A procedural point

The information provided by the Council to demonstrate how it has complied with the duty to cooperate has only been made publicly available after the closing date for representations. In its representation the HBF raised its concern about the supporting evidence being unavailable to interested parties during the submission stage consultation. This material needed to be available to enable third parties to scrutinise the extent to which the council had complied with the duty. The omission of this material will have compromised the consultation process. Some interested parties will have not had access to relevant planning material that would enable them to judge whether the plan was sound or not. If it had been, they may have wanted to comment on this issue.

1. What are the relevant ‘strategic matters’? Do they include the following? Are there any other strategic matters?

We agree the list of strategic matters.

Our comments on this matter tend to be framed in terms of the issue of planning for the unmet housing need. We acknowledge, however, that there are other important cross boundary strategic planning issues that would need to be addressed through the operation of the duty to cooperate.

Failure of the Local Plan to define the strategic issues

The Local Plan fails to identify the key strategic cross boundary issues, of which housing and employment are two. If the Local Plan does not define the strategic issues requiring cooperation, then there is nothing to bind the HMA authorities into a contract to provide the shortfall of homes in Luton.

Housing Market Area (HMA)

The Local Plan states in paragraph 4.5 that the HMA includes all of Luton, a significant part of Central Bedfordshire, and parts of North Hertfordshire, Aylesbury Vale and Dacorum local authorities. However, the Luton Local Plan, including paragraph 4.5 and Policy LP 2, does not refer directly to any agreement with these other authorities that they will be responsible for accommodating the 11,000 dwelling shortfall through their own local plan making, and how the shortfall will be apportioned. This means that the Local Plan is ineffective, and demonstrates that cooperation under the duty to cooperate has not been constructive.

Paragraph 2.26 of the Local Plan refers to the need for neighbouring authorities to cooperate but fails to name the relevant authorities.

OAN
The OAN is a strategic matter. That Luton and Central Bedfordshire have cooperated on the preparation of a SHMA to assess the OAN is the only positive outcome under the duty to cooperate to date. However, if the HMA does include the other authorities referred to in paragraph 4.5 then the preparation of a SHMA using consistent assumptions would have been helpful as the inspector concluded at the Coventry City Local Plan examination.

**Green Belt**

We agree that the extent of the Green Belt any review of its boundaries to accommodate development is a relevant strategic matter. A Green Belt review coordinated with Central Bedfordshire and North Hertfordshire is likely to be necessary to accompany any strategy for accommodating Luton’s unmet need.

We note the Consultant’s Brief for the Green Belt Study (page 210, appendix B). The final report is scheduled for late June 2016. The timetable indicates that LBC is submitting its plan for examination prematurely and that the production of a joint or aligned plan with CBC would be feasible and would maximise the effectiveness of the plan-making process.

2. **Has consideration been given to the preparation of a joint Local Plan and if so, what conclusions were reached?**

On the basis of our reading of material that has now been providing relating to the duty to cooperate it does not appear that Luton Borough Council (LBC) and Central Bedfordshire Council (CBC) have considered producing a joint plan or aligned local plans. The preparation of a joint or at least aligned plans, would have been logical and the most effective way to plan for the future development needs of both authorities. It is our view that both authorities should await the results of the Growth Options Study in October 2016 and then bring forward joint or aligned plans.

We note that it was Bedford Council’s view in its representations on Luton’s Local Plan that LBC ought to have awaited the outcome of the Growth Options Study (page 9, appendix C). A view that is also expressed in a meeting with Luton on 26 November 2015 (page 51, appendix C). Luton’s justification for progressing the strategy in advance of the GOS is that the examination will confirm the OAN, and this is a necessary sequential step (page 52, appendix C). However, this argument would represent a distortion of the purpose of the plan making process. Plan-making is not only about confirming the evidence base but also about making a plan to provide for the development needs identified by that evidence base. Nevertheless, we acknowledge the uncertainties inherent under the new system.

