

Tamworth Local Plan Examination

MATTER 2: Duty to Co-operate

INSPECTOR'S ISSUE 2 DUTY TO CO-OPERATE (DtC)

2.1 Has the Council worked collaboratively with other authorities and organisations during plan preparation on strategic matters that cross administrative boundaries?

Lichfield District Council has worked closely with Tamworth Borough Council and other neighbouring authorities on strategic matters. This includes working together on a shared evidence base, for example the Southern Staffordshire Districts Housing Needs study and SHMA update (2012), and the joint strategy 'Meeting Development needs in South East Staffordshire' (2013) both of which were prepared jointly between Lichfield District, Cannock Chase District and Tamworth Borough Councils.

Lichfield District Council has been – and continues to be - a constructive, active and co-operative partner in assisting Tamworth to meet its housing (and more latterly employment) needs. This is evidenced through the Memorandum of Understanding (October 2014) whereby the Council has committed to working with TBC, NWBC and partners across the wider GBSLEP to address both Tamworth's localised shortfall for housing and employment, and the cumulative shortfall (of which Tamworth's shortfall is a part) across the wider GBSLEP and associated HMA.

Lichfield District Council incorporated a Main Modification (MM1) to its Plan to address cross boundary strategic matters. Accordingly, paragraph 4.6 of the Local Plan Strategy (adopted 17th February 2015) reads:

'Following discussions falling under the Duty to Co-operate, Lichfield District Council recognises that evidence is emerging to indicate that Birmingham will not be able to accommodate the whole of its new housing requirements for 2011 – 31 within its administrative boundary and that some provision will need to be made in adjoining areas to help meet Birmingham's needs. A similar situation applies, albeit on a lesser scale, in relation to Tamworth. Lichfield District Council will work collaboratively with Birmingham, Tamworth and other authorities and with the GBSLEP to establish, objectively, the level of long term growth through a joint commissioning of a further housing assessment and work to establish the scale and distribution of any emerging housing shortfall. In the event that the work identifies that further provision is needed in Lichfield District, an early review or partial review of the Lichfield District Local Plan will be brought forward to address this matter. Should the matter result in a small scale and more localised issue directly in relation to Tamworth then this will be dealt with through the Local Plan Allocations document'.

Matters discussed in relation to Tamworth's needs were discussed at length via Matter 2 of the resumed hearings for the Main Modifications to the Lichfield Local Plan Strategy (October 2014). The relevant extracts from the Inspectors report are included at **Appendix 1**. Key points made were:

- An early review of the plan or the allocations DPD was the most appropriate way of dealing with Tamworth's shortfall in terms of housing and employment depending on the scale of the growth Lichfield would need to accommodate (Inspector's report paras 11 & 12);
- Tamworth's housing shortfall would not need to be met entirely within the Tamworth, Cannock and Lichfield HMA (in relation to the shared evidence base used when calculating housing requirements) as there were also clear links with North Warwickshire (para 12).

2.2 In particular, has the Plan's approach to determining its housing requirements and provision been consistent with that of neighbouring authorities?

Yes, there is a shared evidence base: the Southern Staffordshire District's Housing Needs Study and SHMA update which was commissioned jointly between Lichfield District, Cannock Chase District and Tamworth Borough Councils. This led to the production of a range (setting out an upper and lower dpa figure) for each Local Authority, which it would then need to consider refining in the light of its own particular local circumstances to be tested through the EIP.

This approach has been consistent. However, the local interpretation has differed somewhat. TBC are making the case that a mid-range figure is the appropriate one to pursue, whereas LDC are making a case (through Matter 4) that a figure towards the lower end of the range would be more reasonable given the nature of the constraints not only upon Tamworth Borough but upon neighbouring districts which also have considerable constraints both in terms of policy designations (Green Belt), and other matters for example impacts upon Special Areas of Conservation.

