

MATTER 1: LEGAL COMPLIANCE, DUTY TO CO-OPERATE, SUSTAINABILITY APPRAISAL AND CONSULTATION

- 1.1 This matter statement is prepared on behalf of Terra Strategic Ltd in relation to its land interests at land to the west of Semington Road, Melksham. An outline planning application is currently pending for up to 108 dwellings which would be up to 100% affordable homes (reference 18/04650/OUT).
- 1.2 The 2012 NPPF was clear that in the context of plan-making, Local Plans should plan positively for new development and infrastructure required in the relevant area; be drawn up over an appropriate timescale (preferably 15-years); be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations; and indicate broad locations for strategic development.
- 1.3 This matter statement has been prepared having regard to the wider planning policy context for Wiltshire and the tests of soundness established within the 2012 NPPF: i.e. that a 'sound' local plan should be positively prepared; justified; effective; and consistent with national policy.

Background Issues

- 1.4 A fundamental flaw with the WHSAP is that it has been prepared to align with the plan period of the WCS (2006 – 2026). With the plan period commencing in 2006, some 13 years ago, demonstrates that the WHSAP is more retrospective than forward-thinking. Consequently, there are less than seven years remaining on the plan period, which will be even less by the time it is adopted.
- 1.5 The WCS was prepared prior to the NPPF system, despite not being adopted until January 2015. The housing requirement of 42,000 homes was not founded on a NPPF compliant Strategic Housing Market Assessment (SHMA¹), which was confirmed by the Inspector's report.
- 1.6 Furthermore, the Council's commitment to an early partial review of the WCS was a determining factor in the Inspector's report recommending adoption of the WCS subject to main modifications. Wiltshire Council (WC) has failed to progress an early review of the WCS. Consequently, the WHSAP is failing to adequately plan for the future of Wiltshire.
- 1.7 On the basis of the background to the plan's preparation, TKP assert that the WHSAP fails the tests of soundness as it is not positively prepared, justified or effective nor is it consistent with national policy.

¹ Wiltshire Council Strategic Housing Market Assessment (December 2011)

<http://www.wiltshire.gov.uk/strategic-housing-market-assessment>

Issue 1: Whether all Statutory and Regulatory requirements have been met?

Q. 1.1: In preparing the Plan, has the Council complied with the complied with the Duty to Co-operate required by Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended)

- 1.8 As part of the duty to co-operate in relation to the planning of sustainable development, Section 33A of the Town and Country Planning Act imposes a legal requirement on the local planning authority to “*engage constructively, actively and on an ongoing basis*” during the preparation of development plan documents such as the Wiltshire Housing Site Allocations Plan (WHSAP).
- 1.9 Whilst a thorough evidence base has been published in relation to fulfilling the duty to co-operate – in the form of the Council’s Duty to Co-operate Statement (June 2017), its subsequent Addendum statement (May 2018) and its Regulation 22 Consultation Statement (May 2018) – there are no joint formal agreements between WC and its neighbouring local planning authorities and/or statutory consultees.
- 1.10 Valuable mechanisms to demonstrate effective and on-going joint working include the publication of an agreed Memorandum of Understanding or Statement of Common Ground, so that it is clear to the public that the Council has formally agreed to work with neighbouring local authorities or statutory consultees to resolve wider cross-boundary issues or smaller, more technical matters which are important to the long-term sustainability of local communities.
- 1.11 To date, the submission evidence shows that WC has not formally signed a Statement of Common Ground with any of its neighbouring authorities or statutory consultees. So, at present the Council is not legally obliged to co-operate or agree with any of these stakeholders. This is particularly concerning as WC administrative boundaries adjoin 11 other local authorities.
- 1.12 Most concerning is the lack of joint working with Swindon Borough Council (SBC), especially in the context of the Swindon and Wiltshire Local Enterprise Partnership (SWLEP), Swindon and Wiltshire Joint Spatial Framework (SWJSF) and the Joint SHMA². The WHSAP makes no mention of the joint working nor does the Duty to Cooperate Statement June 2017 (ref. WHSAP22). Even the Cabinet report to addendum to the Duty to Cooperate report May 2018 (ref. WHSAP23) makes one brief reference to working with SBC by having regular meetings. It states that there are no cross-boundary issues with WHSAP, however, the WCS housing requirement of at least 42,000 new homes includes 900 homes for Swindon.
- 1.13 Pertinently, the Joint SHMA identifies the Full Objective Assessed Need for Housing over the 20-year period 2016-36 to be of 73,000 dwellings i.e. 10 years beyond the WCS. The FOAN is split 29,000 dwellings in Swindon (1,450 dwellings per annum)

