

**STAGE 1, MATTER 1 –
LEGAL COMPLIANCE
AND THE DUTY TO
COOPERATE**

**EPSOM AND EWELL
LOCAL PLAN
EXAMINATION**

Land at Ewell East Station (Priest Hill)

Hearing Statement by Carter Jonas

On Behalf of Coldunell Limited

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Carter Jonas

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Client: Coldunell Limited

Client or Job Number: J0019046

Contacts: David Churchill / Jennifer Turner / Amon Yiu (Carter Jonas)

One Chapel Place
London
W1G 0BG

T: 020 7518 3200

F: 020 7408 9238

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1.0 INTRODUCTION

- 1.1 This Statement has been prepared on behalf of Coldunell, the owner of land adjoining Ewell East Station (Priest Hill). Coldunell has engaged in the Local Plan process to date and has sought to identify its concerns with the legal compliance and soundness of the draft Local Plan from the outset.
- 1.2 Coldunell supports, in-principle, the Plan-led system. In order for a Plan-led system to function it requires Local Plans to be not only legally compliant and sound, but for them also to be deliverable, proportionate and based on clear evidence.
- 1.3 Coldunell is of the view that the new Local Plan should be reflective of the Government's housing ambition for 1.5 million homes and explore opportunities for the release of Grey Belt land and '*untapped land near commuter transport hubs*' as supported by the Government on 26th January 2025.
- 1.4 The revised National Planning Policy Framework ('NPPF' or 'the Framework') confirms that Plans will be sound if they are positively prepared, justified, effective and consistent with national policy. For the reasons identified in the representations, which we will expand on, the Plan accords with none of these requirements.
- 1.5 The Priest Hill site is located immediately adjacent to Ewell East Railway Station with direct access to a wide range of facilities and services of the town centre, which represents a unique opportunity for housing development in a highly sustainable location along the excellent and currently under-used transport link at Ewell East to address the unmet needs for the Borough.
- 1.6 Coldunell has submitted duly made representations to each stage of the Local Plan production process. For clarity, this has included representations to:
 - The consultation on the Regulation 18 Local Plan in 2017;
 - Initial Call for Sites submission in 2017;
 - Further Call for Sites submission in 2022; and
 - The consultation on the Regulation 19 Local Plan in February 2025.
- 1.7 Alongside the above Local Plan process, Coldunell has continued with promotion of the site in line with the initial draft allocation, which have included an assessment of the Priest Hill site in the context of the revised policies in the Framework regarding the Green Belt. This additional work has determined that the site is capable of delivering new homes.
- 1.8 This Hearing Statement expands on the issues identified within the representations regarding the Councils' failures in relation to the Sustainability Appraisal. It also identifies the failures of the site assessment process in relation to the Priest Hill site in relation to matters of procedural fairness.
- 1.9 It is not possible for these fundamental matters to be resolved and therefore the Plan is incapable of being taken forward to adoption.
- 1.10 In the event the Plan is taken forward, the effects of the decision for the local community would be intolerable and would have a serious deleterious effect on the social, economic and environmental future of Epsom and surrounds. Whilst it would effectively result in a short-term Plan vacuum this can be remedied in the short-term through the production of a deliverable Plan that meets its identified needs, and addresses wider unmet needs, in a fair and proportionate manner.

2.0 STAGE 1, MATTER 1 – LEGAL COMPLIANCE AND THE DUTY TO COOPERATE

Issue 1: Whether the Duty to Cooperate (DtC) has been satisfied and whether the Plan has been prepared with reference to the relevant procedures and regulations

Question 1.2: The plan as proposed would result in a significant amount of unmet need arising from the proposed strategy. Does the evidence base confirm that the Council have engaged constructively, actively and on an ongoing basis with the parties identified to address this matter as well as the other strategic matters of relevance?

