

## EXAMINATION OF THE BIRMINGHAM DEVELOPMENT PLAN 2031 [BDP] - INSPECTOR’S INTERIM FINDINGS

1. These interim findings should be read in conjunction with the covering letter to Birmingham City Council [“the Council”] which accompanies them<sup>1</sup>. They are given without prejudice to the conclusions that will appear in my report at the end of the examination. **Bold type** in the text indicates points on which further action by the Council is required.

### THE OBJECTIVE ASSESSMENT OF HOUSING NEED

#### *Background*

2. Paragraph 158 of the *National Planning Policy Framework* [NPPF] requires local planning authorities [LPAs] to ensure that their Local Plans are based on adequate, up-to-date and relevant evidence, and paragraph 159 requires them to prepare a Strategic Market Housing Assessment [SHMA] to assess their full housing needs, working with neighbouring authorities where housing market areas [HMAs] cross administrative boundaries. Paragraph 47 makes it clear that this work should identify the full, objectively assessed needs for market and affordable housing in the HMA. Further guidance on housing needs assessment is given in section 2a of the national *Planning Practice Guidance* [PPG].
3. The Council's *Strategic Housing Market Assessment 2012 (Revised January 2013)* [Examination Document EXAM H2] does not fully comply with the NPPF's requirements, in that it is principally focussed on housing need in Birmingham rather than in the housing market area as a whole. Moreover, because it was published before the PPG, its authors<sup>2</sup> were unable to take account of the guidance therein.
4. An HMA-wide *Strategic Housing Needs Study* has also been commissioned by the Greater Birmingham and Solihull Local Economic Partnership [GBSLEP] and the four Black Country local authorities [BCAs]. That study is being conducted in three stages and its Stage 2 Report [EXAM 90: *SHNS Stage 2* for short] was published in November 2014, while the hearing sessions were taking place. I invited written comments on it from participants, which I have taken into account in these interim findings.
5. In paragraph 2.5 of their Matter A statement, and at the hearing session, the Council effectively conceded that SHNS Stage 2 provides a sounder basis than their 2012 SHMA for assessing housing need in Birmingham and across the HMA over the Plan period, because it is based on more up-to-

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<sup>1</sup> The letter can be found on the BDP Examination webpage, document EXAM 131.

<sup>2</sup> Peter Brett Associates [PBA], who are also the authors of the *Strategic Housing Needs Study*.

date evidence. In general terms I share this view, but with a number of reservations which I explain below.

6. Because of these reservations, I consider that further work needs to be done in order to arrive at an objective assessment of housing need for the HMA and for Birmingham that is consistent with guidance in the NPPF and the PPG. The need for some of that further work is anticipated in a proposed work programme submitted by PBA [EXAM 109]. The matters on which I consider that the further work is needed are discussed below.
7. An alternative approach to assessing housing need, which I have also considered in reaching these interim findings, was promoted by Barton Willmore in their evidence. That evidence included a *Sub-Regional Housing Study Part 2* (February 2014) and an *Addendum* to that study (15 September 2014), provided as an Appendix to Barton Willmore’s Matter A hearing statement. (for short: *the BW Study* and *the BW Addendum*.)

#### *Definition of the housing market area*

8. Chapter 2 of SHNS Stage 2 draws the following conclusions about the Greater Birmingham HMA<sup>3</sup>: it does not correspond precisely to the study area formed by the nine GBSLEP authorities and the four BCAs; two of the GBSLEP authorities (East Staffordshire and Wyre Forest) actually lie outside the HMA; two other LPAs (South Staffordshire and North Warwickshire) lie within the HMA but outside the study area; and a third (Stratford-on-Avon) lies at the crossroads of several different HMAs including Greater Birmingham.
9. These conclusions are based on sound analysis and closely mirror the findings of section 3 of the BW Study. Accordingly, the latter takes as its assessment area the 14 LPAs that fall entirely or – in the case of Stratford-on-Avon – partly into the Greater Birmingham HMA. However, I see no difficulty in the fact that SHNS Stage 2 also considers East Staffordshire and Wyre Forest, as well as the 14 HMA authorities, as part of its overall study area. Given the basis on which the study was commissioned, that is a sensible and pragmatic position and it has no significant impact on the way in which housing needs in Birmingham and the HMA are assessed.

#### *Population and household projections*

10. The PPG advises that household projections published by DCLG should provide the starting-point estimate of overall housing need<sup>4</sup>. However, the latest available DCLG housing projections are the 2011-based interim set,

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<sup>3</sup> I use this term as shorthand for the HMA formed by 14 LPAs as described in this paragraph.

