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## Matter 1: Duty to Cooperate and Other Legal Requirements

1.1 Has the Council satisfactorily discharged its Duty to Co-operate to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters, including in particular minerals and waste and housing? (see also Matter 4)

1. The Duty to Cooperate (DtC) is a legal requirement applying to the preparation of development plan documents. The Localism Act 2011 Section 110 states that in relation to planning of sustainable development, a local planning authority.

*“must co-operate with every other person who is within paragraph (a) [local planning authorities], (b) [County Council] or (c) [other prescribed bodies] or subsection (9) [prescribed bodies] in maximising the effectiveness with which activities within subsection (3) are undertaken.”* (emphasis added by Oxford City Council)

2. The legislation goes on to state that:

*“In particular, the duty imposed on a person by subsection (1) requires the person– (a) to engage constructively, actively and on an on-going basis in any process by means of which activities within subsection (3) [includes preparation of development plan documents] are undertaken.”*

3. The NPPF expands further on how the legal Duty to Cooperate should be implemented in practice. Paragraph 179 states:

*“Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans. Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework.”* (emphasis added by Oxford City Council)

4. Published best practice is clear that examination inspectors have judged the success of the DtC against effective outcomes. This includes in relation to unmet need from neighbouring areas (see our Matter 4 statement). Some examples are
  - Mid-Sussex: Inspector letter of December 2013 concludes lack of positive and collaborative working to resolve unmet cross-boundary need (paragraphs 16 and 41);

- Aylesbury Vale: Inspector letter of January 2014 notes significant unresolved issues in terms of potential unmet needs from other authorities, and the Council having been aware of these issues from an early stage of plan preparation, if not before. *“Whilst noting the lack of specific evidence on potential unmet needs and accepting that collaboration and joint working is a two way process, it is the Council’s duty, as the authority submitting the Plan for examination, to have sought to address these issues through constructive, active and ongoing engagement.”* (paragraphs 26 and 27)
5. The PAS best practice note “Doing Your Duty – Practice Update” (June 2014) (Appendix 9) stresses the following principles must be adhered to in ensuring that the DtC test is passed:
    - The Plan is tested on how it was prepared, not future arrangements (point 9)
    - Plans should reflect joint working and cooperation to address larger than local issues (point 10)
    - Plans need to reflect Housing Market Assessments and contribute to the objectively assessed needs of the wider market area (point 11)
  6. In the case of Oxfordshire, the endorsement of a joint Strategic Housing Market Assessment (SHMA) in 2014 by all Oxfordshire authorities was a significant step forward in meeting the DtC in plan-making. VWHDC were an active partner in this process from when commissioning was agreed in early 2013. The brief for the SHMA (issued in March 2013) clarified the agreed position that a new SHMA should be prepared to inform the on-going and longer-term development of housing, planning and economic policy within the Oxfordshire Housing Market Area.
  7. The SHMA identified an objectively assessed housing need (OAN) for the Vale of 20,560 dwellings, 2011-31. It also identified an OAN for Oxford of 24,000-32,000 homes in the period 2011-31. The scale of the Oxford unmet need was known, given that the previous Oxfordshire SHMA 2007 documented a housing need for Oxford of some 36,065 dwellings over just a 10 year period.<sup>1</sup> This may be compared with the conclusion of the Oxford Core Strategy 2026 Inspector’s Report that the City would not be able to meet its full housing need within its own boundaries, and that a constraint-led housing target for Oxford, 8,000 homes over the 20 year period, was appropriate. (Oxford Core Strategy Inspectors’ Report Part 2, paragraphs 15 to 19).<sup>2</sup>
  8. At the point of SHMA publication in 2014, VWHDC issued for consultation a revised draft Plan that included its own housing need, but made no provision or even contingency provision for Oxford’s unmet housing need. This is clearly at odds with the NPPF requirements and Inspectors’ conclusions outlined above, and ignored the evidence and the City Council’s previous representations that clearly flagged up the Oxford unmet needs as an issue to address in the Vale LPP1 (as well as in other districts’ plans). The

<sup>1</sup> Oxfordshire Housing Market Assessment: Final Report (Tribal, 2007) demonstrated a housing need for Oxford of between 19,995 and 52,195 dwellings. The median figure is 36,065.

