



## PLANNING COMMITTEE

15 January 2024

### REPORT OF HEAD OF PLANNING & BUILDING CONTROL

#### South Staffordshire local plan review – duty to co-operate

#### 1. PURPOSE OF REPORT

- 1.1 South Staffordshire District Council (SSDC) wrote to Walsall Council and the other Black Country authorities on 24 October 2023 seeking our views on various matters relating to their local plan in the context of changing national planning policy. The main text of that letter is attached at **appendix 2**, and the purpose of this report is to agree a response to it.

#### 2. RECOMMENDATION

- a) agree the wording set out in **appendix 1** as a basis for Walsall Council's response to the letter from South Staffordshire District Council dated 24 October 2023 under duty to cooperate
- b) refer the response to the Director for Economy, Environment & Communities to submit it to South Staffordshire District Council in consultation with the Portfolio Holder for Regeneration, with delegated authority to make amendments to its contents as necessary.

#### 3. FINANCIAL IMPLICATIONS

None arising directly from this report.

#### **4. POLICY IMPLICATIONS**

- 4.1 The report sets out the strategic planning issues that SSDC considers to be of cross-boundary significance. The most significant of these issues is that Walsall along with the other Black Country authorities and Birmingham, which together form part of the Greater Birmingham and Black Country Housing Market Area (GBBCHMA), have a large shortfall of land to meet their needs for housing and other land uses. SSDC's local plan review (publication stage - 2022) proposed releasing significant areas of green belt land within its area to accommodate their own housing need as well as a 4,000 dwelling contribution to meeting the unmet needs of the GBBCHMA.
  
- 4.2 SSDC are asking for a formal response from Walsall of our position if they were to revise their housing strategy to no longer review their area's green belt boundaries to accommodate the housing needs of the district or those of the GBBCHMA.
  
- 4.3 This is as a result of changes to the National Planning Policy Framework (NPPF) published in December 2023. The revised NPPF states that there is no requirement for green belt boundaries to be reviewed or changed when plans are being prepared or updated but planning authorities may choose to review them where exceptional circumstances are fully evidenced and justified, through the plan-making process (paragraph 145).
  
- 4.4 The revised NPPF continues to refer to the soundness tests. Paragraph 35 states that a plan is sound if it is, amongst other requirements, positively prepared: providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs, and is informed by agreements with other authorities, so that unmet need from neighbouring authorities is accommodated where it is practical to do so and is consistent with achieving sustainable development.
  
- 4.5 Should SSDC adopt a revised housing strategy within their local plan, and not release green belt land to meet housing needs, this will clearly have implications for Walsall as part of the GBBCHMA. In particular in regard to the needs expected to be met in the Walsall Borough Local Plan. Paragraph 145 of the revised NPPF also applies to planning authorities when considering how to meet their own needs.

## **5. LEGAL IMPLICATIONS**

- 5.1 Duty to cooperate is derived from section 110 of the Localism Act 2011. This inserts section 33A in the Planning and Compulsory Purchase Act 2004 (as amended). Section 33A is proposed to be removed by the Levelling Up and Regeneration Act (LURA) 2023. However, the relevant part of the LURA is not yet in force as it is subject to commencement and transitional provisions. The government has stated that duty to co-operate will be replaced by an alignment requirement, to be set out in national policy rather than legislation.

## **6. EQUAL OPPORTUNITY IMPLICATIONS**

- 6.1 The South Staffordshire local plan review will be required to ensure the needs of all sections of the community are met.

## **7. ENVIRONMENTAL IMPACT**

- 7.1 The South Staffordshire local plan review is accompanied by a sustainability appraisal and habitat regulations assessment which will be updated as the plan is progressed.

## **8. WARD(S) AFFECTED**

- 8.1 All.

## **9. CONSULTEES**

- 9.1 Officers in Planning and Building Control and in Legal services have been consulted in the preparation of this report.

## **10. CONTACT OFFICER**

David Holloway – Planning Policy Manager

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## 11. BACKGROUND PAPERS

All published.

