

Winchester LP Examination

Lichfields obo O'Flynn Group

Matter 1: Procedural/legal requirements

1.0 Duty-to-Cooperate

Q1.

- 1.1 No. Whilst there has been engagement, notably through the Partnership for South Hampshire (PfSH), there is no clear evidence that it has been constructive, active or ongoing in terms of Winchester City Council (WCC) ensuring its Local Plan addresses unmet housing need from neighbouring areas: a fundamental challenge understood by all from the outset.
- 1.2 There is a qualitative dimension to necessary engagement: *“the requirement of the Act is for authorities to actively engage to maximise the effectiveness of plan preparation.”*¹ The Act requires this *“in any process”* on a *“strategic matter”* that includes *“sustainable development”*² and to *“have regard to any guidance given by the SoS about how the duty is to be complied with.”*
- 1.3 NPPF para 35 requires *“effective”* plans to be *“based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred”*. NPPF para 26 states effective joint working *“should help to determine... whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.”*
- 1.4 The PPG (ID:61-022-20190315) requires plans to *“explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the NPPF... Authorities are not obliged to accept needs from other areas where it can be demonstrated it would have an adverse impact when assessed against policies in the NPPF. Inspectors will expect to see that... authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates.”*
- 1.5 In applying the legal test, the Inspector in Sevenoaks³ considered not just the actual engagement but also the *“the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated”*⁴. In neighbouring Tonbridge and

¹ Paragraph 21 T&M IR June 2021: https://tunbridgewells.gov.uk/_data/assets/pdf_file/0018/411129/REP-1009661-001a-Pro-Vision-obo-Cooper-Estates-Strategic-Land-Matter-1-Appendix-1-to-Hearing-statement-.pdf

² Defined NPPF Para 11, including 11b) *“any needs that cannot be met within neighbouring areas”*

³ IR: https://tunbridgewells.gov.uk/_data/assets/pdf_file/0011/411131/REP-1009661-001b-Pro-Vision-obo-Cooper-Estates-Strategic-Land-Matter-1-Appendix-2-to-hearing-statement-.pdf

⁴ Sevenoaks IR17

Malling, confronted by the failure of that plan to address unmet housing need from Sevenoaks, the Inspector concluded⁵ the following to be relevant:

- 1 It is not necessary for there to be a “*firm figure*” on the quantity of unmet need if “*the overall position was clear well in advance of the submission of the plan*” which should then lead to engagement “*regardless of whether... the Council felt it may not be able to accommodate the unmet need in full or in part.*”
- 2 Meetings between parties should be “*used for constructive and active engagement in an attempt to resolve the strategic matter of unmet housing need and maximise the effectiveness of plan preparation.*”
- 3 It is not necessary for a Council with unmet need to “*formally ask for help*” or “*make the running*” where the issue is well known to both parties.
- 4 A failure to address unmet need due to a Council’s decision to press ahead with a local plan to meet a self-imposed deadline (e.g. due to NPPF transitional arrangements) and thus not make changes to its strategy at a later stage of plan making “*is not an adequate or legally compliant reason to not engage*”. Acting earlier to address the known problem would not have caused a delay.
- 5 It is not necessary to confirm the amount of unmet need via a plan’s examination/adoption before active and constructive engagement. It requires addressing earlier “*regardless of the lack of clarity at the time over the precise volume of unmet need.*”
- 6 Dealing with it through a “*future review of the Plan*” after the “*actual unmet need is examined and established... is not in the spirit of the Act or of national policy... Deferring the issue to subsequent plans does not amount to constructive, active engagement*”.

1.6 EDO2 attempts to show WCC meeting the duty through participation with the PfSH process, and yet it simply reveals the abject failure to do so hiding in plain sight. The outcome has been the opposite of effective plan making: a local plan submitted⁶ with large amounts of unaddressed unmet need from PfSH, at that point quantified collectively by the SoCGs as **c.18,000 homes**, and having not:

- 1 made any attempt to test options for increasing its housing requirement or allocating additional sites⁷;
- 2 demonstrated through evidence that doing so would not be consistent with NPPF para 11b)i. or ii; or
- 3 made any attempt to incorporate in its Plan (or even test as an option), its own element of the proposed solution to unmet need that was identified by the PfSH process, a Strategic Development Opportunity Area (SDOA) in Winchester, first identified in 2021.

⁵ T&M IR19-33

⁶ And accelerated to take advantage of transition arrangements

⁷ E.g. re-examining deliverable/developable sites from its SHLAA or adjusting its spatial strategy.

