

# HEARING STATEMENT ON BEHALF OF IM LAND (ID 593)

Charnwood Local Plan Examination

Matter Statement 1: Duty to Cooperate and other legal requirements

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## REPORT

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# 1 MATTER STATEMENT 1: DUTY TO COOPERATE

## Duty to Cooperate

*Issue 1: Whether the Council has complied with the Duty to Cooperate in the preparation of the Plan*

### 1.1 What are the relevant cross boundary strategic matters that have arisen through the preparation of the Plan (defined as matters having a significant impact on at least two planning areas)?

- 1.1.1 As explained in IM Land's representations to the Pre-Submission Draft Local Plan consultation, the most notable cross boundary strategic matter of relevance to the Charnwood Local Plan is the unmet housing needs of Leicester and Leicestershire Housing Market Area (LLHMA), primarily Leicester City, but which is also likely to impact on other authority areas in the County in the coming years including Oadby & Wigston. The Council accepts this as the case as stated in paragraphs 2.59 to 2.63 of the Pre-Submission Draft (PSD). IM Land agree.
- 1.1.2 Given the Council accepts that unmet need from elsewhere in the LLHMA constitutes a strategic matter it is incumbent on them to address this strategic matter in this Plan, in accordance with national policy<sup>1</sup> but also to demonstrate constructive, active and ongoing engagement in accordance with the legal test under the Duty obligations<sup>2</sup>.
- 1.1.3 However, despite this acceptance, the Council has sought to defer any policy response to deal with the unmet need in the LLHMA to a future plan review (an approach that would be ratified through the adoption of Policy DS2). The reasons for taking this approach are set out at paragraph 2.62 of the PSD. The Council suggests that dealing with the unmet need now, in accordance with national policy and the legal tests, would delay the preparation of the Plan. IM Land would simply point out that addressing its own need and those of its neighbours are not mutually exclusive and should not be treated as such in the preparation of the Plan given that national policy expects that any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for<sup>3</sup>.
- 1.1.4 IM Land therefore maintains the view that the Council has fallen considerably short of the legal (and policy) requirements under the Duty in preparing the Plan.

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<sup>1</sup> NPPF 2021, para 11b, 25 and 35c

<sup>2</sup> Section 33A of the Planning and Compulsory Purchase Act 2004, inserted by the Localism Act 2011

<sup>3</sup> NPPF 2021, para 61

**1.2 What outcomes have resulted from engagement and cooperation on the relevant strategic matters and how have these informed the Plan’s policies, including in relation to: a. Housing?**

1.2.1 None.

1.2.2 IM Land contend that no positive outcome has emerged from whatever engagement has occurred between the Council and its neighbours with regards to addressing the unmet need from elsewhere in the LLHMA in this Plan. This is despite the scale of unmet need in the LLHMA amounting to at least 7,742 dwellings, as defined by Leicester City Council in the Draft City of Leicester Local Plan consultation published in September 2020 (now some 20 months ago).

1.2.3 The reality of the situation of the shortfall is somewhat different. The latest Statement of Common Ground (SOCG) issued by the Leicestershire authorities[1] in March 2021 [SCG/1] which suggests a further 9,712 homes are needed in the City by 2036. This would give a total shortfall from Leicester in the region of 17,400 dwellings. To date no mechanism has been put in place to address this and the Charnwood Plan, rather that positively planning for this and taking a strategic approach to housing needs is simply looking to ‘kick the can down the road’.

1.2.4 As a result, the outcome from this process is the publication of the Charnwood Local Plan which includes no strategic policies for housing that addresses, to any degree, the acknowledged shortfall in housing in the LLHMA. This, in IM Land’s view, does not constitute effective engagement or represent an acceptable outcome as required under the legal Duty tests. On this basis, IM Land does not consider the Plan to be legally compliant.