<sup>4</sup> PPG Ref 2a-015-20140306

which run only to 2021 and do not fully incorporate the findings of the 2011 Census. The previous full set of projections is 2008-based and is largely based on pre-recession trends that are unlikely fully to reflect current circumstances. In this situation I agree with the analysis in chapter 3 of SHNS Stage 2, which concludes that neither the 2011-based nor the 2008-based DCLG household projections provide a good basis for an assessment of housing need over the Plan period to 2031.

11. More recent official population projections – the 2012-based ONS sub-national projections [SNPP] – were published earlier this year, but have not yet been translated into official household projections. DCLG have, however, confirmed in an email<sup>5</sup> that they will use the same methodologies as for the 2008- and 2011-based interim projections to convert the population projections to household numbers. This confirmation suggests that DCLG’s household projections will not take account of Unattributable Population Change [UPC]<sup>6</sup> and lends support to the SHNS Stage 2 projection referred to as “ONS/PBA 2012”, which is based on the 2012-based SNPP and attempts as far as possible to mirror the process likely to be used by DCLG to derive household projections from them.
12. Nonetheless, there is a critical assumption built into ONS/PBA 2012 in respect of Household Representative Rates [HRRs]. It assumes that HRRs will follow the trend assumed in the 2011-based household projections until 2021, and then revert to the rate of change projected in the 2008-based household projections, but without regaining the actual levels projected in that 2008-based series. This is known as the “index” method of calculating HRRs, which I endorsed in my interim conclusions on Stage 1 of the South Worcestershire Development Plan examination.
13. In the BW Addendum, an alternative approach to HRRs is taken after 2021, in which the rate of change accelerates more rapidly than in the “index” method, so that by 2031 HRRs have returned to the actual levels predicted by DCLG in the 2008-based household projections. This is described by BW as the “Full Return” approach, and it largely accounts for the much higher average rate of household growth projected by BW for Birmingham compared with ONS/PBA 2012 – 5,416 dwellings per annum [dpa] and 4,317 dpa respectively – despite both projecting very similar levels of population growth<sup>7</sup>. BW claim that *a return to the 2008-based rates recently found favour* with the inspector examining the Derbyshire Dales Local Plan<sup>8</sup>, although that is not entirely clear from the evidence before me.

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<sup>5</sup> EXAM 129

<sup>6</sup> See EXAM 109, para 2i

<sup>7</sup> Sources – BW Addendum, Tables 5.1 & 5.2 and SHNS Stage 2, Tables 3.2 & 3.3.

<sup>8</sup> BW Addendum para 4.17 and Annex 3

14. Despite having found the “index” method to be appropriate in the circumstances of South Worcestershire, I would find it useful to see a more detailed explanation than is given in the material before me, of the reasons why it is considered to be appropriate in the present context of the Greater Birmingham HMA<sup>9</sup>. That explanation could also usefully include an examination of the evidence before the Derbyshire Dales inspector, which should help throw a clearer light on what his recommendation on HRRs actually means in practice.
15. Notwithstanding the position likely to be taken by DCLG, both SHNS Stage 2 and the 2012 SHMA argue that account may need to be taken of UPC when projecting future household growth, particularly in Birmingham. I would therefore welcome a further consideration of the consequences, in terms of accuracy, of excluding UPC from the projections<sup>10</sup>. (I would not expect this to require any projections to be produced over and above those already published in SHNS Stage 2.)
16. Finally on the issue of population and household projections, it may well be that the 2012-based DCLG household projections themselves are published before the further work is complete. Should that be the case I would expect relevant sections of SHNS Stage 2 and the further work to be reviewed as necessary to take full account of the new official projections.

*Employment trends, market signals and affordable housing*

17. SHNS Stage 2 itself acknowledges that it does not constitute a full SHMA, in that it does not consider certain factors that are mentioned in the NPPF and the PPG as bearing on housing need. It is intended that these will be dealt with at a more local level<sup>11</sup>. PBA’s proposed work programme [EXAM 109] draws on the PPG to identify three specific factors which require further consideration. I am satisfied with their proposals for work on *Future employment* and *Past provision and market signals*, set out in paragraphs 2ii and 2iii of EXAM 109.
18. On *Affordable housing*, I accept what is said in paragraph 2iv of EXAM 109 about the assessment of affordable housing need. However, the PPG goes on to say that the likely delivery of affordable housing should also be considered, and an increase in the total housing requirement should be considered where it could help deliver the required number of affordable homes<sup>12</sup>. This point will also need to be dealt with.

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<sup>9</sup> See paragraph 2a-016-20140306 of the PPG, which advises that adjustment may be required to reflect factors affecting local demography and household formation rates which are not captured in past trends.

<sup>10</sup> See PPG paragraph 2a-017-20140306.