3. **Has consideration been given to aligning Local Plans in neighbouring authorities so they are examined and adopted broadly at the same time? If so, what was concluded?**

On the basis of the material provided to support the Local Plan (*Statement of Compliance with the Duty to Cooperate, April 2016*) we are unable to answer this
question conclusively. The record of meetings between the various councils since 2012, however, does suggest that there was some disagreement on this issue. Bedford Council had expressed its view in 2014 that the ‘ideal way is for everyone to march forward together’ (minutes of the meeting of 17 April 2014, page 43 of the appendix C). At the same meeting Stevenage and AVDC expressed the view that the intentions of LBC and CBC were unclear. This lack of clarity would have compromised the ability for the local authorities to have worked constructively together.

4. **Has the cooperation maximised the effectiveness of the preparation of the Local Plan? In respect of relevant ‘strategic matter’ is there evidence to demonstrate that the engagement with relevant authorities and bodies in the process of preparing the Local Plan has been:**

- Constructive
- Active and
- Ongoing?

**In considering question 4:**

a) **Has every effort been made to secure the necessary cooperation on the strategic matters listed above?**

The legal aspect of the duty to cooperate

Now that the material relating to the duty is available, a conclusion as to whether the duty has been effectively utilised prior to the submission of the plan in terms of the unmet need, is still hard to reach. A lot of the critical work relating to the provision of the unmet housing need, does still appear to be under discussion, rather than resolved in one way or another. As we said in our representations (HBF, 7 December 2015), it is necessary for Luton Council to provide a clear statement as to whether: a) the unmet need will be accommodated by the other authorities of the HMA, including how much and where; or b) a clear statement to the effect that despite asking the other authorities to assist they have refused (for whatever reason).

The Local Plan acknowledges that the full OAN cannot be accommodated within Luton (paragraph 4.6). The plan also notes that work to resolve this issue is still underway as the Council attempts to ‘potentially’ provide for the unmet need through neighbouring authority local plans (paragraph 4.6). This problem is also reflected in Policy LP 2.

The issue then, is whether Luton Council has diligently pursued the issue of accommodating the unmet need so that it has been able to reach a definitive conclusion on this matter before the plan was submitted namely: which authorities can take some of the homes, how many, where, and when.

A failure to secure cooperation on the unmet housing need does not mean that the Luton Plan has failed the legal aspect of the duty to cooperate. This is because the duty to cooperate is not a duty to agree. However, failure by Luton Council to seek
clarification on this vital point from Central Bedfordshire and the other authorities would represent a failure under the duty.

In summary, there is still no agreement between Luton and Central Bedfordshire as to how much of Luton’s unmet need can be accommodated elsewhere and where and when (assuming that any can be accommodated at all). North Hertfordshire has undertaken to accommodate some of the shortfall – 2,100 homes – but it is unclear whether this figure has been agreed by Luton as representing a reasonable proportion. Notwithstanding the North Hertfordshire contribution, there is still a significant shortfall of 9,000 homes. In this respect we note paragraph 41 of Mr Inspector Brian Cook’s conclusions on Central Bedfordshire’s Development Strategy (his letter to Central Bedfordshire dated 16 February 2015) in which he observed the failure of Luton and Central Bedfordshire to agree on the nature of the housing challenge. Over one year later there is still no clarification in the Luton Plan as to how this problem will be resolved. This does tend to suggest a continuing reluctance in this sub-region to provide any clarity.

We note that the statements of common ground with the surrounding local authorities who will be affected by the Luton Local Plan are only just being agreed. These statements have not been agreed prior to the Local Plan’s submission stage consultation or before the Local Plan was submitted to the Secretary of State. It is therefore arguable that the duty to cooperate has not been utilised to best effect prior to the Local Plan being submitted for examination.

Appendix A of the Statement of Compliance with the Duty to Cooperate, April 2016, lists all the meetings held to discuss cross boundary matters. It is apparent from this list that work on a Growth Options Study with Central Bedfordshire had not commenced by 25 September 2015. The two authorities met on this date to discuss the work brief (see page 16). If work on a growth options study had not yet been started by this date, it would be difficult for Central Bedfordshire to provide a response to a request from Luton Council answering how much of its unmet need it might be able to accommodate.