**1.3 Is the process of cooperation demonstrated with clear evidence, including Statements of Common Ground as expected by National Planning Policy Framework paragraph 27 and the Planning Practice Guidance? Do the Statements of Common Ground identify the relevant strategic matters, actions in relation to cross boundary issues, and the outcomes of actions taken?**

1.3.1 IM Land note that the Council has submitted a number of Statements of Common Ground (SCGs) alongside the submitted Plan. These, IM Land notes, includes a cross-Leicestershire authority SCG relating to Housing and Employment Land Needs [SCG/1] as well as an SCG with Leicester City Council (SCG/8), both of which reference the strategic matter specific to the unmet needs emanating from elsewhere in the LLHMA, notably Leicester. IM Land are of the view that to demonstrate compliance with the legal obligations under the Duty, it is not simply enough to issue such statements. It is necessary for the Council to define in the SCGs the necessary actions needed to address strategic matters, and to explain the outcomes of those actions.

1.3.2 From reading these SCGs highlighted above, IM Land strongly maintains the view that there remains a lack of evidence on the actions required to address the unmet needs and the outcomes of actions taken to address it. For example, on meeting unmet need, the SCG with Leicester City provides no explanation of actions or outcomes, instead it simply points to a separate cross-

authority SCG relating to housing and employment needs [SCG/1] as providing this clarification [SCG/8, para 3.1].

- 1.3.3 However, the cross-authority SCG points to the need for ‘additional evidence’ in light of the worsening situation with regards to the housing shortfall in Leicester [SCG/1, para 3.2]. As stated by the Council, this separate SCG will be replaced by an updated version that is predicted to be complete in the Summer 2022 which is intended to identify the scale of unmet need in the LLHMA and clarify the redistribution of the unmet need [EXAM 2a, page 1; EXAM 1A, page 8-9]. The current cross-authority SCG, as submitted, is therefore out of date and has little value for the purposes of this examination.
- 1.3.4 Consequently, whilst there is no clarity on the scale of unmet need or how the unmet needs are to be redistributed at this time, the evidence is likely to emerge in the next couple of months. On this basis, IM Land would strongly recommend that the examination timetable is paused until such time as the new evidence, including the updated SCG/1 is made public and consulted on prior to reconvening the relevant hearing sessions or out of necessity this matter is addressed in a reconvened session. This Plan is the first of the Leicestershire Review Plans to deal with this important matter and it is critically important it does so through this Examination process. This would ensure that the necessary information is available to the Inspectors and representors as a basis for examining the effectiveness of the Council’s approach on cooperation under the Duty.
- 1.3.5 Furthermore, the Council seeks to justify that the duty has been complied with [SCG/8, para 4.1] by reference to a number of ‘bilateral meetings’ held between the two parties during the preparation of the Plan [SCG/8, para 3.2]. Details of these meetings is provided in the SCG [SCG/8, Appendix A]. IM Land would point out that the evidence required to demonstrate effective engagement goes beyond simply presenting a record of meetings. In particular, IM Land notes the references made to ‘outcomes’ in the appendix, but also notes only two entries refer specifically to matters relating to the unmet need from Leicester. The first entry, dated 11 October 2017, merely summarises that a discussion took place, whilst the second entry, dated 27 February 2020, simply identifies unmet need as a ‘strategic matter’. This is despite Leicester City writing to all LPAs in Leicestershire in March 2017, including Charnwood District Council, to formally declare they would not be able to accommodate their full housing needs [SCG/1, Appendix E, para 2.9]. The evidence provided in SCG/8, as highlighted above, is not in IM Land’s opinion sufficient to demonstrate constructive engagement, but simply provides a ‘record’ of engagement. Despite the requests from Leicester City going back some five years, Charnwood and its partner authorities have repeatedly simply failed to address this critically important strategic matter and in doing so failed the Duty test. The engagement may have been on-going it most certainly has not been effective.
- 1.3.6 Based on the foregoing analysis, IM Land contend neither of the SCGs highlighted above provide the necessary evidence to demonstrate engagement has met the legal obligations under the Duty.

