

# **Havant Borough Council Hearing Statement**

## **Matter 1 – Legal Requirements**

Prepared on behalf of  
**Portsmouth Water**

## Document control

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## 1. Introduction

1.1 On behalf of our client, Portsmouth Water, Tetra Tech Planning have been instructed to submit comments in relation to Matter 1 of the Havant Borough Council Local Plan examination. This statement sets out the client's position in relation to Matter 1 which relates to the Legal requirements, including the duty to co-operate and the sustainability appraisal. Our client owns the land known as 'Land at Palk Road' which has been allocated for residential development in the emerging local plan (H24). This statement has also been informed by a review of Havant Borough Council's (HBC's) examination library. The relevant documents are:

- MIQ01: Schedule of Matters and Issues for the Examination
- CD10-12: Sustainability Appraisal
- CD23: Local Plan Self-Assessment: Legal Compliance
- CD24: Local Plan: Self-Assessment: Soundness
- CD26: Duty to co-operate Statement
- SG04a: Statement of Common Ground: Portsmouth City Council & Havant Borough Council
- SG09: Statement of Common Ground: Partnership for South Hampshire
- TPO01: Strategy Topic Paper
- EB39: Constraints and Supply analysis

1.2 This statement will demonstrate why HBC has failed its duty to co-operate under Section 33A of the Planning & Compulsory Purchase Act 2004 (as amended) and that it does not meet the legal tests for soundness listed under paragraph 35 of the NPPF. This is most relevant in relation to the housing need of Havant and its neighbouring authorities, particularly Portsmouth. These issues were previously highlighted during the Regulation 19 consultation.

1.3 This statement should be read alongside the previously submitted Regulation 19 representations (previously submitted as WYG) which will be built upon within this statement and subsequent matter 2 statement. Additionally, it is requested that these comments be made verbally at the hearing sessions.

## 2. Failure to Meet the Duty to Cooperate

2.1 The duty to co-operate was introduced by section 33A of the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011. It placed a legal duty on local planning authorities, county councils and prescribed public bodies to work together on strategic cross boundary matters, including housing. This is echoed in paragraph 35 of the NPPF which states that as a minimum, plans should seek to meet the area's objectively assessed needs (OAN) and be informed by agreements with other authorities so that unmet need from neighbouring areas can be accommodated.

2.2 This is highlighted within the Inspector's 1<sup>st</sup> question within MIQ01:

*'Has the Plan been prepared in accordance with the Duty to Co-Operate imposed by Section 33A of the Planning & Compulsory Purchase Act 2004 (as amended), particularly with regard to (but not limited to) any unmet housing need in the Partnership for South Hampshire area.'*

2.3 In summary, HBC have not sufficiently co-operated with neighbouring authorities such as Portsmouth and Gosport to plan for unmet need of housing. Paragraphs 24-27 of the NPPF require on-going joint working between authorities to identify *"whether development needs that cannot be met wholly within a particular plan area could be met elsewhere"*. This is required to be an on-going process.

2.4 Havant is located within the PfSH boundary, along with its neighbouring authorities of Portsmouth and Gosport. The supporting examination library base SG09 (PfSH Statement of Common Ground) states that there is a shortfall of 10,750 homes in the PfSH area boundary. In addition to this, HBC have a shortfall of approximately 1,650 dwellings and Portsmouth has a shortfall of around 4,760 dwellings over the plan period. This in itself highlights how important it is that HBC comply with their duty to co-operate on the delivery of housing, including the identified unmet need.

2.5 Notwithstanding the fact that HBC do not have a 5 year housing land supply and the neighbouring authorities of Portsmouth and Gosport have had a historically poor supply of housing; the plan does not effectively tackle this issue. As highlighted in our Regulation 19

reps (appended), Portsmouth only delivered their housing requirement once in the past 11 years, and often fell significantly short of their requirement. Similarly, Gosport (within the Portsmouth housing market area) have not met their required figure on multiple occasions. The PfSH housing area is amassing an increasingly large unmet housing need that the Havant Borough Local Plan has not addressed sufficiently through cross border collaboration.

2.6 In terms of constraints, Havant is much more capable of delivering a good proportion of the identified need than Portsmouth and Gosport. There are a number of sites within Havant that would be well suited for accommodating this unmet need, such as land at Palk Road. This site is located in the settlement boundary and part of the site already forms a residential allocation. In any case, there is evidence within the examination library (SCG4a) which is a written agreement between Havant and Portsmouth Council which acknowledged that HBC could take on some of Portsmouth's unmet housing need. This is further reflected in the Portsmouth cabinet report on local plan progress which identified that Portsmouth could only accommodate a lesser number of homes compared to their OAN. However, despite the significant shortfall in the delivery of housing in the PfSH area, HBC have not sufficiently demonstrated that they have effectively co-operated with neighbouring authorities to address the unmet housing need in line with paragraph 27 of the NPPF. The lack of cooperation amongst the PfSH authorities was further highlighted in Fareham Borough Council's response to the Eastleigh local plan consultation which stated they were unsure whether the local plan was legally compliant and sound in relation to housing need. There is a lack of clarity amongst the PfSH authorities as to where this unmet need is going to be located.

