



HEARING STATEMENT – MATTER 1 LEGAL AND PROCEDURAL MATTERS

ROSSENDALE LOCAL PLAN EXAMINATION

TAYLOR WIMPEY (UK) LTD

Date: August 2019

Pegasus Reference: (KW/GL/MAN.0299/R004v1)

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1. INTRODUCTION

1.1 Pegasus Group have been instructed on behalf of their client, Taylor Wimpey (UK) Ltd, to prepare Hearing Statements to the Rossendale Local Plan Examination (EiP) in support of their land interests in the Borough. This relates to the following sites, which are both allocated in the submitted plan:

- Land west of Market Street, Edenfield (within Housing Allocation H72); and
- Grane Village, Helmsore (within Housing Allocation H74).

1.2 This Statement deals with Matter 1 'Legal and Procedural Matters' which addresses the following issue:

Issue - Has the Plan been prepared in accordance with statutory procedures and Regulations?

2. MATTER 1: QUESTION A - DUTY TO COOPERATE

a) Has the Council submitted robust evidence to demonstrate that they have met the duty to cooperate? Did engagement take place on the level of housing growth in the Plan, based on the standard method in national planning guidance? Are there any outstanding concerns relating to strategic matters from other Councils or duty to cooperate bodies?

- 2.1 The duty to cooperate is set out in Section 110 of the Localism Act 2011 and requires Local Planning Authorities *"to engage constructively, actively and on an on-going basis to ensure the effectiveness of Local Plans in respect of strategic cross-boundary matters"*.
- 2.1 To demonstrate compliance with the duty the Council have produced a 'Duty to Co-operate Statement Incorporating Draft Statement of Common Ground' (March 2019) **(SD008)**, which formed an update of a 2018 version **(SD030)** which was available during the Regulation 19 consultation.
- 2.2 This statement demonstrates active and ongoing engagement (including meeting logs) with a large number of bodies including:
- Adjacent authorities – GMCA, Rochdale MBC, Bury MBC, Blackburn with Darwen, Calderdale MBC, Burnley BC and Hyndburn BC.
 - Other organisations – Environment Agency, Historic England, Natural England, Homes England, East Lancashire Clinical Commissioning Group, Edenfield Community Neighbourhood Forum
 - Infrastructure providers – Highways, Flood Risk and Flood Protection, Education, Health and others.
- 2.3 In respect of housing need, the statement confirms that adjoining authorities were in agreement with Rossendale's self-contained HMA (on the basis that even though it didn't meet the 70% containment level, there was no other logical geography with a higher containment).
- 2.4 In respect of the level of housing growth, Rossendale sent an email to each adjacent authority in July 2018 confirming that it could not meet any other district's unmet needs due to the *"constraints facing Rossendale in respect of topography, flooding, proximity to the South Pennines SPA, Green Belt (which makes up almost 25% of the Borough's land area), viability concerns in parts of the Borough, limited transport infrastructure and other infrastructure deficiencies in health and education provision."*
- 2.5 According to the statement *"No authority came back to Rossendale specifically asking this Council to meet their development requirements, neither have they offered to meet any of Rossendale's needs. This applies to housing and employment land."*
- 2.6 This does not confirm the level of engagement or agreement over the housing requirement figure itself, and the Council will need to provide additional clarification on this. That said, the duty to

cooperate is not a duty to agree, nor are there any obvious grounds for any of the adjacent authorities listed to challenge the Council’s use of the standard method figure.

2.7 The PPG (paragraph 2a-010-20180913), confirms that a higher figure than the standard method can be used “where an authority has agreed to take on unmet need, calculated using the standard method, from neighbouring authorities, as set out in a statement of common ground”. However, in this case Rossendale have not agreed to take on unmet need, and according to the table at page 15, there is no unmet need generated in the adjacent authorities according to the standard method, to justify an uplift on this basis.