- 2.1 This is a matter for the Council to address. However, we note that the duty to cooperate, whilst not a duty to agree, does require the outputs to be effective and deliverable policies on strategic cross boundary matters. In the context of the wider outstanding objections to the spatial strategy, the housing target and approach to addressing Local Housing Needs (LHN), the approach to addressing wider unmet housing needs it is self-evident that what cooperation there has been has not been effective.
- 2.2 Fundamentally the outputs of the cooperation have failed to deliver any suitable solutions to the cross-boundary matters. It is insufficient to effectively ignore matters of cross boundary significance and solely seek to put a tick in the box of compliance. The Local Plan is not deliverable, fails to show any real ambition in the face of the housing requirements and it fails to demonstrate that effective joint working has taken place to address these significant and impactful matters.
- 2.3 Whilst evidence has been presented that shows engagement between authorities, this engagement does not demonstrate effective cooperation to ensure that the housing needs of the area are met in full. For cooperation to be able to demonstrate it has been effective cooperation, positive outcomes addressing identified issues are required. As it currently stands significant levels of housing will continue to be unmet in the period up to 2040 drawing in to question the effectiveness of the cooperation.
- 2.4 Attention should be drawn to the disagreements among various neighbouring authorities regarding the Council's approach to housing and the consequent implications for adjoining areas. East Hampshire District Council stated on 15th July 2024:

“The new Government is looking carefully at Green Belt authorities and we would expect Epsom to consider what recommendations are being made nationally about mandatory housing requirements and Grey Belt land. Whilst appreciating that might not be the solution to your difficulties, a national approach with regards to Green Belt is required.”¹

- 2.5 Mole Valley District Council sets out in their response on 25th July 2024 a different approach than Epsom:

“77% of MVDC's area is designated as either Green Belt or National Landscape. The built-up area only comprises 11% of the area ... As a result of these constraints, MVDC's emerging local plan would meet only approximately 75% of its own need. In addition, these constraints have

¹ COUD_001a, p169.

meant that a significant proportion of housing has come through the release of an element of Green Belt land.”²

- 2.6 Given that only 42% of Epsom’s area is subject to Green Belt, when compared with other neighbouring authorities including Guildford (89%), Runnymede (79%), Mole Valley (75%), Spelthorne (65%), Woking (60%), and Elmbridge (57%)³, and the Council’s evidence does not make clear whether the suggestions arising from engagement with neighbouring authorities have been actively and constructively taken into account.
- 2.7 This doubt is further compounded by the fact that, whereas the Regulation 18 Plan sought to meet 56% of the LHN, the Regulation 19 Plan now proposes to deliver no more than 46%, which eventually raises doubts about the effectiveness and deliverability of the Council’s duty to cooperate process in addressing this development constraint.

Question 1.9: The minutes contained at appendix 8 refer to updates to the LAA including reviewing capacities of individual sites (seeking to optimise yields) – where is this work contained within the evidence base?

- 2.8 We have concerns regarding the factual accuracy of the works described by the Council in the Council’s Response to Inspectors Initial Questions Appendices (COUD_001a).
- 2.9 For example, COUD_001a states that the LAA was updated between May and October 2024 following “*contact with all landowners in the 2022 LAA to confirm availability*” and a “*review of individual site capacities (seeking to optimise yields)*”. However, we were not approached to review or optimise the capacity of our site, nor were we invited to discuss our proposed phased strategy to maximise early-phase delivery.
- 2.10 Similar concerns arise when the Council provided an update to neighbouring authorities early 2025⁴, which asserted that “*one significant Green Belt site (Ewell East station) has fallen away due to issues with deliverability*”. At no stage did the Council seek to properly and fully understand the ownership of the site or assess its deliverability prior to its exclusion, which raises a substantive question as to whether the Council’s engagement process is being undertaken constructively, actively, and on an ongoing basis, as required.
- 2.11 Since our Regulation 19 submission, further work has been undertaken to assess deliverability of the site, which potentially can be defined as Grey Belt, and which will be capable of delivering new homes including the commensurate levels of affordable housing.
- 2.12 Had the Council engaged with Coldunell constructively, actively, and on an ongoing basis to explore the site’s full potential for residential allocation it is likely that the site would have been carried forward for allocation. As it did not, the opportunity for this highly sustainable and deliverable site to contribute to addressing the Borough’s unmet housing need has been erroneously omitted.

² COUD_001a, p175.

³ Elmbridge Borough Council (2016). Green Belt Boundary Review.

⁴ Pp. 223, 226, 228, 231, 234, and 236 of COUD_001a.

Issue 2: Whether the Plan has been prepared with due regard to the appropriate procedures and regulations

Question 2.4: Has the SA tested all reasonable alternatives? Is it clear how the conclusions drawn have been justified?

