

On behalf of: Claimant
Statement of: J Worley
Statement No.: 2
Exhibits: "JW7-JW14"
Date: 27 July 2021
Claim No: CO/1065/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT (BIRMINGHAM)

**In the matter of a statutory review under s.288(1) Town and Country
Planning Act 1990**

BETWEEN:-

MELTON BOROUGH COUNCIL

Claimant

-and-

**SECRETARY OF STATE FOR HOUSING COMMUNITIES
AND LOCAL GOVERNMENT**

Defendant

-and-

MR MATTHEW ATTON

Interested Party

**SECOND WITNESS
STATEMENT OF JAMES
WORLEY**

I JAMES WORLEY WILL SAY AS FOLLOWS:

1. I am employed by the Claimant, Melton Borough Council, as the Assistant Director for Strategic Planning and Delivery based at Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire, LE13 1GH.

2. My principal duties cover overall responsibility for the Claimant's Strategic Planning and Delivery function. I am a qualified town planner and full Member of the Royal Town Planning Institute, with in excess of 30 years' unbroken experience of dealing with planning applications in a Local Government setting, and in my current role I am the principal advisor to the Local Planning Authority on planning matters. I have been employed in this capacity since April 2004. I was directly involved in the production of the Melton Local Plan and its adoption by the Claimant in October 2018.
3. This is my second witness statement which is supplementary to that dated 19th March 2021 which addressed the background to the content of Policy SS2 of the adopted Melton Local Plan. I am duly authorised to make this witness statement on behalf of the Claimant.
4. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
5. The paginated bundle of exhibits annexed to this witness statement contains true copies of documents marked "**JW7-JW14**".

6. By way of background, I can confirm the Local Plan was developed by the Claimant over a period from 2014 to 2018, concluding with its adoption by Council on 10th October 2018. This statement traces the “version control” of the Local Plan prior to, at and post adoption with the object of explaining clearly to the court the reasons why the Inspector in this case was led into error in his application of Policy SS2.

7. The Melton Local Plan Pre-Submission Draft was published for the purposes of Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 on 8th November 2016. A subsequent document, entitled Addendum of Focused Changes (making amendment to, and to be read in conjunction with the Pre-Submission Draft) was published on 12th July 2017. ‘Policy SS2’ set out the development strategy for the Borough, its intended application being elaborated by the associated written justification. I refer to the relevant extract of the policy and its written justification published for the purposes of Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended by the Addendum of Focussed Changes) marked as exhibit “**JW7**”.

8. In accordance with regulation 22(3) of the Town and Country Planning (Local Planning) (England) Regulations 2012, the Claimant submitted the Melton Local Plan, along with the supporting documents required by this Regulation, to the Secretary

of State for Communities and Local Government on 4th October 2017 for independent Examination.

9. Examination took place in late 2017 including Hearing Sessions commencing on 30th January 2018. During the examination, the Examiner was asked to recommend Main Modifications necessary to make the plan sound and legally compliant. The proposed Main Modifications were published for public consultation on 21st June 2018. 39 representations were received and were forwarded to the Inspector for consideration.

10. I refer to the Examination report issued by the Inspector on 14 September 2018 marked "**JW8**".

11. I have reproduced below the Examiner's findings in relation to development strategy and which include reference to Policy SS2 specifically which can be found at paragraph 30 and 46 respectively of the Examination report exhibited as "**JW8**". The relevant part states:

30. In these circumstances, it is justified and consistent with national planning policy to consider how the overall target of 6125 dwellings should be stepped over the remainder of the Plan period, to enable a more gradual increase in the annual level of completions that would be required. A number of alternative options¹⁰ were explored during the examination. In this light I have

*concluded that a 3-step requirement for average delivery rates of 170dpa 2011-2021, 245dpa 2021-2026, and 320dpa 2026-2036 would be aspirational and ambitious, while offering a reasonable prospect of being delivered. Accordingly, Policy SS2, the supporting text and the monitoring framework should be modified by **MM1** to set this out. As Figure 6 of the MM shows planned delivery increases gradually from 170dpa in 2018/19 to 310dpa in 2022/2023, clearly enabling a very significant increase in housing supply.*

