

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

Examination hearing statement

On behalf of:

1. The Gilmour Family
2. Sutton Coldfield Charitable Trust &
3. Bishop Vesey's Grammar School

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

Questions:

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;

Our Part C representations set out the position in so far as the Duty to Co-operate is concerned. BCC has provided no evidence to rebut this position.

As noted on Matter A, it is apparent from the Birmingham City Council (BCC) response to the Inspector's initial questions (EXAM 2C) that the Council accepts that at present it does not know the level of the full objectively assessed needs (OAN) for the housing market area over the plan period. Thus the plan is not based on OAN for market and affordable housing in the housing market area over the plan period. In such circumstances, a recent judgment in Solihull (*Gallagher Estates Ltd v Solihull MBC* [2014] EWHC 1283 (Admin)) is relevant where at paragraph 107 Mr Justice Hickinbottom stated "*...it is impossible to say whether or not there is any breach of the duty to co-operate*", principally because Solihull did not know what its objectively assessed needs were.

As and when Stage 3 of the GBSLEP Joint Housing Study emerges and a figure for OAN is proposed (which may be higher than that included in the Submission Plan), it is the case that the BCC will not change its view i.e. the capacity within the City boundary remains the same and any higher figure may well impact on the level of provision that will need to be made to help meet Birmingham's needs in neighbouring areas.

(b) strategic employment matters;

(c) strategic retail matters;

(d) strategic matters pertaining to minerals and waste; and

(e) strategic transport and other infrastructure?

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?

At present there is no mechanism in place that is fully endorsed and approved to ensure that the 'receiving authorities' will comply with the Birmingham approach.

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.

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.

BCC's updated Duty to Co-operate Statement (June 2014) shows that whilst co-operation has been active and ongoing, it has been less constructive with fewer concrete outcomes than is appropriate for the BDP examination's consideration of the Duty to Co-operate. This is particularly important as BCC has underestimated the capacity within the City Boundary during the plan period and it does not know what its OAN is.

The BDP contains no specific mechanism to determine what proportion of Birmingham's unmet housing should be distributed to other local planning authorities' areas. There are proposals for the GBSLEP and Black Country areas but as is clear from the table included in paragraph 1.8 of our Part C Representation there are other areas e.g. Coventry & Warwickshire LEP that have been a destination for migration flows from Birmingham. At present any solution to this regional problem is unresolved.

BCC should be required to:

- To undertake further joint work with relevant adjoining authorities to ensure the duty to co-operate is properly discharged with appropriate updating of references at para 4.7 and paras 10.19-10.22 including evidence of joint working and an indication of how any shortfall in meeting objectively assessed needs will be met.
- To increase the overall amount of housing comprising Birmingham's objectively assessed needs to a figure reflecting the outcome of the joint Strategic Housing Needs Study commissioned through the GBSLEP;
- To increase the amount of housing to be accommodated within the city, in line with the aspiration in paragraph 3.27, to a figure significantly higher than the 51,100 in Policy PG1, ideally to accommodate a further 5,000 dwellings on Sustainable Urban Extensions removed from the Green Belt.