

Telford & Wrekin Local Plan – Inspector’s Matters, Issues & Questions (MIQs)

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This paper provides the Council’s response to the Inspector’s MIQs –

Matter 2 - Duty to Co-operate & Relationship to Other Plan Areas

2.1 Has the Council satisfied the Duty to Co-operate set out in section 33A of the Planning and Compulsory Purchase Act 2004?

2.1.1 Yes. Document A6 sets out the actions the Council has undertaken in accordance with this statutory duty and has demonstrated that it has engaged in effective cooperation with adjoining; nearby and more distant authorities as well as other relevant bodies consistent with s33A of the Planning and Compulsory Purchase Act, the NPPF and advice in the PPG¹.

2.1.2 Significantly there is also clear agreement between all relevant bodies on all cross boundary and strategic matters including the individual planning authorities’ housing market areas (HMAs). The only exceptions are the suggestions from the Black Country authorities and South Staffordshire that Birmingham City Council’s unmet housing need can properly be addressed by Telford & Wrekin despite the fact that there is no overlap between the two areas’ HMAs.

2.2 Given that the Plan seeks to set a housing requirement that exceeds its stated assessment of Telford & Wrekin’s housing needs, is the Council’s position of not seeking to meet any unmet housing demand from the West Midlands conurbation or South Staffordshire sufficiently justified?
[Inspector’s note: the Council is also asked to comment on findings in paragraph 6.13 of the PBA Objectively Assessed Housing Need Report²]

Summary of case

2.2.1 The Council accepts it should meet a neighbouring authority’s unmet need where there is sufficient justification for it and where it is reasonable to do and consistent with achieving sustainable development. Currently there is still insufficient evidence to support the suggestion that other authorities’ unmet housing need would somehow be addressed in Telford & Wrekin.

2.2.2 The Council appreciates that Birmingham City Council (not a neighbouring authority) has unmet housing need. However, the Council has already demonstrated in Documents A6 and F2a why it is not reasonable at this stage to conclude that, even if the allocation were to be treated as meeting some of

¹ Paragraph: 011 Reference ID: 9-011-20140306

² C2a-1.

that authority's need, it would actually be met in Telford & Wrekin. Such an approach would therefore be likely to be unsound. In coming to this view, the Council is mindful that its Plan must be effective to be found sound.

2.2.3 Put simply, Telford & Wrekin operates in a separate HMA³ distinct from its neighbours inside the Greater Birmingham HMA⁴. This is a matter of agreement. As such the evidence does not show the necessary migration or commuting links to justify being included in the Greater Birmingham HMA. It is therefore clear that Birmingham City Council should properly look to other members of that HMA (and especially South Staffordshire) to attempt to meet its unmet housing need. The Council's neighbours have as yet not addressed this issue despite the advice from Peter Brett Associates (PBA) in its comprehensive housing needs study for the relevant authorities on the various ways in which they could do so.⁵

2.2.4 The Council provides a detailed justification for this position below. This statement considers:

-) the national planning policy context, caselaw and recent decisions in local plan examinations for authorities that lie beyond the boundaries of an HMA;
-) the case for the Council's housing requirement; and
-) research carried out by Peter Brett Associates (PBA) on ways the Greater Birmingham HMA authorities could meet Birmingham City Council's unmet need.

2.2.5 The statement then discusses these findings and draws conclusions on the matter.

Planning policy context, caselaw and recent decisions

2.2.6 The NPPF and PPG are the starting points for considering when a local planning authority has to cooperate with neighbouring authorities in the plan making process on meeting unmet housing need.

2.2.7 Paragraph 182 of the NPPF states that plans should be positively prepared seeking to "meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities ***where it is reasonable to do so*** and consistent with achieving sustainable development" (my italics) as well as being justified and effective based on evidence.

2.2.8 The PPG gives more detailed advice with regard to planning for future housing need and discharging a duty to cooperate.

