

7th February 2025



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Dear Robert,

Hearing Statement - Examination of the Bristol Local Plan 2022-2040

I write in response to your invitation dated 11 December 2024 to provide a written statement ('Hearing Statement') in relation to Matters to be discussed in weeks 1-3 of the Bristol Local Plan examination. Accordingly, our Hearing Statement is provided below, and is prepared by Black Box Planning on behalf of various clients for whom we are promoting development sites across Bristol, South Gloucestershire, Bath & North East Somerset, and North Somerset.

Introduction

It is well established that the functional geography of the West of England region is intrinsically interlinked, including in respect of housing need and housing distribution. The aborted Spatial Development Strategy (SDS) aimed to provide a strategic framework by which to agree a distribution of housing growth across the Bristol housing market area, recognising the fact that Bristol's urban area extends well beyond its administrative boundaries.

The failure of the West of England authorities to progress the SDS, and its withdrawal in 2020, is emblematic of a consistent failure of Bristol and its West of England neighbours to agree a distribution of housing in a manner which appropriately meets needs where they arise. We contend that these failures have been repeated through the preparation of the Bristol Local Plan.

This is despite the fact that throughout plan-making, the Council has recognised that housing capacity and the distribution of growth are strategic cross-boundary issues for Bristol's housing market area as a whole. It is also despite the fact that the West of England Combined Authority gives Bristol the ideal vehicle by which to drive forward cooperation with its neighbours on strategic matters.

As per our previous representations to the publication draft plan consultation held from 21 November 2023 to 26 January 2024, it remains our view and the view that Bristol City Council has plainly failed to meet its obligations under the Duty-to-Cooperate.

Additionally, subsequent to our January 2024 representations, the SHLAA was finally published in April 2024, long after the consultation closed. It revealed that the city has higher capacity at suitable, available and achievable sites than was tested through the Sustainability Appraisal (SA). We believe the capacity in the SHLAA confirms the view advanced in our January 2024 reps that the SA failed to test a sufficient range of reasonable alternative growth scenarios.

These are each serious matters which go to the heart of soundness and of legal compliance.

Previous Representations Summary

Black Box Planning made representations under Regulation 20 during the consultation held from 21 November 2023 to 26 January 2024 in which, for the reasons given there, we raised serious concerns in respect of the following aspects of the submission draft of the Local Plan:

- Spatial Strategy
 - The process of identifying and testing reasonable alternative growth scenarios to the preferred strategy was not robust, either in terms of alternative spatial distributions of growth, or alternative quantum of growth.
- Site Selection
 - The site selection process was too opaque in the absence of a published SHLAA, contributing to the lack of robust testing of reasonable alternatives, as above.
- Duty to Cooperate (the 'Duty')
 - Despite the Council's November 2023 progress report entitled 'Planning for strategic cross boundary matters' concluding that housing capacity and distribution of growth are cross-boundary matters, the Council's actions failed to match its rhetoric. Although the Council did eventually communicate its unmet needs to South Gloucestershire, this took place so late in the preparation of South Gloucestershire Council's (SGC) own local plan, that SGC had no time to explore the potential to meet Bristol's unmet needs before it published its Reg 18 draft Local Plan.

Matters, Issues and Questions (MIQs) for the Examination of the Bristol Local Plan 2022-2040

We note that the Inspectors' first Preliminary Question (PQ1) to the Council was in relation to Duty-to-Cooperate issues. This rightly reflects the significance of the Duty in ensuring the soundness of a plan. We also note that the Inspectors were unsatisfied by the Council's response to PQ1 (including the failure to produce a Duty to Cooperate Statement) such that a Supplementary Preliminary Question (SPQ1) was necessary to request the Council prepare a Duty to Cooperate Topic Paper.

Like the Inspectors, we judge that Duty to Cooperate is a matter which continues to attract grave concern.

The Inspectors' Document 4 (IN4) sets out the Inspectors' draft Matters, Issues and Questions (MIQs). MIQs Q1.1 - Q1.13 relate to housing need and requirement, including the Council's cross boundary engagement with neighbouring authorities, and its obligations under the Duty to Cooperate. These MIQs, and Q1.1 in particular, go to the heart of our concerns with the draft plan.

