



3/12 Kite Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5254
Customer Services: 0303 444 5000
e-mail: Stephen.carnaby@pins.gsi.gov.uk

Mrs Helen Fairfax,
Planning Policy Manager,
Bolsover District Council,
The Arc,
High Street,
Clowne, Derbyshire S43 4JY

Our Ref: PINS/R1010/429/6

Date: 2 May 2014

Dear Mrs Fairfax,

Bolsover Local Plan Strategy Examination

1. Thank you for your Council's letter of 29 April 2014 which asked if I would set out a full report on the issues which were raised and discussed at the hearing sessions on the Local Plan Strategy which I held on 1, 2 and 3 April 2014. This letter is the best means of complying with that request, for reasons which will become clear.
2. I set out below my reasoning and conclusions on the legal issues of the Duty to Co-operate and the Sustainability Appraisal (Matter 1), and on the soundness of the provision of employment (Matter 6) and of gypsy, traveller and travelling showpeople sites (Matter 5). I also explain the implications of these findings for the Examination. These are the key areas where I presently have concerns about the legal compliance and soundness of the Plan.
3. I have not dealt here with housing provision, settlement hierarchy, and affordable housing, which were also the subject of hearing sessions, because I have not yet heard or received all of the evidence on them. There are other related hearing sessions which have not yet taken place and there is other evidence to come, especially that on the Plan's viability. Thus it would be premature and unfair for me to comment without having considered all the evidence. This also applies to the other matters and policies heard at the three days of hearings, such as developer contributions.
4. In summary, I find that the Council has not complied with the legal requirements for the Duty to Co-operate or for the Sustainability Appraisal, and that the Plan is presently not sound in respect of its provisions for employment and for sites/pitches for gypsies, travellers and travelling showpeople.

Duty to Co-operate

Background

5. The concerns about the Duty to Co-operate centre on the former Coalite Chemical Works site (roughly 58 hectares) to the north-west of Bolsover which straddles the Council's boundary and so partly lies in Bolsover (about 30 hectares) and partly in North East Derbyshire (approximately 28 hectares). The Council accepted that Chesterfield Borough Council also has an interest in the future of the Coalite site due to its proximity to a shared boundary (EX19h).
6. This is a complicated brownfield site with viability and remediation concerns. The present landowner has suggested that it requires comprehensive redevelopment (across both Districts) with up to 800 houses and nearly 95,000 square metres of commercial floorspace including various other uses such as a transport hub, an energy centre, a museum/visitors centre, a local centre, a neighbourhood equipped area of play, a local equipped area of play, a park, and a local habitat area. There are current planning applications for these proposals (References 14/00089/OUTEA and 14/00145/OL). I was told that retail and further housing development had also been discussed as alternatives.
7. The Council accepted at the hearing that the development of this site was a "*strategic matter*" as defined in s33A (4) of the Planning and Compulsory Purchase Act 2004 (as amended) which would have a significant impact on at least two planning areas. Therefore, Bolsover, North East Derbyshire and Chesterfield are required to "*co-operate ... in maximising the effectiveness*" of "*the preparation of development plan documents*", and the three Councils must "*engage constructively, actively and on an ongoing basis in any process by means of which*" this might be achieved.
8. "*Engage*" is not defined, but the National Planning Policy Framework (the NPPF) includes phrases such as "... *joint working on areas of common interest* ..." (178) and "... *work collaboratively with other bodies* ..." (179). NPPF 181 states that "*Co-operation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and future levels of development.*"
9. The Planning Practice Guidance (the PPG) says that "*The duty to cooperate is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for examination*" (ID 9-001-20140306).

Duty evidence

10. Around mid-2010 the Council decided to explore the potential for an Area Action Plan which would have included the whole Coalite site and a wider area of land within both Bolsover and North East Derbyshire Districts. However, by late 2010 the Council decided not to pursue this plan-making option as North East Derbyshire Council and the then key landowners had decided not to participate in it. Therefore, both Councils decided to deal separately in their forthcoming Plans with that part of the Coalite land that lay within their own particular area (EX19b to EX19f and EX19h).
11. In April 2011 Bolsover and North East Derbyshire entered into a Strategic Alliance and now have a joint Chief Executive Officer and Senior Management

Team, which includes a joint Assistant Director for Planning and a joint Planning Policy Manager.