Housing Requirements For Adjoining Authorities

District	Objectively Assessed Need For Housing	Local Housing Need Figure (Feb 2019)	Local Plan target	Plan Status	Plan period
Rossendale	265 ¹	204	212	Reg 19 Local Plan	2019-2034
Burnley	209 ²	62	194	Adopted Local Plan (2018)	2012 - 2032
Hyndburn	n/a	60	213	Adopted Core Strategy (2012)	2011-2026
Blackburn with Darwen	n/a	157	624	Core Strategy (2011)	2011-2026
Pendle	n/a	146	298	Adopted Core Strategy (2015)	2015-2030
Calderdale	1,000 ³	802	840	Reg 22 Local Plan	Local Plan 2018/19 to 2032/33
Rochdale	640 ⁴	514	460	Adopted Core Strategy Reg 18 consultation GMSF	Core Strategy 2012-2028 2018-2037
Bury	498 ⁵	608	498	Reg 18 consultation GMSF	2018-2037

2.8 Therefore, notwithstanding our concerns with the use of the standard method figure set out in our Matter 3 Statement, it is our view that the Council have met the duty to cooperate with the authorities listed above in respect of their housing requirement and unmet needs.

2.9 However, we do raise issues in terms of unmet needs across the wider Greater Manchester area, as the statement confirms that the GMCA emailed Rossendale (and all other adjoining authorities) in July 2018 to ask if they were able to accommodate any of Greater Manchester’s need.

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- 2.10 Clearly this could justify an uplift to the standard methodology, and is an issue we have raised throughout our representations to this plan (and in detail within our Matter 3 Statement). This is exacerbated by GM Mayor Andy Burnham seeking to firstly significantly delay and secondly minimise Green Belt release in the GMSF area, which increases the likelihood of generating unmet need, at the cost of delivery of much needed family houses for the GM conurbation.
- 2.11 However, the GMSF process has stalled, due in part to proposed changes to the standard methodology, and as such it is difficult to get an accurate position unmet need and what individual authorities might have to accommodate. Therefore, without this evidence, we do not consider Rossendale’s decision on its housing requirement breaches the duty to cooperate (again notwithstanding our concerns with the use of the standard method figure set out in our Matter 3 Statement).
- 2.12 We are not aware of any other concerns relating to strategic matters from other Councils or duty to cooperate bodies, so have no further comments on this.

3. MATTER 1: QUESTION B - SUSTAINABILITY APPRAISAL

b) Has the Plan’s formulation been based on a sound process of sustainability appraisal (SA)? In particular:

i) Does the SA work assess reasonable alternative site options, and set out clear reasons for their rejection? How has the SA work been fed into the site assessment process and informed the selection of site allocations?

- 3.1 The main Sustainability Appraisal and Strategic Environmental Assessment (August 2018) **(SD005)**, prepared by Lepus Consulting, was subject to objections during the Regulation 19 consultation, which raised similar issues to the above question (and part ii below), over how individual site alternatives were assessed/ rejected. The Council/ Lepus have sought to address these objections within the Addendum SA (March 2019) **(SD006)**.
- 3.2 In respect of alternative site options, the Table 2.4 of the 2018 SA shows how the sites have been assessed and filtered down from 302 to 92, which are then assessed against 13 sustainability criteria.

Table 2.4: Identification and evaluation of sites

Number of sites	Stage	Assessment work
302 potential sites	SHLAA	Assessed in Stage 2 of the SHLAA based on their availability, suitability and achievability (SHLAA was published in March 2017)
228 potential sites	Regulation 18	Assessed through a cluster analyses in the Lepus May 2017 SA of the Rossendale Local Plan Reasonable Alternatives report
92 site allocations	Regulation 19	Assessed on a site by site basis in Appendix B of this report

- 3.3 The 2019 SA Addendum includes an assessment of the rejected sites in section 3, with reasons for their rejection, but no comparable assessment against the 13 criteria.
- 3.4 Therefore, it is our view all reasonable alternative site options have been considered across these two documents, albeit not in a directly comparable fashion.
- 3.5 We also note that the 2019 SA Addendum looks at 162 rejected sites, which does not directly correspond with the total number of sites listed above in the filtering process (302 and 228 respectively).
- 3.6 In terms of how the SA feeds into the wider site selection process, this is set out clearly at Annex 1 of the Housing Topic Paper (March 2019) **(EB006)**, which can be summarised as follows.
 - Reg 18 stage: Site selection was led by the 2017 SHLAA (which took account of SFRA, Viability Study and Landscape Study), with additional Green Belt sites fed in from the Green Belt Study, with the Sustainability Appraisal process used to filter out constraints that had not been picked up.

