

EXAMINATION OF OXFORD CITY LOCAL PLAN 2040

MATTER 2 DUTY TO COOPERATE

JOINT MATTER STATEMENT BY
SOUTH OXFORDSHIRE DISTRICT COUNCIL &
VALE OF WHITE HORSE DISTRICT COUNCIL

MAY 2024

Introduction

This statement sets out both Councils response in relation to the Inspectors' Matter 2 questions regarding Duty to Cooperate.

Housing needs and the housing requirement

1. Who has the Council engaged with in terms of housing needs and the housing requirement. When did this take place and what form did it take?

Engagement with S&V has been limited.

There was significant joint working on strategic housing needs during the preparation of the Oxfordshire Plan 2050, in particular through the jointly-commissioned OGNA in 2019/20 and the OGNA update in May 2022. By May 2022 there were weekly meetings between the planning policy managers from the Oxfordshire authorities and the Oxfordshire Plan manager.

However, following the decision to cease work on the Oxfordshire Plan 2050 the weekly meetings and joint working ended abruptly and interaction on strategic planning matters was much reduced.

S&V do not agree with the contents of BGP.017 which sets out a history of engagement on housing need and capacity matters. The chronology is broadly accurate in terms of when meeting and correspondence occurred, but the document is a presentation of Oxford's 'take' on what was said and done which does not always reflect S&V's perspective. However, a line-by-line response is not appropriate at this point.

Whilst there was some ongoing dialogue on strategic housing matters, in the sense that some meetings took place and there was some email discussion, there has been no constructive engagement on the key issues of establishing a housing need figure or addressing any unmet need. The duty to cooperate is not merely a duty to have a dialogue or discussion (Sevenoaks para 51). There was in particular a lack of active and constructive engagement between the consultation on the Reg 18 (Part 2) document on Housing Need and the consultation on the Reg 19 plan. This was a critical period in terms of informing and influencing plan preparation and maximising the effectiveness of the draft plan. However, during this period the engagement was limited to:

- (i) a single discussion of the issues raised by S&V on the HENA (27 March 2023), which ultimately led to Oxford procuring and circulating a legal opinion (In October 2023);
- (ii) Oxford presenting or providing copies of evidence/explanations of its work (26 June 2023 – HELAA findings, 2 August 2023 – draft HELAA, 11 August 2023 – note setting out housing numbers and calculations, 16 October

- 2023 – legal opinion, October-November 2023 – emails responding to queries about HELAA work);
- (iii) preparation of statements of common ground, which commenced shortly before and continued during the Reg 19 consultation.

This does not amount to constructive, active and ongoing engagement as required by s. 33A(2)(b). Oxford has shared evidence which it has commissioned and provided information. It has carried out statutory consultations. But there has not been any active or constructive co-operation with S&V on addressing the fundamental issues or an attempt to reach agreement on matters of dispute.

It is acknowledged that the duty to cooperate is not a duty to agree, and compliance with the duty is not contingent on securing a particular substantive outcome. It was apparent from the failure of the Oxfordshire Plan 2050 that Oxford and Oxfordshire authorities did not agree on the approach to assessing housing need in the context of that plan. However, Oxford then embarked on a new chapter of evidence gathering to determine housing need for its own plan, without seeking any input from S&V and without attempting to resolve outstanding issues around methodology. There was a complete failure to cooperate on that important strategic matter. There was likewise a failure to discuss the HELAA approach and a refusal to share underpinning evidence to enable this to be scrutinised and discussed. Both of these elements were critical to the question of whether there would be any unmet need and if so, its extent. Even if Oxford thought that there was (or would be) a fundamental disagreement on these issues, that was not the end of the duty to cooperate (*St Albans City and District Council v SSCLG* [2017] EWHC 1751 (Admin) at para 51, approved in *Sevenoaks DC v SSHCLG* [2020] EWHC 3054 (Admin) at para 37).

The effect of the decisions made by the City Council in policies and evidence (as set out in full in our Regulation 19 representations), is that the adjacent Councils are negatively impacted by choices on methodology and approach without being given any substantive opportunity to collaborate on these matters or explore agreed ways forward. As a result we have unresolved cross boundary strategic matters which are not dealt with.

