

Response to the Revised Site Allocation and Development Policies Document (SAPD) November 2020

Introduction

Following the consultation on its previous version of the Site Allocation and Development Policies Document (SADPD) in September 2019, CEC has now published its Revised Version of the SADPD. This revised SADPD is out for public consultation from 26th October to 5 pm on 23rd December.

This document is Bollington Town Council's consultation submission, its contents will also be replicated within the CEC Consultation Portal

Cheshire East Council has failed to assess future need

In the 3 years since Cheshire East Council's Local Plan Strategy was adopted, climate change has become more serious, as recognised by Cheshire East Council (CEC) in their Climate Emergency Declaration and their Environmental Strategy. Many more homes than expected have been built and population growth projections have reduced.

The Local Plan Strategy (LPS) estimated that the Borough would generate 7% growth, year on year, and create 30,000 net additional jobs between 2010 and 2030 which would require circa 450 hectares of employment land.

What has happened, as recorded in Cheshire East's Annual Monitoring Report (AMR) for 2018/19 is a reduction of 6,000 jobs in 2018 since 2017, negative jobs growth between 2010 and 2019 and of the 453.45 ha allocated for employment only 31.10 have been taken up.

In Bollington's view Cheshire East is not taking enough account of what is happening and their SADPD proposal are unsound and legally flawed as detailed in this submission which includes Counsel's opinion from of Ian Ponton of Kings Chambers (attached).

Policy PG 12 – Green Belt and Safeguarded Land Boundaries

Cheshire East is again seeking to utilise green belt land in Local Service Centres (LSC)s.

Bollington Town Council objects to this policy and maintains that it lacks soundness because:

- a) it designates Green Belt parcels of land for safeguarding without proving 'exceptional circumstances' to support this (reference the opinion of Counsel Ian Ponter)
- b) it utilised a methodology which was over-reliant on the call for sites to arrive at the designated sites.

We also reference paragraph 1.2 in the 'Introduction' to this SADPD which states that it will allocate sites for development "*where necessary*". Our case is that it is not 'necessary' to allocate land in the LSCs for safeguarding post 2030. It would merely lead to the unnecessary loss of more Green Belt land.

Cheshire East cannot in our view demonstrate exceptional circumstances in safeguarding greenbelt in the LSCs as we have again confirmed by Counsel's opinion (attached).

In the Cheshire East Local Plan Strategy (CELPS) document adopted in 2017, Policy PG3 removed Green Belt status from 26 sites in the Principal Towns and Key Service Centres, allocating them for development within the Plan period. The policy warned that it may be necessary to identify additional non-strategic sites for removal from the Green Belt in the SADPD.

Policy PG4 of the adopted CELPS identified 8 areas of Safeguarded Land in the towns in the North of the Borough and again warned that further allocations of safeguarded land may be required in the SADPD. The justification for safeguarded land is given in paragraphs 8.52 to 8.58 of the CELPS. It concluded at paragraph 8.57 that provision should be made for sufficient safeguarded land to provide for 8 -10 years development post 2030 and a figure of 200 hectares is given in the justification of Policy PG4 to allow for this, taking account of other land sources which will naturally become available.

This was based on an assumed average of 35 dwellings per hectare and hence corresponds to a future requirement of about 7,000 dwellings after 2030 without any changes then to the Green Belt. Paragraph 8.58 concludes that this will be sufficient to ensure that the Green Belt boundary will not need to be reviewed in 2030. The 8 areas of safeguarded land identified in the CELPS amount to 186.4 hectares, leaving 13.6 hectares to be found from elsewhere to make up the 200 hectares overall target if necessary. It is these 13.6 hectares that the SADPD seeks to divide up between Alderley Edge, Bollington, Chelford, Disley and Prestbury. On the same basis of 35 dwellings per hectare this would correspond to a requirement for 476 dwellings after 2030.

The SADPD suite of documents and appendices includes individual Settlement Reports for each of the Local Service Centres, (ED24 for Bollington), a Report on the provision of land and approach to spatial distribution, (ED05), and a Report explaining the basis of allocation of safeguarded land between the Local Service Centres, (ED53).

