



Lee Rowley MP  
Minister of State for Housing, Planning  
and Building Safety  
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**Erewash Borough Council**

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DH/DR/12/23

14 December 2023

Dear Lee Rowley MP

**s.27 Planning and Compulsory Purchase Act 2004 intervention in the Erewash Borough Council Local Plan**

I write further to your letter dated 30 November 2023 which directed Erewash Borough Council (the Council) not to take any steps to withdraw the local plan from examination.

As you will be aware, on 30 November 2023 the Council held an extraordinary council meeting and the sole item on the agenda was the Council's Core Strategy. This meeting was convened but a motion was immediately put forward to adjourn in order to seek legal advice regarding your sudden decision to intervene. The meeting remains adjourned.

Your decision to intervene has been made without any reference to us and your letter arrived unannounced only four hours before the Council meeting.

The Council have received advice from our KC (William Upton KC) and we are still considering the option of a Judicial Review. We wish to keep our options open at this time, as this is the first opportunity that the Council has had to set out its views.

In your letter you specifically asked the Council *'to set out by 14 December 2023 any exceptional circumstances that should be taken into account when the Secretary of State considers the next steps to take in relation to the Direction and the emerging plan'*.

You referred to *"the Local Plan intervention criteria in the 2017 White Paper "Fixing our broken housing market"*". The 2017 White Paper does not have a specific section on



intervention so we assume that you are referring to paragraphs A9 to A11 of the section on the "Proposals from Chapter One". It is stated that decisions on intervention would be informed by the wider planning context in each area and that authorities would have an opportunity to put forward any exceptional circumstances before action was taken. This would have been an opportunity to explain why intervention at the proposed time would be unreasonable.

Having considered this you should have asked for exceptional circumstances before any action was considered by your Department. There has effectively been a failure to follow due process to ensure that your Department had the relevant information to enable you and the Secretary of State to address the relevant criteria set out within the Government's own intervention criteria.

As a Council we should have been given the chance to explain why, on the basis of exceptional circumstances, intervention at this time is unreasonable. We cannot understand why this early engagement was overlooked. Your Department was clearly aware of the Council's meeting, and would have had time, in this era of emails and internet access, to ask for submissions even at that stage. The papers for the Council meeting were publicly available, in the normal way, five working days before the meeting.

You state in your letter that you have been trying to engage with officers, without success, since May 2023. Our Head of Planning declined invitations for a meeting from your Department following our local government elections in May 2023, and further declined a request for a meeting from your Department at the time the agenda for our Extraordinary Council Meeting was published. However, you have at no time explained what the purpose of such meetings would have been, or how they could have influenced your decision to serve this direction. As a consequence, we fail to see the relevance of those requests to your justification for serving this direction.

### **Response to Intervention Letter**

I do consider that further discussion is necessary about the Government's analysis of the Council's situation and the conclusions that appear to have been drawn regarding the identified criteria.

The least progress in plan-making has been made: You state that "*more than 69% of English Councils have adopted a local plan since Erewash (March 2014). If the Council withdraws the plan, it would be within the 30% of the oldest adopted local plans in the country*".

In response it should be noted that the one of the reasons why it is older than most is because the Council was quicker to proceed and adopt its previous plan than were



neighbouring authorities. It should also be noted that this Council is still ahead in the process of updating its current plan than other neighbouring authorities. It would therefore appear that you have perversely chosen to issue a direction on Erewash Borough Council because we are at a more advanced stage of development planning than our neighbours.

We further note that our plan is amongst the 30% oldest adopted plans in the country. We would appreciate clarification on what measures you have taken in respect to those many other local planning authorities with older adopted plans.

Policies in plans have not been kept up to date: You state that *“the adopted local plan is now over nine years old, and it is reasonable to assume, given the age of the plan, that a number of the policies it contains will not be up to date”*.

In response it is accepted that the strategic housing policies of the local plan are not up to date. We would again appreciate clarification on how many other local planning authorities do not have up to date strategic housing policies, since that can arise when a local plan is five years old.

