

Whyburn Consortium

Hearing Statement

Week 1 Matter 1

Respondent ID: 63

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PLANNING

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1.0 Introduction

CarneySweeney are acting on behalf of the Whyburn Consortium in making representations to the emerging Ashfield Local Plan (2023-2040), with representations having been made to the previous Regulation 19 consultation stage.

Our previous representations are not repeated here but should be read in conjunction with this Hearing Statement to the Inspector's Matters, Issues and Questions for Week 1: Matters 1, 2 and 3.

As requested, we have provided separate Hearing Statements for the following Matters:

- Matter 1 – Procedural and legal requirements including the Duty to Cooperate
- Matter 2 – Meeting Ashfield's Housing Needs
- Matter 3 - The Spatial Strategy and the distribution of development

This document covers Week 1 Matter 1 – Procedural and legal requirements including the Duty to Cooperate.



2.0 Week 1 Matter 1 – Procedural and legal requirements including the Duty to Cooperate

Respondent ID: 63

Issue 1

Whether the Council has complied with the Duty to Co-operate in the preparation of the Ashfield Local Plan.

Questions:

[Duty to Cooperate](#)

1.1 Having regard to the proposed release of land from the Green Belt, what discussions have been held with neighbouring authorities as to whether they could accommodate some of the identified need for housing and employment development?

Whilst this is principally a question for the Council to respond to, we note that the various Statements of Common Ground for the neighbouring authorities (SCG.01, SCG.02, SCG.09 and SCG.10), report that discussions have taken place with the Outer Nottingham Housing Market Area authorities; Core Nottingham HMA Authorities; Amber Valley District Council and Bolsover District Council. It is also noted that these statements agree that each authority would accommodate its own housing need, and that Ashfield District Council are not being asked to accommodate any unmet need from these neighbouring authorities. Whilst we have no further comments at this stage, we may wish to comment further during the Examination Hearing session following a review of the Council's response to this question.

1.2 What form did these discussions take, and what was the outcome?

Appendix 2 of the Duty to Cooperate Statement of Compliance (DTC.01) provides a list of the methods of engagement with the neighbouring authorities, the outcome of which is noted within the various Statements of Common Ground (SCG.01, SCG.02, SCG.09 and SCG.10).

However, the methods of engagement primarily refers to the title of a number of meetings/groups, with no further information as to the form by which these discussions have taken place, let alone the substance of the discussions. Whilst the duty to co-operate does not imply a duty to agree, it is intended to be more substantive than merely meetings taking place. There needs to be clear evidence that substantive discussions and co-operation has taken place upon strategic issues, and this has not yet been provided. Furthermore, there is only an explicit reference to meetings taking place with Amber Valley Borough Council and Bolsover District



Council. The methods of engagement with the Nottingham Core and Outer HMA authorities is not made explicitly clear within Appendix 2 of DTC.01. Clarification from the Council to confirm the method and substance of engagement is therefore welcomed, and a full list of persons with whom co-operation has taken place to ensure that the Council has engaged with the mandatory list of those with whom co-operation is required. We may wish to comment further during the Examination Hearing session following a review of the Council's response to this question.

1.3 Is this clearly evidenced?

No. There is no evidence as to the form of the methods of engagement undertaken by the Council with the neighbouring authorities. Similar to our response to Question 1.4, the table at Appendix 2 of the Duty to Cooperate Statement of Compliance (DTC.01), whilst this provides a list of various meeting group names etc., there is no evidence as to when any such engagement took place. The evidence for the methods of engagement should be provided. We may wish to comment on this matter further during the Examination Hearing session following a review of the Council's response to this question.

Other strategic matters

1.5 Are there any other relevant strategic matters in relation to the Duty to Cooperate?

The following are noted as Strategic and Cross Boundary matters, other than in respect of housing and employment, referenced at Paragraph 4.8 of the Duty to Cooperate Statement of Compliance (DTC.01):

- Gypsy, Traveller and Travelling Showpeople provision
- The scale and location of retail development
- Green Belt
- Infrastructure delivery arising from the development needs
- Flooding and water quality both within and outside of Ashfield
- Sustainable Transport Modes and connectivity, including the Maid Marian Railway Line Scheme
- Nature conservation and enhancement
- Conserving the historic environment
- Settlement hierarchy/ Urban Area boundaries



1.6 If so, how have they been addressed through co-operation and what is the outcome of this? How have these informed the plan's policies?