2. What factors led to the decision to cease work on a joint plan for Oxfordshire?

The methodology for the next stage of the Oxfordshire-wide housing needs assessment (the OGNA update) was a key element of disagreement. In an Oxfordshire Plan Leaders Workshop on 2 August 2022, it became clear that we were going to be unable to find agreement on the approach to the level of housing that we need to plan for over the period to 2050. S&V were of the view that exceptional circumstances had not been demonstrated to depart from the standard method. Oxford City were adamant they did. At no point was OGNA agreed between the councils, and at one meeting, all councils asked the consultants to reconsider their methodology.

3. How did engagement with other authorities in Oxfordshire change after this decision?

As indicated in response to Q.1, after the work ceased on Oxfordshire Plan on 2 August 2022, there was reduced interaction on strategic planning matters. Policy managers had been meeting weekly, but this ended abruptly. Four staff from S&V's policy team who had been seconded part-time to the Oxfordshire Plan returned to their roles in our authority over the next week.

Work on the jointly commissioned housing need evidence (the OGNA) ceased. This meant that high-level strategy discussions about distribution of growth taking place in the lead up to the decision to stop work also ended. Spatial distribution of growth became a more important local level matter for us all as soon as this decision to stop this work was made.

Joint work did continue in the few months after the end of the Oxfordshire Plan on a specific exercise to help us understand each District's housing supply positions. This was likely more successful because an understanding of the supply positions would also be needed for individual local plans.

S&V felt it necessary to plug a gap in cooperation on housing need and requirement cooperation by including more officer attendees in the monthly OPPO meetings as a way to better monitor and engage on duty to cooperate issues on strategic matters. This was a late change to the way S&V engaged on housing matters, and in practice OPPO has been of limited utility because it has tended to have more strategic focus on planning policy matters rather than a role in directly resolving issues.

4. How and when did the Council engage with other authorities in Oxfordshire in relation to the Housing and Economic Needs Assessment (HENA)? Why was it only commissioned by Oxford City and Cherwell District Councils?

Oxford City Council did not engage with S&V on the HENA.

The first S&V knew of the HENA being commissioned was at a Heads of Planning meeting on 9 September 2022, when the Head of Planning for Cherwell mentioned that Oxford and Cherwell had commissioned this work. This was very surprising because we had not been invited to take part or given a chance for any discussion or input. S&V's understanding following the previous meeting on 12 August had been that the future of OGNA was uncertain but that the exact way forward was still to be determined. The choice of Icen/Cambridge Econometrics as the consultants was also a shock because they had been the consultants for the OGNA, the methodology for which had been contested by S&V. This situation did not marry with the information in a Cabinet paper that had been published in advance of Oxford's 14 September 2022 Cabinet Meeting which stated that "*a detailed assessment of the specific housing needs for Oxford will be commissioned to support the Local Plan; ideally working with as many of our neighbouring districts as possible*".

When the Reg 18 (Part 1) draft plan was published the consultation document explicitly stated at paragraph 2.6 “*we will commission a piece of work to establish housing need, with a methodology agreed with as many of our neighbouring districts as possible*”. However, as BGP.017 paragraphs 7.4 and 7.7 confirm, the HENA had already been commissioned in August 2022 with no opportunity to discuss the methodology. It is for Oxford to explain why this decision was taken. In our response to the Reg 18 (Part 1) consultation S&V stated that we remained open to engaging on the HENA methodology.

The next notable event was an email from Cherwell to all the Heads of Planning on 6 January 2023 with a summary note on the HENA attached (see Appendix 1). This explained that the HENA had been published in Cherwell committee papers. It was in effect a *fait accompli*. Oxford and Cherwell had not involved us in any way or sent us a draft of the HENA before it was published. On studying the HENA, we were very surprised to see that it sought to establish need for all Oxfordshire districts without having discussed it with us. It was in effect a continuation of the approach in the failed OGNA, done at speed, with the same consultants, covering the same area. But this time, without an Oxfordshire Plan and an OGNA working group, S&V had had no opportunity to input to the methodology or check the result.

After publication of the HENA we had an officer meeting with Oxford about the methodology in March 2023, but actions to resolve those issues did not get progressed by Oxford, other than a reply from their barrister to express their conclusion that no legal issues exist. This is despite us not raising legal concerns about the methodology.

5. Why was the decision taken to assess housing needs on an Oxfordshire wide basis and then set out a distribution of this by individual district authorities? Were the other authorities involved in this decision?

We confirm S&V were not involved in that decision.

6. What was the response of the other authorities to the Regulation 18 consultations on the issue of housing need and the housing requirement? How did the Council take this into account going forward?

