
Bath and North East Somerset Council
Local Plan (Core Strategy and
Placemaking Plan) Partial Update

Examination Hearing Sessions
Matter 1, Questions 1, 2, 3, 4, 5 and 9

Hearing Day 1, 21 June 2022

Written Statement On behalf of Crest
Nicholson Ltd in relation to Hicks Gate

6 June 2022

John Baker Origin3 Ltd


Planning . Design . Development

Matter 1: Procedural/legal requirements

Issue: Whether all Statutory and Regulatory requirements have been met?

Q1 Is there clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring bodies and prescribed bodies in accordance with section 33A of the 2004 Act in respect of strategic matters with cross-boundary impacts considered through the preparation of the Plan?

Q1.1 The Localism Act 2011 added into the Planning and Compulsory Purchase Act 2004, Section 33A 'Duty to co-operate in relation to planning of sustainable development'. The particular wording from the legislation has to be noted. Under this legislation the local planning authority in preparing its Local Plan '*must co-operate*' with other local planning authorities with which there are shared strategic issues (amongst other bodies) '*in maximising the effectiveness with which the preparation*' of development plan documents is undertaken, and '*must engage constructively, actively and on an ongoing basis*' in the process. The meaning of 'effectiveness' can be taken to be that from the Framework tests of soundness where effectiveness includes, '*joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground.*'

Q1.2 The Bath and North East Somerset (BANES) Local Plan Partial Update (LPPU) (Regulation 19 Draft Plan) Duty to Cooperate August 2021 (CD-SD030) at paragraph 3.3 says that: '*There have been ongoing informal discussions with Bristol City Council officers regarding the LPPU and they have raised no issues in respect of the LPPU for consideration. Therefore no statement of common ground is considered to be necessary.*'

Q1.3 Informal discussions with officers not members – with no recorded and published minutes identified in the document or on the Council's Local Plan evidence webpage – are not in the spirit of the legislation. The test of whether a local planning authority has discharged the duty to cooperate requires more evidence than reference to emails or meetings where neighbouring authorities agreed not to seek to interfere with each other's work.

Q1.4 Once the Council had committed to not proceeding with a proper review of the Core Strategy and hence avoiding making provision for the full housing

need for a full Plan period, it might have seemed to Bristol City Council (BCC) officers that there were no issues they could realistically raise. However, the annual 'standard method' housing need figure for Bristol City including the 35% uplift for a large urban area, is 3835 dwellings (according to BCC Five Year Housing Land Supply Assessment 2020 to 2025, June 2021) and this far exceeds the average annual completions figure for Bristol of 1542 dwellings for the 10 years 2010/11-2019-20, or 1664 dwellings for the five years 2015/16-2019-20, (according to BCC Housing Delivery Test Action Plan, July 2021). Though the Bristol City Council in March 2020 identified 12,750 dwellings with permission or with s106 agreements to be resolved, this amounted to a 3.7 year supply of deliverable dwellings (without allowing for the 35% uplift). Altogether this gives every reason to believe that on the basis of existing and published evidence, there is and will continue to be an annual 'unmet need' to which any Local Plan for BANES should be contributing, regardless of its Plan period.

Q1.5 We understand that discussions have taken place between the three West of England Combined Authority (WECA) authorities about the distribution of housing need between the local authority areas that comprise the Combined Authority. Such discussions would have to have taken place ahead of the previously indicated programme for the publication of the Draft SDS of Spring 2022. These discussions are understood to have included the identification of options for the elements of housing need arising within Bristol that could not be accommodated within the Bristol City Council administrative area, and which would therefore be proposed to be accommodated within the other two WECA authority areas, as well as in North Somerset to discharge the duty to cooperate.

Q1.6 It is quite possible that the potential consequences of the need and distribution figures when viewed by the local planning authorities figures were the reason for work ending on the preparation of the WECA Spatial Development Strategy (SDS), as reported by the current statement on the WECA SDS website that:

Work on the Spatial Development Strategy (SDS) has been halted and is not being progressed by the West of England Combined Authority. Metro Mayor Dan Norris has written to the Department for Levelling Up, Housing and Communities to explain that he has asked officers to stop work as unanimous agreement on the plan by the councils has not been reached.

Q1.7 It is in any case impossible to accept that there are no strategic issues shared between Bristol City Council and BANES – the two local planning authorities are both part of the West of England Combined Authority; they both have important cities with influence and reach beyond the respective administrative areas; they are both within the same Functional Economic Market Area (FEMA) and Local Enterprise Partnership (LEP) area; and they have overlapping Travel to Work Areas (TTWAs). The position with the Housing Market Areas (HMA) is a little more complicated. All of the relevant evidence for defining HMAs shows that parts of the BANES administrative area falls within the Greater Bristol HMA, but that for data convenience, and ‘best fit’, the BANES administrative area is identified as a separate HMA. The evidence is all provided in the 2015 Wider Bristol Housing Market Area Report by ORS (the same consultants currently advising the WECA authorities on levels of housing need). This report notes that (paragraphs 2.49 and 2.50):

‘Whilst we believe that the proposed groupings for Wider Bristol and Bath HMAs provide the overall ‘best fit’ for joint working arrangements on the basis of the available evidence, it will still be important for Bristol, North Somerset and South Gloucestershire to maintain dialogue with those local authorities that are covered partly by the functional housing market area for Wider Bristol – Bath and North East Somerset, Sedgemoor and Stroud. In particular, the Inspector examining the Bath and North East Somerset and Core Strategy noted in his report that: ‘Even if the new West of England SHMA does not cover B&NES, the Council would still have to respond positively to any request from adjoining authorities to accommodate housing needs that could not otherwise be met within the Bristol sub-region’.