12. On 20 May 2013 the Council's Senior Principle Solicitor wrote to the Coalite site landowner about various development proposals on that site, in the course of which he said, "... *whilst the proposals for a significant amount of employment land within Bolsover District would appear to reflect Bolsover's emerging strategy, the proposals for a significant amount of housing within North East Derbyshire appear to raise strategic cross boundary issues that have not to date formed part of any earlier plan-making process.*" (Appendix 1 of Bolsover Land's Matter 1 hearing statement).
13. The Coalite site is not mentioned in the Council's November 2013 *Statement of Co-operation for the Local Plan Strategy* (KSD8). Nor is it defined by the Council as being a "*main potential cross-boundary issue*" with North East Derbyshire in its December 2013 *Local Strategy Statement* update (paragraph 11.28 in KSD9). This latter document identified strategic cross boundary issues and set out how the Council proposed to deal with them. It is not mentioned in any Memorandum of Understanding that the Council has entered into with other councils, or within any working group's terms of reference (KSD9).
14. The Council's evidence relies in large part (but not exclusively) upon the inputs to and outcomes of the joint Local Plan Liaison Meetings held between Bolsover District Council, North East Derbyshire District Council, Chesterfield Borough Council and others (EX19h). I understand that each authority has its own mechanisms in place to brief elected members on matters arising at these Meetings. The Council said that through these Meetings "*all parties kept each other informed and involved in their progress in preparing their new Local Plan documents*" (EX19h).
15. At the hearing session I asked the Council to provide me with written evidence about the working relationships between it and North East Derbyshire concerning the Duty and the Coalite site. I specifically asked for copies of any formal joint agreements at elected member or officer level; for any Council or Committee resolution regarding formal joint working arrangements; for any minutes of any relevant joint working groups; for notes of any relevant meetings between officers and/or elected members of either council; or for any correspondence on this issue between the two councils. I also asked for evidence of any officer working arrangements between the two councils and Chesterfield Borough Council. I have only been provided with the evidence set out above.
16. In early March 2014 Derbyshire Dales District Council requested that Bolsover assist in meeting its unmet housing need (some 73 dwellings per annum). The Derbyshire Dales email did not indicate how much unmet housing should be allocated in Bolsover, or over what period. It was clear from the email that it was a general request which had been sent out to local planning authorities within the wider Derbyshire Dales Housing Market Area.

Conclusions on the Duty

17. I do not regard the March 2014 Derbyshire Dales request to meet some of its unmet housing need as being a Duty failure. This is because, firstly, its request came after the Plan had been submitted and so the Duty does not apply; secondly, because its request was generalised and non-specific; and, thirdly, because Bolsover's links with Derbyshire Dales are weak and so provision in

Bolsover may not be the right solution – for instance, KSD9 shows that 0.9% of those working in Bolsover live in Derbyshire Dales and 1.3% of Bolsover's residents commute to Derbyshire Dales to work.