2.3 Has the Council worked or liaised with the relevant bodies set out in the PPG? How has the Council also co-operated with the relevant Local Enterprise Partnership and Local Nature Partnership?

Lichfield District Council confirms that Tamworth Borough Council has engaged with it constructively, actively and on an ongoing basis which has included regular Duty to Co-operate meetings.

2.4 What particular outcomes can the Council point to in relation to the DtC?

This is considered to be a question directed specifically to Tamworth Borough Council. However, in terms of outcomes relating to Lichfield District Council, the following outcomes have been achieved:

- Commitment to deliver 500 homes to the North of Tamworth to serve Tamworth's needs as part of a wider commitment to deliver around 1000 dwellings in this broad location (Local plan Strategy Policy North of Tamworth);
- Should the Broad Location not deliver then to address the matter through the Allocations DPD (or an early review of the Plan as set out earlier);
- To work with North Warwickshire Borough Council to address the additional growth as set out in the MoU.

This matter was debated in detail at the resumed hearings for the LDC Local Plan strategy and the relevant extracts from the Inspector's report are set out at **Appendix 2**.

MATTER 2: APPENDIX

- Appendix 1 – Extract from Lichfield District Local Plan Strategy Inspectors Report (1)
- Appendix 2 – Extract from Lichfield District Local Plan Strategy Inspectors Report (2)

Appendix 1 – Extract from Lichfield District Local Plan
Strategy Inspectors Report (1)

Modifications. These consultations engendered a number of representations, many of which questioned the soundness of the Council's decision to take land out of Green Belt to meet its need for additional housing land. Consequently, the hearings were resumed in October 2014 to deal with such matters. These will be referred to as the resumed hearings. The earlier hearings will be called the initial hearings.

7. This report incorporates my interim findings either unchanged or, where either a review of existing evidence or new evidence dictates, in a modified form.
8. The Council's decision to endorse the Main Modifications was challenged at the High Court². This challenge was dismissed as was an application to appeal against this decision.

Assessment of Duty to Cooperate

9. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.

Tamworth and Cannock

10. It was established at the initial hearings that the Council had agreed with Tamworth Borough Council³ and with Cannock Chase District Council⁴ that provision should be made in the Plan for agreed amounts of housing to meet the needs of those neighbouring councils. The joint level of housing provision for South Eastern Staffordshire has also been agreed with those councils⁵.
11. By the time of the resumed hearings the situation in relation to Tamworth had moved on. Previously it was estimated that Tamworth's housing shortfall amounted to 1,000 dwellings, 500 of which would be located in Lichfield. Now it was estimated that the shortfall amounted to 2,000 dwellings and 14 ha of employment land. The Council has signed a Memorandum of Understanding⁶ in which it and North Warwickshire District Council agree to deliver a proportion of the remaining 1,000 dwellings. It has, however, yet to be established how many of the 1,000 additional houses will be located in Lichfield. The Council proposes to deal with this by way of **MM1** which includes a reference to Lichfield accommodating some of Tamworth's growth which, depending on the scale of that growth, would be done either through an early review or partial review of the Plan or through the *Lichfield District Local Plan: Allocations* document which the Council intends to prepare.

² CD5-26. I M properties v Lichfield District Council

³ CD3-1. Memorandum of Understanding: Meeting Tamworth's Housing Needs.

⁴ CD3-2. Memorandum of Understanding: Meeting the Needs of SE Staffordshire.

⁵ CD3-4. Meeting Development Needs in SE Staffordshire 2006-2028.

⁶ CD5-31. Memorandum of Understanding relating to the delivery of unmet growth arising from Tamworth.