<sup>2</sup> Oxford Core Strategy Inspectors’ Report [www.oxford.gov.uk/PageRender/decP/Core\\_Strategy\\_occw.htm](http://www.oxford.gov.uk/PageRender/decP/Core_Strategy_occw.htm)

issue has been raised formally, and made evident, on numerous occasions before and during LPP1 preparation, for example:

- Through joint endorsement of the conclusions of the 2007 Oxfordshire SHMA;
  - The conclusion of the South East Plan Examination Independent Panel that Oxford is too constrained to meet its full housing need;
  - City Council's response to the Local Plan 2029 Part 1 Strategic Sites and Policies (9<sup>th</sup> May 2013);
  - Through joint endorsement of the SHMA 2014, including Oxford's unmet need figure;
  - City Council's response to Local Plan 2031 Housing Delivery Update (4<sup>th</sup> April 2014)
  - City Council's response to VWHDC's 'Duty-to-Cooperate update' letter (8<sup>th</sup> August 2014);
  - City Council note to inform VWHDC/City DtC meeting (20<sup>th</sup> August 2014);
  - Regular joint officer meetings of the Oxfordshire planning authorities (i.e. 'OPPO' meetings and the SHMA and Post-SHMA working groups) at which the Oxford unmet need was regularly flagged.
9. VWHDC's Duty to Cooperate Topic Paper (TOP01) duly records in paragraph 3.4 the City Council's strong concerns regarding the Duty to Cooperate, particularly in relation to unmet cross-boundary needs not having been addressed.
10. Despite there being a clear issue in need of resolution, the City Council has been invited to only one bi-lateral Duty to Cooperate meeting with VWHDC officers. This took place in August 2014, at a point when key decisions on the Vale strategy had already been made, and served to highlight the significant differences of opinion between the two authorities with regards the Oxford unmet need issue. No further approach has been made to Oxford, for example seeking common ground or practical ways to narrow differences.
11. The Duty to Cooperate Topic Paper (TOP01) appends the Oxfordshire Statement of Cooperation that was agreed by all Oxfordshire council leaders in September 2013 (some 18 months prior to submission of the LPP1). Paragraph 5.3 of the Statement of Cooperation also makes clear that, as well as assessing the implications of the SHMA in their own area and assessing potential new locations for housing,
- "Should any of the Oxfordshire LPAs be unable to accommodate their objectively assessed need identified in the SHMA, the remaining Oxfordshire authorities must seek to accommodate this need."*
12. The Statement of Cooperation also sets out a process of evidence-gathering, which was subsequently formalised into a timetable that was endorsed by the Oxfordshire Growth Board, of which VWHDC is a member (see Growth Board paper and minutes, Appendix 1). As set out in this paper, all partners agreed to this process and timetable, which shows that an agreed distribution of the Oxford unmet need to the other districts is achievable by August 2015.

13. It is clear from successive examinations and housing capacity assessments relating to Oxford, that Oxford cannot meet its full housing needs within its tightly-drawn administrative boundaries.<sup>3</sup> This was reaffirmed by the Oxford SHLAA (draft issued Oct 2014; final version Dec 2014) (Appendix 2). The Oxford SHLAA was undertaken jointly with independent leading experts URS, and incorporated a ‘check-and-challenge’ process plus consultation with stakeholders and neighbouring authorities. It comprehensively reassessed all sites in Oxford for development potential, against NPPF criteria for sustainable development, and concluded that there is capacity for 10,212 new homes within the period 2011-31<sup>4</sup>. Initial advice from a jointly-commissioned independent Critical Friend has broadly supported the Oxford SHLAA findings. See also our statement on Matter 4.
14. The City Council does not accept the assertion by VWHDC that the outcome of the Cherwell Examination should set a precedent for this examination in respect to the Duty to Cooperate. The Cherwell Inspector stated in his report,
- “I am satisfied that it is appropriate for this plan to proceed on that basis, provided that there is a firm commitment from the Council to play its part in addressing the needs of Oxford city through that joint process in the near future, once those needs have been fully clarified/confirmed. In my judgement, the Council’s modifications, notably in para B.89.b, are intended to and should help achieve that important objective.”* (emphasis added by City Council)
15. In the Inspector’s judgement, Cherwell had made a firm commitment to play its part in addressing the needs of Oxford. This included agreeing to a main modification that, if joint work revealed that Cherwell and other Districts need to meet additional need for Oxford, this will trigger a partial review of the Local Plan to be completed within two years of adoption, and taking the form of the preparation of a separate Development Plan document for that part of the unmet need to be accommodated in the Cherwell District. This commitment is within the Cherwell Local Plan Part 1 (paragraph B.95) which was adopted on 21<sup>st</sup> July 2015.<sup>5</sup> Therefore the partial review must be completed by 20<sup>th</sup> July 2017.
16. Moreover, Cherwell, Vale of White Horse, South Oxfordshire and Oxfordshire County Councils reaffirmed at that examination (9<sup>th</sup> Dec 2014) that the joint work would complete within 12-18 months, leading the Inspector to firmly believe that the timescale was agreed, and leading to the two-year cut-off for completing the Cherwell partial review (some stages of which could run parallel to the joint work). This timescale is crucial to achieve because of the urgency of the Oxford unmet need and the continuing delays in addressing this need.