These reports are based on those issued with the previous version of the SADPD to justify site allocations for development within the Plan period, modified to cover priorities for justifying allocation of safeguarded land for potential development post 2030. There is also a Consultation Report (ED56) giving CEC's account of submissions to previous consultations and its responses to them

There are no exceptional circumstances for Safeguarding Greenbelt Land in the LSCs

A discussion of the justification for exceptional circumstances to release Green Belt land for safeguarding is given in Report ED 53 in paragraphs 1.20 to 1.30. At paragraphs 1.23 and 1.24 of this report, reference is made to the Cheshire East Local Plan Strategy (CELPS) Inspector's statements as follows:

"The exceptional circumstances as stated in the Inspector's final report are "based on the need to allocate sufficient land for market and affordable housing and employment development, combined with the adverse consequences for patterns of sustainable development of not doing so, since it is not practicable to fully meet the assessed development needs of the area without amending Green Belt boundaries." "I also understand that the SADPD will consider the possibility of identifying further smaller scale releases of land from the Green Belt, if exceptional circumstances can be demonstrated, in line with the site-selection methodology" and "CEC also confirms that the SADPD will

consider the need to provide a modest amount of Safeguarded Land at the LSCs, if necessary, in line with the spatial distribution of Safeguarded Land envisaged in the supporting evidence”

Paragraph 1.26 of Report ED 53 states that the exceptional circumstances are fully set out and justified in the Local Plan Strategy (LPS) evidence base and summarised in paragraphs 8.42 to 8.49 of the LPS. Paragraph 1.27 of Report ED 53 concludes that the monitoring of housing and employment land up to March 2020 indicates that it is not necessary to make further alterations to Green Belt boundaries to facilitate the overall level of development required by the LPS up to 2030, and exceptional circumstances to do this no longer exist. However, paragraphs 1.28 to 1.30 conclude that the further requirement for 13.6 ha of safeguarded land remains as when the LPS was adopted in July 2017 and that exceptional circumstances still exist to justify further alterations to the Green Belt boundary in the SADPD.

How do current housing projections affect the need for more safeguarded land?

The latest figures published by CEC for housing projections in the Borough during the Local Plan period are for March 2020. They are summarised in Report ED 05 Table 2 as follows:

Housing Land Supply	Net Dwellings
Completions 01/04/10 – 31/03/20	15,683
Supply (planning permission + allocated)	24,437
Small sites windfall allowance (remaining)	875
Contribution through SADPD	275
Total	41,270

The overall requirement for housing in the Cheshire East Local Plan Strategy (CELPS) is a total of **36,000** dwellings, over the full Plan period from 2010 to 2030. It can be seen from the Table above that there is **already a projected excess of 5,270 dwellings above the 36,000**. CEC refers to this as a ‘flexibility allowance’ to allow for market fluctuations or site circumstances. In Report ED 05 it is stated that the flexibility allowance as seen at the time of the LPS from 2016 figures was **9.9%** whereas based on March 2020 figures the flexibility allowance has risen to **14.6%!**

If there was a need to provide sites to make up 13.6 hectares, this would correspond to a requirement for 476 dwellings. However, there is already a projected surplus of 5,270 dwellings for the end of the Plan period at a stage halfway through the Plan so that a requirement for a further 476 dwellings is unnecessary.

There is, therefore, a very strong argument that there are no exceptional circumstances for removing any land from Green Belt in the Local Service Centres (LSCs) such as Bollington now and designating it as safeguarded land.

There is already 186.4 ha of safeguarded land specified in the adopted Local Plan Strategy in 2017 when the overall potential need was identified as 200 ha. The current projections for housing supply during the whole Plan period are very significantly higher than the Local Plan requirement of 36,000 dwellings. This projected oversupply is more than sufficient, taken with the 186.4 ha of safeguarded land already specified, to ensure that there will be sufficient housing supply at the end of the Plan period that no further release of Green Belt is required.

An opinion sourced jointly by Bollington, Prestbury, Chelford and Disley Town and Parish Council from Ian Ponter of Kings Chambers is attached. It supports the Councils view that Cheshire East Council has not demonstrated exceptional circumstances for safeguarding Green Belt land in the LSCs

The particular sites selected for safeguarding in Bollington



Opposition to the specific sites proposed for safeguarding in Bollington is because they are unsuitable for development and the methods used to select them rely on arbitrary judgements with no involvement of community consultation. A list of detailed objections was submitted by many people in the consultation on the previous version of the SADPD and have been completely ignored by CEC.

