

IN THE MATTER OF THE ST ALBANS CITY AND DISTRICT LOCAL PLAN
FURTHER SUBMISSION AS INVITED BY INSPECTOR HOGGER ON ISSUE 1:
THE DUTY TO COOPERATE
ON BEHALF OF THE COUNCIL

Background to this statement

1. Towards the end of the Initial Hearing Session (IHS), Inspector Hogger requested the Council to make available some material referred to in the discussions and invited written submissions from Joanne Whitehead and Peter Village. The invitees to the table discussion at the IHS have been invited to comment on these submissions if they wish.
2. The Council is therefore responding to that invitation.
3. The Council submitted the additional material requested by the Inspector. These were added to the Examination webpage on 28 October as:

SACDC2 - SADC Opening Statement - Initial Hearing Session - 26 October 2016

SACDC3 - SADC - List of meetings in 2015 mentioned by Mr Briggs requested by Inspector Hogger

SACDC4 - SADC Meeting Notes and Agendas SADC - DBC 1 to 1 Portfolio Holder Meetings

4. The Council has noted the two additional submissions made, as invited by the Inspector:

REP-975973-1 Commercial Estates Group Written DtC Statement from Hearing

REP-343745-1 Ms Whitehead Written Representations on Duty to Co-operate

DtC – The Overall Approach

5. The Council is content that its own submissions, the submissions of others and the discussion that took place at the IHS on 26 October 2016, provides clear evidence to firmly conclude that the legal DtC has been met. Indeed, we go further and submit that there is no lawful basis for concluding that the DtC has not been fulfilled pursuant to section 33A of the 2004 Act.
6. This statement first addresses a number of the legal arguments put forward by Commercial Estates Group (“CEG”) and then deals with the submissions of Joanna Whitehead (“JW”).

REP-975973-1 Commercial Estates Group Written DtC Statement from Hearing

7. The Council notes the content of this submission and the clear conclusion that it reaches. The Council takes a similar view.
8. With regard to the CEG analysis on the legal approach to the DtC question (at paragraphs 8 – 15), this is agreed. In particular, it is necessary that the relevant “strategic matters” as defined by s. 33A(4) are considered when assessing whether the DtC has been met. A strategic matter is the “sustainable development or use of land that has or would have a significant impact on at least two planning areas”. This is significant when considering the representations of JW which fail to establish how a number of matters relied upon by her comprise ‘strategic matters’ (for example, in relation to sewerage issues arising from the NW Harpenden broad location); there is no evidence at all that this is a strategic matter.
9. Additionally, the question of “significance” in relation to what is a strategic matter is of considerable importance in relation to the SWHG authorities’ arguments on housing need. In relation to Dacorum’s case, for example, that authority has brought forward no evidence that the SWHG assessment of need will lead to “significant” issues on the neighbouring authorities. Dacorum’s view appears to be based on the policy in the NPPG (reference ID 9-021-20140410) which indicates that consideration should be given to taking other authorities’ housing needs. However,

importantly this can only be done if there is a housing requirement or need which has been actually identified by the other authority. At present, Dacorum does not have such a requirement and no evidence has been put before this examination (or to this Council) either by Dacorum or anyone else to establish that SADC's housing approach would have a significant effect on that authority's position – again, there is no evidence that the SLP's housing need approach would present a “significant” issue for the purposes of s. 33A.

10. The CEG analysis of the SWHG's fundamental error of approach is supported. The contention that there has been a failure of the legal DtC on the basis of what Mr Jameson made clear was their sole argument - that homes at East Hemel Hempstead should 'count towards Dacorum's needs' - is plainly wrong in law. This is an issue of soundness, not the DtC and CEG is, it is submitted, correct that there can be no question of a failure of the DtC (see paragraph 28.1 of the CEG representations).
11. The CEG submissions support a view set out by the Council in response to suggestions by the SWHG (discussed in response to inspector's questions in the IHS) that there is no requirement for the Plan text itself to identify and discuss DtC 'strategic priorities' as such (see the CEG statement at paragraph 15). DtC issues are clearly addressed in Core Strategic Objectives (SLP paragraphs 3.14 – 21) and in supporting evidence.
12. Reference was also made in the HIS to the linked issue of recording DtC consideration and outcomes in the Council's Authorities Monitoring Report (AMR). It is important to point out that this is done only in summary form and only for the relevant AMR period (monitoring year April 2014-15). Because of the dates involved, it will be the forthcoming AMR that records the SWHG response to the Regulation 19 Publication SLP. It will illustrate how the SWHG's new position has emerged recently and that it is starkly at odds with the SWHG's previous positions.