Similarly we note on page 17 of Appendix A that a meeting between Luton and Central Bedfordshire was held on 11 November 2015. This and a meeting with CBC on the 2 December 2015 were the last two meetings before the close of the local plan consultation. The meeting on the 11 November was to discuss a Memorandum of Understanding between the two authorities on strategic cross boundary matters. Luton Council could have sought an answer from Central Bedfordshire at this meeting as to how many homes Central Bedfordshire could accommodate, if any. If Central Bedfordshire was not in a position to do so, because detailed need and capacity studies were required, and political assent secured, then at least the situation would be clear: namely that Central Bedfordshire could not provide any room for Luton’s unmet need. This may seem a somewhat bald statement by the HBF, but this is only because local plans have to provide clarity. One cannot have a plan that says “some homes may be accommodated in the future in Central Bedfordshire, but the exact number, if any, is subject to capacity and growth option studies” because there is no guarantee that this will ever happen. Plans need to provide certainty.
Similar arguments can be made about the meetings with all the other relevant HMA and sub-region authorities.

We note page 109 of appendix B. This is the minute of a meeting with Bedford Borough Council (BBC). At this meeting it was minuted that Luton “has tried consistently under the Duty to Cooperate to progress a Growth Options Study with Central Bedfordshire which is the key authority…but has so far been unsuccessful”. While we appreciate the difficulty confronting Luton in persuading CBC to engage constructively, unless Luton has directly and clearly asked CBC whether it is prepared to assist or not, and to demand a yes or no answer, it will be difficult for Luton to get any traction on this issue. Unless CBC is confronted it will continue to prevaricate for years.

While we acknowledge the difficulty Luton has had in getting CBC to engage positively (see for example the minutes of the meeting between Bedford and Luton on 22 December 2015, page 125 of appendix B) but Luton has also consistently failed to ask the most important question of its neighbours and especially CBC: i.e. will you provide land for the homes we need? If they say yes, then Luton could have then secured explicit commitments to this effect from its neighbours. If they say no, then at least it will be clear that they have exercised their legitimate right not to agree. LBC has only laid claim to land in CBC, it has not specifically asked, and secured support, for these allocations. We note the letter from CBC to LBC dated 14 August 2015 (page 126 of appendix B). From this letter it is clear that CBC has challenged LBC’s claim to the land at North Houghton Regis and North Luton and has said that Luton cannot rely on this land.

A great many meetings might well have been held, but unless the right questions are asked – i.e. will you take some of our homes and where and when – and clear answers sought then the engagement under the duty, in legal terms, will not have been constructive. This equivocation could roll-on for years.

Regretfully, we conclude that the legal test has been failed.

b) Has consideration been given to consulting on, preparing, entering into and publishing agreements on approaches to the preparation of the Local Plan? If so, with what result? Have any formal agreements between authorities been signed by elected members, demonstrating a long term commitment to a jointly agreed strategy on cross-border matters?

We understand that the agreement of Memoranda of Understanding (MoU) with the other authorities in the sub-region has begun but this has only started after the conclusion on the consultation of the submission version of the local plan (Regulation 19). It is interesting to note that despite the time available to LBC to engage with the other authorities of the HMA it has failed to secure a single signed MoU at the time of writing (21 June 2016). The NPPG advises that MoUs signed by members can be accepted as evidence to demonstrate effective engagement under the duty. Signed MoUs can demonstrate a longer term commitment to a jointly
agreed strategy to address a strategic cross boundary issue (NPPG, paragraph 016).

We note that LBC failed to secure an MoU with CBC in 2014 (page 125 of appendix B).

The lack of any MoUs, especially with CBC, demonstrates a clear lack of commitment to engage positively. As such there is no assurance that LBC or any of the other authorities of the HMA, other than possibly North Hertfordshire, are committed to accommodating any portion of Luton’s unmet need including producing new or revised plans to this effect.

There exists to date only a Statement of Common Ground with Bedford Council, but not, crucially, with the other HMA authorities. Since Bedford Council is not within the defined HMA and is not under any duty to provide for Luton, as the minutes of the meeting on 26 November 2016 confirm (see page 53, appendix C, also page 110, appendix B), this statement of common ground is not as material to answering the question as to whether the duty to cooperate has been effectively utilised to plan for Luton’s strategic housing needs.

