

## **ONLY SOLUTIONS LLP (OS)**

April 2019 Hearing Statement for the Mansfield Local Plan  
to supplement Only Solutions LLP's original representations

## **MAIN MATTER 2**

Local Plan Vision, Issues and Objectives, spatial strategy, settlement hierarchy and the distribution of employment and housing land

***Issue - Will the plan contribute to the achievement of sustainable development in the plan area (Policy S1)?***

**Question 1 - Are the plan's objectives appropriate and justified by the evidence and will they help to deliver the vision and strategic priorities to 2033? Are the objectives soundly based and is it clear how the plan and its policies will deliver the objectives?**

**Question 3 - Is Policy S1 consistent with the NPPF and will it be effective in delivering sustainable development and informing proposals for new development?**

1. In PD/73, Only Solutions LLP commented on Policy S1 as follows:

*To be clearly in line with national policy, the policy wording should be clear that ONLY sustainable development will be supported.*

*To quote the Government: "...No development can take place that is unsustainable. That is the commitment that we give on that point..." – Greg Clark, Minister of State, Communities and Local Government (HC Deb, 27 March 2012, c1344) and*

*"...What I am saying today is that the Government are committed to doing far more to publicise those recent cases widely, to provide reassurance that unsustainable development should be resisted. We will use the Planning Advisory Service to ensure that our message is clearly understood: the national planning policy framework does not stand for development at any cost..." - Stephen Williams, The Parliamentary Under-Secretary of State for Communities and Local Government (HC Deb, 26 Jan 2015, c638).*

*Paragraph 15 of the NPPF (2012) states local plans should have "...clear policies that will guide how the presumption [in favour of sustainable development] should be applied locally", and this can include making it clear what types of development are not seen as sustainable development locally.*

*We also note Planning Appeal APP/T3725/A/14/2221613, 14 January 2016 which states that: "...a line of authority (William Davis, Dartford, Cheshire East, and Wenman) has made it clear that the presumption in favour of sustainable development at Framework paragraph 14 does not apply to unsustainable development. I am not aware of any authority which goes against the ratio of William Davis on the paragraph 14 point, and as recently as January 2015, Counsel for the SSCLG in Cheshire East was instructed to agree that 'the presumption in paragraph 14 of the Framework only applies in favour of sustainable development.'..."*

2. The Local Planning Authority (LPA) responded to this comment by stating that:

*"It is considered that the title of the policy makes it clear that it applies to sustainable development. The policy is positively worded and part two states that proposals which accord with the policies of the plan will be approved. It is considered that this sufficiently conveys that development which goes against the policies in the plan will be unsustainable and therefore resisted unless material consideration indicate otherwise."*

3. Only Solutions LLP maintains that, in the context of the soundness or otherwise of the Plan, it would still be necessary to make the matter more explicit for the assistance of Plan users.
4. We see no good reason why the Plan should not make explicit what the LPA's response says is implicit, i.e. that *"development which goes against the policies in the plan will be unsustainable and therefore resisted unless material consideration indicate otherwise"*, although in our view the term *'goes against the policies in the Plan'* would want to be modified to *'does not accord with the policies in the Plan'* due to the way that the policies are framed.
5. The Council has failed to allay our concern that the wording of S1 does not make explicit that unsustainable development would be resisted, and we take issue with Mansfield District Council's (MDC's) reference to the policy being *'positively worded'* as their justification for not allaying this concern (and other concerns) raised by Only Solutions (and other consultees).
6. The Council repeatedly blurs the distinction between positive framing (*'positively worded'*) and positively prepared. The Council seems to be determined, for the most part, to frame policies and objectives in such a way as to abstain from making reference to refusing (or resisting) planning consent, and more broadly the Council avoids making consistency with a policy objective an explicit expectation or requirement of policies and objectives.

