

**BANES
CORE STRATEGY DPD
EXAMINATION**

**Scope of the Strategic Housing
Market Assessment (SHMA)**

HEARING DATE:

TUESDAY 17 SEPTEMBER 2013

STATEMENT

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For

The Duchy of Cornwall

August 2013

1.0. Preamble

1.1. This Statement has been prepared following consideration of the issues raised in ID/35 (and ID/32) in relation to the content of the SHMA Review (March 2013) and the subsequent Addendums (1a and 1b) published in July 2013. The SHMA documents have been added to the Examination Library as Core Document CD9/H4.

1.2. The overarching question to be addressed at the Hearing on 17 September, is set out in ID/35 as follows:

“Does the geographic coverage of the Council’s new SHMA (CD9/H4) in relation to Housing Market Areas provide an adequate basis for the objective assessment of housing needs in accordance with the NPPF? If not, is any departure from national policy justified?”

1.3. This question is addressed below, supplemented with further responses to certain of the additional questions posed in the Inspector’s commentary.

1.4. In short, and for the reasons set out in our earlier submissions, together with those from the development industry generally and based upon the Inspector’s thorough questioning of the Council, we are of the view that (i) the geographic coverage of the new SHMA has neither been adequately explained nor justified, nor does it represent an adequate basis of identifying an objectively assessed housing need; and (ii) such departure from national policy is not justified in the circumstances.

1.5. The Council has failed to undertake a Strategic Housing Market Assessment (SHMA) as required by the NPPF. Rather, they have prepared a ring-fenced assessed of locally derived need which fails to align with the requirements of the NPPF.

2.0. Background – the 2009 SHMA

2.1. The submission Core Strategy was prepared against the background of a number of technical documents, including the West of England SHMA (May 2009) (CD4/H11).

- 2.2. The 2009 SHMA sets out information relating to the extent of the SHMA in terms of its geographical coverage and also the inter and intra relationships with adjoining areas in the context of the Travel to Work Patterns.
- 2.3. Paragraph 2.2.4 makes it clear that the Bristol Travel to Work Area (“TTWA”) dominates the HMA which includes the western section of Bath and North East Somerset.
- 2.4. Paragraph 2.2.5 adds that the Bath TTWA covers most of the District (except the western section), a significant part of the eastern part of Mendip District (including Frome) as well as sections of the north east corner of West Wilts and the south west corner of North Wilts. Paragraphs 2.4.5 to 2.4.5 further expand upon the Bath TTWA whilst paragraphs 2.4.1 to 2.4.8 set out the wider links to the HMA.
- 2.5. Evident from the 2009 SHMA is that there is a complex relationship between settlements, administrative boundaries and TTWAs extending across the HMA.
- 2.6. Section 2.10 of the SHMAA concludes that the HMA has a high degree of self-containment with 93% of those living in the area also working in the area.
- 2.7. Importantly, paragraph 2.10.2 concludes with the statement

“...if housing is not available within the HMA more people may choose to move outside the area to seek cheaper housing, but commute to the employment centres within the WoE HMA.”
- 2.8. The SHMA, clearly defines the geographical coverage of the HMA extending across the administrative areas of the following Councils: BANES, Bristol City, North Somerset, South Gloucs, Mendip and West Wilts plus neighbouring authorities.

3.0. The Inspector’s Preliminary Conclusions

- 3.1. In June 2012 the Inspector issued his preliminary conclusions (ID/28 and ID/30). His concerns primarily related to the housing element of the strategy

and his main conclusions, in so far as they relate to the consideration of the SHMA for the purpose of the Hearing on 17 September, were:

- the lack of a NPPF compliant assessment of the District housing requirement;
- the need to make up the housing delivery shortfall from the Local Plan;

3.2. The Inspector advised that the further work needed to rectify these issues to include:

- the identification of the housing requirement in a manner consistent with the NPPF;
- changes to the plan to fully accommodate the assessed needs and demands or evidence to demonstrate that doing so would result in adverse impacts which would significantly and demonstrably outweigh the benefits (NPPF, 14);
- Updating of other evidence.

3.3. The Council has undertaken additional technical work and the proposed changes to the Core Strategy include:

- Increasing the housing requirement to 12,700 dwellings during the period 2011 to 2029 (an increase of circa 1,800 dwellings)
- Allocating additional (new) sites to meet the increase in the housing requirement.

3.4. The changes to the housing requirement involve accepting (albeit over a shorter 18 year plan period) a higher annual housing requirement of some 705dpa (which compares with the 550dpa proposed by the Council originally).

3.5. As matters stand, the Council is yet to respond to the question at paragraph 2.14 of our representations upon the Proposed Changes in relation to the calculation of the requirement which the Council claim is based upon the approach set out in the Annex 1, Table 4 to the Report to Council in March 2013 (CD9/CP3).