- 2.13 We do not consider all reasonable alternatives have been tested in the SA. For example, the land at Ewell East Station has only been assessed within Growth Scenario 7, the highest growth option, with no justification provided as to why it could not also be considered within the other six scenarios. In the context of its locational sustainability and deliverability we consider it should have been assessed in the baseline growth scenario and above.
- 2.14 Given the SA failing to provide a strategy to address the unmet housing need that exceeds 50%, it is not justified for paragraph 6.15.4 to state *“there are other scenarios falling in between those appraised that were not defined and appraised as a pragmatic step (i.e. to keep the scenarios to a manageable number, suited to understanding and engagement) and because of a lack of confidence that the appraisal would lead to meaningful differentiation in terms of significant effects.”*
- 2.15 PPG makes clear that *“Sustainability appraisal should be applied as an iterative process informing the development of the plan.”*⁵
- 2.16 As such, the approach set out at paragraph 6.15.4 is untenable and not legally compliant. Given that none of the growth scenarios are capable of meeting the Borough’s identified housing needs, further testing of additional growth scenarios should be undertaken as required.
- 2.17 There is no justification for the Priest Hill site being assessed collectively with sites HOR007 and HOR002 under Growth Scenario 7, rather than being appraised individually, which prevents the SA from accurately reflecting all reasonable alternatives. In particular, the overall ranking for Growth Scenario 7 is skewed unfavourably due to the relatively lower performance scores of HOR007 and HOR002, which does not provide a fair or accurate assessment of the Priest Hill site’s potential.
- 2.18 Given of the fact that the Priest Hill site has been promoted as being available for development, it is critical that the SA is updated to consider land at Ewell East Station as part of the reasonable alternatives.

Question 2.5: As the Council have set out, the standard method is the starting point for housing need. However, of the different options assessed within the SA, none of these looks to address the standard method requirement in full. What is the justification for this approach and in what way does it demonstrate the Council have tested all reasonable alternatives?

- 2.19 We are concerned that the current SA does not adopt a needs-based approach that is calculated to meet the identified housing need of 10,242 homes in full nor does it address unmet needs arising in neighbouring authorities.
- 2.20 All growth scenarios presented in Tables 5.2 are based on ‘supply components’, and none will meet the LHN in full. With over 50% of the Borough’s housing needs remaining unmet, we do not consider the SA capable of achieving its objectives to *“provide a sustainable level of housing growth”* and *“to meet future housing needs.”*⁶

⁵ Paragraph: 001 Reference ID: 11-001-20190722

⁶ SD05a, paragraph 2.5.1.

- 2.21 The approach of the SA is not justified when viewed in the context of the Borough's persistent record of housing under-delivery. The Council has never achieved even 50% of its Housing Delivery Test target since records began⁷, with an average result of no more than 37.6%. Applying this historic delivery rate to the already suppressed housing target that the SA pursues, this only serves to further exacerbate the Borough's housing deficit. It is significant that the delivery of affordable housing in the Borough fell to just 2 units in the last monitoring year⁸.
- 2.22 Paragraph 5.2.34 of the SA seeks to justify the decision not to adopt the LHN figures, which states:
- "There is also a strategic case for testing at least one growth scenario where the housing requirement is set at LHN. However, it remains the case that it is very difficult to envisage any reasonable way of doing so. This is despite acute affordable housing needs locally and the fact that unmet housing need is already a major issue within Surrey and the wider sub-region, with no apparent solutions (for example, the Mole Valley Inspector's Report makes no reference to any potential solutions)."*⁹
- 2.23 No evidence, however, is provided to substantiate why meeting the full, or at least maximising the capacity to meet it, will be undeliverable.
- 2.24 While paragraph 5.2.34 relies upon the Mole Valley Inspector's Report, as identified above, the Mole Valley Local Plan was found sound on the basis of delivering approximately 75% of its Local Housing Need, despite 75% of its area being designated as Green Belt. It could therefore be established that the circumstances faced in Mole Valley were more constrained. Even if this is not considered to be the case, it is clear that more can be done to address the housing need on sustainable and deliverable sites.
- 2.25 The fact the Council has proposed the allocation of Green Belt sites confirms that it (correctly) understands that the Green Belt is not in itself an absolute barrier to maximising opportunities to meet identified housing needs.
- 2.26 The SA seeks to justify its reduced housing figures by relying on paragraph 11(b) of the NPPF, which states: "... strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a **strong reason** for restricting the overall scale, type or distribution of development in the plan area; or ii. **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits**, when assessed against the policies in this Framework taken as a whole." (our emphasis)
- 2.27 Attention should be drawn to the fact that both limbs of paragraph 11(b) constitutes a high bar assessment, for which neither the SA nor the Plan provides a sufficiently robust evidence base to justify