- 1.7 The 18,000 home unmet need recognised prior to Plan submission is identified within Table 1, but has consistently been in the order of 11,000-20,000. In reality the figure is likely greater, because the PfSH process only quantifies the position to 2036 falling well short of the 15-year horizon over which the NPPF (para 22) requires strategic policies to look.

Table 1

LPA	Unmet Need	Source/Notes
Portsmouth	3,577	SD08i Pg.10. Accounts for 800 contribution from Fareham.
Havant	4,309	SD08e Pg.10
Gosport	2,071	SD08h Table 1 Pg.10.
New Forest	5,652	No other LPAs recorded as making contributions to these unmet needs.
Eastleigh	2,511 ⁸	
Total	18,120	

- 1.8 We summarise in Table 2 below the chronology through which it is perfectly clear that WCC used the PfSH stages to limit (and sometimes reduce) rather than maximise the effectiveness of its local plan on the strategic matter of unmet need. Some significant failures of WCC include:

- 1 Misplaced reliance on the idea that it needs to know the specific amount of unmet need before it can act, and disingenuous as to when the shortfall was known about or “crystallised” and of its “expectation that this would be addressed via the SDOAs”⁹.
- 2 In December 2022 reducing its contribution to addressing unmet need to zero by hypothecating housing from sites previously allocated for precisely that purpose¹⁰ to instead meet its own need.
- 3 Outside the PfSH process, WCC only engaged with neighbouring authorities on unmet need in 2023 (SD06), despite it being a known issue since at least 2016 and two Reg.18 consultations in 2021-2022¹¹.
- 4 Reliance on SDOAs that are:
 - a being artificially limited to a narrow PfSH geography rather than considering other parts of those authorities and strategic housing market areas (e.g. sustainable sites/locations in the centre or north of Winchester, within the wider Southampton HMA, well connected to the unmet needs arising in, for example, Eastleigh or New Forest)¹²;
 - b Insufficient to meet unmet needs, even if all delivered;

⁸ SA08c pg.10 records it’s “not possible to agree a position”, but SD08h shows Eastleigh does have unmet needs.

⁹ EDO2 paras 4.3-4.22 and Table 4

¹⁰ West of Waterlooville and North Whitley (LP02 Chapter 5).

¹¹ Including setting the preferred spatial strategy; SD10b para 4.2.

¹² HAO2 Annex 1 para 2.49-2.51: North Winchester is within Southampton strategic market area, South is within Portsmouth strategic market area (both with unmet needs).

- c Not being secured/allocated and not even assessed for suitability/deliverability¹³; and
 - d In the case of the East of Botley SDOA within Winchester not included in the Plan and not even tested by WCC as an option/opportunity¹⁴.
- 5 At each PfSH milestone, it has not tested options or (re)examined potential sites/broad locations to better address unmet need. WCC closed its eyes to the possibility of trying to proactively meet unmet need, only seeking to make a lesser contribution from its already identified supply at the last minute (August 2024 Reg.19).
 - 6 Openly, WCC admits that it was “*instrumental*” in proposing the approach that seeks to further defer the substantive meeting of unmet needs to a ‘stage two’ scheduled for “*the longer term*”¹⁵. ‘Stage two’ appears to be a later round of LPA plan making, timescale unspecified, and to which the new standard method would apply (doubling the need/unmet need to be addressed).
 - 7 Equates ‘buffers’ within the East Hampshire and Test Valley Reg.18 plans as being available to contribute towards the unmet needs¹⁶, despite no agreement on that¹⁷; WCC’s reliance on those is plainly misplaced and, irrespective, insufficient to meet the unmet needs of c.18,000 indicated.

1.9 The scale of unmet needs in neighbouring areas within PfSH is largely unmet through this round of Plan-making, despite it being known about for at least nine years. The 1,900 home purported contribution to unmet needs that the Plan does seek to make is not the answer to the fundamental problem disclosed by the lack of effective co-operation; it does not address the scale of unmet needs that exist (nor a reasoned proportion of it), arrived late in the process rather than as a result of ongoing engagement and testing, and is provided as a means to seek to defer the larger element of unmet needs to a “*longer term*” process, at a time when unmet needs are immediately and substantially increasing (due to the revised SM).

1.10 WCC’s approach is constructive only if viewed through the lens of what is seemingly its own objective: avoiding or obfuscating its inescapable responsibilities to address more of South Hampshire’s chronic unmet needs, which exist now, harm the life chances of real people who need homes, and undermines the achievement of sustainable development.

¹³ The Havant/Waterlooville TC SDOAs were found unsound within Havant’s Local Plan withdrawn from EIP 2022.

¹⁴ EDO2 para 4.14-4.16 is WCC’s explanation; 2022 was too late.

