

To: Chris Briggs
Spatial Planning Manager
St Albans City and District Council
St Peters Street
St Albans
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28th November 2016

Dear Mr Briggs

**St Albans Strategic Local Plan
Duty to Co-operate (Issue 1)**

1. Further to the Initial Hearing Session (HS) held on 26th October 2016, I set out below my conclusions with regard to the duty to co-operate (DtC).

Preamble

2. The Council's evidence is initially included within Core Document CD 015: the Duty to Co-operate Statement of Compliance. However, I have also taken into account the Council's Statement in response to my questions in relation to Issue 1; the Council's contributions to the debate at the HS; other written evidence such as CD011: Consultation Report – Addendum 2016 Consultation and CD016: Monitoring Report; and the further evidence submitted following the hearing. Similarly I have considered the relevant evidence in the representations made with regard to the publication draft Strategic Local Plan (SLP), the further Statements and legal opinions that have been submitted by interested parties, the points they raised at the HS and the comments they have made regarding the post-hearing submissions.
3. It has been suggested by an interested party that great weight should be attached to the fact that St Albans has a very old local plan (1994) and that every effort should be made to find the SLP sound, albeit this may require a temporary suspension of the examination in order for additional work to be undertaken. However, whilst I understand and fully support the need to secure up-to-date local plan coverage, the DtC is an 'independent' legal requirement, which either has or has not been fulfilled.
4. For the avoidance of doubt the references to 'Joint Statement' in this letter relate to the Hearing Statement submitted on behalf of Dacorum, Hertsmere, Three Rivers and Watford Councils.

Legislative Background

5. Section 33A of the Planning and Compulsory Purchase Act 2004 establishes the legal duty to co-operate in relation to planning of sustainable development and stipulates that, in this case, the City and

District Council (SADC) is required to engage constructively, actively and on an on-going basis in any process related to the preparation of development plan documents. The Council must have regard to the activities (insofar as they relate to a strategic matter) of any relevant local planning authority, county council or other prescribed body or person. The engagement should include considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of a number of activities, including the preparation of development plan documents. Regard must be given to any guidance on the matter published by the Secretary of State.

6. This latter requirement is of particular relevance in this case. The legislation refers to strategic matters which are, in summary, sustainable development or the use of land that would have a significant impact on at least two planning areas. Further guidance, however, is included within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG). The NPPF refers to Strategic Priorities (e.g. paragraph 156) and the PPG to both Strategic Priorities (e.g. paragraph 002) and Strategic Matters (e.g. paragraph 001). Whilst such advice cannot override the statutory provisions (which refer to strategic matters), it is clear that it must be taken into account because it includes national guidance on the DtC. I have proceeded on that basis.
7. The following paragraphs summarise the published guidance which the Council are required to have regard to.
8. The NPPF¹ confirms that public bodies have a duty to co-operate on planning issues that cross administrative boundaries, particularly those that relate to strategic priorities, such as the delivery of homes and jobs needed in an area and the provision of infrastructure, for example in relation to transport. Strategic priorities across local boundaries should be properly co-ordinated and clearly reflected in individual local plans. The implication is that local planning authorities should, for example, work together to assess the opportunities that exist for the substantiated unmet development requirements of one local authority to be met within the area of one or more nearby local authorities. The emphasis is on diligence and collaboration.
9. Although I am primarily considering the legal duty to co-operate, it is important to record that for the SLP to be found sound (as opposed to legally compliant) it must be positively prepared and effective. This means it must be based on effective joint working on cross-boundary strategic priorities and where appropriate and sustainable, on a strategy which seeks to meet unmet requirements from neighbouring authorities.
10. Further advice is included in the PPG which confirms that a proactive, ongoing and focussed approach to strategic planning and partnership working is required. Active and sustained engagement is required, evidence of co-operation must be robust and co-operation should produce effective and deliverable policies on strategic cross-boundary matters.

¹ Paragraph 178

The exchange of correspondence, conversations or consultations between authorities alone is unlikely to be sufficient.