Documents and an update position on the South Staffordshire local plan review can be viewed at: [Local Plan Review | South Staffordshire District Council \(sstaffs.gov.uk\)](https://www.sstaffs.gov.uk/local-plan-review)

## **appendix 1**

### ***response from Walsall Council to South Staffordshire District Council - letter dated 24 October 2023 - on the South Staffordshire local plan review - under Duty to Co-operate***

Thank you for your letter dated 24 October 2023, in which you set out the current position with regard to your local plan: that it had been paused in January 2023 subject to the outcome of the current national planning policy reforms, to be published imminently in a revised National Planning Policy Framework (NPPF). *The revised NPPF has now been published in December 2023. While the content of the NPPF is largely as proposed in the December 2022 consultation draft, there are some significant differences between the two versions.*

However, you state that you are still looking to progress your local plan under the existing plan-making regime, and in order to do this, will be likely to be required to meet a deadline for submission of your local plan by June 2025.

You state that the current position on housing need, in which you are considering moving away from, is based on the regional evidence base prepared by the Greater Birmingham and Black Country Housing Market Area (GBBCHMA), and as set out within your regulation 18 plan, with your contribution to the GBBCHMA stated as being around 4000 dwellings. However, you cite that, pending the outcome of the planning reforms, there is a current expectancy that under a revised NPPF green belt will not be required to be reviewed and altered if this would be the only means of meeting objectively assessed need for housing over the plan period.

You are consequently requesting an indication of our position in the event that you were to revise your housing strategy to no longer review Green Belt boundaries to accommodate the housing needs of the both the district and GBBCHMA, if the proposed changes to planning came through: "we would appreciate an indication of what your position would be if SSDC were to revise its housing strategy to no longer review Green Belt boundaries to accommodate the housing needs of the District or GBBCHMA, if the proposed changes to paragraph 142 of the NPPF are enacted."

There are other planning matters which you set out in your letter, specifically on employment land and gypsy and travelling show persons' accommodation, in which you are seeking an updated Walsall Council position on under duty to cooperate.

In your covering message, you have set a deadline of 24 November 2023 for us to respond to your request. We previously responded to you on 22 November 2023 to meet that deadline: we sent a holding response as it was considered that you were seeking this authority's views regarding the ramifications for neighbouring authorities on a potential change in planning strategy for your local plan, which was interpreted as a formal approach under duty to co-operate. This meant that to respond formally under Walsall's scheme of delegations we needed to obtain authority from our planning committee. What follows is our response based on the approach to wording which was agreed at the planning committee meeting on 15 January 2024.

## **Housing**

The NPPF, published in December 2023, confirms that there is no requirement for green belt boundaries to be reviewed or changed when plans are being prepared or updated, but planning authorities may choose to review green belt boundaries where exceptional circumstances are fully evidenced and justified, through the plan making process (para 145).

However, the duty to co-operate remains at least until secondary legislation and/or revised national policy requirements come into effect with regard to the Levelling Up and Regeneration Act 2023: paragraph 25 of the NPPF states that planning authorities are under a duty to cooperate with each other on strategic matters that cross administrative boundaries; effective and on-going joint working between strategic policy-making authorities is integral to the production of a positively prepared and justified strategy, including whether development needs that cannot be met wholly within a particular plan area could be met elsewhere (para 26); in order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground (para 27).

In addition, the test of soundness requiring plans to be positively prepared and that unmet demand from neighbouring authorities is accommodated where it is practical to do so, also stands: paragraph 35 a.

It is therefore advised that in order to meet continued duty to co-operate requirements and ensure that you are able to demonstrate that the South Staffordshire local plan review is positively prepared, SSDC continue to engage with neighbouring authorities under duty to cooperate and seek to contribute to meeting the unmet housing needs in particular of these authorities, including Walsall, where this is justified through the evidence base.

With regard to the evidence, the GBBCHMA Strategic Growth Study (GL Hearn) arose out of the Birmingham Development Plan examination and sought to address the housing needs identified in that plan to 2031. It pre-dates the introduction of the standard method for calculating housing need. The introduction of the standard method and the rolling forward of housing requirements mean that housing need in the region is now much greater than set out in the study.

Furthermore, para. 230 of the NPPF (December 2023) states that the policies in this framework will apply for the purpose of examining plans where those plans reach regulation 19 stage after 19 March 2024. Plans that reach pre-submission consultation on or before this date will be examined under the relevant previous version of the framework in accordance with the above arrangements.

Given that your local plan review has completed its regulation 19 consultation, it would appear that, even if you sought to consult again on a revised regulation 19 plan in Spring 2024, the requirement for plans to be positively prepared would remain, and indeed the revised position on the potential release of green belt land to meet housing needs would not appear to apply.