⁷ Housing Delivery Test results for Epsom and Ewell are shown as below:

2018 - 38%

2019 - 49%

2020 - 34%

2021 - 35%

2022 - 32%

2023 - 38%

⁸ [Authority Monitoring Report](#) 2024/25, p8.

⁹. Paragraph 5.2.9 of SA

a 'strong reason' or to demonstrate 'significant and demonstrable harm' that would outweigh the benefits of meeting the Borough's housing needs.

- 2.28 There are fleeting references to various constraints at paragraph 5.2.10, which falls significantly short of the rigorous and robust assessment required to satisfy the tests set out in paragraph 11(b) of the NPPF.
- 2.29 As neighbouring authorities highlighted, despite material changes in national policy, the SA fails to consider or explore the opportunity for the release of Grey Belt land to address the Borough's substantial unmet housing need.
- 2.30 Instead, in absence of relevant evidence base, paragraph 5.2.10 simply states that *'there is very limited land within the Green Belt that is brownfield, previously developed, or otherwise makes only a limited contribution to the purposes of the Green Belt'*. None of the Green Belt studies, including the Green Belt Topic Paper (TP02, December 2024) and Green Belt Study Update (GB01, November 2024), consider Grey Belt release as a reasonable alternative, despite the concept having been introduced prior to the publication of both reports through the consultation of the NPPF between July and September 2024.
- 2.31 PPG makes clear that *"Sustainability appraisal should be applied as an iterative process informing the development of the plan."*¹⁰ Given the significant unmet housing needs identified in all growth scenarios, alongside the revised national approach to Grey Belt, there is no evidence in the SA that any of the underlying assumptions or options have been revisited, reconsidered, or readjusted.
- 2.32 As mentioned above, Epsom has a lower proportion of Green Belt coverage compared to neighbouring authorities, which indicates a greater potential for identifying areas of lower-quality Green Belt within, or adjacent to, urban areas in Epsom than in surrounding authorities. The omission of the Priest Hill site, which is acknowledged by the Council's planning team as potential Grey Belt land, further underscores the failure of the SA to be positively prepared and to assess all reasonable alternatives.

Question 2.6: To what extent has the SA informed the content of the Plan?

- 2.33 We do not consider the Plan has fairly reflected the findings of the SA. When setting the housing requirement, the Plan adopts a figure of 4,700 homes, which is lower than the Preferred Option (4,914 homes).
- 2.34 While paragraph 3.33 of the Plan justifies this difference as providing *"a degree of flexibility over the Local Plan period should sites fail to be delivered,"* there is no rationale for further suppressing the target below the Preferred Option figure. On the contrary, given the Borough's historic under-delivery, we maintain that a substantial buffer should be applied above the Preferred Option to adequately address this issue.
- 2.35 Further, we do not consider the Preferred Option has accurately reflected the findings of the SA. For example, paragraph 7.2.1 states that:

"higher growth scenarios (i.e. Scenarios 6 and 7), whilst the effect would be to close the gap to LHN / reduce unmet housing need, a key issue is clearly impacts to the Green Belt with resulting

¹⁰ Paragraph: 001 Reference ID: 11-001-20190722

implications for wide-ranging objectives (including landscape, biodiversity and communities), plus there would be a need to allocate some sites in less accessible locations.”