11. I have taken into account the fact that the duty is not a duty to agree and for example, just because SADC does not agree with nearby Local Planning Authorities regarding the definition of the Housing Market Area, this does not, in itself, demonstrate that the DtC has not been met.
12. I believe that the Report to Planning Policy Committee entitled 'Review of Neighbouring/Nearby Authority Planning and Duty to Co-operate Update' (dated 7th October 2014) clearly demonstrates that the Council fully understands the responsibility it has in terms of the duty.
13. Finally I have placed significant weight on the evidence provided by SADC, the other nearby Councils and the County Council because in this case they are the main parties to which the duty applies.

Strategic Cross-Boundary Matters and Priorities

14. The first sentence of paragraph 156 of the NPPF is unambiguous – local planning authorities should set out the strategic priorities for the area in the Local Plan. Paragraph 178 goes on to explain that public bodies have a duty to co-operate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities. Paragraph 179 confirms that local planning authorities should work collaboratively to ensure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual local plans.
15. There is no clear indication in the submitted SLP as to what the strategic priorities are, particularly those with cross-boundary implications. The Council directed me, in paragraph 14 of its Statement, to the priorities that are set out on page 5 of the Duty to Co-operate Statement of Compliance (CD015). In the same document there is a relatively brief explanation of the central issues relating to the DtC (pages 11 to 19). However, CD015 was only published in August 2016, towards the end of the current phase in the plan making process.
16. The SLP includes three paragraphs relating to the sub-regional context (page 12). These include references to employment, travel, retail, leisure and environmental matters but there is no reference to housing. On page 14 (paragraph 2.18) the key issues and challenges for the District are listed (as identified in the Council's 2009 Sustainable Community Strategy) but although affordable housing is identified as a key issue, there is no reference to the need for market housing. There is a reference to the 'provision of new housing' under strategic objective 2 (page 20) and in the two paragraphs under 'Wider Spatial Planning and Duty to Co-operate' (page 25) there is a reference to fully engaging in addressing 'sub-regional and regional strategic spatial planning issues'. However, although the sub-regional context is briefly summarised, nowhere in the SLP is there a clear explanation or detailed identification of what all those sub-regional and regional issues are or how the Council has addressed them.

17. At the hearing the Council confirmed that there is no specific list of strategic cross-boundary matters or priorities in the plan but that they are nevertheless implicitly reflected in the content of the SLP. That may be the case but without a clearer indication of what the Council considers those strategic issues to be, it is uncertain how all the relevant parties could co-operate in a meaningful and constructive manner.
18. In order that effective policies on strategic cross-boundary matters and priorities can be drawn up, it is necessary first to be clear what those matters and priorities are, and in order to ensure that the plan is robust those issues should be identified at the earliest possible stage in the plan-making process.
19. Despite the lack of detailed reference in the SLP to strategic matters and priorities, there is no reason to doubt that the Council has been aware of what those priorities for the area are from the early stages of plan preparation but this is not made sufficiently clear in the SLP. It would be difficult for someone reading the SLP to draw any firm conclusions regarding strategic cross-boundary matters and priorities and in turn they would not be able to conclude whether or not those issues had been properly addressed by the Council. On the evidence submitted I am unable to conclude that cross boundary strategic matters and priorities have been afforded appropriate weight in the plan-making process in St Albans.
20. Although this matter, on its own, may not be terminal in terms of making progress on the Examination, the lack of clarity regarding this issue does not provide a secure foundation from which other matters of co-operation can be assessed. If strategic cross boundary matters and priorities are not clearly identified it is difficult to see how effective and deliverable policies to address those issues can be drawn up.

Processes Undertaken

21. Although there is no specific requirement to establish a framework through which the DtC can be monitored (for example in terms of frequency of meetings, issues to be addressed, outcomes to be anticipated and bodies to be involved) a more structured approach may have assisted in demonstrating the Council's commitment to co-operation.
22. A number of local planning authorities that were represented at the Hearing confirmed that in their opinion there was no structure in place in terms of the regularity and frequency of joint meetings and that many of the meetings were 'high level' where issues were addressed in a 'broad-brush' way, indeed the Council itself described some of the meetings as being 'over-arching'.
23. Quarterly Reports are presented to the Planning Policy Committee but it is not clear from the examples provided in CD015 whether or not the recommendations were agreed and if so, what the outcomes were.

24. Although this is not a matter on which my conclusions have turned I do consider that if a more rigorous approach towards establishing the 'mechanics' of the DtC had been adopted by the Council (remembering that it is not a duty to agree), then the arguments advanced by the Council would be more persuasive.