### 3. Sustainability Appraisal

*'Has the Plan's formulation been based on a sound process of SA in accordance with the regulations and relevant guidance, including the testing and/or consideration of reasonable alternatives for all policies in the Plan?'*

3.1 We do not consider that the Sustainability Appraisal has been based on a sound process, this was previously highlighted in our Regulation 19 consultation responses. The SA fails to fully consider other suitable options, including appropriate housing sites. The SA is informed by document EB39 constraints and supply analysis. The Council's approach appears relatively high level which has led to the exclusion of sites that through further analysis could be suitable. For example, the document places flood zones 2 and 3 in category 1 where it 'effectively removes some areas from further consideration', however no consideration appears to be given to mitigation measures that can be put in place. It is not unusual for development sites to address these types of constraints; therefore it is not appropriate to rule out sites on this basis. The SA does not promote sustainable development and will not contribute to environmental, economic and social objectives or opportunities. Paragraph 32 of the NPPF states that adverse impacts on these objectives should be avoided and that any alternative options which reduce or remove such harmful impacts should be pursued. The SA refers to Palk Road Farm under 'HB3' and the sites allocation under CD01 is H24. A pre-application was submitted to HBC at the end of 2020 to determine the principle of extending the existing draft allocation to cover the whole site which is under the same ownership and control. The comments from HBC confirmed that this was acceptable, subject to addressing flood risk.

3.2 We do not consider that these alternative options have been pursued. Failure to provide sufficient homes to meet the needs of Havant Borough and neighbouring authority's shortfall and unmet need runs contrary to these objectives and in turn, causes adverse harm. Therefore, the plan is not sound. The HBC plan has only sought to utilise sites that meet their Objectively Assessed Need (OAN) but has not looked further in terms of providing sites that exceed the OAN which would help accommodate the identified unmet need from the PFSH authorities, notably Portsmouth. The SA does not demonstrate efforts to test and consider alternative options in relation to the above. This is echoed in the Strategy Topic Paper (examination

document TP01) which states that the strategy is only to meet the OAN of HBC - this is not sufficient.

3.3 In order to avoid adverse impacts on the social and economic objectives the plan should re-assess sites previously brought forward to the Council. In addition to the above comments on document EB39 and the approach taken by the Council, the Council have obviously considered that the flooding constraints on Hayling Island can be addressed and mitigated to enable the provision of residential development. The same approach needs to be taken on other sites that have previously been 'removed from further consideration' by the constraint's analysis, such as the land at Palk Road.

3.4 Despite the need to look at alternative options, the Council have not properly and fully assessed all other appropriate sites such as Land at Palk Road which is an existing draft allocation that could simply be extended. The Council's failure to look at alternative options in this instance would mean losing out on the opportunity to deliver an additional circa 65 units which would be a considerable positive contribution in the circumstances.

3.5 It is therefore considered that the SA fails to fully assess other suitable options, including appropriate housing sites. The SA does not promote sustainable development and will not contribute to environmental, economic and social objectives or opportunities, contrary to paragraph 32 of the NPPF, meaning that the plan is not sound.

## **4. Summary**

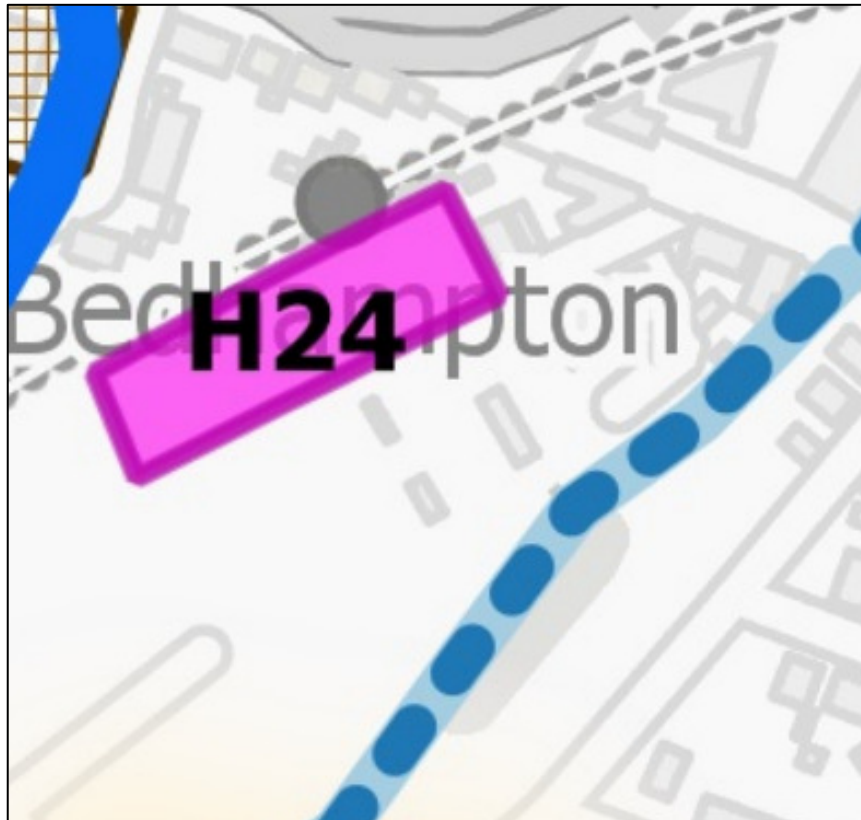
4.1 To conclude, it has been demonstrated that HBC have failed the duty to co-operate by not effectively adopting an approach which will help address the unmet housing need of neighbouring authorities. The SA highlights that there is a shortfall of 4760 homes in Portsmouth and approximately 11,000 homes in the PfSH area boundary. Despite the evidence, HBC have incorrectly made the assumption that it cannot accommodate any of this shortfall as they are already allocating all suitable sites. Section 3 of this statement has demonstrated that the process undertaken to come to this conclusion is flawed and that this should be re-addressed to consider suitable alternative options, including alternative sites. This has been evidenced through the Council's decision to not re-assess sites such as Land at Palk Road.



## Appendix 1

### Location Plan

Existing allocation



Proposed extended allocation