<sup>11</sup> SHNS Stage 2, para 3.1

<sup>12</sup> PPG paragraph 2a-029-20140306

19. In carrying out these elements of the further work, it would be sensible to review the assessments carried out by BW, particularly in the BW Addendum which addresses many of the same issues.

*Summary of further work required on the objective assessment of housing need*

**20. These are the elements that I wish to see covered in the further work:**

- **detailed explanation of why the “index” method of HRRs is considered appropriate in the Greater Birmingham context, including a review of the recommendations of the Derbyshire Dales inspector [paras 12-14 above];**
- **further consideration of the consequences, in terms of accuracy, of excluding UPC from the household projections, particularly for the Birmingham City Council [BCC] area [para 15 above];**
- ***Future employment and Past provision and market signals* to be considered on the basis set out in paragraphs 2ii and 2iii of EXAM 109 [para 17 above];**
- ***Affordable housing* to be dealt with as set out in paragraph 2iv of EXAM 109, but the additional point referred to in paragraph 18 above also to be considered.**

21. **I accept PBA’s proposed approach of producing a supplementary report covering all these points, to sit alongside the 2012 SHMA and SHNS Stage 2. However, the supplementary report itself will need to reach clear conclusions on the objectively-assessed level of market and affordable housing need over the Plan period.**

22. While the work listed in the first two bullet points above will need to have regard to the Greater Birmingham HMA as a whole, I am content that the more local factors covered in the last two bullet points will be considered only for the BCC area. **Should the 2012-based DCLG household projections themselves be published before this further work is complete, I would expect relevant sections of SHNS Stage 2 and the further work to be reviewed as necessary.**

## **SUSTAINABILITY APPRAISAL**

### *Background*

23. The statutory requirements concerning sustainability appraisal of Local Plans are set out in European Directive 2001/42/EC [*the SEA Directive*] (transposed into English law by the *Environmental Assessment of Plans and Programmes Regulations 2004 [the 2004 Regulations]*), and in the *Planning and Compulsory Purchase Act 2004 [the 2004 Act]*. Section 19(5) of the

2004 Act requires a sustainability appraisal [SA] to be carried out of the proposals in each Local Plan. SAs covered by this provision incorporate the corresponding requirements of the SEA Directive and the 2004 Regulations. Guidance on the SA process is given in the PPG, section 11.

24. The PPG explains that the role of SA is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives<sup>13</sup>. The SA needs to compare all reasonable alternatives including the preferred approach. It should predict and evaluate the effects of the preferred approach and reasonable alternatives, and clearly identify the positive and negative effects of each alternative. All reasonable alternatives should be assessed at the same level of detail as the preferred approach. The SA should outline the reasons why the alternatives were selected, the reasons why the rejected alternatives were not taken forward, and the reasons for selecting the preferred approach in the light of the alternatives<sup>14</sup>.
25. Article 12 of the 2004 Regulations provides that an SA report (corresponding to the Environmental Report that is required by the SEA Directive and the 2004 Regulations) must identify, describe and evaluate the likely significant effects on the environment of implementing the Local Plan policies and of the reasonable alternatives.
26. During the preparation of the BDP, SA was carried out at two main stages<sup>15</sup>. An *Interim Sustainability Appraisal* report on the first stage [HTY14] was published for consultation in October 2012 alongside the BDP Options Consultation document [HTY11]. The second main stage culminated in the *Sustainability Appraisal Report of the Pre-Submission BDP* [HTY17], published in October 2013, and consulted upon alongside the Pre-Submission Version of the BDP in accordance with article 19 of the 2004 Regulations. A *Sustainability Appraisal Report of the Submission BDP* [SUB3] was published in June 2014 to accompany the submission of the BDP for examination. It is not materially different from HTY17.
27. The principal criticism of the SA process made in the representations concerns its treatment of the options for strategic development allocations in the Green Belt to the north and east of Sutton Coldfield. It is contended that neither HTY17 nor SUB3 meets the statutory requirement to provide *an outline of the reasons for selecting the alternatives dealt with* in the

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<sup>13</sup> PPG para 11-001-20140306

<sup>14</sup> PPG para 11-018-20140306

<sup>15</sup> SA was also carried out on the Birmingham Core Strategy [CS], but as the preparation of the CS was discontinued in favour of the BDP it is unnecessary to consider it here.

report<sup>16</sup>. In addition, there are some specific criticisms of the detailed assessments of Green Belt sites that are reported in SUB5. From my own assessment of the SA material I see no reason to believe that there are any other significant defects in the SA process, and so I shall focus on these criticisms.