12. I consider this to be the best way forward. I see no merit in the suggestion that Tamworth's housing shortfall should be met entirely within the Tamworth, Cannock, Lichfield Housing Market Area - which in practice would mean entirely within Lichfield - because this was the area used when calculating housing requirements. This ignores both the undisputed links that exist between North Warwickshire and Tamworth and the fact that North Warwickshire has agreed to take a proportion of Tamworth's housing needs.
13. It is true that meeting Tamworth's needs could involve the scale of development in Lichfield that would typically be regarded as a strategic matter to be dealt with in the Plan itself. However, the Council has been placed in the position of having to react, very late in the plan making process, to a major change in circumstances not of its own making. **MM1** is a pragmatic way of introducing sufficient flexibility into the Plan to achieve this end.

East Staffordshire

14. It was confirmed at the initial hearings⁷ that there is no need for the Council to make provision for any of East Staffordshire Borough Council's housing or employment needs or vice versa.
15. This is relevant to a proposal put forward by representors known as the Brookhay Villages and Twin Rivers Park, a scheme that straddles the boundary between the two council areas. This scheme does not feature either in the Plan or in the emerging local plan for East Staffordshire but both councils acknowledge that it is a strategic matter of importance that warrants further investigation to better understand its deliverability and potential benefits - particularly in providing for Birmingham City Council's housing needs⁸.
16. Although a further Memorandum of Understanding between the two councils had been signed by the time of the resumed hearings⁹ there was no suggestion at those hearings that this altered matters significantly as far as the Plan is concerned.

Birmingham

17. At the initial hearings it was established that evidence that Birmingham might not be able to meet its own housing needs had emerged relatively late in the preparation of the Plan. Consequently the Council put forward a main modification (**MM1**) which recognised this and proposed collaborative working with Birmingham and other authorities within the Greater Birmingham and Solihull Local Enterprise Partnership to establish the scale of any shortfall and where it should be met. If this work pointed to a need for further provision of housing in Lichfield then the Plan would be reviewed.

⁷ CD5-9. Statement of Common Ground with East Staffordshire Borough Council.

⁸ CD5-10. Memorandum of Understanding with East Staffordshire Borough Council.

⁹ CD5-30. Memorandum of Understanding. East Staffordshire Borough Council and Lichfield District Council.

18. By the time of the resumed hearings it had been confirmed that there will be a shortfall in housing supply across the area covered by the Greater Birmingham and Solihull Local Enterprise Partnership (the LEP) much of which will derive from Birmingham's inability to meet its own needs for housing. It had also become apparent that the LEP Joint Housing Study and the LEP Strategic Spatial Plan will play an important role in determining how much housing growth individual authorities such as Lichfield will take in the future to help make up the shortfall¹⁰. However, at the time of the resumed hearings work on these was not advanced enough to say with any certainty how much growth Lichfield would need to accommodate.
19. The question was raised at the resumed hearings as to how **MM1**, which effectively defers consideration of how this shortfall will be dealt with to a review or partial review of the Plan, would work in practice or indeed whether it would work. The point was made that these LEP documents will not be the subject of formal scrutiny or testing and that the Council will not be obliged to take the findings and policies of these documents into account. These points are undoubtedly true but that was the intention of the legislation which removed a regional planning system which involved the imposition on councils of housing numbers from above and replaced it with the duty to cooperate.
20. Moreover, there will be a strong incentive for the Council to review the Plan once the size of the shortfall and the manner in which it will be distributed has been established. A failure to carry out such a review would conflict with **MM1** and could be argued to render the housing policies in the Plan out of date. The weight that could be given to these policies would, therefore, be greatly reduced and the Council would find it more difficult to rely on them when making decisions on applications for planning permission.
21. If, on the other hand, the Council did carry out a review in accordance with **MM1** it would be required to cooperate with the LEP and have regard to its relevant findings and policies¹¹. The question of whether or not it had discharged its duty to cooperate with the LEP would, of course, be tested at the examination into the soundness of the reviewed plan. It is in this context that statements reported in the press by a leading Lichfield councillor - the gist of which was that the Council would resist any land grab attempts from outside the area - need to be construed.
22. The Council and its neighbours are at the early stages of an ongoing and complex process and I do not seek to underestimate the procedural, technical and political challenges they will have to surmount. Nonetheless they have made a constructive start to tackling the cross-boundary issue of how large the housing shortfall over the wider housing

¹⁰ CD5-28. Duty to Cooperate Statement between Lichfield District Council and Birmingham City Council.