³ C2a-1, C2b-i - note how Telford & Wrekin has been identified in its own HMA having regard to advice in the PPG

⁴ Comprising Birmingham, Bromsgrove, Cannock Chase, Dudley, Lichfield, North Warwickshire, Redditch, Sandwell, Solihull, South Staffordshire, Stratford-on-Avon, Tamworth, Walsall and Wolverhampton

⁵ G4 – Greater Birmingham and Solihull LEP Black Country Local Authorities – Strategic Housing Needs Study Stage 3 Report (August 2015)

2.2.9 On the matter of planning for future housing need, the PPG advises councils to assess their own need in relation to the relevant functional area, that is, by defining the “housing market area”⁶. A number of studies in the Council’s evidence base have shown that Telford & Wrekin is a distinct HMA based on migration and commuting patterns. Significantly, the Borough’s two neighbours with the greatest part of a shared contiguous boundary – Shropshire and Stafford – concur with the Council’s view. In addition, the Greater Birmingham HMA has been demonstrated to be a distinct and separate HMA. This large HMA - by contrast with Telford & Wrekin - covers 14 local authority areas and two sub areas⁷, one of which covers the Black Country and South Staffordshire. It displays distinct commuting and migration patterns separate from Telford & Wrekin.

2.2.10 Based on recent migration and commuting records, residents from within the Birmingham HMA would not choose to live in Telford & Wrekin. It is therefore not reasonable, based on the evidence, to conclude that Telford & Wrekin would actually attract some of the Greater Birmingham’s unmet housing need and therefore should accommodate it. Giving an “on paper” agreement that some of Birmingham’s unmet housing need would somehow be met in Telford & Wrekin would be both poor planning and in effect a meaningless gesture. It would effectively mean the Council was being asked to accept a change in the economic geography of the sub region (which would require significant additional investment in infrastructure).

2.2.11 The PPG also clarifies how Councils should discharge their duty to cooperate in their plan making functions. Classically, the duty to cooperate is not a duty to agree⁸. Where there is a disagreement, the PPG advises that a planning authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved⁹.

2.2.12 There is no specific caselaw that addresses this issue. However, in Zurich Assurance v Winchester City Council et ors [2014] EWHC 758 (Admin) the High Court noted that the obligation under s.33A is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” and held that the nature of the decisions to be taken indicates that there is a “substantial margin of appreciation or discretion” available to the authority [110]. In addition the Court noted that one of the issues addressed was not so much a failure by the relevant authority in that case to engage with a neighbouring authority over matters of joint concern but rather that its concerns had not been accepted by the relevant authority. Further the Court drew attention to the fact that:

“the duty to co-operate does not require that actual agreement should be achieved, only that proper efforts are made to address issues in a

⁶ Paragraph: 008 Reference ID: 2a-008-20140306

⁷ Refer G4, Para 2.2 The Birmingham sub-market comprises Birmingham, Bromsgrove, Cannock Chase, Lichfield, Redditch, Solihull, Tamworth, North Warwickshire, and Stratford-on-Avon.

- The Black Country sub-market comprises Dudley, Sandwell, Walsall, Wolverhampton and South Staffordshire.

⁸ Paragraph: 001 Reference ID: 9-001-20140306

⁹ Paragraph: 001 Reference ID: 9-001-20140306

co-operative way. Indeed, it may often be the case that ultimate agreement cannot be reached, particularly where there are strong competing local interests between two or more authorities.” [120.]

2.2.13 Document A6 provides the evidence to support why the Council cannot agree with its neighbours in South Staffordshire or the Black Country that some of Birmingham’s unmet housing need can properly be addressed as part of the Telford & Wrekin’s allocation. It also sets out the effort and assessments the Council undertook before coming to that position. Much of the discussion focused on the Council asking the Black Country to justify the request to import this unmet housing need in light of the migration and commuting evidence. The Council has not received anything meaningful.

