

Wycombe District Local Plan Examination

Matter 1 – Legal Compliance & the Duty to Co-operate

**Bourne End Residents Association & Hawks Hill Widmoor Residents Group
(representation nos 1011 & 1012)**

June 2018

Prepared by: Steve Pickles, BA, MSc, Dip TP, MRTPI

Checked by: Alan Divall, BA (Hons), MRTPI

© West Waddy ADP LLP

This document has been prepared in accordance with West Waddy ADP LLP's quality control procedures and should be treated as a draft unless it has been signed and approved. The document should not be used for any other purpose than that for which it has been prepared without the written authority of West Waddy ADP LLP. If the document is used for another purpose without consent, then no responsibility or liability for the consequences arising for such action will be accepted by West Waddy ADP LLP.



Matter 1 – Legal Compliance & the Duty to Co-operate

In relation to matter 1 this written statement focuses on matters 1.1; 1.2; and 1.4.

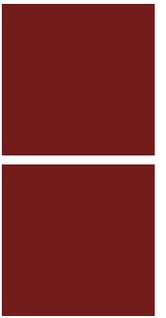
Matter 1.1 What are the relevant strategic matters in relation to the duty to cooperate?

1. Section 33A (4) (a) of the Planning & Compulsory Purchase Act 2004 (as amended) sets out what are strategic matters, which are defined as: *‘sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.’*
2. Further guidance is provided in paragraph 156 of the NPPF, which states that strategic priorities include the provision of the homes and jobs needed in the area; the provision of infrastructure for flood risk and climate change mitigation and adaptation.
3. It is clear from these definitions that the relationship between housing provision and flood risk is a strategic matter. This is further emphasised by the paragraph in the Planning Practice Guidance on *‘Why does the duty to cooperate require local planning authorities to work with local planning authorities and bodies outside their area?’*
4. The answer is that: *‘The duty to cooperate seeks to ensure that local planning authorities lead strategic planning effectively through their Local Plans, addressing social, environmental and economic issues that can only be addressed effectively by working with other local planning authorities beyond their own administrative boundaries. For example, housing market and travel to work areas, river catchments and ecological networks may represent a more effective basis on which to plan for housing, transport, infrastructure, flood risk management, climate change mitigation and adaptation, and biodiversity. The aim is to encourage positive, continuous partnership working on issues that go beyond a single local planning authority’s area.’* (Paragraph: 008 Reference ID: 9-008-20140306)
5. As the NPPF emphasises that a fundamental aim of Government policy is to direct development to areas at the lowest probability of flooding through the application of the sequential test (para 101), it is clearly crucial that the sequential test is applied at an early stage in the Local Plan preparation process, in order to enable the level of unmet housing need to be determined and addressed through the duty to cooperate. Given the weight given to this matter in government guidance this is clearly a relevant strategic matter in relation to the duty to cooperate.



Matter 1.2 In preparing the plan did the Council engage constructively, actively and on an on-going basis with neighbouring authorities and other relevant organisations on relevant strategic matters, in respect of the duty to cooperate? What were the outcome of these discussions?

6. The indications are that the Council did not engage constructively, actively and on an on-going basis with neighbouring authorities and other relevant organisations in relation to the application of the sequential test to flood risk as The Sequential Test Report is dated September 2017, just before consultation began on the Regulation 19 Local Plan on the 16th October 2017. The draft Local plan was published over a year earlier in 2016 and it was this document which identified the strategic sites for allocation, including those with land within Flood Zones 2 and 3 such as Slate Meadow and Hollands Farm in Bourne End.
7. Appendix 5 of the 'Wycombe District Local Plan and the Duty to Cooperate Report', states on page 2 that the *'Environment Agency (EA) commented on the draft plan on 8 August 2016 – say they would object on the basis that there is no local plan Sequential Test (ST) and Strategic Flood Risk Assessment (Level 2).'* Paragraph 014 in the Local Plan section of the Planning Practice Guidance states that: *'The evidence needs to inform what is in the plan and shape its development rather than being collected retrospectively.'* The fact that both the Sequential Test Report and the Level 2 SFRA were not published until September 2017, indicates that this clearly did not happen.
8. Given that both the SFRA Level 2 and the Sequential Test Reports are dated September 2017, it would also appear that the application of the sequential test post dated the reaching of agreement with Aylesbury Vale on meeting Wycombe's unmet housing need as set out in the Duty to Co-operate Report, which indicates that in December 2016 a Memorandum of Agreement was signed between Aylesbury Vale District Council and Wycombe District Council agreeing that based on the currently available evidence the unmet need was 1,700 and this would be accommodated in the Vale of Aylesbury Local Plan. Subsequently a Buckinghamshire wide Memorandum of Understanding was agreed in July 2017 agreeing that Wycombe had an unmet need of 2,275 dwellings. Given the significant level of flood risk at Slate Meadow and Hollands Farm at Bourne End consideration should have been given to the potential to accommodate the dwellings proposed at these sites at other sites through the duty to co-operate.
9. Paragraph 014 in the Local Plan section of the Planning Practice Guidance states that *'Local planning authorities should publish documents that form part of the evidence base as they are completed, rather than waiting until options are published or a Local Plan is published for representations,'* The fact that both the Sequential Test Report and the Level 2 SFRA were not published until September 2017, indicates that either the sequential test was applied when the Local Plan had already been drafted or alternatively that the Council ignored this advice.



