

Contact: Christine Sarris
Direct Line: 01623 457375
Email: c.m.sarris@ashfield-dc.gov.uk

Our Ref: LP2/21.4
Your Ref:
Date: 16th January 2017

Ms Carmel Edwards (Programme Officer)
C/O Gedling Borough Council
Civic Centre
Arnot Hill Park
Arnold
Nottingham
NG5 6LU

Dear Ms Edwards,

FAO Karen Baker DipTP MA DipMP MRTPI

Re: Examination of the Gedling Local Planning Document Publication Draft (Part 2 Local Plan)

Matter 1: Duty to Cooperate

Issue 1G: Legal compliance with respect to the Duty to Cooperate [LPD/REG/07]

Matter 1 G – Legal compliance with respect to the Duty to Cooperate [LPD/REG/07]

Q12. Is the Plan and its preparation compliant with the Duty to Co-operate imposed by Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) with prescribed bodies regarding cross-boundary strategic matters, including with regards to housing provision in particular?

Q13. Does the Council's Detailed Report on the Duty to Co-operate on the Local Planning Document (December 2016) [EX/11] demonstrate that the Duty to Co-operate has been met?

Questions 12 and 13 taken together:

- 1.1 We consider that the delivery of housing need, specifically large scale development which has impacts on existing settlements beyond the administrative boundary of Gedling Borough Council, is a strategic matter. Therefore the Council's actions and outcomes, with regard to this, should be subject to the legal requirements placed upon a local planning authority through S33A of the Planning and Compulsory Purchase Act 2004 (as amended) in order to mitigate impacts.

Address: Council Offices, Urban Road, Kirkby-in-Ashfield, Nottingham. NG17 8DA
Tel: 01623 450000 **Fax:** 01623 457585
www.ashfield-dc.gov.uk

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- 1.2 It should be made clear that Ashfield District Council accepts the Inspector's conclusion and the allocation of land adjacent to Hucknall through the ACS. The strategic planning issue rests with how monies, through S106 or CIL, can be effectively used to support improvements to infrastructure items outside of Gedling. At present there is no certainty with the proposals put forward by Gedling.
- 1.3 Upon submission of the Plan we consider that Gedling Borough Council may have passed the basic legal requirement of the duty to cooperate, but has failed to ensure the submitted Plan and approach is sound, with particular regard to the following two key issues:
- a) The Council has failed to maximise the effectiveness of the preparation of the Local Plan. Whilst there has been some liaison between the two Councils, there have been no constructive and positive outcomes with regards to the issues of potential impacts upon infrastructure and sustainability of Hucknall
 - b) The Council has failed to secure an agreement with Ashfield District Council prior to the submission of the Plan. There is no adequate mechanism to deal with potential impacts arising from developments close to Hucknall at this time.
- 1.4 Document EX/11 sets out the Gedling's narrative of meetings and correspondence. We do not consider a narrative to be adequate in demonstrating an appropriate level of cooperation.
- 1.5 In summary we do not consider that Gedling Borough Council has engaged to deliver a tangible outcome as to how the impact of a strategic level of development upon Hucknall can be mitigated. Ashfield District Council considers that an appropriate protocol should have been agreed by both Councils; this deficiency can be remedied through the insertion of additional policy into the Plan and agreement of a joint protocol. Ashfield District Council would welcome the opportunity to progress the protocol and specific wording for such a policy with Gedling during the examination of the Plan. Although it is noted that Gedling intend to invite Ashfield staff to the working groups, which is welcomed.

Capacity at Top Wighay

- 1.6 Gedling Borough Council now consider that the total capacity within the area adjacent to Hucknall has been reduced down to 1,265 homes. Following the reading of the adopted ACS and the proposed Part 2 Plan, Ashfield District Council consider the total capacity is 1,420 dwellings (1,000 Top Wighay, 300 Papplewick Lane, 120 Hayden Lane), whereas

the SPD for Top Wighay considers the quantum to be less. Whilst we acknowledge the role an SPD can take in place making, we do not consider that an SPD has the scope within a legal context, to reduce and restrict the quantum of housing within a development allocation.

