



The Planning Inspectorate

Report to Luton Borough Council

by Jeremy Youle

An Inspector appointed by the Secretary of State for Communities and Local Government

Date 1 August 2017

Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

Report on the Examination of the Luton Local Plan

The Plan was submitted for examination on 22 April 2016

The examination hearings were held between 19 July 2016 and 12 January 2017

File Ref: PINS/B0230/429/1

Abbreviations used in this report

2004 Act	Planning and Compulsory Purchase Act 2004
AONB	Area of Outstanding Natural Beauty
AVDC	Aylesbury Vale District Council
BREEAM	Building Research Establishment Environmental Assessment Method
CBC	Central Bedfordshire Council
Club	Luton Town Football Club
DCLG	Department for Communities and Local Government
DtC	Duty to Co-operate
EEFM	East of England Forecasting Model
ELCR	East Luton Circular Road
Framework	National Planning Policy Framework
HMA	Housing Market Area
LDS	Local Development Scheme
Local Plan or Plan	Luton Local Plan (2011-2031)
LPA	Local Planning Authority
MM	Main Modification
MoU	Memorandum of Understanding
NHDC	North Hertfordshire District Council
OAN	Objectively assessed need for housing
ONS	Office for National Statistics
PPG	Planning Practice Guidance
SA	Sustainability Appraisal
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SOCG	Statement of Common Ground
SPD	Supplementary Planning Document
sqm	Square metre
TCSA	Town Centre Shopping Area
WMS	Written Ministerial Statement

Non-technical summary

This report concludes that the Luton Local Plan provides an appropriate basis for the planning of the borough, subject to a number of main modifications (MMs) being made to it. Luton Borough Council has specifically requested that I recommend any MMs necessary to enable the Plan to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the hearings, the Council prepared a schedule of the proposed modifications and carried out sustainability appraisal (SA) of them, as appropriate. The MMs were subject to public consultation over a six-week period. I have recommended their inclusion in the Plan after considering all the representations made in response to this consultation. In some cases I have amended the detailed wording where necessary.

The following list summarises the Main Modifications:

- To clarify the extent of the relevant Housing Market Areas
- To commit to an early review of the Plan
- To amend the housing requirement to 8,500 dwellings
- To update the housing capacities from various sources, including allocations
- To clarify that the unmet housing need is 9,300 dwellings and how that might be met
- To clarify the policy requirements in respect of three mixed use allocations and a housing allocation
- To clearly set out the position regarding the five year supply of housing land
- To clearly set out the level of affordable housing need and likely delivery
- To amend the threshold for requiring affordable housing
- To clarify the position regarding allocations to meet the housing needs of gypsies, travellers and travelling showpeople
- To correct the need for specialist housing for older people
- To clearly set out the requirement for employment land
- To clarify the position regarding the East Luton Circular Road
- To clarify where the need for convenience retail floorspace will be met
- To delete the proposal for the relocation of Luton Town Football Club to the strategic allocation at Land South of Stockwood Park
- To clarify the requirements relating to the two proposed park and ride sites
- To delete 'provision for sport' from the strategic allocation at Power Court and to clarify policy criteria relating to uses
- To amend the policy criteria in relation to several strategic allocations
- To amend various development management policy criteria throughout the plan

Introduction

1. This report contains my assessment of the Luton Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers whether the Plan's preparation has complied with the duty to co-operate and other legal requirements. It then considers whether the Plan is sound. The National Planning Policy Framework (Framework) states that, in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the Council has submitted what it considers to be a sound plan. The Local Plan, submitted in April 2016 is the basis for the examination. This was published for consultation in October 2015.

Main Modifications

3. The Council has requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound or not legally compliant and so incapable of being adopted.¹
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal (SA) of them, where appropriate. The schedule was subject to public consultation for six weeks and I have taken account of the consultation responses in coming to my conclusions. In doing so, I have made amendments to the wording of some the main modifications and in one case have added consequential changes for consistency. None of the changes significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that have been undertaken. Where necessary, they are highlighted in this report.
5. The main modifications relate to matters which were discussed at the hearing sessions and this report explains why they are necessary. They are referenced in bold (eg **MM1**) and set out in full in the Appendix.

Policies Map

6. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan.² When the Plan is adopted the Council will need to update the adopted policies map to include all the changes proposed in the submission policies map. No changes from the submission policies map are required as a result of any of the main modifications or from any of the findings I have made.

¹ In accordance with section 20(7C) of the 2004 Act

² Documents SUB002A and SUB003A

Assessment of the Duty to Cooperate (DtC), legal compliance and soundness

7. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, I have identified 21 main issues upon which the legal compliance and soundness of the Plan depends. This report deals with these main issues. It does not respond to every point or issue raised by those objecting to the Plan, nor does it refer to every policy, policy criterion or allocation in the Plan.

Issue 1 – Has the duty to cooperate been complied with?

Legal requirements

8. Section 33A of the Act requires the local planning authority to cooperate on strategic matters with other local planning authorities, county councils and certain other bodies and persons in *maximising the effectiveness in the preparation of development plan documents*. The duty applies where there are 'strategic matters' which would have a significant impact on at least two planning areas.
9. The reference to *preparation* means that any failure to meet the legal requirements of the duty cannot be rectified after the plan has been submitted for examination. It also means that any cooperation that took place after the Plan was submitted on 22 April 2016 is not relevant to an assessment of whether the legal duty has been met.
10. Section 33A(2) further defines the duty as requiring the local planning authority *to engage constructively, actively and on an ongoing basis* in any process by means of which the preparation of the development plan document is undertaken.
11. Guidance about the duty is provided in the Planning Practice Guidance (PPG). This states that local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for examination. However, the duty to cooperate is not a duty to agree. Logically, therefore, it cannot be regarded as a duty to achieve particular outcomes if they cannot be agreed.

Evidence

12. The Council has set out the steps taken to fulfil the duty in a Statement of Compliance and in their hearing statement.³ The former document includes four appendices containing a substantial bundle of meeting notes and correspondence, principally with neighbouring local authorities.
13. Statements of Common Ground (SOCG) have been agreed with: Central Bedfordshire Council (CBC)⁴, North Hertfordshire District Council (NHDC), Dacorum Borough Council and Bedford Borough Council. There is also a completed Memorandum of Understanding (MoU) with Stevenage Borough

³ For matter 1

⁴ Two SOCG have been agreed for CBC. They are referred to in the singular in this report

Council. Some of these have appendices containing correspondence and notes of meetings, including a substantial number from CBC. Each of these documents concludes that the Duty has been met. Critically, this includes CBC and NHDC, both of which directly adjoin Luton. I appreciate that these SOCG and MoU were mostly completed after submission. However, they appear to me to broadly set out the position that had been arrived at by submission.

14. I have not been provided with a SOCG or MoU from any other authorities. There is no indication that St Albans City & District Council has any significant concerns about the duty. However, Aylesbury Vale District Council (AVDC), Hertfordshire County Council and Buckinghamshire County Council all do, to some degree.

Availability of evidence

15. I understand that much of the Council's evidence specifically relating to the DtC was only made publicly available after the closing date for representations on the Plan. However, anyone with concerns about the duty would have been able to make representations and to then participate in the examination. This has included the opportunity to provide a statement in response to my matters and questions and to be heard at the hearing session. Many have taken this opportunity and, in doing so, participants would have had access to the Council's evidence.
16. Concern was also raised that documents have not been available on the website. However, as far as I am aware, relevant documents were provided in this way following the start of the examination. Furthermore, my Guidance Notes indicate that anyone having difficulties accessing documents could contact the Programme Officer. Consequently, I can see no reason why anyone would have been materially prejudiced.

History and geography

17. The administrative area of Luton is drawn fairly tightly around the built-up area and Luton is largely surrounded by Green Belt which falls within Central Bedfordshire and in North Hertfordshire.
18. Work on housing market areas, prepared on behalf of several local authorities, concluded that the Luton functional housing market area (HMA) includes all of Luton, a substantial part of Central Bedfordshire and smaller areas within North Hertfordshire and Aylesbury Vale.⁵ The Luton and Central Bedfordshire administrative areas are then regarded as a *best fit* for the Luton functional HMA. Need figures have been produced for the period 2011-31 (17,800 in Luton itself and 31,200 in the functional HMA).
19. There are disagreements over the objective assessment of housing need and the exact scale of Luton's capacity to accommodate additional housing.⁶ Nevertheless, it has been widely known for some time that Luton's capacity is

⁵ The Council has confirmed that the reference in the Local Plan to Dacorum falling within the HMA is an error.

⁶ The submitted plan makes provision for 6,700 dwellings as the capacity within Luton.

constrained and that it would need to look to neighbouring authorities to help accommodate a significant proportion of its own housing need.

20. For some years Luton and South Bedfordshire District Council (a predecessor of CBC) worked together on the preparation of a joint core strategy. This was submitted for examination in 2011. Even at that time, meeting Luton's housing needs appears to have been an issue between the Councils with no agreement on the need for *some additional sustainable development to the west of Luton*.⁷ Ultimately, the joint core strategy was withdrawn.
21. Since then both Councils have prepared their own plans and the Central Bedfordshire Development Strategy was submitted for examination in October 2014. In February 2015 the Inspector concluded that there was insufficient evidence to demonstrate the duty had been met and that cooperation between CBC and Luton had fallen short of the required level in relation to housing and employment. In particular, there was no evidence that CBC had considered the implications of meeting the unmet housing needs of Luton in full. Consequently, an issue that should have been addressed under the duty had been deferred to later plans that CBC or others would prepare. CBC sought to bring judicial review proceedings against the Inspector's findings. However, the oral application was dismissed in June 2015 and the plan was subsequently withdrawn in late 2015.
22. There have also been disagreements between the two authorities on various aspects of the substantial proposed housing and mixed use development at North Houghton Regis to the north-west of Luton, which falls within Central Bedfordshire. Indeed, Luton pursued legal challenges against the planning application decisions.
23. The representation submitted by CBC on the Luton Plan states that the duty had not been met. However, the more recent SOCG takes the opposite view, despite the remaining disagreements on some strategic matters. This can perhaps be taken as an indication of an improving working relationship between the Councils, along with the joint Growth Options and Green Belt studies which were commissioned in 2016.
24. The aim of the Growth Options Study is to recommend strategic options for meeting the housing needs of the HMA, specifically including Luton's unmet needs. It was commissioned jointly by Luton, CBC, AVDC and NHDC. The Green Belt Study was jointly commissioned by Luton and CBC. The final briefs for both these studies were agreed in February 2016, shortly before the Luton Plan was submitted for examination. Consequently, any influence they may have had on the submitted Plan would, at most, have been limited.
25. It is against this geographic and historical backdrop that the duty should be considered.

⁷ Inspector's findings on Central Bedfordshire Development Strategy (provided as Appendix 10 to Claydon Land Development Ltd's Matter 1 Statement)

Strategic matters

26. Taking into account the relevant written material and discussion at the hearing sessions, the strategic matters can be summarised as:

- The sub-regional role of Luton for housing, employment and retail uses.
- Housing, including the housing market area (HMA), objectively assessed need for market and affordable housing (OAN), the capacity of Luton to provide for new housing and arrangements for how and where Luton's unmet housing needs will be provided for.
- The extent of the Green Belt and any potential review of boundaries to accommodate development, including for housing.
- Economy – the functional economic market area and the need and requirement for jobs, employment land and retail development.
- Transport – the implications of proposed development in Luton on commuting patterns and the strategic road network, including the M1 and M1 junctions, taking into account the potential accommodation of unmet needs in neighbouring authorities and committed development in Central Bedfordshire, including at North Houghton Regis.
- Infrastructure – principally planning for school places.
- London Luton Airport.

27. I originally identified gypsy and traveller accommodation as a potential strategic matter. However, the Plan indicates that an assessment of needs, and any further site assessment work which might follow, is to take place by means of a separate local plan.⁸ Policy LP20 merely seeks to safeguard existing sites and sets criteria for determining planning applications. Consequently, this is not a strategic matter for this Plan.

Consideration to agree to prepare a joint Local Plan or to align Local Plan preparation

28. The Act requires that consideration should be given to the joint preparation of plans. Given the housing market relationship, the logical partner would be CBC. Indeed, this approach was originally pursued through the joint core strategy. However, since this was withdrawn, working relationships have been difficult and CBC chose to progress its own plan, the Central Bedfordshire Development Strategy, until this was withdrawn in late 2015. A new Local Plan is currently being prepared by CBC.

29. I cannot be certain that the question of whether a joint plan might be produced has been directly discussed in recent years. However, in the circumstances outlined above and following the demise of the joint core strategy there does not appear to have been any reasonable prospect that Luton and Central Bedfordshire would have been able to reach agreement on this. Nor can I envisage what Luton might have done to arrive at a different position. Furthermore, given the extent of the ongoing disagreements, there is no certainty that more constructive outcomes on strategic matters might

⁸ As identified in the Local Development Scheme.

have been achieved more quickly through a joint plan. The question was perhaps considered more implicitly than explicitly. Nevertheless, in the circumstances, this was understandable.

30. Only a small part of North Hertfordshire and Aylesbury Vale fall within the Luton HMA and both have more extensive housing market relationships with other authorities. Consequently, the prospect of preparing a joint plan with Luton would not have been a realistic option in this context.
31. The PPG states that one means of working together is to align Local Plans in neighbouring authorities so they are examined and adopted at broadly the same time. There has been some consideration of alignment, particularly between Luton and Central Bedfordshire, although without any agreement having been reached. Again it is unlikely that Luton could realistically have done more on this without very significantly delaying its own plan. In respect of other authorities, the complexities of the various housing market areas makes achieving alignment more difficult.
32. However, in circumstances where there is a disagreement between authorities about strategic housing matters, there is some logic in the authority looking to export unmet housing needs being the first to prepare a plan. This allows for the extent of the HMA, the objective assessment of housing need (OAN), the housing capacity of the core authority and the extent of unmet housing needs to be confirmed and fixed, at least at a specific point in time. Following this, neighbouring authorities will at least be aware of the overall extent of any unmet need when preparing their own plans.
33. The SOCG state that North Hertfordshire and Central Bedfordshire are aiming to submit their plans for examination in March 2017⁹ and December 2017 respectively.¹⁰ Aylesbury Vale has a similar timetable. So, as things stand, these plans will follow on from Luton in terms of the sequence of preparation. Consequently, there is at least some prospect they could take the Growth Options and Green Belt study outcomes into account. Accordingly, there is some degree of alignment.
34. The PPG states that another way to demonstrate effective cooperation, particularly if plans are not being brought forward at the same time, is the use of formal agreements between authorities. In this case various SOCG and a MoU have been agreed. The notable exception is Aylesbury Vale who have declined to complete a SOCG, largely because of their concern regarding the position on Luton's unmet housing needs.

Constructive, active and ongoing engagement

Housing market area and objective assessment of need for housing (OAN)

⁹ The North Hertfordshire plan was submitted for examination in June 2017.

¹⁰ The draft CBC Local Plan was published for consultation in early July 2017.

35. Work to define housing market areas was commissioned by a partnership of 7 Councils¹¹ and advanced through consultation, feedback and a stakeholder workshop. Joint work was also commissioned by Luton and Central Bedfordshire to carry out a Strategic Housing Market Assessment (SHMA). This dates back to 2010 with a *refresh* in 2014 and an *update* in 2015.
36. Several neighbouring authorities¹² were invited to join a SHMA steering group and the update report indicates that outputs were shared and discussed through this forum. The geography of the housing market areas and the calculation of objectively assessed need appear to have been agreed by several authorities through a SOCG or MoU.¹³ Critically, this includes Central Bedfordshire, a large part of which falls within the Luton HMA and North Hertfordshire which adjoins Luton. Aylesbury Vale has not entered into a SOCG or MoU, but their hearing statement indicates they consider the duty has been complied with in respect of the SHMA. The SHMA also establishes the need for affordable housing in the Luton HMA. It is clear, therefore, that there has been constructive, active and ongoing engagement on these strategic matters.

The capacity of Luton to provide for new housing

37. Central Bedfordshire consider that Luton has under-estimated the housing capacity available within its boundary. Having taken this view, they have commissioned their own separate assessment of Luton's capacity. This is not in itself an indication of a good working relationship. However, the disagreement is principally about a soundness issue. In terms of the Duty, the evidence indicates that Luton's work on housing capacity was shared and discussed at several joint meetings. Overall, the engagement here has been satisfactory, even though it has not led to agreement with CBC.

How and where Luton's unmet housing needs will be provided for

38. The main potential candidates for accepting Luton's unmet needs are the authorities within the Luton functional HMA, principally Central Bedfordshire and to a lesser degree North Hertfordshire and Aylesbury Vale. However, there is no firm agreement about how and where, or in what quantity, Luton's unmet needs should be provided for.
39. Instead, there is an agreement between the participating authorities to use the Growth Options Study to move towards a more definitive position. However, as was pointed out to me at the hearing, the study is not the end of the road. The participating neighbouring authorities will each need to consider the recommendations and then reach conclusions about accommodating Luton's unmet needs as their own plans are progressed, having regard to national policy, local constraints and the extent of their own needs.

¹¹ The Councils of Central Bedfordshire, Bedford, Luton, Milton Keynes, North Hertfordshire, Stevenage and Aylesbury Vale – Housing Market Areas in Bedfordshire and surrounding areas – Report of Findings 2015

¹² The Councils of Aylesbury Vale, Bedford, Dacorum, Milton Keynes, North Hertfordshire, St Albans and Stevenage.

¹³ The Councils of Central Bedfordshire, North Hertfordshire, Bedford, Dacorum and Stevenage.

Ultimately, certainty can only be achieved when neighbouring plans have been examined and adopted.

40. North Hertfordshire's emerging plan includes a specific allocation to help meet Luton's needs.¹⁴ However, even here, the SOCG indicates that the objective of the Growth Options Study is to identify options which will then be progressed through plan preparation and/or review. Accordingly, the position in the emerging plan may not be the final word on this matter.
41. Beyond these authorities, the various SOCG indicate that others will only be asked to accommodate any unmet needs if they cannot be met within the HMA. As Aylesbury Vale has pointed out, it is not yet clear whether they might be asked to contribute anything, within the Luton functional HMA or outside of it.
42. The main concern from several representors is that more should have been done to arrive at a definitive position about how Luton's needs will be met. In this context it has been suggested that Luton should have sought a clearer answer from neighbouring authorities, even if that might not have been positive. Alternatively, some representors suggested the Plan should have been delayed until a firmer position had been arrived at, sometime after the conclusion of the Growth Options Study. An underlying concern was that, in the absence of any firm agreements and without a clear position in the Luton Plan, there could be little certainty that the issues regarding Luton's unmet needs will be satisfactorily resolved.
43. The question in this examination in terms of the duty is largely about the efforts that Luton has made to engage with its neighbours. As I have already noted, the inability of Luton to meet its own needs has been widely understood for some time. It was communicated in member level correspondence to CBC and NHDC in late 2012 requesting dialogue. Further member level letters to neighbouring authorities in 2013 and 2014 reiterated this point and the matter has been discussed in various meetings and workshops. Overall, it would have been very clear to neighbouring authorities that they were being asked to help provide for Luton's unmet needs.
44. The trail of letters between Luton and CBC during 2014 and 2015 indicates the difficulties the two parties had in making progress, including on the study.¹⁵ Indeed, as late as July 2015 CBC wrote to say that *"... if we eventually withdraw the Development Strategy we will need to consider how we approach potential future growth options, including the distribution of Luton's unmet need."* At that time, CBC considered formal member liaison meetings on cross-boundary meetings to be premature given the degree of uncertainty around the plan making process. In the circumstances, it seems to me that Luton took reasonable steps at both member and officer level to make progress and it is doubtful whether Luton could have done anything more to move things on at a faster pace. Indeed, the evidence indicates that Luton has taken a lead role in progressing this work. Ultimately, the Growth Options Study brief was finally agreed just before the Luton Plan was submitted.

¹⁴ North Hertfordshire's preferred options plan in late 2014 includes a contribution of 1,950 dwellings towards Luton's unmet needs. The SOCG refers to 2,100.

