

Matter 1: Legal / Procedural Requirements

Representor A0137



SHROPSHIRE LOCAL PLAN EXAMINATION

Stage 1 Hearing Statement

Representor unique Part A Ref *	A0137
Matter	1 – Legal / Procedural Requirements
Relevant questions nos	1,2,3,5,17

1. Q1. Is the Local Plan compliant with: (a) the Local Development Scheme? (b) the Statement of Community Involvement? (c) the 2004 Act and the 2012 Regulations

- 1.1.1. Our response to Matter 2 in general explains the failure of the duty to cooperate process to consider alternatives to the level of BCA housing and employment need proposed to be accepted by the Council. There is no evidence of consideration of the Plan accommodating all of the unmet BCA need as required by NPPF 11b, neither is there evidence of considering a greater or lesser amount than the 1,500 homes and 30ha proposed. The absence of the consideration of alternatives through the duty to cooperate is mirrored by the Sustainability Appraisal (SA).
- 1.1.2. The Plan is not compliant with PCPA 2004 s19(5) because the Sustainability Appraisal is deficient. The SA fails to consider the Plan accepting a different level of BCA unmet housing and employment need. The SA also does not consider alternatives for how the accepted level of unmet need could be provided for. For example, the positive economic and societal effects of pursuing a different strategic approach to allocate a strategic site for employment and / or housing development in the M54 corridor have not been considered through the SA when such a site was known to be an opportunity. Equally, the SA fails to consider the negative economic and societal effects of pursuing the selected approach of the Plan to not allocate a strategic site in the M54 corridor.
- 1.1.3. Our response to Matter 2 duty to cooperate raises concern with the process of cooperation by the Council in deciding what quantity of BCA need to accept, and then in the cooperation with BCA in deciding how the BCA need that the Council does accept is provided for. Consideration of the duty to cooperate and SA matters alongside each other highlights that no assessment of alternatives was undertaken for either process.
- 1.1.4. The Council has not had regard to national policies and advice contained in guidance issued by the Secretary of State in contravention of PCPA s19(2)(j). This applies to the content of the SA for reasons set out in this Statement. In summary, the SA fails to have regard to the benefits of a strategic employment and housing allocation in the M54 strategic corridor contrary to the evidence which identifies a requirement for a step change and identifies the M54 strategic corridor as the preferred location for economic growth due to its relationship with the West Midlands. As a result of the same strategy, the SA fails to have regard to the Council's assessment of a strategic allocation at J3 within the M54 strategic corridor as a "once in a generation opportunity to meet cross boundary needs through delivery of nationally significant employment opportunities, high quality housing and a local centre to provide services".
- 1.1.5. By failing to take account of an opportunity to provide for a strategic allocation in the M54 corridor which would have benefits for economic and social sustainability as an alternative, the SA and by extension the Plan has failed to plan for sustainable development as required by PCPA 2004 s39. And again, highlights why the duty to cooperate discussions were defective.
- 1.1.6. As set out in our response to Matter 2, the preparation of the Plan has not complied with PCPA 2004 s33A or the Local Planning Regulations 2012 Part 2 in respect of the duty to co-operate.

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- 1.1.7. Secretary of State guidance has also not been followed in the carrying out of cooperation as required by PCPA 2004 s33A (7). Please refer to Matter 2 statement for details.
- 1.1.8. PCPA s19 (2)(a) is also not complied with as there is a failure to have regard to Secretary of State advice in NPPF and PPG in formulating the strategic policies which are not positively prepared, justified or effective. Please refer to Matter 2 and Matter 3 Statements.

2. Q2. Are the likely environmental, social and economic effects of the Local Plan adequately and accurately assessed in the Sustainability Appraisal (SA)?

- 2.1.1. Please refer to the opinion of Matthew Reed QC particularly paras 41 and 42 at Appendix 1 which addresses failure to consider alternatives appropriately through the SA in the context of failure of the duty to cooperate.
- 2.1.2. Although the need for cross boundary cooperation to meet BCA needs was first identified in July 2018, the need for a step change in the approach to planning for employment development was identified by the Shropshire Economic Growth Study EV044 (**SEGS**) in 2017¹ before consultation on the Preferred Scale and Distribution of Development (**PSDD**) draft. The SEGS set out ambitious growth and productivity targets including jobs and housing. Immediate actions were to participate in the WMCA as a non-constituent member (the BCA make up 4 of the 7 constituent members) and to focus on key areas of collaboration in the SEP, to accelerate economic growth, employment and productivity and focus on mutual priority actions, including specifically Land Commission and Growth Company. The focus is for major employment sites and growth corridors, with prioritisation for deliverable sites. The SEGS states that the approach will be bold, ambitious and forward thinking to bring sites forward. Five strategic corridors are identified, but only one has close proximity to the West Midlands and the growth potential of the WMCA. As such it is the best placed and possibly only strategic corridor able to deliver the immediate actions. The SSEGS identifies the need to support a younger workforce and to retain talent and graduates who currently migrate away from Shropshire. Good employment is identified as the key factor for achieving that social objective.
- 2.1.3. The PPG makes clear that economic and social objectives should be assessed through the SA². The key sustainability issues identified in the SA report include:
- provide a wide range of good quality housing to meet the diverse needs of the community; and
 - encourage a strong and diverse economy.
- 2.1.4. The key sustainability issues upon which the SA is based do not however include any assessment of the alignment with the SEGS, or the effectiveness of the Plan in seeking to address the SEGS priorities. The sustainability objectives are similarly broadly defined (SO1 and SO3) with no recognition of specific economic and population migration objectives. These matters should all have been considered through the duty to cooperate as part of the assessment of how much BCA need to accommodate and the most appropriate strategy for so doing.

