

By email only

Comments Re. EBC Consultation on Local Plan Main Modifications

The following documents are attached to this letter and referred to herein:

- (1) 17.06.2019 Countryside Hedgerows Protection and Management
- (2) 16.12.2020 Robert Jenrick, Secretary of State MHCLG, Housing Update
- (3) 30.01.2021 Robert Jenrick, Sec of State, Statement Re. Model Design Code
- (4) 01.02.2021 Robert Jenrick, Secretary of State, MHCLG, Press Release
- (5) Hedgerows & Trees on Boundary Banks East(AL1) - West(AL2) Allbrook Way
- (6) 2021 Natural England-DEFRA Biodiversity and Woodland Map Of Allbrook
- (7) Natural England's MAGIC MAPS Guidance
- (8) 10.01.2020 Landscape Institute Guidance - Visual Impact Assessments (LVIAs)
- (9) Google Air Photo of 10 & 10a Pitmore Road and Allbrook Hill Entrance to site AL1
- (10) Google Street Photo of 10 & 10a Pitmore Road
- (11) Google Street Photo of Side entrance into site AL1
- (12) 28.06.2021 to 05.07.2021 Emails G.Tuck-V.Richardson
- (13) 26.10.2017 Pages 8-9 of Deacon Landscape Appraisal (SGO016)
- (14) June 2021 Allbrook Parish Newsletter Article
- (15) Land West of Allbrook Hill -
- (16) Land West of Allbrook Hill -
- (17) Land West and East of Allbrook Way -
- (18) March 2021 Council Land and Social Housing Assets Register

The following comments relate to site AL1 and AL2, Allbrook, and respond to the Inspector's letter dated 01.04.2020(ED71) and the Council's responses to the Inspector and the Main Modifications.

LEGAL COMPLIANCE ISSUES

Inspector's Letter dated 01.04.2020 (ED71)

The Inspector expressed concerns in para. 3 of her letter in respect of the spatial strategy focussing on the development distribution strategy and principles adopted by the Council in December 2016. She referred to the principle of the proposed site allocations for 740 dwellings on smaller greenfield sites adjoining the settlements of Allbrook, Bishopstoke, Bursledon, Fair Oak, Hedge End, Netley and West End. She said she had no fundamental concerns with regards to the overall approach adopted by the Council, which had been adequately justified by the evidence base.

However, the Council's responses to the Inspector and the proposed main modifications to the proposed Local Plan raises significant concerns relating to the evidence the Council has submitted to the public for consultation. The main modifications and Reports referred to in the Inspector's

letter casts doubt as to whether the documents and evidence are legally compliant, sound or whether the sites are deliverable.

The Inspector's Letter Re. SGO and the Sustainability Appraisal Policies S5 and S6:

The Inspector's letter states in para. 13 that “*A fundamental part of the Council's proposed housing strategy from 2024 onwards is the provision of a SGO at land north of Bishopstoke and land north and east of Fair Oak. This is set out at policy S5.*” Para. 14 states a new link road would need to be constructed and policy S6 supports a 5-part phased road project.

Para.15 states “*The Environmental Assessment of Plans and Programmes Regulations state that a Sustainability Assessment should identify, describe and evaluate the likely significant effects of implementing the plan and reasonable alternatives, with the aim of establishing that the plan is the most appropriate.*” Para. 15 states the plan is supported by two SAs, (ORD007) and (SUB003b).

The Environmental Assessment of Plans and Programmes Regulations 2004, state:

12.—(1) Where an **environmental assessment** is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of -

(a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

Regulation 12 appears to be the legislation the Inspector is referring to. Para. 15 of the letter also refers to (ORD007) which is LUC's Sustainability Appraisal - Main Report (2015) and (SUB003b) which is LUC's Sustainability Appraisal dated June 2018. The Inspector appears to have made an error in relying upon The Environmental Assessment of Plans and Programmes Regulations 2004 when considering Environmental Appraisals (ORD007) and (SUB003b) as Environmental Assessments. They are not. Environmental Appraisals are not covered by the EA Regulations 2004.

