

WARWICK DISTRICT LOCAL PLAN

EXAMINATION 2015

MATTER 1 – DUTY TO CO-OPERATE

HEARING STATEMENT

ON BEHALF OF GALLAGHER ESTATES LTD

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MATTER A – DUTY TO CO-OPERATE

Issue: Whether the Council has complied with the duty to co-operate in the preparation of the Local Plan.

- 1.1 We note the Inspector's main issue is whether the Council has complied with the duty to co-operate. We have previously submitted representations to the Publication Draft version of the Warwick District Local Plan with regard to compliance by the Council with the duty to co-operate. At that time, we reserved our position on whether the District Council had effectively discharged that Duty until such time as the full evidence base was made available. Having considered the evidence base to the Examination on this matter it is our clear conclusion that Warwick District Council has not discharged the duty to co-operate in the preparation of the Warwick District Local Plan contrary to Section 33A of the Planning and Compulsory Purchase Act 2004 and the tests of soundness set out in the Framework at Paragraphs 178 to 181 and the Planning Practice Guidance (PPG) at Paragraphs ID: 9-001-2014036 to ID: 9-023-20140306.

Question 1: What are the genuinely strategic matters as defined by S33A(4) of the Planning and Compulsory Purchase Act?

- 1.2 As identified by the Inspector Section 33A of the Planning and Compulsory Purchase Act 2004 imposes a duty to co-operate in terms of the preparation of a development plan document as far as it relates to a strategic matter. Although there are a range of strategic matters, undoubtedly the overall provision of housing is a particularly significant strategic matter in the context of Warwick.
- 1.3 Warwick District falls within the Coventry and Warwickshire Housing Market Area, the subject of the G L Hearn (SHMA) November 2013 and the Update of September 2014. The latter, derived from the demographic projections, identifies an objectively assessed need for housing (OAN) of 4,004 dwellings per annum across the HMA. It is clear from the evidence base, particularly the report to the Economic Prosperity Board of 21st November 2014 (Ref: LP20), that the six authorities that collectively make up the HMA area are grappling with the key issue of a shortfall in housing across the HMA based on the HMA update assessment of the OAN. A shortfall in housing provision across the HMA is

therefore a strategic matter and one which engages the duty to co-operate in order to address any such shortfall.

Question 3: Is the Council's assessment of the extent of the Housing Market Area (HMA) correct? What is the evidence that supports this view? Is there evidence to support an alternative view of the extent of the HMA?

- 1.4 The District Council's assessment of the extent of the HMA is set out, albeit briefly, in section 3.2 of the Duty to Cooperate Statement of January 2015 (Ref: LP22). This states that Warwick District lies wholly within the Coventry & Warwickshire HMA, with the north western part of the District bordering Solihull Borough which lies within the Greater Birmingham Housing Market Area. We would agree that Coventry and Warwickshire is the most appropriate HMA for Warwick District.

Question 4 & 5: What is the situation regarding commuting and migration patterns between authorities in the HMA? What are the interrelationships in terms of housing markets? In particular what are the relationships between Coventry and other authorities in terms of commuting, migration and housing markets? How do these interrelationships affect Warwick District specifically?

- 1.5 Section 3 of the GL Hearn SHMA of November 2013 (Ref H004) provides evidence in relation to migration and commuting flows and housing markets in the HMA area. In relation to migration flows the evidence presented is that migration flows between the north and south of the County are limited and that the overall profile is of a housing market area focused on Coventry. Within this paragraph 3.22 notes that the analysis indicates that some of the strongest migration flows are between Warwick District and both Coventry and Stratford on Avon. Indeed there is significant net migration flows from Coventry to Warwick and from Warwick to Stratford on Avon.
- 1.6 The evidence of commuting flows is said to show a similar pattern. Paragraph 3.29 states that the strongest commuting links are between Coventry with Warwick as well as Nuneaton and Bedworth. It is also noted that there are strong commuting links between Warwick District and Stratford-on-Avon. In terms of house prices, the SHMA evidence is that lower house prices are to be found in the north of the Borough with a second local market which includes most of the larger

south Warwickshire towns close to the M40 corridor including Warwick and Stratford Districts.

