

BIRMINGHAM DEVELOPMENT PLAN EXAMINATION

CLARIFICATION QUESTIONS ON MATTER E:

**GREEN BELT POLICY, THE LANGLEY SUSTAINABLE
URBAN EXTENSION [SUE] ALLOCATION AND THE
PEDDIMORE EMPLOYMENT ALLOCATION (BDP
POLICIES TP10 & GA5-6)**

**STATEMENT ON BEHALF OF BIRMINGHAM CITY
COUNCIL**

Question 1

Section A of the representation from Project Fields (S Webb), concerning the BCC consultation procedures.

- 1.1 There has been extensive public consultation throughout the process of preparing the Birmingham Development Plan. Details of this are set out in the Consultation Statement (HTY14) submitted with the Plan. The approach taken meets the legal requirements of Town and Country Planning (Local Planning)(England) Regulations 2012, the requirements of the Council's Statement of Community Involvement (2008) and is considered compliant with the NPPF.

Availability of documents and consultation period

- 1.2 All of the proposed submission documents were made available for inspection in accordance with the Town and Country Planning (Local Planning)(England) Regulations 2012. An 8 week period of consultation was provided from the 6th January to 3rd March 2014, which is more than the 6 weeks referred to in section 113(4) of the Act that applies in regard to a local plan.
- 1.3 The documents specifically referred to by Project Fields (H8, H10, H11, TA5-8, TA21-29 and IMP01) are updates to existing evidence and further detailed assessments which were made available as soon as practicable. Some of the documents were created at the specific request of the Inspector.
- 1.4 The SHLAA 2012 continues to be available for inspection on the City Council's website. The SHLAA is a 'live' technical document which has been updated in 2013 and 2014. These versions are also available

Proposed Modifications

The Council has proposed Modifications to the Plan following the Pre-submission consultation, and these were submitted alongside the Plan. However there has been no change in relation to the number of dwellings proposed for the Langley SUE.

Consultation Database

- 1.5 In the Council's view the consultation has been extensive and has met all the statutory requirements. The Council maintains a database of organisations and individuals who have expressed a wish to be consulted on planning policies or whom the Council considers should be consulted. Currently this list contains over 2,500 entries.
- 1.6 In relation to consultation with health bodies, a wide range of health stakeholders have been consulted including the Birmingham CrossCity Clinical Commissioning Group. The Heart of England NHS Foundation Trust was on the list, but under its previous name of the Birmingham Heartlands and Solihull NHS Foundation Trust, which operated from the same offices. This error was corrected before the most recent consultation.

Comments form and representations

- 1.7 The consultation process allowed an opportunity for concerns about the Plan to be expressed and the comments form asked what changes (if any) should be made to the Plan to address concerns. In line with normal practice, the form explained that the purpose of the examination process is to examine the soundness and legal compliance of the Plan, and it invited respondents to reflect this in their responses.
- 1.8 The City Council has taken into account all the representations made and have provided a response to the issues raised. See submission documents SUB9-11.

Statement of Community Involvement (SCI) (2008)

- 1.9 The City Council is required to prepare an SCI under the Planning and Compulsory Purchase Act 2004. The SCI was adopted in 2008 and sets out how the Council will seek to engage with residents, businesses and other organisations in decision-making on planning policy documents and planning applications. Although there have been changes to the planning system since 2008, the process for preparing Development Plan Documents has not changed fundamentally. The City Council's approach to engagement in the SCI is considered to be consistent with the NPPF.

Consultation method

- 1.10 Section 4 of the Consultation Statement (HTY14) summarises the steps taken to publicise and encourage responses to the Pre-Submission Plan.
- 1.11 In addition, focussed consultation was undertaken in Sutton Coldfield to address concerns regarding Policies GA5 and GA6. Several sessions were held, including on weekends, in Walmley and Sutton Coldfield libraries to provide advice and assistance to people wishing to respond. There were presentations to all the Sutton Coldfield Ward Committees and attendance of other locally organised meetings.
- 1.12 Council officers have had an ongoing dialogue with Project Fields and have met with members of the group on a number of occasions.

Question 2

The representations from RPS (on behalf of SCCT & BVGS) under Question 4(a), sub-heading Sustainability Appraisal (paras 4 to 20), concerning legal compliance of the BCC with the SEA Directive.

Introduction

- 2.1 RPS seem to be the only party to make this claim. The substantive complaint could only be that RPS is unaware of the reasons why the Council prefer Area C over Area B as a Green Belt release and are thereby prejudiced. That suggestion, however, is not credible as these reasons have been publicly available in the Birmingham Development Plan Green Belt Assessment 2013 (PG1) for the last 12 months. Indeed, RPS para 9 suggests that RPS and its clients are in fact well aware of these reasons. It is suggested that the points made are

simply forensic ones designed to place an obstacle in BCC's path as it seeks to achieve the release of Green Belt land at Area C to help in meeting Birmingham's housing needs. In any event, the forensic points are rejected: see below.

