



RCA Regeneration Ltd.  
Unit 6 De Salis Court | Hampton Lovett Industrial Estate  
Droitwich Spa | Worcestershire | WR9 0QE

t: 01905 887 686  
e: info@rcaregeneration.co.uk  
rcaregeneration.co.uk

Louise St John Howe  
Programme Officer,  
PO Services  
PO Box 10965,  
Sudbury, Suffolk CO10 3BF

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SENT VIA EMAIL

Dear Louise,

## RE South Staffordshire LP Examination - Duty to Cooperate Consultation

Thank you for the opportunity to respond to the above. We do so on behalf of Barberry Perton Ltd as ongoing participants in the EiP process.

### Introduction

Section 33A of the Planning and Compulsory Purchase Act 2004 (PCPA) imposes a duty on the Council to cooperate (the DtC) with other planning authorities and prescribed bodies by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation.

The PCPA makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter.

### The Duty to Cooperate (DtC)

The DtC is supplemented by guidance set out in the PPG at paras 015-075. Para 015 sets out the 'cooperation activities' expected to be documented in a statement of common ground (SoCG) which effectively demonstrate what has taken place between authorities with cross boundary strategic matters that need to be effectively addressed:

*'Strategic policy-making authorities are expected to document the activities undertaken when in the process of addressing strategic cross-boundary matters whilst cooperating. These will include (but are not limited to):*

- *working together at the outset of plan-making to identify cross-boundary matters which will need addressing;*
- *producing or commissioning joint research and evidence to address cross-boundary matters;*
- *assessing impacts of emerging policies; and*
- *preparing joint, or agreeing, strategic policies affecting more than one authority area to ensure development is coordinated, (such as the distribution of unmet needs or policies relating to county matters).*

*These activities will need to be tailored to address local circumstances.'*

Paragraph: 015 Reference ID: 61-015-20190315 (our emphasis)

The shortfall in GBBCHMA known since 2017. The significant unmet need has changed in subsequent updates, but the problem has only grown. This has therefore been clear for all to see for some considerable time that there is significant unmet need and that this will need to be addressed.

Changes to the NPPF 2023 were not so significant to materially alter the approach that the council had originally agreed in relation to delivering 4,000 homes of unmet need for the GBBCHMA. The October 2023 letter asked neighbouring authorities what they thought about the revised (and significantly reduced) contribution that SStaffs was proposing to contribute, using the following excuse:

*'Specifically, paragraph 142 proposes that "Green Belt boundaries are not required to be reviewed and altered if this would be the only means of meeting the objectively assessed need for housing over the plan period". This policy, if enacted, will obviously have significant Duty to Cooperate implications for authorities with a relationship to the unmet needs of the GBBCHMA, particularly those which proposed altering Green Belt boundaries on the basis of meeting unmet housing needs within the region.'*

Of course, just because the NPPF set out that there was 'no requirement' does not mean that the council were not clearly in a position to do the right thing and take the larger amount of unmet need they had already been anticipating for some time during plan preparation.

In their October 2023 letter, the council asked for an 'indication of position' from their neighbours/fellow HMA members, but not a detailed consideration at that point – the implications of such a significant reduction from 4,000 to 640 of unmet need would therefore not have been tested properly. We do not consider this engagement to be meaningful or constructive.

The u-turn the council made was not warmly received and of those authorities that did respond, the majority of feedback was of disappointment and objection to the reduction in the unmet need figure. Perhaps the most interesting feedback came from Wyre Forest Council, who maintain they are not within the HMA, but made the following statement/asked the following questions:

*'If you decide to follow this strategy, will you be increasing the density on those sites which are outside of the Green Belt or potentially looking to allocate new sites? With neighbouring authorities which were also previously looking to allocate sites in the Green Belt, now also not proposing to take land out of the Green Belt, where will the housing requirement be met? This will inevitably put more pressure on neighbouring authorities which are not constrained by Green Belt. As a neighbouring authority, albeit outside of the Housing Market Area, which is also heavily constrained by Green Belt which covers the eastern part of our District nearest to the conurbation, we would not be in a position to offer up any land to help meet any housing shortfall from neighbouring authorities.'*

We are not clear what response SStaffs had to these questions which from the submission appear not to have been answered.