¹⁵ DTC001 – various letters

45. So, in these circumstances, should Luton have delayed submission to allow further progress? The Inspector examining the Central Bedfordshire Development Strategy expressed considerable sympathy with the view that, at some point, a local planning authority has to move on and publish a plan. However, the concern with Central Bedfordshire's plan was that it deferred the issue of Luton's unmet needs to later plans. This same consideration does not apply here because it is not Luton which is considering how to address the unmet needs of other authorities. Indeed, as I have already noted, there is some logic in the *exporting* authority being the first to prepare a plan so that neighbouring authorities will at least be aware of the overall extent of unmet need when preparing their own plans. Furthermore, conclusions about growth options following the study may still be some way off and Luton has little control over the decision making of other authorities. Taking all of this into account, Luton's decision to submit their plan for examination before further progress had been made, including through the study, was not unreasonable and it does not indicate a failure under the duty.
46. In addition, the central purpose of the Growth Options Study is to inform what happens in participating neighbouring authorities rather than in this plan. The ongoing engagement over the Growth Options Study therefore now relates to the duty of neighbouring authorities to cooperate with Luton as they each prepare their own plans. Indeed, it can no longer apply to Luton's Plan because it has now been submitted for examination. The same applies to decisions about the extent to which the North Houghton Regis development within Central Bedfordshire might contribute to Luton's needs and the extent to which developments in neighbouring authorities might contribute to Luton's affordable housing needs. The evidence indicates that these issues have been discussed in broad terms between relevant parties.
47. In addition, there is some degree of commitment from the HMA authorities with regard to the consideration of Luton's unmet needs. North Hertfordshire District Council's emerging plan contains a specific allocation to the east of Luton and the SOCG supports a post Growth Options plan review 'as applicable'. The hearing statement from Aylesbury Vale indicates that if further joint working determines there is a need to accommodate housing need in Aylesbury Vale then the potential to do that would be considered. Central Bedfordshire has committed to meeting a proportion of Luton's unmet needs.¹⁶ The SOCG with CBC acknowledges that the objective of the Growth Options Study is to identify if the housing requirements of the Luton HMA can be met sustainably within the HMA (a substantial part of which is within Central Bedfordshire) and, only if this cannot be achieved, would a request be made to other authorities to accommodate any outstanding balance. The SOCG also confirm that there is now a process and mechanism in place to reach agreement on unmet needs.
48. Concerns have been expressed that, without a strong statement in the Luton Plan about where the unmet needs will be provided, neighbouring authorities might evade or delay making decisions. However, target housing numbers expressed in one plan cannot compel another authority to meet them. Instead, neighbouring local plans will be judged in terms of whether they have

¹⁶ CBC Matter 7 statement – para 77.4

met their own duty to cooperate. Indeed, the PPG advises that if an authority preparing a plan provides robust evidence of an unmet housing need, other authorities in the HMA will be required to consider the implications, including the need to review their housing policies.¹⁷ Based on what has happened in recent years, it seems likely that Luton would not be backward in seeking to help ensure that this happens.

49. It has also been suggested that any growth options chosen outside Luton might have implications within Luton, perhaps in terms of planning for school places or mitigating traffic impacts. This might be so. However, at this stage such possibilities are uncertain and merely hypothetical.
50. Overall, the decision to submit the Plan before firm agreement has been reached on exported housing numbers and locations does not represent a failure in terms of the duty. In conclusion, Luton has raised the issue of unmet needs with its neighbours over a reasonable period of time and discussions have focused on how this matter could be taken forward and resolved. The engagement here has been acceptable.

Green Belt

51. Although the administrative boundary in Luton largely coincides with the built up area, there are several relatively small areas of Green Belt within Luton. These adjoin wider areas of Green Belt within neighbouring areas.
52. There is evidence here that Luton has engaged with its neighbours, including on its own first stage Green Belt study and on review methodologies. Luton has also worked with its neighbours to progress a wider Green Belt study to identify if there are any parcels of land that should be released from the Green Belt to achieve sustainable development. Ultimately, this study was jointly commissioned with CBC to be carried out to a similar timescale to the Growth Options Study. The two studies are closely bound up given Luton is largely surrounded by Green Belt. It will, therefore, primarily have implications for the preparation of the neighbouring CBC plan, rather than for Luton. I am not persuaded that Luton could have done much more to have significantly speeded up progress on this.
53. It is possible that preferred growth options outside Luton could have some implications within Luton, perhaps because they might logically lead to a review of one or more of the Green Belt areas within Luton. However, this cannot be known until neighbouring authorities reach firm conclusions about how to respond to Luton's unmet needs. Overall, the duty has been met on this strategic matter.

Economy

54. Over recent years Luton has engaged with its neighbours on its employment land requirements, including through joint member meetings. This included the 2013 Employment Land Review which sought to define the economic market area. It should also be noted that the joint SHMA includes forecasts on employment trends and jobs growth as part of the calculation of the OAN

¹⁷ PPG – Duty to Cooperate - ID 9-020-20140306

for housing. More recently, Luton has discussed a joint functional economic market area study with CBC. However, this could not be agreed and both authorities are now carrying out separate work. Given the timing, this work has not informed the preparation of the Luton Plan. Overall, however, the engagement has been adequate on the economy and on retail matters.

Transport

55. I am satisfied that Luton has worked with neighbouring authorities and with Highways England, through the sharing of evidence, including transport modelling and by means of ongoing discussions about effects and mitigation. While some issues were not fully resolved at the time the Plan was submitted, the duty has been met on this strategic matter. A SOCG indicates that Highways England also consider this to be the case.
56. I appreciate that Hertfordshire County Council has concerns about the level of engagement about the Luton North Bypass and the East Luton Circular Road. The former would lie mostly within Central Bedfordshire and the latter is merely a safeguarded route within the Luton Plan, although much of the potential route would lie outside Luton. However, in both cases these roads are to some degree related to potential growth options outside of Luton. As such, engagement on them is not primarily a duty to cooperate issue here. The same applies to any potential road link between the Century Park strategic allocation at London Luton Airport and development proposed within the North Hertfordshire Local Plan to the east of Luton.

Other strategic matters

57. The Council's hearing statement outlines the nature of engagement on school planning and I have not been made aware of any duty to cooperate concerns about the role of the airport. The consideration of the sub-regional role of Luton for housing, employment, retail and town centre uses is, in effect, implicit in the consideration of the various other strategic matters.

Findings from other examinations

58. I have been referred to several other examinations where Inspectors have concluded on the duty to cooperate. However, some caution must be applied because the circumstances in each case will inevitably be different to some degree. Consequently, I do not intend to provide an analysis against all the examples cited or to compare and contrast the various findings with Luton in detail. Nevertheless, there are some key threads which are of significance.
59. In some of the cases, the duty was failed principally due to problems relating to the objective assessment of housing need, including through the preparation of a SHMA.¹⁸ This is not the case with Luton. Indeed, taken together, the various DtC examination findings emphasise the central importance of carrying out joint work on housing markets and OAN. Such work has been carried out in the preparation of Luton's Plan.

¹⁸ Coventry, Hart, Aylesbury Vale

60. In some cases the duty was failed because the authority being examined failed to give satisfactory consideration to meeting the unmet housing needs of other authorities.¹⁹ Again this does not apply to Luton, because Luton is the potential exporter of unmet housing needs.
61. In Hart, one of the Inspector's concerns was about engagement with neighbouring authorities on meeting Hart's housing needs. However, this was largely because the Council only raised the issue and initiated discussions very late in the process just before submission. In contrast, Luton raised the issue with its neighbours well in advance.
62. In Coventry, the Inspector did express concerns about the mechanism for dealing with any shortfall, *should one arise*. However, the main concern was about the absence of a joint SHMA for the HMA. As noted above the steps taken by Luton to establish the OAN and deal with its unmet needs are reasonable.
63. However, there are examples that are more directly relevant. In the case of Birmingham, neighbouring authorities agreed to produce a study to identify broad spatial options to accommodate Birmingham's unmet needs. The Birmingham plan was submitted before this study had been completed and similar criticisms were raised as with Luton. However, the Inspector concluded, as I have done, that the steps taken by the Council prior to submission were sufficient to comply with the duty. There are inevitably some differences, for example in terms of the scale and proportion of unmet need and work on the spatial options study in Birmingham appears to have started earlier in the process than in Luton. There also appears to have been a greater commitment from Birmingham's neighbours than Luton's to review their plans if necessary to help accommodate unmet need. However, in overall terms, the situation is sufficiently similar to provide a positive parallel.
64. In addition, Crawley's plan was found to have met the duty despite failing to secure in full the future provision of its unmet needs. This was because there was no compelling evidence that this failure resulted from the Council not promoting its case with sufficient vigour. The same applies with Luton.
65. Overall, I can see nothing in these various findings that would lead me to a different overall conclusion on the duty.

Conclusions on the duty to cooperate

66. The Council has submitted a large amount of evidence that illustrates the extent and nature of engagement over the full range of strategic matters. Significantly, Central Bedfordshire and North Hertfordshire have both agreed that Luton has met the duty.
67. It may be the case that Luton could have done more to engage with its neighbours and that some questions might have been asked earlier and more explicitly. However, that will probably be true in the preparation of most plans. In this case, there were considerable difficulties to overcome in terms of cooperation, particularly with Central Bedfordshire, and it is reasonable to

¹⁹ Mid-Sussex, Aylesbury Vale, Central Bedfordshire

consider the duty with regard to what is realistic and achievable. In this context, significant progress has been now made on joint working, particularly in relation to the SHMA and the actions taken by Luton across the range of strategic matters have been acceptable, reasonable and sufficient. For the reasons outlined above, the legal duty to cooperate has been met.

Issue 2 – Have the relevant legal requirements been met including in relation to the Local Development Scheme (LDS), consultation, the Habitats Regulations and sustainability appraisal?

Local Development Scheme

68. The Local Plan conforms to the subject matter and geographic area set out in the LDS of 2015. It is a full Local Plan with the exception of matters that are to be covered in a separate Gypsy and Traveller Local Plan. It was submitted for examination only one month later than the date specified in the LDS. It has, therefore, been prepared broadly in line with the specified timetable. The plan period is from 2011 to 2031. This complies with the Framework which seeks an appropriate timescale to take account of longer term requirements.

Consultation

69. The Council has confirmed that consultation was carried out in accordance with the Statement of Community Involvement and the relevant regulations, as evidenced in the Statement of Consultation.

Habitats Regulations

70. The SA states that the nearest relevant biodiversity site is about 7 miles to the south-west of Luton and that the Local Plan is unlikely to have a significant effect on it. This is a reasonable conclusion and Natural England has not raised any concerns. Consequently, no further assessment work is necessary.

Sustainability Appraisal

71. The Council has carried out an adequate SA of the Plan and reasonable alternatives have been considered to a sufficient degree. There have been some criticisms of the SA, including the alternatives considered, and I will address some of these throughout the report. However, the Planning Practice Guidance (PPG) states that a sustainability appraisal does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the plan. The SA here conforms to that guidance.

72. The SA identifies that some strategic objectives relating to development are incompatible or potentially incompatible with the protection of air, soil and water resources. This issue is then analysed in more detail in relation to specific policies. The SA recommends that, principally in relation to air pollution from traffic, the Plan should introduce sustainable transport measures. This has been achieved, including through Policies LP31 and LP32, the attempt to maximise housing capacity and the aim of meeting local job needs within Luton. Issues relating to air pollution have been adequately considered.

Conclusion on legal compliance

73. The plan complies with the relevant legal requirements in the 2004 Act and the Regulations, except where indicated below in the report.

Issue 3 – Does the Plan appropriately define the sub-regional role of Luton? Is the overall balance between providing for development needs within and outside of Luton justified?

74. In broad terms this is a plan which seeks to provide for Luton's employment and retail needs within the borough but which, due to capacity constraints, does not seek to meet all of the assessed need for housing. The question here is whether that balance is correct. I will explore this further in the relevant sections of this report. However, in principle it is reasonable that Luton should plan to meet its own employment and retail needs within and on the edge of the existing urban area in sustainable and accessible locations, including within the town centre and other centres, at London Luton Airport and on the other strategic allocations. This approach reflects Luton's historic and current sub-regional role in providing jobs and services. This is adequately articulated and reflected in the Plan, including in the vision and strategic objectives.²⁰

75. The SA does not assess a specific single strategic option for the Plan to deliver more housing and less employment. However, this assessment is implicit in the various strategic alternatives which were considered, including those which considered options for higher or lower urban capacities for housing, for differing amounts of employment development, about the release of employment sites for residential use and the use of the strategic allocations. Overall, the SA has appraised reasonable strategic alternatives.

Issue 4 – Is the Plan informed by a soundly based objective assessment of housing need (OAN)?

76. The OAN for housing in the plan area has been established through the Strategic Housing Market Assessment (SHMA) Update of Summer 2015 which followed the Refresh of 2014. Unless specified, references to the SHMA are collectively to these documents.

77. The Plan states that there is a need for 17,800 net additional dwellings over the plan period to support the population growth of Luton Borough (ie the LPA area) and 31,200 in the wider Luton Housing Market Area, which is also described as the 'functional' HMA. This latter area includes all of the administrative area of Luton, plus a significant part of Central Bedfordshire and much smaller areas within Aylesbury Vale and North Hertfordshire.

78. In order to arrive at an OAN for the administrative area of Luton, the SHMA firstly considered the figure for the combined whole local authority areas of Luton and Central Bedfordshire. This is described as a 'best fit' for the Luton HMA. This was then disaggregated down into figures for the Luton HMA and the administrative area of Luton which is covered by this plan.

²⁰ Subject to two recommended changes set out in the report.

Housing market area

79. The SHMA explains that the extent of the functional Luton HMA is based on migration, travel to work, house moves and house price data. Beyond the administrative area of Luton, this primarily includes the adjoining urban areas of Dunstable and Houghton Regis which have strong functional links with Luton. The overall extent of this HMA is justified.
80. It is inevitable that the boundaries between housing market areas will rarely conform precisely to local authority administrative boundaries. However, given that plan making is carried out on the basis of administrative boundaries, it is pragmatic and sensible to look for a 'best fit' HMA which conforms to them, where this can reasonably be achieved. In this case the degree of containment is sufficient to justify the 'best fit' approach taken here. There is nothing in the SHMA to suggest that there is any significantly better 'best fit' or that it would be clearly preferable, at this stage, to establish a much wider HMA, for example on a sub-regional basis, including Milton Keynes. The Inspector examining the Central Bedfordshire Development Strategy in 2015 also concluded that the approach taken in defining the appropriate HMA accorded with the PPG's advice on this.
81. Judgements about the precise boundaries of HMAs may not always be clear cut. Nevertheless, the broad boundaries appear to have been reasonably defined. However, decisions regarding the definition of the precise Luton HMA boundary within Central Bedfordshire are a matter for that authority as it prepares its own Local Plan. Similarly, it will be for CBC to consider whether any potential housing development sites located outside the HMA boundary might, or might not, contribute to meeting defined needs within it.
82. Some changes to the Plan are necessary to achieve clarity and effectiveness and to correct errors. Firstly, it should be made clear that none of Dacorum Borough lies within the Luton HMA. Secondly, the Plan should be clearer about the Luton (functional) and the 'best fit' HMAs and thirdly, to help achieve this, a diagram should be included to show the HMA, with a footnote to indicate that the boundaries are not intended to be precise. **(MM1, MM9, MM10, MM26)**

Starting point to establish housing need

83. The SHMA uses the 2012-based household projections published by the government²¹ as the starting point to establish housing need. These were the most up to date projections while the Plan was still being prepared. They establish a baseline need of 53,336 households for the 'best fit' HMA over the plan period. This is a reasonable starting point for establishing the OAN.

Migration assumptions

84. The PPG advises that, although the government projections are statistically robust, plan-makers may consider sensitivity testing based on locally specific assumptions. The 2012-based DCLG projections are primarily informed by migration trends over the five year period between 2007 and 2012. However,

²¹ Department for Communities and Local Government

the SHMA prefers the use of a 10 year migration trend (based on the period 2001-2011). This has resulted in a significant downward adjustment of the OAN figure from 53,336 to 41,345 households.

85. There is no certainty about which trends will most accurately forecast what will happen in the future. However, where net migration can show significant variations over time, it is not unreasonable to use a longer term trend. This avoids making a long term forecast primarily on the basis of what has happened over only a limited number of years, which may not be representative of what will happen over a plan lifetime. In this case the SHMA shows that there have been significant variations in annual *recorded* migration²² from 2001 to more recent years, in both Central Bedfordshire and Luton.
86. However, the Council is concerned that there are significant problems in extrapolating future trends from *recorded* past migration and population figures. In broad terms the Council considers that the 2001 Census significantly under-counted the population of Luton and that consequently, the rise in population between 2001 and 2011 was significantly less than a direct comparison of both Census figures would indicate. Given that natural change resulting from births and deaths over this period can be readily accounted for, the Council has concluded that the actual levels of net in-migration between 2001 and 2011 are likely to have been significantly less than a straight comparison of the enumerated Census populations in 2001 and 2011 might suggest. This has relevance even if 5 year migration trends were to be used, because the 2012-based household projections are based, in part, on migration assumptions which date back to before 2011.
87. There has been some debate about whether the Council's analysis on this is robust. However, I consider there are reasonable grounds to question the migration assumptions which have informed the official projections. In the first place the SHMA explains that the 2001 Census only achieved an 86.3% response rate. This means that around 1 in 7 households did not respond. This is a very significant under-enumeration. Following from this, the Council has concluded, based on various other available data sources, including interviews with a sample of 1,600 households in 2004-5, that the population of Luton in 2001 was likely to have been significantly higher than is indicated by the 2001 Census and the official mid-year estimate.²³
88. I understand that the Office for National Statistics (ONS) adjusted the Census data to fill in the evidential gap caused by the under-enumeration. However, I accept the Council's concern, including as expressed at the hearing session, that the use of 'donor' households who had actually completed the Census may not have been representative of the missing households, especially in terms of household size. In particular, the concern is that larger households in the Asian community are likely to have been under-recorded. This potential data error does not appear to have been corrected through the Unattributable Population Change adjustment applied by the ONS.

²² Based on ONS mid-year estimates

²³ SHMA and Document ED036

89. The Council's evidence and analysis on this rather key point could have been set out with much greater clarity and with more transparency. However, there is sufficient evidence to justify approaching the DCLG household projections with some degree of caution and the Council's downward adjustment to the official household projections falls within the bounds of what might reasonably be justified. Nevertheless, the issue is not clear cut. I will return to this later.

Further adjustments to the projections

90. The Council then applied a number of further adjustments. Firstly, taking into account vacancies and second homes, the figure of 41,345 households has been translated into a need for 42,883 dwellings. This was then adjusted upwards by an allowance of 1,053 dwellings to allow for the effects of suppressed household formation taking into account concealed families and homeless households who may not be included within the household projections.
91. A further increase of 3,301 dwellings was then applied to help ensure a balance between jobs and workers. This is based on a reasonable analysis of forecasts and plans for job growth, in and out-commuting to work and the number of people likely to hold more than one job. An adjustment of this nature is in line with the PPG which seeks to avoid a position where the labour force supply is less than the projected job growth, potentially resulting in unsustainable commuting patterns and a reduction in the resilience of local businesses.
92. These two adjustments lead to an OAN figure of 47,237 dwellings. Inevitably, there are different ways of establishing the exact level of such uplifts, but as with many assumptions regarding future trends, it is, to a large degree, a matter of applying judgement informed by available evidence. I consider the Council has done that here and the scale of the various adjustments and the justification for them is reasonable.
93. The Council has also concluded that that an analysis of 'market signals' justifies an uplift to the OAN of around 10% to the demographic based projection of 42,883 dwellings. The PPG does not set out any specific formula or methodology to quantify the level of any such uplift. Consequently, this too is a matter of judgement based on a consideration of the signals. Overall, I tend to agree that the evidence presented in the SHMA indicates a degree of housing market pressure that justifies an uplift of this scale.
94. The Council has reduced this potential uplift to 3,175 because an adjustment has already been applied to allow for suppressed household formation rates. This is a reasonable approach and taken together these two potential uplifts (market signals and suppressed household formation rates) are reasonably related to the scale of improvement in affordability needed, as identified in the SHMA.
95. However, as the suggested uplift of 3,175 is less than that to balance jobs and workers (3,301), it has not been applied separately in addition to it. This is a reasonable approach given that any uplift to take into account sufficient housing for workers would also be likely to have a positive effect on market signals, including in terms of affordability. The same applies to the uplift in

relation to suppressed household formation rates. This results in an OAN figure of 47,237 dwellings for the combined authority 'best fit' HMA.