² Swindon & Wiltshire Strategic Housing Market Assessment – Report of Findings (March 2017)
<http://www.wiltshire.gov.uk/spp-shma-2017-final.pdf>

and 44,000 dwellings in Wiltshire (2,200 dpa). The SHMA proposes four new housing market areas: Swindon, Chippenham, Trowbridge and Salisbury. The Swindon HMA covers an extensive area with WC administrative boundaries which was formerly in the NWHMA. SBC is therefore reliant on WC assisting them with their housing needs. Therefore, it is critical that the authorities work collaboratively and satisfy all the legal requirements of the duty to cooperate.

- 1.14 Furthermore, through its Duty to Co-operate Addendum statement (May 2018) WC has stated its intention to agree specific matters with statutory agencies including Highways England and Natural England, however this has not formally come forward.
- 1.15 We therefore conclude that WC has not fully met the requirements of the duty to cooperate.

Q. 1.2: Is the WHSAP compliant with the Council's Local Development Scheme in terms of its form, scope and timing?

- 1.16 In terms of its timing, the WHSAP is clearly not compliant with the Council's Local Development Scheme (LDS).
- 1.17 Published in September 2017, the most recent version of the Council's Local Development Scheme (LDS) is now 18 months old. The 2017 LDS anticipated the examination of the WHSAP to be undertaken during Q3 and Q4 of 2018, with a potential adoption of the Plan at the end of 2018.
- 1.18 Now we are approaching examination of the Plan in April 2019, it is clear that the Council's LDS requires updating.
- 1.19 Whilst WC has promised to publish a new LDS at approximately the same time of the year (Spring 2019 – according to the Council's Planning Policy webpage), the Examination of the WHSAP is over one year late in the context of the Council's most recent LDS. An associated implication of this is the projected time horizon of the Plan which, if adopted this year, will have a timeframe of just seven more years.

Q1.3. Has consultation on the Plan been carried out in accordance with the Council's adopted Statement of Community Involvement (SCI) and the minimum consultation requirements in the Regulations?

- 1.20 It appears that there were fundamental errors in the consultation process evidenced by the fact that WC had to reconsult on the WSHAP focussed consultation on the Council's Schedule of Proposed Changes and associated evidence documents as all consultees were not correctly notified.
- 1.21 In addition, WC has only covertly consulted on the settlement boundaries by undertaking an informal consultation principally with Town and Parish Councils. This is not appropriate given that the development plan, including proposals maps, is supposed to guide the location of new development and therefore it should be widely consulted.

- 1.22 This approach runs counter to the Council's Statement of Community Involvement (SCI, 2015) which alludes that landowners, infrastructure providers and developers will be involved within the production of Development Plan Documents, such as the WHSAP.
- 1.23 The formulation of local authority settlement boundaries is a fundamental component of the WHSAP, which the Council has failed to provide an appropriate opportunity for developers and landowners to comment, contrary to the provisions of its SCI.
- 1.24 TKP conclude that WC has not consulted in an effective manner with stakeholders, landowners and developers on the development of the WHSAP which has resulted in the preparation of an unsound plan.

Q.1.4: Has the Sustainability Appraisal (SA) been prepared having regard to the requirements of the Strategic Environmental Assessment Directive and Regulations and guidance in the PPG? Is it clear how the SA influenced the final plan and dealt with mitigation measures, and has it sufficiently evaluated reasonable alternatives?

- 1.25 As we outline in response to Matter 2, TKP has concerns about the site selection process as WC have not considered reasonable alternatives. Critically there is no clear audit trail to demonstrate how the sites were selected, whether any alternatives were considered or tested.
- 1.26 With the lack of a clear audit trail it would appear that Melksham, and some other sustainable settlements, were deliberately disregarded as it was deemed that there was sufficient housing land supply in these areas, and they were purposefully excluded from the area of search. This was a prejudicial judgement. The first stage should have been to consider all sites equally and subsequently discount sites based on a sound methodology.
- 1.27 Our client's site at Semington Road, Melksham is site 728 in the SHELAA and is identified as having a capacity for 165 homes and being available, achievable, deliverable and developable. It is not clear, how the site was subsequently discounted having been considered so positively in the SHELAA.
- 1.28 Furthermore, the Sustainability Appraisal makes no reference to Melksham. It is therefore apparent that Melksham has been deliberately overlooked despite being one of the most sustainable settlements in Wiltshire.