10. The failure to undertake the sequential test at the right time in the process means that, whilst the Council have reached agreement with surrounding authorities under the duty to cooperate, the evidence base used to reach these agreements was not adequate and up to date, so the level of identified unmet housing need is not justified and therefore the council have failed to appropriately discharge their formal requirements under the duty to cooperate. The Council therefore need to re-visit the duty to cooperate once they have correctly applied the sequential test.

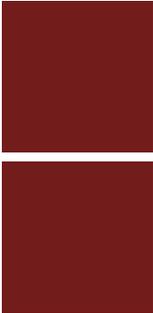
Matter 1.4 What outcomes have resulted from the cooperation with adjoining authorities in relation to: Housing; Gypsy & Travellers; Employment; & Infrastructure?

11. The result of conducting the Duty to Co-operate prior to carrying out the Sequential Test has meant that the options for locating development outside areas at risk of flooding has not been fully explored. The outcome has undermined one of the fundamental principles of the NPPF which *'is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate to the proposed development in areas with a lower probability of flooding,'* (para 101) as the opportunity to identify suitable sites at lower risk of flooding clearly did not form part of these negotiations.

12. The result is that sites that are at significant risk of various forms of flooding are proposed to be allocated. These include:

- Slate Meadow (Policy BE1), allocated indicatively for 150 dwellings, which the 'Flood Risk Sequential Test Report,' states *'is at high risk of groundwater flooding'* (p43); has flooded in the past including during a fluvial event in 1981 (para 3.10.2); is at risk of flooding from the River Wye due to culvert blockage at Cores End Road (p43); with climate change up to 20% of the site is at risk of surface water flooding (Level 2 SFRA Table 3-37 & p 101 - 102); the entire length of the A4094, which would provide access to the site is within the 1 in 100 year flood zone for fluvial flooding, while for surface water flooding it is within the 1 in 30 year flood event (Figures 6 & 7 in Level 2 SFRA); and while the bulk of the site itself is currently in Flood Zones 1 and 2, with allowance for climate change the extent of flood zone 3a increases potentially up to 20% of the site (p 43 of Sequential Test Report);

- Hollands Farm, Bourne End (Policy BE2), allocated indicatively for 467 dwellings, where again the 'Flood Risk Sequential Test Report' states that 'the site is partly at risk of groundwater flooding' (p 36); there are areas of the site which are subject to surface water flooding and while this is currently limited to 7.2% of the site area, the Level 2 SFRA states that climate change has the potential to increase the risk of surface water flooding to the site (Level 2 SFRA Table 3 – 17 & p 101 - 102); the southern access point into the site is also located in Flood Zone 3; while Millboard Road which provides another potential access point leads onto Cores End Road is



also within Flood Zone 3, (Level 2 SFRA Figure 3-68: Site 93 Fluvial Flood Risk p 97).

13. The Planning Practice Guidance further advises that that the aim of the sequential test is to: *‘steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.’* The NPPF also states that *‘a sequential approach should be used in areas known to be at risk from any form of flooding,’* (para 101). This clearly did not happen with the preparation of the Wycombe Local Plan.
14. The outcome from the way in which Wycombe District Council has exercised the duty to cooperate is therefore that sites are being allocated for development which are at significant risk of flooding, when other sites which are at lower risk could potentially have been found.
15. The absence of undertaking the sequential test at the right time in the process means that, whilst the Council have reached agreement with surrounding authorities under the duty to cooperate, the evidence base used to reach such an agreement was not adequate and up to date and therefore the level of identified unmet housing need is not justified and the council has failed to appropriately discharge its formal requirements under the duty to cooperate.
16. As failure to correctly apply the duty to cooperate cannot be remedied, the plan cannot be found sound and the only course of action available is for the Local Plan to be put on hold whilst the Council re-visits the duty to cooperate following the correct application of the sequential test.