### *Reasons for selecting alternatives*

28. The 2012 Interim SA [HTY14] tested three strategic options for development across the city: Do Nothing, ie plan for growth at the same level as in the draft Core Strategy<sup>17</sup>; Accommodate additional growth within the existing urban area; and Strategic Green Belt Release. These three options were subject to a matrix-based analysis against the 28 SA objectives identified in the *SA Scoping Report Autumn 2012 Update*<sup>18</sup>. In my view this analysis provided a reasonable explanation for the Council’s decision to reject the first two alternatives and promote the Strategic Green Belt Release option in the BDP Options Consultation document [HTY11].
29. It is important to note that the second bullet point on page 16 of HTY11 says that *a reasonable limit for any new housing on land currently designated Green Belt in North and North East Birmingham would be a range of between 5,000 to 10,000 dwellings over the plan period*. On page 19, the document makes it clear that the preferred option also envisages a 50-hectare employment site on land currently designated as Green Belt.
30. HTY11 was accompanied by a *Green Belt Options Appendix* which assessed 19 areas of Green Belt in Birmingham for their suitability to accommodate a sustainable urban extension or a 50ha employment site. 15 areas were discounted on the basis of inadequate size or significant environmental and/or physical constraints. The remaining four, to the north and east of Sutton Coldfield<sup>19</sup>, were considered against their contribution to the five purposes of the Green Belt identified in the NPPF and then against a range of environmental and other criteria. However, no attempt was made to select a preferred option.
31. Similarly, while some information on the four remaining Green Belt sites was provided in HTY14, it contained no conclusive comparative analysis. That was a reasonable position for the Interim SA to take at the time, given that its primary purpose was to assess the strategic options for development across the city as a whole.

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<sup>16</sup> See Article 5.1 & Annex I(h) of the SEA Directive, and Article 12 & Schedule 2(8) of the 2004 Regulations.

<sup>17</sup> See para 63 below.

<sup>18</sup> HTY12

<sup>19</sup> These correspond to the *land currently designated Green Belt in North and North East Birmingham* referred to in HTY11, p16.

32. I now turn to the 2013 Pre-Submission SA [HTY17]. It contains a high-level sustainability analysis of the BDP strategy, a matrix-based analysis of each BDP policy<sup>20</sup>, and a textual commentary on this analysis, including consideration of secondary, cumulative and synergistic effects, with recommendations on each group of policies.
33. At page 28, HTY17 contains a summary of the three strategic options which were the principal focus of the Interim SA [HTY14], the reasons for preferring the Strategic Green Belt Release option, and a clear reference to the Interim SA where further details can be found. To this extent, HTY17 partially complies with the statutory requirement to provide an outline of the reasons for selecting the alternatives it deals with.
34. In respect of the strategic Green Belt sites, HTY17 provides a sustainability analysis of policies GA5 and GA6, which respectively allocate land for a sustainable urban extension at Langley and an 80ha employment site at Peddimore. Crucially, however, there is in HTY17 no sustainability analysis that compares the allocated strategic sites with the other two Green Belt areas which emerged from the *Green Belt Options Appendix* to HTY11, nor is there any explanation of why the latter alternatives were not taken forward into the report or the Pre-Submission Version of the BDP. The same applies to the Submission SA of June 2014 [SUB3] which, as I have noted, is not materially different from HTY17.
35. The Council argue that this absence of analysis and explanation does not constitute a breach of the relevant statutory requirement because they are provided in the SA of Proposed Site Allocations [SUB5, September 2013] and the Council’s *Green Belt Assessment* [PG1, October 2013], and because the latter document is referred to in both HTY17 and SUB3. But I cannot agree, for the following reasons.
36. First, while it is true that SUB5 contains matrix-based assessments<sup>21</sup>, against the 28 SA objectives, of each of the four potential strategic Green Belt development areas, there is no explanation of why those assessments have led to two of the areas being discarded and the other two being taken forward as allocations in the pre-submission BDP.
37. Secondly, even if SUB5 had contained such an explanation, it is not clear on its face that it forms part of the pre-submission SA that was provided for consultation alongside the pre-submission BDP [HTY17] or the SA report submitted with the BDP for the purposes of the examination [SUB3]. It is said at paragraph 1.1 that it *contributes to the Environmental Report*

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<sup>20</sup> Set out in a more expanded format in Appendix B of the document.

<sup>21</sup> In summary form in section 3 and in an expanded format in Appendix A.