LUC's SA (ORD007) dated December 2015 states in para. 1.17 “*Sustainability Appraisal is a statutory requirement of the Planning and Compulsory Purchase Act 2004.../The SA process involves appraising the likely social, environmental and economic effects of the policies and proposals within a plan from the outset of its development.*” I cannot find this quotation in the Planning and Compulsory Purchase Act 2004.

Part 3, para. 39, of the P&CP Act 2004 refers to Sustainable Development. The Explanatory Notes to the Act state “*Part 3 deals with development. It updates the definition of the development plan to take account of the changes to the planning system made by the Act. It also imposes on those with plan-making functions under Parts 1, 2 and 6 a duty to exercise their functions with the objective of contributing to the achievement of sustainable development.*”

LUC's SA (SUB003b) dated June 2018 repeats in para. 1.17 exactly the same information stated in para 1.17 of EA (ORD007) dated December 2015. As stated in the previous paragraph, the 2004 Act does not contain any of the definitions described in para. 1.17 of LUC's EAs (ORD007) and (SUB003b). I have absolutely no idea what legislation this quotation has been taken from.

LUC's SA (ED106) dated 29.04.2021 is an Addendum to the Sustainability Appraisal of the Local

Plan submitted in support of the main modifications. The appraisal states it is a stand alone appraisal carried out in conjunction with EBC. It was not carried out as an Environmental Impact Assessment report and does not cite any Legislation, Guidance or the NPPF to support the report. LUC states in all reports, referred to above, submitted in the Local Plan examination that the company is a member of the Landscape Institute. The Landscape Institute's Technical Guidance⁽⁷⁾ “*Reviewing Landscape and Visual Impact Assessments (LVIAs) and Landscape and Visual Appraisals (LVAs)*” gives detailed technical guidance to its members on the legal procedure for carrying out assessments under the EIA Regulations. The Guidance states environmental appraisals are less formal than assessments.

Deacon Design Ltd carried out a Settlement Gap Study, published on 15.10.2020 (ED84). The study states it was carried out in collaboration with EBC's planning team on behalf of EBC. It has the Council's logo and Deacon Design's membership of the Landscape Institute Registered Practice logo published on page 1 and the last page of the study. The identity and qualifications of the person carrying out the assessment is not included in the study and neither is Deacon Design's address included in the study. No terms of reference or instructions are included in the study.

Conversely, the previous three “appraisals” by Deacon Design Limited included the identity and qualifications of the person carrying out the appraisals and the name of the person checking the reports. The instructions and full address were also included in the appraisals by Deacon Design. The three previous appraisals carried out by Deacon Design were prepared on behalf of the Highwood Group and Galliford Try Partnership. I attach a copy of pages 8 and 9 of Deacon's Report dated 26.10.2017(SGO016)⁽¹³⁾ which states that due to the scale of the proposals included in the study an environmental impact assessment would need to be carried out. It clearly and unequivocally quotes the legislation and guidelines which an assessment is required to comply with.

Deacon's Settlement Gaps Study dated 15.10.2020 (ED84) states on page 4 “*Aims and Objectives: The main objectives of the study are as follows: To collect a robust evidence base enabling the assessment of the existing Settlement Gaps.*” The study states 17 times that the study was carried out as an assessment. On page 5 the study states “*Methodology, Approach, There is, currently, no detailed published guidance on the assessment of Settlement Gaps.*” This is not correct. The Landscape Institute's Technical Guidance⁽⁸⁾ “*Reviewing Landscape and Visual Impact Assessments (LVIAs) and Landscape and Visual Appraisals (LVAs)*” is detailed guidance for its members, which includes guidance on the Statutory requirements for an EI assessment.

Page 6 of Deacon's Settlement Gaps Study (ED84) states “*The following designations and landscape related features are shown on each raster map (if relevant) to enable analysis of the Gap's function.*” Under the paragraph Methodology, it states that the desk study included policy S3 proposed housing allocation, S4 proposed employment allocation and DM24 Housing Sites and Planning Permission. This is clearly an assessment, not an appraisal, of how the gaps will function once the proposed development schemes are built. The study should have complied with the Landscape Institute's Technical Guidance in view of the fact that the study relies on Deacon Design's membership of the Institute. The study should also have complied with the following Regulations:

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Regulation 18(5) states “In order to ensure the completeness and quality of the environmental statement—

- (a) the developer must ensure that the environmental statement is prepared by competent experts; and

(b) the environmental statement must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.”