13. It is noted that the HBF, one of only two invited participants to object on the basis of legal DtC compliance in Regulation 19 responses, confirmed again that they are now of the view that the legal DtC has been met. It is also noted that Welwyn & Hatfield Borough Council, the only other invited participant which objected on the basis of DtC compliance in the Regulation 19 responses, did not vary from their position as set out in their 7 October 2016 submission. This was that, on further analysis, their objections are in essence soundness objections.
14. The HBF representations also usefully draw attention to the full history of the DtC in this case and highlight the failure of the SWHG / WHBC submissions to give proper weight to:
 - the 2009 /10 joint technical work that underpins the decision by all the objecting LPAs to progress individual plans.
 - the crucial role of Hertfordshire Infrastructure and Planning Partnership (HIPP) and its Memorandum of Understanding as a context for the DtC issue in the sub region (DtC Statement of Compliance p39-43). This was not explored in IHS discussion – but HIPP and its Memorandum of Understanding is in effect the proper formal arrangement for DtC. Crucially it is agreed at the political level.
 - the role of the Local Enterprise Partnership (LEP) and their Strategic Economic Plan (SEP) in relation to HIPP and the way this has been instrumental in achieving the DtC in recent years. It is important to note that the LEP were not invited to contribute to the hearing, but that they strongly support the SLP and consider that the we have met our Duty To Cooperate with them. They judge it as in alignment with the SEP and crucial to practical delivery of employment land options and the Enterprise Zone.
15. Representatives of the Crown Estate (in particular) and Oaklands College clearly added further substantive evidence that the legal DtC test has been met. They and other parties have been actively involved in seeking to maximise the effectiveness of the SLP.

REP-343745-1 Ms Whitehead Written Representations on Duty to Co-operate

16. The headings and abbreviations used by Ms Whitehead in her statement are adopted for the Inspector's convenience.
17. Whilst extensive, the JW submissions do not in substance directly address the question at hand and should be rejected. It is inaccurate in numerous regards, but these inaccuracies are not germane to the legal test of DtC. A few points of clarification can be made to assist the Inspector.

Scope, Timing and Content of the DtC

18. JW makes a series of contentions on the approach to be taken on the DtC. The Council responds as follows:
 - a) JW has referred (para. 10) to the Council's representations for the IHS ("the Council's Representations") to suggest that the Council has simply listed a series of meetings which is inadequate for DtC purposes. What that argument fails to engage with is that the purpose of providing the list of meetings was (as the Council's Representations made clear, at paragraph 44) to identify the commitment which the Council had to strategic DtC issues. These were meetings going to the DtC (despite JW's comments to the contrary) as the statement indicates. The remainder of the Council's Representations, its DtC compliance statement (CD15) and the evidence provided at the IHS establish the substance of the Council's discussions with DtC bodies.
 - b) JW suggests (para. 11(1)) that the Broad Locations were selected in July 2014 and have not been changed and that the Council relies "very heavily" on meetings taking place after January 2016. As to the latter contention, that is wrong – the Council's meetings with third parties over a number of years are set out in CD22 and the Council's Representations. The fact that the Broad Locations were identified in 2014 does not establish a failing in the DtC. It simply establishes that, following discussions with third parties (amongst other processes), these locations have been identified as appropriate ones for development and for inclusion

in the policies of the SLP. Indeed, the Broad Locations were first identified through the joint three LPA independent Green Belt Review in 2013-14.

c) JW suggests (paragraph 11(2) that one of the “activities” under section 19(2) of the 2004 Act relates to the resources likely to be available. The Council has indeed given due regard to the resources likely to be available for implementation (Planning Policy Committee Agenda, November 2015, IDP, etc). Whether the Plan and supporting evidence has, for its purposes, established that there are sufficient resources to implement the plan, relates to soundness. It may be that information is obtained through DtC bodies, but sufficient evidence to establish the availability of resources is not only obtained through engagement with DtC bodies. JW focusses on highways in this paragraph; this is dealt with further below.