OAN for the Luton functional HMA and for Luton

96. The OAN of 47,237 for the 'best fit' HMA has then been disaggregated down into an OAN of 31,200 for the Luton functional HMA and, more specifically, 17,800 for Luton. The approach taken in the SHMA to arrive at these figures appears reasonable. However, a relatively small adjustment is needed to the 31,200 figure as set out below.

Conclusions on OAN

97. I noted above that I would return to the migration issue. I have already concluded that the significant downward adjustment could arguably fall within the bounds of what might reasonably be justified. However, there are significant difficulties here in trying to accurately forecast what future migration trends might be, especially given the uncertainties about past trends. Furthermore, there are several factors which could indicate that the OAN figure might be different and potentially higher.
98. Firstly, the 2014-based household projections were released by DCLG in July 2016 after the Plan was submitted for examination. These indicate household growth of 59,801 over the plan period in the 'best fit' HMA.²⁴ This is some 6,500 households higher than is suggested by the 2012-based projections. While, I recognise that the Council considers these more recent projections are still affected by 'data quality issues', it is nevertheless a potentially significant increase.
99. Secondly, the Council's concerns about data accuracy in relation to migration assumptions date back to the 2001 Census, an event which took place some 16 years ago. The Council has confirmed that the 2011 Census estimate of population is more robust. Consequently, as time passes, issues relating to the accuracy of the 2001 Census will diminish in importance, even if projections are based on a 10 year period, rather than a 5 year one. Furthermore, the migration trends used by the Council to establish the OAN are based on the period 2001-2011 which now ended some 6 years ago.
100. Thirdly, it was put to me by some representors that there are likely to be migration pressures from London which have not been taken into account. This, it was suggested, is due to the demographic assumptions which informed the London Plan, the possibility that some London boroughs may not achieve the housing requirements in that Plan, housing affordability in London and the proximity of Luton to London in terms of transport links. However, at the time of the examination, there had been no request from the Greater London Authority for Luton or Central Bedfordshire to accommodate any unmet needs from London. Nor is there any robust assessment or quantification before me of any such need or anything to indicate how it might be distributed between

²⁴ Document ED036

authorities. Nor, at this stage, is there any firm evidence about the local effects that leaving the European Union might have on migration.

101. Nevertheless, all these factors could potentially have some effect on the OAN figure for the 'best fit' and functional HMAs. However, I am not persuaded that this means that the OAN figures in the Plan should be regarded as unsound at this stage, or that the Plan should be suspended to allow them to be re-considered, re-worked, consulted upon and examined. I reach this conclusion for a number of reasons.
102. Firstly, a local plan inevitably takes some years to prepare and at some stage the evidence must become fixed if conclusions are to be reached and plans adopted. Indeed, the PPG accepts that although, where possible, local needs assessments should be informed by the latest available information, this does not automatically mean that housing assessments are rendered outdated every time new projections are issued. It is also worth noting that the Inspector examining the Central Bedfordshire Development Strategy expressed sympathy with views that 'at some point, a local planning authority has to climb off the carousel of ever updated demographic data and publish a plan.'
103. Secondly, any reconsideration of the OAN would have the potential to add significant delay to the examination. However, in this case, there are compelling reasons that justify adopting the Plan without delay. In particular, it is important that Luton's unmet housing needs are quantified now. This is so neighbouring authorities can make informed judgements about the contribution they might offer towards meeting those needs. A substantial delay at this point would be likely to lead to a more difficult overlap with the preparation of neighbouring plans, particularly in Central Bedfordshire, and further unhelpful uncertainty. Following the difficult history between Luton and Central Bedfordshire on this matter, relationships now seem to have improved. In this context, it is important that the momentum and progress on plan-making in Luton and in neighbouring authorities is maintained so that much-needed housing can be planned for and provided.
104. Thirdly, the current Luton Local Plan was adopted over 10 years ago in 2006 and it only covered the period to 2011. It is, therefore, important that a plan is put in place as soon as possible which brings forward a supply of land for housing and for other uses, along with up-to-date development management policies. This will provide a more robust basis for making development-management decisions as well as providing greater certainty for developers, local people and other parties, including those who make decisions on infrastructure.
105. Fourthly, if an updated SHMA were to lead to a different, and potentially higher, OAN, the effects would largely influence planning decisions about housing numbers outside Luton, particularly in neighbouring Central Bedfordshire. This is because, on any realistic assessment, the housing capacity of Luton is significantly lower than the OAN and because, both geographically and functionally, Central Bedfordshire is clearly the most obvious candidate to accommodate a significant proportion of that unmet need. In this context the SOCG with CBC confirms that a new joint SHMA will inform the new Central Bedfordshire Local Plan. This will cover the period

2015 to 2035. Consequently, the OAN for the HMA is likely to be revisited in the near future. The two Councils have agreed that any changes to the OAN for Luton itself would need to be considered in the next Luton Local Plan.

106. For these reasons, although there are uncertainties about the OAN figure, particularly in relation to the assumptions regarding migration, I am not persuaded that it would be justified to significantly delay this plan by putting it into suspension to allow the figures to be re-assessed. Finally, it should be noted that the PPG advises that establishing the future need for housing is not an exact science and that no single approach will provide a definitive answer. That is the case here.
107. However, the uncertainties are significant enough to require a re-consideration in an early review of the Plan, when the effect of data concerns about the 2001 Census may be further diminished. This commitment should be set out in a policy which specifically refers to a re-assessment of migration trends and projections. **(MM56)** This aligns with the approach on plan reviews set out in the PPG and in Examining Local Plans Procedural Practice. The use of an early review would also allow the OAN to be reassessed having regard to any standardised approach to assessing housing needs which may be put in place following the consultation announced in the Government's white paper 'Fixing our broken housing market' in February 2017. On this basis, the OAN figures expressed in the Plan can be regarded as sound, subject to a clear commitment to an early review. There is one exception to this which I will discuss below.
108. The Plan refers to an OAN of 31,200 for the Luton HMA. This covers most of the HMA but not the small areas that fall within North Hertfordshire and Aylesbury Vale or the need which relates to those areas. This should be corrected, taking the overall OAN for the HMA to 31,800. **(MM12)** It should also be clarified how this OAN is split between the four relevant authorities. **(MM9)**
109. Finally on this matter, given it is unclear what a reconsideration of the OAN through the plan review process might yield, it is not necessary for the Plan to refer to the OAN for Luton as being *at least* 17,800, a possibility that was discussed at the relevant hearing session.

Issue 5 – Have the housing capacity figure and the housing requirement for Luton been correctly established? Will the Plan make an appropriate contribution towards meeting the OAN and is there a reasonable prospect that the housing requirement will be met? Will there be sufficient school places to support this growth?

Overall capacity

110. Given Luton's administrative boundary fairly closely aligns with the urban area, there is only a limited supply of potential land for housing. The Plan states that 6,700 new homes will be provided for, reflecting the availability of land. However, the more recent Strategic Housing Land Availability Assessment (SHLAA) of July 2016 refers to a capacity of 9,322 between 2011 and 2031. This includes completions in the first few years of the plan period.

111. The SHLAA is based on a robust and thorough assessment of various sources of capacity, taking into account planning permissions and assumptions about densities. These appear to me to strike a balance between maximising capacity while at the same time achieving good quality developments in what is already a densely developed urban area. The assumptions are reasonable and I am not convinced there is a robust justification for seeking to apply significantly higher densities.
112. The Council considers that a capacity of 8,500 is more realistic than the SHLAA figure of 9,322.²⁵ This is partly because of the uncertainties regarding the amount of housing that might be delivered at the Napier Park strategic allocation and in respect of a specific scheme for student accommodation. Looking more generally, the amount of housing delivered on the strategic allocations is almost inevitably likely to vary from that which is forecast, given the size of these allocations, and depending on the particular detailed mixed use schemes developers will bring forward. In more general terms it is reasonable to assume that a limited amount of the identified capacity might not be delivered.
113. Furthermore, any assessment of capacity is prone to at least some uncertainties about delivery. For example, the housing allocation at Kenilworth Road is dependent on the relocation of Luton Town Football Club, which will be considered in detail below. Similarly, the amount of existing housing that might be released through the development of any student accommodation is to some degree uncertain, as is the amount of new housing that might be provided through the exercise of permitted development rights. Set against this, the windfall assumption from small sites is probably quite conservative (at just 114 dwellings)²⁶ and so might in practice be higher.
114. The SA has adequately considered broad capacity options as well as alternatives for allocations. Clearly though, in a borough which will be unable to meet all its own housing needs, it is important that reasonable options to maximise housing delivery are considered. Some of the main factors which could have some bearing on the capacity figure are addressed below.

Use of existing employment land

115. The Council has carried out a robust and thorough analysis of existing employment land and has reached reasonable conclusions about which sites might be made available for residential use.²⁷ Many existing sites are in active employment use and so are not realistic options for housing. Some other existing sites may be under-used. However, where these are sited within industrial areas, they are unlikely to be suitable for housing use. In addition, it is important that Luton provides an adequate stock of buildings and land to support the local economy and maintain jobs, including through retaining sites that will be less costly than those on newly developed business parks. The assessment of capacity from this source is reasonable.

²⁵ Document ED047

²⁶ Based on existing permissions on sites delivering less than 5 homes – MM12

²⁷ For example, as set out in Documents ECON1, ECON3, ECON3a, ED21 and ED46

116. Policies LP13 and LP14 accept there may be circumstances where existing employment sites could be used for other purposes. However, it is difficult to quantify what this might add to housing delivery. This is because the extent to which policy compliant proposals might be advanced is uncertain. I am not convinced this should lead to any upward adjustment to capacity.

Sites suggested by landowners, potential developers and other parties

117. A number of sites which are not proposed to be allocated for housing in the Plan have been suggested by landowners, potential developers and others as being suitable for that use. In summary, none of these sites appear to me to be straightforward candidates for housing allocations as I will indicate in the discussion below. I accept that *some* of these sites might have housing potential, if it can be demonstrated through the development management process that relevant plan policies are satisfied. However, that possibility is not strong enough to justify specifically allocating any of these sites for housing or counting them as a firm source of capacity.

118. I have concluded elsewhere that the safeguarding of the East Luton Circular Road (ECLR) and the Weybourne Link is justified, at least for the moment. The purpose of safeguarding these road alignments would be compromised if any part of the route were to be developed for housing.

119. Much of the area of land described as the Old Bedford Road Estate and Manor Farm Estate lies within the Green Belt. I conclude elsewhere that there are no exceptional circumstances to alter the Green Belt boundary at this time. The land also falls within an Area of Outstanding Natural Beauty (AONB), a further significant constraint.

120. The triangular area of land near Lynwood Avenue is shown in the Plan as a county wildlife site and as an area of great landscape value. Even leaving any potential wildlife value to one side, this locally prominent site is extensively covered with trees. In its current form, it makes a valuable contribution to the local landscape and townscape. For this reason alone, it is not a sufficiently clear cut option for housing to justify an allocation.

121. Land alongside the M1 motorway is currently used by Luton Rugby Club and comprises sports pitches and ancillary buildings and parking. Given this use, and having regard to paragraph 74 of the Framework, the site is not a clear cut opportunity for a residential allocation. Instead, any housing proposal could reasonably be considered through the development management process, having regard to relevant policies in the Plan and any material considerations. This could for example, include consideration of the merits of developing the site to assist the relocation of the rugby club and any overall need for playing fields and open space, as appropriate. However, these are not matters which I need to conclude on here.

122. Much of the 'trailer park' on Vauxhall Way appears to be in active use as a car park. However, even if this use were to cease at some stage, the site lies in a predominantly industrial location between the Vauxhall plant and the airport. Again, this does not stand out as an obvious residential opportunity.

123. In some cases the Council has accepted that increases to the capacity of proposed housing allocations are justified, generally based on planning

permissions or pre-application discussions. This includes the site at Caleb Close and these changes are reflected in **MM59**. However, I am not convinced that it is necessary to increase the capacity at Britannia Estate, given that the capacities for all sites set out in Appendix 4 to the Plan are not prescriptive and that the amount of housing to be delivered on this site will depend on the precise nature and suitability of any detailed scheme. At Stockingstone Road, any scope to increase the stated capacity of the site is uncertain, given the need to retain the existing bowling facilities (an issue which is considered elsewhere in this report).

124. Finally, I am not convinced that any significant areas of the strategic allocations at Butterfield Green, Land South of Stockwood Park or Century Park should be released for housing at this time given their location, circumstances and the need to make adequate provision for suitable employment land. For example, Butterfield Green is already partly developed as a technology park and Century Park provides the main opportunity for employment development near to the airport. As discussed below there are uncertainties about what will be delivered at Land South of Stockwood Park, but that is a matter for the early review of the Plan.
125. Overall, therefore, I can find nothing to indicate that the Council has failed to identify any obvious housing sites or that it has significantly underestimated the overall housing capacity.

Density policy

126. I am not persuaded that it is necessary for the Plan to set any specific minimum density requirements in addition to the indicative and potential housing numbers in the various allocations, the encouragement to achieve higher densities in some specific locations in Policies LP3 and LP15 and the requirement to optimise higher densities in Policy LP25. Broadly, it is reasonable to allow the market the flexibility to bring forward viable schemes which comply with plan policies. There is no clear evidence that this approach will lead to developments being built at unduly low densities.

School places

127. Although the demand for, and supply of, school places is referred to in the supporting text, this only emerged as a significant issue during the course of the examination. The Council's difficulties in providing sufficient school places to meet projected housing growth are set out briefly in the notes relating to the 2016 SHLAA.²⁸ The detailed analysis provided with the Council's hearing statement of August 2016 more clearly indicates the severity of the situation.
128. The analysis is quite stark. Based on a projected housing delivery of only around 6,900 dwellings, an additional 4 or 5 secondary schools are said to be required by 2030. New primary schools are also thought to be needed. As it stands the Council concludes that it does not currently have land or school expansion options to meet the growth from new development after 2021, even taking into account the site-specific proposals for a new secondary school and

²⁸ Document ED47

a new primary school in Policy LP24. This is said to be a particular problem in central and south Luton.

129. I have no reason to doubt the overall thrust of the detailed analysis which has led to these conclusions. It is perhaps possible that different methodologies might be applied to school place forecasting or different assumptions made. However, it is difficult to see how this would cause the scale of the problem to be very significantly reduced. Indeed, the school places forecasting methodology and assessments carried out by the Council would need to be significantly flawed if the problem were to evaporate altogether. There is no indication that this is the case.
130. Despite the timescale to 2031, the Plan does not make any provision to meet this identified need beyond that set out in Policy LP24. Furthermore, given the limited availability of land and the size of existing schools, the Council was unable to draw my attention to any specific solutions based on the expansion of existing schools or the development of new sites. This points to a need to apply caution when establishing the overall housing capacity figure, at least at this stage. On this basis alone, increasing the Plan capacity beyond 8,500 would not be justified.
131. The Framework attaches great importance to ensuring that a sufficient choice of school places is available. It also requires that the capacity of education infrastructure is assessed and that required infrastructure should be positively planned for. The Plan does not meet all of these objectives over the full plan period. Furthermore, it is unlikely that finding a solution will be a particularly easy task. This is because sites in the right locations will need to be identified and procured (in an area with a limited supply of land) before specific school proposals can be planned, designed and funded. This could be an even more difficult prospect if some of the land has to be found in neighbouring authorities outside Luton, possibly in connection with urban extensions, a possibility raised at the hearing session.
132. It is unclear how long finding these site specific solutions might take, but it is unlikely to be quick. Accordingly, it would not be appropriate to suspend the Plan to allow this work to be done. Instead, this is a matter that will need to be dealt with in the early review and the Plan should be amended to confirm that. **(MM56)** Given the scale of the problem and the implications that flow from it (ie the potential for there to be a shortfall in school places), this is not an entirely satisfactory solution. However, there is no clear alternative at this stage, because withdrawing the Plan would not actually help resolve the issue any faster.
133. The MM refers to an assessment of the need for school places taking into account *planned housing growth*. Clearly education requirements related to any provision to help provide for Luton's unmet housing needs will also need to be considered as local plans are advanced in neighbouring authorities. Accordingly, there is no need for the review policy to specifically mention planning for school places outside of Luton. However, the new policy does acknowledge that growth outside Luton may have implications within it.

Conclusions on capacity

134. Given the various variables, constraints and uncertainties, there is unlikely to be any one single definitive capacity figure. Taking all of the above into account, the figure of 8,500 is reasonable and adequately justified. Given that this supply is comprised of potentially deliverable and developable sites (many of which have planning permission²⁹), the figure is one that is capable of being delivered over the plan period. It has also been subject to an adequate process of SA, including in the Addendum on the main modifications. The figure should, therefore, be seen as the housing requirement for Luton and the Plan should make it clear that it will provide for 8,500 dwellings, rather than 6,700. **(MM2, MM12, MM25, MM27, MM60)** This equates to an average of 425/year over the plan period. Annual completions around this level have been achieved in several years dating back to 2001. However, in some years, completions have been significantly less. Overall, this points to the figure being reasonable, realistic and aspirational.
135. I can see no merit in expressing this figure as 'at least 8,500' because this could create uncertainty when quantifying the scale of Luton's unmet housing needs and in the calculation of a five year housing land supply. Nor would there be any clear benefit from doing so. However, it should be clarified that the requirement figure of 8,500 is not intended to be a ceiling, so that it is not seen or applied as a constraint to delivery. **(MM12)** In order to achieve this, the MM, quite reasonably, refers to the aim of enabling development proposals to come forward on non-allocated sites where they comply with plan policies, subject to the availability of appropriate infrastructure. However, there is no need for the MM to also state that regard will be had to relevant material considerations, given this is enshrined in legislation.³⁰
136. In addition, changes to the identified capacities from various sources in the Plan, including to the housing allocations³¹, need to be updated in line with the 2016 SHLAA. Changes should also be made to remove the unnecessary duplication between Policies LP2 and LP15. **(MM12, MM32, MM59)**
137. In all the circumstances outlined above, meeting this figure would represent a significant boost to the supply of housing as envisaged by the Framework. However, given the uncertainties about capacity, the potential for this figure to change over time and the central importance of quantifying the extent of unmet need, this is a further matter which should be re-visited in the early review of the Plan. **(MM56)**
138. The housing requirement of 8,500 is clearly significantly less than the OAN of 17,800. This leaves an unmet need of some 9,300 dwellings. To inform the duty to cooperate between neighbouring Councils and Luton and to provide certainty, this figure needs to be set out in the Plan, instead of the stated figure of 11,100. **(MM9, MM12, MM27)** Finally on this, strategic objective 2 refers to the efficient and sustainable use of resources within the limited physical capacity of the borough. To help ensure that capacity is reasonably maximised, this should be amended to recognise the potential for *mitigation*, particularly in reference to social and environmental resources. **(MM5)**

²⁹ As set out in the appendices to Document ED21 and in Annex A to the Council's Matter 17 Statement

³⁰ Planning and Compulsory Purchase Act 2004, s38(6)

³¹ In appendix 4 to the Plan

Issue 6 - Does the Plan adequately deal with the issue of where and how Luton's unmet housing needs will be provided? Has the plan been positively prepared in this respect?