S&V submitted separate representations to the Reg 18 consultations in November 2022 and March 2023. We stated that we were disappointed that housing need references for Oxfordshire hadn't been remedied, that exceptional circumstances can't be claimed for the whole of Oxfordshire, that we weren't engaged on methodology and that we disputed the HENA methodology, and that the claimed exceptional circumstances for departing from standard method had changed since Reg 18(1) but were still not substantiated. We also raised concerns about lack of ambition and capacity to meet housing need in Oxford. In our Reg 18 (2) response we indicated that Oxford hadn't met the duty to cooperate in relation to housing need.

It is for Oxford to explain how these were taken into account. From S&V's perspective there has been no indication that our concerns about the HENA or HELAA have been taken on board. The only substantive response has been a legal opinion. There has been no change of approach proposed by Oxford.

We held a specific meeting in March 2023 to press the technical issues with the HENA. Oxford have not adequately responded to those issues raised.

S&V submitted a further detailed review of the HENA undertaken by ORS consultants in December 2023 as Appendix 2 to our Regulation 19 responses. We included a review of the Capacity of Oxford by Chilmark consultants in December 2023 as Appendix 1 to our Regulation 19 responses. We have received no indication of Oxford's response to the significant flaws evidence within the evidence.

7. How has the Council engaged with the other authorities in relation to the capacity of Oxford City to accommodate housing?

There was engagement from 2020 to 2021 to agree a Joint Oxfordshire HELAA methodology in November 2021. This was prepared to help the Oxfordshire Plan and Local Plans be better aligned.

In July 2023 a meeting/workshop was set up by Oxford to present their draft HELAA. The final HELAA documents were shared in August 2023. Email engagement to answer queries and share more mapping took place up to December 2023.

In summary S&V responded to the Reg 18 (part 1) consultation stating that:

- it was premature to suggest Oxford can never meet its full housing need (para 2.12),
- we disagreed with the continued use of a capacity led housing requirement,
- their preferred option should be meeting City housing needs in Oxford,
- a more positive approach to windfall and higher densities should be taken,
- interim capacity was too low, and policy approaches compounded the poor capacity.

At Regulation 18 (part 2) Oxford claimed the HELAA was still interim requiring review. In summary S&V responded stating that new policies and approaches should have been reflected in the HELAA, but instead the consultation document claimed that additional capacity wouldn't be found.

S&V submitted a detailed Capacity Assessment with our Regulation 19 representations. Our analysis indicates an additional indicative capacity of Oxford of between 5,807 and 9,014 further dwellings. We have received no indication of Oxford's response to the significant headroom capacity that we have demonstrated exists within Oxford.

The HELAA has under-explored housing delivery opportunities. We have been unable to scrutinise the capacity of allocated sites that seek to meet the area's

objectively assessed needs with the guarding of the ‘urban capacity assessments’ which would not be shared.

8. How and when did the Council discuss the conclusions of the HENA, the estimate of capacity, the resultant housing requirement and the implications for unmet need?

March 2023 was the only dedicated meeting with a follow up note, held between Oxford and S&V officers to discuss the HENA.

In July 2023 we met about the HELAA outcome and Oxford stated their intention to continue using a capacity-led housing requirement. This was the first meeting where Oxford said that their approach will likely mean that they have unmet need they want us to meet. Although their previous Regulation 18 consultations have hinted that this was their preferred option all along.

Finally, HENA was discussed at an OPPO meeting in autumn 2023, where Oxford confirmed that they would not be going back to their consultants with S&V’s methodology concerns. At this meeting Oxford provided a legal response to S&V’s concerns (see response to Q4).

9. How and when did the Council directly request the other authorities to assist in accommodating unmet housing need? What implications did this have for co-operation?

A formal request for S&V to assist with unmet need did not come until 22 December 2023, after the Reg 19 draft plan had already been published, and the same day that our consultation responses were submitted to Oxford. The request therefore came at a very late stage in plan preparation, but nonetheless, in S&V’s response they made it clear that further engagement was needed to satisfy the DtC prior to submission of the draft plan and they urged Oxford to engage with S&V on a more appropriate and productive way forward.

It was hinted in Oxford’s Regulation 18 consultations back to the issues stage consultation that seeking more unmet need from neighbouring authorities was their likely intention: for example paragraph 2.6 of the Reg 18(1) plan stated that “capacity is limited, and the full need cannot be met” and that “it should ideally be demonstrated how the need is being met outside of the authority’s boundaries”. At that time, Oxford should have been genuinely seeking to resolve their eventual housing needs by exploring any reasonable alternatives to accommodate them within Oxford. A clear implication of declaring they are bound to have a high housing need again (before they did the HENA) and that their HELAA would surely not be able to find enough supply, before they had evidenced it, is not effective or compliant with national policy. Engagement on the HENA faults and HELAA capacity matters could have been genuinely positive and collaborative, but this starting point was unhelpful and ultimately fatal for the duty to cooperate.

