

**EXAMINATIONS OF THE BIRMINGHAM DEVELOPMENT PLAN -
MATTERS & ISSUES**

**THURSDAY 30TH OCTOBER 2014 : MATTER F – DUTY TO CO-OPERATE
IN RESPECT OF STRATEGIC MATTERS**

Inspector's Questions in bold text.

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

Birmingham City Council has failed to apply the stepped approach to formulating a housing strategy in a local plan as required by the NPPF and set out by Mr Justice Hickinbottom in Paragraph 73 of the Gallagher Homes Limited & Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) judgement. *“The first vital step in the process is to assess, fully and objectively, the need for market and affordable housing in a SHMA, in accordance with the requirements of Paragraph 159 of the NPPF. Only then can the other steps be taken namely :-*

- (i) considering whether there are policies in the NPPF which are consistent / inconsistent with those full needs ;*
- (ii) constraining the figure which represents the full objectively assessed needs where any adverse impacts of meeting those needs “would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole or specific policies in the NPPF indicate development should be restricted (Paragraph 14 of the NPPF) ;*
- (iii) and where the result is a constrained figure (a figure which on policy grounds is less than the full objectively assessed figure for housing need in that area) co-operating with adjoining or other near-by LPAs on the strategic matter of meeting otherwise unmet need (section 33A of the 2004 Act)”.*

Please also refer to the HBF written Hearing Statement for Matter A – Housing Need for further comments on the Council's failure to undertake an OAHN in the HMA. Therefore as stated in Paragraphs 94 and 95 of Mr Justice Hickinbottom's judgement the stepped approach outlined above *“... cannot be performed without being informed by the actual full housing need ... Nor can an assessment of whether a planning authority has complied with its duty to co-operate under Section 33A of the 2004 Act, which may be triggered by an unmet housing need in one area resulting from a shortfall between full housing need and a housing target based on policy on requirements”.*

1) 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;

For the Birmingham Development Plan to be positively prepared and effective it must be based on effective joint working on cross boundary strategic priorities including a strategy to meet in full OAHN in the HMA. As discussed above the Council has not followed the necessary stepped approach.

Recently the Inspector examining the Derbyshire Dales Local Plan found *“the Council has comprehensively failed to achieve effective cooperation ... This failure arises from the fact that the Council apparently did not recognise until shortly before submission that it needed to (1) identify its OAN, (2) detail the constraints that apply in the area, (3) assess the OAN against the constraints and (4) take all reasonable steps, starting as soon as possible, to try to get help from other authorities if the constraints meant that the OAN would not be met (our emphasis) ... This 4 step approach is an important element of positive planning outlined in the NPPF ... It is fully appreciated that the Duty is not a duty to agree. However the expectation is that authorities should make every effort to secure the necessary cooperation on strategic cross-boundary matters throughout the preparation of the local plan ... The Council argue that there is little point in seeking to get cooperation from neighbouring authorities at this late stage, especially as most are at a more advanced stage and some even have adopted plans. It may well be that the Council is right about the difficulty of getting cooperation now. This rather reinforces the conclusion that the Council failed to seek to use the Duty early enough or effectively enough (our emphasis). It is acknowledged that seeking to use the Duty now will delay the plan making process but I cannot simply ignore the requirements of the Duty legislation and national planning policy. Furthermore promoting further discussions even at this late stage may, if nothing else, serve to re-focus the minds of the authorities in the SMHA on the requirements of the Duty (our emphasis)*

. It may also serve to remind authorities with a plan in place of the advice in the Planning Practice Guidance (reference 9-020-20140306) about cooperating with an authority that is bringing forward its plan”.

Birmingham City Council’s approach that the emerging issue of its unmet housing needs is recognised and dealt with by plans well advanced in the plan making process but without stalling progress of such plans also suggests that the process was started too late. The evidence does not demonstrate on-going consideration of cross boundary issues from initial thinking. The late commissioning of new evidence such as the GB&SLEP Housing Needs Study and the fact that Part 3 work is unfinished raises an issue about the basis on which the submitted Plan had been prepared.

