

## **RE: DRAFT GREATER NOTTINGHAM STRATEGIC PLAN**

### **SECOND NOTE ADVISING**

#### **1. Introductory Matters**

- 1.1 I would refer to my previous advice note dated 26<sup>th</sup> June 2026, which was appended to the Hearing Statement for Matter 1 submitted by those instructing me on behalf of the Consortium. Following submission of that Statement to the Examination a typographic error was noted and the Programme Officer was notified that the word ‘not’ was erroneously omitted from paragraph 3.1.2 of the advice.
- 1.2 More substantively, late on 13<sup>th</sup> July 2026, the day before the Examination Hearings an opinion was provided by Mr Reuben Taylor KC, which sought to respond to my previous advice in respect of the Transitional Arrangements in NPPFR 2024. That opinion did not respond to the issues of whether the plan was (or was not a Joint Local Plan), nor whether the Key Cities uplift of 35% should be applied when undertaking a standard methodology assessment for Nottingham based on the 2023 NPPF.
- 1.3 At the Examination hearing on 14<sup>th</sup> July 2026 I provided an oral response to the opinion of Mr Taylor KC, to which officers of the Councils responded. However, mindful that only a very short time had been available to digest his opinion, the Inspectors requested that my oral response was condensed to writing. This note should be read together with the relevant parts of my First Note Advising, especially in section 3.3.
- 1.4 That said, Mr Taylor KC refers in his opinion to my Note Advising comprising ‘submissions’, with respect that is incorrect. The Note Advising comprises my professional view on the issues, just as I assume that Mr Taylor’s opinion contains his professional view on the Transitional Arrangements.

## **2. Additional Submissions**

### **2.1 Statutory Context**

2.1.2 It is important to contextualise the disagreement between myself and Mr Taylor KC, within the statutory context:

(i) Planning and Compulsory Purchase Act 2024:

- section 20(2) prohibits a LPA from submitting a plan unless they have positively concluded that the submission plan: (a) meets the statutory requirements; and (b) is a document which is “ready for examination”
- section 20(5)(b) makes it clear that this means capable of being found to be ‘sound’.
- that is a substantive decision as to whether or not to submit the plan at that point, it is not an inevitability that simply follows on from the plan reaching regulation 19 stage.

(ii) New Plan Making Regime

- There are two new statutory instruments made under the LURA 2026 which replace the 2012 Local Planning (England) Regs 2012, which were formally revoked on 26<sup>th</sup> March 2026, namely:
- the Levelling-up and Regeneration Act 2023 (Commencement No. 11 and Saving and Transitional Provisions) Regulations 2026 (‘the Commencement Regulations’); &
- the Town and Country Planning (Local Planning) (England) Regulations 2026
- The transitional arrangements for plan making are found in Regulation 91 of the 2026 Local Planning Regs & the Schedule entitled “Transitional Provisions”
- That schedule identifies the circumstance in which the obligations to start to prepare a new style Local Plan arise, and where a plan can continue to be prepared under the ‘old’ pre-LURA process under the Commencement Regulations (paragraph 4 of Schedule 1).
- importantly a key determinant under paragraph 3 of the Schedule of the Local Planning Regulations 2026 is whether all of the criteria in that paragraph have been met, including:

“(a) the authority submitted a development plan document for examination under Part 2 of the Act, as it had effect immediately before 25th March 2026<sup>1</sup>, on or before 12th March 2025, ...,” and

“(c) the development plan document, as submitted for examination, established a draft housing requirement for the area that would meet less than 80% of the authority’s local housing need figure, calculated using the standard method as published by the Secretary of State on 12th December 2024” (emphasis added)

2.1.3 From the above statutory context the following propositions arise:

- (i) the decision as to whether or not to submit a plan is a substantive decision made by a LPA in accordance with s.20(5), and the test is whether or not the plan is ‘sound’ at the point of submission, not an earlier point in time;
- (ii) Parliament has concluded in approving the transitional arrangements in the 2026 Local Planning Regulations that it is a consequential determinant of whether a plan proceeds under the former system or under the LURA (either immediately or rapidly, whether or not the plan *as submitted* would meet 80% of the LHN or not. The language of paragraph 3 of the Schedule of the 2026 Regulations does not admit of the interpretation that it is referring to the comparator being the LHN as calculated at regulation 19 stage (of the now defunct 2012 Regulations).
- (iii) it is profoundly unlikely that the Secretary of State would have intended that the assessment of when that comparison would be different for the purposes of the transitional arrangements in the Regulations than for the transitional arrangements in the NPPF.