Accordingly, we provide our response to Q1.1 below, and subsequently our response to Q1.15 also.

Q1.1 Has the Council's engagement with other local authorities on housing need, the housing requirement and the capacity of Bristol to accommodate housing (as set out in EXA036a), been carried out constructively, actively and on an on-going basis?

The statutory requirement for all local planning authorities to cooperate constructively, actively and on an ongoing basis when undertaking preparation of a development plan is set out at Section 33A of the Planning and Compulsory Purchase Act 2004. These are the statutory tests when assessing

whether the Duty has been complied with.

Bristol City Council first wrote to their neighbouring authorities on 31st October 2023. This was the same day on which Full Council agreed that the publication version of the plan should be published for representations and then submitted to the Secretary of State. It is manifestly the case that this is an egregious failure to meet the test of on-going engagement on housing need, when the Council's first request to its neighbours was the day the plan was published for pre-submission consultation. By back-end-loading its cross-boundary engagement, it follows that the Council fails the tests of constructive and active engagement also.

*Procedure Guide for Local Plan Examinations*¹

The Procedure Guide for Local Plan Examinations is clear at paragraph 1.15 that compliance with the Duty is best demonstrated via submission of a statement of compliance which should *"identify any relevant strategic matters and how they have been resolved – or if they have not, why not"*.

It is therefore of concern that the Council evidentially failed to submit a statement of compliance at the point of submission, and begs the question of whether the Council realised at the point of submission that it was clearly non-compliant with the Duty.

Notwithstanding this, the Inspectors requested via SPQ1 that a Topic Paper be prepared by the Council to remedy this failure. Accordingly, the Council published its 'Maintaining Effective Cooperation' Topic Paper in November 2024².

However, we believe this Topic Paper fails to meet the requirements at paragraph 1.15 of the Procedural Guide, and consequently that the Council has plainly failed to comply with the Duty.

We draw the Inspectors' attention to Section 2 of the Topic Paper, entitled 'Collaboration on Strategic Matters'. Paragraph 40 says that *"the Council has collaborated with its partner strategic policy-making authorities to identify the relevant strategic matters to be addressed across the local plans ... The strategic matters are discussed in the two statements of common ground"*.

Paragraph 41 then says *"the strategic matter that has greatest prominence is that of unmet housing need which is being addressed through the mechanisms described above"* (emphasis added).

However, whilst it is true that the two SoGCs – one with North Somerset, and the second with South Glos and B&NES – do identify a number of strategic matters, it is manifestly untrue that they address the issue of how unmet housing needs are to be met.

To illustrate this point we draw the Inspector's attention to the following sequence of events:

1. **31 October 2023** – Bristol City Council first writes to its neighbouring authorities to request they consider meeting some of Bristol's unmet housing need.
2. **6 December 2023** – South Gloucestershire Council publishes its first Regulation 18 draft Local Plan consultation – fails to consider unmet need because Bristol's request came too late (as per our Jan '24 reps).
3. **April 2024** – Bristol publishes its Statements of Common Ground with a) North Somerset and b) SGC and B&NES. States that "housing need including unmet need" is an area of "agreement

¹ <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations>

² <https://www.bristol.gov.uk/files/documents/8482-exa036a-spg1-dtc-maintaining-effective-cooperation-topic-paper-with-appendices/file>

and future cooperation”.

4. **July 2024** – South Gloucestershire Council publishes a Topic Paper entitled “South Gloucestershire’s strategy concerning ensuring adequacy of its own housing land supply and whether it can assist with Bristol City Council’s unmet housing need”³ – concludes in terms at paragraph 12.6 that South Gloucestershire Council’s position is “*that it is not able to address BCC unmet needs, either wholly or in part*”.
5. **November 2024** – Bristol City Council publishes its ‘Maintaining Effective Cooperation’ Topic Paper which clearly suggests that the April SoCGs demonstrate that unmet housing need is being addressed on an ongoing basis.

