

# NUNEATON & BEDWORTH LOCAL PLAN REVIEW: EXAMINATION-IN-PUBLIC

**Matter 1: Compliance with statutory procedures and legal matters**

**On behalf of Taylor Wimpey**

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REPORT

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# 1 ISSUE 1: HAS THE COUNCIL MET THE STATUTORY DUTY TO CO-OPERATE ('DTC') AS SET OUT UNDER SECTIONS 20(5)(C) AND 33A OF THE PLANNING AND COMPULSORY PURCHASE ACT 2004 AS AMENDED?

## Q1. Has the Council submitted robust evidence to demonstrate that the duty to co-operate has been met?

- 1.1.1 No.
- 1.1.2 As highlighted in our submission at the Regulation 19 stage, the Council had not published the details on how the duty to cooperate has been fulfilled up to that point of the plan review. This is contrary to national policy and the need for such activities to be presented '*throughout the plan-making process*' (paragraph 27). It is only now, at the submission/examination stage, that the Council has finally made public any information pertaining to compliance with the duty. These documents are provided in the submission documents (exam doc CD4, CD5, and CD 6.1-6.18).
- 1.1.3 The principal evidence on the duty is provided in the Duty to Cooperate Compliance Statement 2024 (CD4). The opening paragraph (1.1) claims:
- "This Statement sets out how Nuneaton and Bedworth Borough Council (NBBC) has complied with the Duty to Cooperate in preparing its Borough Plan Review (2021- 2039)".*
- 1.1.4 We refute this assertion, with specific reference to elements of the statement. For example, section 4 comments on the engagement carried out between the Council and 'Groups/Forum' on various topics. However, whilst some references are made to discussions, it is unclear what the clear outcomes were from these discussions and whether, if at all, any such outcomes have informed the preparation of the plan and thus demonstrate how the outcomes have maximised its effectiveness. This information simply hasn't been presented adequately enough in the statement.
- 1.1.5 Section 5 of the statement provides a commentary relating to the other five local authorities that make up the Coventry and Warwickshire Housing Market Area ("CWHMA"). Throughout this section, the Council makes reference to various statements of common ground ("SoCG") it has prepared and that have been signed by constituent authorities, as well as reference to a 'memorandum of understanding' ("MOU") that is being prepared. Such documents could constitute suitable evidence to help demonstrate compliance with the duty, however that detail still remains.
- 1.1.6 We observe that of the five neighbouring authorities that make up the CWHMA, only two have signed up to SoCGs with Nuneaton & Bedworth; Coventry (CD6.1) and Rugby (CD6.2). A letter from North Warwickshire DC has been submitted to the examination, but this does not constitute a SoCG and thus is not sufficient evidence to demonstrate compliance with the duty.
- 1.1.7 The Council says in the statement (paragraph 11.3) that it will publish further SoCGs not yet signed up to as '*part of the future documents for examination*'. Nonetheless, at this advanced stage in the process, it remains the case that three constituent members of the CWHMA

(Stratford-on-Avon, Warwick, and North Warwickshire) have not entered into a SoCG with Nuneaton and Bedworth as part of the plan review process. This is a significant gap in the evidence base required to demonstrate compliance with the duty.

- 1.1.8 On the SoCGs, we see that areas of disagreement exist between the Council and Coventry City Council (CD6.1). This relates to how the plan should incorporate 'flexibility' to be able to adapt to changing circumstances, primarily to deal with the scale of any housing shortfall emanating from elsewhere in the CWHMA, notably Coventry. However, the SoCG with Coventry merely points to 'further joint working' and provides no clarity on how the disagreements are to be resolved. This is contrary to practice guidance, which says that SoCGs are expected to contain a record of where agreements have (or have not) been reached on key strategic matters, including the process for reaching agreements on these<sup>1</sup>.
- 1.1.9 Similarly, the Council makes numerous references to a CWHMA-wide MOU which we assume (because it is not stated to the contrary) will supersede the current MOU prepared in support of the previously adopted round of plans in Coventry and Warwickshire and which adopted by each constituent authority in 2015/2016. The purpose of the new MOU is set out in paragraph 10.2 of the statement. However, the statement then says (paragraph 10.3) that it has not been submitted with the Duty to Cooperate evidence due to 'political influences'. It is unclear what these influences are, but nonetheless represents another significant gap in the evidence base dealing with compliance.
- 1.1.10 Taken together, the absence of a large proportion of the evidence with regards to engagement with neighbouring authorities, notably within the CWHMA, and the lack of a clear process for reaching agreements on those matters in dispute, means the Council has not provided the comprehensive and robust evidence sufficient to demonstrate it has complied with the duty<sup>2</sup>.