- 1.4 When will the Statement of Common Ground on Housing and Employment Need (SCG-1) be updated to apportion the unmet need for housing and employment from Leicester to 2036?**
- 1.4.1 As highlighted in response to question 1.3, the Council ‘expects’ an updated SCG to ‘completed Summer 2022’. As also stated above, this represents an imminent timeframe where important, new evidence will be available. Should the Inspectors determine that the Council has met the legal tests under Duty, then this justifies a short delay to the examination to allow all parties to consider the findings from the additional work and consider the implications this has for the Plan.
- 1.5 What liaison has taken place between the Leicester and Leicestershire authorities to address the unmet need for housing and employment since the announcement of the cities and urban centres uplift in December 2020? Where is this documented?**
- 1.5.1 For the Council.
- 1.6 Paragraph 3.25 of SCG-1 states that the Leicester & Leicestershire authorities agree that there is a sufficient supply of employment land in the Charnwood Local Plan to accommodate the unmet need for 23 hectares of employment land to 2036. However, page 96 of the Statement of Consultation (SD/13) indicates that the Plan does not accommodate unmet need for employment. What is the correct position?**
- 1.6.1 For the Council.
- 1.7 If the outcome of cooperation on the Statement of Common Ground is that none of the unmet housing need will be apportioned to Charnwood, would there be any implications for the Plan or for Policy DS2?**
- 1.7.1 If this were the case, IM Land would suggest that a review trigger proposed under Policy DS2 is no longer needed to demonstrate the legal compliance (and soundness) tests have been met by the Plan. Nonetheless, even in this situation, the Plan should include text recognising that the unmet need within the LLHMA is a key strategic matter for the other Leicestershire authorities to address urgently, given the Council accepts this as being a strategic matter relevant to this Plan.
- 1.8 If the Statement of Common Ground concludes that more housing is needed in Charnwood to meet Leicester’s unmet need, does the development strategy set out in Policy DS1 represent a robust and appropriate approach for the distribution of further housing, employment and other development in the longer term?**
- 1.8.1 No.
- 1.8.2 IM Land stands by its view that the current strategy, including Policy DS2 as drafted, does not represent a robust and appropriate approach for the distribution of further housing, employment and other development in the longer term. IM Land has identified concerns with the ‘deferment strategy’ set out under Policy DS2 in its Regulation 19 submission. If the SCG does conclude more home are needed in Charnwood, then the strategy and the review trigger set out in the Plan needs to be more responsive to this, to ensure the strategy is both positively prepared and effective.
- 1.9 Are there any other issues that could trigger the need for a Plan review apart from Leicester’s unmet need?**

1.9.1 For the Council.

**1.10 Will Policy DS2 be effective in its submitted form and are any main modifications necessary to improve its clarity in relation to timescales and its effectiveness? Should the policy include a reference to strategic warehousing and distribution needs?**

1.10.1 No, Policy DS2 is not effective in its submitted form and main modifications are required to improve its clarity in relation to timescales and its effectiveness. This is explained in IM Land's Regulation 19 submission. To reiterate, by pursuing draft Policy DS2, IM Land contend that the Council is simply trying to delay taking the positive action it needs to take now in order to address this worsening position regarding the unmet needs elsewhere in the LLHMA. Such a policy, as drafted, is too vague and non-committal on the issue on accommodating any unmet need.

1.10.2 Furthermore, the consequences of not addressing the unmet need at the time has been evident with respects to the housing shortfall emanating from Birmingham. The Birmingham Development Plan was adopted in January 2017 (so is now not up to date, in any event). The BDP was adopted with a 37,900 dwelling shortfall against the needs of the City. In response to this significant shortfall in housing provision, the BDP states:

*"4.7 The City Council will seek to work collaboratively with neighbouring authorities to secure the development of further homes to contribute toward meeting Birmingham's housing requirement over the period to 2031. This will focus on the Greater Birmingham Housing Market Area (HMA), which comprises, in addition to Birmingham itself, The Black Country, Bromsgrove, Redditch, Solihull, North Warwickshire, Tamworth, Lichfield, Cannock Chase, South Staffordshire and parts of Stratford-on-Avon..."*

1.10.3 Despite significant requests from the development industry at the Examination in 2015/16 this approach did not seek to explicitly address the unmet housing need from Birmingham by way of an agreed mechanism or Memorandum of Understanding (MoU) across the HMA. Consequently, despite apparently good intentions, only one neighbouring authority (North Warwickshire) has taken any meaningful steps in the intervening five years to help address this shortfall through the preparation of its local plan review, which was adopted in September 2021. A number of other neighbouring authorities are currently progressing slowly towards adopting their own plans which propose their own contributions i.e. Solihull, South Staffordshire, and Lichfield but these have yet to be formally adopted. This is all being done in an uncoordinated manner with no established or agreed mechanism for addressing the redistribution. The mechanism set out in the BDP, based on collaboration through individual local plan reviews, has therefore not resulted in any meaningful response across the wider HMA, and now Birmingham has recently commenced a full update of the BDP, which will no doubt establish additional unmet housing need that will to be accommodated in neighbouring authority areas.

