Birmingham Development Plan 2031

Examination Hearing Statement on behalf of Richborough Estates

Matter F: the duty to co-operate in respect of strategic matters

September 2014

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Client
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LPA reference
Birmingham Development Plan 2031 Examination

15 September 2014

Executive Summary

1. This hearing statement is submitted by Turley on behalf of Richborough Estates in respect of their objections to the Birmingham Development Plan 2031 with reference to land at Fox Hill, Roughley.

2. It addresses Matter F: the duty to co-operate in respect of strategic matters due to be heard on Thursday 30 October (Day 6).

3. The statement is set out as a response to the Inspector's Issues and Questions for Discussion as set out in the Programme for Hearing Sessions (version 1) dated 20 August 2014.

Main Issue: Have the Council complied with the requirements of section 33A of the Planning and Compulsory Purchase Act 2004?

4. Richborough Estates considers that the Council has not complied with the duty to co-operate. This was covered in section 3 of our March 2014 representations.

5. Section 33A specifically requires the outcome of the duty to be "maximising the effectiveness" of the plan-making process. It is unfortunate that the Inspector's question does not reference this critical and fundamental requirement of the statutory obligation, since it is the key part of the test which the plan has to pass.

6. The PPG says that "co-operation should produce effective and deliverable policies on strategic cross boundary matters". This chimes with one of the tests of soundness in the NPPF para 182, which is whether a plan will be "effective".

7. For us, the question is not whether BCC has engaged actively and on an ongoing basis in Q1, but whether the outcome is an effective strategy, and indeed the most effective strategy, for meeting the needs of the city (Q2).

8. The PPG says that "In assessing whether the Local Plan is effective, the Inspector will assess whether it is deliverable within the timescale set by the Local Plan and if it demonstrates effective joint working to meet cross boundary strategic priorities". BCC cannot show that its unmet needs will be delivered within the plan period.

9. The PPG goes on to say "Inspectors testing compliance with the duty at examination will assess the outcomes of cooperation and not just whether local planning authorities have approached others". "Effective cooperation" it continues "is likely to require sustained joint working with concrete actions and outcomes". It is the outcomes of co-operation on which we focus.

10. In this respect, the Council has produced an updated DTC Statement (June 2014, Document Ref. DC2) since our March representations and we comment on this below.

1. Q1: in the preparation of the plan, have the Council engaged constructively, actively and on an ongoing basis with all those bodies with whom they are required to co-operate, in respect of (a) strategic housing matters….?

1.1 The Council's position is that they have fully engaged the DTC with the outcome being the GBSLEP Joint Strategic Housing Needs Study, which will determine the needs of the HMA, and the GBSLEP Spatial Plan for Recovery and Growth (SPRG) which will determine distribution to adjoining authorities triggering review of their local plans.

1.2 Our position is that the likely shortfall has been known since 2012, leading to the consultation on Green Belt Options (HTY11), which acknowledged a likely 30,000 shortfall and considered a range of 5-10,000 dwellings on land currently designated Green Belt in NE Birmingham. Despite the BDP strategy to "*accommodate as much of the City's housing requirement as possible within the boundary*", BCC has chosen to release land for only 5,000, and leaves it to the GBSLEP work to deal with the unmet need that currently stands at 33,000.

1.3 The GBSLEP work also began in 2012 with the launch of a Spatial Planning Framework, which was the subject of consultation at the end of 2013, with the Joint Housing Study commissioned in Autumn 2013 with a projected completion date of February 2014.

1.4 The fact that neither exercise is complete by September 2014 at the time of the BDP examination means that the Council cannot demonstrate concrete outcomes in terms of:

- Having explored all the options, particularly in respect of the sustainability of the options outside Birmingham to be assessed in the SPRG
- Specific agreements on the quantity, location and timing of unmet housing need, particularly as the PPG makes it clear that LPAs are not obliged through the DTC to accept unmet need
- Sufficient certainty that an effective strategy will be in place to deliver housing to meet Birmingham's needs by 2031
- Any means of knowing, in the absence of knowledge as to where the unmet housing need will be met, whether or not it will be met sustainably.

Birmingham's Approach

1.5 For the past 2 years, BCC has been attending examinations of other plans in the sub-region to explain progress on determining its needs. Most recently, this was in respect of the joint Bromsgrove and Redditch plans. The Inspector's interim conclusions dated 17 July 2014 conclude on the DTC at paragraph 6:

Bromsgrove District has accepted that it will accommodate additional housing to meet the conurbation's needs when its scale and apportionment have been quantified…… a mechanism has been put in place within both Plans to implement this approach. To my mind, this represents an 'outcome' of the co-operation process in the sense required by the national PPG.