‘Similarly, it will be important for Bath and North East Somerset to maintain dialogue with those local authorities that are covered partly by the functional housing market area for Bath – Mendip and Wiltshire. Furthermore, all four West of England authorities will need to maintain dialogue with each other and their other neighbouring authorities’.

Q1.8 With no published statement of common ground with the neighbouring local planning authorities or any other bodies, the Council has effectively sought to

avoid demonstrating anything of any substance with regard to the statutory duty to cooperate.

Q1.9 As noted above, the test of soundness specific to the consideration of this most important shared strategic issue expressly refers to: '*cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground.*' The Council's defence for not meeting the legal test of the duty to cooperate and the related soundness tests, cannot be that it will address the issues at some unstated future time, as deferring consideration of the issues is specifically proscribed by national planning policy.

Q2 What are the specific outcomes of the Duty to Cooperate?

Q2.1 There is nothing in the LPPU that can be identified as specific outcomes of the Duty to Cooperate, and indeed if there were the Council would presumably have drawn attention to it.

Q3 Is the Sustainability Appraisal (SA) adequate?

Q3.1 The sustainability appraisal that accompany a submitted Local Plan is the essential means of determining whether a plan is meeting the statutory objective of Plan making of promoting sustainable development. We would suggest that with the increasing significance of the sustainability agenda, and given the unique opportunity provided to spatial planning to achieve an important and particular contribution to more sustainable patterns of development, the assessment of what the sustainability appraisal of the Plan has done and has achieved should be quite demanding.

Q3.2 A sustainability appraisal is not simply a description of a submitted local plan after it has been prepared, but should:

- Be undertaken in a proper independent and objective manner
- Be challenging, in that at every stage and whenever a choice is made in making the plan, the question is asked whether there would be a better alternative from the point of view of promoting sustainable development; and

- Have demonstrably had a positive influence on the emerging plan through successive iterations of its preparation.

Q3.3 By these tests, which we believe to be appropriate, the sustainability appraisal of the submitted LPPU has not been adequate, as it has not been challenging in its approach, questioning why reasonable and quite possibly better alternatives have not been chosen, and cannot have had any significant influence on the LPPU, the publication of which falls far short of the Council using its role as plan-maker in the best possible way to promote sustainable development. As noted in the answers to subsequent questions, the LPPU has not sought to implement the statutory objective of plan making of promoting sustainable development in the most basic way it can by directing needed development to the most sustainable locations, and the sustainability appraisal has not apparently had any influence in this matter, nor reported this failing.

Q4 Has the SA been undertaken on the basis of a consistent methodology and is the assessment robust?

Q4.1 The general appearance of the sustainability appraisal from the 'BANES SA Report Partial Update Draft Plan August 2021 Combined Plan' (CD SD-005) is that the appraisal has been undertaken using a methodology that reflects long established good practice and guidance, in that there is the systematic consideration of parts of the Plan against the objectives set out in a sustainability framework which are comprehensive yet manageable in number without being unduly repetitive.

Q4.2 This is not enough for the sustainability appraisal to be 'adequate' however, and the assessment undertaken by the sustainability appraisal should be more robust.

Q4.3 Paragraph 6.2 of the BANES SA Report Partial Update Draft Plan August 2021 Combined Plan (CD SD-005, p.40) (and repeated at paragraph 11.2, p.84)) says:

'As explained in section 2, this is a partial update to the existing Plan and not a new Plan, the scope of the changes is confined to those that can be addressed without changing the spatial priorities; the spatial strategy; or

strategic housing and job growth requirements set out in the Core Strategy and Placemaking Plan. The scope of the LPPU therefore needs to be focussed on the immediate priorities and must not seek to pre-empt strategic decisions which are the remit of the SDS or significantly change the strategic policy framework of the existing Plan, such as the spatial strategy, key development sites and the plan period.'