*46. Therefore, I have concluded that the fundamental components of Policy SS2, which lays down the development strategy for the Plan period, are sound. However, for an effective plan, greater clarity about the relationship of Policy SS2 with other policies is required. Therefore **MM6** acknowledges that some new housing and employment development may come forward on unallocated but sustainable sites that accord with Policy SS1.*

12. The Examiner recommended Main Modifications as an appendix to her report. Modification 1 ('MM1') and Main Modification 6 ('MM 6') stated that amendment should be made to Policy SS2 and its explanatory text. I provide the full text of the Examiner's Main Modifications to policy SS2 marked as exhibit "**JW9**".
13. The specific reference to Policy SS2 is found in MM1 of the Examiner's Main Modifications exhibited as "**JW9**". The bold and

underlined text below is additional text recommended by the Examiner for inclusion in the Local Plan:

Policy SS2 – Development Strategy

Provision will be made for the development of at least 6125 homes and some 51 hectares of employment land between 2011 and 2036 in Melton Borough. Housing delivery is planned to increase within the plan period as follows:

Average annual housing requirement

2011-2021 a minimum of 170 dpa

2021-2026 a minimum of 245 dpa

2026-2036 a minimum of 320 dpa

The 5-year housing land supply will be calculated on the basis of the relevant requirement for the period in accordance with the above. Subject to any review of the Plan, any shortfall in delivery from the start of the Plan period will be addressed by applying the Liverpool Approach, with the shortfall being delivered over the remaining years of the Plan period. This is necessary to ensure that the Plan's policies for a significant uplift in the supply of housing in the 5-year period following adoption, as part of the Plan's sustainable, long term growth strategy, are not undermined by the setting of unrealistic housing targets in the short term.

Development will be distributed across the Borough in accordance with the spatial strategy set out below:

.....

Service Centres and Rural Hubs will accommodate approximately 35% of the Borough's housing residual requirement need (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale 'windfall' development, where it would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

[footnote]* please see Table 3: Distribution of 'windfall' sites

14. Main Modification 6 recommended further changes to the explanatory text in relation to policy SS2 (pages 25 and 26 of Examiner's Main Modifications Exhibited as "JW9"), as follows:

Policy SS2 – Development Strategy

Provision will be made....

Development will be distributed....

Melton Mowbray Main Urban Area is the priority location for growth and will accommodate approximately 65% of the Borough's housing need. The role and sustainability of Melton Mowbray will be significantly enhanced through the delivery of at least 3,980 homes and up to 31 hectares of additional employment land by 2036 on

allocated and other sustainable sites in accordance with Policy SS1 above.

Development will be expected to contribute positively to the provision of key infrastructure, including traffic relief within the town, to support its growing population and economy.

*Service Centres and Rural Hubs will accommodate approximately 35% of the Borough's housing **residual** requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging additional small scale **residential** development, where it would represent **sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 – Sustainable Communities.***

....

Development on unallocated sites in the rural area

4.2.16

*Where no sites are allocated for new housing, schemes may be permitted where they **represent sustainable development or demonstrably meet identified needs and/or help to sustain local services or facilities.** Schemes of up to about 10 dwellings may be appropriate within or on the edge of Service Centres, schemes of up to about 5 dwellings for Rural Hubs, and schemes of up to about 3 dwellings for Rural Settlements.*

....

4.2.16

....To ensure that the housing requirement is met, **Policy SS32 and Table 4** establishes individual housing targets for Melton Mowbray and for each settlement in the Service Centre and Rural Hub categories. The majority of development in these settlements will be met through allocations in the Local Plan. These are set out in Policy C1. Housing allocations are on sites that can accommodate 10 dwellings or more. **The remainder will be provided by 'windfall' development in accordance with Policy SS2 or SS3.**

15. I refer to the report presented to the Claimant's full Council on 10th October 2018 marked "JW10". The report recommended that the Main Modifications were accepted and that the Melton Local Plan was adopted subject to those modifications. The Examiner's report and the Main Modifications to the Plan were presented in full as appendices.