1.6 The mechanism referred to is a commitment to a Local Plan Review including a Green Belt Review before 2023. The Inspector went on to say at para 57:

…it would be clearly premature to initiate a Green Belt Boundary Review until there is greater certainty about full scale of housing provision that will be required. It therefore appears prudent to delay the process until the GBSLEP Joint Strategic Housing Needs Study is concluded. I note that broadly similar conclusions have been reached by Inspectors examining some of the other Local Plans that are potentially affected, including those at North Warwickshire, Lichfield and Cannock Chase Districts.

1.7 This pattern has been followed across the HMA. However, Solihull's December 2013 adopted plan was successfully challenged in April 2014 (Case No CO/17668/2013), although this succeeded on housing need and Green Belt rather than the DTC. However, the judgement concludes at para 107 that: "*..it is impossible to say whether or not there was any breach of the duty to co-operate*", principally because Solihull did not know what its objectively assessed needs were.

1.8 This decision is being challenged in the Court of Appeal by Solihull MBC.

1.9 Nevertheless, both Bromsgrove and Solihull are helpful in clarifying two points:

- Firstly, Birmingham is the one LPA that cannot rely on the argument that meeting the city's needs can be delayed until the joint study is complete, as its plan's purpose is to fully assess its own needs. The surrounding LPAs have been entitled to say they cannot meet Birmingham's needs (on top of their own) pending the joint study, but this approach does not work in reverse for the city itself. Birmingham cannot be entitled to say, at its own examination, that it should press ahead without its full needs having been identified, as it is required to do, and must show how they will be met (NPPF paragraph 47)

- Secondly, the Solihull judgement shows that where an LPA does not know what its OAN are, it is not possible for an Inspector to make a planning judgement as to whether or not the DTC has been properly engaged.

1.10 For this examination, our Matter A submission shows that the Council is aware that its housing need is greater than the 2012 SHMA (Document Ref. H2) suggests, based on more recent demographic information which is being assessed through the Joint Study, and this could be as much as 112,000.

1.11 Just because Birmingham cannot accommodate this level of housing does not mean that it can defer identifying its full OAN any more than it can defer showing how that need is to be met, but that is exactly what the Council is doing.

1.12 The proposition in the DTC Statement (June 2014, Document Ref. DC2) is summed up in paragraph 4.29 which states:

While a significant potential under-provision of housing in Birmingham has emerged in the last few years, the view has been taken that this is a matter that can be effectively handled through subsequent reviews of plans once the Strategic Housing Needs Study is complete, subject to this point being acknowledged by the relevant LPA and where possible reflected in the wording of the plan. The City Council has successfully taken this approach thus far in relation to the Bromsgrove, Redditch, Solihull, North Warwickshire, Lichfield and Tamworth plans… (our underlining)

1.13 Unlike the authorities named, this is Birmingham's problem and they are required to identify a solution, showing how the city will meet its full housing needs in the HMA (NPPF paragraph 47). They have not done so.

The GBSLEP mechanism

1.14 The mechanism which exists to resolve this problem is proposed to work as follows:

- The Joint Study will determine the level and distribution of housing across the HMA including Birmingham (by Autumn 2014)
- A way forward will be agreed by the GBSLEP Leaders
- This will be "considered as part of the work" of the emerging SPRG
- This will presumably be the subject of further public consultation
- The SPRG, as an informal plan, will be approved by the GBSLEP Supervisory Board and endorsed by the relevant authorities
- Any proposals to meet the shortfall outside of the GBSLEP area, including within the Black Country LEP authorities, will need to be the subject of separate formal agreement (see Supervisory Board report, July 2014, Document Ref. EXAM2E)

1.15 It is unlikely that this process will be concluded until well into 2015. However, we contend that it could and should have been completed by now.

1.16 Appendix 22 of the Council's DTC Statement (June 2014, Document Ref. DC2) is the invitation to tender (ITT) for the GBSLEP study from September 2013. The contract terms specified in the Schedule at section 1.3 show appointment of consultant in October 2013 and final report sign off following three stages of work by Friday 7 February 2014. That would have been a month prior to the deadline for representations to the Pre-Submission Consultation BDP.

1.17 Appendix 21 contains minutes of the GBSLEP Planning Sub-Group meetings held since April 2011. We will show with reference to meeting minutes from August 2011 onwards that the need for a spatial planning framework to assess "options as to how to promote and accommodate growth" and latterly "key studies/evidence gathering which were critical to the development of a Framework" were discussed and could have been progressed quicker to bring this matter to a head in time for this examination.

1.18 The preliminary Joint Study outcome was first shared at a workshop presentation on 31 July 2014 but only the PBA slides have been made available. Stage 3, which explores spatial options for meeting the likely shortfall, was due to take 1 month to complete but latest indications are that this will be complete by November, not in time for the BDP examination.