BOL 1 Henshall Road

This site is unsuitable for housing development as it is not compatible with sustainable development for the following reasons:

- It is heavily contaminated with industrial chemicals and rotting storage drums due to tipping of waste by Bollington Printing Works up to 1980.
- Since it has been undisturbed for nearly 40 years it has become an important site for habitat distinctiveness with badgers, foxes, owls and bats in evidence as shown in the Bollington Neighbourhood Plan study by Cheshire Wildlife Trust.
- United Utilities indicated in their response to the previous consultation that they would prefer alternative sites to be used as their wastewater infrastructure is under pressure in the nearby area and there has been flooding in the vicinity and the site is around known pinch points on the surrounding wastewater network.
- The site is on the side of Hall Hill and the land falls away to the North down to housing and two schools on Albert Road. There has already been flooding damage to the two schools in recent years and building on this site would cause a faster run-off of rain water with consequent increased risk of flooding and would be in contravention of SADPD Policy ENV 16.
- The proposed access to the site is off a bend in the main B5090, opposite access to a major estate and concerns by the community in Bollington about traffic safety have been ignored.
- In the 2013 SHLAA Update this was site 3415 and was assessed as 'not suitable', 'not achievable' and 'not currently developable'.

- the SADPD proposals conflict with Green Belt Policy ENE.P1 of the Bollington Neighbourhood Plan, adopted in May 2018, as the development proposals are likely to have a significant adverse impact on a local wildlife corridor or wildlife habitat.
- This site is immediately adjacent to the proposed extension of the Bollington Cross Conservation area to include Lowerhouse and development on this site could impact the Conservation Area adversely.

BOL 2 Oak Road / Greenfield Road

- This site is unsuitable for housing development as it is not compatible with sustainable development for the following reasons:
- The traffic light assessment gives insufficient weight to the location of this site within the Peak Park Fringe area.
- There is considerable doubt about suitable access to this site and opposition from local residents to the potential additional congestion that would be caused on Greenfield Road. This is not reflected satisfactorily in the traffic light assessment for this site.
- In the responses to consultation, United Utilities have reported the presence of a gravity sewer running through the site. Insufficient attention has been paid to this as the site is relatively small.
- Planning permission has been refused on this site on a number of occasions previously – there is no reason for previous decisions to be changed now.

The Traffic Light Assessment Red/Amber/Green (RAG) of potential Safeguarded Sites.

The Traffic Light Assessment (RAG) of potential Safeguarded Sites in the north Cheshire Local Service Centres (LSCs) including Bollington has played an important role in the Site Selection Methodology. Those sites with the highest number of Green Ratings have ended up with being the chosen as Safeguarded Sites.

The use of the RAG System is both subjective and superficial. It relies on unsubstantiated statements and judgements by prospective developers and Council officers.

There follows a list of reasons to back up the above statements.

- (1) The assumption behind the RAG system is that the higher the number of Green Ratings is a key factor in terms of the choice of site because each of the 20 criteria has the same weighting. This is clearly not the case, as a site which requires expensive highway mitigation works or significant contamination remediation works, and requires a Red Rating, could make the development of the site unviable even if most or all of the other ratings were Green.
- (2) The viability of the chosen Safeguarded Site is an important consideration at the Plan making stage, as referred to in paragraph 57 of the NPPF (2019), it is a concern that there is no reference to this paragraph and its requirements. It is also of great concern that the Council has relied on “The site promoter has confirmed that the development is deliverable”. To be deliverable there is a requirement for significant highway and pedestrian off site works, on land not in the control of the “site promoter”. As a basic requirement the Council should have requested a viability assessment, and independently appraised it, and these documents should

have been made publicly available. The viability of the site has to be fully evidenced and justified before a judgement can be made about it.

To give the site a Green Rating on the statement of a party which has an interest in developing the site, is a serious error of judgement. If the site is not viable it should not go forward as a Safeguarded Site.