Even without this text, it is advised that a change to the strategy of the plan of this significance is likely to require a new regulation 18 consultation, including a revised sustainability appraisal to assess the environmental outcomes of this change in strategy. This would mean that, in our view, it would be unlikely that, in allowing for any new regulation 18 consultation as may be necessary, with such a change the plan would be able to be submitted under the existing plan-making regime.

### **Employment**

Acknowledging that South Staffordshire has a strong functional economic relationship with the Black Country Functional Economic Market Area (FEMA), and that Walsall is within the evidenced South Staffordshire FEMA, we note and welcome your intention to work with us on updating the Economic Development Needs Assessment (EDNA). Similar work is underway on the employment evidence for the Black Country, including work to support the Dudley and Sandwell draft local plans that have recently been consulted upon.

### **Gypsies and Travellers**

We can confirm that the situation in Walsall remains as set out in your letter, and in response to the email of October 31 from ORS, we can confirm that there are no Gypsy, Traveller and/or Travelling Show persons related planning issues that cross our administrative boundaries. We are aware that there are several long-established traveller sites (mainly single-family sites) in South Staffordshire close to the boundary, but these are not considered to be part of the supply for Walsall or the wider Black Country. Walsall has a significant shortfall in the supply of land for all housing as well as specifically for traveller sites, so we are likely to be unable to offer any provision that might contribute to meeting needs arising from South Staffordshire.

### **Other Issues**

We agree that transport, infrastructure (in particular any additional infrastructure that may be required to serve proposed development sites in South Staffordshire close to our border) and natural environment remain strategic issues between us.

We look forward to further engagement with your council, especially under duty to cooperate/alignment test protocols as we progress our respective plans.

## **appendix 2**

### ***letter from South Staffordshire District Council dated 24 October 2023 - on the South Staffordshire local plan review - under Duty to Co-operate (main text)***

As you will be aware, South Staffordshire District Council (SSDC) paused work on its local plan in January 2023, requesting clarity from government over its proposed reforms to national planning policy announced in December 2022. At the time these were understood to be implemented by 'Spring 2023', which unfortunately has not been the case, with our current understanding being that the revised National Planning Policy Framework will be published in Autumn 2023.

Despite these delays at the national level, we recognise the need to progress the plan to ensure that we can submit in line with the government's plan deadlines. Whilst no decisions have yet been made regarding the plan's strategy it is evident that the delay to the plan's preparation and potential changes to national planning policy will have effects on the plan's approach to accommodating development needs. Therefore, the Council announced in July 2023 that it would begin revisiting the evidence underpinning the local plan, with the intention of undertaking an additional public consultation on the plan in Spring 2024. Whilst the Council had hoped to wait for the changes to the NPPF to be finalised before progressing further work on the Local Plan it will be necessary to begin this process now, including further Duty to Cooperate engagement, if the government's June 2025 deadline is to be met. The Council's full statement on this can be found here:

<https://www.sstaffs.gov.uk/news/2023/local-plan-statement>.

The likely Duty to Cooperate issues raised by this additional plan-preparation stage and changing national policy context for cross-boundary matters are summarised below, alongside matters where the Council would welcome your authority's views.

### **Housing**

The Council's 2022 Publication Plan consultation proposed releasing significant Green Belt release to achieve its proposed housing target, which accommodated the Council's own housing needs and a 4,000 dwelling contribution to the unmet needs of the Greater Birmingham and Black Country Housing Market Area (GBBCHMA). The Council's evidence base indicated that, at a strategic level, the exceptional circumstances for releasing this level of Green Belt heavily relied upon the Council's housing need and the significant unmet housing needs arising from the wider housing market area<sup>1</sup>, as there was no way to accommodate this contribution to unmet needs without Green Belt release.

The Council's exceptional circumstances for altering Green Belt boundaries were also supported by a regional evidence base prepared by the GBBCHMA<sup>2</sup> in 2018, which indicated that strategic Green Belt release would likely be required to meet the unmet housing needs of the region. Following on from this regional evidence base, a Statement of Common Ground was drafted between the GBBCHMA authorities, reflecting the position on unmet housing needs, proposed updates to the regional evidence base and measures to implement a governance structure between the



authorities, based on the positions of each authority as at August 2022. This is attached in Appendix 1 of this letter and was signed by nine (but not all) of the GBBCHMA local authorities and related authorities.

Given the evident role of unmet housing needs in driving Green Belt release in South Staffordshire, it is important to note that the 2022 draft changes to the National Planning Policy Framework (NPPF) proposes changes to how Green Belt boundary changes are considered in relation to housing needs. 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.

