

STATEMENT

Warrington Local Plan Examination: Ref 1434

6 September 2022

Matter 2: The Duty to Co-operate

Satnam Millennium Limited

Brooklyn Limited

1. In the Representation Form submitted by Satnam Planning Services Ltd on behalf of Satnam Millennium Limited and Brooklyn Limited (*“the Representors”*) the Representators indicated that they did not consider the Draft Local Plan to be compliant with the duty to co-operate. That indication was given when completing Part B of the form in relation to:
 - a. The plan as a whole.
 - b. GB1: Warrington’s Green Belt
 - c. DEV1: Housing Delivery
2. A person who makes representations seeking to change a development plan document must (if s/he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination¹. The Representors have requested that they be given the opportunity to appear before and be heard by the inspectors. It would be perverse to deny the Representors an opportunity to be heard on this issue when their position, that the duty to co-operate has not been complied with, was set out clearly in the form provided by the Council.
3. In any event, the inspector has an obligation to consider whether the duty to co-operate is complied with whether or not the matter is raised in representations (Section 20(5)(c) Planning and Compulsory Purchase Act 2004 (*“PCPA 2004”*)).
4. Satnam is a member of the consortium of leading developers and housebuilders. The Consortium has taken a duty to co-operate point in its representations ².

¹ Section 20(6) PCPA 2004

²Representation 0410 Item 6

5. The basis for the point taken by the Consortium is identified in Section 4 of Appendix 3 to the Warrington Local Plan Issues Report prepared by Lichfields (November 2021) (*“the November 2021 Lichfields Report”*).
6. The duty under section 33A(2)(a) PCPA 2004 is to engage, constructively, actively, and on an ongoing basis in any process by means of which the preparation of a development plan is undertaken, so far as relating to a strategic matter.
7. The duty applies to plan preparation. Preparation ends on submission³.
8. The duty applies in relation to each and every strategic matter individually⁴.
9. The allocation of Fiddlers Ferry⁵ and Green Belt matters⁶ are identified as strategic matters.
10. The engagement required by subsection (2)(a) requires (inter alia) a LPA to consider whether to agree to prepare joint local development documents⁷.
11. Although ‘considering whether to agree under section 28 to prepare joint local development documents’ allows a LPA a substantial margin of appreciation⁸, a LPA must consider the issue in relation to each and every strategic matter.

Consideration of whether to agree to prepare joint local development documents

12. The March 2019 Statement of Common Ground records that WBC are not preparing joint local plans⁹. At the time that statement was prepared Fiddlers Ferry was not identified as a site allocation or strategic matter¹⁰, and therefore the question of whether, in relation to that strategic matter, to prepare a joint plan was not considered at that stage.
13. Satnam are not aware of any evidence to demonstrate that the Council considered whether to agree to prepare a joint local development document with Halton BC in relation to Fiddlers Ferry and/or Green Belt release at any stage in the process.
14. Unless the Council are able to point to such evidence, it is clear that the Council have failed to comply with the duty imposed upon them by section 33A(2)(a) and (6) PCPA 2004.

³ *Samuel Smith v. Selby DC* [2015] EWCA Civ 1107 at paragraphs 28-31

⁴ *Sevenoaks DC v. Secretary of State* [2020] EWHC 3054 (Admin) at paragraph 50

⁵ SP10 paragraphs 4.27-4.31

⁶ SP10 paragraphs 4.15-4.18

⁷ Section 33A(6)(b) PCPA 2004

⁸ *Zurich Assurance Ltd v. Winchester CC* [2014] EWHC 758 (Admin) at paragraph 111

⁹ SP7e paragraph 2.2

¹⁰ See the site allocations in the March 2019 proposed submission plan PVL1

To engage constructively, actively and an ongoing basis

15. In addition, the Council have failed to engage, constructively, actively and on an ongoing basis in discussions with Halton Borough Council on the decision to allocate the Fiddlers Ferry site for development and to release land from the Green Belt.
16. In the Development Options and Site Assessment Technical Report (September 2021)¹¹ the Council recognised that they were under an obligation to continue to work with Halton BC under the duty to co-operate.
17. The state of the engagement with Halton BC is set out in the September 2021 Statement of Common Ground as quoted at paragraphs 4.3 and 4.4 of Appendix 3 to the November 2021 Lichfields Report.
18. In the April 2022 Statement of Common Ground¹² the same wording as in the September 2021 Statement of Common Ground¹³ is repeated. It is clear that engagement with Halton BC on the measures necessary to mitigate the impact of development at Fiddlers Ferry has not been active, or ongoing in the period between September 2021 and April 2022, despite the fact that the need for further engagement is recognised.
19. Similarly, in relation to the Green Belt between Warrington and Widnes, the wording from the September 2021 Statement of Common Ground (4.18) appears again at paragraph 4.18 (and paragraph 6 of Appendix 2) of the April 2022 Statement of Common Ground (SP10). It is clear that engagement with Halton BC on Green Belt issues has not been active or ongoing.

Conclusion

20. It is clear that there has been a failure to comply with the duty to co-operate.
21. The Representors request that the inspector make an early finding on this issue. If the Representors' submissions are upheld there will be no need to proceed with the local plan examination.

¹¹ Options Doc 1 paragraph 4.54

¹² SP10 paragraph 4.31

¹³ At paragraphs 4.31