There was higher housing pressure: You state that *“the Council is not performing well against the Housing Delivery Test which requires enough houses to come forward within the Borough to adequately meet local housing need. In withdrawing the draft plan, the Council would be further failing to plan for and deliver the homes that people need”*.

In response it is accepted that the Council is not performing well against the housing delivery test. However, it is noted that the Secretary of State has published proposals to remove the housing delivery test. We would appreciate clarification of the status and progress of those proposals.

Intervention would have the greatest impact in accelerating Local Plan production: You state that *“considering the average time taken to prepare a local plan is seven years and we are approaching the phased introduction of a new planning system, withdrawing the plan at this stage will lead to significant further delay whilst a new plan is prepared. The council should proceed with its current plan”*.

In response this is a generic point made and there has been a failure to understand or take account of local circumstances. In the Council’s report as part of the Extraordinary Council agenda sets out the detail regarding the length of time needed to implement a replacement plan. This does not appear to have been taken into consideration by your Department.

Wider Planning context: You state *“delays caused by withdrawing the Local Plan could significantly slow down Neighbourhood Plan progress in the area and could also disincentivize other communities from coming forward to start the process”*.



In response there are two made Neighbourhood Plans in Erewash (Little Eaton and Breadsall), and one emerging plan (Sandiacre). The Council is unaware of any other proposals for neighbourhood plans, or of any effect on the progress or otherwise of the Core Strategy Review on the emergence of such proposals. If anything, by not allocating specific housing numbers to the parishes, and by proactively protecting the village centres of those parishes through new village centre designations, the emerging Core Strategy Review itself acts as a disincentive to neighbourhood Plan production. Government's reasoning in this respect therefore does not appear to be based on any evidence.

### **Exceptional Circumstances**

What constitutes an 'exceptional circumstance' cannot, by its very nature, be defined fully in advance. But it does mean that even if it has been decided that the four intervention criteria are met, there will be occasions when intervention will be unreasonable as the Local Planning Authority can show it is in exceptional circumstances. It is considered that our own unusual circumstances arising from the local elections in May 2023 do give rise to exceptional circumstances. The Council has Borough elections every four years, which took place in May 2023 and resulted in a change of administration. It should be noted that the previous administration had been in control for 20 years.

One key tenant of the manifesto that this administration was elected on, was to review the local plan for a number of reasons. Firstly, the reason of fairness, we need to ensure that a local plan delivers the services that local communities need and is proportionate to that need, that ensures one community is not severely and adversely impacted over another. The Core Strategy Review currently places the majority of potential development within one area without addressing the additional problems this would create, especially in respect of traffic into the major urban center, and local amenities that would be needed such as schools, dentists or further NHS Provision.

Secondly, distribution, all communities need homes, and there have been areas that have not seen any development even on a small scale for more than several years, this has meant a lack of social housing within those areas, and has forced some younger people to relocate from areas they have spent their entire lives due to affordability, or lack of access to social housing. We want to work with those local communities to ensure we have homes of the right type, in the right places, with the right amenities where people need them, in order that everyone has access to the right home, ensuring that the overall strategy is fair, sustainable with an equitable distribution.

I would also like to note that a local planning authority has the power to withdraw a local plan at any time before a local development document is adopted under section 23 (s.22 of the 2004 Act). It is accepted that withdrawing the Core Strategy Review at this stage

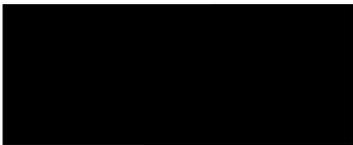


can cause additional delay and expense of preparing a replacement plan but I would respectfully point out that this should rest with us and not central government. If as a Council we wish to incur additional costs to prepare a replacement plan which is right for our communities then this is for us to decide, in line with central government advice which is promoting decision making and engagement at a local level.

I trust the above clearly shows that the Council has both a reasoned and justified response to the four criteria set out in your intervention letter and has been able to demonstrate exceptional circumstances in any event.

I look forward to hearing from you at your earliest convenience.

Yours sincerely



**Councillor James Dawson**  
**Leader of Erewash Borough Council**