(3) It is reasonable to expect that the criteria used will be of relevance to the part of Cheshire East in which the LSCs in the north Cheshire Green Belt lies. Criteria 4 Strategic Green Gap as shown on Figure 8.3 in the LPS clearly shows that the Strategic Green Gap only relates to the area around Crewe. It is unclear what the relevance of the Strategic Green Gap is to the sites being looked at as Safeguarded Land. The sites are over 20 miles away. The consequence is clear in terms of the RAG assessment, all of the potential Safeguarded Sites are rated as Green.

(4) Criteria 14 deals with Accessibility, and “*How accessible is the site to open space, local amenities and transport facilities*”. There is specific guidance in the LPS under Policy SD2 in Table 9.1 and paragraph 9.5 to Access to services and amenities. There is no reference to this key Table under this criteria, despite the fact it is regularly used by the Council in assessing the sustainability of sites which come forward in planning applications.

This is a serious omission and undermines the credibility of how the important issue of accessibility has been addressed in the RAG.

Paragraph 9.5 states that Table 9.1 “*provides a guide to the appropriate distances for access to services and amenities.... It is backed by the DCLG & the WWF*”.

“The distances have been used for the purposes of informing the Sustainability Appraisal and the accessibility of proposed developments”.

There can be no doubt of the weight which should be attached to Table 9.1, which plays a key part in site assessment in the LPS. It is difficult to understand why this Table has been bypassed in dealing with the Criteria of Accessibility.

The above points highlight serious deficiencies in the Traffic Light Assessment used in the Revised SADPD for selecting Safeguarded Sites. In the light of them it is considered that very limited weight should be attached to it as a means of site selection

The section on ‘Green Belt’ references the Green Belt Assessment Update (**GBAU**) carried out by Arup in 2014 and quotes them as follows: “*The consultants state that the higher the performance against Green Belt purposes, the greater the exceptional circumstances that will be necessary to make the case for the release of sites from the Green Belt*” (para. 3.81). What it fails to do is to give the original ratings that Arup arrived at. It merely presents, in Table 3.4, the amended rankings that Cheshire East Council has arrived at.

As explained in Bollington’s response to the previous consultation, some of the ratings given to land parcels subsequently recommended for development were later downgraded by CEC. Why was this and why are designations of significant contribution being totally ignored in safeguarding these sites for development? Both Bollington Sites were rated by ARUP as Significant Contribution and remain so in CEC’s SADPD table. This does not make any sense.

The updated table of sites in Local Service Centres proposed for removal from Green Belt, (along with their Green Belt rankings), is shown below.

Site ref in SADPD	Site Ref. in settlement report	Site Name	Site contribution to Green Belt purposes	Site within GBAU parcel(s)	GBAU contribution to Green Belt purpose	Land proposed, in revised CEC SADPD, for safeguarding
ALD 1	CFS301	Land adjacent to Jenny Heyes, Alderley Edge	Contribution	AE06	Major contribution	
ALD 2; ALD 3	CFS404 Plot 4	Ryleys Farm, north of Chelford Road, Alderley Edge	Significant contribution	AE19	Significant contribution	ALD 3: 2.32 ha
ALD 4	CFS130b	Land north of Beech Road, Alderley Edge	Significant contribution	AE04	Major contribution	
BOL 1	CFS561	Land at Henshall Road, Bollington	Significant contribution	BT19	Significant contribution	BOL 1 1.48 ha
BOL 2	CFS567	Land at Oak Lane / Greenfield Road, Bollington	Significant contribution	BT11	Significant contribution	BOL. 2 0.26 ha
BOL 3	FDR855b	Land at Jackson Lane, Bollington	Contribution	BT10	Contribution	
CFD 1	CFS2/48	Land off Knutsford Road, Chelford	Significant contribution	CF07	Significant contribution	CFD1 0.58 ha
CFD 2	CFS427c (smaller parcel)	Land east of Chelford Railway Station	Significant contribution	CF05	Significant contribution	CFD2 4.53 ha
DIS 2	FDR1941	Land off Jacksons Edge Road, Disley	Significant contribution	DS29	Significant contribution	DIS 2 2.43 ha
MOB 2	CFS333A	Land north of Carlisle Close, Mobberley	Significant contribution	MB05	Significant contribution	
PRE 2	CFS574	Land south of Prestbury Lane, Prestbury	Contribution	PR02	Contribution	PRE2 1.84 ha
PRE 3	FDR2001	Land off Heybridge Lane (northern site), Prestbury	Contribution	PR09	Significant contribution	PRE3 0.94 ha

It would be prudent, logical and certainly more environmentally friendly under the circumstances, for CEC to desist from taking any more Green Belt altogether – whether it be for the period of this Local Plan or the next one – and to concentrate on reassessing other areas such as employment sites which are not delivering or failing town centres. Town centres were failing prior to the coronavirus pandemic due to the rise of internet shopping but have now been decimated due to it.