18. So far as the Duty on the Coalite site is concerned, I am not persuaded that the Local Plan Liaison Meetings were anything other than consultative and information sharing gatherings. The extracts of the various meeting notes (EX19f) are all written in that manner, and do not indicate any constructive, active or on-going work to jointly and proactively plan for the Coalite site. It has not been demonstrated that appropriate conclusions have been drawn at those Meetings or that the councils have acted on those conclusions.
19. In April 2012 the Liaison Meetings resulted in a joint Memorandum of Understanding between six authorities. Although the Council said that the Memorandum covered "*all significant activity and development plans relating to land in the authorities in the Housing Market Area ... on matters which are likely to have significant cross border implications*" (KSD8), it does not mention the Coalite site and nor was any action taken under the terms of the Memorandum to jointly plan for the site in any positive or constructive or ongoing manner.
20. The PPG warns that effective co-operation "*is unlikely to be met by an exchange of correspondence, conversations or consultations between authorities alone*" (ID 9-011-20140306). The 2004 Act, the NPPF, and the PPG use the term "*co-operation*" and not "*consultation*". If the Duty had been merely to consult then the 2004 Act and subsequent Government policies would have said so. I have to test the outcomes of co-operation and not just whether the Council approached others (PPG ID 9-010-20140306).
21. I conclude that the Local Plan Liaison Meetings do not provide adequate evidence of "*sustained joint working with concrete actions and outcomes*" as required in the PPG (ID 9-011-20140306).
22. It is clear that in 2010 no formal co-operation or joint working concerning the Coalite site existed between the three Councils apart from the Local Plan Liaison Meetings. A suggestion for a joint Area Action Plan in that year was ultimately not pursued. In April 2011 Bolsover and North East Derbyshire entered into a Strategic Alliance but it has not resulted in any evidence of the type of co-operation required under the Duty for this site. The 2012 Memorandum did not deal with the site, nor has any joint working on the site flowed from the Memorandum. The letter by the Council to the Coalite site landowner in May 2013 confirmed that the strategic cross boundary issues raised by the site's potential development had not up to then formed part of any earlier plan-making process.
23. At the end of 2013 the Council's submission documents with the Plan giving its evidence on the Duty (KSD8 and KSD9) did not deal with the Coalite site and it is not mentioned in them as being a strategic cross boundary issue. The Council's relies, in large part, on the Local Plan Liaison Meetings but, for the reasons I have explained above, these do not show compliance with the Duty.
24. The Council said that the reason for the lack of joint action with North East Derbyshire was because "*work on its [North East Derbyshire's] Core Strategy was delayed by resourcing issues and was not far enough advanced to indicate how the former Coalite site would be addressed ...*" and that "... *this still remains the position*" (EX19a). It also pointed to the fact the North East Derbyshire had

not raised any objections to the submitted Plan alleging any lack of compliance with the Duty.

25. The PPG says that "*Where Local Plans are not being taken forward in the same broad time frame, the respective local planning authorities should try to enter into formal agreements, signed by their elected members, demonstrating their long term commitment to a jointly agreed strategy on cross boundary matters. Inspectors will expect to see these agreements at the examination. A key element of the examination will be to ensure that there is sufficient certainty through the agreements that an effective strategy will be in place for strategic matters when the relevant Local Plans are adopted*" (ID 9-017-20140306).
26. There is no such formal agreement. I appreciate that the PPG is relatively new, but the consideration of such agreements is a requirement of the 2004 Act [s33A (6) (a)] and this has featured in the NPPF (181). The fact that North East Derbyshire and Chesterfield did not make any Duty objections to the submitted Plan are not conclusive indications that that the Duty has been fulfilled. The key point here is that it is this Council's legal requirement to comply with the Duty that is being tested at this Examination, and not North East Derbyshire's or Chesterfield's.
27. It does seem that after the failed attempt in 2010 to prepare an Area Action Plan that the Council focussed too much of its attention on the planning proposals and planning applications coming forward from the Coalite site landowners, and put to one side, or forgot, the strategic plan-making requirements of the Duty which came into force at the end of 2011. It appears that here the actions and proper efforts necessary to comply with the Duty were not embedded as an integral element in the plan-making process by the Council. As the PPG advises, "*Co-operation should take place throughout Local Plan preparation ... until plans are submitted for examination and beyond, into delivery and review*" (ID 9-012-20140306).
28. Overall, there is no comprehensive or robust evidence of the efforts that the Council should have made to co-operate, or of any outcomes achieved, on the Coalite site strategic issue (PPG ID 9-003-20140306). In particular, there is no evidence of "*a proactive, ongoing and focussed approach to strategic planning and partnership working*" or that the Council's councillors and officers have adequately engaged in "*discussion, negotiation and action to ensure effective planning*" on an ongoing, constructive basis for this important strategic matter in its plan-making processes (PPG ID 9-004-20140306).
29. Therefore, I consider it is reasonable to conclude that the Plan does not comply with the legal requirements of s33A of the 2004 Act in that there has not been constructive, active and ongoing engagement during its preparation between the Council, North East Derbyshire District Council and Chesterfield Borough Council with regard to the acknowledged strategic matter of the Coalite site.
30. In reaching my conclusion, I have considered carefully all the representations made after the hearing by the Council and by others, and I have taken into account the potentially significant implications of my decision. I have also carefully considered the judgement in Zurich Assurance Limited v Winchester City Council and the South Downs National Park Authority [2014] EWHC 758 (Admin) in EX13f, cited by the Council (particularly the sections it thought especially relevant), and also my colleague's Report on the examination of the Chesterfield Local Plan Core Strategy of June 2013 (EX19g). However, their circumstances are not the same as those here and they do not, in my view,