*prepared to accompany the draft Publication version of the BDP, but not that it is formally part of that report.*

38. Thirdly, the references in HTY17 and SUB3 to PG1 give no details of the assessment it contains, and so do not assist in explaining why certain alternatives were not taken forward.
39. For these reasons I find that there was a breach of the SA Directive and the 2004 Regulations, in that neither the *Sustainability Appraisal Report of the Pre-Submission BDP* [HTY17] nor the *Sustainability Appraisal Report of the Submission BDP* [SUB3] provided an outline of the reasons for selecting the alternatives dealt with in those reports.
40. I consider further that the SA process failed to follow the guidance in the PPG, in the following respects. First, while the *Green Belt Assessment* [PG1] does contain a detailed, two-stage comparative assessment of the four Green Belt areas, resulting in the rejection of Areas A and B and the selection of the Langley and Peddimore sites for allocation, it is not a sustainability appraisal as such. It assesses the four areas against the NPPF’s Green Belt purposes and a number of other criteria, but not against the SA objectives that are used in HTY17 and SUB3.
41. Secondly, there is no clear explanation in either HTY17 or SUB3 of why the potential urban extension areas were assessed on the basis that what was being sought was a single site for around 5,000 dwellings. That is a clear change from the position set out in the BDP Options Consultation document [HTY11], which referred to *a range of between 5,000 to 10,000 dwellings*<sup>22</sup>. Some reasoning to support the change in position is given on pp13-14 of PG1, but not in the SA documents themselves.
42. In these ways the SA of the BDP failed to follow the guidance in the PPG that the sustainability appraisal should predict and evaluate the effects of the preferred approach and reasonable alternatives, and that all reasonable alternatives should be assessed at the same level of detail as the option the plan-maker proposes to take forward in the Local Plan<sup>23</sup>.

#### *Detailed assessments of Green Belt sites*

43. A substantial amount of material was submitted by those promoting alternatives to the allocated Green Belt sites, seeking to demonstrate that the assessment of each of the sites in SUB5, PG1 and related evidence documents, was flawed in various detailed respects. However, with the exception of the major procedural defects that I have identified above, in

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<sup>22</sup> See para 29 above.

<sup>23</sup> See para 24 above.

most cases I find that this material demonstrates differences over the professional evaluation of the available evidence, rather than actual flaws in the analysis. That is entirely reasonable, since SA is not an objective science but relies substantially on professional judgment.

44. One exception to this general point, however, is the textual summary of the Area B1 assessment on p32 of SUB5, which the Council accepted contains an erroneous reference to landscape constraints. **That will need to be corrected in any further SA work.**
45. Moreover, notwithstanding the general point, it would be prudent, in my view, for the Council, or their consultants, to review the material submitted by the promoters of the alternative sites alongside the material previously prepared on the Council’s behalf, as part of the preparations for carrying out the further SA work outlined below. This would not require a detailed, point-by-point rebuttal of that other material, but rather the consideration of the other material as a “sense-check” on their own assessments.
46. One additional factor which it would be prudent to review would be the way in which the Green Belt areas were subdivided for the purposes of Stage 2 of the *Green Belt Assessment* [PG1], and some of the sub-divisions were then re-combined for the purposes of Stage 3. While I understand the rationale for this in the context of PG1, it may or may not necessarily be appropriate for the further SA work.

#### *Rectifying the defects in the SA*

47. Following the judgment in the *Cogent Land* case<sup>24</sup>, it is clear that, in principle, the defects in an Environmental Report may be cured by a later document. The same principle applies to any defects in the SA process.
48. In this case, I have found no significant defects in the SA process up to and including the publication of the 2012 Interim SA [HTY14]. In addition, much of the work reported in the SA of Proposed Site Allocations [SUB5], the *Green Belt Assessment* [PG1], and the other documents that fed into SUB5, is sound. The two crucial defects in the process, however, were:
  - (a) the failure to explain the reasons for the selection of the allocated Green Belt strategic sites, and the corresponding rejection of Areas A and B; and
  - (b) the failure to explain why the potential urban extension areas were assessed on the basis that what was being sought was a single site for

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<sup>24</sup> *Cogent Land LLP v Rochford DC* [2012] EWHC 2542 (Admin): see paras 124-127

around 5,000 dwellings, rather than site(s) for a range of between 5,000 to 10,000 dwellings as stated in HTY11.

49. This meant that all reasonable alternatives were not assessed at the same level of detail as the option taken forward in the submitted Local Plan. In order to rectify these defects, further SA work will need to be undertaken. I suggest that this would best be done in two stages. The first stage would compare the positive and negative effects of providing urban extension(s) for up to 10,000 dwellings, or for around 5,000 dwellings. Once the choice of one or other of those alternatives had been justified, the second stage would compare the positive and negative effects of alternative sites for the required urban extension(s) and strategic employment site (that is to say, the previously-identified areas to the north and east of Sutton Coldfield) and provide reasons for selecting one or more of the alternatives and rejecting the others.
50. I stress that in making these recommendations I am expressing no preference for any of the alternatives, nor recommending that the Council should favour any of them. Nor am I suggesting that SA should be the only basis on which decisions on the strategic allocations in the BDP are taken. My aim is solely to ensure that the SA process is carried out in full accordance with national policy guidance and with the statutory requirements. **In order to maintain the integrity of the SA process, it will be essential that those who undertake this additional SA work approach it with an open mind, and not on the basis of seeking to justify decisions previously taken.**
51. This does not mean, however, that no reference can be made to work previously carried out. Provided it is properly reviewed in the light of my findings, taking into account the specific criticisms outlined above, there is scope for much of the underlying analysis undertaken for the Council and others to feed into the fresh SA of reasonable alternatives.
52. Once the further SA work is complete, it should form the basis for an SA Report that meets all the relevant requirements of the SEA Directive and the 2004 Regulations. When complete, this should be submitted to me along with all the relevant background documents.
53. The SA Report will need to be published for public consultation<sup>25</sup>, and, depending on its outcome, the further SA work may or may not indicate the need for modifications to the BDP. Any such modifications would also need to be the subject of public consultation. I suggest that the consultation

