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By email only to Andrew Davie - localplan@centralbedfordshire.gov.uk

My Ref.: F:\Planning\Responses\

Dear Mr Davie

Central Bedfordshire Local Plan – proposed main modifications, March 2021

Thank you for consulting the Chilterns Conservation Board (CCB) on the proposed main modifications to the Central Bedfordshire Local Plan 2015-2035. The Chilterns Conservation Board is a statutory independent corporate body set up by Parliamentary Order to promote the protection, enhancement, understanding and enjoyment of the Chilterns Area of Outstanding Natural Beauty (AONB).

As noted in the consultation materials, we have attempted to limit our comments to the matter of whether the proposed main modifications themselves result in a plan that is legally compliant, sound and prepared in line with the duty to cooperate, and not to dwell on the parts of the plan proposed not to be modified which have already been discussed in previous consultations including the examination. It is, however, hard to restrict comment to such matters given that a key part of the plan, notably the proposal for development north of Luton, as it stands, is not legally compliant, sound or prepared in line with the duty to cooperate, as follows:

- it fails to demonstrate that the council has exercised its duty to protect and enhance the AONB under section 85 of the Countryside and Rights of Way Act 2000 by proposing development in the AONB and its setting, with weak requirements for mitigation and little if any expectation of enhancement, when the significant direct harm of development on the AONB here could easily have been avoided in the first place;
- it fails to accord with the principles of the NPPF which seeks to protect AONBs and other areas or assets of particular importance, notably by proposing a scale and distribution of development that necessitates direct and indirect harm to the AONB despite alternatives being available (contrary to NPPF paras 11 and 172); and
- it fails to align with the duty to cooperate in that Luton Borough Council explicitly object to the north of Luton proposal, to the extent of taking legal action (albeit unsuccessfully) on the planning permission granted for the bypass element of the project.

The remainder of our statement will focus on the proposed Main Modifications themselves.

MM9 – section 6.2, paras 6.2.7-8 (also relates to MM14, MM22, MM28, MM103 and MM236) - comment

The proposed modification at para 6.2.7 refers to “approximately 3600 homes and approximately 7ha for employment” for the North of Luton site. This accords with the wording of policy SA1 as proposed to be modified by MM28, but not with policy SP1 as proposed to be modified by MM14, table 7.1 (MM22) and para 8.3.1 (MM103), all of which refer to a figure of 3,100 homes (not always qualified by “approximately”).

It would appear that the reason for these discrepancies may be that the figure of 3,600 homes is intended to be delivered over a period extending beyond 2035, as suggested by the housing trajectory table, proposed by MM236.

The plan would be clearer if all of the references to the North of Luton proposal could refer consistently to the site being proposed for “a total of approximately 3,600 homes, approximately 3,100 of which are intended to be delivered by 2035” or “approximately 3,600 homes (3,100 by 2035)”. The same will no doubt apply to other strategic sites. The trajectory table proposed at appendix 8 (MM236) could usefully include an additional column indicating the numbers of homes in each site/area that are intended to be delivered after 2035.

MM28 – policy SA1: North of Luton - objection

Principle of the modified policy

The Board continues to be gravely concerned that the council has determined to drive a bypass through part of the Chilterns AONB north of Luton and fill the gap between the existing built-up area of the town and the new road with development, within the AONB itself and its setting.

Regardless of the lawfulness of the decision of the council to grant itself planning permission for the road, against the advice of the Chilterns Conservation Board, Natural England, and neighbouring Luton Borough Council, the construction of this road in this location is deeply regrettable from the perspective of the protection and enhancement of the nationally protected landscape of the Chilterns AONB. It is incomprehensible in the context of the climate emergency, biodiversity crisis and increasing recognition of the value of natural beauty and tranquil green spaces to physical and mental health and wellbeing that has been highlighted by the ongoing Covid-19 pandemic. Even if additional road capacity to the north of Luton between the M1 and A6 continues to be justified in the face of overwhelming evidence of the futility of such road construction (see for example CPRE’s [The End of the Road?](#)), an alignment closer to the edge of Luton could have reduced direct harm to the AONB or avoided it entirely.

The justification given in the Schedule for the range of modifications proposed by MM28 is “To ensure that the policy is effective, justified and consistent with national planning policy”. Our objection to MM28 is that the modifications proposed do not go far enough in order to justify the proposal or make the policy effective and consistent with national policy. The fact that modifications to the proposal were seen as being necessary demonstrates that the version of the policy in the local plan as submitted for public examination was not effective, justified or consistent with national policy. The Board would argue that the modifications have failed in their objective (as set out below), and that the policy as proposed to be modified remains ineffective (and in many respects even less effective), unjustified and inconsistent with national policy. The fundamental problem is that the policy *cannot* be justified or made effective or consistent with national policy so long as the development site (and its concomitant road proposal) extend into the Chilterns AONB. Modifying the policy to realign the road and redefine the development area boundaries to avoid the designated area of the AONB would instantly make the whole proposal more easily justifiable, remove the uncertainty that renders it ineffective, and make it compliant with NPPF policy.