7. The essence of Only Solutions' concern is that the policies need to be both sound and consistent with national policy and the wording of the policies needs to be effective in delivering sustainable development as well as being clear as to how objectives will be delivered.
8. As such, wherever there is an interest that needs to be protected then the wording of Plan policies (not merely their titles) must make clear to plan users that development proposals would be required to protect those interests, and that failure to do so could result in planning permission being refused.
9. MDC's over-emphasis on producing a Plan which is 'development friendly' and 'developer positive' (rather than 'sustainable development friendly' and 'responsible developer positive') fails to respect the three pillars of sustainable development, and falls well short of ensuring that only genuinely sustainable development will be supported.
10. The upshot is not only a proposed Plan which, as it is currently worded, is neither sound nor consistent with Government policy, but also a proposed Plan that introduces unwelcome uncertainty for would-be developers, who are given inadequate guidance as to the sorts of proposals that would be deemed unacceptable.
11. National Planning Policy Framework (NPPF) references to 'objectively assessed infrastructure requirements' are intended to include not only requirements for roads and schools, but also green infrastructure requirements. Similarly, building sub-standard or inappropriately sited housing does not meet the needs of the community, and could be detrimental to the meeting of the Plan's broader objectives.
12. Indeed, the 'PAS Soundness Self-Assessment Checklist, December 2018' used as one of the Council's key supporting documents [K2] refers to 'Objectively assessed needs' as: *"The economic, social and environmental needs of the authority area"*.
13. Unfortunately, the imperative to ensure that development meets social and environmental needs is not adequately reflected in Policy S1 and in various other policies (and in some instances, the proposed Plan also fails to align with objectively assessed economic needs due to the failure of the housing targets to take into account the anticipated impacts of automation on economic growth).
14. To the extent that meeting these needs or protecting these interests was meant to have been 'implied' by MDC (as is typically stated in MDC's consultation responses to Only Solutions and others), we believe that it would be helpful for Plan users if these expectations are made more explicit within the wording of the relevant policies.

15. To address this point, and indeed to answer Main Matter 2 Questions 1 and 3, we feel it is worth quoting a portion of an earlier comment from Only Solutions (MDLP/CD/200, dated 20<sup>th</sup> February 2016 in response to the Consultation Draft consultation) as it remains our view, and as we believe it may be of assistance to the Plan's Examination in Public:

*There is no national requirement for policies to be expressed in a purely 'permissive' manner which states what would be acceptable while remaining silent regarding what would not be acceptable.*

*The framing of the Consultation Draft appears to misapply the advice that the plan should be 'positively prepared'. As per paragraph 182 of the NPPF, 'positively prepared' merely means that "the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements..."*

*It is not the Government's intention that Local Plans should support all development, and indeed to do so could prevent the achievement of the NPPF paragraph 182 objective to "meet objectively assessed development and infrastructure requirements", as it could result in missed opportunities for development to provide affordable housing, and housing for people with special requirements, and for vital infrastructure to be delivered alongside development.*

*Similarly, if uncontrolled development results in the destruction of natural and cultural assets that would have otherwise attracted future sustainable development then the permissive language could actually result in lower levels of house building overall, thus failing to meet the objectively assessed needs.*

*The current Draft's unjustified approach calls into question the Plan's viability and deliverability, as well as consistency with national policy. These, in turn, undermine the Plan's soundness.*

*Paragraphs 70, 117, 120 and 123 of the NPPF provide a number of examples of how the NPPF makes it clear that Local Plans should act to prevent inappropriate development, as follows: "To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should...guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;" and "To minimise impacts on biodiversity and geodiversity, planning policies should...aim to prevent harm to geological conservation interests..." and "To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location..." and "Planning policies and decisions should aim to...identify and protect areas of tranquillity..."*

*...Commenting on paragraph 150 of the NPPF, the National Planning Practice Guidance states that: "...Local Plans set out a vision and a framework for the future development of the area, addressing needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment, adapting to climate change and securing good design..." As such, safeguarding the environment and securing good design is a crucial part of what Local Plans should do, as is ensuring that development comes with the appropriate supporting infrastructure and community facilities and addresses the specific needs for housing (e.g. ensuring a sufficient proportion of housing delivered is affordable) rather than delivering housing at any cost.*

*...It is not appropriate to simply indicate what is acceptable and not to indicate what is not acceptable. The approach currently proposed for the Local Plan jeopardises the soundness of the Plan as it means that the Plan could fail to protect the interests that it seeks to protect and fail to explain how 'sustainable development' will be interpreted locally.*

*The recently adopted North Dorset Plan provides one of many examples of Local Plans that have been found to be sound even when they make use of explicitly 'restrictive' language that makes clear that various forms of inappropriate development will be refused permission.*

*The clarity provided by policies that spell out what is required of an applicant, and that explain clearly what constitutes inappropriate development, benefits all parties, not least developers. Such policies show how the presumption in favour of sustainable development will be applied at a local level by explaining what forms of development are unlikely to be deemed sustainable and therefore unlikely to benefit from any presumption in favour of sustainable development.*

*Inappropriate development would not be 'sustainable', therefore having clear restrictive language in the Plan would not go against any Government desire to support sustainable development.*

16. As should be clear from our previous submissions and from MDC's response, Only Solutions has been raising this issue for a long time and, whilst some policies have been improved in their framing, it remains the case that more work needs to be done in this regard.
17. In line with Only Solutions LLP's previous representations, we believe that some of the policies need to be re-worded to more clearly protect the interests for which they are written and to ensure the vital function of planning in preventing inappropriate development. We believe that these changes are necessary to ensure the soundness of the Plan, and more broadly to ensure consistency with Government policy.