- 1.7 The conclusion reached by the District Council (Paragraph 3.2.2, Duty to Cooperate Statement Ref: LP22) is that the evidence shows that Warwick District has a very strong relationship with Coventry and a significant relationship with Stratford District. We would agree that this is indeed what the evidence shows and this is significant in the context of the role which Warwick District plays in meeting any unmet housing needs of the HMA particularly arising from Coventry.

Questions 6, 7 & 8: When did co-operation with other authorities on overall housing provision within the HMA begin? What form has co-operation taken? Has it been ongoing during the preparation of the Local Plan? To what extent is there agreement between the authorities in the HMA regarding the level of objectively assessed need for housing (OAN) for the HMA and individual authorities? Is this as set out in the 2014 SHMA Addendum?

- 1.8 The Duty to Co-operate Statement (Ref; LP22) evidences that significant efforts are being made albeit in the very recent past to provide a strategic context for emerging Local Plans across the HMA area regarding meeting the OAN. This has primarily been through reports approved by the Economic Prosperity Board (EPB) on the 10th October 2014 and 21st November 2014 aimed at deriving a process for addressing the HMAs full housing requirement. It is important however, we respectfully suggest, that note is taken of the fact that much of this activity took place very recently and evidence based work is in train now or being planned for the future. It could not be said therefore that meeting the full needs of the HMA has formed an integral part of the ongoing preparation of the Plan, much is to be resolved post submission of the Plan for Examination.

- 1.9 The evidence base suggests that there is agreement across the HMA authorities that the OAN for the area is 4,004 dwellings per annum over the period 2011 to 2031 as derived from the September 2014 SHMA update (Ref: H008). In our view this raises a fundamental question as to the governance, democratic legitimacy, accountability and transparency of the process of joint working across the HMA. In particular, whilst the EPB has agreed that in its view the OAN for the area is 4,004 dwellings per annum this overall figure has not been subject to any independent scrutiny or consultation. It should be noted that the Paper prepared by the Council

in respect of the 2012 based Based Subnational Population Projections (March 2015, Exam 4) suggests a greater overall dwelling requirement for the HMA at 4,100 dwellings per annum between 2011 and 2031. This figure is closer to the Scenario 1 dwelling requirement for the HMA prepared by Pegasus Group (4.076 dwellings per annum) than the 4,004 dwelling figure accepted by the Council's.

- 1.10 In light of the above we are clear in the view that the HMA agreement to the 4,004 requirement figure cannot supplant the process by which individual Local Plans are examined and cannot be presented as a figure which is immune from challenge through this Examination process. Indeed, the timetable set out at Table 2 of the 21st November report includes no reference to public consultation regarding the OAN.
- 1.11 There appears to be agreement across the authorities of the area to a “starting point” for the distribution of the 4,004 dwellings across the HMA area. It is acknowledged however that this distribution does not directly respond to the findings of the SHMA update (which, although untested, is relied upon for the overall HMA requirement) and will result in a modest shortfall in housing across the HMA as a whole based on the 4,004 figure. Importantly however it also acknowledges that the “starting point” distribution may well need to be revisited should it be demonstrated that the level of housing proposed cannot sustainably be achieved in the administrative boundaries of any particular authority. In essence therefore there is an acknowledgement that there are uncertainties about capacity and the most appropriate distribution amongst the respective authorities across the area. Again, this raises problems of transparency given the lack of any wider involvement of stakeholders across the HMA in the formulation of important principles as to matters such as the broad spatial approach for development in the area including, in particular, the locations best placed to accommodate the significant amount of unmet need arising from Coventry.

Question 9: What is the evidence that the level of need in individual authorities and the HMA as a whole will be met ie in terms of capacity assessments / SHLAAs/ Green Belt studies etc?

- 1.12 There is no evidence before the Inspector which demonstrates that the need in individual authorities and the HMA as a whole will be met. To date the evidence has not been completed. There is no capacity assessment. The agreed timetable

(Table 2, 21st November EPB Report Ref: LP20) refers to the agreement to a common SHLAA methodology to be used by the individual authorities but this is as far as that work has progressed. There has been some stakeholder involvement in what the SHLAA methodology should be but this has been subject to objection including by Pegasus on behalf of a range of clients. In terms of the Green Belt, work on phase 1 is said to be progressing but will not be available until May or June of this year yet the Tender Brief of July 2014 makes it clear, in paragraph 2.2 that the: *“authorities must now address how the sub regional housing need will be accommodated and the Green Belt Review will be relied upon as part of this process”*. It would appear that the evidence to support policy decisions that have already been taken is being prepared retrospectively.

