
STATEMENT SUBMITTED ON BEHALF OF ROSCONN STRATEGIC LAND (36)

1. LEGAL COMPLIANCE AND FUTURE PLAN REVIEW

- b) Is the Plan and its preparation compliant with the statutory Duty to Co-operate (DTC) with prescribed bodies regarding cross-boundary strategic matters, including housing requirements in particular?
- c) Does Policy S1 of the Plan, with the MM1 proposed by the Council, make appropriate, justified, and effective provision in current circumstances for early review of the Plan to take account of the conclusions, yet to be published, of the joint Housing and Employment Needs Assessment (HEDNA) and /or other research?

Duty to Cooperate

The Duty to Cooperate (DTC), introduced by the Localism Act 2011, requires the Council to engage “*constructively, actively and on an on-going basis to maximise the effectiveness of Local and Marine Plan preparation in the context of strategic cross boundary matters*” (NPPG). The NPPF requires (para 181) that authorities “*demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts*”. The demonstration of effective cooperation in reality means a *positive outcome* to these strategic planning discussions, even if agreement is not secured on all issues. Compliance with the duty to cooperate is central to ensure that a Council delivers sustainable development (NPPF paras 150-151) and meets its full objectively assessed needs for market and affordable housing in the HMA (NPPF para 47).

The Council has not prepared a Plan that is compliant with the DTC in terms of the housing requirement proposed in Policy S1. It is apparent that the Council have sought to engage with the other Local Authorities in the HMA (the “HMA Authorities”) during the preparation of the Plan, and indeed following its submission. However, it is also clear that there has not yet been a positive outcome to that engagement that will ensure that (market and affordable) housing needs in the HMA, identified in an up to date objective assessment, will be properly identified and then effectively provided for.

The Duty to Cooperate Paper (September 2016) (LP/14) sets out the Council’s engagement with the HMA Authorities and the Leicester and Leicestershire Local Economic Partnership (LLEP) in the preparation of the Employment Land Study and 2014 SHMA, which led to the signing of the 2014 Memorandum of Understanding (MOU). It also refers to the more recent preparation of the HMA wide Housing and Economic Development Needs Assessment (HEDNA) to identify an up to date and policy off assessment of housing and employment development needs for the HMA and the individual constituent authorities in the periods to 2031 and 2036. It highlights that once the HEDNA is concluded the intention is to agree a new MOU between the HMA Authorities, and for it to inform the preparation of the emerging Strategic Growth Plan that will guide growth across the HMA.

In relation to the “outcomes” of the engagement undertaken in relation future housing needs, the Duty to Cooperate Paper states that it has not been possible to reach formal agreement with the other HMA Authorities at the point of submission of the Local Plan. Indeed, in response to the Publication Local Plan consultation, Oadby and Wigston Borough Council, Charnwood Borough

Council, Leicester City Council and Hinckley and Bosworth Borough Council all objected or raised serious concerns regarding Policy S1 and NWLDC's intention to progress its Plan in advance of the findings of the HEDNA and associated MOU. Notably Leicester City Council stated that it *"cannot support the Local Plan in advance of the HEDNA report. At this time, there remains uncertainty over overall levels of housing and employment needs for the HMA and how the overall needs will be distributed across the HMA."* That statement is presumably made in the knowledge that there will be a degree of unmet need arising in Leicester in the plan period that will need to be accommodated elsewhere in the HMA.

Clearly, therefore, the Council has promoted the plan in advance of a critical part of the exercise of cooperation being completed and at this point in time it cannot demonstrate **effective** joint working on cross boundary strategic housing matters, and consequently, the Plan and its preparation is not compliant with the DTC. This plan has been submitted precipitously therefore, whereas even a short delay would enable the content of the HEDNA to be publicly known and the relevant authorities to at least attempt to agree a further **up to date** MOU.