Bollington Town Council December 2020



**RE: SAFEGUARDED LAND
IN CHESHIRE EAST**

ADVICE

1. I am instructed on behalf of Bollington Town Council, Chelford Parish Council, Disley Parish Council, and Prestbury Parish Council (“the Local Councils”). The Local Councils all fall within the administrative boundary of Cheshire East Council (“CEC”).
2. CEC is engaged in the promotion of a draft Site Allocations and Development Policies Document (“SADPD”) that is intended to form part of its statutory development plan. A second publication version of a draft SADPD has been produced by CEC, and is undergoing a process of public consultation (that is due to close on 7 December 2020)¹.

¹ What is referred to by CEC as an initial publication draft of the SADPD was issued for consultation in August 2019. That document has undergone significant alteration in the current draft SADPD.

3. The Local Councils are concerned about the approach taken by CEC to the identification of safeguarded land within the draft SADPD. In particular, draft policy PG12 designates 8 sites as safeguarded land, and confirms that policy PG4 of the Local Plan Strategy (“LPS”) will apply to those sites. Within the draft supporting text for emerging policy PG12, it is stated (at paragraph 2.18) that;

“LPS Policy PG 4 'Safeguarded land' sets the policy related to land between the urban area and the inner boundary of the Green Belt that may be required to meet longer-term development needs. It also lists the areas of safeguarded land identified in the LPS and confirms that it may also be necessary to identify additional non-strategic areas of safeguarded land in the SADPD.”

4. The Local Councils are concerned that CEC’s approach to the release of land from the Green Belt to be identified as safeguarded land within draft policy PG12 is erroneous, in that it fails to address the requirements of national policy. Paragraph 136 of the National Planning Policy Framework (“the Framework”) is in the following terms;

“Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.”

5. In light of the provisions of the Framework, the Local Councils consider that CEC has not demonstrated exceptional circumstances so as to justify the release from the Green Belt of the 8 sites identified within policy PG12 of the draft SADPD.

6. That concern has been expressed to CEC. In an e-mail from Councillor Toni Fox (CEC's cabinet member for planning) to my instructing consultant dated 16 October 2020 it is stated that;

"The Local Plan Strategy is an up to date, strategic plan. It establishes that 200 hectares of safeguarded land will enable the Green Belt boundary to retain a sufficient degree of permanence so that it will not need to be reviewed again at the end of this plan period in 2030.

The provision of 200 ha of safeguarded land is established in the evidence for the LPS and confirmed in paragraph 8.57 (supporting text to LPS policy PG4 (Safeguarded Land)). The LPS identifies 186.4 hectares of safeguarded land, meaning that a further 13.6 ha needs to be identified in order to demonstrate that the Green Belt boundaries will not need to be altered again at the end of the plan period.

The evidence and justification for the Site Allocations and Development Policies Document approach to safeguarded land and its proposals is set out in full in the Local Service Centres Safeguarded Land Distribution Report [ED 53]. The exceptional circumstances required to make alterations to Green Belt boundaries are fully set out and justified in the LPS evidence base and summarised in paragraphs 8.42 to 8.49.

NPPF paragraph 136 also states that where strategic policies have established a need for changes to Green Belt boundaries, detailed amendments to those boundaries can be through non-strategic policies. The Site Allocations and Development Policies is a non-strategic Plan set within the strategic context established through the LPS."

7. Accordingly, it appears to be CEC's position that;

(i) the LPS, as CEC's strategic plan, identifies that 200 ha of land should be identified as safeguarded land,

- (ii) the exceptional circumstances required to justify the release of that level of safeguarded land was established within the evidence base that supported the LPS,
- (iii) the draft SADPD is a non-strategic plan that may implement detailed Green Belt boundary changes, “within the strategic context established through the LPS., and,
- (iv) as such, CEC is not required to demonstrate exceptional circumstances to support the release of sites from the Green Belt within policy PG12 of the draft SADPD.