Regulation 18(3)(f) requires the EIA to provide any additional information required in Schedule 4 of the Regulations.

Deacon Design Limited's Settlement Gap Study dated 15.10.2020 (ED84) did not comply with the above Regulations and is therefore not legally compliant.

The Hedgerows Regulations 1997 and Natural England and DEFRA Guidance⁽¹⁾:

The Countryside Hedgerows Protection and Management Guidance dated 17.06.2019⁽¹⁾ states:

“There are rules you need to follow if you intend to remove a countryside hedgerow. You could get an unlimited fine if you break these rules”

The hedgerows surrounding the boundaries of Allbrook sites AL1 and AL2 are protected under the Hedgerows Regulations 1997. These settlement hedgerows fulfil the following requirements of the Regulations:

Regulation 3, Application of the Regulations:

The hedges surrounding settlements AL1 And AL2 fulfil the requirements of Regulation 3(1)(a); (4) and (5)(a) and (5)(b)

Regulation 4, Criteria for determining “important” hedgerows:

The hedges surrounding settlements AL1 and AL2 fulfil the requirements of Regulation 4(a) and 4(b), Part II of Schedule 1, Part 1, Interpretation, (a) and (b), Part II, Criteria, Wildlife and Landscape, 6(1)(a); 7 and 8. Part II of Schedule 2, Woodland species, Schedule 3, Woody species.

Natural England/DEFRA Biodiversity-Woodland Map Of Allbrook⁽⁶⁾

Natural England's Magic Maps Guidance⁽⁷⁾

I attach a copy of the Natural England and DEFRA Guidance⁽⁷⁾ and Map⁽⁶⁾ covering the biodiversity and woodlands of Allbrook. I have downloaded the MAGIC map showing the Woodland Priority Habitat Network (England) and the Woodland Improvement (England) areas for Allbrook⁽⁶⁾. This map has coloured in brown all the hedges and woodland surrounding the Village of Allbrook, which illustrates that the habitat and woodland are “**High Spacial Priority**” areas for proposed development sites AL1 and AL2. I also attach a Google aerial photo which clearly identifies all of the hedges and woodland surrounding sites AL1 and AL2⁽⁵⁾

The symbol depicting the “*Priority Habitat Inventory - No main habitats but additional habitat exists (England)*”⁽⁶⁾ is hatched over the hedges on the map for sites AL1 and AL2. The symbol extends from Allbrook Hill through to the northern edge of Lincoln's Copse. This is an extensive expanse of protected hedgerow. The same symbol is used to show the extent of protected hedgerows on the AL2 site. The Magic Map and Guidance supports the requirements of The Hedgerows Regulations 1997. Not a single report, so far as I can ascertain from the published documents, or submissions made in the Local Plan Examination process have given any consideration to, or evidence submitted on, the legal requirements set out in the Hedgerow Regulations 1997. For this reason none of the appraisals or assessments carried out for the Local Plan are legally compliant.

It is notable that because no assessment under the Hedgerows Regulations 1997 have been carried out in compliance with the Hedgerow Regulations and Guidance, neither the Council, the Planning Inspector or the public have any information regarding the multitudinous species listed in Schedules

I and II of the Regulations, which are present in the hedges and woodland in sites AL1 and AL2. This is particularly the case regarding the presence of the listed woodland species and woody species. Therefore, the Deacon Design Ltd's Settlement Gap Study (ED84) is not legally compliant with the 2007 Regulations or Guidance.

I emailed Mr Tuck, EBC, on 28.06.2021⁽¹²⁾ requesting advice as to whether the Deacon Design's Settlement Gap Study was legally compliant. He advised on 30.06.2021⁽¹²⁾ that the study was consistent with the requirements for Local Plan evidence, set out in para. 31 of the NPPF(2019). However, the NPPF must be read as a whole. Chapter 1. Introduction, states:

2. **Planning law** requires that applications for planning permission be determined in accordance with the development plan², unless material considerations indicate otherwise³. **The National Planning Policy Framework must be taken into account in preparing the development plan**, and is a material consideration in planning decisions. **Planning policies and decisions must also reflect relevant international obligations and statutory requirements.**
3. **The Framework should be read as a whole (including its footnotes and annexes).** General references to planning policies in the Framework should be applied in a way that is appropriate to the type of plan being produced, **taking into account policy on plan-making in chapter 3.**
6. **Other statements of government policy may be material when preparing plans** or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.

