

## BIRMINGHAM DEVELOPMENT PLAN EXAMINATION

### Examination Statement Matter F: The Duty to Cooperate in respect of strategic matters

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

**Question 1: In the preparation of the Plan, have the Council engaged constructively, actively and on an ongoing basis with all bodies with whom they are required to co-operate, in respect of**

- a) Strategic housing matters;
- b) Strategic employment matters;
- c) Strategic retail matters;
- d) Strategic matters pertaining to minerals and waste; and
- e) Strategic transport and other infrastructure?

1. **Response to 1(a):** The council has set out within its Duty to Cooperate (DtC) Statement that it has undertaken active and ongoing engagement with the bodies that they are prescribed to engage with. It has also set out how this is integrated with the wider Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) and its recently commissioned Joint Housing Study.
2. The DtC was, however, introduced in 2011 and since then the cooperation that has taken place appears to be relatively recent, rather than an ongoing basis over the period back to 2011.
3. Under the preparation of the now revoked Regional Spatial Strategy (RSS), a number of clear Housing Market Areas (HMA) were defined for the region and the evidence assembled on this basis. Since the revocation of the RSS a myriad of individual housing needs assessments, Housing Market Assessments and Strategy Housing Market Assessments have been prepared across the region and GBSLEP area. Some of these are based upon local planning authority administrative areas (Birmingham City) and claim to be strategic, whereas others seek to combine location planning authorities that were previously within multiple RSS Housing Market Areas (for example, Cannock Chase, Lichfield and Tamworth). This has led to a complex patchwork of individual housing studies all setting out that they establish the Objectively Assessed Need (OAN) for housing on the basis of paragraph 159 of the NPPF, requiring the OAN to be based upon a Strategic Housing Market Assessment (SHMA).
4. Birmingham City prepared its own SHMA (for the City only) and while the recommendations in its own SHMA set out that the OAN should be set in the context of the wider housing market area, the Council has progressed with its own city boundary based SHMA. Outside of this, the Council has appeared at examinations of neighbouring authorities seeking review based mechanism be inserted into their Plans to accommodate any unmet need from Birmingham.
5. In this context, there has been active and ongoing engagement, however, the outcomes of that have been limited to neighbouring authorities inserting review mechanisms into their Plans at the request of the City, however, until recently there had been no joint working to establish the level of unmet need to be

accommodated from Birmingham. This is due to the City undertaking a City centric based SHMA and not incorporating the wider housing market area into its own evidence.

6. In terms of more recent evidence, the Council is working in partnership with the GBSLEP authorities in the preparation of the Joint Housing Study, however, this as yet is incomplete and has only reported on Phases 1 and 2. As it is understood, this study is not a SHMA and is not intended to be such and therefore its place in the evidence base on OAN for Birmingham is uncertain. As a SHMA and as a piece of incomplete evidence that has not been tested, it's role at the examination as evidence needs to be clarified. It is also in need of clarification as to when this component of evidence will be tested. If it is submitted to the Birmingham examination then Phases 1 and 2 must be available to scrutiny, even though it is not a SHMA.
7. Therefore in answering this question, since the RSS revocation there has been a myriad of studies undertaken with little strategic coordination and in a manner where Birmingham City has conducted its own SHMA rather than engage in a wider study of its housing market area. To this end the level of cooperation has been limited. In response to emerging Plans, Birmingham City has appeared at numerous examinations setting out that review mechanisms must be inserted into Plans. In this context, engagement has occurred but it has been through the City appearing at other authorities examinations rather than a proactive approach in the early stages of plan preparation process of neighbouring authorities. The levels of cooperation therefore appear to be very 'reactive' of Birmingham than engaging.
8. In respect of the GBSLEP study, this appears to be the latest attempt to understand the level of unmet need from Birmingham, however, the study does not comprise a SHMA, is untested, and without mechanism to implement its findings. It is therefore merely an academic exercise. As such the Birmingham Plan is actually supported by little joint cooperated and engaged evidence or mechanism to addressing unmet need. In fact there appears to be no jointly agreed evidence base on the level of unmet need, nor indeed the manner in which that will be distributed or addressed.
9. **Cooperation that results in tangible outputs is therefore limited and the Plan is based upon a future unknown arrangement of how unmet need will be accommodated.** How this can be demonstrable outputs of active engagement escapes RPS.