This has not yet been properly evidenced. With regard to the strategic/cross boundary matters relating to Green Belt, Transport, and the Settlement Hierarchy/Urban Area Boundaries we note the following:

- Green Belt - SCG.02 Statement of Common Ground Nottingham Core HMA refers to the following being agreed:
 - *“The Nottingham Core HMA authorities acknowledge the justification for exceptional circumstances to release green belt sites to accommodate proportionate housing growth adjacent to existing settlements.”*

- Sustainable Transport Modes and connectivity, including the Maid Marian Railway Line Scheme – Paragraph 4.82 of DT.01 Duty to Cooperate Compliance Statement, refers to the following being agreed:
 - *“Ashfield, Mansfield, Bolsover, Erewash, and Nottinghamshire County Councils will continue to work together to secure improvements in sustainable transport modes, in particular supporting the re-opening of the Maid Marian railway line and stations.*
 - *Ashfield and Bolsover councils will continue to work together to secure the improvement of multi-user routes within and beyond district boundaries.*
 - *Ashfield Council will continue to safeguard additional land for the Nottingham Express Transit System as identified on the Ashfield Local Plan Policies Map.”*

- Settlement hierarchy/ Urban Area boundaries – Paragraph 4.115 of DT.01 Duty to Cooperate Compliance Statement, refers to the following being agreed:
 - *“The Ashfield Local Plan Policies Map will identify areas allocated for housing/employment sites and located on the boundary of Ashfield/Mansfield as ‘Main Urban Areas’ in the settlement hierarchy under strategic Policy S1 part (a).*
 - *The Ashfield Local Plan Policies Map will identify that part of Blenheim Industrial Estate which falls within Ashfield District with its own designation to reflect the hierarchy as set out in Strategic Policy S1 part (d).”*



1.7 Are there any strategic cross-boundary issues in relation to any of the proposed site allocations and any general policies, and if so, how have they been considered via the Duty to Cooperate?

Whilst this is principally a question for the Council to respond to, we note the following are referred to as outstanding areas of agreement (DTC.01) and any update from the Council on these would be welcomed:

- SCG.02 Statement of Common Grounds Nottingham Core HMA Authorities:
 - Standing objection from Broxtowe Borough Council (SCG02) to proposed housing allocation H1Va, Land at Plainspot Farm, New Brinsley, Underwood for 42 dwellings.
- SCG.07 Statement of Common Ground Nottingham County Council (policy)
 - Strategic Employment allocations under Policy S6 and their cumulative impacts on heritage assets:
 - a) Land to the north-east of Junction 27 and west of Sherwood Business Park comprising a gross site area of approximately 20.47 hectares.
 - b) Land south-east of Junction 27 comprising a gross area of approximately 25 hectares towards the latter end of the Plan Period.
- Historic England – Statement of Common Grounds has not yet been signed (SCG.08) in respect of the following (DTC.01):
 - Strategic Employment allocations under Policy S6 and their cumulative impacts on heritage assets:
 - a) Land to the north-east of Junction 27 and west of Sherwood Business Park comprising a gross site area of approximately 20.47 hectares.
 - b) Land south-east of Junction 27 comprising a gross area of approximately 25 hectares towards the latter end of the Plan Period.

Following a review of the Council's response to this question, we may have further comments to make during the Examination Hearing session.



Overall

1.8 Overall, has the Council maximised the effectiveness of the Local Plan by engaging constructively, actively and on an ongoing basis with the prescribed bodies on relevant strategic matters during the preparation of the Local Plan?

Question 1.8 is a matter for the Council to respond to and depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session.

Issue 2

Whether the Council has complied with relevant procedural, legal and other requirements.

Questions:

Plan preparation

1.9 Has the plan been prepared in accordance with the Council's Statement of Community Involvement and met the minimum consultation requirements in the Regulations?

This is not clear from the Statement of Community Involvement (SD.06) and the Duty to Cooperate Statement of Compliance (DTC.01). Appendix 2 of SD.06 details the list of consultees under the Town and Country Planning (Local Development) (England) Regulations 2012) Duty to Cooperate. However, cross referencing this list of consultees with Appendix 2 of DTC.01, the engagement with the following consultees identified in Appendix 2 of SD.06 is unclear:

- Civil Aviation Authority – consultee is noted to have been consulted as part of the Regulation 18 and Regulation 19 consultation stages, with 'no issues raised' with regards to 'Strategic Matters'.
- Homes England – as per the above.
- Office of Rail and Road – again, as per the above.
- Local Nature Partnership – not shown to be included within the summary provided at Appendix 2 of DTC.01.