8. I disagree. In particular, the starting premise (at point (i) above) advanced by CEC does not correspond with the policy position set out in the LPS.

9. Amongst other things, policy PG3 of the LPS identifies 26 sites for removal from the Green Belt and designation as either land allocated for development or safeguarded land. At its paragraph 6, policy PG3 states that;

“In addition to these areas listed for removal from the Green Belt, it may also be necessary to identify additional non-strategic sites to be removed in the Site Allocations and Development Policies Document.” (emphasis added)

10. Consistent with that approach, policy PG4 of the LPS (addressing safeguarded land specifically) lists the sites designated as safeguarded land within the LPS (that are also referred to in policy PG3) and states that;

“In addition to these areas of safeguarded land listed; it may also be necessary to identify additional non-strategic areas of land to be safeguarded in the Site Allocations and Development Policies Document.” (emphasis added)

11. Accordingly, the terminology used in policies PG3 and PG4 of the LPS is clear, and confirms that there is no certainty surrounding the further release of land from the Green Belt (whether by way of allocation for development or as safeguarded land).

12. In addition, there is no reference in LPS policies to the release of 200 ha of land from the Green Belt to be designated as safeguarded land. Policies PG3 and PG4 achieve the designation of 186.4 ha of land as safeguarded land, and simply record that there may be a need for the further identification of land within the SADPD. The policies themselves do not pre-judge the existence of that need.

13. That approach is consistent with the understanding of the inspector who conducted the examination into the LPS. That Inspector’s findings include the following;

“CEC also confirms that the SADPD will consider the need to provide a modest amount of Safeguarded Land at the LSCs [Local Service Centre’s], if necessary, in line with the spatial distribution of Safeguarded Land envisaged in the supporting evidence.”²
(emphasis added).

² at paragraph 102 of the LPS Inspector’s report.

14. Paragraph 8.57 of the LPS forms part of the supporting text to policy PG4 and states that;

“Given the desire to protect the countryside and minimise the impact on the Green Belt, it is appropriate to provide only the minimum amount of safeguarded land needed to make sure that Green Belt boundaries do not need to be altered again in the next plan period. Considering the potential options for accommodating development post 2030, it is considered that there are grounds for a modest reduction in the timescale for projecting forward needs, to provide for between 8-10 years of safeguarded land. Factors in relation to future housing densities have also been considered, including an ageing population, increased provision of smaller units and enabling higher densities through improved urban design. It is considered that there are sufficient grounds for assuming future housing densities of between 30 and 40 dwellings per hectare. A range of scenarios have been tested using the parameters on time period for projections and housing densities, which result in a requirement of between 155 ha and 244 ha of safeguarded land. Overdependence on any single influence is not appropriate given the timescales and variables involved, and a mid-point of 200 hectares is selected to take account of all factors concerned.”

15. I note;

- (i) the supporting text does not alter the plain words of the policies. Those policies confirm that the necessity for additional Green Belt release in order to designate further land as safeguarded land is a matter to be addressed in the SADPD, and,
- (ii) paragraph 8.57 confirms that the identification of a figure of 200 ha turned on a consideration of a range of factors that, in turn, generated a range of between 155ha and 244ha as the requirement for safeguarded land.

16. In my view, and for the SADPD to accord with the policies of the LPS, CEC is obliged to examine the need for the release of additional Green Belt land for designation as safeguarded land as part of the exercise in producing the SADPD.

17. That exercise would not only be consistent with the policies of the LPS, but also with the terms of national policy. In particular, with specific reference to the setting of detailed boundaries (that may be conducted in 'non-strategic' plans), paragraph 139 of the Framework includes the following;

"When defining Green Belt boundaries, plans should:

- a) ensure consistency with the development plan's strategy for meeting identified requirements for sustainable development;
- ...c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period..."

18. In order to comply with these provisions of national policy, the SADPD should examine the need for the release of further land from the Green Belt for identification as safeguarded land so as to;

- accord with policies PG3 and PG4 of the LPS and thereby ensure consistency with the development plan's strategy, and,
- meet the express requirement of the Framework, namely, to identify safeguarded land only where necessary.