1.19 In our view, it was vital for this work to be completed on time and shared earlier in order for all participants, including the other affected LPAs, to fully comprehend the scale of need and the sustainability of possible solutions.

1.20 Therefore, whilst co-operation has been active and ongoing, it has not achieved the most effective strategy to meet the needs of the BDP area in full. The requirements of the Duty to Co-operate have not therefore been met.

2. Q2: Insofar as the plan relies on other local planning authorities (LPAs) to deliver a proportion of its housing requirement, what mechanisms exist to ensure that the other LPAs will comply with this approach?

2.1 The GBSLEP joint study is the mechanism the Council and other LPAs rely on to determine the proportion and future distribution of the city's housing requirement.

2.2 It has been relied upon by others to demonstrate to their plan examinations that they are unable to accommodate Birmingham's needs until they are known and the mechanism for their distribution is agreed. Insofar as the 'mechanism' is a commitment to early review of their plans, this has by and large satisfied the DTC in these cases.

2.3 As we have said, this does not work in reverse for Birmingham. It is the Council's responsibility to assess its full OAN and how they are to be met, including whether the solution is more sustainable or acceptable in Green Belt terms than other options of meeting more within its own boundaries.

2.4 The DTC Statement (June 2014, Document Ref. DC2) helpfully colour codes all the LPAs in a table to show to what extent agreement has been reached.

2.5 There are 8 LPAs where fully signed agreements are in place. These are:

- Bromsgrove – which has agreed to commit to an early review of its plan by 2023 in the event that the GBSLEP work concludes that provision within Bromsgrove is required. Further discussions have been taking place during the course of their examination (ref the Inspector's interim conclusions). There is no mention or indication of the likely scale and whether it could be accommodated.

- East Staffordshire – although some distance from Birmingham, the area will be covered by the GBSLEP study and the potential scale of growth will be dealt with through the SPRG

- North Warwickshire – the district has not previously been identified to take Birmingham overspill, but has agreed to refer to the joint work and a future review of its plan, and has agreed to co-operate with the GBSLEP study

- Redditch – there is no realistic potential to meet any of Birmingham's needs, as some of Redditch's needs are being met in Bromsgrove, and some wording to that effect has been included in the draft plan

- Stratford-upon-Avon – not originally identified as one of the LPAs likely to be directly affected, but the recently submitted local plan notes the overlap in housing market areas and commits to future working if necessary

- Tamworth – it is unlikely to be able to help address Birmingham's shortfalls due to its own tight boundaries. Its plan was withdrawn and a new plan is being progressed. There is a commitment to joint working via the GBSLEP

- Telford and Wrekin – as a former New Town, there is capacity for growth and whilst direct migration from Birmingham is historically low, there may be an opportunity working through the Black Country to harness surplus capacity

- Wyre Forest – has an adopted plan and is participating in the GBSLEP study and recognises its outcome will be dealt with through a future local plan review

2.6 5 of the 8 are districts with a limited historic relationship with Birmingham and other than Telford, which appears willing to explore opportunities positively, there is no commitment to any scale or locations where housing needs might be met. To the contrary, both Tamworth and Bromsgrove record concerns about the potential impact on their Green Belt, and all bar Telford could have implications for Green Belt which are not known.

2.7 Only Staffordshire has declined to reach agreement, and other LPAs have agreements waiting to be finalised, but only one (the four Black Country districts) has indicated any figure that might be offered - 3,100 - which was "provisionally identified" before the BCLEP agreed to co-operate with the Joint Study. A DTC statement is in preparation but not available and we understand the BCLEP will consider the outcome of the PBA work in mid-September, so this may be available for the examination.

2.8 As we pointed out in our March 2014 reps at para 3.9, the Inspector at Coventry's Core Strategy in 2013 concluded that the mechanism for dealing with the city's housing shortfall was "*no more than an agreement to seek to agree in the future*" and that there was "*no commitment*" from those authorities to assist in remedying the shortfall.

2.9 Birmingham is in a similar position save for the undertaking to carry out a joint study, but there is no greater commitment to meeting housing needs, and the consequences for Green Belt and sustainable development are presently unknown.

2.10 As the Inspector at Aylesbury Vale earlier this year concluded:

The key question is that of timing and the choice between having an adopted plan as soon as possible or a plan that, at the point of adoption, effectively resolves strategic housing issues…..

2.11 This is the choice being put before this Examination.

2.12 We do not expect Birmingham to be able to meet its full housing needs and clearly a strategic exercise is required to determine the distribution of its unmet needs to other LPAs. However, it has not fully explored options for maximising the capacity of the city, and does not have sufficient certainty from the agreements it has reached with other LPAs to pass the test of soundness in terms of the effectiveness of its own strategy.

2.13 In these circumstances, Birmingham has failed the Duty to Co-operate by failing to maximise the effectiveness of the plan-making process.

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