



Broxtowe
Borough
COUNCIL

Broxtowe Borough Council

Response to Matter 1:

Legal Compliance and Duty to Cooperate

November 2018

BROXTOWE LOCAL PLAN PART 2 EXAMINATION MATTERS, ISSUES AND QUESTIONS

MATTER 1 Legal Compliance and Duty to Cooperate.

Issue: Has the Plan been prepared in accordance with the legal and procedural requirements and has the duty to cooperate been met?

1a) Duty to Cooperate

1. In preparing the Plan, has the Council complied with the requirements of the Duty to Cooperate with prescribed bodies regarding cross boundary strategic matters?

- 1.1. Yes, the Council has positively engaged with all the relevant duty to cooperate bodies throughout the preparation of the Part 2 Local Plan to consider cross boundary strategic matters, as set out within the Council's [Statement of Compliance with the Duty-to-Cooperate \(CD/23\)](#). This describes how every Duty to Cooperate body has been engaged in the plan preparation process.
- 1.2. The Council forms part of the Greater Nottingham Joint Planning Advisory Board (JPAB), which is made up of the Portfolio Holding Councillors for planning and transport of the constituent authorities. Membership of JPAB includes political representation from all the authorities making up Greater Nottingham, and several of the statutory agencies (also Duty to Cooperate bodies) are invited to JPAB meetings. The preparation of the Greater Nottingham Core Strategies was overseen by JPAB and JPAB has continued to meet during the preparation of the Part 2 Local Plans. The officer groups have also continued to meet to ensure the continuing coherent strategic planning of the area. This on-going process has ensured that no unresolved cross boundary strategic issues have arisen between the constituent Councils in the preparation of their Part 2 Local Plans, as set out within the [Council's Statement of Compliance \(CD/23\)](#) and the [Consultation Statement \(CD/20\)](#).
- 1.3. As outlined within the Council's [response to the Inspector's Initial Questions \(BBC/01\)](#), the only District Local Planning Authority (LPA) sharing a boundary with Broxtowe who are not a member of JPAB is Amber Valley Borough Council which is in the Derby Housing Market Area (HMA). Meetings were held between officers at Broxtowe and Amber Valley and no requests were made from either party to accommodate needs from one HMA to the other at an early stage of Part 2 Local Plan preparation. Had Amber Valley had any issues, they were invited to all workshops detailed in the [Consultation Statement \(CD/20\)](#) and were able to raise concerns as part of this process. No concerns were raised.

- 1.4. It should also be noted that, in recognition of the partnership working across Greater Nottingham, JPAB has been invited to be part of the Government’s pilot programme for Statements of Common Ground, as required by the 2018 NPPF. A draft Statement has been prepared and submitted to the Ministry of Housing, Communities and Local Government for their consideration.

2. Does the Council’s Duty to Cooperate Statement adequately demonstrate that the duty has been met?

- 2.1. Yes, Appendix 1 of the Council’s Statement of [Compliance with the Duty-to-Co-operate \(CD/23\)](#) describes who was consulted, what was said, and how the Council responded and resolved any issues raised. The Statement demonstrates that the legal and soundness aspects of the duty to cooperate have been resolved and, where issues are not fully resolved with a prescribed body, these issues are set out. However, none of these fall into the category of having “a significant impact on at least two local planning areas” and so are not considered to be of a strategic nature.

1b) Other legal and procedural requirements

3. In preparing the Plan has consultation been undertaken in accordance with the Council’s adopted Statement of Community Involvement and the consultation requirements in the Regulations¹?

- 3.1. Yes, consultation has been undertaken in accordance with the consultation requirements set out in Regulation 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and the Council’s adopted [Statement of Community Involvement \(PD/21\)](#). The Council also undertook additional non-statutory consultation and included additional methods of communication (e.g. social media) which exceeded the minimum requirements; this is detailed in the [Statement of Community Involvement supplement \(PD/22\)](#). The [Consultation Statement \(CD/20\)](#) provides further detail of the consultations that have been undertaken during preparation of the Plan including a brief summary of the outcome of the consultation.

4. Do the scope, content and timescale for the preparation of the Plan accord with the Council’s latest Local Development Scheme?

- 4.1. Yes, the [Local Development Scheme \(LDS\) \(CD/24\)](#) was revised and adopted by the Council in July 2018. The scope, content and timescale for the preparation of the Part 2 Local Plan has been undertaken in accordance with the LDS.

¹ Regulation 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

5. Has the formulation of the Plan been based on a sound process of sustainability appraisal (SA)? In particular :
a) How has the SA informed the preparation of the Plan at each stage and how were options selected/rejected?

