



Position
Statement

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North West Leicestershire Local Plan Examination

Position Statement on behalf of
Jelson Limited

Matter 1 – Legal Compliance and
Plan Review

December 2016



Matter 1 – Legal Compliance and Future Plan Review

Duty to Co-operate

The provisions of the Duty to Co-operate (s33a of the Planning and Compulsory Purchase Act 2004) and the Government's policies on planning strategically across boundaries (NPPF paragraphs 178-181) will be well known to the Inspector. As a consequence, it is not necessary to repeat them in full here. Suffice it to say that:

- a) the Council is required under the Duty to engage constructively, actively and on an on-going basis with adjoining authorities and other bodies in respect of strategic matters that impact on the preparation of development plan documents;
- b) the Council is required under the Duty to have regard to any guidance given by the Secretary of State about how the Duty is to be complied with;
- c) it is implicit in the Government's policy on the Duty that the collaborative working that is required should generate outputs that enable the authorities to determine what their development requirements are and to determine how strategic priorities across local boundaries should be addressed;
- d) the Government's policy states that local planning authorities will be expected to demonstrate evidence of having effectively co-operated to plan for issues with cross-boundary impacts. It goes on to state that this could be by way of plans or policies prepared as part of a joint committee, a Memorandum of Understanding or a jointly prepared strategy which is presented as evidence of an agreed position; and
- e) the Government's policy states that the result of the duty should be plans that provide the land and infrastructure necessary to support current and projected future levels of development.

The Inspector will also be fully aware that councils are required to use their evidence base to ensure that their Local Plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are critical to the delivery of the housing strategy over the Plan period.

It is widely acknowledged that the Duty to Co-operate is not a duty to agree. However, for the Duty to be satisfied, the Council must have worked collaboratively with relevant

authorities and other bodies and this collaboration must have generated outputs that enable the plan to address strategic, cross-boundary issues. If the Duty is satisfied simply by authorities talking to one another, but not identifying, understanding and attempting to grapple with strategic issues, then the Duty would be a pointless provision. That cannot be the intention.

In this instance, the Council has been working collaboratively with other authorities over several years and, in the past, this has resulted in the authorities agreeing how strategic matters should be dealt with. However, the results of that collaboration are now out of date, as is the Memorandum of Understanding that was agreed on the back of it.

The Leicestershire authorities have since commissioned a fresh assessment of their housing and employment development needs but this work has not yet been completed. Accordingly, the authorities do not yet know what their housing and employment development needs are and, in reality, are still some way of having robust data in this regard (see below). As a consequence, whilst the authorities have had a dialogue and have agreed to work together to determine what the development needs of the HMA are, their work has not informed and is not capable of informing the North West Leicestershire Local Plan at this juncture. The result is a Local Plan that is not based upon up to date strategic evidence, or a strategy that considers/addresses cross-boundary issues in an appropriate way. Moreover, this is a plan that fails the four tests of soundness.

The need for plan-making to be expedited is noted and understood. However, this cannot be at the expense of good planning. Indeed, a poorly prepared Plan will not provide the stability and certainty that the Government wants and expects the plan-led system to deliver. Instead, its weaknesses will be all too apparent and will further stimulate, rather than quell, an appeal-led system of development control.

The Duty to Co-operate has not been satisfied. The Plan should be withdrawn and not re-submitted for Examination unless and until the results of the HEDNA are known, have been considered and it can be demonstrated that the plan deals properly with strategic, cross-boundary issues in accordance with the provisions of the NPPF.

Policy S1 – Plan Review

The Inspector has asked whether Policy S1 (with MM1) makes appropriate, justified and effective provision in the current circumstances for early review of the plan to take into account the conclusions, yet to be published, of the HEDNA.

Policy S1 (as amended) is not justified because it is not the most appropriate strategy when considered against reasonable alternatives. These include withdrawing the Plan and re-submitting it for Examination once the Council has a suitably robust evidence base. Policy S1 is

also not effective because there is a significant chance that HEDNA will render it out of date. It certainly won't be relevant for the life of the Plan, or anything like it. Finally, even if the Inspector concludes that the Council should be allowed to adopt the Plan in (broadly) its current form, and that the Plan should include such a policy, the Policy as drafted does not make appropriate provision for a Review. If a Policy like this is to be incorporated, it will need to contain a more specific trigger, or triggers and confirm that a review will be commenced immediately upon reaching that point. Alternatively, it should commit the Council to commencing a review within a certain period following adoption, e.g. 12 months. Insofar as any trigger is concerned, the Inspector should note that the HEDNA may not identify specific FOAN's for each of the Leicestershire authorities. It is very likely to be presented as a starting point which, under the Duty to Co-operate, the authorities will need to discuss and adjust to reflect policy, before final decisions are taken on what their objective needs and requirements are. As things stand, the policy is far too imprecise and gives the authority too much time to commence a review in circumstances where the evidence indicates that one is required.

GVA