d) At paragraph 11(3) it is argued that the Council is seeking to avoid a failure in the DtC process at this stage by dealing with DtC issues (notably on highways matters) at a later, post-submission stage. The highways issues are dealt with below, but it is not the Council’s case that the DtC can be – or is in this case sought to be - fulfilled through a later Plan. The Council’s case on the highways issues (expanded further below) is that both HCC and the Council agree that, following analysis, there is a good understanding of the issues and impacts arising from the Plan strategy and ultimately nothing to indicate that the strategy cannot be delivered. Sufficient engagement has therefore been achieved for this strategic Plan.

e) JW argues that the DtC must be commenced early enough in the plan process to influence the content of the development plan document (paragraph 11(1)) and suggests that this justifies the contention that “it is no good preparing the plan and only then trying to bolt on appropriate co-operation”. However, importantly, the NPPF (para. 181) is clear that cooperation is a continuous process; consequently, cooperation is capable of being achieved later in the plan process so long as the cooperation has the potential to shape the plan. JW’s approach wrongly assumes that only cooperation commenced at the start of the plan process can meet the DtC. In the present case, taking highways issues with the HCC as an example,

the Council has engaged throughout the process (essentially since 2006) and this engagement has continued in 2016.

Risk of Distortion

19. JW argues (paragraph 12) that there is a risk of distortion in this case by considering only the duty owed by one public body to another. It is wrongly suggested that the DtC is also owed to residents. The DtC does not comprise or include, as the submission suggests, a duty of care to third parties. It is a legal duty placed upon authorities by Parliament which must be performed pursuant to s. 33A; it is satisfied by undertaking cooperation with the relevant DtC bodies on strategic issues in the manner identified in that section. It is important to focus, as is dealt with below in respect of a number of Ms Whitehead's arguments, on the question of whether a particular issue engages the DtC. It is only strategic matters that are to be the subject of the DtC. This matter is also addressed in the context of the Council's response to the CEG representations.

Failure to Co-operate with CBC and Luton

20. JW suggests that the NW Harpenden allocation gives rise to strategic issues (paras. 16 and following).
21. The starting point is that there is no suggestion by either of the relevant DtC bodies that the duty has not been met in respect of this allocation.
22. In fact, the essential point made by JW is that cross-boundary issues arise because of the prospective identification of a site promoted as NLP228 in the CBC Plan. It is argued (see paragraph 19) that this potential allocation raise vitally important cross-boundary issues. JW's argument addresses the wrong question and therefore falls into error. The correct question is whether this Council has met its DtC in respect of its Plan and its allocations.

23. The potential allocation of NLP228 in the CBC plan does not raise strategic issues for the St Alban's plan:
- a) It is not an allocation at the present time, but one of a very large number (over 830 submitted) of landowner submissions for potential development.
 - b) A landowner proposed urban extension to Harpenden has not been a proposal in any draft Central Bedfordshire Plan and is not a proposal in its current (early emerging) draft Plan. If an allocation were to be brought forward in the CBC draft plan, it will be for that authority to consider any strategic consequences arising from the St Alban's Plan. St Albans has already made clear in discussions with CBC that it would likely object, based on Green Belt and landscape impacts.
 - c) The DtC bodies have identified no strategic matter in relation to this site.
24. In any event, the consequences of growth in CBC and Luton Borough have in fact been considered by the Council. The currently proposed levels of growth for both Luton Borough Council and Central Bedfordshire District Council have been and are included in the COMET traffic model runs. They are similarly inputted into the cross Hertfordshire Water study (as referred to in the DtC Statement of Compliance p139).
25. Moreover, DtC discussions with Central Beds have taken place since May 2012 and continue on an ongoing basis. The latest meeting, asked for by CBC as part of a round of such discussions, was held on 15 November 2016. Luton Borough Council DtC discussions have in fact taken place since November 2011 and continue on an ongoing basis.
26. A few examples of the outputs of cooperation include:

- The signed Memorandum of Understanding from November 2014 (DtC Statement of Compliance p183) was the agreed output of a substantial amount of political and officer DtC work over a long period of time. All relevant Districts/Boroughs agreed the content of the MOU.
- The Council gave evidence at Central Bedfordshire's Examination In Public in February 2015.
- The Council gave comments as part of the ongoing Reference Group to the 2016 draft Luton HMA Growth Options Study methodology / 2016 draft CBC and LBC Green Belt Study methodology.