- Q4.4 This feels rather circular. The LPPU is '*focussed on the immediate priorities*' out of the Council's choice and presumably so that it can avoid '*significantly chang(ing) the strategic policy framework of the existing Plan, such as the spatial strategy, key development sites and the plan period.*'
- Q4.5 The Council gives as an important reason for preparing the LPPU its declaration of a Climate Emergency and hence its wish to contribute to the slowing down the adverse consequences of climate change through its spatial planning role. In that case, the matters that are not addressed through the LPPU are exactly the aspects of its plan-making that the Council should be prioritising, with the opportunity to determine the location of proposed development a role local plans hold uniquely, and is their most valuable role.
- Q4.6 Whilst the LPPU does not do all that the local planning authority could be doing to promote sustainable development through spatial planning, with the reported demise of the SDS, the need for a local plan for BANES to carry out this role becomes all the more vital.
- Q4.7 The sustainability appraisal really just describes the LPPU. It is largely positive in its findings on what is in the LPPU, because most of the changes in the LPPU are development management policies drafted to seek positive environmental outcomes from the allocated sites. These policies are welcomed and the sustainability appraisal is right to acknowledge their potentially beneficial contribution. The published sustainability appraisal however does not show any sign of having challenged the limited content of the LPPU through its successive stages of preparation, or having sought to improve its performance by seeking to ensure that development takes place in the most sustainable locations, including development that cannot be satisfactory accommodated within the existing larger settlements.

Q4.8 This point is further developed in answer to the next question, concerned with the statutory requirement for a local plan to consider and report upon reasonable alternatives.

Q5 Did the Council, through an iterative SA process, take into account reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?

Q5.1 In our view the answer to both parts of the question is 'no'.

Q5.2 Aside from its later repetition, the only reference to 'options' in the sustainability appraisal is the heading 'Options appraisal for the Local Plan Partial Update document, (January 2021)' from the sustainability report (CD SD005) on page 40, and the following paragraph 6.2 which explains that the LPPU was not to '*significantly change the strategic policy framework of the existing Plan, such as the spatial strategy, key development sites and the plan period.*' As the Plan does not look at these things, the sustainability appraisal has had no options to consider and report upon, in relation to the most effective means a spatial plan has to contribute to sustainable development.

Q5.3 The types of reasonable alternatives that the Council might have considered, and which it would have been for the sustainability appraisal to seek and to report on, include:

- Preparing a full review of the Core Strategy – a reasonable alternative and a statutory and national policy requirement, given the Core Strategy was adopted in 2014 and in many respects out-of-date
- Planning for a period of at least 15 years – a reasonable alternative to what the Council has done, and a specific requirement of the Framework
- Addressing the likely unmet need from other parts of WECA - a reasonable alternative and something required for consideration by the duty to cooperate and the Framework

- The allocation for development of land on the immediate periphery of the urban area of Bristol, such as at Hicks Gate.

Q5.4 On the last point, while the Council's reasons for not considering this area for development may be that it is at this stage avoiding changes to the extant spatial framework and hence avoiding proper consideration of the spatial and functional relationships between parts of BANES and the urban and administrative areas of Bristol, these are not good reasons within the context of national planning legislation and policy. The sustainability appraisal has effectively been complicit in leaving out of consideration a location for development that would significantly contribute to more sustainable development by helping to meeting the housing need close to where the need is arising, and to increasing the sustainability of the overall pattern of development.

Q9 Are the policies of the Plan designed to secure that the development and use of land contribute to the mitigation of and adaption to, climate change in accordance with Section 19(1A) of the Act?

- Q9.1 It is noted that the primary justification offered by the Council for making changes to the adopted Core Strategy is the enhanced importance of responding to climate change, reflected in the Council's declaration of a Climate Emergency in March 2019.
- Q9.2 The proposed development management policies in the LPPU in the section headed 'Responding to Climate Change' are an attempt to seek to ensure that development taking place performs as well as can be reasonably expected in seeking to lower the carbon footprint of development and to increase biodiversity. Achieving the aims of the policies in practice will inevitably be subject to the available technology and to the viability of development proposals.
- Q9.3 However, these development management policies are to be applied in determining planning applications that are received, and as such are 'after the event', only able to seek the better performance from the form development takes. More fundamental however in seeking to achieve sustainable development, is how community needs are met and where development

takes place. We note that the Inspector's question specifically refers to the use of land as well as to development. Determining the location of development is the single most important role of a Local Plan and only a spatial plan can undertake this task. If the location of development is not, on balance, the best option from the point of view of promoting sustainable development, then no requirement from the development management function can correct this basic failing.

- Q9.4 A Plan that does not seek to put new development in the best locations is not meeting the statutory objective of plan-making of promoting more sustainable development, failing the test of legal compliance, and failing the soundness tests of in particular, positive preparation, justification, and compliance with national policy.
- Q9.5 The act of seeking to put a plan in place with only a seven year Plan period from adoption is the antithesis of promoting sustainable development through spatial planning. Promoting short termism and a piecemeal approach to addressing development needs effectively precludes the proper coordination of development with new infrastructure provision, something the expressed desirability of looking to the longer term at paragraph 22 of the Framework specifically refers to.
- Q9.6 Short termism, keeping the Plan period numbers artificially low, effectively rules out addressing the housing requirement in part through the allocation of strategic sites. Strategic sites generally have longer lead times, but can be planned and delivered in a way which incorporates all of the desirable elements of sustainable development such as access to services and facilities with a mix of uses; provision for safe and pleasant active travel; high levels of on-plot and on-site energy generation; and full integration with and enhancement of green infrastructure networks with biodiversity gain.
- Q9.7 The short Plan period is in direct conflict with the requirements of the Framework.