16. Accompanying the Council report was Appendix 2 (Exhibited as "JW11"), which was an updated version of the Local Plan which incorporated all of the Main Modifications that had been commended to full Council. The officer's report to the full Council ("JW10") included a recommendation that this document be adopted as the Development Plan. Paragraph 2.1 of the Council Report exhibited as "JW10" states (as relevant):-

(iii) Agrees the adoption version of the Melton Local Plan (including its appendices), as set out at Appendix 2 of this report” and

(iv) Agrees that the Melton Local Plan 2011-2036 is adopted as part of the development plan for the Borough”

17. Paragraphs 4.2.16 of Appendix 2 (which I refer to marked “**JW11**”) show the full text of Policy SS2 incorporating the amendments recommended by the Examiner. I draw the court’s attention to the inclusion of the word ‘windfall’ in the 5th paragraph (page 32 of exhibit “**JW11**”) of policy SS2:

Service Centres and Rural Hubs will accommodate approximately 35% of the Borough’s housing residual requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale residential ‘windfall’ development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

18. I refer to the minutes from the Council meeting on 10th October 2018 marked as “**JW12**”, which confirm the Council adopted the Plan as recommended.

19. Following the formal adoption of the Plan, the Claimant gave Notice of its adoption of the Local Plan. I refer to the notice issued under

Regulation 26 of the Town and Country Planning (Local Planning) Regulations 2012, marked “**JW13**”.

20. The Claimant’s officers then proceeded to prepare the Local Plan document, its appendices and maps, for publication in digital format on the Claimant’s website and for the purposes of publishing printed copies. Unfortunately, an error occurred during this exercise and the word ‘windfall’, which had been inserted into Policy SS2 by virtue of acceptance of Main Modification 1 was omitted. Consequently, the version of the Plan which was printed on the Claimant’s website and “hard” printed copies did not set out the version of the policy which had been adopted by the Claimant on 10th October 2018.
21. The published version on the Council’s website and the printed copies, contained the wording I set out below:

Service Centres and Rural Hubs will accommodate approximately 35% of the Borough’s housing residual requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale residential development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

22. I confirm that this alteration was made in error and not carried out under the delegated powers afforded to me by virtue of the Council decision on 10th October 2018, part (viii) as presented in exhibit **“JW12”**. **This error was identified following the appeal Hearing held on 2nd February 2021 when raised by an interested party.**

23. No other changes were made to the Policy under these delegated powers but the following adjustments were made to the explanatory text:

(i) the reference in paragraph 4.2.2 of Appendix 2 (Exhibit **“JW11”**)

“(see paragraph 4.7.8)” was corrected to “see paragraph 4.8.8” and

(ii) the words *“at the current time”* in the first sentence of paragraph 4.2.8 of Appendix 2 (Exhibit **“JW11”**) was deleted. These changes were made at the time the Claimant’s officers were preparing the Local Plan document, its appendices and maps, for publication in digital format on the Claimant’s website and printed copies.

24. When dealing with planning applications, I make use of the online published version of the Local Plan for reference to its Policy and other content. I believe my planning officers also principally use the online version due to its accessibility or a printed copy, in the belief that these versions represent the correct adopted Local Plan. However, for the reasons I have given, whichever source is used, the error I have described was present at the date of Inspector Forrett’s appeal hearing and decision. This error was corrected in

March 2021 in the online version of the Local Plan and a notice and explanatory text has been added to the relevant part of the website.

25. I refer to the Planning Committee report prepared for the original planning application relating to this matter marked as “JW14”. It references Policy SS2 and at section 5.1 (page 3) quotes, with emphasis applied, the relevant part of the policy, as follows:

Policy SS2 provides support to sustainable development within Service Centres and Rural Hubs: i.e. that housing needs will be met by *“planning positively for the development of sites allocated **within and adjoining** the Service Centres and Rural Hubs by 2036, **and by encouraging small scale residential development** where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3’*

26. I invite the court to note the absence of the word ‘windfall’ after ‘residential’ indicating that its source would have been either the published version or printed copy, both of which contained the error referred to above.

27. My witness statement of 19th March 2021 provided an explanation as to how this discrepancy was highlighted during the appeal when raised by an interested party. As that statement explains, it was confirmed by my officer that the version appearing in the Planning

Committee report on the application before Inspector Forrett and on the website was correct, believing this to be true. That statement was incorrect and was made in error. The correct version of Policy SS2 is as set out explained previously in this witness statement.

28. The Inspector proceeded to make his decision based on the understanding that the correct version had been provided, but in fact made the decision based on the version which contained the error I have set out. Consequently, he failed inadvertently to determine the appeal having regard to and in accordance with the development plan.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:



Name:

JAMES WORLEY

Dated:

27.7.2021