19. It is not clear to me that CEC has conducted an up to date assessment of the need for the identification of further safeguarded land. Councillor Fox's e-mail to my instructing consultant made reference to part of the evidence base for the draft SADPD. The document with reference number ED53 is called the Local Service Centres Safeguarded Land Distribution Report ("ED53") and is dated August 2020. Amongst other things, it makes clear that;

- (i) CEC is proceeding on the basis that the LPS has established that 200ha of land should be identified as safeguarded land, and, as a result, the SADPD is to identify 13.6ha of safeguarded land³, and,
- (ii) the purpose of the Report is to address the distribution of that 13.6ha⁴.

20. Before addressing CEC's methodology for distribution (within section 2 of the Report), the ED53 concludes that;

"1.29 ...Unlike the situation in relation to provision of housing and employment land during this plan period, the further requirement for 13.6 ha safeguarded land remains the same now as it did upon adoption of the LPS in July 2017.

1.30 As set out above, the LPS (¶18.57) considers that 200 ha safeguarded land will enable the Green Belt boundary to retain a sufficient degree of permanence. It is considered that exceptional circumstances still exist to justify further alterations to the Green Belt boundary in the SADPD, to enable the full 200 ha

³ e.g. paragraph 1.3. At paragraph 1.17, the 200ha is said to have been "fixed" by the LPS.

⁴ at paragraph 1.4 of the Report.

safeguarded land required in order to comply with the requirements of NPPF ¶139 regarding the permanence of the Green Belt boundary.”

21. Apart from the assertion (at ED53’s paragraph 1.29) that the position remains the same as in July 2017, there is no assessment within ED53 by reference to up to date evidence that there is now a necessity for the designation of additional land (beyond that designated in the LPS) as safeguarded land.
22. I am not aware of any other part of the evidence base prepared in support of the draft SADPD that sets out an up to date assessment of the necessity for the further release of 13.6ha (or any other amount) of land from the Green Belt and its designation as safeguarded land.
23. My instructions list a series of factors that may be relevant in determining the question of the necessity for additional allocation of safeguarded land within the draft SADPD. I am not in a position to conclude whether or not those (or other factors) are relevant to that question, and if so, what weight they should carry in any proper assessment. However, it is sufficient to conclude that there will be factors relevant to the issue of need for additional Green Belt release and designation of safeguarded land⁵, and, on the face of it, CEC has not sought to assess any such factor, relying instead on the assertion that there has been no change since adoption of the LPS in 2017.

⁵ for example, my instructions refer to the fact that development on brownfield/windfall sites is well in excess of the level anticipated at time of adoption of the LPS.

24. In conclusion, it is my view that;

- (i) the policies of the LPS (PG3 and PG4) require CEC to determine whether or not it is necessary to release further land from the Green Belt to be designated as safeguarded land,
- (ii) that clear requirement of policy is not altered by the terms of supporting text within the LPS,
- (iii) that policy approach was one that was recognised (and endorsed) by the inspector who examined the LPS,
- (iv) it is a policy approach that is consistent with national policy (at paragraph 139 of the Framework), and,
- (v) CEC does not appear to have conducted an up to date assessment of the need for release of further land from the Green Belt to be designated as safeguarded land within the SADPD.

25. I acknowledge that the Framework refers to the requirement to establish exceptional circumstances to justify the alteration of Green Belt boundaries as a matter for strategic policy-making⁶. My conclusions (summarised in the preceding paragraph) are

⁶ at paragraphs 136 and 137 of the Framework.

not directed at the establishment of exceptional circumstances required to justify the alteration of Green Belt boundaries. It is clear that the principle of Green Belt boundary alteration was justified by the demonstration of exceptional circumstances through the LPS. However, when it comes to detailed boundary adjustment (that is the subject, amongst other things, of the SADPD), CEC must demonstrate the need for those adjustments so as to comply with local and national policy as set out above.