1.10.4 In contrast, the Coventry and Warwickshire HMA (CWHMA) has taken a very different approach to addressing the housing shortfall emanating from Coventry City. Their approach sought to address

an identified unmet need of 17,800 dwellings up to 2031. The approach is summarised in the introduction to the Coventry Local Plan, adopted in December 2017, which states:

*“...the Council have worked openly and constructively with its neighbouring authorities to agree a Joint Memorandum of Understanding (MoU) on housing delivery (2015) to support all Local Plans for Coventry and Warwickshire. This MoU is unchanged following the 2014 based data as the overall needs of the HMA remain stable and continued to be planned for in a positive way. At the time of writing this MoU has been endorsed by five of six authorities and seeks to demonstrate that the full needs of the HMA will be planned for over the course of the plan period. This approach has been progressed through the Duty to Cooperate (DtC) to help provide as much certainty as possible about how the city’s full housing needs will be delivered.”*

- 1.10.5 This represents a much more positive approach which, in turn, provided greater confidence that the shortfall will be tackled. As it turned out, the housing shortfall in Coventry has been addressed in full by all the constituent authorities of the CWHMA. The approach taken in Coventry and Warwickshire is clearly different to that which was accepted in Birmingham’s case but which has ultimately, been highly effective in addressing that housing shortfall.
- 1.10.6 The approach being proposed by the Leicestershire authorities should follow the broad approach in Coventry and Warwickshire in establishing a mechanism for redistribution. However, the approach, as proposed through Policy DS2, is vague and non-committal and, ultimately, ineffective in addressing the problem. In this context, Charnwood should be taking a much more positive stance with regards to the worsening housing situation that is evident in Leicestershire. The Plan should properly recognise and acknowledge the full extent of the problem based on the latest evidence (currently set out in SCG/1). The Plan should also make clear what measures will be taken to address the unmet housing need now emanating from elsewhere in the LLHMA.
- 1.10.7 RPS would also make the point that other authorities in the LLHMA, notably Melton, have already made a contribution (91dpa) towards addressing the existing (known) shortfall of minimum 7,742 dwellings in Leicester City. If other LPAs can make a contribution, there is no sound planning reason why Charnwood should not make their own contribution, in accordance with national policy<sup>4</sup>.
- 1.10.8 The policy therefore does not demonstrate any meaningful outcome has been achieved from the Council’s engagement on this strategic matter. It is also not positively prepared or effective, and so is contrary to national policy and guidance.
- 1.11 What is the role and status of the Strategic Growth Plan (EB/DS/6)? What consultation has been undertaken and is it subject to external scrutiny? How much weight does the Strategic Growth Plan have for plan making purposes?**

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<sup>4</sup> NPPF 2021, para 61