¹ Shropshire Economic Growth Strategy 2017 – objectives

² Planning Practice Guidance Paragraph: 007 Reference ID: 11-007-20140306 Revision date: 06 03 2014 & Paragraph: 009 Reference ID: 11-009-20140306 Revision date: 06 03 2014 & Paragraph: 018 Reference ID: 11-018-20140306 Revision date: 06 03 2014

- 2.1.5. The PSDD consultation (2017) promoted a high growth strategy and stated that new garden villages at strategic locations to support the overall development strategy are being considered³. The Economic Growth chapter refers to the new SEGS, and reports its ambition to “strive to maximise our economic potential and our productivity by utilising the benefits of our special environment and high quality assets⁴. It is noted that the SEGS requires the attraction of more economically active people into Shropshire driven by quality of life and ability to meet housing training and employment needs⁵. The PSDD identifies a preferred target of 305ha of employment land for balanced growth before any requirement for BCA has been considered. The PSDD states however that to achieve the “step change” in economic performance and structure, elements of the productivity growth option are required⁶. The Council therefore decided to move away from achieving the SEGS targets at the PSDD stage. Notwithstanding the acknowledgement that the growth is not sufficiently ambitious the PSDD states that it will pursue the aspirations of the SEGS, with ‘step change’ taking effect in new allocations to influence the pattern of development⁷. The Preferred option pursued is however urban focus which continues previous trends and does not embrace any step change. The PSDD states that it is focusing development in the strategic corridors, but in the east of the County, Bridgnorth is the focus which is not within the M54 corridor.
- 2.1.6. SA Table 1.1 identifies how significant effects have influenced plan policies. It appears anomalous that at the Issues and Options stage, the productivity growth option was considered to have no benefits for SO2, yet the less ambitious high growth option did. At I&O and PSDD there are no negative effects to pursuing any of the economic growth strategies. As the plan progressed through its stages, at Regulation 18 and Regulation 19, the economic growth policies did not change in terms of the amount of employment land proposed, or the strategic approach to its distribution. At each stage SO2 is assessed to benefit from positive effects, whilst there are no negative effects. Housing shows a similar picture, with no negative effects to any of the options in the early stages, and no negative effects arising from the selected option in the later stages, with SO2 and SO3 assessed to receive positive effects. This appears to have been a very high level exercise without due regard to the advantages or disadvantages of different approaches.
- 2.1.7. None of the Strategic Objectives measures the achievement of the SEGS objectives and the priority actions which it identified. No option of strategic development in the strategic corridors and particularly the M54 corridor which could create the linkage with WMCA has been assessed.
- 2.1.8. SA Table 1.4 shows that J3 received a Preferred Site SA rating of Poor and was not carried forward. Ironbridge Power Station also received a rating of poor but was carried forward. No explanation of the assessment or the decision making rationale has been provided.

³ Consultation of Preferred Scale and Distribution of Development (October 2017) para 2.22