There is a clear chronological inconsistency to the Council’s logic. The November Topic Paper, prepared specifically to demonstrate that relevant strategic matters have been resolved (or if not resolved, explain why) refers to the commitment to ongoing future cooperation established in the April SoCGs. This fails to account for the fact that such ongoing cooperation is rendered impossible by the intervening South Gloucestershire Topic Paper from July, which firmly closes the door on meeting any of Bristol’s unmet need.

Therefore, the Council are claiming that in November work was still ongoing to meet unmet needs, when clearly in South Gloucestershire this was manifestly not the case. Bristol’s ‘Maintaining Effective Cooperation’ Topic Paper fails to do the job for which it was prepared, i.e. to demonstrate compliance with the Duty.

This is exactly why the test of soundness at NPPF 36(c) is in effect, because it shows the danger in deferring rather than dealing with cross-boundary strategic matters. The Council have comprehensively failed to deal with the strategic matter of unmet housing need.

Q1.15: Did the sustainability appraisal consider and compare reasonable alternatives as the Plan evolved, including for housing and employment need and distribution, local plan policies and site allocations?

As we set out in our representations to the Regulation 19 Local Plan (January 2024), we have concerns with the robustness of the Sustainability Appraisal (SA) which tests reasonable alternative growth scenarios. Growth scenarios have both a quantitative and a spatial dimension, i.e. they explore both how much growth will be delivered and where this growth will be directed. The relevant regulations do not define what constitutes a ‘reasonable alternative’, though it stands to reason that the testing of alternative growth scenarios should include both spatial and quantitative alternatives to fully inform decision makers.

We do not believe the testing of reasonable alternatives has been robust. The SA concludes that delivering in excess of 1,925 dwellings per annum would not be reasonable, but our view remains that no evidence is presented to support this maximum, other than a list of commitments and supply assumptions at page 43 of the SA totalling 34,650 homes over the plan period.

The subsequent publication of the Strategic Housing Land Availability Assessment (SHLAA) in April 2024 – several months *after* the Regulation 19 consultation - identifies a higher capacity of 39,798

³ https://consultations.southglos.gov.uk/gf2.ti/-/1649602/216784645.1/PDF/-/Appendix%201%20-%20SGC_s%20approach%20to%20and%20strategy%20for%20meeting%20Bristol_s%20unmet%20housing%20need%20-%20Topic%20Pa.pdf

homes (para 6.3). The SHLAA attempts to explain the gap between identified capacity and the housing requirement as follows:

“6.6 The overall scale of the buffer between the SHLAA capacity and the local plan housing requirement is 5,148 homes. This is sufficient, for example, to cover the full citywide allowance for urban potential, which is one of the least certain of the capacity assumptions, while still allowing for a shortfall of over 2,500 homes from other sources.”

“6.7 Conversely, the emerging local plan proposes to meet or exceed the housing requirement where possible. The capacity set out in this SHLAA provides evidence that the potential does exist for the housing requirement to be exceeded.”

However, available completions for ‘urban potential sites’ have already been discounted to take account of delivery risks, including limiting supply assumptions to sites that had been promoted for development (para 5.6).

The fact that the SHLAA provides evidence that the housing requirement could be exceeded serves to reinforce the point made in our Regulation 19 representations regarding the failure to test a higher growth scenario.

This continues to be a key weakness in the draft Local Plan because it shows that the evidence is following the plan rather than leading it. We believe the late publication of the SHLAA, and that fact the SHLAA identifies sufficient suitable, available and achievable sites to exceed the level of growth in the plan, shows that there are reasonable alternative growth scenarios which the Council’s SA has failed to test. We believe this undermines the Plan’s soundness overall on the basis that NPPF 36(b), which specifically requires plans to take into account reasonable alternatives based on proportionate evidence.

I trust this Hearing Statement sets out clearly our grave concerns with the publication draft of the Local Plan in respect of Duty to Cooperate. Also, our concerns in respect of the shortcomings of the Sustainability Appraisal and the process by which reasonable alternative growth scenarios have been identified and tested to inform the plan. As per the tests at NPPF paragraph 36, these issues go to the heart of soundness, and in our view fatally undermine the plan.

We do not propose to attend the forthcoming hearing sessions as we trust these submissions adequately address our concerns.

Yours Sincerely,

A solid black rectangular box redacting the signature of Chris McNulty.

Chris McNulty
Associate