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<sup>3</sup> Most recent examples are the Northern Gateway Area Action Plan Inspector’s Report (May 2015), Oxford Core Strategy 2026 Inspectors’ Report (Dec 2010) and South East Plan Panel Report (Aug 2007)

<sup>4</sup> The City Council’s Response to the Cundall Report (May 2015) updates the Oxford capacity figure to 10,368 (an increase of 156 dwellings over the whole period). See **Appendix 3, Section 4 Conclusions (pp87-88)**

<sup>5</sup> Adopted Cherwell Local Plan 2011-31 [www.cherwell.gov.uk/index.cfm?articleid=9803](http://www.cherwell.gov.uk/index.cfm?articleid=9803)

17. If significant delays to this timetable had been recognised at the time of the Cherwell examination, the Cherwell Inspector is likely to have reached an entirely different conclusion. The City Council's concerns on the continuing delay in meeting Oxford's unmet need which were expressed at the examination have since been borne out. It should also be noted that the Cherwell Inspector's verbal comments at the time indicated that he fully appreciated the urgency of addressing the Oxford unmet need. We understand a key reason for the Cherwell Plan being found was the specific timing of the Cherwell Plan submission, on 31<sup>st</sup> January 2014, in advance of the SHMA publication (which itself was a year behind its programme) which confirmed the scale of the Oxford unmet need.
18. It is highly relevant, therefore, that the Vale LPP1 was submitted on 18<sup>th</sup> March 2015, over a year after the submission of the Cherwell Plan, a year after the outcome of the SHMA was known to the commissioning partners, and 18 months after the Statement of Cooperation (which explicitly recognised the likely Oxford unmet need issue) was agreed. Unlike the Cherwell Plan which was already well-advanced at the start of the formal joint working process, VWHDC could at this stage have considered providing for a reasonable portion of Oxford's unmet need without making other aspects of Plan preparation abortive. In short, VWHDC could have achieved a similar timetable as is current for their LPP1 whilst still testing options for, and ultimately providing for, a portion of Oxford's unmet need.
19. Since the Cherwell Inspector issued his report, and despite commitments given by VWHDC and others at the Cherwell examination on post-SHMA process timescales, VWHDC have recently changed their position in seeking to fundamentally alter and lengthen the timetable for the joint work, to include statutory processes that would cut across local plans' sovereignty. This proposal has not been agreed by Growth Board partners. In short VWHDC has sought to depart from the commitments given to the Cherwell Inspector, and there is no guarantee that this will not continue after this examination, and extend subsequently into any proposed Local Plan review.
20. The recent report of the Growth Board Programme Manager (attached, Appendix 5, in particular the spreadsheet appended to this report) also demonstrates the significant delay in the project timetable to date of around 6 months. These have, by and large, been avoidable delays caused by missed deadlines which have been met by Councils except for VWHDC and South Oxfordshire District Council. In particular, it is noted that these two Councils have not to date submitted spatial growth options for their respective areas in respect of the Oxford unmet need, where the agreed deadline was 31<sup>st</sup> March 2015. However other aspects of the joint work are progressing, for example the Green Belt study is due to conclude in September 2015.
21. The City Council has consistently urged that partners stick to the agreed timetable and process, in order to meet the agreed timetable of 12-18 months to conclude and agree on the Oxford unmet need issue. Further delay would not only make the validity of the Cherwell Plan vulnerable (in terms of meeting the full assessed needs of the HMA), but also, regrettably, would demonstrate that the Duty to Cooperate in Oxfordshire is failing

to achieve effective outcomes, contrary to the expectations of the Cherwell Inspector and the NPPF.

22. The City Council believes that all the key studies of the joint working process can be concluded before the end of 2015. For the Duty to Cooperate to have been effective, it is crucial that the post-SHMA work feeds into the LPP1 thus fully addressing cross-boundary needs within the housing market area without even more delay. A suspension of the examination is appropriate to allow this work to conclude finally and to be incorporated into the Plan (see our statement for Matter 4). The evidence to date is that the alternative of a subsequent Local Plan review will not.
23. In summary, the evidence presented above demonstrates that the joint working arrangement between the Oxfordshire local authorities has not yet yielded effective outcomes, but there is good prospect of it doing so within the next few months, provided the commitment from partners to achieve this is genuine. In respect of the LPP1, VWHDC has failed to meaningfully engage with the City Council with a view to reaching common ground or narrowing differences. As currently stands, the effectiveness of the Plan, in the context of the NPPF requirement to address cross-border housing needs, has not been maximised, and the Duty to Cooperate has not been discharged.