***Issue - Is the spatial strategy, settlement hierarchy and distribution of housing, employment and retail development appropriate and justified by a robust and credible evidence base (Policy S2)?***

**Question 6 – Does Policy S2 Part 1a provide sufficient guidance for plan users? What is meant by ‘most’ new development and ‘district wide service development’? Should Policy S2 include reference to locations served by sustainable modes of transport including public transport? Is it clear what is meant by ‘underutilised’ land?**

18. Concern regarding the ambiguity of the definition of 'underutilised land' was raised by Only Solutions in PD/75 (Policy S2), and the proposed Plan is still insufficiently clear about what sort of land is meant by "*other underutilised land*".
19. We note that 'other underutilised land' is listed in Policy S2 as being distinct from brownfield sites, which means the term 'underutilised land' is reminiscent of the problematic term 'underused greenfield land' which was a source of concern in previous rounds of consultation (see Consultation Statement November 2018, A2:5 and A2:16).
20. As we noted in PD/75: "*The term 'other underutilised land' is unclear - underutilised by whom? This is still unclear, despite the response to PO/128 stating that the concept this would be appropriately clarified*". The Council's response that "*The Local Plan needs to be read as a whole*" does not provide sufficient clarity as to the meaning of the term.
21. In PD/75 we noted that if the term 'underutilised land' is retained then it should be clarified that: "*Land of ecological value or ecological potential will not be considered to be 'underutilised land' prioritised for development*".
22. Whilst Only Solutions' suggestions were not taken up with respect to Policy S2 (on the basis that policies such as NE2 would apply to the sites "*whether or not they could be otherwise considered unused or underused*"), the Council did propose M9 which would add the following after Paragraph 3.23 (the supporting text to Policy S3):

*“Where development is proposed on ‘other surplus or derelict land’, [the text] will need to be read as a whole and subject to policies such as open space (IN3) and employment (E3), in order to determine if they are surplus to requirements. The green infrastructure and ecological importance of a site will need to be protected and/or enhanced in accordance with policies IN2 (Green infrastructure) and NE2 (Biodiversity and geodiversity).*
23. It is possible that a similar clarification could be helpful in relation to Policy S2, but it still leaves open the question as to what sort of land is actually being envisaged by the policy.

24. Indeed, the wording of Policy S2 and MDC's associated response raises a question as to whether or not the term 'underutilised land' is intended to be a euphemism for the category of land referred to in the Sustainability Appraisal Appendices to the Publication Draft appraisal of SC4 as being 'underutilised'.

25. According to the SA Appraisal Appendix (page 75/354 of the .pdf):

*"The 'business as usual' approach to this issue involves the use of Saved Policies LT1 - LT7 of the Local Plan. These policies (except LT1) protect a whole range of open spaces and sports and recreational facilities from development unless it is demonstrated that there is sufficient open space in close proximity, or if an acceptable replacement facility is provided elsewhere. LT1 sites have a higher level of protection and development is only permitted if it enhances the facility for recreational use. These policies have meant that some land considered as surplus to requirements (on the basis that it appears underused / unvalued) remain underutilised. It is unlikely that the continued protection of these sites would encourage more community engagement, therefore the effect is uncertain."*

26. If the 'underused / unvalued' land referred to in the Sustainability Appraisal is the same land as that which the Council intended to be covered by Policy S2, then MDC should have explicitly consulted on this basis; however, the Council did not consult on that basis.

27. Many consultees may have considered such land to be important to their local communities and worthy of protecting, not least because it may have been the creation or retention of such spaces that may have justified a specific development going ahead despite adverse impacts. To reclassify this land, after the fact, as suitable for development could be seen as a breach of faith with the community that could undermine confidence in the plan-led system.

28. Indeed, promoting the development of land that had been set aside for the community could be seen as unfairly rewarding developers for failing to provide or maintain open space or facilities of an adequate quality to be attractive, and to justify expecting those facilities and amenities to be improved rather than removed.

29. If it is the policy's intention is to allow for some of these community sites to be lost to development then, at the very least, MDC should have considered whether requiring the provision of extra community benefits in exchange for removing previously safeguarded amenities should be an explicit requirement written in to the policy.

30. Many of these sorts of issues have not been adequately explored as part of the consultation exercise (at least not in writing) due to the ambiguity of undefined terms used by the Council. The concomitant uncertainty raises questions about the extent to which the Sustainability Appraisal properly investigated both the impact of the proposed policies and the impact of potential alternative approaches to 'underutilised' land.