¹⁵ EDO2 para 4.7

¹⁶ EDO2 Table 3

¹⁷ SDO8b, SDO8l; Those buffers were not part of East Hampshire’s/Test Valley’s Reg.18 proposed requirements, and no longer exist given the much-increased NPPF 2024 SM.

Table 2

Date	Unmet Needs Event/PfSH Statements	In response to unmet needs, did WCC test higher requirement/a strategy to meet them?	Notes/WCC Actions
April-June 2016	PUSH Spatial Position Statement agreed (PSH04). Unmet need of c.7,350 to 2034. PUSH statement indicates (difference between Table 1 and H1) Winchester will make provision for 261dpa of unmet needs 2011-34 (i.e. 7,350 was <u>only</u> with that contribution embedded; without it unmet needs were higher), with West of Waterlooville and North Whitley identified as PUSH strategic development locations (i.e. for PUSH needs, not rest of Winchester, see pg.36).	No.	Local Plan Launch (CON07) recognised “ <i>wider housing needs in accordance with the [PUSH] Strategy</i> ”
October 2018	In response to Standard Method (increase in needs), PfSH agree to prepare SoCG.	No.	
September 2020-February 2021	PfSH SoCG (PSH05). Unmet need reduced from c.18,000 to c.10,750 2020-36 (due to base-date/reduced period). [ED02 para 4.4] WCC contribution to unmet need remained implicit.	No.	SIP Consultation (CON05) Feb 2021 set out options <u>only</u> for 14,000 homes to meet Winchester’s own SM needs (no unmet needs acknowledged). Supporting IIA Scoping (IIA01, para A84) recognises unmet needs, but assumes PfSH strategy will meet needs as a whole. IIA of SIP options (IIA09) did not assess other numbers to account for unmet needs (para 2.29) as alleged to be “ <i>not yet clear</i> ”.
September 2021	WCC sets preferred spatial strategy (SD10b para 4.2).	No. Spatial strategy set without reference to any unmet need.	

October 2021- November 2022	PfSH SoCG Update October 2021 (PSH06): unmet need increased to 12,896 2021-36. [ED02 para 4.8]. WCC contribution to unmet need remains implicit in SoCG numbers; albeit footnote added stating: <i>"The method... does not reflect Winchester's development strategy for housing provision, which could affect the availability of the apparent 'surplus' to meet wider PfSH needs"</i> (i.e. unmet need contribution/surplus of +2,420 may not be available) [PSH06 footnote 27].	No. Overarching Spatial Strategy was fixed by WCC in Reg.18 Nov 2022, prior to consideration and co-operation on unmet needs.	Reg.18 Local Plan (CON01) November 2022 included 'buffer' of 1,450 for SM changes or unmet need, without commitment (CON01 para 9.18) against unmet need of 13,000 and SoCG agreed potential contribution of 2,420. Unclear how 1,450 was arrived at (nor why it was maximum WCC could accommodate). ED02 para 4.17 suggests it reflects <i>"increased capacity"</i> . IIA02 para 2.40 suggests it was due to windfall projections; i.e. nothing to do with meeting need in co-operation with neighbours, nor the 2,420 in the PfSH SoCG. IIA (IIA02) continued to state at this point <i>"no specific quantum of development or allocations are proposed in order to provide for neighbouring authorities' unmet needs."</i> (para 4.117)
December 2022	PfSH SoCG Update December 2022 (PSH07): unmet need increased to 19,865 2022-36. Partial reason is that Winchester surplus was reduced from +2,420 to zero, reflecting that WCC <u>removed</u> the commitment implicit within the numbers that WCC would contribute to unmet needs (PSH07 footnote 24). At this point there was clear indication that SDOAs would not address all of unmet need (ED02 para 4.16)	No.	This SoCG change matched the position that WCC promulgated in the Reg.18 plan; that there was no commitment from WCC to its neighbours on meeting <u>any</u> unmet needs (despite no evidence to justify stance). ED02 (para 4.15) indicates WCC would not, by this point, allocate SDOAs. WCC did not go back to test alternative approaches.
September 2023	PfSH SoCG Update September 2023 (SD08h): unmet need reduced to 14,531 2022-36 (exclusion of Southampton's 35% uplift). WCC's unmet need contribution remained at zero.	No.	