**Question 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?**

10. **Response:** There is no mechanism that the other LPAs will comply. **That is categorically clear.**
11. The Plan sets out that there is an unmet need of of 30,000 based upon the Council's evidence (SHMA). This is increased to 35,000 dwellings when the GBSLEP evidence is considered. On further analysis of the SHMA RPS has set out that this could rise to 57,000 dwellings (See RPS Matter Statement, paragraph 5). RPS is also aware that even higher levels of need are being presented to the examination that will increase the unmet need for housing above

these levels. Therefore at present there is absolutely no tested objectively assessed need for Birmingham that is considered sound and the Plan is based upon the lowest number than has been considered. **For a mechanism to be in place it first needs certainty amongst of what the agreed, tested and sound housing need is.**

12. However notwithstanding this point, the Council has no mechanism in the Plan that sets out how cross boundary housing need will be met based upon its own assumed level of need (30,000 dwellings). Therefore as a statutory development plan at examination, it has been presented absent of any cross boundary policy or mechanism to address unmet need. It is incomprehensible as to how this can of been considered sound in the first instance, particularly with Birmingham City Council seeking that other Development Plans for neighbouring authorities include specific Development Plan review references. The Birmingham Plan is absent of such references as no agreement has or can be reached on this issue. This is a failing of the DtC and a the fact that an evidence base study (GBSLEP Joint Housing Study) is being prepared, doesn't allow the authority to circumvent or indeed satisfy its statutory DtC requirement.
13. In terms of the GBSLEP Joint Housing Study, this is an academic study to understand and assist authorities in the dialogue of how to meet the unmet need for Birmingham. In terms of mechanisms it contains none as set out below and clarified at the recent 2014 presentation of Phases 1 and 2 of the Study.
  - It was clarified as not being a SHMA at the recent 2014 presentation. As such it cannot be regarded in the context of paragraph 159 of the NPPF as being such;
  - It was clarified at the same event above that it does not replace or substitute for local authority individual SHMAs;
  - Furthermore it was set out that the study will not replace or trigger local decision making to accommodate addition housing need. The sovereignty of this will remain with individual authorities;
  - It was set out at the event that Phase 3 contained no active triggers or mechanisms to trigger local planning authorities to review their Plan or accommodate additional need from Birmingham.
14. Most crucially the event clarified that Phase 3 of the Joint Housing Study would set out a range of strategic options in which unmet need could be distributed. From this, local authorities will be **asked** as to whether they can **volunteer** to assist in meeting that unmet need, as Phase 3 indicates may be possible. **If a local planning authority does not volunteer to accommodate any additional housing need, then it will not have to and there is no action or mechanism within the GBSLEP study or Local Enterprise Partnership itself to make this action occur. This position was clarified at the event on Phases 1 and 2.**
15. Therefore even with the GBSLEP governance arrangements there is absolutely no mechanism by which the Phase 3 study or the GBSLEP itself can ensure that other LPAs comply with meeting unmet need.
16. This also has the effect of rendering the review mechanisms contained within neighbouring plans that are based upon the GBSLEP evidence as unsound as it cannot trigger or action any of the review policies/mechanisms contained in those plans.



17. In conclusion, there is no mechanism within the Plan as submitted, its evidence base or the GBSLEP and its evidence base that can ensure that other LPAs comply with meeting unmet need. It is entirely absent from the Plan and evidence with the eventual decision on this issue being a political decision from each individual authority approached. As such there is no satisfactory DtC arrangement in place.
18. The only mechanism that is in place is the statutory responsibility of the Council under the DtC and its legislative requirements. This is the role and function of the legislation to ensure that circumstances such as this are avoided.
19. **It must also be considered that it is the Plan that is at examination, not the mechanism and proposed actions of the GBSLEP. As such, the Plan has been submitted to examination without mechanism for ensuring that its unmet housing need is met and it is therefore the Plan that has failed.** The proposed actions of the GBSLEP, no matter how well intentioned do not rectify that position, particularly with regard to the lack of mechanism that this contains also.
20. It therefore appears that not only is the Plan absent of any mechanism, so is the subregion.