- 2.36 The Council's conclusions above contradict the findings of the SA and therefore mischaracterises individual sites within Scenario 7, specifically:
- ‘accessibility’ – Paragraph 6.2.2 confirms the Priest Hill site *“would be well-placed to deliver a small retail facility or parade of shops, plus this is a highly accessible location”*;
 - ‘biodiversity’ – Paragraph 6.4.2 confirms the Priest Hill site *“links very closely to Priest Hill SNCI. However, there is little reason to suggest that development would lead to major issues”*;
 - ‘Transport’ – Paragraph 6.13.1 makes clear that the Priest Hill site *“has excellent train connectivity and also good access to bus services along the A24”*;
 - ‘Landscape’ – Paragraph 6.12.1 confirms that the Priest Hill site *“has limited Green Belt and landscape sensitivity, once account is taken of the SNCI to the south and the NESCOT playing pitches to the west being protected over the long term”*.
- 2.37 Paragraph 7.2.1 of the SA further states: *“There is also a specific issue with one of the sites that features only under Scenario 7, namely Land adjacent to Ewell East Station, specifically that only parts of the site are in the control of the freeholder, meaning that the availability and deliverability of the wider site cannot be confirmed at the current time (and it is important that the Local Plan only commits to delivering sites where availability is confirmed).”*
- 2.38 There appears to have been a lack of regard being given to the submissions of Coldunell to clarify the position in October 2023 and in our Regulation 19 representations in February 2025.
- 2.39 There are factual inaccuracies at paragraph 6.12.1 that *“However, the Green Belt Study Update (2024) flags some visual sensitivity and also strikes the following note of caution: “The site is an awkward shape and may make it vulnerable to further infill of adjacent parcels. It is also noted that there is an adjacent historic bridleway”*.
- 2.40 The above is at odds with the findings of the 2024 study, which makes clear that *“The landscape sensitivity is low and visual sensitivity is low”* for Priest Hill. Notably, none of the references to ‘awkward shape,’ ‘further infill of adjacent parcels,’ or ‘historic bridleway’ form part of the LAA assessment criteria. In contrary, the neighbouring SNCI provides a natural barrier to development to the south, effectively limiting any proposals to a ‘rounding off’ of the built-up fingers of Ewell.

Question 2.7: Is the distribution of housing growth supported by the SA and will it deliver an appropriate pattern of housing growth?

- 2.41 The simple answer is no.
- 2.42 The preferred option ‘Growth Scenario 5’ concentrates solely on allocations to the west, which fails to consider a more balanced and evenly distributed development pattern across the wider area. This approach falls short of meeting the NPPF requirement under paragraph 11(a) to *‘promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure.’*
- 2.43 Given the significant unmet housing need across the Borough, we consider there is insufficient justification for concentrating growth solely in the western part of the Borough. As such, further allocations elsewhere, in particular those at transport hubs, such as the Priest Hill site, should be supported to deliver a more sustainable pattern of housing growth.

Table 5.2: The reasonable alternative growth scenarios (with constant supply components greyed-out)

Sub area	Site(s)	1	2	3	4	5	6	7
Completions, permissions and windfall		1,918	1,918	1,918	1,918	1,918	1,918	1,918
Urban area	Non Green Belt	1,416	1,416	1,416	1,416	1,416	1,416	1,416
West	Hospital Green Belt PDL	200	200	200	200	200	200	200
West	Chantilly Way	30	30	30	30	30	30	30
West	Hook Road Arena		100	100	100	100	100	100
South	COL017, COL019, COL023			310			310	310
East	Downs Farm				675		675	675
West	Horton Farm					1,250	1,250	1,250
West	Noble Park ext. / Hollywood L.							150
Northeast	Land adj. Ewell East Station							350
Total housing supply		3,564	3,664	3,974	4,339	4,914	5,899	6,399

Question 2.8: Overall, does the SA demonstrate that the submitted plan is justified and would it comprise an appropriate strategy, considering the reasonable alternatives?

- 2.44 As noted above, we do not consider the SA to have demonstrated that the submitted plan is justified. It fails to demonstrate that all reasonable alternatives have been fully considered, as an iterative process as required by national policies to revisit and reconsider their assumptions and options, particularly in respect of the opportunities for releasing land for development that meets the Grey Belt definition, including Priest Hill, which is both essential and necessary to maximise opportunities to meet the identified housing need.
- 2.45 As such, with over 50% unmet housing need, the SA has failed to deliver an appropriate strategy in meeting the required housing need and promote a sustainable pattern of development as by required by the NPPF paragraph 11.