The methods of engagement for the Civil Aviation Authority, Homes England and Office of Rail and Road, suggests a notification to the various consultation stages, but with no clarity as to what response, if any, was received from any of these consultees. Also, there is no evidence of the Local Nature Partnership being consulted, or if there has been a change in circumstance resulting in this consultee not needing to be consulted.



A further point we wish to raise is that the Statement of Community Involvement is dated August 2020, and due to the time of its publication the document refers to Government guidance relating to Covid-19 and referring to incorporating measures to minimise the spread of the virus. However, over the course of the plan-making process, the rules surrounding Covid-19 were subject to a number of changes, with a notable change in August 2021 with the easing of social distancing rules.

At the time of the Regulation 19 consultation stage, the measures surrounding social distancing were no longer in place. We request that the Council clarify any adjustments made to the methods of consultation/engagement through the plan-making process in light of subsequent changes in Government guidance. It is noted that the Council will provide a response to this question through their Hearing Statement submission, and so we may wish to make further comments during the Examination Hearing session.

1.10 Has the preparation of the plan been carried out in accordance with the Local Development Scheme?

Yes. From a review of the Local Development Scheme (SD.05), it is noted that the timescale undertaken for preparation of the emerging local plan aligns with the programme set out within Appendix 3 and 4 of the Local Development Scheme. We have no further comments on this point at this stage.

1.11 Is the plan sufficiently clear whether there are any policies from the existing development plan that would be superseded by its adoption?

No. Page 2, Paragraph 1.1. of the Pre-Submission Draft document (SD.01) refers to ‘the Development Plan’, comprising “...the Local Plan as set out in this document...” amongst a number of other documents. However, document reference: SD.01 does not make it explicitly clear that the document intends to supersede all the remaining saved policies from the adopted Ashfield Local Plan Review (2022). It is noted that this matter has been clarified in the Council’s response to the Inspector’s Questions (ADC.02 and INS01 respectively), but this should be made clear within SD.01.

Habitats Regulations Assessment

1.12 How was the Habitats Regulations Assessment (HRA) carried out and was the methodology appropriate?

Question 1.12 is a matter for the Council to respond to and depending on the Council’s response to this question, we may have further comments to make during the Examination Hearing session.



1.13 What potential impacts of the Local Plan were considered? What were the conclusions of the HRA and how has it informed the preparation of the Local Plan?

Question 1.13 is a matter for the Council to respond to and depending on the Council's response to this question, we may have further comments to make during the Examination Hearing session.

1.14 Have any concerns been raised regarding the HRA and if so, what is the Council's response to these? How has Natural England been involved?

Whilst this is principally a question for the Council to respond to, we note that a Statement of Common Ground has been signed between Ashfield District Council and Natural England (SCG.06) which notes the following matters as being agreed between both parties:

- *The HRA sets out a comprehensive assessment of the Local Plan impacts (both alone and in-combination) on the identified Habitats Sites, including the Sherwood Forest ppSPA.*
- *The conclusions of the HRA are accurate in identifying that the Local Plan will have no adverse impact on site integrity of the Habitats sites, or upon the ppSPA, either alone or in-combination.*

On this basis, we have no further comments to make at this stage. However, noting that the Council will be providing a response to this question, we may have further comments to make during the Examination Hearing session.

[Sustainability Appraisal](#)

1.15 Does the Sustainability Appraisal (SA) meet the requirements for a Strategic Environmental Assessment?

Yes, however the Sustainability Appraisal has been improperly considered by the Council as it does not provide appropriate evidence to support the plan's strategy, albeit it does support the very different strategy which formed part of the Regulation 18 Draft Local Plan. Paragraph 1.1.2 of the Sustainability Appraisal (SD.03) outlines that as part of the Council's requirement to carry out a Sustainability Appraisal of the local plan, the Council must also incorporate the requirements of the Strategic Environmental Assessment (SEA) Regulations. It is noted that a checklist against the requirements of the SEA Regulation is provided at Appendix A of the Regulation 19 Sustainability Appraisal (SD.03b).