The Role of SA and SEA in the plan-making process

- 2.2 By section 19(5) of the Planning and Compulsory Purchase Act 2004, a local planning authority must carry out an appraisal of the sustainability of the proposals (inter alia) in its development plan (a "SA"). NPPF para.165 notes that a SA which meets the requirements of the European Directive on SEA should be an integral part of the plan preparation process and should consider all the likely significant effects on the environment, economic and social factors. SA is an iterative process informing the development of a local plan.
- 2.3 SEA is a subset of SA, but is governed by a specific EU Directive and domestic Regulations which implement its provisions. As the ODPM/DoE's Practical Guide to the SEA Directive (September 2005) reminded¹: "It is not the purpose of the SEA to decide the alternative to be chosen for the plan or programme. This is the role of the decision-makers who have to make the choices on the plan or programme to be adopted. The SEA simply provides information on the relative environmental performance of alternatives..."
- 2.4 Annex 1 of the Directive sets out the list of information to be included in the environmental report. This includes inter alia at (h) "an outline of the reasons for selecting the alternatives dealt with" (emphasis added), ie the alternatives which have been assessed.
- 2.5 It is not sensible or practical to republish with each stage of the SA all previous iterations or supporting documents. This is clear from the Forest Heath case [2011] EWHC 606 (Admin) at para 15, which notes that a report may rely upon "earlier material" so long as it is "identifiable in that report" and that "there is no need to repeat large amounts of data..."
- 2.5 Article 9 of the SEA Directive "Information on the Decision" requires a further level of information, namely "the reasons for choosing the plan or programme as adopted". However, this stage has yet to be reached.

SA documents accompanying the BDP

- 2.5 Inevitably, given the length of the iterative process, there is a suite of documents charting the SA for the BDP over the past 8 years. The latest of these is dated June 2014 (SUB3), although this was only produced for the benefit of the Secretary of State and simply reflects the fact that the content of the BDP did not change significantly following the Pre-Submission public consultation in December 2013. The SA documents which supported the Pre-Submission Draft BDP when it was subject to public consultation in December 2013 were the SA Report of the Pre-Submission BDP October 2013 (HTY17) and the SA of Proposed Site Allocations September 2013 (SUB5). Both documents also refer to the Green Belt Options Assessment 2013 (PG1) as providing a "separate appraisal of their performance as suitable

¹ Para.5.B.7

housing sites” and note that this was used “to help inform the appraisal of these sites”: see p.29 of HTY17 and pp.17 and A5 of SUB5.

- 2.6 The evolution of the options assessed in the SEA is addressed in both June 2014 (SUB3) and October 2013 (HTY17) at pp.27-29. It does not seem to be suggested by RPS that Option B (which their clients are arguing should be allocated for housing) was not assessed. Indeed, it (with two sub-options) is expressly identified here as “Area B: West of the M6 Toll”. This area is assessed at pp.A15-A20 of SUB5. The main reasons for not pursuing Area B are set out at p.75 of PG1 (RPS para.11).
- 2.7 Accordingly, it is not accepted that the SUB3 in June 2014 “contains no reference to the reasonable alternative of Area B or Withy Hill Farm or the reasons why this alternative, alongside the wider area of Area B has not been selected/discounted” (RPS para.8). As noted above, SUB3 expressly refers to Area B on p.28 and pp.28-29 direct the reader to the places where full assessment and discussion of Option B may be found. The same references were present in HTY17 in October 2013 (RPS para.11).
- 2.8 The criticisms of the LPA in the Forest Heath case, which turned on its own facts, simply do not apply here (RPS para.10).
- 2.9 Page (x) of SUB3 is not referring to Article 1(h) but to the express Article 9 requirements (see para.2.5 above) (RPS paras.12 and 16).
- 2.10 All 6,000 consultation responses on the Pre-Submission consultation have been reviewed by BCC and they have all been submitted to the Secretary of State. Some have led to BCC proposing modifications to the plan. The fact that that BCC does not consider that Option B should be reconsidered at this stage and has not regurgitated the reasons for this judgment or amended its SA does not render the SA unlawful (RPS para.12-15). These matters were all clear and properly referenced in the SA Reports supporting the Pre-Submission consultation (see para 2.6 above). The Examination is a further opportunity for the views of RPS’s clients to be taken into account.
- 2.11 Nothing has been “withheld” (RPS para.19). All relevant documents have been submitted and are before the examination. These forensic points are without merit.