Annex
Examination of the Coventry Local Development Plan – Core Strategy
Preliminary Hearing Session
Concerning the Duty to Cooperate

All references thus *[xx]* in this annex are to documents to be found on the Examination website.

Introduction

1. On the 13 December 2012 an exploratory meeting was held at which I set out my concerns about whether in the preparation of the Coventry Local Development Plan – Core Strategy (the Plan) Coventry City Council (the Council) had discharged its duty to cooperate as required by Section 33A of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). A minute of the meeting has been published *[ExM2]* as have the Council's comments on these *[CCC5]*.
2. Following this meeting I wrote to the Council on 17 December 2012 confirming my reservations about whether the Council had discharged its duty to cooperate and setting out an agenda for a preliminary hearing session. *[IC6]*
3. Subsequently on the 1 February 2013 a preliminary hearing session was held to consider this matter further. Specifically the point at issue was whether the Council had engaged constructively, actively and on an ongoing basis with neighbouring local planning authorities on the strategic matter of the number of houses proposed in the Plan and in so doing had maximised the effectiveness of the plan making process?
4. There was no discussion at the preliminary hearing session about the soundness of the Plan. Discussions were limited to whether or not the Plan was lawful – the point being that if it were decided that the Council had not carried out its statutory duty to cooperate then there would be no remedy, the Plan would be unlawful and the Examination would proceed no further.

Background

5. Before considering the duty to cooperate further it is useful to set out the background to the Plan. The situation in Coventry is highly unusual, if not unique, in that the Council has withdrawn a Core Strategy that was found sound in 2010. That withdrawn Core Strategy made provision for some 33,500 dwellings (26,500 of which would have been in Coventry, 3,500 in Nuneaton and Bedworth and 3,500 in Warwick). The Plan, on the other hand, makes provision for 11,373 houses – a significant reduction in housing numbers.
6. The Council confirms that one major reason for this withdrawal was the collapse of the sub-regional agreement which underpinned the previous Core Strategy. This occurred when Nuneaton and Bedworth Borough Council withdrew from its commitment to accommodate 3,500 houses. In the Council's view this left it with an undeliverable plan.
7. A number of representors also point to the change in political control within the Council and the emergence of a clear political mandate that sites within the Green Belt would not be released for housing.
8. It is also relevant to note that the Plan only seeks to make provision for Coventry's own housing requirements while the withdrawn Core Strategy made provision for housing requirements originating in south Warwickshire,

particularly Warwick and Stratford. It is, however, unclear what role this has played in the reduced housing figures now being proposed.

The Duty to Cooperate

9. In paragraph 3.10 of the Plan the Council acknowledges that it has a duty to cooperate but goes on to state that "*…it is not yet clear what, when or how this can be demonstrated*…" While this statement has introduced an element of doubt into the minds of representors as to whether the Council understood the requirements of the duty to cooperate, the Council considers it simply acknowledges that this is an area that would benefit from appropriate guidance – a point also made in the Taylor Review.
10. In my view there is little to be gained from undertaking a forensic analysis of this sentence. It is more relevant to assess what the Council actually did in seeking to discharge its duty to cooperate and to consider this in the light of the advice that does exist, most notably in the National Planning Policy Framework (the Framework) paragraphs 178 to 181.
11. The Council's efforts to comply with the duty to cooperate are set out in its *Duty to Cooperate Topic Paper [CS22]* as amplified in its responses to my questions on this matter *[CCC1]*.
12. Broadly speaking the Council has sought to cooperate with local planning authorities in the metropolitan area through its involvement with *The Metropolitan Area's Duty to Cooperate and Finish Group* and to cooperate with local planning authorities in Warwickshire through its membership of *The Coventry, Solihull, Warwickshire Association of Planning Officers.*

Cooperation within the Metropolitan Area

13. *The Metropolitan Area's Duty to Cooperate and Finish Group* produced a document entitled *The Strategic Policy Framework for the West Midlands* but this has nothing direct or specific to say about housing numbers in the Plan. Nonetheless, relatively late in the process of preparing the Plan, one of the members of this group, Birmingham City Council, made representations to the effect that the Council had not met its objectively assessed need for housing or explained how any shortfall would be accommodated. It was concerned that this could have knock on implications for Birmingham and other local planning authorities. This was not a matter on which the Council and Birmingham City Council were able to reach agreement.
14. However, while this sends a signal that cooperation on the matter of housing requirements had not been entirely constructive – a matter I will return to – the nub of the dispute between the two Councils is whether Coventry had taken the 'right' approach to assessing its housing requirements and this is not an issue of lawfulness but rather an issue of soundness.