- Reg 19 stage: Changes were made based on consultation responses, the updated 2018 SHLAA, 2018 SA and the 2018 HRA.

3.7 In respect of the individual site assessments within the Sustainability Appraisal we would make the point that several of the criteria (such as landscape and cultural heritage) can and will be mitigated through detailed design, ensuring that sites will score much higher in reality, once developed.

ii) Does the SA work assess reasonable alternative spatial strategy options, levels of housing and employment need, and options relating to other policies in the Plan?

3.8 The SA Addendum also provides clarification on the how reasonable alternative strategy options were considered, again in response to comments received at the Reg 19 stage (which are attached at Appendix A of the report).

3.9 The 2018 SA confirms that reasonable alternatives have been considered for quantum of housing and employment; spatial strategy; strategic site allocations; non-strategic site allocations; and policies.

3.10 The consideration of alternatives for quantum and strategy/ distribution have been conflated within the four proposed spatial options, which attracted objections on the basis that it made it impossible to consider the sustainability of the different quanta and distribution options in isolation. It was also highlighted how the housing target changed during the process and did not reflect the quantum of any option, let alone chosen option D (at 5,000 dwellings which is 1,820 higher than the 3,180 proposed).

3.11 The 2019 SA Addendum addresses these issues in section 2, clarifies its reasoning for pursuing Option D, and includes an assessment of the final chosen strategy (Policy SS) assessed against the 13 sustainability criteria in section 4.

3.12 In our view, the spatial options could have been more clearly defined and separated (potentially into a matrix of the 4 quantum options and 4 distribution options), however clearly all the various permutations have been considered within the assessment, and as such we consider that they still form a reasonable starting point to be refined as the plan evolved.

3.13 We support the SA's conclusions on distribution, with Option D offering the most flexibility, however we do have issues with how the quantum of development has been considered, which we address in more detail in our Matter 3 Statement.

3.14 We have addressed the consideration of site allocations in the previous section, however we would highlight that reasonable alternatives for policies do not appear to have been considered. That said the sustainability of each policy as drafted has been assessed against the 13 sustainability criteria in both the 2017 and 2018 SA's and considered sustainable on this basis.

iii) Has the SA Addendum 2019 been published for consultation purposes?

- 3.15 As far as we are aware this has not been published for consultation, but simply forms an update of the 2018 version, which was consulted on at Regulation 19 stage, to accommodate the comments received during that consultation.

4. MATTER 1: QUESTION C – EDENFIELD NEIGHBOURHOOD FORUM

c) How does the work being undertaken by the Edenfield Community Neighbourhood Forum and the intended Neighbourhood Plan fit with the proposals for Edenfield in the Rossendale Local Plan (including housing allocations H72, H71 and H73 and the proposed school and playing field extension)? What stage has been reached in the production of the Edenfield Neighbourhood Plan? What cooperation or joint working has taken place to date between the Forum and the Borough Council?

4.1 As we understand the Neighbourhood Forum have undertaken the following work to date:

- Application to designate a Neighbourhood Forum and Area – February 2018;
- Signed Constitution – early 2018
- Detailed Representations to Regulation 19 Plan (submitted by Troy Planning and Alan Ashworth) – October 2018;
- Transport Study – 2019 (not publicly available); and
- Series of meetings and articles published on the website.

4.2 However, the Forum have yet to produce the Regulation 14 Draft Plan, and as such we are unable to confirm how it fits with the Council proposals.

4.3 That said we are aware from correspondence with the forum (along with their Regulation 19 reps and information on the website) that they oppose the planned allocations within Edenfield, and that the Forum and Neighbourhood Plan were formed, at least in part, to resist these allocations, a situation which is not uncommon in areas that are subject to large scale development such as this.