1.2 Are the likely environmental, social and economic effects of the plan adequately and accurately addressed in the Habitats Regulations Assessment and the Sustainability Appraisal (SA)? Does the SA test the plan against all reasonable alternatives in terms of the overall requirement for land for housing and employment (see also Matters 2 and 4) and its broad spatial distribution (see also Matter 3)?

24. As stated in previous representations, the City Council does not believe that the SA (incorporating SEA) tests the plan against all reasonable alternatives and therefore does not comply with the SEA Directive and fails the test of Legal Compliance.
25. The SA (DLP04) only tests options relating to the VoWH's own OAN. As Topic Paper 4 (TOP04) states:
- "The option to delay the Local Plan until such time as Oxford City's unmet need is quantified and a robust distribution approach identified was not considered to be a reasonable alternative for SA and therefore was not assessed."* (Paragraph 5.15)
26. The City Council would reiterate that the City's unmet need has been confirmed through publication of the Oxford SHLAA in December 2015. Initial advice from the Critical Friend broadly supports this view.
27. Paragraph 157 of the NPPF states: "Crucially, Local Plans should [...] be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations" (emphasis added by City Council). The NPPF (paragraph 47) is clear that plans should seek to meet the needs of the housing market area, rather than

considering the needs of a single authority in isolation. Testing alternatives that take into account Oxford's unmet housing need is therefore a reasonable alternative and should be tested by including in the SA.

28. The City Council's response at pre submission stage (letter dated 19<sup>th</sup> Dec 2014) suggested that an additional 2,000, 4,000, or 5,500 homes on top of VWHDC's OAN of 20,560 should have been tested to take into account this unmet need. Indeed a recent report to VWHDC Cabinet (attached, Appendix 6) demonstrates that options for accommodating Oxford unmet need have in fact already been considered (at a level of 1,000, 2,000 or 3,000 homes). There is no reason why growth options for meeting Oxford's unmet need, for example increasing the area or density of housing proposed north of Abingdon, could not have been considered earlier, to allow incorporation into the Plan.
29. Core Policy 2 quite clearly states that there are in fact reasonable alternative strategies due to be considered during the Plan period, i.e. further release of brownfield sites, potential new settlements and a full strategic Green Belt review. These alternatives have not been tested or considered further in the SA simply because of the stated preference of VWHDC to address only their own objectively assessed needs first (e.g. paragraph 1.23 of Local Plan Part 1).
30. A Joint Spatial Options Assessment was due to be completed by the time of the Local Plan Part 1 hearings. It is unfortunate that this has been delayed as a result of VWHDC failing to submit necessary information by agreed deadlines, else the study would already have been completed and could be considered at the hearings. This assessment will provide a clear set of preferred options that can be tested through the LPP1 SA as relate to VWHDC. This will ensure all reasonable options are considered, including those that meet a proportion of Oxford's unmet housing need.
31. Even putting aside the Oxford unmet need, it is considered that a bespoke option looking at development close to Oxford is in any case a reasonable alternative and may score differently when assessed as a discrete option rather than in combination with other settlements. As stands, the SA includes Option C 'extensions to the edges of main settlement's including Wantage/Grove and Farringdon, but does not consider the role of Oxford despite it clearly being a main settlement bordering the Vale.
32. It is evident that VWHDC's policies in relation to meeting housing requirements fail to meet the NPPF test 'Justified' as the preferred approach has not been tested against all the reasonable alternatives.

1.3 Is it appropriate for the plan to include only Strategic Policies and Site Allocations and for detailed planning policies and non- strategic site allocations to be devolved to a Part 2 Local Plan document? Is there a clear justification for this and does it accord with national policy?

33. Meeting the full, objectively assessed needs for market and affordable housing in the housing market area is a strategic issue. Therefore consideration of Oxford's unmet housing need must fall within the strategic policies and be included in Local Plan Part 1.

34. If Oxford's unmet housing need was deferred to Local Plan Part 2 non-strategic sites, this is likely to have knock effects of a strategic nature (such as impacts on infrastructure and schools provision). This would clearly not be an appropriate or sound way forward.

1.4 Is the plan compliant with:

(a) the Local Development Scheme?

(b) the Statement of Community Involvement?

(c) the 2004 Act and the 2012 Regulations?

35. No comments.