form a precedent binding on this Duty issue which concerns a single strategic matter cross boundary site with a particular and unique history and sequence of events.

31. I realise and understand that the Council will be very disappointed by my conclusion. However, I consider no alternative conclusion can be reached.
32. I should also mention that as the Plan has not been based on effective joint working on strategic priorities then there is also a high risk that the Plan could be found not to be sound in terms of the 'effective' soundness criterion in paragraph 182 of the NPPF.

Sustainability Appraisal

33. The submission Sustainability Appraisal (SA) at KSD1 does not clearly set out the reasons for the selection of the Plan's proposals and the outline reasons why the other reasonable alternatives were not chosen during preparation. I accept that some of these matters were set out earlier and that the SA process is an iterative one, but the submission SA does not set out whether the reasons for selecting the Plan's proposals are still valid as opposed to the reasonable alternatives. These are legal requirements, and the need for them to be satisfied is well known and has been stated in many court cases such as Heard v Broadland District Council & Ors [2012] EWHC 344 (Admin). The SA process has to provide "*an outline of the reasons for selecting the alternatives*" (Regulation 12 and paragraph 8 of Schedule 2 of the Environmental Assessment Regulations 2004).
34. The Council said in its hearing statement on this issue that "*a full narrative of how the Plan has moved through subsequent stages of reasonable alternative options selection would be set out within the Final Sustainability Report on adoption of the plan and hence meeting the requirements of Part 4, Reg. 16(4)(e) of the 2004 Regulations.*" Unfortunately, this would be too late (post-adoption) to meet the requirements of the Regulations. A description of what alternatives were examined and why they were rejected has to be available for consideration at each stage, even if only by reference back to earlier documents. Appendix 3 of the submission SA report (KSD1) does not, as the Council claims, properly undertake this task because it is so brief in its reasoning on most alternatives and does not adequately explain why the Plan's proposals were better.
35. Without this information people would be denied the opportunity to understand and make representations on the foundational bases of the Plan. In this case it does not seem possible for consultees to know from the submitted SA what were the reasons for rejecting some reasonable alternatives, such as those at Clowne North and the Coalite site, or the reasons for the selection of the various policies and proposals in the Plan without going on a paper chase through other older Council documents.
36. Nevertheless, the Council published with its hearing statement an advance draft of the narrative tables making more explicit the Plan's selections made across its previous iterations in relation to alternative policy options (Appendix to its Matter 1 hearing statement). Even so, this is still flawed because at least one alternative being canvassed at the Examination - a mixed use scheme at the Coalite site - still does not appear to have been clearly considered, and because the chosen employment option (see below) is not adequately assessed

compared to other reasonable alternatives such as the provision of employment land to meet the objective assessment of need.

37. Where this situation has occurred before, the courts have held that the SA can be corrected during the Examination, then consulted upon, and any resulting representations considered by the Inspector before the submission of his or her report [see, for example, Cogent Land LLP v Rochford District Council & Bellway Homes [2012] EWHC 2542 (Admin)]. Had the Examination continued that would have been my intended course of action in this case, i.e. I would have suspended the Examination to allow for this work to be programmed and undertaken by the Council.