2.2 Response to Mr Taylor KC’s opinion

2.2.1 I have the highest regard for Mr Taylor KC, but I profoundly disagree with his interpretation of the transitional arrangements in para 234a of NPPF, and its footnote.

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<sup>1</sup> Ie as the 2004 Act was before amendment by the LURA

2.2.2 Firstly, I have set my primary reasoning on the interpretation of those paragraphs in my First Note Advising at section 3.3. Which I do not repeat in this note. The difference of opinion between myself and Mr Taylor can be summarised thus:

- (i) for my part one has to focus upon the words used in NPPF, and what words are not used:
  - para 234(a) does not say that the comparison is with the LHN at either 12<sup>th</sup> March 2025 or at the point of submission;
  - unlike the draft version of NPPF 2024, the footnote to para 234(a) does not say that the comparator is with the LHN as calculated in the regulation 19 version of the plan;
  - a judgment therefore has to be formed as to the most sensible interpretation of when the LHN should be calculated in para 234a, to achieve the Governments objectives<sup>2</sup>.
- (ii) for Mr Taylor he considers that:
  - His interpretation is obvious from the words used, and the contrary interpretation would add unwarranted complications to the interpretation of policy to no good reason;
  - Considerable emphasis should be placed upon the use of the possessive word “its” in the paragraph;
  - If one looks at the draft version of NPPF then it is clear that this is what Government intended;
  - If one looks at the Government’s Response to the consultation upon draft NPPF dated Feb 2025 in respect of a plan submitted on or before 12<sup>th</sup> March 2025, but which doesn’t meet the 80% target of the LHN calculated as at that date then Government provides clear advice what such a LPA should do, based upon a LHN calculation which can only have been intended to be undertaken as at 12<sup>th</sup> March 2025.

2.2.3 Responding to each of Mr Taylor’s justifications in turn.

2.2.4 Firstly, unlike the Schedule of the 2026 Regulations – the NPPF does not make the point explicit as to whether one is considering the LHN at the point of the Regulation

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<sup>2</sup> To that end there is nothing between myself and Mr Taylor in his assessment of relevant caselaw.

19 draft or the submission of the plan. What should have been known to a LPA publishing a regulation 19 plan on or before 12<sup>th</sup> March is:

- (i) that the LHN would be revisited later in the year, and most likely would be before the plan could be submitted (the PPG tells one that if there were any doubt – see my First Note Advising paragraph 3.3.4);
- (ii) that it would need to make a substantive decision (not least in the light of consultation upon the regulation 19 plan) whether or not to submit the plan – which means a prior substantive decision as to whether the plan was or was not sound (or could be made sound) at the point of submission;
- (iii) that the policy objective of Government in drafting the transitional arrangements was not to allow LPA's to tweak their requirements to just meet 80% and get in just under the wire to enable them to under-deliver against the LHN (2024) for a number of years; but rather to “...*strikes the right balance between allowing authorities a reasonable period of time to respond to the changes whilst increasing housing numbers as soon as possible*.”<sup>3</sup>

2.2.5 In deciding to promote a plan at Regulation 19 stage whose requirement just met 80% of the LHN calculated at that time, Broxtowe and Rushcliffe were taking the risk that their LHN would go not up before submission or that the comparator assessment of the LHN would be 12<sup>th</sup> March 2025 and that either way they would fall within the transitional arrangements. That is gaming the system not seeking to “increase housing numbers as soon as possible” – ie the objective of Government, and the policy reason for the transitional arrangements.

