

NT/SHF/P21-0026

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19th January 2021

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c/o Ian Kemp
PO Box 241
Droitwich
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Dear Sir,

Matters Statements for the examination of the Tewkesbury Borough Plan

I write to inform the Inspector of an important issue that has become highly material to the examination of the Tewkesbury Borough Plan (TBP).

The County Council published a document entitled 'Population Forecasting Study' on 27th November 2019 following the pre-submission consultation on the TBP which ran until 18th November 2019. This document seeks to provide evidence in support of determining a new formulaic approach to calculating the number of pupils in every new dwelling.

It has subsequently become evident that when determining planning applications the Borough Council is firstly applying the new formulaic approach of the County Council and secondly seeking to secure educational infrastructure through s106 planning obligations rather than through CIL receipts.

Both of these positions are substantially different to those set out in the adopted Development Plan, and different to the position which was assumed in support of the operative CIL Charging Schedule.

My understanding is that the approach to determining infrastructure needs and the operation of the CIL Charging Schedule does not fall within the scope of the current examination. However, if the Borough Council is proposing to apply these new untested approaches when determining planning applications this has significant implications for the soundness of the proposed policies within the submitted TBP as well as the deliverability of the proposed allocations as briefly set out in this letter.

The evidence in support of the new approaches being applied by the Borough Council is not currently before the examination and as such if these are to be applied it would be necessary for this to be urgently made available and for all participants to be afforded sufficient opportunity to respond to this and its consequential effects.

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In order for the policies of the emerging TBP to be sound and for the proposed allocations to be deliverable, it will be necessary for the Borough Council to assess infrastructure needs using a method which has been duly tested at examination. It would appear that the Council are inviting this to be done in accordance with the adopted Development Plan and the approach assumed in the evidence base of the emerging TBP (and presumably for the CIL Charging Schedule to continue to be applied in accordance with the way in which this was approved) as and yet they are not applying this in practice. This approach would turn the current examination into a charade, as the Inspector would be being asked to consider the soundness of the TBP on a basis that the Borough Council does not apply in reality, and would not apply were the plan to be adopted.

Without a candid explanation of its up to date position, including the evidence in support of the new approaches of the Borough Council being before the current examination we are advised that the examination would be problematic. Accordingly, we would seek the Inspector's urgent guidance in this regard. Specifically we would urgently wish to know whether in its Matters Statements should Pegasus Group proceed on the basis that these new approaches are or are not within the scope of the current examination? That is to say, should it assume that future planning applications should be assessed using the formulaic approach to determining infrastructure needs which was tested as part of the JCS examination and that the funding for such infrastructure will be secured in accordance with the CIL Charging Schedule, or the Council's most recent approach?

The formulaic approach to determining educational needs

Paragraph 34 of the NPPF requires Development Plans to set out the contributions expected from development including the levels of infrastructure required. This was achieved in the Joint Core Strategy (JCS) by the Infrastructure Delivery Plan of 2014 (IDP2014) which underpins the JCS and which sets out the infrastructure required to support the levels of housing and employment growth proposed as set out in paragraphs 5.7.2 and 5.1.5 of the JCS respectively. Policy INF6 of the JCS confirms that full regard must be given to the IDP2014 when identifying infrastructure requirements.

The IDP2014 provides the formulaic approaches on pages 75 and 80 to determine the educational needs arising from development necessary to meet the requirements of the JCS. These formulaic approaches were tested as part of the JCS examination and found to be sound. They identify that on average every 100 new dwellings will increase the number of pupils by **49**, comprising 7.467 pre-school attendees, 27.76 primary school pupils and 13.87 secondary and sixth form pupils.

The PPG (23b-004) is clear that it is not appropriate for new formulaic approaches to be applied unless and until these have been subject to examination.

As I understand it the emerging Tewkesbury Borough Plan (TBP) does not propose to revise or replace Policy INF6 of the JCS and no new formulaic approaches have been advanced by the Borough Council to this examination.