Mr Tuck referred me to the NPPF, Chapter 3. Plan Making, para. 31 in his email⁽¹²⁾. He failed to point out that the following para. 32 states “*Local plans and spatial development strategies should be informed throughout their preparation by a sustainability appraisal that meets the relevant legal requirements¹⁷.../*” The Footnote¹⁷ states “*The reference to relevant legal requirements refers to Strategic Environmental Assessment.../*”

Mr Tuck appears to have considered para. 31 of the NPPF in isolation when checking whether the study carried out by Deacon Design met the legal requirements referred to in para. 32 and footnote of the NPPF. The legislation referred to in para. 32 of the NPPF also applies to para. 31, which refers to the relevant legal requirements for Strategic Environmental Assessments. The fact that the Council only required Deacon Design's Settlement Gaps study (ED84) to comply with para. 31 of the NPPF confirms the Council failed to check the methodology used to ensure the Settlement Gaps Study was legally compliant.

Deliverability of site AL1, Allbrook

The Deacon Design Limited's Settlement Gap Study (ED84) states on page 102:

“EBC's Local Plan will include a new link road and roundabout junction to Allbrook Way situated to the north of Allbrook Hill. The access to this proposed road is not identified in this study.”

Observations on page 107 state:

- “1. *New infill development to rear of Pitmore Road dwellings provides hard edge to adjacent woodland.”*
- “2 *Allbrook Way cutting and associated / established embankment vegetation contributes to physical / visual barrier between settlements. This may be compromised by future road links to Allbrook railway bridge as part of allocation access.”*

Deacon Design states there is a proposed road link and roundabout north of Allbrook Hill, a cutting in Allbrook Way and future road links to Allbrook railway bridge as part of the allocation process. This is the only clue the residents have in respect of the Council's intention to reintroduce the first phase of the B/C road link the Inspector instructed the Council to delete from the Local Plan. There have been no consultation documents produced by the Council to enable the public to be properly informed about where or when these strategic infrastructures will be constructed. There is undoubtedly an attempt to get this alleged relief road for Allbrook Village passed in the Local Plan by stealth.

There are no plans to show how this alleged relief road for Allbrook Village will be constructed. The plethora of strategic road plans submitted for examination for the Fair Oak/Allbrook relief road, which the Inspector examined and instructed the Council to delete from the Local Plan, is a clue as to what a road in cutting behind Allbrook Hill would involve. The following extracted paragraphs from the 2018 Local Plan SUB001 (with my comments added) state:

Local Plan, para. 4.29 .../The provision of the new Allbrook Hill, Bishopstoke and Fair Oak link road, as set out in policy S6, is a critical part of the overall concept for the new communities. This is because, without the link road, the scale of the full development proposal would generate significantly more traffic congestion across the Borough's road network and the link road will provide relief to this congestion.../Each phase of development will make a financial contribution to the link road which is proportionate to the scale of built development within that phase.../

The Council's stated reason for trying to get a "relief road" constructed had nothing to do with alleged traffic congestion on Allbrook Hill. There were only 147 dwellings in Allbrook Hill in the 2011 census. The Council proposed to route vehicles from some 5,000 houses and commercial properties from the proposed Fair Oak development through Allbrook railway bridge, meaning thousands of vehicle movements a day through a proposed road cutting into the heart of this, the smallest Village in the Borough completely severing all ties with the rest of the Allbrook settlement.

There are many traffic control measures the Council could have taken over the years to mitigate any problems with traffic in Allbrook Village, such as traffic calming measures to slow down traffic which has been repeatedly requested by residents. The Council could, and should, establish further parking areas for the residents. The Council have never wanted to know, or do anything, about traffic problems in the Village in the past. It is thorough reprehensible for the Council to allege now that they are trying to relieve traffic problems in the Village. The Council allocated a parking area for Allbrook Hill residents at the junction with Allbrook Way many years ago. It could now find other suitable sites for parking in the Village if the Council had the will to do so.