26. I also note the reference in both my instructions and the e-mail from Councillor Fox to the case of **Aireborough Neighbourhood Development Forum v Leeds City Council v Secretary of State for Housing, Communities and Local Government, Avant Homes (England) Limited, Gallagher Estates Limited**⁷. That case concerned a successful challenge to a site allocations plan on the grounds, amongst others, that inadequate reasons were given for finding exceptional circumstances to justify the release of Green Belt within that plan. As stated at paragraph 103 of the Judgment;

“The job for the Inspectors in deciding whether there should be GB release was to apply the NPPF, and in particular para 83. They therefore had to determine whether there were exceptional circumstances to justify GB release. If the level of need in the CS [Core Strategy] was undermined in emerging policy then that was a matter that they had to take into account and give reasons in respect of.”

27. Accordingly, the **Aireborough** case proceeded on the basis that exceptional circumstances were required in order to justify the release of Green Belt land within

⁷ [2020] EWHC 1461 (Admin).

a site allocations plan in accordance with national policy advice. The national policy of application in the **Aireborough** case was the 2012 version of the Framework. Its paragraph 83 is in different terms to paragraph 136 of the current (2019) version of the Framework. It stated that;

“Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term., so that they should be capable of enduring beyond the plan period.”

28. Unlike paragraphs 136 and 137 of the current version of the Framework, the earlier national policy provision did not refer to the demonstration of exceptional circumstances only as part of the strategic policy-making process. I have acknowledged the apparent effect of paragraphs 136 and 137 of the Framework (i.e. that the requirement to demonstrate exceptional circumstances appears to be limited to the strategic policy-making process). I have also concluded that separate to the demonstration of exceptional circumstances, the LPS policies themselves (PG3 and PG4) together with paragraph 139 of the Framework require CEC to demonstrate the need for Green Belt release and the designation of further safeguarded land.

29. Separate to the question of need for the designation of further safeguarded land through the release of Green Belt land, my instructions raise the issue of CEC’s selection of sites to be designated under policy PG12 of the draft SADPD.

30. The exercise of site selection is referred to in ED53 at paragraph 3.87 in the following terms;

“The assessment of the availability of sites to accommodate safeguarded land takes account of:

- the ‘Assessment of Urban Potential and Possible Development Sites Adjacent to the Principal Towns, Key Service Centres and Local Service Centres’⁸, which identified a pool of sites to be considered at SADPD stage;
- sites submitted in the LPS Proposed Changes Version that were not considered large enough to be a strategic site (as detailed in the Final Site Selection Reports);
- a call for sites exercise, held by the council, which ran from 27 February 2017 to 10 April 2017, to help inform any further land allocations for development that are made through the SADPD;
- consultation on the First Draft SADPD, which took place between 11 September and 22 October 2018; and
- consultation on the initial Publication Draft SADPD, which took place between 19 August and 30 September 2019.”

31. Similarly, CEC’s Site Selection Methodology Report (document reference ED07, dated August 2020) states that;

“This work involved utilising existing sources of information including the results of the Assessment of the Urban Potential of the Principal Towns, Key Service Centres and Local Service Centres and Possible Development Sites Adjacent to Those Settlements (August 2015), sites submitted to the Local Plan Strategy Proposed Changes Version that were not considered to be large enough to be a strategic site (as detailed in the Final Site Selection Reports), and sites submitted through the call for sites process, the First Draft SADPD consultation and the initial Publication Draft SADPD consultation.”⁸

⁸ at paragraph 2.6.

32. Paragraph 35 of the Framework sets out the tests of “soundness” for development plans, including the requirement that plans should be;

“Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence”.

33. The sources of data that are referred to in the Council’s evidence base (in the extracts from the evidence base documents set out above), appear to me to represent a reasonable basis for the identification of potential sites to be the subject of designation in the emerging SADPD. Whilst my instructions state that the only clear basis for CEC’s selection of sites is contained in an Urban Potential Study from 2012, that contention does not correspond with the list of sources that the Council refers to in its recent documents (ED53 and ED07). Based on the information that I have been provided with, it is not clear to me that CEC has fallen into error in the process of site selection. Of course, that conclusion does not dilute my conclusion in respect of what is clearly the primary issue, namely whether or not the Council is required to demonstrate a need for the further release of Green Belt land for designation as safeguarded land within the draft SADPD.

Kings Chambers,
Manchester, Leeds, Birmingham.

Ian Ponter,
11 November 2020.