However, since the pre-submission TBP was consulted upon, the Borough Council has in fact been applying a new formulaic approach to calculate educational needs when determining planning applications contrary to the explicit wording of the PPG. The new formulaic approach applied by the Borough Council assumes that every 100 new dwellings will increase the number of pupils by **98**, namely double that identified by the adopted Development Plan.

This new formulaic approach has not been tested at examination as required by the PPG (23b-004). It has also been calculated in a way which in our view departs from the relevant guidance in numerous regards and Pegasus Group consider the new approach to be fundamentally flawed such that if it were subject to examination it would be found to be unsound. Notwithstanding this, even if it was found to be sound, the effects would need to be examined alongside all relevant policies as set out in the PPG (23b-005). The new formulaic approach if accepted would have significant and wide-ranging implications for Development Plan policies including those proposed in the TBP which have not been taken into account by the Borough Council as follows:

Policies of the TBP

- **Policy RES1** – the evidence prepared in support of the proposed allocations would be significantly affected by the new formulaic approach in numerous regards if this is accepted, including in terms of their viability (as outlined subsequently) and their transport implications. For example, the Tewkesbury Borough Plan Transport Assessment (EB022) assumes that every dwelling will generate 0.684 outflows between 8am and 9am. The new formulaic approach however assumes that 0.98 pupils will travel in and out of each dwelling even without the additional flows as adults travel to and from work. If the new formulaic approach is to be accepted, it would therefore be necessary to revise the Transport Assessment accordingly which may necessitate significant modifications to the submitted TBP;
- **Policy RES2** – the new formulaic approach if accepted would increase the housing requirement significantly (as outlined under Policy SP1 of the JCS below) such that it would be necessary to extend the settlement boundaries proposed in the TBP to accommodate housing needs;
- **Policy RES12** – the new formulaic approach indicates that there will be a significantly greater need for school places arising from the delivery of new dwellings. This will obviously have viability implications (as outlined subsequently) which are likely to mean that 40% affordable housing is undeliverable. At the same time, if the new formulaic approach is accepted, the need for affordable housing will increase owing to the fact that households with a greater number of children are more likely to be in affordable need as set out in Table 7.13 of the Strategic Housing Market Assessment (EB012). As a result, if the new formulaic approach is accepted, it would be necessary to revise Policy RES12 to reflect the viability of development which would almost certainly result in a reduced proportion of affordable housing on each site, and to trigger an immediate review of the JCS to increase the housing requirement to address the resultant shortfall in affordable housing delivery;

- **Policy RES13** – the new formulaic approach if accepted indicates that there would be circa twice as many children in every new dwelling on average than that assumed in the JCS. It will therefore be necessary to deliver a much greater proportion of larger homes to provide sufficient space to accommodate all of these additional children than identified in the evidence based documents referred to in Policy RES13. Whilst Policy RES13 is worded in a sufficiently flexible way to allow other evidence based documents to be taken into account, the new formulaic approach of the County Council does not align with any projections or the recent survey of pupils across Gloucestershire undertaken on behalf of Robert Hitchens Limited and so it would not be possible to identify any housing mix that aligned with new formulaic approach of the County Council and as a result there would be a significant discrepancy between the number of school places provided in support of a new development and the room to accommodate the same number of pupils in that new development. As a minimum it would be necessary to remove the reference to the Strategic Housing Market Assessment from Policy RES13 as if the new formulaic approach is accepted this would necessarily render the Strategic Housing Market Assessment out-of-date;
- **Policies GRB1 and LAN3** – if the new formulaic approach were to be accepted, then owing to the resultant increase in the housing requirement (as outlined under Policy SP1 of the JCS below) it may be necessary to at least consider whether additional Green Belt releases are required or whether development within the proposed strategic gaps may be required;
- **Policies DES1 and COM2** – owing to the viability implications (as outlined subsequently) of the new formulaic approach a revised viability assessment would be required to demonstrate that the optional space standards and the requirement for broadband provision would not undermine the deliverability of the Development Plan.