The Requirements of the Duty

Has Engagement been Constructive from the Outset?

25. There has been engagement between St Albans Council and nearby local planning authorities, particularly in the earlier stages of plan-making, for example in relation to the 2008 Strategic Market Housing Assessment (SHMA) and employment work undertaken in 2009. Constructive engagement in more recent years appears to be less evident and it is difficult to conclude that the Council has approached cross-boundary priorities in a meaningful and positive way. SADC recognises that there are 'strong economic and spatial relationships with neighbouring towns, particularly Hemel Hempstead, Welwyn Garden City, Hatfield, Watford and Luton'². However, there is no persuasive evidence that the Council has pro-actively sought meaningful engagement with all of these and other nearby Local Planning Authorities. Meetings have been held and doubtless appropriate issues have been discussed but it needs to be demonstrated that cross-boundary issues, for example in terms of housing, employment and infrastructure provision, have been fully addressed and that opportunities to be constructive have been given appropriate consideration and where necessary have been acted upon. I acknowledge that there may be difficult issues to tackle but that is no reason to adopt a less than constructive approach throughout the plan-making process.

Has Engagement been Active?

26. The Council refers to the various groups that meet on a bi-monthly basis³ and it is clear that the Council has attended these meetings at both political and officer level. However, the Agendas and Minutes of those meetings that were submitted do not enable me to conclude that the Council has been sufficiently active in seeking engagement with nearby local planning authorities (for example those with which it acknowledges it has a strong economic and spatial relationship – see paragraph 25 above), with a view to quantifying and tackling cross-boundary matters and priorities, particularly (but not exclusively) in terms of housing provision.

Has Engagement been On-going?

27. Co-operation should start with the 'initial thinking' (NPPF paragraph 181) and evidence of effective co-operation from the earliest stages up to the submission of the SLP (and beyond if necessary) should be demonstrated. It is reasonable to conclude that in order to achieve this objective, there

² Page 4 of CD015

³ Paragraph 66 of Statement

should be continuing and frequent engagement, even if that engagement is only to provide an up-date on issues of strategic relevance.

28. I am satisfied that there have been opportunities for the Council to engage with nearby Councils throughout the plan-making process – whether or not those opportunities have been maximised is another issue. I am concerned, for example, that the Council did not reply to a letter requesting a meeting (dated 11th April 2016) from Three Rivers District Council (on behalf of four south-west Herts LPAs) for over 5 months, despite being sent a reminder via e-mail. The letter also includes a request for housing data to be forwarded⁴.
29. The Council's response⁵ includes an apology for the delay but also refers to 'difficult dilemmas', 'past, difficult political level discussions' and 'the technical, political and practical challenges of developing a plan in St Albans'. I completely accept that plan preparation is not always straightforward but the significant delay in responding to a request for a meeting does not demonstrate that engagement has been on-going.
30. Furthermore the aforementioned response (dated 23rd September 2016) includes a list of 13 bullet points which summarise the 'matters we should all now be considering and crucially clarifying at a political level'. Several of the 'matters' referred to relate to the duty and in my opinion should have been addressed much earlier in the plan-making process, rather than a month before the hearing session (for example DtC outcomes not delivered; the level of cross-boundary agreement; and proposals for new joint technical work). This is another indication that engagement has not been on-going from the earliest stages in plan preparation.
31. I am told in the 'Joint Response'⁶ that there has been a significant delay in the publication of draft Minutes of a DtC meeting held in February 2016 (for example Hertsmere received them on 10th November 2016). More significantly it is confirmed that the four LPAs do not accept them 'as being a fair record of the issues raised by the four Authorities on which they sought unsuccessfully to discuss'. I acknowledge that SADC has not had the opportunity to respond to this claim but it nevertheless provides a further indication that satisfactory engagement has not been achieved.

Has Engagement been Collaborative?

32. The Council needs to demonstrate that it has worked with the relevant bodies in a co-operative and positive manner. The correspondence I refer to in the section above demonstrates that there has been a lack of meaningful collaboration. The Joint Statement (paragraphs 3.3 to 3.6) provides examples of invitations to St Albans to participate but there appears to have been a reluctance to accept and contribute to the debate. As already stated, there is no obligation on the Council to agree with its neighbours but without even entering fully into the debate, it is difficult to conclude that there has been collaboration.