Cooperation within Warwickshire

15. The *Coventry, Solihull, Warwickshire Association of Planning Officers* has produced a *Draft Statement of Common Ground and Cooperation for the Coventry, Solihull and Warwickshire Sub-Region (SOCG).* This has been signed by the Chief Executive Officers of the Warwickshire Councils and endorsed by members of the Council and of North Warwickshire District Council. The intention is that it will also be endorsed by the members of other Warwickshire Councils. Solihull Metropolitan Borough Council did not participate in drawing up this statement and will not sign it.

16. One of the members of this group, Nuneaton and Bedworth Borough Council, has made representations on the Plan questioning whether Coventry is proposing to meet its long term housing requirements and expressing concern over the implications of it not doing so. Once again, however, this is a situation where the nub of the disagreement between the Councils relates to whether Coventry had taken the 'right' approach to assessing its housing requirements and this is a matter of soundness not of lawfulness.
17. However, as with the representations from Birmingham City Council, it does send a message that cooperation in this matter has not been entirely constructive. Indeed Nuneaton and Bedworth are of the opinion that while the SOCG identifies matters of cross boundary interest it does not resolve them.

The SOCG

18. It is necessary, therefore, to look in more detail at what the SOCG says. Under the sub heading '*Level of Housing Provision*' four points are made in this document. Firstly paragraph 4.1 states that although there is no sub-regional Strategic Housing Market Assessment (SHMA) there is broad consistency between the methodologies and assumptions used in individual SHMAs.
19. Secondly, paragraph 4.2 states that the current interpretation of evidence shows that all member authorities are capable of meeting their housing requirements within their borders and there is no requirement for any local authority to meet any part of its housing requirements in another area.
20. Thirdly, paragraph 4.3 states that local planning authorities in the sub-region will continue to plan to accommodate their own needs. This is, I note, different to the situation which prevailed with the previous Core Strategy where Coventry was accommodating housing requirements originating in the south of the County.
21. Fourthly, paragraph 4.3 states that if an authority cannot accommodate its own needs (because an increased housing requirement and because of strong evidence of constraints on the provision of housing sites within its boundaries) then, and only then, would the shortfall be addressed through discussions with neighbouring authorities within and beyond the sub-region.
22. Dealing with these points in reverse order. In my view the mechanism for dealing with any shortfall in housing provision amounts to no more than an agreement to seek to agree in the future. It simply says that, if it arises, a shortfall will be discussed with neighbouring authorities but there is no commitment from those authorities to assist in remedying the shortfall.
23. As to the statement that local planning authorities will continue to plan for their own needs, the significance of this depends to a degree on the consistency of the evidence which demonstrates that they can accommodate their own needs. This in turn, when we are discussing housing, depends to a considerable extent on the robustness of the statement that there is broad consistency between the methodologies and assumptions used in individual SHMAs.
24. The Coventry SHMA *[CSH2]* that will be discussed further below is a comprehensive document which examines a wide range of factors which influence the need and demand for market and affordable housing. It is neither necessary nor appropriate at this time to discuss the content of this document in detail, it is sufficient to note that, as with many such documents, it contains various population projections and the housing figures that emerge depend on the projection selected.
25. In the Coventry SHMA an economic led projection based on a forecast of employment growth derived from the West Midlands Integrated Policy Model

was selected as providing the most appropriate basis for Coventry's future housing requirements. This projection produced the second lowest population figure of all the alternative projections considered and is presumably the basis for the reference on page 13 of the Coventry SHMA to it '*taking a more cautious approach to future housing provision in the City than indicated by recent population trends…*'.