Failure to define the HMA

The local plan provides no assurance that the unmet need will ever be accommodated by anyone at any point in the future. North Hertfordshire’s proposal to provide for 2,100 homes is still uncertain. Luton’s Local Plan fails to refer to the authorities that make up the HMA (as identified in the SHMA and the Housing Market Areas in Bedfordshire and surrounding areas Report of Findings). This had identified the HMA as consisting of Luton, a large part of Central Bedfordshire, and smaller parts of Aylesbury Vale and North Hertfordshire. This lack of definition in the Local Plan would result in uncertainty as to who would be responsible for planning for Luton’s unmet need. Clarity is needed to ensure that any review clause included in the local plan - if one were to be included as a remedy for soundness failings – would be effective. If the Local Plan does not define the relevant authorities of the HMA then LPAs can dispute their membership of the HMA and thus their responsibility for helping Luton.

c) What joint work, including with Central Bedfordshire Council and North Hertfordshire District Council, has been completed, is underway or is planned?

It is apparent from Appendix A that there has been much discussion since 2012 and the publication of the NPPF. However, it is clear from the documentation provided that this engagement has been largely inconclusive. The Councils have met a lot, but the briefs for the vital studies are still being agreed. Therefore, engagement on the vital issues has occurred much too late in the day to influence the local plan, even though the problem of Luton’s inability to accommodate its housing need in full has been known about for a long time, going back to at least November 2013 when this was discussed at the meeting with CBC on 7 November 2013. The critical work relating to housing land capacity studies, housing land allocations, and the political
assent that this requires in the adjoining areas, has occurred much too late to be able to inform Luton’s Local Plan.

Moreover, it is not altogether clear from the minutes that there is any agreement yet on the aims of the studies (e.g. see minutes of the meeting between LBC and CBC dated 11 November 2015, page 115 of appendix B). These studies needed to have been completed much earlier to inform the local plan and show how the problem of Luton’s massive unmet housing is going to be met (assuming there is any agreement to do so). Indeed, many of these vital studies have only just started.

We note on page 17 of Appendix A that a meeting between Luton and Central Bedfordshire was held on 11 November 2015. It was only at this late date – one month before the close of the Local Plan Submission Version consultation – that the idea of a Memorandum of Understanding between the two authorities to resolve strategic cross boundary matters was raised. The brief for the related planning studies which were to explore capacity and the growth options were only just being agreed (see minutes of the meeting of 11 November 2015, page 115 of appendix B). Clearly this indicates that Luton Council failed to reach an agreement with Central Bedfordshire on how to plan for the unmet housing need until the local plan was in the very late stages of development.

We note that the brief was still being debated at the meeting with CBC on 14 January 2016 (see page 20) and at the meeting on 8 February 2016. We do not understand why it has taken so long to commission and complete these studies. Mr Inspector Brian Cook’s verdict on the unsoundness of CBC’s Local Plan ought to have galvanised action. There has been inaction in the intervening year and a half.

The pattern is also the same with the other local authorities. For example, at the meeting on 11 November 2015 between Luton and AVDC it was minuted that “a proposed Growth Study…remains our preferred way to bottom this out”. This is far too late to influence the Luton Local Plan. This late realisation is perhaps surprising because Luton’s unmet need was an issue flagged-up by Mr Inspector Kevin Ward in his conclusions on the unsoundness of AVDC’s local plan (see paragraph 10 of his conclusions to AVDC dated 7 January 2014). There has been in-action in the two intervening years.

The important issue is that all the authorities in the sub-region, apart from North Hertfordshire, have diligently avoided saying anything on paper that might enable one to conclude how much, if any, of Luton’s unmet need will be accommodated in the plan period up to 2031, and where and when. Because the plan is unclear on this, one can only reasonably conclude that the plan has not been positively prepared.

e) Have any neighbouring local authorities included a commitment in their adopted or merging plans to help meet any of Luton’s unmet housing needs or to review their plans to do so? Has the duty to cooperate led to a mechanism for the housing shortfall within Luton to be met in full outside Luton?
At the time of writing there is a commitment from North Hertfordshire Council in its emerging local plan (the consultation on this concluded in February 2015) that it will accommodate 2,100 homes out of Luton’s shortfall of 11,100 homes. Paragraph 6.5 of North Hertfordshire’s emerging plan says that its own requirement is 12,100 homes plus 2,100 for Luton. However paragraph 2.1 of the minutes of the meeting with North Hertfordshire Council held on 17 November 2015 (page 96, appendix B) says something different. It says that the North Herts OAN is 14,400 plus 2,100 for Luton. If the OAN has increased in North Hertfordshire since February 2015 then this may have implications for how much of Luton’s unmet need North Hertfordshire may be able to accommodate, assuming that it resists a Green Belt review. It would be helpful if this could be clarified. The Green Belt Study is only for the area in Luton and Central Bedfordshire (paragraph 1, Green Belt Study – Consultant’s Brief).