- 1.11.1 IM Land acknowledges the adoption of the Leicester and Leicestershire Strategic Growth plan (LLSGP) [EB/DS/6] by the Leicestershire authorities in December 2018 as non-statutory planning framework for the County covering the period up to 2050.
- 1.11.2 As part of the LLSGP, the strategy identified a range of initiatives to support and facilitate future growth in the County, including identifying Leicester as a 'Central City', the 'A46 Growth Corridor' around Leicester, as well as the 'A5 Expressway' proposals that run through neighbouring borough of Hinckley & Bosworth.
- 1.11.3 Nevertheless, recent events have cast some doubt over the efficacy and deliverability of certain key elements of the LLSGP strategy. Firstly, the growth aspiration for Leicester in the LLSGP was predicated on a much lower scale of growth (1,668 dpa) to 2036 [EB/DS/6, Table2] and beyond to 2050, compared to the latest estimate of housing need for the City (2,341 dpa) over that period [SCG/1, Appendix B, column A). The more recent estimates of housing need are based on the standard method calculation (which incorporates the 35% 'urban centres' uplift in Leicester) and therefore renders the LLSGP housing figures as out of date. This also means that a much higher proportion of the total future growth emanating from the City will need to be accommodated outside the City's administrative boundary, given the inability of the City to meet its own needs in full. This must bring into question the overall aspiration for Leicester as 'central' foci for growth within the LLHMA.
- 1.11.4 Secondly, a key plank of the LLSGP strategy is the delivery of the A46 Growth Corridor plans. This was predicted as supporting the potential for 38,000 dwellings, a significant proportion of the LLHMA's total housing need. However, in 2020 the project was scrapped and would not be taken forward by Midlands Connect as part of its long-term transport plans for the region<sup>5</sup>. The scale of growth envisaged in the A46 Growth Corridor (c. 38,000 dwellings) will, nonetheless, still need to be accommodated somewhere in the LLHMA. The scrapping of this key proposal therefore casts further doubts over the ability of the LLSGP to deliver significant amounts of housing growth around Leicester and its immediate environs.
- 1.11.5 Consequently, IM Land broadly supports the overarching strategic growth aspirations of the LLSGP and the principle established within it that seeks to address the unmet needs from the LLHMA within the LLHMA, as an evidence base to inform the preparation of Local Plans across the LLHMA. However, certain elements of the LLSGP strategy are no longer fit for purpose having been superseded by more recent events. This has implications for where the higher growth needs (and unmet needs) from within the LLHMA should now be accommodated.
- 1.11.6 On this basis, IM Land contend that the growth figures and elements of the LLSGP strategy relation to the A46 Growth Corridor should be given limited weight for the purposes of plan-making.

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<sup>5</sup> <https://www.leicestermercury.co.uk/news/local-news/campaigners-delighted-after-controversial-1-4566178>

**1.15 In overall terms, is there evidence to demonstrate that, during the preparation of the Plan, the Council has engaged constructively, actively and on an on-going basis with relevant authorities and prescribed bodies on relevant strategic matters? Has the Duty to Cooperate been met in a manner consistent with paragraphs 24 - 27 of the Framework?**

1.15.1 No.

1.15.2 National policy emphasises the need to demonstrate ‘effective and ongoing joint working’ has taken place between LPAs to ensure plans are based on positively prepared and justified strategies, including whether development needs that cannot be met wholly within one plan area could be met elsewhere<sup>6</sup>, notably Leicester. This is a relevant strategic matter that has been known to the Council since at least March 2017 and so should have been taken into account in establishing the amount of housing to be planned for in Charnwood<sup>7</sup>.

1.15.3 In response, the Council points to two Statements of Common Ground (SCGs) as its response to dealing with this strategic matter. As highlighted above, the SCG with Leicester City Council (SCG/8) provides limited information documenting any meaningful engagement has taken place between both authorities on this specific matter (referring only to two meetings held in October 2017 and February 2020). In addition, the policy response, based on a ‘plan review trigger’ in Policy DS2, is vague and imprecise and would introduce an unduly lengthy delay into the process of dealing with what is now a very pressing housing (and employment) shortfall in the LLHMA. On this basis, IM Land does not consider the approach taken by the Council constitutes effective and ongoing joint working as required by national policy and the Duty obligations.

1.15.4 The Council points the reader to a separate cross-boundary SCG (SCG/1) as providing the necessary evidence to demonstrate effective and ongoing joint working has taken place. However, this document was published over a year ago (March 2021) and will be superseded by new evidence to be published shortly (Summer 2022) by the Leicestershire authorities as part of an updated SCG/8. The Council claims this updated SCG will resolve the question of apportionment of unmet need across the LLHMA. The validity and efficacy of the current SCG/8 must therefore be in question. Nonetheless, if the Inspectors are satisfied that the impending evidence and update of SCG/8 provides sufficient evidence to pass the legal tests under the Duty, then IM Land strongly advocate that the examination is paused or reconvened to enable a specific session to deal with this issue to enable open forum by all interested parties, given its analysis and conclusions will have critically important implications for the Charnwood Local Plan and the actions it and its partner authorities must take to deal with the wider unmet need within the LLHMA.

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<sup>6</sup> NPPF 2021, para 26

<sup>7</sup> NPPF 2021, para 61