The mechanisms for collaborative working should have been in place earlier in the plan making process. Doubtless meetings have been held and strategic matters discussed but have appropriate conclusions been drawn and acted upon for that engagement to be considered constructive. The identified matter of unmet need arising in Birmingham city remains unresolved. The wording of supporting text in emerging Local Plans prepared by neighbouring authorities refer to this matter in very similar terms as the Coventry City Council Core Strategy for which the examining Inspector’s Report concluded that *“in my*

view the mechanism for dealing with any shortfall in housing provision amounts to no more than an agreement to seek to agree in the future (our emphasis). It simply says that, if it arises, a shortfall will be discussed with neighbouring authorities but there is no commitment from those authorities to assist in remedying the shortfall” (Paragraph 22) and “the Statement of Common Ground identifies matters of cross boundary interest it does not resolve them” (Paragraph 50).

2) 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?

The NPPG advises that a LPA should consider whether plan making activity by other authorities has an impact on planning and the Local Plan in their area, for example a revised SHMA will affect all authorities in that HMA and potentially beyond irrespective of the status or stage of development of particular Local Plans (ID 12-008-20140306). Even if a LPA has an adopted Local Plan it is still required to co-operate with a LPA that is bringing forward its Plan. Local Plans should be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements. Therefore if a LPA preparing a Local Plan provides robust evidence of an unmet housing need identified in a SHMA other LPAs in the HMA will be required to consider the implications including the need to review their housing policies.

In the emerging Local Plans of neighbouring authorities some refer to the problem of Birmingham’s unmet needs in supporting text (please refer to the attached Appendix for the wording of such supporting text). However there are no policy commitments to accommodating this unmet need. The meeting of unmet need is entirely dependent upon compliance with NPPF and NPPG.

The mechanism to trigger an early review of neighbouring plans relies upon the commissioning of further work to assess housing need and the distribution of any identified shortfall. This suggests that the evidence of the GB&SLEP Housing Needs Study will be insufficient to trigger a review of these Plans especially since it is not a SHMAA. This also questions the ability of the GB&SLEP to resolve the problem of unmet housing needs across the sub regional HMA.

The supporting texts also highlight that the problem is not resolved but delayed until later for example in Cannock Chase until the Part 2 DPD and in Redditch until the next Plan. Therefore today’s existing identified housing needs will not be met in the city (as evidenced by Policy PG1 for 51,100 additional homes between 2011 – 2031 and Policy TP28 with its back-loaded housing trajectory) nor elsewhere. To date Birmingham’s neighbouring authorities are proposing housing requirements for their own needs only as summarised below :-

- The Gallagher Homes Limited & Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) High Court judgement determined that the 11,000 dwellings between 2006 – 2028 in the Solihull Local Plan adopted in December 2013 was not based on

an objective assessment of housing need (OAHN). This policy is now remitted ;

- North Warwickshire Local Plan Main Modifications consultation (ended 21st August 2014) proposes 175 dwellings per annum between 2006 - 2028 plus 500 dwellings to satisfy unmet housing needs from Tamworth ;
- Lichfield Local Plan Main Modification consultation (ending on 20th March 2014) proposes an amended housing requirement of minimum 10,030 dwellings over 2008 – 2029 to fulfil its own housing needs and 1,000 dwellings for unmet housing needs from Tamworth and Cannock Chase. In October Examination Hearing Sessions will re-convene so the Inspector can re-consider unmet needs from Tamworth and Birmingham ;
- The Bromsgrove Local Plan Examination is suspended (to re-convene in December) whilst further work is under taken having regard to economic evidence as necessary to ensure that an OAHN is in line with NPPF and NPPG. The resultant figure may or may not be 7,000 dwellings proposed between 2011 – 2030 ;
- The Black Country Joint Core Strategy (including Sandwell, Dudley & Walsall) was adopted in 2011. It will reviewed starting in 2016. The JCS is focussed on the regeneration of its rundown urban centres with a housing requirement figure based on the former WMRSS. Paragraph 18 of the Birmingham City Council Duty to Co-operate Statement identifies that the Black Country could potentially meet 3,100 dwellings of unmet need from Birmingham which represents only 5–10% of potential unmet needs identified in the 2012 SHMA. However this proposition is subject to the outcomes of the Black Country Housing Needs Study by Peter Brett Associates, which has not yet been published.