¹¹ Practice Guidance. Duty to Cooperate. Paragraph 6.

market area will be and how it should be distributed. The efforts they have made go well beyond consultation and amount to more than a mere agreement to agree. **MM1** commits the Council to an early review of the Plan if there is a need for further housing.

23. That being so I do not consider it necessary to specify a time by which this review will take place nor do I consider that there is a need, as was suggested at the resumed hearings, to start afresh and prepare a new plan once the amount of the shortfall in housing provision which will be accommodated in Lichfield has been established.

Walsall

24. Walsall Metropolitan Borough Council raises no objection to the housing numbers in the Plan but is concerned that there is no explicit policy reference in the Plan to not undermining regeneration in neighbouring areas. However, at paragraph 9.6 of the supporting text, the Plan does include a reference to this effect and little would be achieved by incorporating this into policy.

Transportation and Infrastructure Provision

25. Even allowing for efforts to reduce the need to travel, the planned growth in housing and employment in the District is likely to lead to an increase in out commuting. If this is to be accommodated then improvements to the road network and to public transport provision will be needed.
26. The Council has cooperated with all the bodies responsible for highways and transportation provision in and beyond its area such as Staffordshire County Council, the Highways Agency, Centro and Network Rail. None of these bodies have raised concern that the housing and employment policies in the Plan are out of step with or compromise their strategies. Moreover these bodies are working with the Council to provide a range of highway and transportation improvements as set out in Core Policy 5 of the Plan.
27. While it is suggested by representors that more should have been done, particularly in improving rail links to Birmingham, it is difficult to see what else the Council could realistically have achieved.

Conclusions

28. The Plan contains proposals to help the housing needs of neighbouring councils at Tamworth and Cannock Chase. However, mindful of the fact that cooperation should be a continuous process of engagement from initial thinking through to implementation¹² the Council has reacted constructively to information that emerged shortly before and during the hearings. This information indicated that Birmingham would not be able to meet its own housing needs and that Tamworth would require more assistance to meet its housing needs. In essence it has, in cooperation with these neighbours, devised an arrangement whereby an early review

¹² National Planning Policy Framework. Paragraph 181.

or partial review of the Plan will be carried out if it transpires that further housing provision needs to be made in Lichfield District.

29. On the basis of this evidence I consider that it is reasonable to conclude that the Council has cooperated constructively, actively and on an ongoing basis with relevant bodies on the strategic matters of housing and transportation and in so doing has maximised the effectiveness of the plan making process. It has thus discharged its duty under the Planning and Compulsory Purchase Order Act 2004.

Assessment of Soundness

Main Issues

30. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 12 main issues upon which the soundness of the Plan depends.

Issue 1: Housing

The Evidence Base

31. The Plan seeks to deliver 8,700 homes between 2008 and 2028 at a rate of 435 dwellings per annum (dpa). These figures are derived from the *Housing Needs Study*¹³ prepared jointly with Tamworth Borough and Cannock Chase District Council. This study, based on the 2008 Communities and Local Government (CLG) household projections, examined twelve demographic and employment led scenarios which in turn generated a broad range of housing demand of between 76 dpa and 630 dpa for Lichfield District over the plan period. This range was ultimately narrowed down to between 410 and 450 dpa.
32. With the publication of the 2011 CLG household projections the Council produced a *Housing Requirements Update* which concluded that the range of 410-450 dpa remained within an acceptable margin of tolerance despite changes to the growth forecasts¹⁴. A significant change between the 2008 and 2011 projections is that household representation rates (the factor used to convert population into households) are lower in the latter, reflecting the fact that people are less likely to form households in poor economic times. When account is taken of this a figure of 430 dpa is arrived at¹⁵.
33. The Council also produced a *Migration Scenario Addendum* which on the basis of the most recent migration trends gives a range of 379-393 dpa, figures which the Council concludes lend further weight towards justifying a figure towards the mid-point of 410 to 450 dpa range¹⁶.