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<sup>25</sup> In accordance with the statutory consultation requirements.

arrangements are discussed once a timescale for the further SA work has been agreed.

*Summary of further work required on sustainability appraisal*

54. **Further SA work needs to be carried out in order to ensure that all reasonable alternatives have been assessed at the same level of detail as the option taken forward in the submitted Local Plan** [paras 49-50 above].
55. **A review of the relevant material prepared previously for the Council and for those promoting alternative sites should form an input to this work, and any errors should be corrected** [paras 43-46 & 51 above].
56. **A report of the further SA work, meeting all relevant statutory requirements, should then be prepared and submitted to me, and consideration given as to whether or not the further SA work indicates the need for modifications to the BDP** [paras 52-53 above].
57. **Arrangements for public consultation on the SA report and any modifications to the BDP should be discussed once the timescale for the further SA work has been agreed** [para 53 above].

## **DUTY TO CO-OPERATE**

*Background*

58. The Council have set out, in two Duty to Co-operate statements [DC1 and DC2] and two extensive bundles of appendices, the steps they have taken in order to fulfil their duty to co-operate under section 33A of the 2004 Act. The appendices include records of correspondence and, in many cases, meetings with a wide range of bodies including 14 other LPAs, two LPA consortia<sup>26</sup>, three county councils, GBSLEP, the West Midlands Metropolitan Area Duty to Co-operate Group, West Midlands Planning Officers Group, Regional Technical Advisory Body and West Midlands Regional Aggregates Working Party.
59. The Council have sought to conclude bilateral Duty to Co-operate Agreements with the LPAs and county councils, and 10 have been signed so far<sup>27</sup>, covering 13 LPAs including the four BCAs. The Agreements each deal with 11 matters which together cover everything that could reasonably be

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<sup>26</sup> The BCAs and the three South Worcestershire Councils.

<sup>27</sup> Those with Lichfield DC [EXAM 73] and the BCAs [EXAM 122] were signed after DC2 was published.

considered as a strategic matter within the meaning of section 33A(4). The only matters on which there were substantial representations to the effect that the duty had not been met were those concerning housing need, provision and distribution.

60. Even though agreements have not been signed with all the other local authorities, I am satisfied that any outstanding disagreements on strategic matters other than housing are to do with the adequacy of evidence to support the proposals in the BDP (which will be considered in my report), rather than with any failure on the Council’s part to discharge the duty to co-operate.
61. I shall therefore focus here on strategic housing matters: assessment of housing needs, the extent to which Birmingham’s housing needs cannot be met within its own boundaries, and arrangements for the shortfall to be met elsewhere in the housing market area. As was recognised during the hearing session, any consideration of whether or not the duty to co-operate has been met must deal with both the legal requirements in respect of the duty, and its outcome in terms of the soundness of the plan.

#### *Legal requirements*

62. Section 33A(1) requires a LPA to co-operate on strategic matters with other bodies and persons in *maximising the effectiveness* of certain activities including the preparation of development plan documents. The reference to “preparation” means that any failure to meet the legal requirements of the duty cannot be rectified after the plan has been submitted for examination. Section 33A(2) further defines the duty as requiring the LPA *to engage constructively, actively and on an ongoing basis* in any process by means of which such activities are undertaken. Additional guidance on the duty is given in section 9 of the PPG.
63. The Localism Act 2011, which enacted the duty to co-operate, received royal assent in November 2011, and the NPPF was published in March 2012. In the same month, the Council commissioned the 2012 SHMA. This marked a move away from the earlier draft Core Strategy (December 2010) which proposed a much lower level of housing development than the BDP, all of which would have been met within the city. Population and household projections and early results from the 2011 Census had indicated that this approach would not reflect the NPPF’s new emphasis on meeting objectively-assessed housing need.