26. This is not the place to discuss the rights and wrongs of this approach. However, Coventry forms part of a sub-regional housing market area including not only Coventry itself but also Nuneaton & Bedworth Borough Council, Rugby Borough Council and Warwick District Council. It is, therefore, relevant to explore whether the SHMAs relied on by those other councils base their recommended housing figures on the West Midlands Integrated Policy Model.
27. Rugby Borough Council, which has an adopted Core Strategy, did not use this model, its housing figures are derived from 2004/6 household projections. Nuneaton and Bedworth Borough Council is not using this model. It has commissioned a different economic model - how different it is has yet to be established - which will feed into a joint SHMA that it proposes to prepare with Rugby Borough Council and North Warwickshire District Council.
28. Warwick District Council, which now shares Group Manager of Planning and Building Control/Head of Development Services with the Council, prepared a SHMA using the same consultants as the Council. The housing figures which emerged from this were derived from population projections and not from the West Midlands Integrated Policy Model, although that model was the basis for one of the projections in the SHMA. Since then further work has been commissioned in connection with a major planning application proposing up to 14,000 jobs and this work does make use of the West Midlands Integrated Policy Model. Warwick District Council is now looking afresh at the evidence base for its plan with a view to incorporating this evidence.
29. It is not possible from this to conclude with any certainty that there was broad consistency between the methodologies and assumptions used in individual SHMAs when the SOCG was drawn up or that there is now. At best the situation can be described as fluid with one council moving towards taking an approach that is consistent with Coventry's while others are apparently not.
30. This is significant because the lack of broad consistency in the way housing need is being calculated between the various local planning authorities in the Coventry housing market area calls into question the statement that they are all capable of meeting their housing requirements within their borders and that consequently there is no requirement for any local authority to meet any part of its housing requirements in another area.
31. It also makes it difficult to judge whether the full and objectively assessed need for market and affordable housing in the housing market area is being met as paragraph 47 of the Framework makes clear should be done.
32. The Council considers this paragraph to be ambiguous. They ask whether it means Coventry should meet the whole needs of the housing market area, or should it set housing targets for its neighbours or does it mean that it should use the best available evidence to identify the needs for market and affordable housing?
33. To my mind this ambiguity falls away if the need for market and affordable housing has been consistently assessed, for example by way of a joint SHMA. In order to consider the question of a joint SHMA it is necessary to look in more detail at the background to the preparation of the Coventry SHMA.

Coventry SHMA

34. As has already been established the housing market area for Coventry crosses local authority boundaries.
35. Clearly the Council was aware of the benefits of a joint SHMA because in March 2011 it initiated discussions with neighbouring councils with a view to undertaking just such an exercise. This did not prove possible. North Warwickshire District Council, Rugby Borough Council and Warwick District Council confirmed that they were too far advanced in their work to take part in a joint SHMA. Nuneaton and Bedworth Borough Council did not make a definite response but has subsequently stated that the approach was made to its Housing Department and its Planning Department did not know about the Coventry SHMA until it had been commissioned.
36. Consequently Coventry prepared its own SHMA which, as it acknowledges at paragraph 2.60 of Housing Topic Paper *[CS24],* does not consider wider housing needs or requirements.
37. It is relevant to note that this approach to neighbouring local planning authorities took place before the duty to cooperate came into force in November 2011 and before the publication of the Framework in March 2012 - paragraph 159 of which specifically states that, where housing market areas cross administrative boundaries, local planning authorities should work with neighbouring authorities in preparing a SHMA to assess their full housing needs.
38. While the Council accepts at paragraph 2.60 of the Housing Topic Paper that the SHMA '…*could be considered to lack some cooperation with Para 159*…', it did not treat the introduction of the duty to cooperate or the publication of the Framework as a prompt to renew its efforts to produce a joint SHMA.
39. The Council is of the view that the use of the word 'should' in paragraph 159 implies that it will not always be possible to produce a joint SHMA. Respondents point out that paragraph 159 also states that local planning authorities 'should' have a clear understanding of housing needs in their area and it would be a nonsense to interpret this as meaning that there may be circumstances in which this is not possible.
40. However, whatever the merits of these arguments, there are a number of reasons why the production of a joint SHMA is particularly important in this instance.
41. Firstly, reference has previously been made to the breakdown in the sub-regional agreement that underpinned the withdrawn Core Strategy. While such a breakdown will not have created particularly fertile ground for cooperation it should, paradoxically, have emphasised the critical importance of effective cooperation in assessing housing needs.
42. Secondly, during the preparation of the SHMA it will also have become apparent that the assessment of housing need that was emerging (11,373 dwellings) was significantly different to that in the withdrawn Core Strategy (33,500 dwellings, 26,500 of which would have been in Coventry, 3,500 in Nuneaton and Bedworth and 3,500 in Warwick) – a Core Strategy which had recently been found sound. Such an abrupt change in approach towards housing provision could, on the face of it, have an effect on neighbouring local planning authorities in the housing market area and is another reason why further consideration should have been given to cooperating with them to ensure a consistent approach to the assessment of housing need.
43. Thirdly, it will also have become apparent during the preparation of the SHMA that the emerging assessment of housing need, unlike those of neighbouring