139. The Framework states that joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas.
140. The emerging North Hertfordshire Local Plan includes a contribution of 1,950 homes towards meeting Luton's needs. However, the main options for accommodating most of Luton's unmet needs lie within Central Bedfordshire. At this stage, there is little certainty regarding the scale or location of any contribution from CBC, including in respect of the consented development at Houghton Regis. The position is similar in Aylesbury Vale. At this stage, therefore, it is not possible to be sure that Luton's needs will be met in full or how and where this will be achieved.
141. However, I have already concluded that the Council has adequately engaged with neighbouring authorities³² on this matter and that it is broadly agreed that these authorities will consider how they will contribute to meeting Luton's needs as they prepare their own development plans, including through review or modification process depending on timing.³³ This will be informed by the joint Growth Options Study. At this stage Central Bedfordshire have committed to helping meet a proportion of Luton's unmet needs.³⁴ North Hertfordshire have confirmed, in addition to the allocation referred to above, that they will assess the implications of the Growth Options Study before their own plan is submitted for examination.³⁵ Aylesbury Vale have not yet made any firm commitment, beyond their involvement in the Growth Options Study. However, given the geography of neighbouring HMAs, Aylesbury Vale is unlikely to be a prime candidate to receive any very significant quantity of Luton's unmet needs.
142. The Growth Options Study was carried out during 2016 and the final report was made public in March 2017. However, the findings within it will need to be agreed by each of the commissioning authorities and decisions will need to be made about how to progress growth options through their own development plan process. Each of these plans and the proposals within them will then need to be subject to SA, consultation and examination. Inevitably, a final position on providing for Luton's unmet needs is some way off.
143. At this stage, there is little more that the Council could have done to secure a firmer commitment from any of its neighbours on housing numbers and there would be little merit in suspending this plan to allow that to be achieved, given the likely timescales. Indeed, it is difficult to see how that course of action might realistically speed up progress in neighbouring authorities. Furthermore, as I have already concluded, there is logic in the *exporting* authority adopting their plan first because this then quantifies the extent of

³² Principally, the Councils of Central Bedfordshire, North Hertfordshire and Aylesbury Vale.

³³ In the various SoCG and in Aylesbury Vale's Stage 2 hearing statement

³⁴ CBC Matter 7 statement (77.4)

³⁵ North Hertfordshire Stage 2 statement on Matter 7

the unmet need, so removing uncertainty which might prejudice solutions being reached in neighbouring authorities.

144. In an ideal world where decisions such as these were easier and less contentious, a plan could seek to explain clearly, and with certainty and detail, how its own unmet needs would be met. However, the lack of firm outcomes here does not make Luton's plan unsound and the responsibility for considering how these needs will be met now largely falls on Luton's neighbours. Indeed, in order to be positively prepared, neighbouring plans will need to be based on a strategy which seeks to meet unmet requirements from Luton, where it is reasonable to do so and consistent with achieving sustainable development.³⁶ Furthermore, a local plan can inevitably only plan positively for development within its own area³⁷ and it follows that it cannot dictate what a neighbouring plan should do.
145. The SA concludes that it is not reasonable to assess the sustainability of potential locations or numbers of homes that could be delivered outside the borough. Given the circumstances described above, I agree. Such development will instead be considered through the plan making, DtC and SA processes in neighbouring authorities.
146. In broad terms Policy LP2 and the supporting text adequately explain the overall position regarding unmet needs and the Council's continuing work with neighbouring authorities. However, some changes are necessary to provide clarity, to reflect the most up to date position and to set out the actions Luton Council will take. In particular, it should be made clear that the aim is for the unmet need to be provided for within the functional Luton HMA, and that locations outside the HMA will only be considered if joint working fails to achieve this. **(MM10)** It is reasonable that the first aim is to meet these unmet needs within the functional HMA, because this is where the need arises, rather than in the wider 'best fit' HMA which is based on administrative areas.
147. The wording of MM10 does refer to three local authority areas outside the functional HMA,³⁸ but this does not mean that any specific locations or sites for development are being pre-determined through this plan. Instead the preferred locations for this growth will be decided upon through the preparation of neighbouring plans, informed by continuing joint working. However, it does need to be made clear that the work with neighbouring authorities on unmet needs will be informed by the Growth Options Study. **(MM12)**
148. The plan states that the Council's policy is to support development to the west of Luton (ie within Central Bedfordshire). It is debatable how helpful this statement is given that the locations for growth will be resolved through joint working informed by the Growth Options Study and that the solution will ultimately find its expression in neighbouring plans. However, this is simply a statement of the Council's preference and the plan is not unsound for setting that out. Nor can it bind CBC to this particular solution. However, the Council's position on this should be clarified **(MM11)** and it should also be

³⁶ Framework, para 182

³⁷ Framework, para 157, first bullet point

³⁸ Aylesbury Vale, Central Bedfordshire and North Hertfordshire

made clear in Policy LP2 that the 'Areas of Search' for the growth of Luton are to the north, south, east and west. **(MM12)** The Plan is unable to be any more specific without pre-empting the options being considered by neighbouring authorities and through joint working. The Key Diagram does not show any of these areas of search. However, the broad spatial options are clear from the MM described above and no further change is required.

149. Fourthly, given the central importance of this issue, Strategic Objective 3 should clarify that new housing will be provided to meet local needs within Luton *subject to capacity constraints*, that the Council will work collaboratively with neighbouring authorities to help ensure unmet needs are provided for in appropriate locations and will monitor progress on this. **(MM6)**
150. Finally, I have already concluded that the growth options chosen outside Luton might have implications within Luton, for example in relation to transport infrastructure and school places planning. However, at this stage any such implications are unknown. Consequently, the need to consider this possibility should be recognised in the early review policy. **(MM56)**
151. Overall, therefore, and subject to these modifications, the plan adequately deals with the issue of where and how Luton's unmet housing needs will be provided. It has been positively prepared in this respect.

Issue 7 – Are the housing and mixed use allocations sound and has the site selection process been based on a robust approach?

Overall approach

152. The methodology for selecting sites and the conclusions from that assessment are set out in the SA. A substantial number of potential sites were assessed in a staged and systematic process, including a final 'sense-check'. This resulted in some 35 sites being proposed for allocation in the plan. Overall, the sites were assessed against an appropriate range of criteria including access to services, viability and the potential effects on landscape and heritage assets.
153. Given the extent of the task, there may well be some errors and inconsistencies in the scoring of some individual criteria. There are also arguments that the assessment against some criteria could have been more sophisticated, perhaps taking into account potential mitigation, that the site size threshold might have been different and that too many sites were sieved out on the basis of 'poorly performing criteria'.
154. However, this does not inevitably mean that the site selection process was fundamentally flawed or that the wrong sites have been allocated or the right sites rejected. The development of sustainability criteria, the degree and nature of the assessment against them, the operation of a sieving process and the use of site size thresholds are all susceptible to different judgements being made. Overall, the SA should be seen as a process to help ensure that the merits of sites are considered on a reasonably consistent basis and with an approach that is proportionate. In overall terms, the process has been adequate, reasonable alternatives have been taken into account and the reasons that led to decisions to allocate or reject sites are reasonably clear.

155. Ultimately, decisions about site allocations are based on planning judgement informed by an analysis of the evidence. In reaching final conclusions about sites the Council has made reasonable judgements. Overall, I am not persuaded that the Council has excluded from allocation any sites that should have been allocated and which would have made any significant difference to the overall level of housing supply. Looked at in its totality, the plan, informed by the SA, strikes a reasonable balance between providing enough sites for housing while seeking to protect the quality of Luton as a place to live.
156. As noted above, there are inevitably some disagreements about the 'scores' made against various SA criteria for some sites. For example, in the case of Lynwood Avenue³⁹ the Council accepts that the SA criteria relating to heritage assets should not have been scored red. Other scores, including in relation to healthier lifestyles are perhaps more arguable as a matter of planning judgement. However, as explained in the section on housing capacity above, because of its landscape value, I am not convinced that the Council's overall conclusion about this site was wrong.
157. The SA considered whether any housing or strategic allocations included land where there is a medium or high risk of flooding⁴⁰. There are only a limited number of sites where this is the case and the capacities identified in the plan for these sites appear to have taken flood risk into account, including by steering development to land where there is a low probability of flooding⁴¹ and in line with planning applications where relevant.⁴²
158. Thames Water expressed some concern about the capacity of the wastewater network in connection with some housing allocations.⁴³ However, there is nothing to indicate that these local issues are not capable of being overcome and two of these sites have planning permission. The Wastewater Statement, provided on behalf of the owner of the Britannia Estate site, confirms that the redevelopment will result in the cessation of some existing wastewater flows. This will create some immediate capacity for housing development as well as allowing time to plan, agree and implement off-site works to further increase capacity. Overall, these wastewater capacity issues are unlikely to significantly affect the deliverability or developability of any of these sites.
159. Appendix 4, which lists the housing allocations, refers to *potential* capacity and Policy LP15 (as amended by MM32) states that permission will be granted *in line* with Appendix 4. This is a suitably flexible approach and allows the possibility for there to be some variation from the stated capacity figure, depending on circumstances.

Mixed use allocations

160. The submission policies map identifies three sites for mixed use under Policy LP15 (housing provision). However, with the exception of Britannia Estate there is no reference to mixed use on these sites in the Plan. Some changes

³⁹ Site 326 in the SA

⁴⁰ Flood zones 2 and 3

⁴¹ Flood zone 1

⁴² Document ED078

⁴³ Caleb Close, 69 Felstead Way, West of Newlands Road and Britannia Estate

are, therefore, necessary to bring clarity. Firstly, the policy should recognise that some of the sites are for mixed use. **(MM32)** Secondly, at Britannia Estate the proposal is to redevelop just part of an existing employment site for housing. The plan needs to confirm this. **(MM59)**

161. Kenilworth Road is currently the home of Luton Town Football Club and the site should not be developed for housing until the Club has relocated to a new site. In addition, given the shortfall in the area, part of the site should be used to provide open space. This is achievable given the Council owns the site. These key points should be set out in the Plan. **(MM59)**

162. The site at Stockingstone Road is in use as a sports club. The Framework requires (in summary) that existing sports and recreational buildings should not be built on unless they are surplus to requirements or would be replaced. There is nothing before me to indicate that the disused tennis courts or the social club building should be retained. However, I accept Sport England's evidence that the indoor bowls facility is strategically significant. Furthermore, it is the only one in Luton. Although the Council's evidence indicates that there is an over-supply of *outdoor* bowling greens⁴⁴, having both facilities on one site is mutually beneficial, particularly as most members of the outdoor club are also members of the indoor one. Both clubs appear to be well-used. Accordingly, it has not been demonstrated that these facilities are surplus.

163. The Plan should, therefore, be modified to make it clear that the indoor and outdoor bowls facilities should be retained or replaced within the site or appropriately relocated before new housing goes ahead. **(MM59)** It is reasonable to require that any replacement provision should be operational prior to the commencement of new housing development to help ensure continuity of provision. The site appears to be large enough to accommodate these facilities and the 56 dwellings indicated in the Plan and I am not persuaded that this requirement would inevitably compromise deliverability.

164. Subject to acceptable detailed schemes being advanced, it is possible that more housing could be delivered at Stockingstone Road and at Britannia Estate. However, there is no clear justification for increasing the *potential* capacities on these sites beyond those set out in the plan.

Housing allocations – Orchard Centre

165. The Orchard Centre site is a former playing field. Given the Council's Playing Pitch Strategy identifies shortfalls in quantity and quality, this site has not been shown to be surplus. Consequently, it should be made clear that the site should not be developed until appropriate replacement provision has been made elsewhere, potentially through enhancing existing facilities. **(MM59)** This should not affect delivery given the site is controlled by the Council, as are many of the open spaces where there are options for enhancement.

Viability and conclusions on housing allocations

166. The Viability Assessment concludes that the housing sites are generally viable over the plan period with the exception of some apartments in the next few

⁴⁴ Document CF01 - Luton Playing Pitch Strategy

years, where the Council accepts that affordable housing requirements might need to be relaxed, as allowed for in Policy LP16. I have no reason to doubt these broad conclusions. The housing and mixed use allocations in the plan are sound, subject to the modifications set out above.

Issue 8 – Will the plan help ensure that a 5 year supply of deliverable housing sites is provided?

167. Taken as an average over the lifetime of the plan, a requirement of 8,500 dwellings equates to 425/year. Between the start of the plan period and 2016, the Council reports that there were 2,027 completions. I have no firm reason to doubt the overall accuracy of this figure. This would leave a shortfall of 98 against the 5 year requirement of 2,125. Given the Council's forecast of delivery in 2016/17 (875 units), this modest amount may already have been recovered. However, if it were to be recovered over a 5 year period, it would take the 5 year requirement from 2016-21 to some 2,225, at an annual average of c445/year. After this the annual requirement would fall to 425.
168. As noted above, the shortfall in delivery since the start of the plan period in 2011 has been modest. Looking further back, between 2008 and 2011, there was a very limited under-delivery against the housing target based on the former East of England Regional Strategy (1,032 completions compared to a 3 year requirement of 1,080). Before this, the annual requirement of 200 in the local plan⁴⁵ was comfortably exceeded between 2006 and 2008. And between 2001 and 2006, the higher annual target from the same plan was also achieved (1,735 over the 5 years). Overall, therefore, between 2001 and 2016, slightly more dwellings were built than the overall cumulative requirement. Consequently, there has not been a persistent record of under delivery.
169. Accordingly, in line with the Framework, an additional buffer of just 5% is required to ensure choice and competition in the market for land. This would take the 5 year requirement for 2017-22 to some 2,315.⁴⁶ Based on this, the Council considers that it will have a 5.30 year supply of land for the 5 year period starting in 2017/18. After this the annual and five-year targets will reduce, albeit slightly, once the shortfall from the early years of the plan has been recovered.
170. There was discussion at the hearing session about the rate and timing of delivery at three specific sites: at Britannia Estate, a specific plot at High Town and at Marsh Farm. In addition, the Council's assumptions about the supply that will be delivered through the development of student accommodation have been questioned. However, all of these are arguable to some degree and, overall, I am satisfied that the Council has made a reasonable assessment of the deliverability of sites. In particular, many of the sites which are relied upon have planning permission.⁴⁷

⁴⁵ Luton Local Plan 1991-2011

⁴⁶ Based on x4 years at 445 plus x1 year at 425 plus 5% buffer – and expressed as 2,314 in MM55

⁴⁷ As set out in Annex A to the Council's Matter 17 Statement

171. In reality, there will inevitably be some variations from delivery forecasts based on standardised assumptions, pre-application discussions and planning permissions. However, there is some limited flexibility given that the supply calculation only counts those small sites which currently have planning permission. In any case, given my earlier conclusions about capacity, there is little realistic scope to significantly increase the supply of housing land in the short term. In the longer term, this is an issue that can be re-assessed in the early review. Overall, therefore, I am satisfied that there is a reasonable prospect that there will be a five year supply of deliverable housing sites at the point the Plan is likely to be adopted and for at least some time thereafter.
172. For clarity and to allow effective monitoring, the Plan should clearly set out a trajectory showing the annual and five year requirements, including the recovery of shortfall and the application of a 5% buffer, along with previous and forecast annual completions for the plan period and related contextual information. However, the existing detailed table in Appendix 5 showing delivery on individual sites is already out of date and should be deleted. Detailed monitoring data of this nature is best presented separately to the Plan.⁴⁸ **(MM55 and MM60)** These MMs are based on estimated completions for 2016-17 and thereafter. Although the financial year 2016-17 has now passed, I can see no reason to further extend the examination to allow additional monitoring data to be compiled and analysed. Instead, this can, appropriately, be the subject of annual monitoring reports.

Issue 9 – Does the Plan appropriately identify the overall level of affordable housing need and does it make appropriate provision to meet that need? Is Policy LP16 justified, effective and consistent with national policy?

Objective assessment of need for affordable housing

173. The Plan identifies a need for 7,200 affordable homes over the plan period. This is based on a robust analysis in the SHMA which takes into account unmet needs and projected future needs.

Policy LP16 – requirement threshold

174. Policy LP16 seeks affordable housing on all schemes that deliver a net gain of at least 1 dwelling. However, this is not consistent with national policy⁴⁹ or with the PPG.⁵⁰ These both state that affordable housing should not be sought on sites of 10 units or less.
175. The viability assessments carried out for the Council show that, with 20% affordable housing, schemes of two or more dwellings would generally be viable, with viability improving as scheme size increases. However, the effect on the viability of developments of one unit is described as severe. Nevertheless, I accept that most developments would be able to sustain

⁴⁸ MM60 indicates that this will be through the Annual Monitoring Report and subsequent versions of the SHLAA

⁴⁹ Written Ministerial Statement (WMS) on *Small-scale Developers*

⁵⁰ WMS of 28 November 2014 and PPG on Planning Obligations

affordable housing as required by the policy, although inevitably there will be individual variations depending on specific site circumstances.

176. However, the aim of national policy in the WMS is to tackle the disproportionate burden on small-scale developers by *lowering* the construction costs of small scale housing (my emphasis). By doing this, the expressed intention is to help increase the supply of housing, to encourage development on smaller brownfield sites and to help diversify the house building sector by providing a boost to small and medium sized developers. These aims could be achieved by ensuring that developments which would not be viable, if they were to provide affordable housing, are made viable. However, they could also be achieved by encouraging development to come forward on viable, or marginally viable, small sites by *improving* the level of viability (my emphasis). Consequently, the fact that smaller developments may be able to sustain a contribution to affordable housing does not in itself justify an exception from clearly stated national policy.
177. The application of the policy could deliver around 1,700 dwellings (ie 20% of the identified housing capacity of 8,500 dwellings). This would leave a significant shortfall of around 5,500. It is conceivable that some of this might be met outside Luton. However, this would depend on the approach taken by neighbouring authorities in the preparation of their own Local Plans, informed by the Growth Options Study and having regard to their duty to cooperate. At the time of the examination, any such outcomes are unknown. In addition, some affordable housing might possibly be delivered in other ways, but I have no firm quantification of this. So, as things stand, the level of unmet need would be high.
178. The Council's analysis indicates that applying the national threshold could result in the loss of around 96 affordable dwellings over the plan period. This figure is indicative and it is possible that more housing than this might be delivered on smaller sites. However, there is no certainty of this.
179. This would amount to the loss of a relatively small quantity and percentage of the affordable housing that might otherwise be delivered. It would be an even smaller percentage of the overall need for affordable housing. Clearly the loss of any affordable housing has significance for the people it might have provided for. Nevertheless, the limited scale of the potential contribution from smaller sites does not justify a departure from national policy.
180. For the reasons that apply in this specific case, and despite the overall level of affordable housing need, Policy LP16 (and Policy LP2) should be amended to reflect the thresholds expressed in the WMS and PPG. **(MM33 and MM12)** In addition, the policy should clearly set out the level of affordable housing need, likely delivery via Policy LP16 and the potential scale of unmet need. **(MM33)**

Policy LP16 criteria

181. The policy states that the size, type and tenure of affordable housing should reflect the needs identified in the SHMA. This provides a reasonable degree of flexibility. However, some changes are needed to ensure soundness. Firstly, the wording relating to the possibility of financial contributions and to the circumstances where a lack of viability might justify a lower contribution is unclear. This should be corrected. **(MM33)** Secondly, the position regarding

the split of types of affordable housing should be clarified in the supporting text. **(MM28)**

Starter homes and potential changes to national policy

182. The Housing and Planning Act 2016 includes a general duty for local authorities to promote the supply of starter homes.⁵¹ However, by the time the Plan had been submitted for examination, the relevant parts of the Act had not been commenced and national planning policy had not been amended. Consequently, Policy LP16 does not specifically refer to starter homes.

183. The Government's white paper 'Fixing our broken housing market' (February 2017) initiated a consultation to revise the definition of affordable housing, to include, amongst other things, starter homes. Given the timing, the early review of the Plan would provide an appropriate mechanism for the Council to consider the implications of any such future changes to national policy.

Delivery of affordable housing

184. It is likely that there could be a significant shortfall in the delivery of affordable housing against the identified need. Consequently, some of those with affordable housing needs will continue to be dependent on the private rented sector, in some cases supported by housing benefit.

185. The PPG states that an increase in the total housing figures included in the Plan should be considered where it could help deliver the required number of affordable homes. However, given the capacity constraints in Luton, there is a significant unmet need for housing which stands to be provided for outside Luton. In this context, raising Luton's housing requirement beyond the capacity level could have no material effect on the total amount of affordable housing that might be delivered within Luton. Consequently, such an increase would not be justified. Instead, provision for Luton's unmet affordable housing needs is an issue which falls to be considered by neighbouring authorities as they prepare their plans, under their own duty to cooperate. Policy LP16 and supporting text express the Council's commitment to seek to ensure this. At this time, that is as much as the Plan can reasonably say.