⁴ Ibid 3.2

⁵ Ibid 3.4, 3.5

⁶ Ibid 3.12

⁷ Ibid 3.14

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- 2.1.9. SA Table 2.6 lists the sustainability questions applied to each of the sustainability objectives. SO2 – encouraging a strong sustainable economy was assessed with regard to public transport links, proximity to primary schools, and loss of local services. None of these measures goes to the heart of whether the economic objective is being satisfied. They are peripheral measures unrelated to the economy. SO3 – requiring a sufficient amount of good quality housing is also assessed with regard to transport links and proximity to primary schools and distance to local services. There is nothing about the quality of the environment, harnessing the benefits of the special environment and high quality assets referenced in the PSDD, to attract a younger, higher skilled workforce. There is no assessment of relationship to employment and training, and no assessment of location factors including the M54 strategic corridor and priority to link with WMCA.
- 2.1.10. The SA measures for housing and employment sites at Table 2.8 and Appendix T Strategic Site Assessments, focus on measurement of distance to a particular service or facility. The only other measures employed are landscape and heritage sensitivity, flood, waste and air quality environmental considerations. There is no opportunity for sites which do not score highly in relation to distance from facilities currently, to be objectively weighed for the benefits that a different strategy might bring. A strategic site in the M54 corridor will necessarily be less well related to services in existing urban areas, but has the advantage of the shortest travel distance to the BC and WMCA area. Strategic road and rail links. Physical association with the WMCA which would encourage migration into Shropshire. The opportunity to create a new standard in sustainable settlement in a high quality setting, incorporating large areas of greenspace and new services, schools and links with education and training providers. None of these factors which are central to the SEGS are considered either as an assessment factor, or as an alternative to the strategy proposed.
- 2.1.11. As the plan stages have progressed after the need to provide for BCA needs became known, there is no assessment of either the socio economic benefits or the environmental consideration of providing additional housing or employment land to meet BCA needs.
- 2.1.12. There is also no assessment of the mutual benefits that providing for BCA needs would have for the objectives of the SEGS.
- 2.1.13. The SA does not assess the economic and social objectives, instead it focuses exclusively on environmental considerations. This confirms that cooperation with BCA did not extend to consideration of how the Plan could maximise the mutual benefits of the opportunity of making provision for BCA. The plan making process evidenced by the SA has not given any consideration to the socio-economic benefits of housing and employment land provision for the BCA.

3. Q3. Does the SA test the Local Plan against the preferred options chosen and all reasonable alternatives?

- 3.1.1. Most importantly and reflecting our response to Matter 2 , the SA does not test the alternative of accepting all or a larger amount of the unmet housing and employment needs of the BCA. This is a requirement of NPPF 11b. Please also refer to the opinion of Matthew Reed QC at Appendix 1.
- 3.1.2. As set out in our response to Matter 1 Q2, the assessment of sites did not take account of socio and economic factors. The SA does not consider reasonable alternatives which should include bold, strategic allocations in the strategic corridors which the SEGS calls for. As we have explained at Q2, that omission is relevant because it shows that in exercising the duty to cooperate, appropriate consideration has not been given to the factors most important to meeting the employment and housing needs of the BCA. Our responses to Matter 2 reference the representations of the Association of Black Country Authorities (ABCA), Walsall Council and Dudley Council which all specifically requested that the BCA need was met in part at a new strategic allocation around M54 J3. That location and form of provision was considered by those authorities to have particular benefits. It would have been reasonable for the Council to have considered the social, economic and environmental merits of such a proposal and to have recorded that through the SA. This has not been done.
- 3.1.3. Please refer to our response to Matter 2 Q1, Q3, Q4, Q6, Q11 for a summary of strategic matters that should have informed the strategic approach to the amount, quality and distribution of employment and housing land. There is no evidence within the SA of consideration of any of these factors, or any reasonable alternative to the planned strategy of urban first and the omission of allocation of one or more strategic sites in the M54 corridor between junctions 2 and 4. Land at M54 J3 (Appendix T site P26 Amended) was specifically considered in the Strategic Sites consultation. The site was promoted by BRE with a considerable body of technical delivery evidence and was supported explicitly by ABCA, Dudley and Walsall as meeting their needs and being complementary to WMCA growth objectives in line with Shropshire Council's stated objectives. However the SA provides no explanation of why it was rejected, other than crediting the site with a poor score reflecting the lack of consideration of any positive socio economic factors.
- 3.1.4. It appears that an assessment score and conclusion of poor was not determinative in this matter as at least one other site, Ironbridge Power Station (IRN001) also scored poor for both housing and employment but is proposed for allocation for both.
- 3.1.5. The SA does not appear to have been used as a process to inform the Plan, rather it appears to be a comparison of the relative merits of the Council's proposals (against very restricted criteria) with the only apparent purpose being to identify proposals which require some form of mitigation.