64. In August 2012, the Council wrote to all the other LPAs in the GBSLEP area as well as the BCAs, Coventry City Council and North Warwickshire Council, referring to all these matters and making it clear that it was likely that Birmingham would need to look to adjoining areas to accommodate some of the city’s housing requirement. The letter proposed a meeting to discuss the issues and resolve a way forward in addressing them. A number of meetings and discussions on these matters followed, and other LPAs, including South Staffordshire, Stratford-on-Avon and Telford & Wrekin were also involved in discussions.
65. One important outcome from these discussions was the commissioning by the GBSLEP of the Strategic Housing Needs Study [SHNS], Stage 2 of which has been discussed above. Following the completion of Stage 2 – an assessment of housing needs and existing capacity across the HMA – the intention is for Stage 3 to identify broad spatial options for accommodating housing growth, including housing needs arising in Birmingham that cannot be met within the city.
66. Furthermore, as a result – at least in part – of representations by the Council, so far seven LPAs within the HMA have included a commitment in their adopted or emerging Local Plans to review those plans, should there be evidence (including from the SHNS) of housing needs arising in Birmingham or the West Midlands conurbation that cannot be met within the areas in which they arise<sup>28</sup>.
67. Stage 3 of the SHNS was originally programmed for completion by February 2014, well before the BDP was submitted for examination, but in the event it is likely to be about a year beyond that date before it is finalised. At the hearing session there was criticism of the Council for having submitted the BDP before either Stage 2 or Stage 3 of the SHNS had been completed. It was argued that the Council could not be found to have complied with the legal duty to co-operate in the preparation of the plan, in circumstances where the full extent of housing needs in Birmingham and across the HMA was not known, and specific proposals for meeting Birmingham’s housing shortfall in other LPA areas had not been identified.
68. But the legal duty to co-operate is not a duty to agree, nor is it a duty to reach a particular policy outcome: instead the objective, in the present context, is to maximise the effectiveness of plan preparation in respect of the strategic matters of housing needs, provision and distribution.

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<sup>28</sup> See EXAM 83. The seven LPAs are Bromsgrove, Cannock Chase, Lichfield, North Warwickshire, Redditch, Solihull and Stratford-on-Avon. In Bromsgrove, the emerging policy states that any additional provision would be considered as part of a Green Belt review already programmed for 2023. In Cannock Chase, any additional provision would come forward through Part 2 of the Local Plan.

69. I consider that the steps taken by the Council, prior to the submission of the BDP for examination, were consistent with that objective. They sought to identify the full scale of housing needs in Birmingham through the 2012 HMA, and across the HMA through their participation in the GBSLEP’s commissioning of SHNS Stage 2. When it became clear that they could not accommodate provision to meet all Birmingham’s housing needs within the city, they held meetings and discussions with other LPAs in the HMA in order to address the issue. Through the GBSLEP, they went on to prepare a brief for Stage 3 of the SHNS, and through their representations they helped to persuade other LPAs to include commitments in their Local Plans to review those plans if this becomes necessary to address the shortfall.
70. It is true that further work needs to be done (as I have made clear earlier in this paper) to establish the full, objectively-assessed need for housing in Birmingham over the plan period. But that is a matter of soundness and it does not alter the general position, on which the Council based their plan preparations, that there will be a substantial shortfall of housing provision in the city to meet the city’s needs, and that the shortfall will need to be met by other LPAs in the HMA.
71. Drawing all these points together, I find that it would be reasonable to conclude that the Council have complied with the relevant legal requirements in respect of their duty to co-operate in the preparation of the BDP.

*Outcome of co-operation in terms of soundness*

72. Given that a large proportion of Birmingham’s housing needs cannot be met within the BCC area, the most important outcome that needs to be achieved through the duty to co-operate is a mechanism for that housing shortfall to be met through the provision of sites elsewhere in the Greater Birmingham HMA<sup>29</sup>.
73. However, it is not within my remit, as the inspector examining the Birmingham Development Plan, to specify how much land should be allocated for development in each other local authority area. That would require separate examinations of Local Plans or plan reviews for each LPA. Nor would it be consistent with the NPPF’s emphasis on the need to have up-to-date plans in place, to delay the adoption of the BDP until every other relevant council in the HMA had reviewed their Local Plan to provide for the Birmingham shortfall – a process that could take several years and would delay necessary housing development coming forward within the city itself.