While Central Bedfordshire Council has the power to de-designate the Green Belt around Luton, the construction of the bypass through the AONB does not alter the status of the protected landscape. Despite the irreversible harm it will cause, construction of the new road does not diminish the council's duty under section 85 of the Countryside and Rights of Way Act 2000 to have regard to the protection *and* enhancement of the natural beauty of the Chilterns AONB in its consideration of the development north of Luton.

Policy SA1 as proposed to be modified by MM28 does not give sufficient clarity about the nature of development in this location to determine the potential impact on the character and natural beauty of the AONB. This is evident from the fact that the policy requires a development brief and design codes (amended by the MM) to ensure the stated principles for development (including "appropriate mitigation against any impacts, and ... enhancements to, the Chilterns AONB" – see below) can be met, and from the new requirement proposed in the MM for "additional evidence" that harm can be avoided in the 'Eastern bowl'.

This lack of clarity is reflected in uncertainty with regard to understanding of the proposal in both the Sustainability Appraisal (SA) and Landscape and Visual Impact Assessment (LVIA). As we have previously noted, the SA took a simple arithmetic approach, determining that development would be acceptable because four assumed positive benefits outweighed two harmful impacts, despite the harmful impacts being definite if the development went ahead (but also entirely avoidable) and the benefits depending upon how it was implemented.

The modified policy does nothing to assuage concerns about the actual direct harm of the development on the AONB and its setting, but rather adds a great deal more uncertainty to the deliverability of the scheme as a whole. In particular, the Council and the Inspector(s) may determine either that the Local Plan proposal in principle is not 'major development' in the AONB (in terms of NPPF footnote 55), or that it is 'major development' but meets the exceptional circumstances tests set out in para 172 (for the avoidance of doubt, the Board's position is that the proposal is self-evidently 'major development' and the public interest 'exceptional circumstances' case has not been made since the same development needs can be met without direct harm to the AONB).

However, the principles of development listed in the policy as proposed to be modified, and the plethora of other caveats, indicate the high degree of possibility that, once the details of the layout and design of the development have been worked out, costed and subjected to viability testing, its nature may necessitate a re-evaluation of its 'major development' status, and/or the site could prove undeliverable for other reasons. This would be a positive outcome for the AONB, but would leave Central Bedfordshire with a severe shortfall in its housing delivery plans. Alternatively, the council might choose to override even the elements of its own policy that aim to mitigate the inevitable irreversible harm to the AONB in order to ensure delivery of the proposal. A plan policy cannot be considered sound if it offers so little certainty either that a development can be deliverable or that it will provide the environmental safeguards sought.

The correct approach, strategically, is, and always was, to avoid the complexity and uncertainty of dealing with a significant development proposal within the AONB by following the key principles of the NPPF and limiting the scale and extent of development here.

'Eastern bowl' aspect of the modification

MM28 proposes to insert a new section into policy SA1 concerning the so-called 'Eastern bowl' area, requiring that development cannot take place in this location until 'additional evidence' is provided concerning its impacts on the Chilterns AONB and other assets.

Given that this modification is proposed at the same time as the reduction in the overall scale of development envisaged (from 4,000 homes and 20 ha of employment to 3,600 homes and 7 ha of employment), the policy is entirely unclear as to whether the quantum of development envisaged in the 'Eastern bowl' area is included within the 3,600 homes and 7 ha of employment land, or will be additional to it. This modification alone renders the policy ambiguous and hence ineffective.

It is unclear as to how the SA has considered this modification and on what basis. On p.80 the SA determines that the modifications to policy SA1, including the additional mitigation measures and the restriction of development in the 'Eastern bowl', reduce the impact of the proposal from 'major negative' to 'minor negative'. The Chilterns Conservation Board objects to this characterisation in the strongest possible terms. The development proposal carves land out of the AONB itself and proposes significant development in its setting, and the wording of the new section on the 'Eastern bowl', while offering some additional safeguards, still envisages an unspecified quantum of development in that location. Regardless of a few small aspects of unspecified mitigation in the policy, the development proposal as a whole will continue to have a major negative impact on the AONB.

Notwithstanding our view that the location and extent of the North of Luton proposal and its associated link road should be revisited in its entirety to reduce or avoid impacts on the AONB, the clarity, and hence the effectiveness, of the policy might be improved by separating the development area into two policies, or by amending the boundary of the North of Luton development area to exclude the 'Eastern bowl' entirely, and defer its allocation to the 'partial review' of the plan anticipated in MM1.