S&V have continually sought better dialogue and collaboration. The engagement has not been constructive or effective since Oxford declared early on in their plan making that they felt sure that more unmet needs would result, without any genuine attempt to justify that prediction.

They had set out their intentions prior, they had done all their technical work, they progressed with meetings in 2023 on completion of their evidence to tell us the outcome. This isn't cooperation.

10. What is the position of the other authorities in terms of the duty to cooperate in relation to this issue?

For reasons given in the answers to other Questions, S&V's position is that there has been a failure to comply with the duty to cooperate.

Other strategic matters

13. In overall terms has the Council engaged constructively, actively and on an ongoing basis in maximising the effectiveness of the preparation of the Local Plan?

No. See the answer to Q1 above. There has been a clear breach of the duty to cooperate.

The Plan was not Positively Prepared, because there is no demonstrable effort to meet the areas objectively assessed needs in the City. This results in the creation of more unmet need, it diverts growth from the City, therefore making this approach inconsistent with achieving sustainable development.

EXAMINATION OF OXFORD CITY LOCAL PLAN 2040

MATTER 2 DUTY TO COOPERATE – APPENDIX 1

SOUTH OXFORDSHIRE DISTRICT COUNCIL &
VALE OF WHITE HORSE DISTRICT COUNCIL

MAY 2024

This is a paper attached to an email dated 6 January 2023 from Cherwell District Council to South Oxfordshire, Vale and West Oxfordshire, cc Oxford City Council, announcing the publication of the HENA.

The covering email read:

“Please find attached a short note having now published the Housing and Economic Needs Assessment produced for Cherwell and Oxford. The note is self-explanatory”

This was the first indication that the HENA covered all Oxfordshire authorities, no drafts had been shared.

Dear Colleagues

Cherwell and Oxford have been working on a Housing Economic Needs Assessment (HENA) to support their Local Plan work. Your planning teams will have been aware of the production of this work from meetings of the Oxfordshire Planning Policy Officer and Heads of Planning groups.

The Assessment is now complete and is available as a published document on the agenda for a meeting of Cherwell's Overview and Scrutiny Committee on 11 January (<https://modgov.cherwell.gov.uk/ieListDocuments.aspx?CId=116&MIId=3873&Ver=4>).

The HENA assesses housing and economic needs for the period 2020-2040 on an objective basis. It does not determine whether and how housing need might be met.

The scenarios assessed in the HENA are based on the Oxfordshire Functional Economic Market Area (FEMA) and Housing Market Area (HMA). For that reason, all five of the Oxfordshire districts necessarily feature in the assessment, notwithstanding the fact that the purpose of the HENA is to inform the review of the Cherwell and Oxford Local Plans. It is recognised that the other districts will wish to rely on their own evidence which may or may not accord with results of the HENA.

Section 7.5 of the assessment explains the results of the assessed scenarios. Section 7.6 explains the distribution of need by district. Table 7.12 presents the recommended distribution for each scenario.

Table 7.12: Distribution of District Housing Need by Distribution of Employment in 2040

CE Baseline Trend Employment Based Distribution		SM	CA	CE-B	ED
Projected (2040) Distribution					
Oxfordshire	100%	3388	4721	4406	5830
Cherwell	22.9%	776	1081	1009	1335
Oxford City	30%	1016	1416	1322	1749
South Oxfordshire	18%	610	850	793	1049
Vale of White Horse	16.2%	549	765	714	944
West Oxfordshire	12.8%	434	604	564	746

Cherwell and Oxford officers consider that the Cambridge Econometrics Baseline Scenario ('CE-B') in Table 7.12 represents the most appropriate assessment of housing need by district.

Cherwell's draft Local Plan Review is scheduled to be presented to its Executive on 19 January. Subject to approval, a public consultation will follow and be supported by the HENA. All comments and engagement will be welcome during the consultation period.

A separate consultation for the Oxford Local Plan will follow.

Any queries from your planning teams can be put to [REDACTED] at Cherwell and [REDACTED] at Oxford.

Cherwell and Oxford Planning Teams
6 January 2023