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<sup>29</sup> See PPG, para 3-026-20140306

74. For these reasons I do not regard it as practical for me to recommend that the BDP should include a policy listing other local authorities in the HMA and setting out what specific share of the Birmingham housing shortfall each is required to accommodate. On the other hand, I would not be justified in recommending the BDP for adoption without being satisfied that Birmingham’s full housing needs are capable of being met over the Plan period. The question is therefore whether or not adequate arrangements have been put in place, including through the duty to co-operate, to enable this to happen.
75. The specific commitments by seven LPAs, so far, to a review of their adopted or emerging Local Plans should this be necessary in order to meet unmet housing need from Birmingham, are very important in this context. Completion of Stage 3 of the SHNS will be another important step, as it will identify specific options for meeting the shortfall and undertake sustainability appraisal of them. As the Council made clear at the hearing session, however, that will not be the end of the process. It will then be for the GBSLEP itself to assess the options and decide on a preferred option to take forward into the next iteration of its *Spatial Plan for Recovery and Growth* [SPRG]. That process is expected to be complete by the summer of 2015.
76. As I was urged to do at the hearing session, I have considered whether it would be sensible to suspend the examination until next summer, when the outcome of SHNS Stage 3 and the GBSLEP’s preferred option should be known. However, there is no guarantee that the anticipated timescale will be met, and as the process is not within the Council’s control, this could lead to an open-ended suspension of the examination.
77. Moreover, even after a preferred option has been agreed upon by the GBSLEP and included in the SPRG, it will not form part of the statutory development plan. Section 33(2)(b) of the 2004 Act requires LPAs to have regard to the activities of the GBSLEP, and thus the outcome of the SPRG process, as part of their duty to co-operate. But in order to actually provide the housing sites envisaged by the preferred option, it will still be necessary for individual LPAs to undertake reviews of their Local Plans.
78. Thus I see nothing substantial to be gained from the delay that would be involved in suspending the examination in the way that was suggested. Having said that, **I would find it helpful to consider the outcome of SHNS Stage 3 (ie, the options report) as part of my examination of the BDP.** On the timescale for Stage 3 outlined by the Council, that would not involve any delay in the examination, given the other work that I have



identified in this paper as needing to be done before I can submit my report.

79. That other work – on the objective assessment of housing needs and sustainability appraisal – will enable the scale of need arising in Birmingham, and the extent to which it can be met within the city in a manner consistent with achieving sustainable development, to be definitively established. From this, the extent of the shortfall that will need to be met by other LPAs in the HMA will also be clear. As a first step in achieving an effective mechanism for ensuring that the city’s full housing needs will be met, the shortfall will need to be included in a BDP policy as an element of the housing requirement – while making it clear that sites to meet the shortfall are to be provided within the HMA but outside the city’s boundaries.
80. Specific identification of the shortfall in an adopted BDP policy will provide evidence of the need to review the other LPAs’ plans, referred to above, that include a commitment to a review in the event that such circumstances require it. For those LPAs that have not yet made such a commitment, guidance in the NPPF and PPG nonetheless makes it clear that it is incumbent on other authorities in the HMA to work with Birmingham to meet the housing shortfall – to the extent that it is also consistent with achieving sustainable development in their own areas<sup>30</sup>.
81. The duty to co-operate is an ongoing one, and the Council will need to take an active, continuing role in ensuring that provision to meet the housing shortfall is met as early as possible, through the SHNS Stage 3 and SPRG process, through representations on emerging Local Plans and plan reviews, and through further meetings, discussions and formal agreements with other LPAs. I recognise that it will take time for the necessary plan reviews to come forward so that sites are allocated to meet the Birmingham shortfall. But on the evidence before me, I see no other way of proceeding that would achieve a faster result.
82. The BDP will also need to set out a mechanism for monitoring the provision made by other LPAs towards Birmingham’s identified housing shortfall. Alongside this, it will need to set out the circumstances in which an early review of the BDP would become necessary. This will involve identifying the expected rate of progress towards achieving provision by other LPAs to meet the shortfall, and the triggers that would require an early review to be brought forward should that rate of progress not be achieved<sup>31</sup>.

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<sup>30</sup> See, in particular, NPPF paragraphs 14, 47 & 179, and PPG para 3-026-20140306.

<sup>31</sup> These provisions would sensibly sit alongside the similar provisions I recommended during the hearing sessions for an early review of the BDP, should development within the city not come forward as planned.

83. Provided that all this is done, my view is that the BDP will include mechanisms to ensure, as far as is reasonably possible, that Birmingham's full housing needs are capable of being met over the plan period. Thus the duty to co-operate will have achieved a satisfactory outcome in terms of soundness.

*Summary of further work required arising from the duty to co-operate*

**84. I would like the Council to bring forward proposed modifications to the BDP to address the following points:**

- **inclusion of the shortfall in a BDP policy as an element of the housing requirement [para 79 above];**
- **inclusion of mechanisms for monitoring provision of land by other LPAs to meet the shortfall, and for an early review of the BDP should the expected rate of progress in this regard not be met (para 82 above);**
- **a commitment by the Council to an active, continuing role in ensuring that provision to meet the housing shortfall is met (para 81 above).**

Roger Clews  
Inspector  
5 January 2015