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- 3.1.6. The Council is aware of alternatives to its planned strategy, having commissioned the M54 Growth Corridor - Strategic Options Study 2019 (M54 Study). The M54 Study identified five sites that could help realise Shropshire's vision and recommended that three of them, including the BRE site at M54 J3 be prioritised for the delivery of balanced employment and residential growth. Some of the benefits of the J3 site are set out at section 3 of the Strategic Sites consultation document. The Council states at 3.26 that the site may be a once in a generation opportunity to deliver sustainable growth to meet cross boundary needs in the M54 corridor.
- 3.1.7. The M54 Study noted the once in a generation review of the Shropshire green belt as an opportunity to drive forward economic objectives. The M54 Study states at 1.11 that the potential significant economic benefits of supporting investment in strategic locations like the M54 and the contribution they could make to the future growth of Shropshire and the West Midlands will be key considerations to an exceptional circumstances case for green belt release. M54 Study 1.16 identifies the need to reposition Shropshire's economy into high value add sectors to boost productivity levels from the relatively low levels of agriculture and tourism. The opportunities of the M54 corridor are summarised at 3.7. The recent Secretary of State approval of the M6 / M54 link road has underlined those opportunities.
- 3.1.8. M54 Study notes that the two stage Green Belt Assessment and Green Belt Review commissioned by the Council does not draw conclusions as to where land should be released for development, it simply draws comparisons on a qualitative basis. The Green Belt Review concludes that the most sustainable locations for development may result in high harm to the green belt⁸.
- 3.1.9. It appears therefore that neither the SA or the Green Belt Review make an assessment as to which sites should be allocated. There is no evidence of what alternatives were considered, or how the comparative scores from SA were weighed up, and then how the SA score was weighed against the need for exceptional circumstances for any green belt release required.
- 3.1.10. It is only by reviewing the Cabinet report of 20th July 2020 that the Council's assessment is found. Here we are told that: "In weighing up the site specific considerations, both positive and negative, and giving consideration to the consultation responses on this matter, it is considered there is insufficient justification to progress an exceptional circumstances argument for the release of this land from the Green Belt. The site is therefore not included within the Pre-Submission version of the Local Plan".
- 3.1.11. There is no additional explanation to support that conclusion. The decision has been made to reject the M54 J3 site on grounds of insufficient evidence of exceptional circumstances. In drawing that conclusion the Council must have disregarded the SEGS, the SEP, the EDNA, the M54 Growth Study, its stated intent to deliver step change and to prioritise working alongside the WMCA. There is no evidence of any of these factors having been taken into account.

⁸ M54 Growth Corridor Strategic Options Study 2019 – para 2.29 – 2.30

- 3.1.12. Accordingly there is no evidence that a realistic alternative of allocating a strategic site for employment and housing in the M54 strategic corridor, of a type, size, and quality to address the economic growth priorities that have been identified in the evidence base. An allocation at M54 J3 can capitalise upon the qualities of Shropshire and attract an economically active population, co-locate education, up-skilling, employment, and housing together with services and extensive green recreation spaces. It would be attractive to inward investment and would have critical mass to support arrange of complementary businesses and services alongside sustainable communities. Step change is the priority for the Plan, but the proposed urban first strategy does not deliver step change. Delivery of J3 by a single landowner with the means and drive to do so is a unique opportunity. The evidence submitted in support of the site by BRE provides appropriate assessment that the site is deliverable. There is no evidence that the potential benefits of this potential strategic allocation have been objectively considered.

4. Q5. Have the requirements for Strategic Environmental Assessment (SEA) been met?

- 4.1.1. For the reasons set out in response to Q3, the requirements of SEA are considered not to have been complied with. With particular regard to the cooperation of the Council with the BCA through the duty to cooperate, the failure to consider alternative amounts of cross boundary provision for the BCA and failure to consider alternatives formats and locations for the cross boundary provision has implications for the BCP. In particular, there is no assessment of the degree to which the Plan influences other plans including the BCP ability to deliver the homes and employment land that it requires. That is a breach of Regulation Schedule 1 part 1b. There is no outline of the main objectives and its relationship with other relevant plans and programmes as required by Regulations Schedule 2 part 1. Additionally, there is no outline of how the assessment of alternatives was undertaken in accordance with part 8.

5. Q17. Is the Local Plan period of 2016 to 2038 consistent with national policy? If not, is there justification for this?

- 5.1.1. The requirement of para 22 to set policies within a vision which looks ahead at least 30 years, only applies (under the transitional arrangements of Annex 1) where the Plan has not reached Regulation 19 at the date of the NPPF. Therefore as Regulation 19 consultation commenced 18 December 2020, and the NPPF was published in July 2021, there is no requirement for the Plan to have a 30 year horizon. A minimum 15 year horizon will comply with para 22.
- 5.1.2. However, in consideration of green belt release, the assessment of land requirements for release should be longer than 15 years. We say this because the Council proposes to address any additional unmet need from the BCA in a review of the Plan. As we say in Matter 2, that is evidence of the failure in the duty to cooperate. Although we fundamentally disagree with the approach of a plan review to address residual unmet need for reasons set out in Matter 2, it follows that with green belt release necessary to meet Shropshire's requirements now (irrespective of any contribution to BCA), that any proposal to address cross boundary housing and employment needs at a review will likely require green belt release. NPPF para 140 seeks green belt boundaries to endure beyond the plan period.
- 5.1.3. If the plan is not adopted by 1 April 2023 it will have less than 15 years to run, this appears tight and at the very least it suggests that there is a need to extend the plan period by at least a year, notwithstanding the matters above. This would require identification of another 1,400 dwellings and 14ha of employment.

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