⁴ Appendix 10 of Joint Statement

⁵ Appendix 11 of Joint Statement

⁶ Ref: 872722-2

Has Every Effort been made to Secure the Necessary Co-operation?

33. The Council needs to demonstrate that no stone has been left unturned in the pursuit of co-operation. Active and sustained engagement should be the objective. However, there is little evidence that a rigorous approach has been adopted by the Council. The evidence provided, for example in the appendices to the Joint Statement, set out some of the efforts made across Hertfordshire to secure co-operation. However, it appears to me that SADC has not made every effort to become fully involved in the processes, to engage fully and to explain to other nearby LPAs its approach towards, for example, housing and employment provision and the related evidence on which the Council relies. The references to 'watching briefs'⁷ and 'general liaison'⁸ do not instil confidence that every effort has been made.

34. There is a Memorandum of Understanding (MoU) prepared by the Hertfordshire Infrastructure and Planning Partnership (HIPP) (May 2013). Its purpose is to 'provide a framework through which HIPP members will commit to engaging constructively, actively and on an on-going basis with each other ...'. Among the stated objectives are (and I summarise):

- To provide the opportunity to work collaboratively across local boundaries on issues of broader strategic importance;
- To facilitate the achievement of a broad, co-ordinated but consistent approach to strategic spatial planning;
- To facilitate joint working on strategic issues which affect more than one local authority area; and
- To ensure that policies prepared by each local authority are, where appropriate, informed by the views of other local authorities in Hertfordshire.

35. These are appropriate objectives to establish but there is little evidence that SADC has made the necessary effort to ensure that they are satisfactorily achieved. The aim is to encourage continuous partnership working on issues that go beyond a single local planning authority's area.

36. As I confirm in paragraph 25 I am aware that there has been a relatively high level of co-operation and joint work undertaken in Hertfordshire in the past. However, any momentum that may have been generated at that time appears to have dissipated and it cannot be concluded that SADC has made every effort secure co-operation throughout the entire plan-making process to-date.

Has Engagement been Diligent?

37. In order to demonstrate diligence it is reasonable to conclude that the Council's approach should have been careful, thorough and with

⁷ For example in paragraph 5.1 of the Report to Planning Policy Committee on 7th October 2014 (see CD015)

⁸ For example in Table 1 of CD015

commitment. However, no in-depth analysis of the issues facing the local planning authorities in the area appears to have been undertaken by St Albans and no robust assessment of how those issues should be addressed has been prepared. The level of diligence, particularly in terms of seeking engagement, has not been high.

Is the Evidence Robust?

38. Whilst I understand the need to strike an appropriate balance in the submission of evidence, I would not describe the Council's submissions as comprehensive and, drawing together all the threads in the previous paragraphs, it can be concluded that the evidence of co-operation on cross-boundary matters and priorities is not robust.

Has Engagement been of Mutual Benefit (the broad outcomes)?

39. Taking all factors into account the answer to this question must be no, especially as there are objections to the approach of St Albans City and District from several nearby local planning authorities. Mutual benefit, in terms of strategic matters and priorities, does not appear to have been at the top of the list for the Council. As I have intimated elsewhere, it may not be possible to achieve a high level of mutual benefit and as I have already made very clear, there is no requirement for Councils to agree. However, if that is the case then robust evidence has to be available to demonstrate that at least the achievement of mutual benefit has been sought.

40. The 2013 MoU establishes the objectives for co-operation and makes it clear that if requested an LPA will meet with and discuss any issues raised by one or more of the other HIPP local authorities and take into account any views expressed. On the evidence submitted I am unable to conclude that St Albans City and District Council has given sufficient weight to enacting the approach embodied in the MoU and that consequently any engagement that has occurred has not been of mutual benefit.

Planning Topics

41. Concerns have been raised by interested parties regarding co-operation in relation to a number of planning topics, including housing, transport, gypsies and travellers, employment, the provision of infrastructure and the green belt. Although in the view of some respondents the level of co-operation regarding the consideration of these issues falls well short of what might be expected, I would have been content to address many of the concerns raised in subsequent hearing sessions which would have considered matters of soundness. I am therefore restricting my comments in this regard to only one issue that has clear DtC implications.