- 1.7 As already set out to the Council in the Inspector's questions EX01 paragraph 8, regard should be had to regulations 5 and 6 of the 2012 Regulations. Specifically (iv) *development management and site allocation policies, which are intended to guide the determination of applications for planning permission*. The inference from the SPD is that it is seeking to limit the capacity of the allocation; which is clearly a development management and site allocation policy to guide in the determination of a planning permission.
- 1.8 This is the role of a development plan document, which is fulfilled by the adopted Aligned Core Strategy (ACS). Within the Inspector's Report for the ACS it is noted that Mod 11 was necessary to ensure soundness of the ACS. The modification seeks to ensure that development in this area should not have a seriously adverse impact on the future wellbeing of Hucknall, this is to be achieved by reducing the approximate quantum of development from 1,600 down to 1,300 dwellings.
- 1.9 The current situation as proposed, would allow for the ceiling of development set out by the ACS Inspector to ensure that plan's soundness, to be exceeded.
- 1.10 To remedy this deficiency the submitted Plan should revise and replace parts of the adopted ACS which would reduce the quantum of development at Top Wighay, therefore allowing for the additional site at Hayden Lane, but retain the quantum of 1,300 dwellings around in the Top Wighay / Papplewick Lane area.

Mutual benefits have not been sought or achieved

- 1.11 Paragraph 178 of the National Planning Policy Framework (NPPF) sets out that the Government expects that joint working on areas of common interest are to be diligently undertaken for the mutual benefit of neighbouring authorities.
- 1.12 As set out above, development around Hucknall, but within Gedling, is a strategic planning issue between Gedling and Ashfield Councils. There has been no agreement between the two councils about how infrastructure within Ashfield can be supported by development within Gedling. This is clearly opposed to paragraph 178 of the NPPF; it is not to the mutual benefit of neighbouring authorities.

- 1.13 Gedling has not effectively engaged with neighbouring LPAs whom they will rely on to ensure sustainable development can be achieved. Whilst the allocation of land adjacent to Hucknall has been found sound by the ACS Inspector, there has been a failure to agree a mutually beneficial protocol for infrastructure monies (S106 CIL). This is clearly evidenced through the ongoing concerns expressed by Ashfield District Council (in correspondence and meetings with Gedling Borough Council) and the fact there is no Statement of Common Ground or MoU agreeing an approach.
- 1.14 Paragraph 88 of the Inspector's Report of the ACS expected the then draft protocol document would ensure that cross boundary impacts are mitigated. This has not been progressed, the protocol, although adopted by Gedling, has not been endorsed by Ashfield District Council as it does not address the issue raised at paragraph 1.13 above. The expectations of the ACS Inspector have not been realised.

Work prepared to date

- 1.15 It is to be recalled that the point at which the duty applies is from the start of plan preparation to the conclusion of a regulation 19 consultation, before the submission of a plan to the Secretary of State for examination (regulation 20). Importantly, plan preparation cannot be postponed to a later date (Samuel Smith Old Brewery and Selby District Council 2015 [EWCA 1107], paragraph 28).
- 1.16 The Plan does not adequately set out in policy how impacts to infrastructure and sustainability of Hucknall will be delivered and, or mitigated.
- 1.17 Based upon the evidence presented through the R.19 consultation, submission and the Top Wighay Farm SPD it is challenging to comprehend how joint working has led to concrete, positive outcomes to the mutual benefit of both authorities. We consider that this issue can be resolved through a Main Modification to the Plan.

Changes requested to the protocol and working arrangements

- 1.18 Ashfield District Council would respectfully request that Gedling Borough Council re-opens discussion regarding the protocol of infrastructure provision between the two authorities. With a particular focus on the issues addressed within paragraphs 13 to 16 of the most recent protocol. It is considered at least the following broad additions should be considered:
- a) Specify the quantum of CIL and S106 monies that is anticipated arising from the proposed development at Top Wighay Farm

b) Using the most up to date evidence specify the impact upon infrastructure which the allocations within Gedling, directly adjoining Hucknall's urban boundary, will have and specify the necessary mitigation to adequately address this impacts of development.

- 1.19 Upon agreement of this protocol we consider that a new policy should be inserted to the Plan, which sets out that a protocol between the two authorities exists and outlines the broad objectives of that protocol. The justification for this is to ensure that the development around Top Wighay and Papplewick Lane can be truly sustainable and recognises the role that Hucknall will play in the delivery of infrastructure to support this strategic level of development.
- 1.20 At present there is no guarantee that any CIL or S106 monies raised through development in this area will go towards funding infrastructure improvements within Hucknall. Ashfield District Council has serious concerns that the development in this area will come forward without adequate infrastructure. Therefore, it is requested that a specific and adequate percentage of CIL monies arising from development in this area, is made available for infrastructure items within Ashfield District. Further to this we request that the R.123 list, specifies all relevant infrastructure items that may need to be delivered within Hucknall, at present the CIL R.122 list states secondary school contributions related to Top Wighay Farm Strategic Site; it is not specific that this infrastructure item will be in Hucknall.

Yours faithfully



C.M.Sarris
Corporate Planning and Building Control Manager