4.4 As such, it is clear that the aspirations of the Council and Neighbourhood Forum are not aligned on this matter. However it must be remembered that Neighbourhood Plans should be in general conformity with a Local Plan and the Borough Council are responsible for ensuring that the Local Plan is adopted as soon as possible to meet the overall needs of the Borough in a sustainable manner. The Local Plan does just that.

4.5 Recent correspondence with the Forum has confirmed that work on the Regulation 14 Draft Plan has stalled but will restart after the EiP Hearings, so mid October onwards (confirmed by email 18th August 2019).

4.6 In respect of cooperation and joint working between the Forum and Borough Council, the 'Duty to Co-operate Statement' (March 2019) (**SD008**) notes:

"A Neighbourhood Forum was designated for Edenfield in April 2018. The Forum is collecting evidence to aid understanding of development pressures throughout Rossendale, liaising with the Council on the Local Plan as it relates to Edenfield and the preparation of the emerging Neighbourhood Plan".

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- 4.7 Beyond that, we are aware that the Council have had regular dialogue and meetings with the Forum, with multiple requests for ourselves and other developers within the allocations to share our technical information, which Taylor Wimpey have complied with where practicable (including notifying the Forum when Site Investigation Works were beginning, and providing our initial Geo-Technical Assessments in early 2019, in response to a request from Highways England).
- 4.8 It is also pertinent that Taylor Wimpey have twice requested to join the Neighbourhood Forum, however our requests have been refused, although the Forum have promised to keep us informed of relevant developments with the Neighbourhood Plan, and have been doing so.

5. MATTER 1: QUESTION D – OTHER NEIGHBOURHOOD PLANS

d) Are there any other Neighbourhood plans being prepared or in the pipeline in Rossendale?

5.1 We are not aware of any other Neighbourhood Plans being developed in Rossendale, and certainly none that have sought formal area designation or drawn up a constitution.

6. MATTER 1: QUESTION E – STATEMENT OF COMMUNITY INVOLVEMENT

e) Has the Plan been prepared in accordance with the Council’s Statement of Community Involvement and met the minimum consultation requirements in the Regulations?

- 6.1 The Council’s Statement of Consultation (March 2019) **(SD007)** confirms that the plan has been prepared in line with the Statement of Community Involvement.
- 6.2 It also clarifies that whilst the 2014 SOCI **(SD020)** was updated in 2019 **(SD018)**, with consultation taking place alongside the Regulation 19 consultation in 2018, the update did not affect Local Plan consultations, as it related to development control issues (namely changes to Permitted Development rights).
- 6.3 The plan has certainly met the minimum consultation requirements required in The Town and Country Planning (Local Planning) (England) Regulations 2012; notifying all relevant bodies through multiple channels (emails, letters, press notices, roadshows, developer forums etc) at both draft and publication stages; with the Regulation 18 consultation lasting 11 weeks (24th July 2017 to 9th October 2017) and the Regulation 19 lasting the statutory 6 weeks (23rd August 2018 to Friday 5th October 2018).

7. MATTER 1: QUESTION F – LOCAL DEVELOPMENT SCHEME

f) Has the Plan been prepared in accordance with the Council’s Local Development Scheme?

7.1 The Council’s most recent LDS was published on 13th December 2018 (**SD017**), and broadly reflects the actual timescales achieved up to that point, with the Regulation 18 Draft consultation beginning on 24th July 2017, following the publication of evidence base documents in late June 2017; whilst the Regulation 19 Publication consultation formally began on 23rd August 2018, albeit the documents were available to view since a Council meeting on 11th July 2018.

7.2 Since then timescales have slipped slightly, with the plan submitted to PINs on 25th March 2019, approximately 1 month behind schedule. The EiP is confirmed to begin on 24th September, so 3 months behind schedule, albeit this was not really in the Council’s control, as driven by the availability of Inspectors and other parties, and potentially delayed by the school holidays.