Other emerging Plan in GB&SLEP but not adjacent to Birmingham :-

- The Tamworth Draft Local Plan (consultation ended 12th May 2014) proposes 6,250 dwellings between 2006 – 2031 of the 4,503 remaining dwellings to be delivered from 2014 onwards 2,500 dwellings are proposed in 4 SUEs, 400 dwellings in the urban area, 500 dwellings in North Warwickshire and 500 dwellings in Lichfield. Therefore there is an unmet housing need of 603 dwellings ;
- Redditch Local Plan proposes 6,400 dwellings of which 3,400 dwellings will be accommodated adjacent to Redditch but within the administrative boundaries of Bromsgrove District Council.

In conclusion Birmingham City Council has failed to secure the accommodation of its unmet needs. The Birmingham Development Plan is not based on a strategy which seeks to meet OAHN.

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APPENDIX : EXTRACTS OF SUPPORTING TEXT FROM EMERGING LOCAL PLANS OF NEIGHBOURING AUTHORITIES REFERING TO UNMET HOUSING NEEDS IN BIRMINGHAM

Cannock Chase District Council

1.8 Cannock Chase Council is a member of both the Greater Birmingham and Solihull Local Enterprise Partnership (LEP) and the Stoke-on-Trent and Staffordshire LEP and also has connections to the Black Country LEP. There is a strong commitment from the LEPs to work in a coherent way across LEP boundaries on mutual priorities. This will be key in Cannock Chase District where the economic geography is closely linked with that of the Birmingham, Solihull and the Black Country conurbation. Following discussions falling under the duty to co-operate Cannock Chase Council recognise that evidence is emerging to indicate that Birmingham will not be able to accommodate the whole of its new housing requirement for 2011-31 within its administrative boundary and that some provision will need to be made in adjoining areas to help meet Birmingham's needs. Cannock Chase Council will work collaboratively with Birmingham and other authorities, including joint commissioning of appropriate evidence to assess the emerging housing shortfall and the scale and distribution of any such requirement. In the event that the additional work identifies Cannock Chase District as a reasonable option for helping to meet the requirement, this will be addressed further as part of Local Plan Part 2.

Lichfield District Council

Main Modifications inclusion of the following new paragraph after para 4.5: Following discussions falling under the Duty to Cooperate Lichfield District Council recognises that evidence is emerging to indicate that Birmingham will not be able to accommodate the whole of its new housing requirement for 2011-31 within its administrative boundary and that some provision will need to be made in adjoining areas to help meet Birmingham's needs. Lichfield District Council will work collaboratively with Birmingham and other authorities and with GBSLEP to establish, objectively, the level of long term growth through a joint commissioning of a further housing assessment and work to establish the scale and distribution of any emerging housing shortfall. In the event that the work identifies that further provision is needed in Lichfield District, an early review of the Lichfield District Local Plan will be brought forward to address this.

North Warwickshire District Council

Main Modifications Paragraph 1.13 This Council has a proven track record in cooperating with neighbouring authorities in strategic planning matters. It commits to working collaboratively with other authorities, and in particular Birmingham and Tamworth, to objectively establish the scale and distribution of any emerging housing and employment shortfalls. In the event that work identifies a change in provision is needed in the Borough of North Warwickshire an early review of the North Warwickshire Local Plan will be brought forward to address this.