¹³ CD2-20. Southern Staffordshire Housing Needs Study & SHMA Update.

¹⁴ CD5-5. Lichfield, Tamworth and Cannock Chase Housing Requirement Update paragraph 4.17.

¹⁵ SQ-M2ii-LA1. Supplementary Questions (ii) Table 6.4.

¹⁶ CD5-5a. Addendum. Paragraph 3.2.

Appendix 2 – Extract from Lichfield District Local Plan
Strategy Inspectors Report (2)

is developable in the next 5-10 years⁵⁸. Any improvement in market conditions over that time would have a positive effect on that site's viability as would any flexibility shown by the Council in affordable housing requirements. It cannot, therefore, be concluded that urban sites such as this will not come forward.

130. There is, therefore, no clear advantage in the suggestion that one or other of the greenfield sites referred to above should be allocated for housing either to replace urban capacity sites or to provide additional capacity should the East of Burntwood By-pass SDA not deliver the number or type of housing anticipated.
131. All of these other sites are in Green Belt and, to repeat a point made earlier, Green Belt boundaries should be altered only in exceptional circumstances. Exceptional circumstances have not been demonstrated. Moreover, one of the purposes of Green Belt is to assist in urban regeneration by encouraging the recycling of urban land. It is difficult to see how releasing housing sites in the Green Belt as an alternative to developing urban sites or the East of Burntwood By-pass SDA would assist the regeneration of Burntwood, which is one of the Strategic Objectives of the Plan.
132. The alternative sites put forward at Burntwood are not, therefore, preferable to the strategy proposed in the Plan of focussing development in the urban area.

Conclusions on the East of Burntwood By-pass SDA

133. The site is in a suitable and sustainable location, it is developable, it is or could be made to be viable and it is the most suitable having considered reasonable alternatives.

North of Tamworth

134. At the time of the initial hearings it was estimated that Tamworth's housing shortfall amounted to 1,000 dwellings and it was proposed that 500 of these would be accommodated in a Broad Development Location located to the north of Tamworth on land to the east and west of the railway. This Broad Development Location, which would also accommodate 500 houses to meet Lichfield's needs, was to be planned comprehensively with the adjoining Anker Valley Sustainable Urban Extension proposed in the emerging Tamworth Local Plan. Both would rely on improvements to the local highway network - possibly involving the construction of the Anker Valley Link Road.
135. As a result I concluded in my interim findings that while there was no certainty that the Anker Valley scheme would come forward there remained a reasonable prospect that it would - given Tamworth Borough Council's firm commitment to it. However, if this proved not to be the case then the Council (Lichfield Council that is) would need to reconsider its position when preparing the *Lichfield District Local Plan: Allocations*

⁵⁸ CD2.23. Strategic Housing Land Availability Assessment 2012. Table B.33, page 64.

document when it would be considering the Broad Development Location in more detail.