Conclusions on affordable housing

186. Subject to the recommended modifications, the position set out on affordable housing will be sound. The application of Policy LP16 will help achieve the plan's Strategic Objective of meeting local housing requirements, as far as this is realistic having regard to viability considerations and national policy.

Issue 10 – Does the Plan make appropriate provision for the needs of gypsies, travellers and travelling showpeople?

187. National policy asks local authorities to assess the need for sites for gypsies, travellers and travelling showpeople and to identify how this need will be met. This Plan does not seek to do this and, instead, defers the issue to a separate

⁵¹ In summary - dwellings available to purchase by qualifying first time buyers at a discount from the market value

plan. The Plan explains that this is because the national change to the definition of these groups for the purposes of planning policy in 2015 required a new assessment of need and that could, in turn, alter what will have to be provided for in terms of sites.

188. Although the Framework tends to refer to the term 'Local Plan' in the singular, there is nothing in the Act or regulations to prevent a Council producing more than one plan to cover their area. Consequently, the Council's approach is reasonable, provided that there is a clear commitment to making progress on this work.
189. The Council completed a revised assessment of need in January 2016 and previous to that had considered the merits of potential sites. The Local Development Scheme of 2015 anticipated Regulation 19 consultation starting in July 2016, although this has now slipped back to autumn 2017 in the 2017 LDS. Nevertheless, this does signal a clear and recent intent. On this basis, the approach taken in this Plan can be regarded as sound. However, it is necessary to modify Policy LP20 to avoid giving the impression the policy is bringing forward any new allocations. **(MM35)**
190. The Council's hearing statement, which was prepared before the 2017 LDS, suggested the Council would consider whether it might be able to secure any necessary site provision through a Supplementary Planning Document (SPD). I urge the Council to think very carefully about this option. Firstly, it is not the role of SPD to allocate sites and, secondly, such a route would avoid any scrutiny of needs or provision through the preparation and examination of a plan. Instead the Council should deal promptly with this matter through the development plan process to ensure that it has plans in place which appropriately provide for the needs of gypsies, travellers and travelling showpeople.
191. Policy LP20 appropriately safeguards three established sites. It also sets out criteria to allow the assessment of any development proposals which might come forward across the borough. However, there is no general requirement in the Plan for other housing proposals to be located on previously developed land or under-used land, or to avoid sites which are allocated for another use. I can therefore see no good reason for applying that restriction solely to sites for gypsies and travellers. This needs to be corrected. **(MM35)**

Issue 11 – Have the accommodation needs of older people, students and potential self-builders been adequately assessed and will the Plan make appropriate provision for them?

192. The SHMA identifies a need for around 1,300 specialist older person housing units, rather than the 1,000 referred to in the Plan. This should be corrected. **(MM31)** The Plan does not include any specific allocations for this type of housing. Instead, the Council expects that the market will provide for this need, including on the strategic and housing allocations. This is a reasonable and flexible stance given that it would be difficult to identify specific sites solely for this purpose, and potentially overly restrictive to do so.
193. Policy LP18 sets out criteria to assess proposals for accommodation designed specifically for older people. However, there is no sound reason why proposals

should only be permitted if they contribute to an identified need in the SHMA and this should be deleted. **(MM34)**

194. I have not been made aware of any proposals that might lead to any significant additional need for student accommodation and Policy LP17A provides an appropriate basis for considering any proposals which might come forward. The Council has advised that there have been no registrations from anyone seeking land for self-build in Luton. However, there could be opportunities within the housing supply, particularly on windfall sites. These various potential needs have been adequately assessed and appropriately provided for. In addition, Policy LP15 requires development to achieve a mix of different housing types and tenures informed by the latest housing market assessment and local circumstances. This is in line with paragraph 50 of the Framework.

Issue 12 – Does the Plan appropriately identify the objectively assessed quantitative need for jobs, land and floorspace for economic development? Are the policies regarding the economic strategy and employment areas sound?

Identifying and meeting needs

195. The Plan identifies a need to plan for growth of about 18,000 jobs, including 8,000 from B use class development over the plan period. This is based on work carried out in 2013 informed by the East of England Forecasting Model (EEFM), the size of the projected labour force and Luton's sub-regional role.⁵² Taking these factors into account and the availability of land, these figures seem reasonable. Although the analysis is robust it does predate the most recent national guidance on functional economic market areas. The Council has commissioned new work which will only be finalised in time to inform the early review of the Plan. This should be acknowledged in the review policy. **(MM56)**

196. The 2013 study considered land requirements of between c49 and 80ha which the Council considers could accommodate around 7,660 to 13,700 jobs. Ultimately, the Plan allocates around 69ha of land through the strategic allocations. This is a suitably aspirational but realistic approach having regard to the economic forecasts and past take-up of employment land. It also provides an element of choice for the market. Furthermore, it is unrealistic to expect employment and land projections to be a precise forecast of what will happen to 2031. For example, the EEFM forecasts in 2013 and 2014 projected fewer jobs⁵³ than the 2012 forecasts.⁵⁴ However, these lower figures may have been affected by the economic downturn. A more recent forecast which projects a higher number of jobs⁵⁵ indicates the degree of forecasting volatility. More recent forecasts can be taken into account in the early review of the Plan as appropriate. The strategic allocations will provide for employment primarily from B use class development, but also from other

⁵² Document ECON 003 Employment Land Review and as set out in the Council's Matter 11 Statement.

⁵³ 9,300 and 11,300 jobs respectively – ECON001

⁵⁴ 17,600 and 17,800 jobs – ECON001

⁵⁵ 22,300 - 2015 based forecast – Council's Matter 11 Statement (Question 113).

uses, including the expansion of London Luton Airport. Growth is also being provided for in the town centre and in the other retail centres.

197. Given that there are now uncertainties about the amount of employment development that might be delivered at Napier Park and Land South of Stockwood Park,⁵⁶ there is no clear justification for allocating significantly less employment land. Nor are there any obvious opportunities to allocate significantly more land within Luton. Overall, an appropriate balance has been struck.
198. In effect, Luton is broadly aiming to meet all of its own job needs but not all of the OAN for housing. However, if a significant proportion of Luton's unmet housing needs are planned for in locations which are close to and have good access into Luton (for example, as urban extensions), the resulting commuting to work could, to some degree, be contained within the expanded urban area. Furthermore, the approach in the Plan reflects the availability of sites and Luton's sub-regional and historic role in providing employment. As noted above, the way in which Luton's unmet housing needs should be provided for is now an issue for neighbouring authorities to consider including through their own DtC. In relation to this, the early review policy discussed above accepts that growth options outside Luton might have transport implications which will need to be addressed within Luton. **(MM56)** In addition, it would be for neighbouring authorities to consider whether any growth options outside Luton should include any employment or retail provision.
199. Consequently, the Plan's overall stance on this is sound. However, policies LP2 and LP13 should be amended so that the Plan sets out the broad amount of land to be allocated, rather than a specific target to create jobs, given this is a key role for the development plan. **(MM12 and MM24)**
200. The Plan allocates four strategic sites to provide the c69ha of employment land. These are all discussed in more detail later in this report. The sites were subject to an appropriate process of SA and were also considered in supporting employment studies.⁵⁷ However, the Plan should clarify which of the allocations will contribute to providing employment. **(MM3 and MM23)**

Policies for economic strategy and employment areas

201. The Plan includes two lists of existing employment sites.⁵⁸ The Category A sites are generally those which were categorised as being of very good quality in the Council's 2015 review.⁵⁹ This includes the strategic allocations. The Category B sites are categorised as being of good or average quality and which continue to have a role to play in meeting employment needs. This is based on a robust assessment.
202. Policies LP 13 and 14 set out the circumstances in which employment sites can be redeveloped for a different use. The approach is protective of the Category

⁵⁶ Discussed in more detail in the section below on the strategic allocations.

⁵⁷ Employment Site Assessments (2015) and Employment Land Review (2013)

⁵⁸ Appendix 3 to the plan.

⁵⁹ Document ECON 003A and also by the 2013 Employment Land Review (Document ECON 003)

A sites but more flexible in relation to Category B and the generally smaller sites which are not identified in the Plan. This is a reasonable approach which reflects the quality of the sites and the policy criteria are generally appropriate. Overall the approach accords with the Framework.⁶⁰ However, some redrafting of the policy and supporting text is required to ensure they are clear and effective. **(MM22 and MM24)** I have made a small change to MM24 to ensure consistency of wording between Policies LP13 and LP14. In addition, the potentially confusing reference to *Intervention* areas in the list of Category B sites should be deleted. **(MM58)** Subject to the specified changes, these policies are sound.

Issue 13 – Has the effect of proposed development on the strategic road network been adequately assessed and are there sufficient measures in the Plan to help avoid any adverse effects, including through mitigation? Is the safeguarding of the East Luton Circular Road justified? Are the policies relating to transport sound?

Effect on the strategic road network

203. The SOCG with Highways England confirms that the effect of the Plan proposals on the strategic road network has been subject to modelling work.⁶¹ This has taken into account the increase in dwellings proposed in the submission plan, additional jobs, the planned increase in passengers to London Luton Airport, proposals for housing in North Hertfordshire, at Houghton Regis and at North of Luton (all of which have different planning status), along with proposed highway schemes in Luton and the wider area (of which there are several). However, it is not necessary for the Plan itself to mention all these schemes.
204. The modelling confirms that the main impacts of planned development at peak times are likely to be on specific slip roads at M1 junctions 10 and 11a and on the M1 northbound carriageway between junctions 11 and 11a. It is concluded that some measures will be required to resolve these effects. However, there is nothing at this stage to indicate this will not be possible.
205. The Council has also confirmed that there are sections of roads within Luton which are likely to experience additional delays in the morning or evening peaks and junctions which will experience more than 95% congestion. Some of these problems may be mitigated by the junction improvements listed in Policy LP31 and/or by the recently commissioned review of all signalised junctions to consider capacity improvements. I understand that the junction improvements will be delivered through developer contributions (for example, as agreed in connection with the approved airport expansion) and from public sector sources.⁶²
206. As the SOCG points out, the modelling is based on a 'worst case' position as it does not take into account the potential for any public transport schemes or Travel Plan initiatives. So, it is possible that the effect on the strategic road

⁶⁰ Specifically paras 22 and 51 of the Framework

⁶¹ It is also set out in Document TRA001 and the Council's Matter 12 statement

⁶² For example, as set out in the Council's response to Matter 12, Question 137

network could be less than predicted. Various policies in the Plan may assist in this, including for example the development of park and ride sites and the use of maximum car parking standards. However, set against this, the modelling appears to be based on 6,905 dwellings rather than the more recent capacity estimate of 8,500 dwellings.

207. Regardless of these points, development in and around dense urban areas inevitably has the potential to increase traffic congestion, regardless of what mitigation is put in place. While this has an economic cost and is frustrating and inconvenient to those who use the roads, it is not a sufficient reason in this case to avoid meeting housing or employment needs. Furthermore, this is an issue that should be re-visited in the early review of the Plan (**MM56**) when proposals to provide for Luton's unmet housing needs in neighbouring authority areas, potentially including in Central Bedfordshire and to the east of Luton are further advanced and the implications on transport infrastructure can be properly evaluated. The same applies to any transport implications arising from the re-location of the football club, when that is decided upon. Overall, therefore, the effects on the strategic road network have been adequately assessed at this stage and sufficient measures are in place to help mitigate adverse effects. Given the requirement for an early review, the changes advanced through the main modifications to this report, including in relation to the strategic allocations, do not justify any further modelling work at this stage and before the Plan can be found sound.

East Luton Circular Road

208. Policy LP31 safeguards the route of the East Luton Circular Road (ELCR), including the Weybourne Link. I understand that the ELCR was one of a number of options for a proposed Luton Northern Bypass which were consulted on some years ago. However, much of the ELCR alignment would be within Central Bedfordshire and CBC have indicated that they do not support it as an option because of the likely effect on the AONB.⁶³ Clearly, this plan cannot safeguard any route outside of its own area. There are also strongly expressed and legitimate concerns from Natural England and Historic England about the likely effects on the landscape, on biodiversity sites and heritage assets.

209. Consequently, there are several very significant obstacles to the ELCR ever being developed. However, it seems to me that it is prudent, for the moment, to safeguard the route until the potential implications of the bypass and any link between the A6 and A505 have been further considered, having regard to the scale and location of preferred options to help meet Luton's housing needs and any effects on wider traffic patterns. This could also include the consideration of any reasonable alternatives to the ELCR. In this sense there is some possibility the route could potentially be critical in developing infrastructure to widen transport choice in line with the Framework.⁶⁴ Nevertheless, I urge the Council to very carefully re-assess whether there is robust evidence to justify any further safeguarding of this route option when it carries out the early review of the Plan.

⁶³ CBC Matter 12 Statement

⁶⁴ Framework, para 41

210. Although the SA predicts that Policy LP31 as a whole would have a broadly neutral effect on biodiversity and landscape features, it does state that if the road were to go ahead there would be major adverse effects on biodiversity, landscape and heritage features. However, as it stands, it is reasonable for the SA to assess the overall effect of the policy with regard to the Plan's safeguarding of the ELCR route, rather than as a firm road-building proposal.
211. The safeguarding of this potential route within Luton is justified, for now. However, to bring clarity, the policy and supporting text should be amended to provide context and to make it clear that the route is being safeguarded, that it is not a formal transport proposal and that any firm proposal to build the road would be considered against relevant legislative requirements and policy relating to heritage, biodiversity and landscape. **(MM49 and MM50)** I have made a change to MM50 to ensure accuracy and consistency with MM49.

Transport policy criteria

212. Policy LP31 B states that planning permission will be granted for developments that meet several transport criteria. However, it should be clarified that proposals only have to satisfy these criteria where *relevant*. For example, not every proposal will justifiably need to provide cycle parking. **(MM50)**
213. Policy LP31C and Appendix 7 set out reasonable requirements for Transport Assessments, Transport Statements and Travel Plans. These will help ensure that the transport effects of developments above the specified thresholds are assessed and that, where necessary, appropriate mitigation is secured, including if necessary off-site. However, the drafting is unclear and this should be resolved. **(MM50 and MM62)**
214. Policy LP32 requires that car parking should not exceed the maximum standards in Appendix 2. The standards are reasonable. However, if the policy wording were to be interpreted literally, schemes providing no car parking would always comply with the policy regardless of the circumstances. The policy and the supporting text should be modified to make it clear that the level of parking *up to* the maximum standards will be determined by the need to avoid adverse effects to highway safety and on nearby residents and users. **(MM51)**
215. Consultation was carried out on a potential MM to Policy LP32 in relation to parking for the airport and Dunstable Hospital. Following consideration of representations, I am not persuaded that the suggested changes are necessary for soundness, with the exception of explaining that the stringent control at the airport *will be in line with Policy LP6C* (to provide clarity). Furthermore, the change consulted upon in relation to Dunstable Hospital would have been overly restrictive and inflexible. I have therefore amended the MM. **(MM51)**
216. Policy LP33 merely sets out a list of factors that will be considered when assessing proposals for warehouse and distribution proposals. Changes are needed to ensure the policy can be used effectively when making development management decisions. **(MM52)** Subject to these changes the various transport related policies and criteria are sound.

Issue 14 – Is the extent of the Green Belt appropriately defined and is the approach to the Green Belt consistent with national policy?

217. As already noted, there are some parcels of Green Belt land within Luton to the north, north-east, east and south. These all adjoin wider swathes of Green Belt which fall within neighbouring local authority areas. The Luton Green Belt Study of 2014 concluded that these parcels still met the Green Belt purposes set out in the Framework. No additional land was identified which should be included in the Green Belt. The findings of the study are based on a robust assessment.
218. The Green Belt includes a parcel of land⁶⁵ which is also included within Policy LP6 for London Luton Airport and which the airport identifies as operational land. However, this land is open and undeveloped and adjoins a wider swathe of open land. It therefore meets Green Belt purposes. In addition, there is no evidence that it is required for development which would not normally be acceptable in the Green Belt.
219. The Framework states that one of the essential characteristics of the Green Belt is its permanence and that boundaries should be capable of enduring beyond the plan period. I concluded earlier that it is possible that housing growth options outside Luton might conceivably justify considering a review of one or more of the Green Belt areas within Luton. Equally, they might not. However, this cannot be known until neighbouring authorities reach firm conclusions about how to respond to Luton's unmet needs. It would be difficult to make any robust decisions regarding the potential release of any of the small Green Belt parcels within Luton, until the wider picture is known.
220. Accordingly, there are no exceptional circumstances which would justify altering the Green Belt boundary, at this time. However, this is a further issue which points towards the need for an early review. **(MM56)**
221. Policy LP4 sets out the approach towards development proposals in the Green Belt. However, the wording is not consistent with national policy and this should be corrected. **(MM14)**

Issue 15 – Are the assessments of additional retail floorspace needs robust and does the Plan ensure that these needs will be met in appropriate locations? Are the policies for the town centre and for the district and neighbourhood centres sound?

Floorspace needs

222. The supporting text to the Plan sets out net additional convenience and comparison retail floorspace needs over the lifetime of the Plan. These are based on the upper range figures set out in Retail Study Update of July 2015.
223. In broad terms the floorspace figures are based on a robust methodology which assesses expenditure and turnover, taking into account projected population growth, existing commitments (including at the North Houghton

⁶⁵ Part of Site 5 in the Study.

Regis Urban Extension outside of Luton) and the potential to claw back some of the trade which is being lost to other centres outside of Luton. Given the extent of retail spend leakage, this approach is justified and could help minimise travel, enhance the town centre and bolster the local economy.

224. There was some discussion at the hearings about the assumptions made regarding the effects of online shopping, the degree to which existing comparison goods floorspace may be under or over-trading (and how this might change) and the extent to which turnover efficiency might increase in the future. The Study indicates that all of these factors have been taken into account. However, they are all susceptible to different judgements being made and their potential effects on floorspace needs are difficult to predict with any degree of certainty over the lifetime of the Plan.
225. The Study indicates that caution should be applied when relying on longer term projections owing to the volatility of much of the data and the assumptions used (for example, as indicated above). Consequently, it is appropriate for the Plan to seek to provide for 30,096 sqm of comparison floorspace by 2025 as set out in Policy LP3 and as recommended by the Retail Study Update, rather than the Study forecast of between 32,229 and 53,715 sqm by 2031. Indeed, the Study advises that it is not necessarily appropriate to plan to meet all identified needs now.
226. Nevertheless, the approach taken in the Plan provides an opportunity to significantly increase investment in the town centre and to improve perceptions of it. This policy approach, coupled with the expression of the maximum Study range figures in the supporting text to the Plan, is a suitably aspirational but realistic approach, as is required by the Framework.
227. Given the uncertainties regarding longer term projections and forecasts, I agree with the Retail Study Update that an updated assessment of need should ideally be carried out every 5 years. The Council's hearing statement signals agreement on this. Accordingly, this should be added to the list of items to be considered in the early review of the Plan. **(MM56)** This should also allow progress on where Luton's unmet housing needs are likely to be accommodated to be factored into the analysis, as appropriate.

Meeting convenience retail needs

228. The Plan seeks to provide for some of the identified convenience retail needs within the town centre. This will help support the viability and vitality of the town centre by adding capacity for main food shopping. I agree with the Retail Study Update that Power Court is the most suitable site to achieve this, given its size and location and the limited other options available.
229. The Plan identifies a number of other locations outside the town centre where convenience retail is to be provided, including at Birdsfoot Lane and Sundon Park as part of identified centres and at the Marsh Farm and Napier Park strategic allocations. Convenience floorspace in these locations will serve existing and proposed neighbourhoods and so is justified. Overall, there appears to be sufficient land available to meet the net additional convenience floorspace figure of 9,064 sqm to 2031 as set out in the Plan.

230. However, as drafted Policy LP3 appears to indicate that all or most of the Plan's convenience floorspace needs should be met within the town centre. This is clearly not the intention or what the Plan in fact proposes. This drafting error should be corrected to ensure that the Plan is clear and effective. The supporting text in section 7 needs a similar clarification regarding the distribution of retail development **(MM13 and MM38)**

Meeting comparison retail needs

231. The Plan intends that all comparison floorspace needs should be met in the defined town centre. This aligns with the approach set out in the Framework and follows the recommendation in the Retail Study Update. In principle, this should help support the viability and vitality of the town centre.