3.6. The Table identifies a requirement for 7,470 dwellings during the 18yr period. It then adds the pre 2011 backlog of 1,167 dwellings (see also BNES/32) resulting in a requirement for 8,637 dwellings. This figure is then subtracted

from a SHLAA supply of 10,852 dwellings with the difference (2,215) added to the 8,637 requirement to produce a figure of 10,852. A figure for affordable housing of between 1,400 to 1,900 dwellings is then added which results in a requirement figure of between 12,274 and 12,749 dwellings. This appears to represent the 12,700 figure carried forward in the Core Strategy. However, the Council has not explained how it translates a SHLAA (supply figure) into a requirement figure. Moreover, the 12,700 requirement figure fails to reflect any of the requirement figures set out in Figure 59 of the SHMA, the content of which we question in any event particularly in the context of the need for geographical consistency.

- 3.7. The Inspector has highlighted this lack of explanation at paragraph 1.3 of ID/33 as an issue to be addressed by the Council, which matter remains outstanding.

4.0. The SHMA Update (CD9/H4)

- 4.1. The SHMA Update was published as part of the revised evidence base to support publication of the Proposed Changes consultation following the Inspector's concerns as set out in his Preliminary Conclusions.
- 4.2. ID/32 and ID/33 set out the Inspector's concerns with the Council's revised approach to preparation of the SHMA.
- 4.3. Paragraph 2.16 of the SHMA suggest that the geographical extent of the HMA have been revised with "the city of Bath, its environs and the south of BANES forming its own HMA which also extends into small parts of Wiltshire and villages in the north of Mendip."
- 4.4. Interestingly, paragraph 2.10 of the SHMA Update identifies that "the reason that Bath does not show higher levels of self-containment at this stage is because it has many workers coming from elsewhere to work in the city."
- 4.5. This is an important conclusion in seeking to understand the TTW patterns within and beyond the HMA.

5.0. The West of England Partnership

- 5.1. The West of England LEP, Planning and Communities Board have commenced preparation of a new joint West of England SHMA.
- 5.2. A “Pre-production Brief” was published for consultation in March 2013 setting out a broad approach to preparation of the SHMA, with the project timetable suggesting the publication of initial findings at the end of 2014.
- 5.3. A report on the West of England SHMA Review was considered by the LEP’s Planning, Housing & Communities Board on 1 July 2013. A copy is attached as Annex A and paragraphs 3 and 4 helpfully set out what is expected to be addressed in preparing a SHMA.
- 5.4. Paragraphs 12 and 13 confirm in relation to establishing a HMA that:

“The Housing Market Area is yet to be agreed (informed by evidence which will require the latest Census Travel to Work Area information (anticipated November 2013)). Mendip and West Wiltshire local authority areas were previously included within the West of England Housing Market Area.

The West of England will continue to work with our neighbouring authorities to determine the best approach to undertaking the SHMA review.”

- 5.5. The Table at Pg4 further states that once the Census Travel to Work Area Data is made available in November 2013, it will inform the definition of the HMA.
- 5.6. Publication of this data may support the Council’s assertions that BANES is a “ring-fenced” SHMA. Conversely, and what is likely, is that it will confirm a complex relationship across the wider area to include the adjoining authorities of Bristol and beyond.
- 5.7. Of further relevance is the LEP’s Duty to Co-operate Schedule published in March 2013 which sets out the overall coordination of strategic growth and infrastructure provision including in relation to the coordination of “other” Local Plan documents. Pg10 refers to the need for evidence base preparation

highlighting the need to ensure the evidence base on housing needs across the WoE is consistent, robust and NPPF compliant.

- 5.8. It is unclear how the Interim SHMA prepared for BANES (CD9/H4) fits in with this detailed review which covers the administrative areas of BANES, Bristol, North Somerset and South Gloucester.
- 5.9. In response to the Inspector's questions at paragraph 3,10 of ID/35, it is our view that yes, the focus of CD9/H4 on BANES only (with a limited part of administrative boundaries to the east) will have practical implications for the focus of development both within BANES and in "other" administrative areas.
- 5.10. If preparation of the SHMA is not founded upon a proper understanding of both the inter and intra relationships within which the Authority is located, this could result in a material under provision in the overarching housing requirement to be met during the plan period.
- 5.11. If, on this analysis, the spatial strategy is predicated on (i) an erroneous identification of the HMA and therefore (ii) a failure to identify an appropriate level of housing growth, (iii) the policy approach to urban extensions (including any necessary Green Belt releases) will be flawed and is unlikely to plan for sufficient housing opportunity and choice as (iv) the SHMA will have failed to identify an objectively assessed housing need.

6.0. The NPPF

- 6.1. The NPPF, and accompanying guidance, sets out the methodology of approach to preparing a robust and acceptable Plan.
- 6.2. Paragraph 182 of the NPPF states that it is the role of the Local Plan Inspector to assess whether the Plan has been:
 - (i) Prepared in accordance with the Duty to Cooperate, legal and procedural requirements; and
 - (ii) Whether it is sound.
- 6.3. The tests of "soundness" require the plan to be positively prepared, justified, effective and consistent with national policy.