The checklist includes reference to address the following: "reasons are given for choices in the adopted plan, in light of other reasonable options considered" (underlining is our emphasis). The Council's response outlines that this requirement of the SEA Regulations is provided in the following:

"Section 5 and Appendix H set out the reasons for the selection of the Council's preferred development



requirements and Spatial Strategy in light of the reasonable alternatives considered. Further consideration will be given in the SA Post Adoption Statement.”

[Source: Examination Library Reference: SD.03b Appendix A, Page A3]

Whilst the Sustainability Appraisal has considered alternatives, the conclusions drawn from the assessment of these alternative options do not support the strategy forming part of the plan.

The PPG (Paragraph: 013 Reference ID: 11-013-20140306) outlines the various stages of the Sustainability Appraisal process. Stage B of this process deals with ‘*developing and refining alternatives and assessing effects*’ (underlining is our emphasis).

There has been a fundamental shift to the spatial strategy approach following the close of the Regulation 18 consultation stage to the publication of the Regulation 19 consultation. Our representations submitted to the Regulation 19 consultation stage set out our detailed comments on the Sustainability Appraisal. However, in addition to those representations, the Sustainability Appraisal fails to demonstrate any refinement of these alternative options as required by the PPG.

The Council reports that the principal reason for the spatial strategy approach being reconsidered as part of the Regulation 19 consultation stage is due to the number of objections received to the previous preferred ‘New Settlement’ spatial strategy approach (Option 10 in CD.04 and continues to be Option 10 in SD.03). However, all the alternative options assessed as part of the Regulation 19 Sustainability Appraisal (SD.03) are unchanged from the Regulation 18 consultation stage, all of which include for a strategic scale of development for the spatial strategy.

Depending on the Council’s response to this question, we may have further comments to make during the Examination Hearing session.

1.16 How has the SA informed the preparation of the Local Plan at each stage and how were options considered?

No. This is a fundamental problem with the plan. The Sustainability Appraisal for the Regulation 19 consultation stage does not properly inform the local plan. Rather it leads inexorably to an entirely different strategy as set out in the Regulation 18 Draft Local Plan.

As per our response to question 1.15, there is no change in the options considered from the Regulation 18 consultation stage in respect of the spatial strategy, and neither is there any change to the housing growth options. We do not wish to comment on the employment growth options.



With regard to the housing growth options, the Sustainability Appraisal has assessed a ‘Preferred Option using the Standard Methodology’ and a ‘Reasonable Alternative Flexible buffer (20% buffer)’; both options and the conclusions are as per the Sustainability Appraisal for the Regulation 18 consultation stage (CD.04).

In terms of the spatial strategy, the Sustainability Appraisal (SD.03) includes a reappraisal of the same 10 options which have been carried forward from the Regulation 18 Sustainability Appraisal (CD.04) and confirms at Paragraph 5.5.1 of SD.03 that “...Following the review, no changes to the scoring outlined in the 2021 SA Report have been identified. The Council’s reasoning for the selection of the preferred approach and rejection of others is set out after the summary appraisal.” (underlining is our emphasis).

The Council’s reason for dismissing the ‘dispersed development’ spatial strategy option at the Regulation 18 consultation stage (CD.04) have not been meaningfully explained or otherwise addressed as part of the Regulation 19 consultation. Neither does the evidence base justify why the now preferred spatial strategy option for ‘dispersed development’ is appropriate. It is little more than an unexplained ‘change of the Council’s corporate mind’ rather than a clear paper-trail to justify the basis of the submission version of the plan. With “no changes” to the Sustainability Appraisal conclusions for the reappraisal of all the options, we maintain that the preferred spatial strategy cannot sensibly be found sound based upon the Council’s own limited, updated evidence base, from the Regulation 18 consultation stage. Either the Sustainability Appraisal is in error, or the draft plan is unsound as the two are not compatible.

As the spatial strategy options and conclusions within the Sustainability Appraisal remain unchanged from the previous local plan stages, we would welcome the authority’s response to this question and question 1.17 below, particularly as the local plan is failing to meet the minimum housing need through adopting the standard method option and the ‘dispersed development’ spatial option not being justified.

1.17 What were the conclusions of the SA and how has it informed the preparation of the Local Plan?

Please see our response to questions 1.15 and 1.16 above.

1.18 Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the SA?

Whilst the Sustainability Appraisal (SD.03) assesses the effects of various options against a range of environmental, social and economic objectives, the Sustainability Appraisal does not properly inform the Pre-Submission Draft as per our response to question 1.15 and 1.16 above.