December 2023	PfSH Spatial Position Statement December 2023 (PSH01): Unmet need reduced to 11,771 2023-36, (partly due to reduced timeframe, position only looking ahead 13-years versus minimum plan-period of 15-years). SDOAs identified but two-stage approach (PHS01 para 6.33-6.34) defers them to “ <i>longer term</i> ” consideration in future plan-making, with no commitment/strategy for addressing problem in short term.	No. East of Botley SDOA not tested/brought into Plan; deferred to later plan making.	Late 2023/early 2024 is when WCC held substantive engagement with individual other LPAs on unmet needs.
January-March 2024	Portsmouth and Havant formally request WCC accommodate their unmet needs (collectively 7,886 homes; SD02a para 2.33/SD08i/SD08e). Plus the agreed unmet need in PSH01: Gosport (2,071), Eastleigh (2,511) and New Forest (5,652). Indicates unmet needs among neighbours (which need not be contiguous) have increased again and prior to Reg.19 sat at <u>c.18,000 homes.</u>	No.	ED02 para 4.23; whilst Portsmouth and Havant were the only two neighbours to make formal requests, they are not the only two unable to meet needs. PfSH SoCGs to which WCC has always been party make that clear. The DTC extends across all of these areas, not just Havant and Portsmouth.
August 2024	WCC publish Reg.19 Plan (SD01) with unmet needs allowance of 1,900; c.10% of known unmet needs at time.	No.	Reg.19 IIA (SD02a) confirms (pg.591) that the 1,900 did not arise from testing numbers for how much unmet need might be accommodated without significant adverse impacts (as required by NPPF) but arose from revised development yields and updated SM calculation (i.e. it was residual from the pre-defined sites/supply, re-purposed to meeting unmet needs).

Q2.

- 1.11 In mid-2023 it was known that Basingstoke was considering a garden village at Popham Airfield on its Winchester border and close to Micheldever Station¹⁸. In January 2024, Basingstoke's Reg.18 consultation proposed it for 3,000 homes. On 4th March 2024 WCC objected to the Popham Airfield proposals¹⁹ (asserting that BDBC had not held meaningful discussions with WCC; although SDO6 indicates²⁰ discussion of some sort did take place in 2023). This is not recorded in the SoCG (SDO8a August 2024) between the two Councils, despite being a strategic matter.
- 1.12 BDBC is pursuing a proposal for a new settlement on WCC's border yet the latter has not considered implications for its own plan²¹. A constructive and positive Council would have looked again at the opportunities it might have to support growth.
- 1.13 WCC may point to its in-principle objection, and consider it is not a failure of the duty on its part, but one in fact on BDBC. But effective co-operation is a two-way street: BDBC is pro-actively seeking to meet its relevant housing needs in a sustainable manner, whilst WCC is actively frustrating that.

2.0 SA

Q2.

- 2.1 No. Our Reg.19 representation shows how the SA fails to properly consider how the spatial pattern of development can reduce carbon emissions, given transport is the highest contributor in Winchester²². The principle is recognised in the IIA²³ but then downgrades/downplays how large-scale development, which NPPF para 74 actively supports, can meet objectives for carbon reduction by better embedding sustainable transport patterns via public transport (train stations), active travel and co-locating homes/local services/employment (reducing travel demand). Instead, the IIA is agnostic of the type of large scale development.
- 2.2 The first objective of the plan is to tackle the climate emergency. The SA conclusions do not robustly evidence that the spatial strategy genuinely supports that objective.

Q3.

- 2.3 Yes. A higher growth target was fundamentally necessary to be tested to meet policy and duty-to-cooperate obligations. The spatial strategy and SA testing has never been predicated on constructively seeking to provide for the housing needs of WCC alongside the unmet needs from neighbours.

¹⁸ SDO6 pg.34

¹⁹ Via representations:

<https://consult.basingstoke.gov.uk/node/17/submissions?chapter=All&topic=All&author%5B%5D=2139&urn=>

²⁰ SDO6 pg.34

²¹ Plan/IIA/Transport Assessment does not address.

²² SDO2a para 4.29

²³ E.g. SDO2a pg.59

Q6.

- 2.4 No. The fundamental failure to test reasonable alternatives on the quantum of housing to meet the unmet needs that have consistently existed throughout plan preparation fails to accord with policy²⁴ and legal requirements²⁵.

3.0 HRA**Q1.**

- 3.1 Our Reg.19 representation explains it was not clear that cumulative nutrient demand from growth within the catchments (both in/out Winchester District), would be met by forecast capacity. Despite a revised topic paper, an HRA addendum (SDO4a) and updated SoCG, it remains unclear that, beyond the early part of the plan, there is sufficient nutrient budget across the plan period and on a cumulative basis with surrounding areas to conclude on the certainty of mitigation.

Word Count: 2,992

²⁴ PPG ID:11-018-20140306; ID:11-019-20140306

²⁵ Including Reg.12 Environmental Assessment of Plans and Programmes Regulations 2004.