Luton’s Local Plan does not include a commitment to a review. Therefore, aside from the emerging commitment from North Hertfordshire, it is unclear if the remaining shortfall of 9,000 dwellings will be accommodated.

We note that some of the minutes of meetings refer to the potential for a review depending upon the publication of the Growth Options Study (GOS) (see for example page 126 of appendix B). Luton’s hope is that the outputs from the GOS (scheduled to be published in October 2016 – see page 228 of the DTC papers) will inform a new CBC plan (or possibly a review, depending on the timetable for CBC’s local plan) and will trigger the review of other HMA plans who may need to accommodate some of Luton’s shortfall.

This process is too uncertain. Because Luton cannot compel either CBC or the other authorities to review their plans or make provision for the shortfall following the publication of the GOS study, and there is no guarantee that this will ever happen. Luton has limited influence over the contents and timetabling of the preparation of review of the plans of the other local authorities. We note that North Hertfordshire Council is very green belt constrained, and the DTC paperwork indicates that North Herts is unlikely to release green belt land to accommodate a larger portion of LBC’s shortfall than it has already said it will accommodate (see appendix C, page 10).

Even if the review is considered an acceptable approach, the time this would take is not conducive to ensuring the delivery of the full unmet need of 11,000 homes by 2031. New plans would need to be prepared, politically approved, examined, adopted, allocation land granted permission, and then built-out, all by 2031. It would probably would not be before 2020 that a new reviewed plan for CBC was published, examined and adopted, that would allocate the land needed to provide for an element of the 11,000 shortfall. There is no assurance in the paperwork provided, and there is no signed MoU with CBC, confirming that CBC is committed to making provision for an element of the unmet need in its plan.

It would be more sensible to await the outcome of the GOS in October 2016 and then for LBC and CBC to produce a joint or at least aligned local plans. We note that BBC has queried why LBC is pressing ahead with the plan before the GOS is completed (minute of meeting on 26 November 2015 – page 51, appendix C). We agree. CBC also hinted something similar in its letter to LBC dated 14 August 2015.
arguing that forging ahead with the local plan would prejudge the outcome of several key cross-boundary studies (page 127, appendix C).

\[ \text{f) Project Briefs for the joint Growth Options Study (to review the housing land supply and identify potential growth options) and the joint Green Belt Study (to assess the contribution to the Green Belt and potential releases from the Green Belt to achieve sustainable development) were finalised in February 2016 shortly before the plan was submitted for examination. What cooperation took place prior to submission, on the relevant strategic matters?} \]

From reading the minutes of the various meetings included in the Duty to Cooperate papers it is apparent that it has been difficult to secure agreement on the need for the GOS. In the minutes of the meeting of 26 November 2015 Luton states that it has tried to progress a GOS with CBC but had been unsuccessful. Agreement on the need to progress the study was not secured until September 2015 (page 109, appendix B). This would have been too late in the plan-making process to materially affect Luton’s Local Plan.

\[ \text{g) A purpose of the Growth Options Study is to review urban capacity. In addition, the Project Brief states that Central Bedfordshire Council intends to commission a separate urban capacity study for Luton. Luton is also finalising a new Strategic Housing Land Availability Assessment. What cooperation took place on these separate pieces of work, prior to submission?} \]

Rather than CBC commissioning its own capacity assessment of Luton’s own administrative area, it would have been more productive if both authorities had produced a joint SHLAA. This would have complemented the joint SHMA that has already been published. CBC’s assessment of Luton’s area seems superfluous if the GOS is to undertake an urban capacity assessment.

The duplication of work speaks to the degree of mistrust that exists between the two authorities. It suggests that these disagreements will continue into the future and explains why cooperation has been so ineffective up until now. It does not bode well for future cooperative working.

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