## **Q2. Has the Council carried out effective engagement with neighbouring local authorities and other prescribed bodies on all relevant strategic matters? In particular has effective engagement taken place in respect of housing and employment needs and provision in a cross border context?**

- 1.1.11 No.
- 1.1.12 A fundamental objective of the plan-making process is to maintain effective cooperation on strategic matters that cross administrative boundaries (NPPF, para 24). This is also enshrined in law under s33A of the Planning and Compulsory Purchase Act. This is ensure that strategic matters are addressed in such away as to 'maximise the effectiveness of the plan'.

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<sup>1</sup> Paragraph: 011 Reference ID: 61-011-20190315

<sup>2</sup> PPG Paragraph: 022 Reference ID: 61-022-20190315

- 1.1.13 We have already pointed out in our response to question 1.1 the significant gaps that presently exist in the evidence base required to demonstrate compliance with the Duty to Cooperate, notably the missing SOCGs and no updated Memorandum of Understanding dealing with relevant strategic matters across the CWHMA authorities. This is primarily due to the Council's decision to progress an early review of the current Borough Plan (adopted in 2019) in advance of all other authorities in the CWHMA. In particular, the Council is attempting to move ahead in this round of plan-making, specifically ahead of any informed debate around the scale of unmet housing need that is likely to emerge from Coventry as it moves forward with its own local plan review. This does not, in our view, provide an appropriate basis to demonstrate effective engagement is occurring on this matter.
- 1.1.14 The approach now being taken forward in the Borough Plan review cuts across the previous round of plans adopted by the Coventry and Warwickshire authorities, which was based on a collaborative approach to plan-making and joint evidence gathering in accordance with the Duty. At that time, the plan-making process across the CWHMA was informed by an HMA-wide housing needs assessment. This work demonstrated that Coventry was unable to accommodate its own housing needs in full (c. 18,000 dwellings shortfall between 2011-31), which meant that neighbouring authorities were required to accommodate the shortfall in their plans. This included Nuneaton and Bedworth who agreed to accommodate 4,020 dwellings (201 dpa) as part of their overall housing requirement in the adopted Borough Plan up to 2031. This approach was set out formally in a Memorandum of Understanding signed by all the authorities in Coventry and Warwickshire in 2015 to ensure compliance with the Duty to Cooperate in the proper manner.
- 1.1.15 The lack of genuine and effective engagement on this strategic matter is also evident when we consider timing of recent public consultations carried out by CWHMA authorities, notably Nuneaton & Bedworth and Coventry. For example, Coventry City Council carried out its Issues and Options consultation for its new Local Plan between 18 July and 29 September 2023. This overlapped with, but was slightly ahead of, the Nuneaton and Bedworth Pre-Submission (under Regulation 19) which ran between 4 September and 16 October of the same year.
- 1.1.16 Of importance here is that the Coventry Issues and Options document (Table 1) considered the matter of housing need and presented three alternative need figures. These were based on the standard method (63,760), the sub-regional HEDNA (39,280), and the HEDNA figure minus the 35% urban centres uplift (29,100). Coventry also issued alongside this consultation an updated evidence on housing land supply over the plan period<sup>3</sup>, which identified a current supply of 25,158 dwellings (Table 3). On this basis, it is evident that an unmet housing need is likely to persist from Coventry, and that this will need to be considered in the new round of plans across Coventry and Warwickshire. If the engagement between the parties was 'effective' then we must assume that both authorities were cognizant of the other emerging consultations and the evidence base prepared to support them. However, neither the submitted Borough Plan nor the SoCG prepared

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<sup>3</sup> Coventry City Housing Land Availability Assessment 2023

by the two authorities make any reference to this 'emerging' shortfall or the potential options to address it through the respective plans. The Council has not sought to 'maximise the effectiveness of the Plan' in this regard, and is clear evidence that engagement between the authorities has not been effective. This does not comply with the Duty to Cooperate.