Given the above context, **we would appreciate an indication of what your position would be if SSDC were to revise its housing strategy to no longer review Green Belt boundaries to accommodate the housing needs of the District or GBBCHMA, if the proposed changes to paragraph 142 of the NPPF are enacted.** Understanding your stance on this will help us to progress any necessary changes to the plan at pace once the final changes to the NPPF are confirmed, ensuring that we can meet the June 2025 deadline set by government.

### **Employment**

The 2022 Publication Plan proposed sufficient employment land supply would be released to deliver 99ha between 2020-2039. This provided for a potential contribution of 36.6ha towards the unmet needs of the Black Country authorities and a further additional minimum contribution of 67ha of land to the Black Country from the West Midlands Interchange development consent order, with the remainder of the surplus land supply from the site to be considered with related authorities through the Duty to Cooperate. Due to the delay in the plan's preparation, the Council will need to prepare an update of its Economic Development Needs Assessment (EDNA) to inform its Spring 2024 Regulation 19 consultation. This will update the Councils employment requirement across an updated plan period, reflecting delay to the plan's likely adoption date. We will be engaging with you on these matters at an appropriate point in time to inform the Regulation 19 consultation on SSDC's Local Plan in Spring 2024.

SSDC will also continue to work through the West Midlands Development Needs Group to assist in the preparation of the update to the West Midlands Strategic Employment Sites Study 2021 and will seek to address its findings through the update to its EDNA and employment land site assessment process.

## **Gypsy and Travellers**

SSDC has previously indicated a 121 pitch need for Gypsy and Traveller households, including 72 pitches within the 5 year period. SSDC has commissioned an update to the Gypsy and Traveller Accommodation Assessment which will identify our needs up until 2041. It is not expected that our needs will reduce through the updated assessment. As it stands, despite undertaking the following steps, SSDC can only deliver 37 pitches within the plan period on sites which would address unmet pitch needs;

- Intensifying supply on existing sites
- Expanding all suitable existing sites
- Exploring all public land options (SSDC or County Council owned) in the District for new public sites
- Approaching sites proposed for general housing allocation to identify if the landowner would be willing to set aside part of the site for pitch needs

Call for sites, public consultations with Gypsy and Traveller sites and pro-active conversations with public bodies were undertaken to fully establish the extent of land available to meet pitch needs. This involved full exploration of both Green Belt and non-Green Belt options, which, if suitable, are allocated for new pitch supply. Despite exploring all of these options, SSDC can only deliver 37 pitches which would address its unmet pitch needs, creating a strategic cross-boundary issue to be discussed with adjacent authorities and other authorities within the housing market area.

In response to this unmet need, Walsall Metropolitan Borough Council (WMBC) has confirmed that its permanent traveller site is full and that there is a temporary transit site but that only has a 3 year permission. Whilst the Walsall Site Allocation Document allocates a new permanent (non-Green Belt) site, no funding has been identified to enable its delivery and no options have been considered for publicly run sites in the Green Belt. Green Belt sites proposed in the Black Country Plan had not yet been contacted to consider the inclusion of a traveller site and WMBC have not yet scoped out issues that might be addressed by any replacement for the Black Country Plan. Finally, Walsall has very little publicly owned land that remains available for development either as a traveller site or for general housing.

Given this background SSDC is of the view that it will need to continue to work with WMBC to establish whether there is scope for new publicly run Green Belt sites (including as part of a wider housing allocation) which could address SSDC pitch needs as the new WMBC local plan progresses.

SSDC would welcome an update to the steps taken to examine all potential pitch supply options, as SSDC has sought to do through its plan preparation.

### **Other issues**

The previous statement of common ground drafted between our councils also addressed the following matters:

- Transport
- Infrastructure
- Natural Environment

Once further details of any finalised spatial strategy are understood will be re-engaging with you on these matters.

### **Next steps**

The Council is currently preparing a Regulation 19 consultation on SSDC's Local Plan in Spring 2024 and will engage with you once further information is available on matters affecting cross-boundary issues. This will allow us to update to the statement of common ground previously drafted to reflect each of our up-to-date positions. In the meantime we would welcome a response to the matters raised in the letter above, particularly those relating to potential changes to national planning policy regarding housing needs and Green Belt. Please let us have your response no later than **24th November 2023**.

We would be happy to meet with you to discuss this further, please get in touch with myself or the team using the contact details above if it would assist.