42. I share the concerns of Dacorum Borough Council regarding the role that land to the east of Hemel Hempstead could play in terms of housing provision. Policy SLP 13(a) states that the urban extension of Hemel Hempstead would 'meet the needs of the St Albans housing market area'. Paragraph 4.5 of the SLP confirms that 'development needs arising in the

District can readily be met in this location'. This may be an appropriate approach to take but the Report into the Dacorum Core Strategy⁹ refers to meeting that Borough's housing needs 'including in neighbouring Local Planning Authority areas' (e.g. in St Albans). At the very least I would have expected a much clearer process for the consideration of the role of this land. At the end of the day the Council's decision to allocate all the land to meet the needs of St Albans may well be justified but in order to reach that conclusion there needs to have been a proper consideration of all the issues by all the interested parties and there is no substantive evidence that the appropriate level of collaboration and engagement on this matter has been sought or achieved.

43. Although this by itself is not a matter on which my decision has turned, it adds weight to my overall conclusion and is a further indication that the level of co-operation falls short of what is expected.

The Effectiveness of the Strategic Local Plan (in relation to soundness)

44. To be effective the SLP must be based on effective joint working on cross-boundary strategic priorities (for example housing provision). I understand the conclusions that the Council has drawn with regard to accommodating additional growth but those findings do not appear to be based on collaborative working or effective co-operation with other bodies. It may be that the Council's conclusions are correct, for example in terms of housing numbers and the definition of the Housing Market Area, but on the evidence before me I am unable to confirm that St Albans City and District Council has given adequate consideration to helping meet the development needs of other nearby local planning authorities. In these circumstances the plan would not be effective and therefore it could not be found to be sound.

Conclusion and the Way Forward

45. I have taken into account all the relevant representations (including those in support of the Council for example from the Local Enterprise Partnership and the Home Builders Federation). However, the evidence submitted clearly demonstrates to me that the duty has not been met by St Albans City and District. A small number of nearby Councils consider that the duty has been met but there is no opportunity for a Council to be selective over which of its 'neighbours' it co-operates with.
46. The evidence does not enable me to conclude that prior to the submission of the SLP, St Albans City and District Council gave satisfactory consideration to identifying, addressing and seeking co-operation with regard to strategic cross-boundary matters and priorities. The legal requirements, as expanded upon in paragraphs 178 to 181 of the National Planning Policy Framework and in the Planning Practice Guidance, have not been fulfilled and therefore **it is with regret that I must conclude that the Duty to Co-operate has not been met.** As the Plan has not been based on effective joint working on strategic matters and priorities

⁹ Appendix 1 of Joint Statement

and because currently there is insufficient evidence to demonstrate that the SLP has been positively prepared, there is also the significant risk that the Plan could be found to be not sound.

47. It must be emphasised that this does not mean that St Albans City and District should be expected to accommodate additional growth – that is not necessarily the case. What it does mean is that the Council should give detailed and rigorous consideration to strategic cross-boundary matters and priorities and draw robust conclusions with regards to whether or not any of those priorities could be delivered in a sustainable way within the District, bearing in mind the environmental and other constraints that exist.
48. I understand that this is not the conclusion that the Council would have wanted and that there may be consequences in terms of the Council's housing land supply and the adoption of an up-to-date Development Plan. Nevertheless these factors cannot outweigh the legal requirement for the Council to engage constructively, actively and on an on-going basis with those bodies (as appropriate) identified in the 2004 Planning and Compulsory Purchase Act (as amended).
49. Under the circumstances this leaves two options. Firstly the Council could decide to receive my Report, however, given my findings I would have to recommend non-adoption of the SLP. Alternatively the Council may choose to withdraw the SLP under S22 of the Planning and Compulsory Purchase Act 2004 (as amended). In any event I would advise the Council to undertake a more rigorous assessment of cross-boundary matters and priorities, particularly in conjunction with nearby LPAs and the County Council, draw justified conclusions and in so-doing ensure that it meets the requirements of the Duty to Co-operate. Any necessary consultation should be undertaken and a revised Plan re-submitted as soon as possible.
50. Although I have not tested the evidence (and it has no bearing on my conclusions with regard to the DtC) I would remind the Council about my initial pre-hearing concerns regarding the soundness of the SLP which I outlined in my letter dated 22nd August 2016 entitled 'Preliminary Concerns of the Inspector'.

Yours sincerely

David Hogger

Inspector