## 2 ISSUE 2: DOES THE SUSTAINABILITY APPRAISAL (SA) ADEQUATELY ASSESS THE ENVIRONMENTAL, SOCIAL AND ECONOMIC EFFECTS OF THE PLAN IN ACCORDANCE WITH THE LEGAL AND NATIONAL POLICY REQUIREMENTS?

### Q5. Has the SA properly assessed the likely significant effects of all reasonable alternatives?

- 2.1.1 No.
- 2.1.2 Our representations submitted at the Pre-submission (Regulation 19) stage highlight the flaws in how the Council has selected reasonable alternatives, in particular the exclusion of Green Belt land (under point 2 of our submission on SA).
- 2.1.3 To reiterate, national policy<sup>4</sup> does not specifically exclude consideration of the existing Green Belt sites when identifying reasonable alternatives for testing through the sustainability appraisal process prior to establishing the appropriate strategy in the Plan.
- 2.1.4 We also highlight in our representations that addressing wider, cross-boundary strategic matters, notably unmet housing need, can constitute an 'exceptional circumstance' that can justify the release of Green Belt land for that purpose. This has been widely accepted in other local plans, as summarised below:

**Table 2-1 Green Belt authorities where exceptional circumstances identified to justify Green Belt release**

Local Plan included in this report	Inspectors Report publication	Adoption date	Appendix reference
Bolsover Local Plan 2033	15 January 2020	4 March 2020	K
Broxtowe Local Plan (Part 2)	7 October 2019	16 October 2019	D
Central Bedfordshire Local Plan 2015-2035	15 July 2021	22 July 2021	S
Cherwell (Part 1) Partial Review 2011-2031	6 August 2020	7 September 2020	R
County Durham Plan 2035	17 September 2020	21 October 2020	P
Doncaster Local Plan 2015-2035	30 June 2021	23 September 2021	T
Guildford Local Plan 2015-2034	27 March 2019	25 April 2019	A
Harlow Local Development Plan 2033	5 November 2020	10 December 2020	O
Hillingdon Local Plan (Part 2) 2026	22 October 2019	16 January 2020	I
Lancaster City Local Plan 2011-2031 (Part 1)	12 June 2020	29 July 2020	U
New Forest Local Plan 2016-2036 (Part 1)	25 March 2020	6 July 2020	V
North East Derbyshire Local Plan 2014-2034	19 July 2021	29 November 2021	W
North Warwickshire Local Plan 2033	19 November 2021	29 September 2021	X
Nottingham Land and Planning Policies (Part 2) 2011-2028	13 December 2019	13 January 2020	N
Nuneaton & Bedworth Local Plan 2011-2031	9 April 2019	11 June 2019	B
Oxford City Local Plan 2036	15 May 2020	8 June 2020	L
Reigate & Banstead Development Management Plan	9 July 2019	26 September 2019	H
Rossendale Local plan 2019-2036	19 November 2021	22 February 2022	Y

<sup>4</sup> NPPF 2023 paragraph 140



Local Plan included in this report	Inspectors Report publication	Adoption date	Appendix reference
Royal Borough of Windsor and Maidenhead	26 January 2022	8 February 2022	Z
Rugby Local Plan 2011-2031	27 March 2019	4 June 2019	M
Rushcliffe Local Plan (Part 2) 2011-2028	20 September 2019	8 October 2019	C
South Oxfordshire Local Plan 2011-2035	27 November 2020	29 November 2021	ZA
Staffordshire Moorlands Local Plan 2014-2033	18 June 2020	9 September 2020	Q
Stevenage Borough Local Plan 2011-2031	18 October 2017	22 May 2019	J
Sunderland Core Strategy and Development Plan 2015-2033	7 January 2020	30 January 2020	E
Vale of White Horse Local Plan 2031: Part Two	25 June 2019	9 October 2019	F
Wycombe District Local Plan	10 July 2019	19 August 2019	G