- 6.4. The NPPF also sets out the specific outcomes that the planning system should deliver and sets out a requirement for development plans to take into account evidence of current and future levels of need and demand for housing and affordability levels based upon, inter alia, local and sub-regional evidence of need and demand as set out in SHMAs.
- 6.5. Paragraph 157 sets out the crucial components of Local Plans. This includes the need for Plans to:
- (i) plan positively for the development and infrastructure required in the area,
 - (ii) be drawn up over a 15yr time horizon and take account of longer term requirements,
 - (iii) be based on co-operation with neighbouring authorities; and
 - (iv) allocate sites to promote development and flexible use of land
- 6.6. Paragraph 158 refers to the need for an adequate evidence base.
- 6.7. In terms of housing, paragraph 159 states that local planning authorities should have a clear understanding of housing needs in their area and should:
- (i) Prepare SHMA to assess their full housing needs,
 - (ii) Work with neighbouring authorities
 - (iii) Identify a scale and mix of housing which meets household and population projections, taking account of migration and demographic change (see also NPPF, para 50),
 - (iv) Address the need for all types of housing; and
 - (v) Prepare a SHLAA to establish realistic assumptions about the availability, suitability of land to meet the identified need for housing over the plan period.
- 6.8. The above requirement is reinforced at paragraph 47 of the NPPF which requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area.
- 6.9. Plans that can show compliance against the above requirements are more likely to be found sound than those strategies that have not adequately and appropriately applied the foregoing tests.

Planning Strategically Across Local Boundaries

- 6.10. Paragraph 179 of the NPPF makes it clear that LPAs will be expected to work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in Local Plans.
- 6.11. It is further added that joint working should enable LPAs to work together to meet development requirements which cannot wholly be met within their own areas.
- 6.12. Paragraph 181 adds that LPAs will be expected to demonstrate evidence of having effectively cooperated to plan issues with cross-boundary impacts when their Local Plans are submitted for examination.

The Duty to Cooperate

- 6.13. Whilst the Core Strategy was submitted prior to 15 November 2011, there has been a lengthy suspension of the examination process and new evidence has been prepared and is to be submitted by the Council. This represents a significant change in circumstances and we ask the Inspector to review whether the proposed changes to the Core Strategy, having regard to the revised housing requirement, satisfy the duty to cooperate as required by Section 33A of the 2004 Act.
- 6.14. The Duty was enshrined in statute in order to require cooperation between authorities thus replacing the void left by the revocation of the RSS tier of governance and the boundary-transcending strategies that formed an integral part of the regional planning process.
- 6.15. The Duty to cooperate as set out in Section 33A is met when the local authority has “maximised its effectiveness”. This represents the touchstone. In instances where an authority has failed to “maximise its effectiveness” under the Duty then the Strategy or Plan cannot be said to be legally compliant.
- 6.16. A recent example of a Council failing its Duty to Cooperate is Coventry. The Inspector’s conclusions following an exploratory meeting are set out in a letter

and accompanying annex dated 27 February 2013 and a copy is attached at Annex B.

- 6.17. Paragraphs 46, 53 and 54 set out a helpful summary of the significance of failing to meet the Duty. The paragraphs are reproduced below (our emphasis underlined):

The duty to cooperate plays a critical role in the planning process. It is the mechanism for ensuring that, to use the words of paragraph 179 of the Framework, "...strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans." The importance of this role is emphasised by the severity of the sanctions which apply if this duty is not discharged - in other words the Plan would be found unlawful and there would be no remedy for this. [Para 46]

It is clear from the evidence that it has not ignored the duty to cooperate and it has actively sought to discharge that duty on an ongoing basis. However, that is not the end of the story. Section 33A of the 2004 Act also requires the Council to engage constructively with its neighbours. The evidence does not show that cooperation between Coventry and its neighbouring councils has been constructive, as required by the 2004 Act, or effective as is expected by paragraph 181 of the Framework. [Para 53]

I conclude, therefore, that the Plan does not meet the legal requirements of the 2004 Act in that the Council has not engaged constructively with neighbouring local planning authorities on the strategic matter of the number of houses proposed in the Plan and consequently it has not sought to maximise the effectiveness of the plan making process. [Para 54]

- 6.18. This matter was also addressed in the preparation of the Hart District Local Plan, with the Inspector noting at paragraph 14 of his conclusions (copy attached as Annex C) that inter alia, the Council has not clearly identified the full housing needs of the HMA or even the District.

- 6.19. The implications of failing to discharge the Duty to cooperate are severe in so far as the Plan cannot then be said to be legally compliant.
- 6.20. The onus is on BANES to demonstrate that their revised approach to preparation of a District-only SHMA meets the tests of the NPPF and the Duty to Co-operate.
- 6.21. However, if the Inspector is not minded to re-open the debate about the application of the Duty to Cooperate and does not accept that the Core Strategy needs to pass the legal duty, it would nevertheless be found unsound due to the inadequacies of the SHMA which looks at BANES in isolation and is not what is required by the approach set out in the NPPF.

7.0. Summary

- 7.1. In response to the question posed at paragraph 3.12 to ID/35, the consequences would be that the Core Strategy is unsound such that there would be little merit in advancing the remaining parts of the Examination. In these circumstances, the Council should be asked to withdraw the Core Strategy.