We have serious concerns regarding the 'engagement' that took place with those other authorities – their feedback is quite stark and indeed there are a significant number of authorities who did not give feedback at all

(including neighbouring Bromsgrove). We would therefore wish to see the minutes of any meetings held where discussions took place following the decision that SStaffs took to reduce the unmet housing need figure. Indeed, the corollary of this is we cannot see the point in continually updating the Strategic Growth Study if all it is going to result in is an updated figure showing how big the problem of unmet need continues to be. There is no obvious working together to achieve the same end, because the 'end' does not seem to be the same for each authority.

The excuse has so far been that as a result of what the council see as a 'strengthening' of the NPPF on matters such as Green Belt release in December 2023. Following this, it appears that the council took a politically motivated decision to actively reduce the amount of housing being proposed for allocation in the Local Plan, but for the reasons we have given, the December 2023 was not prohibitive of Green Belt release to facilitate unmet need. It was just pointed out that councils preparing development plans did not have to if Green Belt release was the only way to address objectively assessed need.

The reality is that nothing changed in the NPPF that would have prohibited the council from continuing with its original intention to accommodate the 4,000 dwellings of unmet need. The implications of the council's decision to deliberately reduce the unmet need figure are very substantial and cumulative for those unable to accommodate their own need. As a minimum, it amounts to 3,360 dwellings that will not be accommodated in SStaffs. To date, the failed local plans from Lichfield, Shropshire and Solihull amount to thousands of dwellings that will not now be delivered. There is (conspicuously) still no unmet need figure contribution from Bromsgrove, despite working on a local plan for many years and only recently reaching Reg 18 consultation now (at the time of writing).

All of this points to a complete failure of the DtC in our view as it has simply not resulted in any real effective agreement or coordination at a strategic level on housing matters – where housing (or the lack of) is a considerable and growing problem in the HMA.

#### Beyond the Plan Period:

There also appears to be no evidence of discussions over how residual unmet need (of which there clearly would be substantial amounts) could be met in subsequent reviews of local plans which would come later on. That has, in our view left the council unable to demonstrate that Green Belt boundaries will not need to be altered prior to the end of the plan period, contrary to para 148(e) because it is clear that the unmet need continues not to be remotely close to being met by South Staffordshire – let alone those who have failed to secure a local plan through examination – including Lichfield, Shropshire and Solihull – all of whom belong to the same HMA.

#### Conclusions

We accept that the disagreements between a number HMA authorities and South Staffordshire do not in and of themselves amount to a failure of the duty to cooperate.

However, the fact remains that South Staffordshire Council had originally got as far as Reg 19 accommodating a far greater unmet need housing figure from the HMA, agreed by members (4,000). This clearly demonstrates that the council could have and should have done far more to provide a far greater amount than 640 to meet the 'HMA need' under the DtC. There really were no changes sufficiently material in the NPPF to clearly support this reduction as the council have suggested – the 2023 NPPF was a re-framing of a previous position – it was not a statutory requirement to release Green Belt to meet unmet need but that was always the case. The reaction of neighbouring authorities in the HMA in objecting to the approach demonstrates that they were not anticipating the revised approach.

It is also not now clear at all how the 640 would be distributed between the HMA authorities, particularly in light of the failure of the Shropshire Local plan. These are questions that have been raised about this by neighbouring authorities, but they remain unanswered. This has, in our view, contributed to a number of other local plans being delayed or negatively affected during preparation.

The letter asking for an 'indication of position' is not cooperation. It is asking for a basic opinion, but does not, in our view extend to cover the constructive and active engagement that is described under the DtC. We consider the council (in particular where the unmet need figure has been reduced so substantially) have not engaged constructively, actively and on an ongoing basis in relation to the strategic matters of housing needs and unmet housing needs.

Based on the evidence provided, we believe that South Staffordshire Council have failed in their legal obligation under S.33A, subsection 2(a) of the PCPA by not 'engaging constructively, actively and on an ongoing basis' in this process and by not doing so have frustrated the preparation of other Local Plans in the HMA (contrary to subsection 3(b)).

Given this we invite the Inspector to conclude that the Council has not satisfied the DtC.

Yours sincerely,

**Sian Griffiths BSc(Hons) DipTP MScRealEst MRTPI MRICS**

Director

siangriffiths@rcaregeneration.co.uk