Local Plan, para. 4.39 .../Phase 1 connects the existing Allbrook link road (and hence junction 12 of the M3) with the B3335. This phase of the road relies on land in separate ownership to that in the new communities to the north of Bishopstoke and Fair Oak. However it is understood that the land will be released for the road in conjunction with development at Allbrook (policies AL1 and AL2).../

This statement has subsequently proved to be an entirely misleading representation of the true facts about who owns land in Phase 1 of the proposed link road, which the Council is intending, without proper consultation, to construct in Allbrook Village using the MMs. This road is not deliverable for the following reasons:

The Council purchased two freehold bungalows in Pitmore Road on 14.12.2011, no. 10, and 10.06.2010, no 10a. This fact was not disclosed to the public before or during the examination of the Local Plan. The only indication that these properties were to be demolished was in the

illustrations on plans showing the proposed link road emerging from Allbrook railbridge, leading to the roundabout at the bottom of Pitmore Road and then passing over the land of the demolished bungalows to enter site AL1 in cutting.

These bungalows have been neglected and left empty by the Council for years, depriving needy families of a home. The rental income from these properties should have been paid to the Council to ensure Council tax payers were not being forced to pay increased Council tax due to the Council's failure to collect rental income over a long period of time for these properties. There have been many complaints about the dilapidated state of these bungalows, which has encouraged criminal damage to the properties, as the attached Google aerial and street photos⁽⁹⁾⁽¹⁰⁾ of the bungalows show. Allbrook Parish Council has pursued these complaints with EBC on behalf of the residents.

EBC have very belatedly, due to the threat of the Community exercising their collective right to have first refusal to purchase the bungalows under the Right to Regenerate policy, decided to take action to bring the bungalows back into use. I attach a copy of an article from Allbrook Parish Council's June 2021 newsletter, which shows the Parish Council has received confirmation from EBC that they are going to refurbish the bungalows so that they can become homes again. This will mean bungalows 10 and 10a cannot be demolished to make way for access to the proposed site AL1, which is land locked. The proposed bypass through AL1 is unquestionably undeliverable.

Furthermore, the map on page 106 of Deacon Designs Gap Assessment Study dated 15.10.2020 (ED84) shows bungalows 10 and 10a Pitmore Road are part of the AL1, proposed housing allocation development Policy S3. This map also includes the track alongside 109 Allbrook Hill as part of the proposed housing development, which misrepresents the true facts. I attach a Google street view of this small track leading to site AL1⁽¹¹⁾ which is impassable for large vehicles. I also attach copies of the Registered Title ⁽¹⁵⁾ and Plan⁽¹⁶⁾ for land west of Allbrook Hill, which is owned by . This Registered title and plan is additional proof that EBC owns 10 and 10a Pitmore Road, and not , and this land should not have been implied in the Deacon Design Study that the land is owned, and controlled, .

Deacon Design should not have implied owned bungalows 10 and 10a in their Gaps Settlement Study. ⁽¹⁵⁾ shows a Unilateral Notice is registered in the Charges Register in favour of Highwood Land (Allbrook) Ltd for first refusal to buy the land behind bungalows 10 and 10a Pitmore Road, coloured in blue in the Registered plan. Highwood Land (Allbrook) is owned by three directors. The Company has also registered a Unilateral Notice against the land in Registered Title ⁽¹⁷⁾ which gives them the first option to buy all the land east and west of Allbrook Way, copy attached.

Highwood widely advertised in 2019 that they secured the largest ever strategic land site at Fair Oak in their history. This calls into question Deacon Design's impartiality in carrying out the Gap Assessment because they have acted throughout, and prepared all their reports, for Highwood Land. Deacon's study (ED84) states on page 4 "*This Settlement Gap Study was produced by Deacon Design Limited in collaboration with the Eastleigh Borough Council's (EBC) planning team.*" This also calls into question the Council's impartiality. EBC would have appeared open and transparent if it had instructed a company which had not been involved with these developers.