2.2.14 Other Inspectors across England have accepted a similar approach to the Council with regard to the issue of an authority meeting the unmet need from another HMA and the obligation to discharge its duty to cooperate. It is useful, by way of example, to refer to the South Worcestershire Councils’¹⁰ recent experience in relation to whether it should accept some of Birmingham’s unmet housing need. South Worcestershire is especially relevant because it shares some characteristics with Telford & Wrekin including its distance from Birmingham and its location outside the Greater Birmingham HMA. The same inspector (Roger Clews) examined both the Birmingham and South Worcestershire Development Plans concurrently.

2.2.15 Inspector Clews was asked to consider whether South Worcestershire should take some of Birmingham’s unmet housing need. He concluded that the South Worcestershire Councils were not obliged to do so and nor were they expected to be directly involved in any sub regional Housing Strategy¹¹. The Inspector duly found the plan sound and South Worcestershire Councils adopted their joint Local Plan in February 2016.

The case for the Council’s housing requirement

2.2.16 The Council recognises it has identified a final housing requirement which is significantly higher than its basic OAN¹². There are a number of factors leading to this conclusion. These include in particular :

-) The need not only to meet its OAN but also to address the Council’s aim to plan for housing in excess of that OAN, consistent with the NPPF and the requirement for authorities to boost significantly the supply of housing and to achieve its clear pro-growth agenda that underpins the Plan;
-) The opportunities for development that exist due to the extensive amount of land, much of which is in public ownership, including up to 148 ha of employment land within the B Use Classes¹³ which benefits from section 7(1) consents under the New Towns Act 1981; and

¹⁰ Worcester City, Wychavon and Malvern Hills Councils

¹¹ Refer Annex 1 (paragraphs 1 to 11) to Inspector’s report into the South Worcestershire Local Plan http://www.swdevelopmentplan.org/wp-content/uploads/2016/02/SWDP_Inspectors_Report_ANNEX_A_Feb2016.pdf

¹² B2a and F2, para 14

¹³ B1a

-) The objective of reversing the trend in recent years that has resulted in Telford & Wrekin becoming a net importer of skilled labour especially from Shropshire¹⁴. The Council seeks to reverse this outflow of people so that more of the disposable income of people who work in the Borough is spent in the Borough's centres.
-) The genuine ability to address assessed affordable housing need.

Ways of meeting Birmingham's unmet housing need

- 2.2.17 PBA, in its Objectively Assessed Housing Need report for the Council in March 2015¹⁵, considered the issue of addressing Birmingham's unmet need and suggested, as an option, that Telford & Wrekin Council may be well placed to resume its old historic role as an overspill town for the Black Country and effectively devise a means of importing some of the unmet housing need that ripples outwards from Birmingham.
- 2.2.18 The Council takes seriously the suggestion that this could benefit both areas – the donor areas by relieving capacity constraints, and Telford & Wrekin by helping to make more sustainable settlements, pay for affordable housing and support necessary infrastructure. The Council will continue to discuss this in line with the duty to cooperate which, of course, does not end at the submission of the Local Plan.
- 2.2.19 However, it is pertinent to note that PBA's later advice in a Stage 3 report for the Greater Birmingham, Solihull LEP Black Country Local Authorities Strategic Housing Study issued in August 2015¹⁶ does not support this as an option.
- 2.2.20 From the outset, PBA's advice, consistent with Telford & Wrekin Council's viewpoint and national policy, has been that it is for the authorities inside their separate HMA to resolve their own unmet housing need first. Its Stage 3 report identified six scenarios that could form the basis for the HMA authorities delivering its unmet housing need. Four of the scenarios would appear to present viable options for the Greater Birmingham HMA.
- 2.2.21 For **Scenario 2: Urban extensions**, the report writers acknowledge that the Councils within the HMA are collectively aware of enough land being proposed as new sustainable urban extensions to meet the entire housing shortfall¹⁷.
- 2.2.22 **Scenario 3: Public transport corridors** identifies a number of railway stations around which further growth could be considered¹⁸ and takes the view that there is potentially enough land close to these stations to meet the whole housing shortfall. Having regard to the Black Country and South

¹⁴ C2a-1, C2b-i (especially Appendix C)

¹⁵ C2a-1, paragraph 6.13

¹⁶ G4

¹⁷ G4, paragraphs 5.40 to 5.53

¹⁸ G4, paragraphs 6.1 to 6.73

Staffordshire, this would include promoting more growth around Bloxwich North, Landywood, Penkridge, Bilbrook and Codsall.