local planning authorities, was well below that of the Phase II Review of Regional Strategy for the West Midlands.

44. Phase II is not, however part of the development plan and there is no reason in principle why its assessments of housing need should not be replaced by more up to date local assessments. They do, however, provide a useful point of comparison which gives some indication that housing needs may not be being assessed in a consistent way across the housing market area. The preparation of a joint SHMA would have avoided such an apparent anomaly.
45. Fourthly, it is also the case that two neighbouring Councils (Birmingham City Council and Nuneaton and Bedworth Borough Council –the latter being in the same housing market area as Coventry) have expressed concern about the Council's apparent under provision of housing and the effects that this would have on them. This is another indication of the merits of producing a joint SHMA in which a common approach to the assessment of housing need would be considered and agreed.

Conclusions

46. The duty to cooperate plays a critical role in the planning process. It is the mechanism for ensuring that, to use the words of paragraph 179 of the Framework,"*…strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans.*" The importance of this role is emphasised by the severity of the sanctions which apply if this duty is not discharged - in other words the Plan would be found unlawful and there would be no remedy for this.
47. In this instance the Council accepts that the level of housing provision is a strategic priority planning issue that crosses local boundaries. However, it has not collaborated with its neighbours to produce a joint SHMA for the housing market area even though paragraph 159 of the Framework says it should and even though there are a number of factors, enumerated above, which point to the desirability of it doing so. It cannot, therefore, be established that the needs of the housing market area have been considered in the round.
48. In seeking to demonstrate that it has complied with the duty to cooperate the Council lays emphasis on the SOCG which it has signed along with neighbouring authorities. However, as far as the Coventry housing market area is concerned, the significance of this SOCG is undermined by the absence of a joint SHMA - a crucial piece of evidence in understanding the housing needs of the area - and uncertainty as to whether individual SHMAs have used broadly consistent methodologies and assumptions.
49. This in turn undermines the statement, insofar as it relates to the Coventry housing market area, that each council can meet its own housing need within its own area. Finally the mechanism for dealing with any shortfall, should one arise, is no more than an agreement to seek to agree in the future.
50. These factors significantly reduce the overall substance of the SOCG in as far as it relates to the Coventry housing market area. I share the view expressed by Nuneaton and Bedworth Borough Council that while the SOCG identifies matters of cross boundary interest it does not resolve them
51. As the Council points out, cooperation is not a one way street and it would have been open to its neighbours to take more of an initiative in cooperating with Coventry. It notes, in particular, that Nuneaton and Bedworth Borough Council has, it considers, declined an invitation to prepare a joint SHMA and then objected on the basis that a joint SHMA has not been prepared.

52. But it is the Council and not its neighbours that has submitted its plan for examination and it is the Council not its neighbours that is required to demonstrate that it has discharged its duty to cooperate.
53. It is clear from the evidence that it has not ignored the duty to cooperate and it has actively sought to discharge that duty on an ongoing basis. However, that is not the end of the story. Section 33A of the 2004 Act also requires the Council to engage constructively with its neighbours. The evidence does not show that cooperation between Coventry and its neighbouring councils has been constructive, as required by the 2004 Act, or effective as is expected by paragraph 181 of the Framework.
54. I conclude, therefore, that the Plan does not meet the legal requirements of the 2004 Act in that the Council has not engaged constructively with neighbouring local planning authorities on the strategic matter of the number of houses proposed in the Plan and consequently it has not sought to maximise the effectiveness of the plan making process.