Employment provision

38. The evidence for employment land need primarily rests on the Bolsover Employment Land Study (KBD2) published in August 2006, which is itself based on data from 2004 and the 2001 census. That Study does not cover the plan period to 2031 as it only goes up to 2026. The East Midlands Northern Sub-Region Employment Land Review of March 2008 (KBD7) reviewed the 2006 Study but did not produce new demand (need) projections. The 2008 Review supported the conclusions of the 2006 Study, saying that the Study's "*projections appear appropriate*" although "*estimated demand*" would likely be at the higher end. The 2008 Review's main effort was to "*add value*" to the 2006 Study's site appraisal work.
39. The most up-to-date source of employment land assessment material available is that in the Council's Employment Topic Paper (TR3) of December 2013. However, the only forecast in the Topic paper of future needs is based on the policy objective in the Plan of matching the number of jobs in the District with the number of households divided by employment density to derive the area of employment land required (paragraphs 6.7 to 6.10, and 6.17 to 6.18).
40. The PPG says that authorities should "*develop an idea of future needs based on a range of data which is current and robust*" and "*consider forecasts of quantitative and qualitative need ... broken down by economic sectors*", together with the particular characteristics of employment land in the area (ID 2a-032-20140306). This is a reflection of previous Government policy in the NPPF (160 and 161) which requires a clear understanding of business needs and existing and future employment land supply, working together with the business community and other key stakeholders.
41. The forecasting models and the base information, including the past take-up of employment land, have altered considerably since the 2006 Study. It is now completely out of date and unreliable. It was not updated by the 2008 Review and, even if it was, that Review is itself now out of date. Both documents were prepared before the economic downturn of 2007/2008. Neither document is current or robust. Consequently, I can place very little weight upon them.
42. The 2013 Topic Paper is not a forecast or projection of future needs using the methodologies advised in the NPPF or the PPG. Nor does it identify whether there is a mismatch between quantitative and qualitative supply of and demand for employment sites. Instead, it mathematically works out how much employment land should be provided to meet a pre-determined policy objective. The Topic Paper has not been prepared in close liaison with the business community; or used market intelligence; or used market signals; or considered the recent pattern of employment land supply and loss; or

considered the locational and premises requirements of particular types of business; or identified oversupply and market failure (PPG ID 2a-030-20140306). The Topic Paper does not identify how much employment land should be provided in each economic sector, and nor does the Plan. The Plan also does not give any indication of when the employment land provision would be delivered (although the Council did suggest a main modification to rectify this deficiency).

43. The submitted SA does not deal with any reasonable alternatives to the Plan's strategic aim of matching the number of jobs in the District to the number of households. The Council's draft additions to its submission SA in the Appendix to its Matter 1 hearing statement do not consider the reasonable alternative of meeting the objective needs for employment land provision. Instead they are based upon various methods of dealing with commuting. As I have mentioned above, that would need to be corrected.
44. I conclude that the Plan is not sound in respect of employment land provision because there is no current or robust objective assessment of this key matter, and the only up-to-date information is designed solely to meet an already decided strategic aim (called a "Spatial Principle"). The Plan is not positively prepared, justified, effective or consistent with national policy.
45. Given that I would have suspended the Examination in any event to enable the above SA work to be carried out, I would, on its own, have required that a current and robust employment land and/or economic assessment be undertaken in conformity with Government policies during that suspension period and for the Council to suggest any necessary main modifications (and consult on them) before the Examination resumed.