2.1.5 However, the SA has effectively ignored matters relating to housing needs in the wider, cross boundary context. Strategic land designations, including Green Belt, should not be discounted from the appraisal process as a matter of principle nor in terms of its potential to address strategic matters of relevance to the overall strategy, as is the case here.

2.1.6 It remains the case that an appropriate policy response to address that unmet need requires a proper consideration of reasonable alternatives in the context of sustainability appraisal. Neither the Regulation 19 Plan nor the SA tackle this issue at all. Not to do so renders the Regulation 19 Plan fundamentally unsound and arguably non-compliant in legal terms.

## **Q6. Have all potential site allocations been assessed on a comparable basis?**

2.1.7 No.

2.1.8 In line with our responses at the Regulation 19 stage and to question 5 above, we do not agree that all potential site allocations have been assessed on a comparable basis due to the unwarranted and unjustified approach taken to exclude Green Belt sites from site appraisal process in the SA.

2.1.9 Furthermore, we contend there exists an emerging quantum of unmet housing need across the CWHMA, namely Coventry, based on available information (some information has been highlighted in our Issue 1 response) that should be addressed in the Borough Plan review. On this basis, sites located within the Green Belt, but that could also contribute towards this unmet need by supporting additional housing provision in sustainable locations, constitute 'potential site allocations' that should be assessed in the Borough Plan review. Failure to address these issues undermines the credibility of the SA process.

## **Q7. Is it clear how the SA has influenced the Plan and the choice of spatial strategy? Does it support the spatial strategy or is there anything in the SA which indicates that changes should be made to the Plan?**

2.1.10 No.

- 2.1.11 In relation to the SA, planning practice guidance says that the development and appraisal of proposals in plans needs to be an iterative process, with the proposals being revised to take account of the appraisal findings<sup>5</sup>. The guidance also says highlights Section 19 of the Planning and Compulsory Purchase Act 2004 which requires a local planning authority to carry out a sustainability appraisal of each of the proposals in a plan during its preparation. The 'proposals in the plan' comprise both the policies and site allocations.
- 2.1.12 Chapter 10 of the Pre-Submission SA provides a commentary on the appraisal of the draft Plan. It says (SA, paragraph 10.1.1) that whilst all the policies have been considered individually, their effects are discussed in overall terms, rather than on a policy-by-policy basis. Put simply, the SA does not contain any appraisal of 'each of the proposals' in the draft Plan (alongside reasonable alternatives) as required by law and guidance. Instead, the appraisal refers those policies of relevance to each SA Objective. We contend that this approach does not accord with either the law or the guidance.
- 2.1.13 Similarly, without an appraisal of each individual policy in the draft Plan against the SA Objectives, it is again not clear whether any amendments are required to those policies and therefore it is not clear how, or to what extent, the SA has influenced the draft Plan.
- 2.1.14 These are concerns that goes to heart of the soundness of the SA, but also raises serious implications regarding legal compliance. If this is accepted, then on this basis the SA is defective and must be revisited.

### **Q8. Is the methodology in the SA sound and is it consistent with relevant guidance including the National Planning Practice Guidance (PPG)?**

- 2.1.15 No.
- 2.1.16 We have highlighted in our response to question 7 what we consider as significant flaws in the SA and the appraisal of the draft Plan. Our representations submitted at the Regulation 19 stage also identify clear errors in the SA as it has moved forward, in particular with respect to changes in the number of SA Objectives applied at different stages of plan preparation. We maintain our view that applying different SA Objectives to test different options at different stages undermines the fair and transparent comparison of the Plan when considered alongside reasonable alternatives, which is a key requirement under the SEA regulations.

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<sup>5</sup> Paragraph: 018 Reference ID: 11-018-20140306