EBC's Local Plan (SUB001) also states in para. **6.40.70** "*Planning permission will be granted provided that detailed proposals accord with the development plan and meet the following specific development requirements: Vehicular access shall be from Pitmore Road or off the new link relief road*" This again calls into question the sincerity of the Council's submissions in the MMs that the

alleged road from Allbrook railway bridge through to Allbrook Way is designed to act as a relief road for the Village. The road cannot provide relief for Allbrook Hill Village if it is proposed to be located “off the new link relief road” when this road is not identified anywhere on any plan.

I recently discovered that EBC owns the freehold of properties 30-38 Pitmore Road, which is referenced 71117 in EBC's Land and social housing asset register dated March 2021, a copy of which is attached⁽¹⁸⁾. I have highlighted in blue these properties in the register. I sent an email to Mr Tuck on 11.07.2021⁽¹²⁾ asking him if he could advise me where in Pitmore Road these properties are located. The numbers fall between 28 and 42 Pitmore Road. All properties with even numbers are located on the western side of Pitmore Road. There has never been any properties numbered 30-38 Pitmore Road since I have lived here. Neither would there be space to fit five houses between 28 and 42, which are located on adjoining plots.

I am concerned that these properties could be a plot of land abutting the field AL1 and consider it important that the public should be provided with this information to enable them to be informed of the facts before they submit comments on the proposed MMs. Unfortunately, I have not received a response to my request. Due to the time limit imposed for submitting comments I will leave it to the Inspector to make any enquiries deemed necessary to identify whether or not this land forms part of the proposed development AL1.

The Council relied heavily on the Government's White Paper “Planning for the Future” in their response to the Inspector's letter (ED77). The Government has now withdrawn the proposals in the white paper and issued new Guidance in the form of Ministerial statements which planning authorities are required to take into account in compliance with the NPPF, Chapter 1, para. 6, which states: *“Other statements of government policy may be material when preparing plans or deciding applications, such as relevant Written Ministerial Statements and endorsed recommendations of the National Infrastructure Commission.”*

I attach a copy of Robert Jenrick, Secretary of State, MHCLG, Housing Update statement dated 16.12.2020⁽²⁾; Robert Jenrick, Sec of State, Statement Re. Model Design Code dated 30.01.2021⁽³⁾ and Robert Jenrick, Secretary of State, MHCLG, Press Release dated 01.02.2021⁽⁴⁾. All three statements make it clear that new homes should be built in existing urban centres and not built at the expense of green spaces. Robert Jenrick stated that development should be on brownfield land, of which he said urban centres continue to have large quantities. He also said that the NPPF will set an expectation that all new developments will have streets lined with trees. He also very clearly stated ***“Instead of developers forcing plans on locals, they will need to adapt to proposals from local people”***

It is difficult to see from any of the proposed MM plans how sufficient space could be allocated on both sides of proposed roads to enable them to be lined with trees. The original Allbrook/Fair Oak link road was proposed to be in cutting in the field AL1. This road was designed as a two way system with no space to spare on either side of the road. In fact some of the reports stated fitting the houses on to the site with the necessary land for the road removed would make it difficult for the proposed number of houses to be built. It is incomprehensible that any road through AL1, and indeed more particularly AL2 where space for anything is tight, for trees to line the proposed roads.

The community is trying to fully take part in the consultation process for the Local Plan, which the Council is planning to cover the next 15 years. During the process of this consultation with the public AL2 was, and remains, part of the examination process of the proposed Local Plan. Despite this, Highwood Land (Allbrook) Ltd are trying to drive through an outline planning application for

Site AL2 before the Local Plan is adopted. The Council, Inspector and the public must consider the Minister's statements, as detailed in the NPPF, Chapter 1, para. 6 during the examination process of the Local Plan. We all, collectively, have a right and valid expectation that proper procedures will be followed before developments are, as the Minister stated, forced on locals.

In all the above circumstances I submit the Local Plan Main Modifications are not legally compliant, the proposed link road is unquestionably undeliverable and the proposals are not sound.

Mrs V Richardson

I also object to the proposed Main Modifications to the Local Plan for the reasons stated above.

Mr P Richardson