232. It is clear that the Plan envisages that most comparison retail development will be accommodated on the Northern Gateway and Power Court sites. Given their proximity to the primary shopping area (referred to as the Town Centre Shopping Area in the Plan), both of these are edge of centre sites for retail purposes under the definition set out in the Framework. There do not appear to be any other realistic and readily available site options at this time, within the town centre or on the edge of it, which could make any very significant additional contribution to meeting the identified needs. Furthermore, Power Court, and to some degree the Northern Gateway, both have the potential to provide for retailers seeking larger premises.

233. The Council has provided an impact assessment of retail development at Power Court. This dates back to 2005 and, given its age, it cannot be relied upon. However, having regard to Section 2 of the Framework, I am not convinced an impact assessment is an essential component of the evidence base for town centre or edge of town centre retail allocations which have been provided to meet identified needs in accordance with the sequential approach.

234. The Plan does not require any specific quantity of comparison floorspace to be achieved at the Northern Gateway, Power Court or on any other site. This is a suitably flexible approach and one which recognises the role of the market in shaping the precise scale and mix of uses on the strategic allocations and within the town centre.

235. Taking all of this into account, the overall approach regarding comparison retail is sound. However, there are uncertainties regarding delivery which will be discussed below in the section on the strategic allocations.

Centre hierarchy and the sequential and impact tests

236. The hierarchy of centres set out in Policy LP21 is justified by the analysis in the Retail Study Update which included 'health check' assessments. However, Policy LP21 should be modified to reflect the intention in Policy LP8 to create a new neighbourhood centre at the Napier Park strategic allocation. This also needs to be reflected in Policy LP2. **(MM39 and MM12)**

237. Policy LP21 sets out the requirements for sequential and impact assessments in line with the Framework. The impact assessment threshold of 1,000sqm is justified given the size of district and neighbourhood centres (the Retail Study Update reports that the average size of the latter is 1,354 sqm gross) and the

need to safeguard their viability and vitality. A threshold set below this level would be unduly onerous.

238. Policy LP21 also states that permission will be granted provided that retail development, either individually or cumulatively, does not exceed the quantitative floorspace needs set out in the Plan. However, retail proposals will only be consistent with plan policy if they comply with specific retail policy allocations and/or pass the sequential and impact tests, where these apply. These tests are designed to protect existing centres from unacceptable impacts and the threshold for impact assessment has been justified by the Retail Study Update. On this basis there is no justification for what amounts to, in effect, a cap on overall retail provision in the borough and a change is necessary to Policy LP21 to rectify this. **(MM39)** The same applies to the reference to 'need' in Policy LP11 for the Northern Gateway. **(MM21)**

Policies for the town centre and other centres

Town centre boundaries and areas

239. The Town Centre boundary is appropriately defined and encompasses the various shopping frontages and development sites lying within the inner ring road and the railway line. The division of parts of the centre into four policy areas (University Campus, Creative Quarter, Power Court and Castle Quarter) reflects their different characteristics, the varying opportunities for development within them and the appropriate policy responses.

Frontages

240. The Town Centre Shopping Area, and the Premier, Primary and Secondary Shopping Frontages within it, conform to the definitions set out in the Framework, although the terminology used in the Plan is a little different.

241. Policy LP22 is supportive of A1 (use class) shops in these locations and sets criteria to allow the consideration of non-A1 uses. This is achieved, in large part, by limiting the amount of non-A1 use to no more than 10% in the premier shopping frontages, 25% in the primary and 50% in the secondary. A similar approach is followed in Policy LP23 which seeks to maintain 75% of the shopping frontages in district and neighbourhood centres and shopping parades in A1 use. Overall, these policies reflect the extent and importance of shopping activity in these areas, without being overly restrictive.

242. The setting of precise percentage limits is to a large degree a matter of planning judgement and I understand that the figures for the premier and primary frontages are broadly the same as in the current Local Plan (2001-2011). The Council has advised that this approach has been applied without problems and that it has been successful in preventing any over-representation of uses which might have harmed the quality, viability and vitality of the town centre as a shopping destination. I have no firm evidence which might lead me to conclude otherwise.

243. The approach is most restrictive in respect of the Mall, a substantial indoor arcade which is the main focus of shopping activity in the town centre. This is because much of the Mall is defined as a premier shopping frontage. However, there is some flexibility here given that the frontage facing the

square to the north-west is defined as a secondary frontage and the area which is in use as an indoor market is not defined as any type of frontage. In addition, the Northern Gateway (Policy LP11) provides an opportunity for the Mall to be extended to provide a mix of uses, including a market. Accordingly, I am not persuaded that any change is necessary to achieve soundness.

Strategy

244. Policy LP3 sets out the strategic approach for the town centre and the criteria in this policy should help ensure that an appropriate mix of development is provided, that high quality development is brought forward and that adverse effects avoided. This includes making more effective use of the River Lea.

Other matters

245. The Town Centre Inset Map shows two food courts and a Primary Block Frontage. These are not directly before me because they do not appear to be mentioned in the Plan and do not represent the geographic illustration of any policy. To avoid any confusion, I suggest that they are not included on the adopted policies map. Finally, the use of terminology relating to the regional/sub-regional role of the town centre should be clarified. **(MM4, MM12, MM13, MM36, MM37)**

Issue 16 – Are the proposed uses on the strategic allocations appropriate justified and deliverable, including in terms of their scale and mix. Are the policy requirements sound?

246. The Plan allocates eight strategic sites. Taken together they make provision for a range of uses, including housing, employment, retail, park and ride, London Luton Airport and the relocation of Luton Town Football Club (the Club). The allocations have been subject to an appropriate SA which considered broad options for different uses. There are no obvious candidates for additional or alternative strategic allocations. Subject to the various modifications set out below, I am content that they set out a reasonable mix of uses.

South of Stockwood Park (Policy LP5) and Power Court (Policy LP9)

Luton Town Football Club

247. It has been a longstanding aim of the Club to move from its historic site at Kenilworth Road. Given the inner city location within an area of high density terraced housing, there is little opportunity to expand the existing stadium, to create extra seating capacity or to develop ancillary community and commercial uses. Consequently, Strategic Objective 9 of the Plan, quite reasonably, seeks to deliver a new stadium in a location with good access to transport infrastructure, along with associated uses, shared venue events and ancillary sports related uses.

248. The submitted Plan makes provision for a new stadium, as part of a mixed use development, at Land South of Stockwood Park on the edge of Luton next to junction 10a of the M1 motorway. This site was originally allocated for a stadium in the Local Plan for 2001-2011 (adopted in 2006). In addition to the stadium and ancillary sports facilities and enabling provision for small scale

A1, A3 and A4 uses⁶⁶, the other stated uses are for B1 business and a park and ride facility.

249. The Club's current owners now believe this location to be unsuitable. Instead they consider that the stadium should be located closer to the supporters the Club serves and that without such a location the various ancillary community and commercial activities that are necessary to develop and sustain support and income would not be viable. This is largely because an edge of Luton location might only attract visitors in any substantial numbers on match days. The Club therefore considers that the stadium should be built in a more accessible central location where these disadvantages could be avoided. More specifically the Club's preferred location is the strategic allocation at Power Court.
250. However, it is clear that the Power Court site is simply not large enough to accommodate a stadium and related uses along with the various uses sought by the allocation and the Plan, which includes several hundred dwellings, convenience retail of around 3,393 sqm net and a substantial contribution towards meeting the identified comparison retail needs for the town centre. The Club's proposed solution is that the Plan should be modified to allow for a retail-led mixed use development at South of Stockwood Park, on the basis that this would help meet Luton's retail needs while at the same time cross-subsidising the construction of the stadium and the running of the club.
251. It was confirmed at the Stage 3 hearings that the Club now owns South of Stockwood Park and most of Power Court. Clearly the Club cannot determine what these sites should be allocated for or whether or not planning permission is granted for any particular mix of uses. However, through its control of both sites, the Club can determine what it chooses *not* to develop.
252. The Club has submitted two planning applications⁶⁷, broadly for the uses it is seeking through the development plan process, as outlined above. The Council anticipates that, at the earliest, these will be determined several months after the close of the examination hearings. Conceivably, the planning application decision-making process could take longer than this.
253. As was pointed out to me by some of the participants at the hearing sessions, the inter-related issues involved here are difficult and there are some considerable uncertainties to grapple with. The question for me is whether the issues are so intractable, at this point, that it is not feasible to seek a full resolution of them through the current examination of the Plan. I will consider the various issues below.

Does Policy LP9, as drafted, allow for a stadium at Power Court (Policy LP9)?

254. Both the Club and the Council have argued that the term 'provision for sport, leisure and entertainment' in Policy LP9 would allow for a football stadium at Power Court. This is based on a view that a football stadium should be

⁶⁶ Associated with the sport, health and fitness focus of the football stadium and shared venue events.

⁶⁷ 16/01400/OUTEIA (Power Court) and 16/01401/OUTEIA (South of Stockwood Park) – submitted August 2016

regarded as a use for sport under Use Class D2(e)⁶⁸, which includes 'area for other indoor and outdoor sports or recreations'. In relation to the interpretation of the Use Classes Order, that may be so. However, it is not the end of the story.

255. Leaving aside the intention of the Council when it drafted the words 'provision for sport', it seems to me highly unlikely that anyone taking a reasonable interest in the Plan would have regarded Policy LP9 as identifying Power Court as a site which was positively allocated, or even generally suitable, for a sports stadium of this scale and nature, whether for the Club or another user. I conclude this for a number of reasons.

256. Firstly, the Plan already makes very specific provision for the Club to relocate to Stockwood Park. This is unequivocally stated in Policy LP5 and in the supporting text to this policy and in the section on Growing Luton's Economy. There is no clear indication in the Plan that any alternative sites were being considered or specifically identified, including at Power Court. Nor is there any mention of a stadium in Policy LP3 which sets out the strategy for the town centre in some detail. This would be a very surprising omission if the Plan was specifically allocating Power Court for a major sports stadium for the Club or anyone else or if it were signalling in any way that Power Court is suitable for that use. The Council's background paper on 'Centres' does refer to the Club's representations and in doing so it acknowledges that a town centre site may have merit and that it may be *in step* with the range of uses envisaged at Power Court. The term 'in step' is somewhat ambiguous, but it is striking that the paper does not unequivocally state that the policy for Power Court would allow a stadium. Again, this would be a surprising thing to leave out if it had been the intention all along. The paper is dated April 2016, the same month the Plan was submitted for examination. Finally, aside from the brief high level assessment in the SA, I have not been pointed to anything in the evidence base for the Plan to show that a detailed assessment of the suitability of Power Court for a stadium was carried out in its preparation.

257. Secondly, it is clear from the Plan and the supporting evidence base, that Power Court is intended to make a significant contribution to meeting the need for town centre comparison retail floorspace (in addition to providing a substantial volume of housing and a specific amount of convenience floorspace). For example, Policy LP9 states that the site will be used to extend the primary shopping area to improve the town centre retail offer, accommodating comparison floorspace in accordance with the identified need for the town centre. In addition, the Retail Study Update makes it clear that this site and the Northern Gateway are the two main sites where this need could be met.⁶⁹ Finally, the Council's hearing statement on Matter 13 states that the expectation is that Power Court will take the bulk of the overall comparison floorspace.⁷⁰

⁶⁸ The Town and Country Planning (Use Classes) Order 1987

⁶⁹ For example in 7.2.1 – "The provision of up to 30,096sqm net of comparison floorspace by 2025. The delivery should be met primarily at the Northern Gateway and Power Court sites;"

⁷⁰ Answer to question 4

258. In these circumstances, it must have been clear to the Council that the site is not large enough to accommodate all of these uses in the broad quantities indicated, as well as a football stadium. Indeed, the Council has accepted that if the site is developed for a stadium, it might not be possible for the identified comparison retail needs in Policy LP3 to be fully met within the town centre.⁷¹ However, there is nothing in the submitted Plan to indicate this inevitable consequence and there is no response to it. In addition, although the Retail Study mentions the possibility of D2 *leisure* uses on the site, this is specifically by reference to the example of 'gyms/cinemas etc'. There is no reference in the study to a football stadium or similar.
259. Having regard to the Plan as a whole and reading the policy objectively in its proper context, I am not persuaded that anyone would have understood, or even contemplated the possibility, that the policy wording was intended to support a football stadium on this site. The fact that the use of the site for the Club was tested in the sustainability appraisal as an option for this site, does not alter my conclusions on this.
260. Consequently, even on the most generous reading possible, the term 'provision for sport' is unacceptably ambiguous. This conclusion is supported by the Council's suggested 'minor modification' of April 2016 which proposes inserting a reference to Use Class D2 (which includes areas for indoor and outdoor sports) into the policy, 'to add clarity'.
261. For these reasons, this policy wording cannot be regarded as effective. Furthermore, even if the policy had been intended to allow for a stadium, the lack of clarity in the wording is such that I have significant doubts about whether public consultation on this specific provision could be said to have met the necessary legal requirements. Overall, the policy wording is not sound and it cannot be regarded as encompassing the possibility of a football stadium. I will return to this later.

Stockwood Park – is the provision for a stadium sound?

262. Leaving aside the issue of where a stadium might be best located, the Club has now confirmed that there are no circumstances in which it would relocate to Stockwood Park. Even if it failed to get planning permission for Power Court, the Club has stated that it would prefer to stay at Kenilworth Road rather than move to this edge of town site.
263. I understand the argument that a site owner's intentions or preferences should not necessarily determine whether or not an allocation is deliverable and that these preferences might change over time. However, in this case, the Club's position is unequivocal and the allocation at Stockwood Park is very clearly intended for the Club's relocation. It is, therefore, in large part, a single user allocation. Consequently, the Club's publically stated intentions as both landowner and potential developer are a significant consideration and the delivery of a stadium at Stockwood Park seems very unlikely, both in the foreseeable future and within the timescale for an early review of the Plan.

⁷¹ For example, in the Council's statements on Matter 13 (answers to question 4 and 8) and Matter 26 - Power Court (answer to question 4).

264. For this reason the policy is clearly not effective. This can be rectified by deleting reference to a stadium for the Club at Stockwood Park, along with references to ancillary sports facilities and enabling provision for A1, A3 and A4 uses. Adjustments are also needed to the supporting text to reflect this change. **(MM15 and MM23)** These changes have been accepted as being necessary by the Council which formally agreed to support this modification at a meeting of full Council on 15 November 2016.

Should Stockwood Park be allocated for a retail-led mixed use scheme?

265. The Club considers that a retail-led mixed use allocation at Stockwood Park would provide a replacement for the comparison floorspace that could no longer be provided at Power Court if a stadium were built there. It is further argued that this would help claw back retail trade which is currently lost from Luton and that it could be used to help subsidise the cost of a new stadium at Power Court and the running of the Club.

266. However, even if the Plan cannot provide sufficient town centre or edge of centre sites for retail development, I am not persuaded that it would be necessary to allocate an out of centre site in order to make the Plan sound. In the first place this is not what national policy requires in such circumstances. The Framework tells local planning authorities to *allocate* sites to meet the scale and type of retail development needed *in* town centres (my emphasis). Where suitable and viable town centre sites are not available, then appropriate edge of centre sites should be *allocated*. If that is not possible, the Framework indicates that the Plan should set *policies* for meeting identified needs in other accessible locations that are well connected to the town centre along with *policies* for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres. Policy LP21 provides criteria for considering any planning applications for out of centre proposals, applying the impact and sequential tests sought by the Framework. Taking this into account, a specific *allocation* for out-of-centre retail would not be necessary to achieve soundness.

267. Even if I were to reach a different view on this, I simply do not have the evidence before me to justify an out of centre retail allocation of the scale and nature sought by the Club. Firstly, I have no robust sequential or impact assessments. Consequently, the potential effects on the viability and vitality of Luton town centre and on any other centres are unknown and unquantified. Secondly, I have no assessment of the potential effects on traffic, or of how any such effects might be satisfactorily mitigated, including in relation to the operation of the motorway junction and the strategic road network generally. Thirdly, I have no evidence which quantifies the extent of any cross-subsidy that might be necessary to help deliver a stadium or to help sustain the Club. Nor do I have an assessment of any other options that might be available to help fund the Club. Accordingly, I am not in a position to carry out a reasoned assessment or balancing of any considerations for or against such a proposal.

268. For these reasons, and despite the uncertainties about what might now be delivered at Stockwood Park and at Power Court (which are discussed below), it is not necessary, or possible, for me to recommend a main modification to allocate Stockwood Park for a retail-led mixed use scheme. Instead this is an issue that in the immediate future stands to be considered through the

determination of the planning application which is before the Council (as referred to above). Consequently, this report reaches no finding about the potential merits or otherwise of significant out of centre retail development in this location.

269. Finally, given the approach set out in the Framework, out of centre retail development of the scale suggested by the Club was not a reasonable alternative that should inevitably have been considered as an option in the SA.

Is the remainder of Policy LP5 (South of Stockwood Park) sound?

270. The Plan envisages a mixed use development at Stockwood Park comprising a stadium, offices and a park and ride facility. Deleting the stadium raises a question about whether the remaining development has any realistic prospect of going ahead.
271. The Viability Assessment considered a mixed use scheme, with the main elements being the stadium and B Use Class development. The assessment concludes that the costs of the stadium significantly outweigh its value and so render the overall development unviable. There is no indication of viability problems specifically in connection with B1 use. Consequently, if the stadium is deleted from the policy, there must logically be some prospect that a residual B1 development could be viable, particularly as the site now has a direct access to the strategic road network and J10a has recently been upgraded. Given these factors, the identified need to provide for B1 uses and the limited availability of alternative sites, I am not persuaded that the B1 element should be found unsound, even though there are clearly significant uncertainties about whether it will be delivered by the existing site owner and in isolation. Instead, this is a matter that should be reconsidered in the early review of the Plan, which can re-consider the overall use of the site. **(MM56)**
272. Policy LP5 also allocates 2 ha of land for a park and ride facility. I accept the Council's position that there is merit in identifying a site for this purpose given that it could help reduce traffic levels in and out of Luton with potential benefits to air quality. I am also inclined to accept the Council's arguments that there are few other realistic options on this side of Luton.
273. However, it would not be reasonable for the policy to require that the residual B1 development alone should provide a park and ride facility, given there is no clear linkage to show it would be directly related to the development or fairly and reasonably related to it in scale. Consequently, the policy should be amended to make it clear that an appropriate area of land should be *safeguarded* for this purpose. **(MM15)** This would also resolve my concerns about the policy as currently drafted, given the wording is ambiguous about what a developer might be expected to provide. The provision and delivery of this facility is a further issue for the early review, where it can be considered alongside the wider use of the site. **(MM56)**
274. Given the changes to delete the stadium and to safeguard land for a park and ride facility, the reference to the site being allocated for *mixed use* will no longer be accurate and that term should be deleted for clarity. **(MM15)** Changes are also needed to remove the unjustified requirement for car parking to meet the *maximum* standards in the Plan and to make the

approach to landscape and heritage assets more robust given the sensitive location. **(MM15)**

275. The other policy criteria are sound. In particular, there is a reasonable prospect that the residual allocation for B1 use could be developed without harmful effects on the road network. Even so, the policy requirement which refers to Highways England being satisfied about impacts is reasonable given the location at a motorway junction. The requirements of Policy LP31 for transport assessments and statements would also apply to schemes above specified sizes on the site. This would allow the effect of development on local roads and junctions to be considered and mitigated, if necessary. The site lies outside the public safety zone for the airport and there is no firm evidence that any biodiversity interests on the site could not be adequately protected or mitigated.
276. The effect of MM15 is that the stated area for B1 uses and a park and ride facility will add up to less than the total site area referred to in the Plan. However, that does not mean that the changes are unnecessary or that uses have to be specified for the full extent of the allocation. Nor will the approach taken here prevent the Council reaching conclusions on any planning applications submitted ahead of the early review, taking into account plan policy and any relevant material considerations. However, an addition to the review policy introduced by MM 56 is necessary to make it clear that the review will take into account the determination of any relevant planning applications. Subject to this change being made, it is not necessary to add any further clarification to the Plan on this matter.
277. Finally on this topic, the reference to a 'prestige gateway business development' in the amended supporting text clearly relates to the revised policy focus on 'B1 business use' (following the deletion of the football stadium and ancillary uses). I can see no reason why this phrase should reasonably be interpreted more widely than that.