Highways

27. The essence of JW's arguments on the highways issue is that the Council cannot know if there are deliverability issues associated with the plan given the lack of proper engagement with HCC.
28. The argument proceeds upon the wrong factual basis. It was confirmed again orally by Mr Flowerday on 26 October that, the 2015 COMET model run – which included all planned for growth in the District and the County as a whole and took account of beyond-County growth eg Central Beds and Luton, showed there were no 'showstoppers' for the District. The significance of this must be understood: the COMET run was a 'worst case scenario' run for the District, as all proposed growth (across the County and beyond) was included, but almost no mitigation was included for the District.
29. Discussion at the HIS included some comments from Mr Flowerday which are suggested by Ms Whitehead as having cast doubt on HCC's position. Mr Flowerday's early verbal comments at the hearing may have been capable of some misinterpretation in this respect, but; the position was then clarified. When asked a direct question by the Inspector as to whether he was as categoric as the District that there are no

'showstoppers', Mr Flowerday stated "...there's nothing that I could say that at this point in time that I would point at and say that cannot be resolved". The discussion referred back to the Highway Authority's formal, written position of 7 October 2016, for Examination decision purposes, which Mr Flowerday did not countermand in any regard. This statement concludes positively "...the County Council is content with this approach and is actively supporting SADC".

30. JW has also referred to the Highway Authority Local Plan Protocol and the correspondence passing between the authority and the Council on highways issues (at paragraphs 34-45).

31. As for the protocol, this document has never been an agreed protocol and has no formal DtC, or other, status. It is a series of iterative internal HCC documents and has certainly not been endorsed by HIPP or HPG.

32. Nevertheless and notwithstanding the lack of status of the Local Plan Protocol, its overall aims have clearly been met. As quoted by Ms Whitehead:

The overall aim of the protocol is to ensure that sufficient evidence is available by the time of an Examination in Public (EiP) so that the County Council as Local Highways Authority are able to support the development Strategies and Infrastructure Development Plans being brought forward in Hertfordshire.

33. That objective has clearly been fulfilled. As quoted in paragraph 29 above, "...the County Council is content with this approach and is actively supporting SADC".

34. The HCC written statement is unequivocal with regard to the Council having met the legal DtC. Any possible transport soundness concerns are exactly that – issues to be followed through at the main Examination.

35. In relation to the correspondence referred to by JW, this refers to correspondence preceding the Council's IHS statement (and the

comments made at the IHS) and so fails to reflect the current position of HCC on the achievability of the Plan strategy. This correspondence does not assist with the essential question – namely, whether the outcomes of cooperation between HCC and the Council allow for a conclusion to be reached on whether the Plan is sound. These outcomes patently do.

36. The Highways Agency has also raised no objection under the Duty To Cooperate. As briefly detailed in the Council’s Statement of 7.10.16 (p15, 16, 27, 28), there has been significant engagement with Highways England over a long period of time. They are a key party regarding the East Hemel Broad Location and have been jointly involved with the District, Dacorum, the LEP and Crown Estate in joint bids for Road Investment Strategy funding from the Department for transport. The District and Highways England are also jointly (with others) implementing improvements to the A1(M). These improvements include early work on a Smart Motorway upgrade to the A1(M); through the Hertfordshire A1 Corridor Consortium (HACC).

Schools

37. It is notable that JW’s arguments on education provision do not expressly allege a failure to meet the DtC. Nor is it established that the particular educational issue identified (secondary schooling provision in Harpenden) amounts to a strategic matter for the purposes of s. 33A. Instead, the comments relate to soundness; namely, whether the Council’s approach towards education within the plan is sound. JW contends that the Council should have made a specific secondary school allocation in the SLP; the Council disagrees, but this is not a matter for the DtC.

LEP

38. JW’s contention of a failure in the DtC in dealing with the LEP is unsustainable in the light of the considerable involvement of the LEP with the Plan’s development as identified in the DtC Compliance Statement

(CD22) and the fact that the LEP is wholly supportive of the SLP and the extent of its involvement with SADC. No DtC failure is alleged by the LEP, in fact quite the opposite (see also paragraph 14).

39. Other Matters - Roehyde

The Council noted the contribution by representatives promoting Roehyde. Clarification of the actual position may assist. This location has in fact been considered as a potential new Green Belt employment site for many years and was indeed included as a possible option in the Council's 2009 Regulation 18 consultation. It has featured in ongoing political and officer DtC discussions with Welwyn & Hatfield Borough Council since that time (and before). Both Councils are in agreement that there is no evidence leading to a conclusion to support the site.

Conclusion

40. In conclusion, there is no lawful basis for concluding that the DtC has not been fulfilled pursuant to section 33A of the 2004 Act.

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