- 5.1. The Council's view is that the formulation of the Part 2 Local Plan has been based on a sound process of Sustainability Appraisal, at each major stage of the preparation of the Local Plan.
- 5.2. A [Sustainability Appraisal Scoping Report \(PD/23\)](#) was first prepared at start of the Part 2 Local Plan process in winter 2013; this accompanied the publication of the Part 2 Local Plan [Site Allocations Issues and Options draft \(November 2013\) \(PD/04\)](#). This Report was revised and redrafted in January 2015, prior to the start of the Council's [Preferred Approach to Site Allocations \(Green Belt Review\) \(PD/13\)](#) consultation in February 2015. Later that year, an [Interim Sustainability Appraisal Report on the draft masterplan for Toton Strategic Area for Growth \(PD/16\)](#), was published in December 2015.
- 5.3. The Sustainability Appraisal of sites and emerging policies has been an on-going exercise throughout the Part 2 Local Plan process, including at the time of the Site Allocations ('Potential Additional Sites') consultation in August 2016. This consultation sought views on additional sites in Bramcote, Nuthall and Chetwynd Barracks. In addition, an SA was undertaken for the site of the former Bramcote School (located to the south of the 'East of Coventry Lane' allocation) for the development of the proposed new school. This was undertaken in order to ensure that each of the options proposed by the Part 2 Local Plan has been subjected to Sustainability Appraisal.
- 5.4. The two main options for the preferred site for allocation in Brinsley were again subjected to a revised [Sustainability Appraisal in January 2017 \(PD/29\)](#), prior to the additional consultation in relation to the selection of this site.
- 5.5. A full SA setting out the detailed appraisals for all of the emerging policies, site allocations and rejected sites was published alongside the Publication Version of the Part 2 Local Plan for consultation in September 2017 ([CD/08](#); [CD/09](#); [CD/10](#)). An additional appraisal of the sustainability of each policy, site allocation and rejected site, was again undertaken prior to the Submission of the Part 2 Local Plan ([CD/12](#); [CD/13](#); [CD/14](#)). This resulted in a number of amendments, including the revision of site and policy SA scores within an updated Submission Version Sustainability Appraisal, partly as a result of representations received to the Publication Version of the Part 2 Local Plan. The Council further intends to undertake an SA of any Main Modifications to the Part 2 Local Plan.

- 5.6. At various stages within the Part 2 Local Plan process, potential sites for allocation have been rejected on the basis of their SA scoring. In addition, originally larger sites have been reduced in size due to concerns which the SA process has highlighted, for example, in the case of the Kimberley and Awworth sites. The boundaries of both of these sites were amended to remove more ‘sensitive’ areas; the sites as per the originally wider boundaries had scored less well in SA terms.
- 5.7. The wording of emerging development management policies has also be amended as a result of concerns highlighted by the SA process, particularly within the earlier stages of the preparation of the Part 2 Local Plan.

b) Has the SA had sufficient regard to the implications of Minerals Safeguarding and Consultation Areas?

- 5.8. The Council is of the view that the SA has had sufficient regard to the implications of Mineral Safeguarding and Consultation Areas. One of the ‘Objectives’ assessed as a part of the Sustainability Appraisal process is that of ‘Natural Resources’. This Objective requires that ‘natural resources, including air quality, soils and minerals, should be prudently managed, whilst also minimising the risk of flooding’.
- 5.9. Part 2 Local Plan Policy 22 ‘Minerals’, which has been appraised within a number of iterations of the SA, sets out that ‘development will not be permitted which would needlessly sterilise mineral resources of economic importance or pose a serious hindrance to future extraction in the vicinity’. Both the Coal Authority and Nottinghamshire County Council, (which has responsibility for minerals at a County level), encouraged the inclusion of a policy on this issue. Neither authority has objected to the Part 2 Local Plan on the grounds that the SA has had a lack of regard to the implications of Minerals Safeguarding and Consultation Areas.

6. Is the plan legally compliant with respect to Habitats Regulations² and any requirement for appropriate assessment?

- 6.1. Yes, a [Habitats Regulation Assessment \(HA/01\)](#) was undertaken as part of the Aligned Core Strategy. Following the European Court of Justice (CJEU) ruling (Case C/323-17- *People Over Wind*), the Council instructed the undertaking of an updated [Habitats Regulation Assessment \(HRA\) \(BBC/04\)](#). The HRA takes full account of this ruling and has screened all policies contained within the Part 2 Local Plan according to the statutory procedures laid out in the Habitats Regulations and using the methodology laid out in the Habitats Regulations Assessment Handbook. Paragraph 5.2 of the HRA concludes that:

² Conservation of Habitats and Species Regulations 2010 (as amended)

“Overall, and despite an increase of 18% in the proposed housing numbers above and beyond that assessed in the ACS, it was found that likely significant effects and the need for further assessment could be ruled out alone for all 32 policies. There were no residual effects and, therefore, no need for an in-combination assessment. Consequently, there is no need for an appropriate assessment.”

6.2. Sherwood Forest, as a ‘prospective’ Special Protection Areas (SPA) was considered to be ‘fully classified’ within the assessment and the impact on this prospective SPA was fully assessed within the HRA.

7. Has the preparation of the DMP complied with Part 2 of the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Plan) (England) Regulations 2012 in all other respects?

7.1. Yes it is considered that the DMP is consistent with the 2004 Act and the Local Planning Regulations 2012 relating to the preparation, publication and submission of the Plan.

Broxtowe Borough Council
Neighbourhoods and Prosperity
Council Offices, Foster Avenue,
Beeston, Nottingham, NG9 1AB
Tel: 0115 917 7777
www.broxtowe.gov.uk