Is the mix of uses envisaged by Policy LP9 deliverable at Power Court and should Power Court be allocated for a football stadium?

278. In principle, I have some sympathy with the Club's desire to seek a more central location in Luton. Depending on the site, a central location is likely to be more accessible by public transport and on foot for more supporters than a location on the edge of the town. I can also see that ancillary community and commercial uses could be more successful in a central location because they might attract more use. On this basis a football stadium could, in principle, be an appropriate use within a defined town centre.
279. I also accept that there are now uncertainties about the delivery of a mixed use scheme at Power Court, including any substantial component of comparison retail, given the Club controls the site and has acquired it with the specific intention of developing it for a football stadium. It is possible that if the Club were ultimately unable to deliver a stadium here, decisions might then be made, at some stage, to sell the site or to pursue a different mix of uses. However, that is no more than a hypothetical possibility at this stage.
280. The viability of the mixed use scheme set out in the Plan is unclear. Both the Plan and the Viability Assessment set out some of the problems that will need

to be overcome, including dealing with flood risk, contamination, archaeology and the River Lea. In addition, despite having been part owned by British Land for several years and despite the allocation for retail, offices and residential in the Local Plan for 2001-11 (adopted in 2006), no re-development has occurred. Finally, although the VA concludes that the site is viable, it does not appear to have assessed the mix of uses set out in the Plan. Instead it has considered a scheme which is largely comprised of residential and B1 uses with only a smaller component of general retail. Consequently, I have little firm evidence in front of me to confirm that any mix of uses allowed for under Policy LP9, and which included a substantial component of retail floorspace, would be viable or not.

281. However, the uncertainties about delivery and viability do not inevitably indicate that the site should be allocated for a stadium in addition to, or as a replacement for, the other stated uses. In the first place, simply adding a stadium to the mix of uses on the site will not necessarily improve viability. This is particularly so given that the Club has argued that a substantial out-of-centre retail development is necessary to subsidise a stadium.⁷² And in broader terms, it was generally accepted at the hearing that most football stadia are unlikely to be financially viable in conventional terms, wherever located.
282. Secondly, I simply do not have sufficient evidence before me to justify such an allocation or to conclude that it would be appropriate on this specific site. For example, I have no substantive assessment about whether a stadium might have any significant effect on the attractiveness of the town centre as a retail destination on match days or about whether there might be any effects on the viability and vitality of the centre. The Club has provided some analysis of supporter accessibility and an interim transport strategy, but this is not a fully detailed or definitive assessment of the potential effects in terms of traffic, parking and public transport (and on whether these might in turn affect town centre footfall). Nor do I have any substantive assessment about the potential effect that a building the size of a football stadium might have on the setting of the nearby listed St Mary's Church.
283. Finally on this, although I appreciate that the Council and the Club are of the view that there are no other suitable locations for the stadium, there is very little firm evidence before me to justify that position definitively. This is relevant because of the uncertainty regarding the potential to meet retail needs in the town centre and the potential for comparison floorspace needs to be displaced to an out of centre location if a stadium were to be built at Power Court.
284. I appreciate that the Council is now broadly supportive of a stadium in this location and that a more flexible policy might perhaps assist delivery. It is also the case that the SA concluded that locating the Club on the site or allocating the site purely for retail would be the most sustainable options, although the delivery of new homes is also stated to be a benefit. However, as outlined above, it is not possible for me to reach a reasoned conclusion that Power Court is a suitable site for a football stadium on the evidence before me

⁷² Para 7.24 – representations to submission draft plan on behalf of the club

or that the Plan should be changed accordingly to achieve soundness. Even if I were to accept the contention that a stadium should be regarded as a main town centre use as defined in the Framework, this would not alter my position on the suitability or otherwise of this particular site.

285. Consequently, for the moment and ahead of the early review, the suitability of the site for a football stadium, both in principle and in terms of any detailed effects, will be for the Council to consider when it determines the planning application referred to above, or any other similar applications. The same applies to whether or not a stadium (or any other use for sport or recreation) might be regarded as a main town centre use, as defined in the Framework. I am not reaching any conclusion on these specific matters and the findings in this report should not be seen as pre-determining any conclusions the Council might reach when it considers any relevant planning application ahead of the review of the Plan. A minor wording addition to the review policy introduced by MM 56 is necessary to make it clear that the review will take into account the determination of any relevant planning applications. Subject to this change it is not necessary to add any further clarification to the Plan.

Delivery of uses at Power Court

286. Policy LP9 asks for *circa* 3,393 sqm net of retail convenience floorspace at Power Court. The Club's current planning application seeks permission for a foodstore of up to 3,000sqm and for other retail. In addition the current application seeks permission for up to 550 housing units. This is broadly in line with the *around* 600 dwellings sought by the Plan. Accordingly, *if* any development does go ahead on the site, there is a reasonable prospect that these uses could be delivered in something like the broad quantities sought by the Plan.

287. However, there is considerable uncertainty about what might be delivered at Power Court and when. For example, from the Club's perspective, the delivery of a stadium is dependent on securing permissions for the developments it seeks at both Power Court *and* Stockwood Park. Alternatively, if the Club cannot secure permission for out-of-centre retail at Stockwood Park, it would need to consider other means of financing the move to Power Court. The delivery of the comparison element of the retail led mixed use scheme in the Plan is also uncertain because of the Club's intentions, even setting aside any viability issues. The current planning application includes up to 10,800 sqm of A1 to A5 space. However, I have not been provided with an assessment of how much of this might be comparison retail. Consequently, there is doubt over how much comparison retail might be delivered at this site under any possible scenario.

Will the Plan deliver the required amount of comparison floorspace?

288. The Council, based on evidence advanced during the examination⁷³, considers that there are three other allocations within the defined town centre that could deliver some retail floorspace: the Northern Gateway, Station Gateway and North of St Georges Square (all of which are part of the Creative Quarter). In total the Council estimates that these could provide for at least around 14,300

⁷³ Document ED096

sqm net retail floorspace and possibly up to 28,700 sqm depending on the plot ratio which is assumed.

289. I am not entirely convinced by these figures. In the first place they sit uncomfortably with the overall thrust of the Plan, the Retail Study Update and other supporting information which clearly see Power Court as the main opportunity for town centre retail, along with the Northern Gateway, which is a much smaller and more restricted and constrained site. I discussed this earlier in relation to the 'provision for sport' issue. However, in this context it is also relevant to note that the Plan refers to the delivery of increased convenience and comparison goods shopping by expanding the town centre onto Power Court, to Power Court and the town centre being the primary location for identified floorspace, to Power Court being a flagship project shaping what Luton has to offer shoppers and to the step-change the Northern Gateway and Power Court could deliver in the quality and range of the comparison goods sector.
290. This reflects the Retail Study Update which concludes that there remains little opportunity for significant town centre expansion with the exception of the Northern Gateway and that the delivery of identified floorspace needs should be met *primarily* at that site and at Power Court, the latter of which remains the sequentially preferable location to accommodate any residual large-scale retail development within Luton.
291. Looking at two of the 'alternative' sites suggested by the Council, the Station Gateway is identified in the Plan as a *residential led* scheme with only *limited* retail and North of St Georges Square is seen as a mixed use scheme incorporating leisure, cultural and retail uses.⁷⁴ Consequently, it is not entirely clear to me that a scheme on the former site might deliver the 7,875-15,750 sqm of net retail floorspace now suggested by the Council *and* be in compliance with the Plan. In addition, two of the sites⁷⁵ referred to by the Council as being part of the Northern Gateway appear to lie outside that allocation in the Plan and the site specifically allocated is identified for only 2,025-4,050 sqm.⁷⁶ Furthermore, the Council's most recent analysis does not estimate what proportion of the suggested 14,300-28,700 total floorspace might specifically be for A1 comparison retail.
292. While the actual quantity of comparison floorspace that might be delivered is difficult to quantify definitively, the overall amounts now suggested by the Council are uncertain because they have not been clearly or compellingly justified. In summary, it is clear that there is some potential for comparison floorspace to be provided within the town centre away from Power Court. However, at best, it seems likely that the sites indicated by the Council could only make a partial contribution towards providing the 30,096 sqm for comparison goods sought by Policy LP3.
293. Consequently, if comparison retail is not delivered at Power Court or if the retail component of a mixed use scheme is significantly reduced, there are no clear alternative locations which can be identified at this stage within or on the

⁷⁴ Policy LP11

⁷⁵ Bute Street Corner and Cheapside Corner

⁷⁶ In Document ED096

edge of the town centre which could be brought forward to substantially make up the likely shortfall (which could be significant in size). Taking all of this into account, there is a significant risk that the Plan may not deliver the 30,096 sqm of comparison retail floorspace by 2025 sought by Policy LP3 and as recommended by the Retail Study or even the lower range figure in the study of 18,057 sqm to 2025.

Main conclusions and the early review of the Plan

294. In the circumstances outlined above there are several intractable problems which are unlikely to be resolved in the near future. In particular, there is considerable uncertainty about what might be delivered at both Power Court and Land South of Stockwood Park, whichever options suggested to the examination might be pursued. Overall, there is a significant risk that the Plan may fail to provide for and deliver a relocated football stadium as sought by Strategic Objective 9, the full extent of identified retail comparison floorspace needs, the B1 uses sought at Stockwood Park and a park and ride site. Given the general uncertainties regarding Power Court, the prospect of housing delivery on that site is not entirely clear either.
295. The next question is whether any of these matters could be resolved in the immediate future by suspending the examination. However, it seems unlikely that a definitive resolution could be achieved without a very lengthy delay to the Plan. For example, even if the Club obtains the planning permissions it seeks on both sites, delivery of what it proposes is not guaranteed. Conversely, if the Club fails to get the permissions it seeks on either or both sites it would still have control over both of them. In all the likely scenarios discussed at the hearing sessions there are uncertainties over what might be built at both strategic allocations and over the quantity of comparison floorspace that might be delivered in the town centre as defined in the Plan.
296. Consequently, even if the Council were to review and develop its evidence base in relation to these matters, a suspension of the examination would not be justified because there is no realistic prospect that these issues could be firmly resolved within a timescale that might reasonably be considered for a suspension. Furthermore, a significant delay would frustrate the objective of putting a plan in place that quantifies the scale of Luton's unmet housing needs and which provides an up to date framework for making planning decisions across the borough.
297. Overall, therefore, the realistic and pragmatic way forward is to accept that there are several issues here which can only realistically be fully resolved, in plan-making terms, in an early review of the Plan. This includes the relocation of the Club, uses and policies relating to Power Court and South of Stockwood Park, the allocation and delivery of a park and ride facility on that site, retail needs and how they will be provided for and the strategy and policies for the town centre. To some degree, these are all inter-linked. Accordingly, the Plan needs to signal its commitment to an early review covering these matters. **(MM56)** The review will be able to take into account the decisions on the Club's planning applications.
298. Consequently, despite the uncertainties and problems, the existing plan proposals at Stockwood Park and Power Court can be found sound subject to

an early review of the Plan and the various other modifications set out in this report, including those relating to Power Court below. Consequently, it is not necessary for soundness to delete one or both allocations in their entirety. I agree with the Council that this would be unnecessarily radical surgery. In addition, the overall aim of providing for comparison retail needs within the town centre also remains appropriate.

299. Given the changes outlined above, the Plan will not include a policy allocating any specific site for a new stadium. Nevertheless, Strategic Objective 9 would remain a valid statement of intent and the issue would at least be recognised in a policy as one to be resolved in the early review. Consequently, there is no justification for amending or deleting this objective.

300. Finally, it was put to me that a policy might be added to the plan setting generic criteria to allow the consideration of any proposal for a stadium which might come forward. However, it is difficult to see how this would significantly help in the determination of any planning applications and it is not necessary to achieve a sound plan.

Are any changes necessary to Policy LP9 (Power Court)?

301. Given my conclusions above, it is necessary to delete the term 'provision for sport' at Power Court. **(MM19)** This also reflects my finding that the location for the stadium is now a matter for the review of the Plan, informed, if appropriate, by the consideration of the outcome of any relevant planning applications.

302. Some other changes are also necessary to ensure the policy is clear and effective. Firstly, it should be clarified which uses *should be included* in a mixed use development and in what scale and which additional uses are *acceptable in principle*. Secondly, the policy should refer to B1 offices, rather than to *business*. Thirdly, given the site is separated from the town centre shopping area (TCSA) by a dual carriageway it is necessary to add a criterion to ensure that proposals include measures to ensure the site is accessible from the TCSA and is perceived as being a part of the town centre. Fourthly, it is not appropriate for the policy to require compliance with the requirements of the untested Luton Town Centre Development Framework which dates back some years and criterion Ai should be amended accordingly (with a related change to the supporting text). Finally, the approach required with respect to the River Lea and the consideration of design and heritage matters needs to be made more robust to ensure these issues are adequately addressed. **(MM19)** The other policy criteria are sound, including the requirement for a masterplan.

303. Given the site is within the proposed town centre, it is not necessary for soundness to delete the reference to 'town centre uses' as proposed and consulted upon by the Council under MM19. Accordingly, I am not recommending this as a change and I have amended the wording of the MM accordingly. As noted above, it will be for the Council to determine, where relevant, whether any uses proposed for the site through planning applications fall within the definition of main town centre uses in the Glossary to the Framework. Nor does the policy need to list each individual use that might conceivably be acceptable on the site.

304. The policy refers to 3,393 sqm of convenience floorspace. Although this is perhaps unusually specific, it is preceded by the word 'circa'. This provides an appropriate degree of flexibility and would allow the Council to consider accepting a certain amount of floorspace less, or more, for example having regard to deliverability and market conditions, if appropriate.

Butterfield Green Technology Park (Policy LP7)

305. Butterfield Green is a longstanding technology park allocation. A significant proportion of the site remains undeveloped and progress has stalled in recent years. Several changes are necessary to make the policy and supporting text sound. These are discussed below and have been set out in one main modification. **(MM17)** Most were agreed between the Council and developer in a SOCG. Some consequential changes are necessary to Policy LP7Aii, Policy 13Aiii and Appendix 3 to ensure consistency within the Plan, with regard to appropriate uses. I have added these to the MM. Some of the changes also need to be reflected in the section of the Plan dealing with the economy. **(MM23)**

Uses

306. The policy allocates the site for technology-related B1 uses. However, the Council accepts that market conditions indicate that a more flexible approach should be taken, while still maintaining the high quality technology park concept. I agree with this and the restrictive approach taken is likely to prejudice delivery. The need for more flexibility on uses is reinforced by the current position at Napier Park, which is now unlikely to deliver as much B1 or B2 development as anticipated (see below) and the uncertainties about land South of Stockwood Park (see above). Accordingly, changes are necessary to ensure an appropriate degree of flexibility on uses, while retaining the overall high quality concept and adding safeguards to protect local amenity.

Park and ride facility

307. The policy as drafted supports the provision of a park and ride facility. I agree that a facility is justified on this site given the potential to reduce car use on a main route into Luton, the need to improve air quality and given the lack of suitable identified alternative locations. The Council's Luton Park and Ride Final Report also concludes that a facility here is likely to be popular, provided parking constraints and charges are applied in and around the town centre.

308. However, even given the best possible interpretation, the policy is ambiguous about what a developer will be required to provide and at what point. To achieve effectiveness, the policy needs to be amended to make it clear that a plot of land for a specific number of spaces will be safeguarded and transferred to the Council at an appropriate trigger point. In addition, to ensure development within the strategic allocation makes a fair and proportionate contribution to transport infrastructure, the policy should also make it clear that no additional contributions will be required to provide off-site infrastructure or the funding of the park and ride facility.

Policy criteria

309. Given the sensitive location on the edge of the urban area, and the need to maintain the technology park concept, it is necessary to ensure that good quality development is achieved and that adverse effects are avoided, including on the character and appearance of the surrounding landscape, some of which is an AONB. In broad terms the various policy criteria should help ensure this is achieved. However, several changes are necessary to ensure effectiveness and delivery.
310. Firstly, given the site has already been partially developed, the masterplan required by Ai only needs to be indicative rather than comprehensive. Secondly, Aiv and viii should be amended to set out a more sophisticated and flexible approach to density and building heights, recognising that the fundamental aim is to achieve an appropriate level of spaciousness and to avoid harming views into the site. Thirdly, Avii should be amended to recognise that it may be necessary to enhance existing landscape features (as well as retaining them) but that in some cases it may be necessary to replace them elsewhere. Similarly, greater flexibility needs to be applied in relation to existing rights of way (Aix).

London Luton Airport (Policy LP6)

Airport expansion

311. The airport makes an important contribution to Luton and the wider area in terms of transport accessibility, jobs and the economy. This is recognised in Strategic Objective 1 of the Plan.
312. The allocation boundaries appear to be reasonably defined and Policy LP6 appropriately supports proposals to expand the airport, subject to several criteria being met. These are primarily intended to limit potential environmental and landscape effects from development of the airport itself and from the employment allocation at Century Park. These are all reasonable aims. However, a number of changes are necessary to ensure that the policy is effective. These are set out in one modification and are discussed below. This includes related changes to the supporting text. **(MM16)**
313. Policy LP6 B requires that *all* 9 criteria are met for *any* proposal relating to the expansion of the airport, its operation or any surface access improvements. All of these criteria might reasonably apply to a comprehensive scheme to significantly expand the airport and its operations. However, they will not necessarily all apply to smaller developments that might be advanced within the airport over the lifetime of the Plan. Consequently, the policy needs to make it clear that the criteria will be applied, *where applicable and appropriate* having regard to the *nature and scale* of what is proposed.
314. Criterion Biii and v require proposals to be in accordance with the latest permission and to comply with any imposed planning conditions relating to noise. However, it is unnecessary for a plan policy to require compliance with a planning permission given that any such permission will be self-contained and subject to any conditions which have been attached to it. Furthermore, planning applications stand to be determined in accordance with the

development plan, unless material considerations indicate otherwise. Consequently, these references are not justified and should be amended.

315. To be effective Criterion Biv should be amended to clarify how the effects of any proposed increase in air traffic movements will be considered, including by reference to the potential to mitigate any adverse impacts. For the same reason criteria Bv should be amended to make it clear that proposals should avoid any *material* increase in noise.

Airport-related car parking

316. The policy seeks to ensure that airport related car parking should be located within the allocation (excluding Century Park and Wigmore Valley Park which are intended for other purposes), except in some defined circumstances. This is justified because an expansion of off-site parking could undermine the aim of encouraging access by non-car modes, undermining the reason for criterion Bviii (which seeks sustainable transportation and surface access measures).

Century Park

317. This is a specific site for office, manufacturing and distribution within the strategic allocation. It will provide important opportunities for uses that would benefit from a location close to an airport as well as potentially meeting a general demand. It is one of the few opportunities in Luton to provide for distribution uses.
318. However, as drafted the policy is somewhat ambiguous about what types of development would be supported and whether proposals would need to demonstrate a requirement for close access to the airport. Consequently, the policy should be amended to make it clear which uses are acceptable in principle and that particular support will be given to those which need to be close to the airport.
319. The site has not seen any development since it was allocated in the current Local Plan in 2006. However, at that time, the intention was to provide access via a tunnel under the airport. This would inevitably have been costly, potentially deterring development. The Plan now proposes a different means of access and the Viability Assessment concludes that the site would be viable. Consequently, there is a reasonable prospect it can be delivered.
320. The Plan now proposes that access is taken across Wigmore Valley Park. This will clearly have some effect on the amount of land available within the park and on its function. However, there appear to be no clear alternative viable means of access, especially given the need to avoid channelling traffic onto Eaton Green Road. Furthermore, the policy requires that any open space which is lost is replaced. The Council explained at the hearing that this is feasible because part of the Century Park allocation could be used to provide any replacement open space.