2.2.6 As for the emphasis upon the word “its” within the paragraph, that plainly is referencing the requirement set out in the regulation 19 plan, it is not telling one anything about whether the LHN to compare it with is the one as at regulation 19 or submission.

2.2.7 Mr Taylor's point about looking at the draft version of NPPF, and its differently drafted footnote, as well as the Government's response to consultation ought to have been caveated with something of a pinch of salt. When interpreting policy, the Courts

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<sup>3</sup> Penultimate paragraph of Government's response to NPPF 2024 consultation (emphasis added)

have been very clear that the decision maker ought to be cautious about conducting ‘forensic archaeology’ into the history of and background information about policy, rather than interpreting policy on its face.

- 2.2.8 In *Phides Estates (Overseas) Limited v SSCLG* at [44] Lindblom LJ summarised the correct approach to take to the interpretation of planning policy. This emphasises that policy should be interpreted objectively in accordance with the language used and in their proper context. He then goes on at paragraph 56 to set out how it is inappropriate to resort to the use of extrinsic documents to interpret policy, policy should be interpreted on the basis of the document in which it is found. In short what counts is the words used in the policy itself and certainly not what might be revealed by going into the background as to how the policy was formulated, unless there is clear ambiguity that might be resolved thereby. Evocatively Lindblom J. strongly disapproved of what he characterised as ‘forensic archaeology’ to determine a policy’s meaning rather than just looking at the words which are used.
- 2.2.9 In any event, the Government’s response does not endorse the LHN comparator being either at submission or Regulation 19 publication, and a previous draft of NPPF doesn’t help interpreting a current one.
- 2.2.10 As for Mr Taylors’ point that if the comparator was at submission and not regulation 19 that a LPA would be unsure under which version of NPPF its plan would be examined – the point has no force, because it forgets that the decision as to whether or not to submit is a substantive one, made at the point of submission. Thus, in this case, at the point of submission, it would still have been open to Broxtowe and Rushcliffe to submit their plans whilst falling short of the 80% figure. The consequences would then have been that this examination would be judging the soundness of those plans against the higher 2024 LHN, and no doubt the Councils would be sent away to look for sites to meet the deficit. However, that is not an absurd outcome – it is one which is precisely in line with the objective of Government to meet housing needs as soon as possible.
- 2.2.11 Were the mathematics to have been reversed (ie that their requirement was only 76% of the LHN calculated at the point of publication but 80% of the LHN calculated at the point of submission) there can be little doubt that these Council’s would be

arguing for my rather than Mr Taylor's interpretation – since it would facilitate an examination against the 2023 and not the 2024 NPPF (in line with the flow diagram in the transitional arrangements section of the Government's response to draft NPPF under Q103).

2.2.12 There is sense to such an outcome, as within a LPA where the LHN is rising the need to meet needs sooner is greater, whereas in a LPA where the LHN is falling or static then there may be sense in examining the plan under the former less onerous version of NPPF, when assessing the Government's objective of "increasing housing numbers as soon as possible".

2.2.13 Finally neither my First Note Advising nor Mr Taylor's opinion grapples with the question as to which interpretation is consistent with the transitional arrangements contained within the Byzantine Commencement Regulations 2026 and particularly the Local Planning Regulations 2026. Respectfully for all of the confection of Mr Taylor's conclusions, his interpretation would mean that there would be a different assessment as to whether one fell within the transitional arrangements in paragraph 234a from the Regulations, which cannot have been the intention of Parliament.

2.2.14 I would only add a correction to my observations made orally in the examination, which is that for Broxtowe, and Rushcliffe the fact that their requirement falls below 80% of their LHN calculated at the point of submission, means that their plans do fall within all of the four criteria of paragraph 3 of the Schedule within the 2026 Regulations which has ramifications for the timescales within which the Councils need to prepare new style plans under the LURA; a point which was alluded to during the Examination by Mr Inspector Davies, but which transcends the scope of this note.

### **3. Conclusions**

4.2 I advise accordingly. Should anything else arise please do not hesitate to contact me further.

Kings Chambers

Manchester, Birmingham, Leeds, London



*Paul G Tucker KC*

*14<sup>th</sup> July 2026*