Submission of an Unsound Plan

As the NPPG confirms, the DTC is not a duty to agree, but the circumstances of the failure to agree needs to be carefully considered. Here it is not the case of a single other authority not cooperating (the scenario set out in the NPPG), it is this Council itself which is being uncooperative in the face of the concerns of the other HMA Authorities that have been repeatedly made to them through the plan preparation process. Those concerns are self evident and obvious and are shared by very many objectors.

The NPPG also highlights that local planning authorities should make every effort to secure the cooperation of the strategic cross boundary matters before they submit their local plans for examination. The Council has plainly not done so.

It is apparent from the Local Plan Advisory Committee Report dated 18th April 2016, the Cabinet Report dated 3rd May, and the Council report dated 28th June that sought authority to publish the Local Plan, all highlight that the Council were intent to press ahead regardless of the concerns that were widely expressed throughout the process by the other HMA Authorities and the development industry, and a recognition of the risk it was taking in terms of a suspension of the Local Plan examination if it was concluded that there is a failure to comply with the DTC and that the Plan is not sound.

The Council states that they decided to progress because of a concern that a delay in the preparation of the HEDNA and agreement of a new MoU would prevent the Council from responding to the Government's imperative to have an adopted Plan in place at the earliest opportunity. However, the submission of a Plan that is patently unsound will never achieve that, and the Council will have to continue to defend its position at appeals. What the Government requires is adoption of a justified, effective and positively prepared plan that is consistent with national policy and, therefore, facilitates the delivery of sustainable development (NPPF para 150-151).

Indeed, it is apparent from those reports, and the Local Plan submission letter (LP/20) dated 4th October, that the underlying reasons for deciding to proceed are actually the risk of Government intervention and a loss of future New Homes Bonus receipts. However, these concerns cannot reasonably be considered to outweigh the imperative to provide an appropriate policy framework that guides future development in the District to the great benefit of its existing and future communities.

The HEDNA

The concerns of the delay that the HEDNA would cause are over-stated. The Duty to Cooperate Paper (LP/14) states that there is no agreed date by which the HEDNA and proposed MOU will be completed. That is a disingenuous portrayal of the position. At the point of the submission of the Local Plan, the findings of the HEDNA were expected imminently (October/November). It is understood that the HMA Authorities were in receipt of a full draft shortly after submission, but have asked for some further technical work to be undertaken before it is finalised (no indication of what additional works is required or why has been given). The latest indication given is that it will now be available in January.

The HEDNA, and potentially the MoU, will therefore, still be finalised prior to the anticipated adoption of the Plan (even if it is not suspended) meaning that the Plan would in effect immediately be out of date. That will create great uncertainty going forward as to how much development should take place and where (e.g. the HEDNA conclusions would need to be considered in the Council's 5 year land supply calculations).

The short delay in the finalisation of the HEDNA is frustrating, but it is of course very important that the HEDNA is a comprehensive, robust and objective assessment of development needs across the HMA and within the individual authority areas, particularly given the shortcomings of the existing evidence base on which the Local Plan is based.

Existing Evidence Base

The NPPF requires (para 47) local planning authorities use their evidence base to ensure that their Local Plan meets the "*full objectively assessed needs for market and affordable housing in the housing market area*" and (para 159) "*should prepare a Strategic Housing Market Assessment to assess their full housing needs working with neighbouring authorities where housing market areas cross administrative boundaries*". However, the housing requirement set out in Policy S1 is not supported by an up to date and robust evidence base that demonstrates that the scale and distribution of housing proposed will meet both the future needs of the District and the wider HMA.

RSL's Position Statement in relation to Matter 3 sets out their fundamental concerns in this respect. Notably that findings of the 2014 SHMA have been found to be "policy on" in an appeal decision in Oadby and Wigston Borough that was the subject of subsequent High Court and Court of Appeal judgements and upheld. It has now also been conclusively found to be out of date in recent appeal decisions in the District, notably including the Greenhill Road, Coalville appeal decision [EX/13].