MM159 – Policy EE5 Landscape Character and value – comment

While we are content that the modifications to the policy proposed by MM159 do improve its clarity, we consider that its clarity could be further improved with a note to the effect that, with regard to the Chilterns AONB, "major development" in the second paragraph should be qualified by reference to footnote 55 of the NPPF.

We suggest a footnote, located after the words "major development proposals", noting "For proposals within the Chilterns AONB, the consideration of what constitutes a "major development" will be informed by footnote 55 of the National Planning Policy Framework."

MM162 – Policy EE7 The Chilterns AONB – objection

The Chilterns Conservation Board welcomes the continued inclusion of our model local plan policy, albeit in slightly modified form. However, it is important to maintain a consistency of approach to development across the whole of the Chilterns area, and we therefore strongly object to the demotion from the policy to supporting text of the requirement to comply with the Chilterns Buildings Design Guide (CBDG) and the Board's other technical notes.

The justification for the modification relates to a discussion at the hearings (presumably on Matter 14) which the Board was unable to attend due to staffing issues, hence we cannot speak to the relevance of that discussion. In our view the plan will be diminished by the demotion to supporting text of the regard to be had to the CBDG and other technical documents produced by the Board.

Since the closure of the examination, the emphasis to be placed on good design has been greatly enhanced in national planning policy and guidance, including giving greater prominence to the application of high quality local design guidance. Demotion of this requirement to supporting text is a backwards step in the context of the recent changes to the NPPF. We strongly recommend that the text is reinstated in the policy.

If the concern is with the strength of the requirement to “comply with” the CBDG when it has not been adopted as a supplementary planning document by the council, then we make the following observations:

1. Plans containing clear guidance on what development proposals will or will not be allowed, rather than having vague references in supporting text, is clearly a direction of travel towards a more ‘rules-based’ planning system supported by the recent Planning White Paper. Nonetheless, planning legislation currently requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. It is therefore always an option for a developer, or the decision maker, to make a case for a proposal in the Chilterns AONB to not “comply with” the CBDG. Hence, a policy requirement for development to “comply with” the CBDG is a perfectly reasonable expectation in an area which the NPPF describes as having the “highest status of protection” in relation to landscape and scenic beauty.
2. The council should move towards adopting the CBDG as a supplementary planning document at its earliest opportunity, as others, including [Dacorum Borough Council](#), have done.
3. If that is not sufficient, then the Board may be content with an alternative wording for the regard to be had to the CBDG and supporting technical notes within policy EE7.

Additional note - **comment:** Here, e.g. para 15.8.1 and elsewhere in the Plan, reference is made to NPPF para 115 in relation to AONB policy. The relevant paragraph is currently 172 (with proposals to change even that outstanding). This doesn’t seem to have been picked up in the ‘Additional Modifications’, and we raise it just in case it had been overlooked.

Thank you again for consulting the Chilterns Conservation Board on this consultation. I look forward to working with you on this and other planning matters, and wish you all the best with the adoption of the local plan (subject to our comments above, of course).

Yours sincerely,



Dr Matt Thomson MRTPI AoU
Planner, Chilterns Conservation Board

cc.



The Chilterns Area of Outstanding Natural Beauty

The Chilterns AONB was designated in 1965 for the natural beauty of its landscape and its natural and cultural heritage. In particular, it was designated to protect its special qualities which include the steep chalk escarpment with areas of flower-rich downland, woodlands, commons, tranquil valleys, the network of ancient routes, villages with their brick and flint houses, chalk streams and a rich historic environment of hillforts and chalk figures.

Chilterns Conservation Board

The Chilterns Conservation Board is a statutory independent corporate body set up by Parliamentary Order in 2004 under the provisions of Section 86 of the Countryside and Rights of Way (CRoW) Act 2000.

The Board has two statutory purposes under section 87 of the CRoW Act:

- a) To conserve and enhance the natural beauty of the AONB; and
- b) To increase the understanding and enjoyment by the public of the special qualities of the AONB.

In fulfilling these roles, if it appears that there is a conflict between those purposes, Conservation Boards are to attach greater weight to (a). The Board also has a duty to seek to foster the economic and social well-being of local communities within the AONB.

Like all public bodies, including ministers of the Crown, local authorities and parish councils, the Chilterns Conservation Board is subject to Section 85 of the CRoW Act which states under "General duty of public bodies etc"

“(1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”

List of Organisations providing Nominees to the Chilterns AONB Conservation Board

The Chilterns Conservation Board has 27 board members, all drawn from local communities; these are elected by:

- Hertfordshire and Oxfordshire County Councils
- Buckinghamshire, Central Bedfordshire and Luton Borough Councils (unitary authorities)
- Dacorum Borough and North Hertfordshire, South Oxfordshire and Three Rivers District Councils
- The Central Bedfordshire, Buckinghamshire, Hertfordshire and Oxfordshire Parish Councils (6 elected in total), and
- The Secretary of State for the Environment, Food and Rural Affairs (8 in total).