Policies of the Joint Core Strategy (JCS)

- **Policy SP1** – the new formulaic approach of the County Council if accepted results in twice as many children arising from the housing requirement of Policy SP1 than assumed during the examination of the JCS. A significant proportion of these additional children will become of household-forming age during the remaining 10 years of the plan period and will therefore be in need of housing in excess of that taken into account in Policy SP1;
- **Policy SP2** – Gloucester City Council have assessed the implications of the new formulaic approach of the County Council and have identified that this would render all allocations in Gloucester City “wholly unviable”. If the necessary corresponding assessment had been undertaken in Tewkesbury Borough similar conclusions may have been reached. However, even based on the evidence in Gloucester City alone, as a direct result of the new formulaic approach of the County Council, it would be necessary under the duty-to-cooperate for Tewkesbury Borough to consider the extent to which they could address the resultant unmet needs;
- **Policies A4 and A7** – the strategic allocations at North West Cheltenham and West Cheltenham, both of which are partially within Tewkesbury Borough, do not currently benefit from planning permission. It is understood that both of these allocations already face significant viability challenges which have resulted in delays to their delivery. The

new formulaic approach of the County Council if accepted will further compromise the viability of these schemes. Indeed, the undetermined planning application at North West Cheltenham proposes primary and secondary schools in accordance with the formulaic approach of the JCS, but if the new formulaic approach were to be accepted and applied this planning application would no longer meet the full infrastructure needs of the whole strategic allocation and so would be contrary to Policy SA1 which would further compromise the ability of the minimum housing requirement of Policy SP1 to be met.

The inevitable consequence of the new formulaic approach is that there will be a significantly greater need for housing in Tewkesbury Borough itself, and as a result of the unmet needs of Gloucester City, and as a result of the fact that this new formulaic approach would further undermine the ability of Cheltenham Borough to meet its housing needs. The resultant significantly greater need for housing should be addressed as soon as possible. Furthermore, as every additional dwelling that is provided will result in a significantly greater number of children than anticipated by the JCS according to the new formulaic approach of the County Council, and each of these additional children will require housing in the future, it is plain to see that as a direct result of the new formulaic approach the housing need will increase exponentially in Tewkesbury Borough the future.

Whilst the policies of the JCS are beyond the scope of the current examination, if the new formulaic approach is accepted then this would firstly support identifying sufficient allocations to at least meet the minimum housing requirement for Tewkesbury Borough as set out in Policy SP1 of the JCS as even this would be demonstrably insufficient, and secondly it would require the Borough Council to commit to and expedite an immediate review of the JCS to ensure that the future housing needs of all of the additional children are planned for.

Viability

Tewkesbury Borough Council have an operative CIL Charging Schedule. This was examined and the viability tested on the basis that all educational infrastructure on sites of less than 450 dwellings was to be funded through CIL (unless land was to be provided as part of a proposal) as set out in the Councils response to the Examiners Most Important Questions and paragraph 3.24 of the accompanying Viability Assessment. Whilst the Councils did revise the wording of the Regulation 123 List and this was taken into account by the Examiner prior to approval as set out in paragraph 4 of her Final Report, this didn't change the intended operation of the CIL Charging Schedule. Indeed, had it done so it would have been necessary to revisit the Viability Assessment.

The Examiner relied upon the fact that as a result of CIL, planning obligations would be significantly scaled back from the £7,710 per dwelling previously achieved in Tewkesbury Borough and in many cases would not apply at all to justify her conclusion that the CIL Charging Schedule was viable as set out in paragraph 33 of her Final Report.

The fact that this is the way in which the CIL Charging Schedule operates in Tewkesbury Borough is reflected in paragraph 5.53 of the Viability Assessment (EB012) prepared in

support of the current examination which states in terms “education costs...are expected to be offsite for the allocated sites and covered by CIL.”

The increased number of pupils per dwelling that arises from the new formulaic approach of the County Council will obviously have significantly increased the infrastructure gap such that if this is accepted the operative CIL Charging Schedule is in urgent need of review in accordance with the PPG (25-045). Any such review would have to grapple with how the resultant additional infrastructure burden could be accommodated without undermining the deliverability of the Development Plan. Obviously, until such time as the CIL Charging Schedule has been reviewed, CIL must continue to be applied in accordance with the way in which it was examined as reflected in the Viability Assessment (EB012).