The Council itself has acknowledged the shortcomings of the SHMA. Consequently it commissioned the preparation of the Review of Housing Requirements (2011-2031). However, that Review still does not provide a comprehensive, robust and up to date evidence base on which the housing requirements established by Policy S1 can be based. It is not based on the 2014-based household projections for England (published on 12th July 2016) that indicate an increase in the base annual demographic need figure for North West Leicestershire, and crucially the assessment only relates to the District not the wider HMA. Indeed, para 7.27 of the Review document itself acknowledges that the housing need figures identified in it will be reviewed as part of the on-going preparation of the HEDNA.

Remedy by Review?

A Joint Statement by HMA Authorities has prepared and agreed by the Strategic Planning Group of the HMA Authorities at their meeting on 27th October 2016, following agreement at the MOU

Working Group on 14th October 2014. This details agreement that those HMA Authorities seeking to progress their Local Plans in advance of the HEDNA and revised MOU being completed, will include appropriate trigger mechanisms within their Plan to initiate a partial/full review. However, the status of the Joint Statement, and whether it has now been signed by all parties, is currently unknown.

Notwithstanding that, proposed Main Modification 1 seeks to address the concerns that have been raised, at the outset of the plan by strengthening the Council's commitment to a future review of the Plan. However, a commitment to a review mechanism in Policy S1 is an inappropriate and ineffective response in these circumstances. Here, the matters in question are critical to the soundness of the Plan from its outset and such fundamental matters must be addressed before the Local Plan is adopted, rather waiting to an as yet undetermined future point. Such a "commitment" cannot be enforced if the Council decide, for whatever reason, not to honour the commitment in the policy (e.g. a failure to agree a new MOU that addresses unmet need arising elsewhere).

The situation here closely reflects experience elsewhere, such as the West Oxfordshire Local Plan where the Inspector raised fundamental concerns in relation to the soundness of that Plan in relation to the housing requirements, unmet needs and the DTC, and consequently, suspended its Examination. West Oxfordshire District Council have now recently consulted on the Main Modifications to the Local Plan to address those matters, and the Examination is due to resume early next year. Another example being Cherwell District Council who promoted a submission plan knowing that it was based upon an out of date SHMA - resulting in a suspension of the examination and a direction to take the new SHMA position into account by main modifications. This Plan similarly relies on a fundamentally flawed evidence base, which will be remedied imminently by the conclusion of the HEDNA. A short delay, will allow the distribution of the development needs to be understood and then agreed ensuring that the unmet needs that are likely to arise in the city in the plan period are appropriately provided for elsewhere in the HMA in accordance with the requirements of the NPPF.

The correspondence with Brandon Lewis MP [EX/07 & EX/08] refers to avoiding an **unnecessary** delay, but here a short delay is **necessary** in order to address these fundamental matters and ensure that the Plan is sound at the point of adoption. A failure to do so will only result in the identified housing needs not being met within the plan period, and that will have dire socio-economic consequences for the residents and workers in the District and wider HMA.

Rosconn Strategic Land's Position

Rosconn's position, therefore, remains as set out in their objections. That is Policy S1 is not based on robust and up-to-date evidence as required by the NPPF, and fails to address the development needs of the District and any implications stemming from the wider HMA or vice versa. With the key findings of the HEDNA anticipated to become available shortly (and already known to the Council confidentially), by not awaiting this evidence, seeking to reach an agreement between the authorities subsequent to that, and then providing for that established need in the Plan to ensure that the needs will be met in full across the HMA, the Council has failed to comply with the DTC and the plan is fundamentally unsound.

The submission of the Local Plan was, therefore, precipitous and the Examination should be suspended for a short period whilst these matters are properly addressed.

To remedy the flaws in the soundness of the plan, Policy S1 should identify a housing requirement for a plan period to 2036 (to provide a 15-year time horizon). That requirement should reflect the up to date, full and objectively assessed needs for housing and economic development within the

District and wider HMA, based on the findings of the HEDNA and a new MOU between the HMA Authorities that addresses the likely unmet need arising in Leicester. The Plan should then identify sufficient deliverable and developable supply of housing land to meet that need in sustainable locations in the District. These matters are considered in further detailed in RSL's Position Statements in relation to Examination Matters 2, 3 & 5.