Effect on the strategic road network

321. The main vehicular access to the airport and Century Park is along the A1081 corridor from Junction 10a of the M1. During the hearing sessions the Council explained that the recent improvements to J10a took account of the proposals

set out in Policy LP6. I am satisfied that the road network is capable of accommodating the potential increase in traffic from the expansion and development envisaged by the policy, subject to the relevant measures set out in the Plan, including in Policies LP6 and LP31 (sustainable transport strategy).

Effect on heritage assets

322. A criterion should be added to ensure that the effects on nearby heritage assets are adequately taken into account, so correcting an omission. For clarity I have added a cross-reference to Policy LP30 (historic environment) which, after modification, sets out an approach to heritage assets which is consistent with the Framework. On this basis, it should be possible to avoid any significant harm to nearby assets.

Sustainability appraisal

323. The SA tended to consider the strategic allocation as a whole, including the Century Park site. It is possible that, if the specific proposals for the airport had been assessed separately, different and possibly better 'scores' might have been arrived at. Similarly, it is conceivable that different judgements might have been made about individual 'scores'. However, it is difficult to see how this might have led to any significantly different outcomes in the Plan. Consequently, this is not a significant soundness or legal compliance problem.

Napier Park (Policy LP8)

324. This is a large brownfield site within the heart of Luton. Given its central location it has the potential to provide a substantial amount of residential development. In addition, given the location close to the railway station and airport, it is an appropriate site for a hotel to meet demand associated with the airport as identified in the Luton Hotel Study. Despite the existence of planning permissions, the requirement for a masterplan remains valid given the extent of this strategic allocation and the possibility that proposals might change over time. However, some changes are necessary to ensure the policy is justified and effective with related changes to the supporting text. These are set out in one modification and are discussed below. **(MM18)**

325. The policy refers to 600 residential units. However, based on the most recent SHLAA and planning applications/permissions on the site, the Council consider that considerably more than this number could be built and the policy should reflect this.

326. The policy also states that the allocation is for around 35,000sqm of B1a office and 20,000sqm B1c industrial. However, I am not convinced these precise floorspace figures are justified or that there is any particular reason why B1b research and development should not be supported, particularly given the need for greater flexibility at Butterfield Green Technology Park. Overall, the approach is unnecessarily specific and if applied inflexibly could stifle development which might provide jobs and help support the local economy. Furthermore, there is now some uncertainty over how much new employment development might be delivered given that Vauxhall has re-acquired the part of the site most likely to be used for this purpose. This needs to be reflected in the supporting text, including in the section on the economy. **(MM23)**

327. The policy should, therefore, be amended to achieve greater flexibility by deleting the specific floor space figures and accepting all B1 use in principle. In addition, although Policy LP13 refers to *small scale affordable B2 use* at Napier Park, this is not mentioned in Policy LP8. Given the large size of the site and its central location, it does have the potential to accommodate some B2 uses and the inconsistency within the Plan should be corrected.

328. The policy also makes reference to a 2,500sqm foodstore. However, there is no clear justification to restrict the retail format to a foodstore of this specific size. Instead, the aim, more reasonably, should be to provide a convenience retail-led neighbourhood centre to meet the needs of those living on the site. The policy should be amended accordingly **(MM18)** along with the supporting text. **(MM23)**. I have made a small adjustment to the wording of MM23 to ensure it is consistent with MM18.

High Town (Policy LP10)

329. High Town is an established area to the north of the town centre which would benefit from regeneration. The Plan sets out a reasonable approach to help achieve this, informed by master-planning work. However, the policy should not require compliance with the High Town SPD or Masterplan given these have not been tested through a local plan examination. The policy and supporting text should, therefore, be amended to make their status and role clear. Recognition should be given to the potential to seek opportunities to *enhance* the historic environment and heritage assets and that, in line with the most recent SHLAA, the housing potential is for *at least* 750 units. **(MM20)** The second paragraph of the policy, as modified, is somewhat long and multifaceted. However, it is adequately clear.

Creative Quarter (Policy LP11)

330. This is an area that lies within the defined town centre broadly to the north of the Town Centre Shopping Area. There are a number of vacant and under-used sites which provide an opportunity for redevelopment and three key sites are identified in the Plan. Overall, the approach taken is reasonable.

331. As discussed above, the Northern Gateway is one of the main opportunities identified in the Plan for expanding town centre retail floor space. Consequently, the reference in the supporting text to retail provision being *limited* should be amended. **(MM21)**

332. Overall, the various policy criteria and the mix of uses sought are soundly based having regard to the town centre location. However, the approach regarding heritage assets should be strengthened, particularly given that part of the allocation lies within a conservation area which is identified as being at risk on Historic England's national register. **(MM21)** I have made a minor change to this MM to correct the wording on this.

Marsh Farm (Policy LP12)

333. Marsh Farm is described in the Plan as the biggest housing estate in Luton and the plan sets out an appropriate framework for its regeneration.

Viability and conclusions on the strategic allocations

334. The Viability Assessment of the Plan concludes that the mixed use schemes proposed on the strategic allocations all demonstrate positive viability, with the exception of the football stadium at Land South of Stockwood Park.⁷⁷ I have no reason to doubt these conclusions, except as discussed above. Subject to modifications, and despite the uncertainties about delivery in some cases, the strategic allocations and policy requirements are sound.

Issue 17 – Local technical and other standards – are the various policy requirements justified, effective and consistent with national policy and guidance?

335. The Plan contains several local technical and other standards most of which relate to new housing. These are considered below. In some cases they do not comply with government policy⁷⁸ or the PPG⁷⁹ which require justification and viability testing. In these instances the Plan should be modified.

Accessible, adaptable and wheelchair user requirements

336. The supporting text to the Plan states that the *evidence supports* the need for *all* dwellings to meet Requirement M4(2) (accessible and adaptable dwellings) of the Building Regulations and for 10% of market housing and 15% of affordable housing to meet M4(3) (wheelchair user dwellings).

337. The Plan's position on this is somewhat ambiguous given there is no clear expression of a requirement in a policy. In addition, there is no clear linkage between the justification in the Plan and the 'need' stated in the supporting text. For example, despite the analysis in the SHMA Update of 2015, it is unclear why a high level of growth in the population of people over 65 justifies a need for *all* housing to meet M4(2) or, why the fact that 3.3% of households in *England* have a wheelchair user justifies 10% provision in *Luton*. Nor does there appear to have been any assessment of the accessibility and adaptability of the existing stock as sought by the PPG. Furthermore, the Council's hearing statement accepts that the costs of achieving these standards have not been allowed for in the Viability Assessment. Consequently, the Council has advanced changes to resolve this by making it clear that these are not policy requirements. **(MM29)** However, it should be noted that Policy LP25 on high quality design does reasonably require that buildings and spaces should be safe and easily accessed by all members of the community in line with the Framework.⁸⁰

National space standards

338. Policy LP25 requires new housing to meet the internal space standards set out in an appendix to the Plan. The Council has confirmed that these are the Nationally Described Space Standards referred to in the PPG.

⁷⁷ High Town and Marsh Farm were not specifically assessed as strategic allocations.

⁷⁸ As expressed in the Minister's Written Statement to Parliament of March 2015

⁷⁹ PPG – Housing - Optional Technical Standards

⁸⁰ For example, Framework paras 57,58, 61 and 69

339. The Council is concerned that many recent completions have been for smaller flats with 1-2 bedrooms rather than 2-3 bedroom houses which the SHMA Update indicates are needed. However, the national standards are not a mechanism to ensure developers build houses rather than flats or to build dwellings with more, rather than less, bedrooms. Instead the standards simply require that dwellings with a specific number of bedrooms and bed spaces are built to a minimum size. Consequently, the policy is not an appropriate response to the Council's concern. Nor has any robust or detailed evidence been provided about the size and type of dwellings currently being built as is sought by the PPG. Accordingly, the requirement in Policy LP25 and in the related appendix should be deleted. **(MM42 and MM61)**

Water efficiency standards

340. The Luton Water Cycle Strategy of 2015 concludes that the borough lies within an area of serious water stress. Consequently, and given the level of housing growth proposed, it is reasonable to seek to manage the use of water by setting the higher optional requirement in the Building Regulations. I understand that this has been taken into account in the Viability Assessment, although from what I heard at the hearing session, the additional cost per dwelling is likely to be limited. However, the standard should be expressed as 110 litres/person/day (rather than 105) to comply with the PPG. **(MM53)**

Carbon and energy performance

341. Policy LP37 requires new residential development to meet standards of performance equivalent to Level 4 of the Code for Sustainable Homes. This appears to have been included in the Viability Assessment modelling. However, the Government has now withdrawn the Code and the ministerial statement indicates that plans should not set policies requiring any level of it. This needs to be rectified. The Council has chosen to do this by advancing a change that *encourages* rather than *requires* higher standards than those set in the Building Regulations. This is an acceptable solution and various textual changes are required to achieve this, including by deleting the requirement for supporting information and Energy Statements. **(MM53 and MM30)**

External amenity space standards

342. It is reasonable for the Plan to set some baseline standards, given there is a high need for housing and a limited supply of land. The external space required does not seem excessive, including for flats and houses, and the standards are expressed with some degree of flexibility. It also seems likely that the space sought could, in most cases, be achieved within the housing density assumptions used to inform the Viability Assessment. Consequently, the policy should not unduly constrain or reduce the supply of housing. However, two changes are needed. For clarity, the requirement should be specified in Policy LP25 (rather than only in an appendix) **(MM42)** and ambiguities in the drafting of Appendix 6 should be resolved. **(MM61)**

BREEAM and Lifetime Homes

343. The Viability Assessment states that 'excellent' status has been tested rather than the lower 'good' standard sought by the Plan. Overall, the requirement

for non-residential development above a specified size threshold to meet this is reasonable.

344. The supporting text to the Plan encourages developers to meet Lifetime Homes standards. However, this is not consistent with the approach in the WMS and this reference should be deleted. **(MM41)**

Issue 18 – Are the allocations for new schools sound?

345. Policy LP24 allocates sites for a primary and secondary school in the south of the borough. Both these sites have previously been used as open space and for sport. However, the evidence suggests that this was now some time ago. More fundamentally, both sites now have planning permission and the primary school has been built and construction of the secondary school is due to start soon. In this context, the Council has advised that the open space issues were addressed when both these applications were considered and that the sports facilities provided for both schools have the potential to be used by the wider community. In addition, the schools are necessary to meet a pressing need for school places. Consequently, the policy is justified.

Issue 19 – Open space, biodiversity and landscape – are the policies justified, effective and consistent with national policy and guidance?

Open space

346. Several changes are necessary to Policy LP27 (open space and natural greenspace) for soundness and these are all expressed in **MM44 and MM45**. In relation to the first part of the policy (A), it should be made clear that the requirement for open space specifically relates to housing development, that open space will only be required where there is a shortfall and that the first preference is to provide the open space on-site where this is practical. Secondly, the wording in the supporting text about playing fields is unclear and should be corrected, given that it is not intended as a policy requirement. The policy requires open space to be provided in accordance with greenspace standards.⁸¹ These are adequately justified.⁸²
347. Making off-site provision could be affected by the restrictions which apply on the pooling of financial contributions.⁸³ However, this would be a matter for the Council to consider as it determines relevant planning applications and it does not make the policy unsound.
348. The second part of Policy LP37 (B) relates to proposals which might result in the loss of open space. This needs to be amended to state that decisions will be made on the basis of the most up to date evidence, rather than the local plan evidence base.
349. Consultation also took place on a change to Policy LP37 (B) to allow the loss of open space, potentially including playing fields, where *proportionate enhancements are made to the quality of one or more other existing open*

⁸¹ In Appendix 12 of the Plan

⁸² In Document ENV004

⁸³ Under the Community Infrastructure Levy Regulations

spaces in the vicinity. Having considered representations on this potential MM, I am not convinced it is necessary for soundness and so have not recommended it. Instead it will be for the decision-maker on planning applications to decide whether or not any such proposed enhancements would amount to the *replacement provision of equivalent type, quality or quantity or better* required by (B)i of the policy.

350. Finally on this, the policy states that the loss of open space will be justified where there is no previously developed site that is suitable and available to accommodate *the development*. In an authority where there is a shortage of land and substantial unmet housing needs this could, if applied literally, lead to a widespread loss of open space. This would not be justified and the criterion should be deleted.

Biodiversity

351. Policy LP28 sets out the various biodiversity sites that will be protected and, where feasible, these are shown on the policies map. However, to correct an omission the policy should refer to sites of special scientific interest. It should also be made clear that the level of protection will be commensurate with the status of sites and their importance and that ecological assessments will only be required where there is a *reasonable likelihood* development could have an adverse effect on habitats or species. **(MM46)**

352. The evidence base provided by the Council to justify the various biodiversity sites dates back some years.⁸⁴ While I understand the Council's position that the value of sites may not have significantly changed in most cases and that there have been some more recent checks, the age of the evidence base and the lack of any clearly presented justification for individual sites is a concern. For example, at the relevant hearing session it was indicated that the triangular area of land at Lynwood Avenue (shown as a County Wildlife Site on the policies map) was last re-assessed by the Council in the late 1990s. The Plan does refer to an independent panel review in 2012 and reference was made at the hearings to a 2014 survey update, but these have not been provided as part of the evidence base for the submission plan. Document ENV008 does not help either because it is merely a link to the Bedfordshire and Luton Biodiversity Recording and Monitoring Centre's website and there is no clear indication of how any of the website's contents might support the Plan.

353. However, Policy LP28 (as recommended to be modified) seeks to provide a level of protection for wildlife sites and ecological networks commensurate with their status and importance. Consequently, if more recent evidence indicates that a site now has less value than previously thought, this can be taken into account when making decisions on any individual planning applications, including in the balancing of any benefits against any nature conservation interest (under criterion Aii of the policy). In these circumstances it would be disproportionate to suspend the Plan to allow sites to be re-assessed, particularly given the potentially very significant delay that

⁸⁴ For example, examination documents, including the Nature Conservation Strategy of 1992 (Document ENV009) and the Rebuilding Biodiversity reports of 2006 and 2007 (Documents ENV10 and 10A).

would be caused. Instead the Council should carefully consider whether a more up-to date and clearly presented evidence base should inform the early review of the Plan.

Landscape

354. Policy LP29 sets out the approach regarding national and local landscape areas, the latter of which are divided into two tiers ('great value' and 'local value'). Changes are required to make it clear that individual development proposals are not required to both conserve *and* enhance the character, setting and natural beauty of these areas and to clarify the position regarding the local designations. **(MM47)** The policy, as amended, is consistent with the Framework which seeks to conserve landscape and scenic beauty in AONBs.
355. The local designations have been adequately justified by the assessment work carried out in 2014.⁸⁵ Candidate areas were considered against a criteria-based scoring system. The extent of the areas assessed is a matter which is susceptible to judgement. It is also likely that smaller parcels within them could, if considered in isolation, result in a lower score than for the overall area. However, the broad areas assessed are reasonable. For example, the Bradger's Hill Corridor⁸⁶ quite reasonably covers a corridor of undeveloped land stretching from the rural edge of Luton into the built up area. The landscape characteristics of individual parts of this area vary. However, I am not persuaded that any should have been considered separately for the purposes of deciding upon broad landscape designations. It is also the case that the choice of scoring threshold between the two tiers of local designation is capable of being debated. However, such judgements have to be made when applying assessments of this nature and the threshold used is not unreasonable.

Conclusions

356. For the reasons outlined above and subject to the recommended changes, these policies are sound.

Issue 20 – Are the development management policies in the Plan sound?

357. Some of the development management criteria set out in various policies have already been considered above. In addition, the changes discussed below are necessary to achieve soundness.
358. The approach to sustainable development is set out in Policy LP1. This requires all development proposals to meet ten wide-ranging criteria. There are three problems with this. Firstly, most, if not all, of these criteria are reflected in more detailed policies later in the Plan and the variations in wording could cause difficulties of interpretation. Secondly, the criteria are expressed as brief sustainable development principles which do not give a clear indication of how a decision maker would react to a development proposal. Thirdly, a requirement to meet all ten criteria would be unduly

⁸⁵ Documents ENV005 and 005A

⁸⁶ Candidate Area (g)

onerous given that in many cases not all of the criteria would be relevant. The Council has suggested deleting all ten criteria to resolve this. Further changes are required to clarify what is meant by sustainable development and to accept that, in some cases, it may be appropriate to preserve the character of an area (rather than requiring improvement). **(MM7 and MM8)**

359. Policy LP24A seeks to protect community facilities. However, the definition in the glossary lacks clarity. For the policy to be effective this needs to be changed to set out which uses will fall within the definition. **(MM57)** The policy itself seeks to protect existing community facilities, even where there are existing suitably located facilities that would meet needs. This is an unduly restrictive approach and should be changed. In addition, duplication within the policy should be removed. **(MM40)**
360. Policy LP25 on design should be modified to clarify the purpose and role of SPDs. **(MM42)** Policy LP26 (and the supporting text) on advertisements should be amended so that it is appropriately focused on dealing only with amenity and public safety issues in line with the relevant regulations and the Framework and to avoid an overly prescriptive approach to illuminated signs in conservation areas. **(MM43)**
361. Several changes are necessary to Policy LP30 (historic environment) to ensure it is consistent with the Framework, including in relation to the circumstances where the loss of, or harm to, an asset needs to be balanced against any benefits, the consideration of archaeological remains and the circumstances when a record of an asset is required. It should also be noted that registered parks and gardens are designated heritage assets. **(MM48)**
362. Policy LP38 on pollution and contamination needs to be redrafted so that it can be effectively applied in development management decisions, including by allowing for potential mitigation. **(MM54)** However, to ensure the policy is not unduly onerous, I have amended the wording of the MM so that it refers to 'any *significantly* adverse effects.' Subject to this, the amended policy is broadly in line with the Framework. However, it is not necessary for soundness for each policy in the Plan to repeat every potentially relevant part of the Framework in order to achieve consistency with it.
363. Policy LP39 sets out the general approach to developer contributions towards infrastructure. It does not list the particular types of infrastructure that might be required, but it is not unsound for that reason.

Issue 21 – When should the early review of the Plan take place?

364. An early review of the Plan is necessary for several reasons as outlined through-out the report. However, deciding on a particular timetable is not clear cut. This is because some issues require a more urgent response than others. For example, the need to address school provision is particularly pressing. Conversely, the Plan needs to provide enough stability and certainty to allow neighbouring authorities to progress Local Plans towards adoption in order to help address Luton's unmet housing needs.
365. In this context a target which sees the review being commenced before the end of 2019 and submitted for examination by mid-2021 strikes a reasonable balance. This should be set out in a new policy and explained in supporting

text. **(MM56)** Clearly though, there is nothing to prevent the Council making more swift progress on the various assessments and studies that will be necessary to inform this review or to pursuing a more rapid review. A review could also be an appropriate mechanism for considering any changes to national policy which may be put in place following the consultation announced in the Government's white paper 'Fixing our broken housing market' in February 2017. The Council has reached the same conclusion on this.⁸⁷ As noted earlier, I have amended the MM to make it clear that the review will take into account any relevant planning permissions. I have also made a change to more accurately reflect the status of the joint Growth Options Study.

366. Some representors have raised concerns that the review may not be carried out to the stated timescale and that the implications of this hypothetical outcome should be made clear in the Plan. However, in this eventuality, the weight to be attached to any relevant policies in the Plan when determining a planning application would be a matter for the decision-maker to consider, having regard to national policy and any relevant material considerations at that time. This is not a matter which the Plan needs to pre-judge. Nor does the new policy need to specifically refer to every aspect of the Plan which might be assessed in the review, however, desirable a review of that aspect of the Plan might be.

Overall Conclusion and Recommendation

367. The Plan has a number of deficiencies in respect of soundness and legal compliance which have been explored in the main issues set out above. For those reasons, in accordance with Section 20(7A) of the 2004 Act, I recommend non-adoption of the Plan as submitted.

368. However, the Council has requested that I recommend MMs to make the Plan sound, legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix, the Luton Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the Framework.

369. Some of the MMs might necessitate consequential changes to the wording of aspects of the monitoring framework in the Plan. However, these would be for the Council to consider as additional modifications as they do not affect soundness.

Jeremy Youle

Inspector

This report is accompanied by an Appendix containing the Main Modifications.

⁸⁷ Council letter of 23 February 2017