2.2.23 The **Scenario 5: Dispersed Growth** option acknowledges that the growth could be distributed to shire districts outside the West Midlands conurbation but, if so, would need to be accompanied by a shift in the economic geography of the West Midlands¹⁹.

2.2.24 In **Scenario 6: New Towns/ New Settlements**, the authors have focused solely on Redditch New Town and other settlements within the HMA being able to meet the unmet housing need. The steering group overseeing the study excluded Telford from their consideration:

“because it is outside the HMA, and the NPPF suggests that Councils should look to meet seek to meet their housing needs within the HMA before looking elsewhere”²⁰.

2.2.25 This latter scenario identifies a range of options for growth: these include an urban extension to Redditch New Town; an eco-town at Curborough in Lichfield; and longer term options in Bromsgrove, Solihull, North Warwickshire, (north) Stratford-on-Avon and South Staffordshire²¹.

2.2.26 The Inspector is asked to note the conclusions to the report in detail. The consultants are clear that through these scenarios they have identified sufficient land to meet the unmet housing needs of the Birmingham area.

2.2.27 Paragraphs 10.12 to 10.14 of the report provide the most pertinent advice to the client authorities within the HMA. They are therefore quoted in full:

10.12 Our analysis shows that, ‘Green Belt off’, there is a supply of land which is free of absolute constraints. If it were developed, this supply could address the strategic housing shortfall either close to where the need arises or in places easily accessible to it. ‘Green Belt on’, almost all the potential additional land within the HMA is undeliverable, regardless of how well connected it is; the only exception is some land north of Lichfield.

10.13 This shows that there is an urgent need for the HMA to develop a shared Green Belt evidence base. Without this it is very difficult to direct growth to the most appropriate locations; including possibly outside the HMA.

10.14 This report also shows that there is a pressing need for the HMA to develop a much better understanding of development constraints ‘Green Belt off’. One key finding of this study is the lack of a HMA-consistent evidence base that assesses other supply constraints; such as transport, schools, agricultural land or flooding. It is important that

¹⁹ G4, paragraph 8.21

²⁰ G4, paragraph 9.2

²¹ G4, paragraph 9.45

the gaps in evidence be filled, because the HMA is already at the point where Green Belt sites are being considered as part of the future development mix. Further work is needed to ensure that growth is directed to the most sustainable places, taking account both of the Green Belt and other constraints.

Discussion and conclusion

2.2.28 It is clearly not for this Council to tell the authorities inside the Greater Birmingham HMA how to plan for their unmet housing need but the foregoing advice from one of the leading national experts on this matter sets a direction in which they may wish to travel. The advice is over a year old. Since then, the Birmingham Development Plan has been found to be sound²² despite a shortfall of over 37,000 homes. Inspector Clews' report has identified that seven of the adjacent authorities in the HMA have committed to review their adopted or emerging Local Plans in order to help address Birmingham's shortfall²³. The Black Country and South Staffordshire appear not to have made any tangible commitment so far.

2.2.29 In this context it therefore appears to be inconsistent with the advice received and the assessments carried out for the unmet need to be 'directed' to Telford & Wrekin Council when these authorities which lie within the relevant HMA are identified as being where the need can more appropriately be addressed.

2.2.30 The Inspector may note that there appears to be substantial land within South Staffordshire available to accommodate the HMA's unmet housing need. It would seem to Telford & Wrekin Council that the most reasonable and likely way forward is for the Black Country authorities and South Staffordshire to conduct an extensive Green Belt review and/ or carry out the other recommendations in the PBA Stage 3 report.

²² However, it is currently the subject of a holding direction under section 145(5) of the Housing and Planning Act 2016

²³ G4a, paragraph 66 https://www.birmingham.gov.uk/downloads/file/2626/bdp_inspectors_reportpdf