136. As has been established earlier in this report (paragraph 11) the situation had changed radically by the time of the resumed hearings. Tamworth's estimated housing shortfall had increased from 1,000 to 2,000 dwellings and although the Council had agreed to take a proportion of the additional 1,000 dwellings it had yet to be determined how many that would amount to. What is more, Tamworth Borough Council decided that the Anker Valley Relief Road was not viable and deleted it from its emerging plan as well as significantly reducing the extent and capacity of the Anker Valley scheme so that it would now accommodate only some 500 dwellings or so. Moreover, Tamworth Borough Council had resolved to grant outline planning permission⁵⁹, subject to the signing of a section 106 agreement, for 535 dwellings on the land in Anker Valley that it is proposing to allocate.
137. The situation had also changed in Lichfield in that the Council had resolved to grant outline planning permission⁶⁰, subject to the signing of a section 106 agreement, for 165 dwellings in the western part of the Broad Development Location at Browns Lane. It was also considering an outline planning application⁶¹ for up to 1,000 dwellings on the eastern part of the Broad Development Location at Arkall Farm. The Council confirmed at the resumed hearings that it had resolved all matters relating to this application, including concerns about the way development would relate to the surrounding countryside, and the only outstanding matter related to the effect that such a scheme would have on the local highway network.
138. These various changes have not had an effect on the suitability and sustainability of the Broad Development Location in a number of respects as it is still, or has the potential to be, well related to the urban area of Tamworth with the range of facilities that this provides. Moreover, there was no suggestion at the resumed hearings that it was not deliverable or developable, subject to agreement on highway matters, or that it was not viable. Nonetheless, the lack of agreement as to the effect that developing the Broad Development Location as a whole would have on the highway network raises the question of whether it is capable of being developed in full.
139. Staffordshire County Council, supported by Tamworth Borough Council, is of the opinion that the Broad Development Location, other than Browns Lane, should be deleted from the Plan. In its judgement the evidence indicates that the local roads have the capacity to accommodate 700 or so extra dwellings - and that capacity had been used up by the resolutions to grant planning permission for 535 dwellings in Anker Valley and 165 dwellings at Browns Lane. The highway evidence produced by

⁵⁹ Ref: 0105/2014

⁶⁰ Ref: 14/00018/OUTM

⁶¹ Ref: 14/00516/OUTMEI

the developer of the Arkall Farm site, on the other hand, indicates that the local roads could accommodate up to 1,000 more dwellings.

140. The Council takes the view that the highways debate has far to go before it reaches its conclusion and that the Broad Development Location should be retained in the Plan as there is a reasonable prospect that some additional housing, over and above that which it has been resolved to permit, will be able to be accommodated.
141. I share the Council's view on this point. While I have no doubt about the seriousness of the problems of congestion and highway safety that could result from the overdevelopment of this Broad Development Location, I consider that it is too soon to conclude that local roads can accommodate no more development. I consider that, in principle, the 'monitor and manage' approach offers a way forward. With such an approach the actual impact of various increments of development is monitored annually as it is brought forward with trigger points being built in to any planning permission granted to govern the amount of development.
142. While I acknowledge that the County Council is wary of adopting such an approach in this instance, influenced no doubt by the breadth of the gap between its professional assessment of the capacity of the local roads and that of the developers professional advisers, I consider that there is still scope for discussion on the details of a 'monitor and manage' scheme insofar as it would apply to this site and on other matters which have yet to be agreed⁶².
143. I accept that it would have been preferable if agreement had been reached on the principle of access to the Broad Development Location but in this instance the Council is reacting to major changes that have occurred late in the day and which are beyond its control. Moreover, I agree with the Council that it is likely that the bulk of the Broad Development Location will not come forward until the later stages of the Plan so if alternative land needs to be found there will be time to do this.
144. For these reasons I consider that the Broad Development Location is a suitable and sustainable location, that it is deliverable or developable and that it is viable. If it transpires that the Broad Development Location as a whole is not capable of delivering something in the order of 1,000 dwellings then **MM1** provides the mechanism through which additional land could be identified either through a review of the Plan or through the preparation of the *Lichfield District Local Plan: Allocations* document.

Alternative Sites at Tamworth

145. An alternative approach suggested by representors was to cater for development needs in the area by developing on the edge of Fazeley, a Key Rural Settlement a short distance to the west of Tamworth where the Council is promoting development within the defined urban area. It was

⁶² RHD-02. Summary Statement – Land north of Ashby Road, Tamworth (Savills, Peter Brett & Staffordshire County Council).