Question 10: Will there be unmet needs within the HMA? In particular will there be unmet needs in Coventry? If so, what is the scale of this unmet need?

- 1.13 There is a consensus that there will be unmet needs within the HMA particularly in Coventry. Indeed the process and timeline advocated by the EPB is an attempt to grapple with how unmet need arising in the HMA could potentially be accommodated. As set out above, the evidence as to the exact scale of the unmet need and how this is to be distributed around the HMA areas remains unresolved and there are no firm outcomes that can be relied upon by the Inspector. What is clear, however, is that the scale of Coventry’s unmet need will be significant.
- 1.14 The SHMA Update of September 2014 concludes a need for 36,220 dwellings in Coventry over the period 2011 to 2031. All six authorities including, in particular Coventry City, acknowledge that the City would be unable to meet this level of housing need and there would be a significant shortfall in the order of 12,500 dwellings. It is important, we would respectfully suggest, to repeat our concern that this is based on the SHMA update figure that must not be regarded as immune from challenge. It should also be noted that the extent of the shortfall is derived from initial work undertaken by Coventry City Council in their draft Strategic Housing Land Availability Assessment (SHLAA) of September 2014. This, as yet, is untested and again cannot be regarded as definitive and immune from challenge in assessing the capacity of Coventry to meet housing need.

Question 11: What are the issues as far as Warwick District is concerned in addressing unmet needs from other authorities ie Coventry?

1.15 As set out previously the HMA SHMA work demonstrates that Warwick District has a very strong relationship with Coventry. This is a conclusion which is agreed by the District Council in paragraph 3.2.2 of the Duty to Co-operate Statement, Ref: LP22). There is, therefore, a clear need for consideration to be given to the ability of and extent to which Warwick District can and should accommodate unmet need arising from Coventry in order to deliver the most sustainable spatial strategy for the HMA area. Unfortunately to date work has not been undertaken to identify the issues arising in Warwick District particularly regarding capacity in terms of addressing unmet need.

1.16 The 'starting point' distribution that Warwick District has signed up to is an arbitrary figure only and not based on any assessment of commuting and migration patterns and delivering sustainable development. It also fails to take into account implications on the Green Belt around Warwick and whether Green Belt release is or is not necessary in order to deliver the most sustainable means of addressing unmet need across the HMA. These are all options and issues that need to be considered.

Question 12: What is the situation regarding housing needs beyond the HMA ie Greater Birmingham affecting the HMA? What form has co-operation with other relevant authorities taken? What has been the outcome?

1.17 There are parts of the Coventry and Warwickshire HMA area that do not fall wholly within the HMA. Strategic housing matters are being considered concurrently by Coventry and Warwickshire and by the Greater Birmingham and Solihull LEP (GBSLEP). The GBSLEP commissioned a Joint Housing Needs Study from PBA, the results of Stages 1 and 2 of which have been published. This report concludes, for example that Stratford-on-Avon District has sufficiently strong relationships with the Birmingham HMA, certainly in parts of the district, so as to merit consideration of meeting unmet needs from Birmingham. Indeed the Inspector's Interim Findings following the Examination into the Birmingham Development Plan 2031 (5th January, 2015 Ref: EXAM7) acknowledges that both Stratford and North Warwickshire form part of the Greater Birmingham HMA.

- 1.18 Given the above there is likely to be unmet housing needs arising from Birmingham that other Council's within the Coventry and Warwickshire HMA will need to accommodate. In particular this includes Stratford District with whom Warwick has a very strong relationship. Inevitably therefore although located wholly within the Coventry and Warwickshire HMA, meeting housing need in Warwick District is also influenced by, in particular, the neighbouring Birmingham housing market area.
- 1.19 The Duty to Cooperate Statement deals with this matter in paragraphs 4.6.1 to 4.6.3. This acknowledges, in paragraph 4.6.1 that, in the context of meeting the needs of the Birmingham and Solihull area (beyond the Coventry and Warwickshire HMA) that there is: *"the likelihood that at least some Councils within the Coventry and Warwickshire sub region will be approached to accommodate some growth from neighbouring housing market areas"*. Given this it is surprising that cooperation seems to be limited to some ill defined and undocumented liaison between the Coventry and Warwickshire HMA and those working on the Greater Birmingham HMA. There are certainly no outcomes arising from this approach and the strategy appears to be one of putting off any consideration of the matter to a future review process. The concerns we have about the ability of such an approach to comply with the duty are discussed in response to question 15 below.