Redditch Borough Council

Original text : In particular, Redditch Borough Council and Birmingham City Council have jointly acknowledged there is strategic planning matter with regard to Birmingham being unable to accommodate all of its own housing needs. This issue will need to be dealt with during the preparation stage of the next Redditch Local Plan (i.e. the next plan period), or when a review of the development plan may be needed to consider these cross boundary matters. This will be dependent on the outcome of recently commissioned work to understand the issues, and further work on allocations for Birmingham's growth. The mechanism for dealing with this would be through the Greater Birmingham and Solihull Local Enterprise Partnership (LEP).

Proposed Modification : 1.14 In addition, Redditch has worked with other Local Authorities, which although are not directly adjacent to Redditch may have strategic matters that have implications for the preparation of the Local Plan. In particular, Redditch Borough Council and Birmingham City Council have jointly acknowledged there is strategic planning matter with regard to Birmingham being unable to accommodate all of its own housing needs. As required by the Duty to Co-operate, due consideration will be given, including through a review of the BORLP4 where appropriate, to the housing needs of another local planning authority in circumstances when it has been clearly established through collaborative working that those needs must be met through provision in Redditch. This issue will need to be dealt with during the preparation stage of the next Redditch Local Plan (i.e. the next plan period), or when a review of the development plan may be needed to consider these cross boundary matters. This will be dependent on the outcome of recently commissioned work to understand the issues, and further work on allocations for Birmingham's growth. With regard to Birmingham City Council, The mechanism for dealing with Birmingham's unmet housing needs this would be through the Greater Birmingham and Solihull Local Enterprise Partnership (LEP).

Bromsgrove District Council

Both Councils also continue to engage on Birmingham's unmet housing need which may require the identification of potential sites in Bromsgrove in the later stages of the Plan period. A housing study is currently being carried out across the whole of the Greater Birmingham and Solihull Local Enterprise Partnership area which will provide some of the evidence required for this issue.

Stratford upon Avon District Council

1.3.8 The Council wishes to meet in full its objectively assessed needs for market and affordable housing and will do so within its own boundaries. Active and ongoing discussions with neighbouring authorities, principally within Coventry and Warwickshire but also within the other housing market areas that influence the District, indicate that they too plan to meet in full the identified housing needs within their own areas. The known exception is the

city of Birmingham, where the emerging evidence indicates that identified housing needs over the period 2011-2031 will exceed capacity within the city. However, evidence being prepared across the wider Greater Birmingham and Solihull LEP area is not yet sufficiently advanced to understand to what extent, if any, there are implications for other Districts beyond the LEP area, including Stratford-on-Avon District. It is further acknowledged that the extent to which objectively assessed need for the city of Coventry will be met within the city itself is unknown. The Council will continue to work with its immediate and wider neighbours in accordance with the duty to co-operate and will therefore keep under ongoing review the need and scope to respond to new evidence. In the event of the evidence identifying that further housing provision is justified in Stratford-on-Avon, a review of the Core Strategy will be brought forward to address this.

Warwick District Council

1.22 Each of the authorities within the sub region is at a different stage in preparing their local plan or core strategy. The capacity of the other districts to deliver their housing requirement in full is therefore not known. In this context, the potential remains that one or more of these authorities will not be able to meet their housing requirement within their boundaries. Warwick District Council has therefore been working closely with the other authorities in Coventry and Warwickshire to agree a robust process to address this issue should it arise. This process has been agreed by the Coventry and Warwickshire Joint Committee. It involves three broad stages:

- ensuring a robust and up to date joint evidence base;
- agreeing a sub-regional strategy for meeting any shortfall in housing provision; and
- reviewing Local Plans where necessary.

1.23 If required, the Council is committed to an early review of its Local Plan to address any shortfall in the sub region's housing provision.

1.24 The Council and along with the other Councils in the Coventry and Warwickshire sub-region have also cooperated with Councils in neighbouring housing market areas, particularly the Birmingham area. Whilst it is not anticipated that Warwick District Council will be approached directly to accommodate any housing shortfall from the Greater Birmingham area, there is a possibility that other Councils within the Coventry and Warwickshire sub-region will be. This could have knock on effects for the District. It has therefore been agreed, that any housing shortfall arising from within the Greater Birmingham area will also be addressed using the approach described above.