Local Plan Stage	Draft Plan (Reg 18)	Publication (Reg 19)	Submission to PINs	Examination in Public
December 2018 LDS	July 2017	July 2018	February 2019	June 2019
Actual	July 2017	July/ August 2018	25 th March 2019 (1 month slippage)	24 th September 2019 (3 month slippage)

7.3 The LDS also includes a timetable for producing a CIL document, with preliminary consultation scheduled to begin in July 2020; albeit it does note that the Council may not choose to pursue this document.

7.4 As such, the plan has been prepared in accordance with the Council’s LDS.

8. MATTER 1: QUESTION G – HABITAT REGULATION ASSESSMENT

g) Are the likely effects of the Plan adequately and accurately assessed in the Habitat Regulations Assessment? Will the Plan, alone or in combination, adversely affect the integrity of any European protected sites? Has the Council taken account of the EU Court of Justice judgement (12 April 2018)? Are there any outstanding issues from Natural England? Is additional work required to address any matters?

8.1 The Strategy Topic Paper (EB001) includes a useful summary of the HRA process undertaken:

"The Habitats Regulation Assessment work was undertaken by Lepus Consultants. An 'Appropriate Assessment' was undertaken following concerns raised by Natural England at the Regulation 18 consultation in 2017. These related to impacts of development, especially in the Whitworth area, on the Breeding Bird Assemblage of the South Pennine Special Protection Area. Rossendale is not within the SPA but parts of the Borough are within a 7km buffer zone of it which is classed as the distance people may travel to enjoy recreational opportunities. The HRA recommends that in order to mitigate the impact a Visitor Management Plan should be produced jointly with other South Pennine Authorities. A "Duty to Co-operate" group is examining this. In addition, Breeding birds from the South Pennine SPA use Rossendale as a foraging area. The Study thus recommended consideration be given to taking two proposed sites in Whitworth out of the Plan as these infringed on the "Moorland Fringe" character area used by these birds. These sites were thus taken out of the Plan. In addition "Appropriate Assessment" will need to be undertaken for sites of over 100 houses."

8.2 There is also an update of the HRA (March 2019) **(SD006.1)** which provides further clarification on the outstanding issues/ ongoing work which is to be undertaken in consultation with Natural England.

8.3 The 2019 HRA also confirms that the Council have taken account of the 'Court of Justice of the European Union (CJEU) People Over Wind and Sweetman v Coillte' Judgement (12th April 2018); albeit they had already committed to full Appropriate Assessment after the Regulation 18 consultation in 2017 (see section 1.4 of the 2019 HRA).

8.4 We are not aware of any other outstanding issues beyond those listed above.

9. MATTER 1: QUESTION H – EQUALITY ISSUES

h) How have issues of equality been addressed in the Local Plan?

- 9.1 The public sector Equality Duty (PSED) requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities, in line with the Equalities Act (2010).
- 9.2 Issues of equality are addressed within the Equalities Impact Assessment, July 2018 **(SD016)** which comprises a template form which goes through all forms of diversity (age, disability, gender etc.) and confirms if the plan will have a positive, negative or no impact, with supporting reasons provided.
- 9.3 This confirms the plan will have a positive impact in 6 areas, a neutral impact on 12 areas and no negative impacts. To clarify the positive impacts are as follows:
- Older people – through policy HS8 and requirement for older persons and adaptable housing.
 - Younger people and children – through the planned housing to meet future need and open space requirements in HS10.
 - Disability - through policy HS8 and requirement for adaptable housing.
 - Gypsies and Travellers – through policy HS18 which allocates sites for new pitches in line with need.
 - Contribution to equality of opportunity – through provision of additional employment land to boost local employment and wages, and affordable housing to increase access to housing.
 - Contribution to fostering good relations between different groups – through the extension of Rawtenstall Town Centre in policy R2; policy LT1 which protects existing open space, sport and recreation facilities; policy LT2 supports community facilities and policy LT which supports overnight visitor accommodation.
- 9.4 Whilst we have some comments on the wording of individual policies in our associated Hearing statements, we agree with these conclusions and this suggests that the plan meets the duty.