Question 13, 14 & 15: Has the issue of unmet need within the HMA or beyond been addressed and resolved? How does the Local Plan deal with the issue? Is this an appropriate approach? What are the implications for compliance with the duty to co-operate of not addressing this issue at this stage?

- 1.20 The issue of unmet need within the HMA has not been addressed and resolved. The Local Plan proposes to deal with this issue through proposed Policy DS20 which 'commits' the Council to future working on the strategic matter of unmet housing needs arising within the Coventry and Warwickshire HMA or other evidenced unmet needs arising outside the District. This approach repeats a formula from elsewhere in the region which effectively postpones the matter to a later date. When evidence is clearly available now as to the very significant scale of unmet need, we continue to find this approach incompatible with the requirements of the duty to cooperate both in statutory terms and with regard to the soundness of the Local Plan.

- 1.21 The District Council will point to the shared process and timetable contained at Table 2 of the 21st November 2014 EPB Board report as approved by the six authorities as a means of demonstrating that the matter will be addressed. We would agree that this is helpful in clarifying work streams to be progressed jointly but it does little to provide an effective and definitive outcome as to how the issue of housing provision across the HMA will be addressed. It also does not grapple to any meaningful degree with how any need arising from outside of the HMA area will be addressed. There remains uncertainty in this regard. There is an anticipation that a mechanism will be in place to accommodate unmet need somewhere between 2017 and 2019 and that this will have been achieved through the preparation of a Joint Core Strategy (which seems unlikely given the lack of support for this approach from some authorities) or presumably through certain authorities agreeing to review their Local Plans to accommodate unmet needs arising outside of their respective Districts. We would respectfully suggest that this seems somewhat inadequate given that the unmet need is arising now.
- 1.22 With the revocation of Regional Strategies, responsibility for strategic planning now rests with local planning authorities; the statutory duty to co-operate and the tests of soundness in the Framework are in place to ensure they meet this responsibility, including in the preparation of development plans. If it were the case that the test as to whether or not the duty to cooperate has been complied with is simply evidence that local authorities have agreed amongst themselves to defer consideration of the strategic matter of unmet housing needs to some point in the future, in our view this would have the effect of removing from Section 33A and the relevant paragraphs from the Framework their meaning and purpose in relation to the future strategic planning in a landscape without Regional Strategies or Structure Plans. Whilst it is recognised that the Framework clearly indicates that local planning authorities should move to adopt up to date development plans, this cannot absolve councils of their responsibilities with regard to the duty to cooperate.
- 1.23 We have commented above that we do not believe the supposed ‘commitment’ to a future review of the Core Strategy contained in Policy DS20 satisfies the Council’s responsibilities under the duty to cooperate. There can be no effective means for compelling a local planning authority to undertake a review of its Local Plan. It is entirely within the gift of the Council whether it would carry this out,

and it is unlikely to be a process which Council Members would readily volunteer to embark upon whatever pressures were brought to bear on them. It will also be very resource intensive and, at a time when financial pressures on local authorities are unlikely to ease for some time, dedicating scarce financial resources to such a review is not likely to be a priority.

Question 16: What additional work is required to address and resolve the issue of fully meeting ONA for the HMA? What progress has been made? What agreements are in Place?

- 1.24 We acknowledge that the work streams identified in Table 2 of the EPB Board Report of the 21st November 2014 most particularly consistent SHLAA work and the Joint Green Belt Review will provide key evidence in determining how the HMA could potentially accommodate the OAN. It is unfortunate, however, that little progress has been made when it has been known for some time that there will be unmet need across the HMA deriving, in particular, from Coventry. Furthermore, as set out above, there are no firm agreements in place as to how the extent of any unmet need will actually be delivered.
- 1.25 A Joint Core Strategy between the HMA authorities seems unlikely and so reliance appears to be placed on Local Plan reviews to be completed in the period 2017 to 2019. In the case of Warwick and indeed any of the Authorities, this would effectively mean plans being subject to review almost immediately after adoption which seems somewhat at odds with the role of a Development Plan to provide certainty in the longer term.
- 1.26 Added to the above we have previously noted the deficit in transparency, scrutiny and accountability in the processes by which it is envisaged the matter of unmet housing needs will be addressed in the Coventry and Warwickshire HMA. In our view, the appropriate mechanisms to ensure that the Council plays its part in accommodating housing need arising in the HMA and wider West Midlands is through the Examination of its Local Plan, as required by statute and the Framework. PPG contains a section on the duty to co-operate and helpfully sets out the clear position with regard to co-operating to maximise the effectiveness of policies for strategic matters in Local Plans:

Co-operation should produce effective policies on cross boundary strategic matters. This is what local planning authorities and other bodies should focus on when they are considering how to meet the duty. Local planning authorities should bear in mind that effective co-operation is likely to require sustained joint working with concrete actions and outcomes. It is unlikely to be met by an exchange of correspondence, conversations or consultations between authorities alone.

PPG ID 9-011-2014036

- 1.27 At paragraph ID 9-020-2014036 the PPG reiterates that the Framework requires Local Planning Authorities to take a strategic approach in their Local Plans. This means they should be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring local planning authorities where it is reasonable to do so and consistent with achieving sustainable development. The paragraph goes on to say:

Therefore, if a local planning authority preparing a Local Plan provides robust evidence of an unmet requirement, such as unmet housing need, identified in a Strategic Housing Market Assessment, other local planning authorities in the housing market area will be required to consider the implications, including the need to review their housing policies

PPG ID 9-020-20140306

- 1.28 In light of the above in our view there is clear and robust evidence that demonstrates unmet housing need arising in the HMA area. In our view, the Warwick District Local Plan should take account of this now.

Question 17: In overall terms has the Council engaged constructively, actively and on an ongoing basis in maximising the effectiveness of the preparation of the Local Plan? What has been the outcome of cooperation and how has this addressed the issue of housing provision?

- 1.29 The legal requirements in relation to the duty to cooperate are set out in S33A of the Planning and Compulsory Purchase Act 2004 (as amended). The duty requires the Council to have cooperated in order to maximise the effectiveness of the preparation of the Plan and to have engaged constructively, actively and on an ongoing basis. In our view the Council have failed to do so in respect of the strategic housing matters in the Coventry and Warwickshire HMA. Policy DS20 is an ineffective policy as it does not demonstrate how unmet housing need arising in the HMA will be delivered. This ineffective policy has been borne out of a failure of the Council to engage constructively, actively and on an ongoing basis throughout plan preparation to ensure clear actions and outcomes.
- 1.30 We note that there is an agreement, through the EPB Board report of 21st November 2014, for authorities to work together but this only goes so far. It does not agree a process by which any evidence arising from the as yet to be completed work will be acted upon. It is telling, for example, that the authorities could not agree to prepare a Joint Core Strategy meaning that the matter is to be left to individual Local Plans. This document does not, therefore, in our view amount to much more than an agreement to work together on a shared evidence base. It delivers no firm outcomes, offers no transparency or democratic accountability as a process and, in turn, does not address the issue of housing provision.
- 1.31 In our view this approach does not provide sufficient evidence that the complex matters relating to strategic housing needs of the wider HMA have been properly addressed in the preparation of the Local Plan to the extent that the duty to cooperate has been discharged and the tests of soundness in this regard have been met. In our view the importance of having an adopted local plan in place cannot absolve councils from their statutory obligation nor can it mean that an unsound plan can proceed to adoption. We note that there are no dissenting voices regarding the approach from other LPAs within the HMA area however we would wish to make it clear that this does not, in our view, as of itself mean that the duty to cooperate has been complied with.

- 1.32 We would respectfully suggest that your previous findings in relation to the Vale of Aylesbury Plan Strategy (7th January 2014) are of some possible assistance in this Local Plan as we concur with the sentiments expressed in that letter. We do, of course, appreciate however that in making reference to other decisions, that they in no way are binding on your consideration of this Plan and fully accept that the circumstances surrounding decisions taken elsewhere might distinguish them from Warwick.
- 1.33 In conclusion and in light of the points made throughout this Hearing Statement we conclude that any engagement that has taken place has not been sufficiently constructive and has not led to effective plan preparation. There is no mechanism in place to deal with the strategic matter of addressing housing provision. As such we do not consider that the District Council has complied with the duty to co-operate.