However, it has become apparent that contrary to the way in which the CIL Charging Schedule was examined and contrary to the position of the Borough Council to this examination, the Borough Council is seeking to secure educational infrastructure on every non-strategic site through planning obligations rather than CIL. This is not only evident from the Infrastructure Funding Statement of the County Council which identifies that no CIL receipts have been received towards education from the Borough Council but also from a review of the request of the County Council to every planning application on large generic sites in recent times, including to the current planning appeal at Land off the A38, Coombe Hill.

It is therefore apparent that the Borough Council is seeking to secure educational infrastructure on all non-strategic sites of less than 450 dwellings contrary to the approach of the Councils to the examination of the CIL Charging Schedule and contrary to the approach of the Viability Assessment to the current examination. The new formulaic approach of the County Council also places a cost burden of £16,223 per dwelling towards educational infrastructure alone which clearly does not accord with the approach of the Councils to the examination that any planning obligations would be significantly scaled back from the £7,710 previously achieved towards all forms of infrastructure. These revised positions if accepted therefore not only necessitate an urgent review of the CIL Charging Schedule, they also have significant implications for the viability of the emerging TBP.

In the Council’s Response to Viability Related Comments made by Pioneer (EB024e), the Council rather disingenuously suggested that the planning obligations received at Bishops Cleeve are not typical and that it is appropriate to assume an average of £5,000 per dwelling. This response not only fails to engage in the position that the Borough Council require that all of the educational needs at Bishops Cleeve and at every other large generic site are met through s106 planning obligations contrary to paragraph 5.53 of the Viability Assessment (EB012) but also disregards the fact that the Borough Council are seeking £16,223 per dwelling towards education alone through planning obligations.

Accordingly, if the Borough Council’s position is that it is appropriate to apply this new formulaic approach notwithstanding that it hasn’t been tested and the effects on other policies haven’t been considered and that it does not comply with the relevant guidance, such that the educational infrastructure is to be secured by way of planning obligations contrary to the basis

of the CIL Charging Schedule, this not only needs to be reflected in the evidence base of the TBP it also necessitates the CIL Charging Schedule to be urgently reviewed alongside the TBP and for the Borough Council to commit to an immediate review of the JCS.

Either or both of the departures from the adopted Development Plan and CIL Charging Schedule described above are not only unjustified, they also have significant implications for the current examination. It would therefore be appreciated if the Inspector could clarify whether:

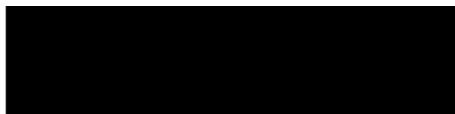
- the new formulaic approach to calculating educational needs as well as its effects on all other policies within the TBP is to be examined (or at least considered) as part of the current examination notwithstanding that Policy INF6 of the JCS is not intended to be reviewed or revised as part of the examination, the Borough Council has not provided the necessary evidence to facilitate this and the Borough Council has not taken account of the implications of the new formulaic approach on any policies proposed in the TBP; or
- the new formulaic approach falls outside of the scope of the current examination, such that the formulaic approach examined as part of the adopted Development Plan should continue to be applied when determining planning applications (until it is reviewed at another examination).

And whether:

- the assumption underlying the Viability Assessment (EB012) that educational needs are to be secured through CIL in accordance with the adopted CIL Charging Schedule is appropriate and will apply when determining planning applications on these allocations (unless the CIL Charging Schedule has been reviewed in the interim); or
- that the CIL Charging Schedule will be reviewed as part of the examination.

I trust that the Inspector will understand my concerns in this regard, namely that if the TBP is examined on one basis but planning applications on the allocations determined on another basis this is likely to undermine the deliverability of those allocations. I would welcome clarity on this matter as soon as possible, as you will appreciate the limited time which we have to address the new positions of the Borough Council in any Matters Statements.

Yours faithfully,



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