Gypsy, traveller and travelling showpeople sites provision

46. The Council has recently completed a draft Gypsy and Travellers Accommodation Assessment for Derbyshire, jointly commissioned by a number of local authorities. Unfortunately, the findings of the Assessment may require negotiations between authorities, which may take some time, and the document cannot be released until then. There may, I understand, be an agreed final version sometime this month.
47. The Council has a criteria based policy at LP7 which is intended to operate between and beyond this Plan and the forthcoming Allocations and Policies Local Plan, which is scheduled to be adopted in February 2016 and which will allocate sites to meet the needs set out in the above Assessment.
48. Paragraph 9 of the Government's *Planning for travelling sites* says that a Local Plan should identify and update annually a supply of specific deliverable sites sufficient to produce five years' worth of sites against their locally set targets, and a supply of specific, developable sites or broad locations for growth for years 6 to 10 and, where possible, for years 11 to 15. The Council says it has made good progress in meeting previously identified needs, but I do not know until the Assessment is published whether there is an immediate short-term requirement for sites for pitches to be allocated between now and when the Allocations and Policies Local Plan is likely to come into effect. In addition, this Plan should clearly state any need in order that planning applications (and appeals) can be properly considered on the basis of policy LP7 (to which modifications have been suggested) and that need.

49. I conclude that the Plan as submitted is not sound because it is not positively prepared to meet objectively assessed requirements for gypsies, travellers and travelling showpeople, it is not justified by evidence, it is not effective, and it is not consistent with national policy.
50. Again, on its own, given that I would have suspended the Examination in any event to enable the above SA work to be carried out, I would have required that the Accommodation Assessment be published during that suspension period and for the Council to suggest any necessary main modifications (and consult on them) before the Examination resumed.

The implications for the Examination

51. The PPG advises that "*if an Inspector finds that the duty has not been complied with they will not be able to recommend that the plan is adopted. In this context the most appropriate course of action is likely to be for the local planning authority to withdraw the plan and engage in the necessary discussions and actions with other relevant local planning authorities and partners. The precise stage of the plan preparation process that the local planning authority will need to go back to will depend on the specific facts of the case. But the revised plan will need to be re-published for consultation and comment before being re-submitted for examination (ID 9-018-20140306).*"
52. Sections 20 (7B) and (7C) of the 2004 Act do not provide for the repair of a failure to meet the s33A Duty through main modifications. Thus, the consequence of my conclusion that the submitted Plan is not legally compliant is that I cannot continue any further with the Examination. The Council may choose to receive my report on the Plan which will not deal with any other planning issues and, following s20 (7A) of the 2004 Act, would recommend non-adoption of the Plan.
53. Alternatively, the Council may choose to withdraw the Plan under s22 (1) of the 2004 Act and so return to the preparation stage (s33A (3) (a) of the 2004 Act). Were the Council to follow this route it should seek to remedy the Duty defects I have identified. In my opinion, this would involve detailed, proactive discussions and negotiations with North East Derbyshire and Chesterfield at both officer and elected member levels, and the signing (by elected members) of a memorandum setting out the strategic principles governing the development of the whole of the Coalite site, so far as these can be agreed. This process may well result in alterations or modifications to the submitted Plan.
54. The submitted SA is not legally compliant and will need to be revised. The evidence base for the provision of employment and for gypsy, traveller and travelling showpeople sites and pitches is inadequate as it is not current or robust. Consequently the Plan is not sound in its policies for those policy aspects. There would be a need for a substantial amount of additional work to rectify the deficiencies I have identified. The resulting modifications to the policies in the Plan from the revisions to the SA and the policies as a result of the new evidence could well be significant.
55. Therefore, the main modifications required to make the Plan sound could well make it fundamentally different to that submitted in terms of its strategy and the approach to these policy areas. In the light of this, and notwithstanding the implications of the failure to comply with the Duty, my present view is that the cumulative impacts of these three concerns would mean that suspension of the

Examination would not be appropriate. Making what might be significant modifications would be unfair to those who engaged on the basis of the Plan as submitted and who would be denied the opportunity to affect the Plan's strategic direction, and thus its consequent detail, at its early formative stage. This may be another reason for the Council to decide to withdraw the Plan.

56. I would be grateful if you would confirm as soon as possible (via my Programme Officer) the Council's decision as to whether it wishes me to issue a non-adoption report on the Duty or whether it wishes to withdraw the Plan. In the meantime, it would obviously be inappropriate for me to reschedule the further hearing sessions. The Council's website should be updated to reflect the situation. A copy of this letter should be placed on the website and made available on request.

Yours sincerely,

David Vickery

Inspector