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Kevin Ward and Martha Savage

The Planning Inspectorate

Subject: OLP2040 post hearings

letter of 11th September 2024

Your ref: PINS/G3310/429/9

Date: 25.09.24

Dear Mr Ward and Ms Savage,

RE: Oxford Local Plan 2040 Post Hearings Letter

Thank you for the efficient running of the initial set of hearings into the Oxford Local Plan 2040 and for the letter dated 11th September, which sets out your conclusions. We are of course disappointed with the recommendation that we withdraw the plan from examination. We understand withdrawal of the Plan may be the best course of action in order to avoid further unnecessary costs of the examination. Further, we recognise that there is no right to reply to your findings; however, there are a number of areas of concern regarding factual accuracy or, as we see it, inconsistencies within the letter that we would appreciate you reviewing and responding to. We elaborate on these below and include an appendix summarising the specific matters we would like additional clarification on.

Clarity on the duty to co-operate

In order that we can move forward we would benefit from more clarity specifically with regard to the duty to co-operate. Currently, we consider that there are contradictions and uncertainties about the details of what constitutes a failure of the duty to co-operate.

Paragraphs 10 and 11 of your letter list three criticisms; the first is that that we intended to progress quickly with the HENA following the end of the Oxfordshire Plan; the second is that it was clear the other districts were not going to join the commission; and the third is that we then did progress quickly.

Whilst we disagree that these points inherently merit criticism, it is not clear in the letter how they are directly duty to co-operate flaws. In paragraph 12, it says that these are *not* necessarily significant issues, but that the issue is in the engagement in the preparation and publication of the HENA. If the other criticisms are not fundamental, we question why they were listed extensively as criticisms at all.

Involvement in the HENA

Conversely, it is acknowledged in the letter that the other districts were aware of the basis of HENA (para 11), it is recognised that they were unlikely to join (para 10), and said that this is not a problem (para 12); however in paragraph 11 it seems our failing was not consulting them on the methodology and yet simultaneously that we went ahead 'despite strong concerns from the other three authorities'. There is a clear contradiction in what is being identified as an issue here.

The HENA was published in January 2023 and then as part of a consultation period, which provided opportunity for meaningful discussion throughout the period leading up to Regulation 19 consultation (as set out in BGP.017). The HENA was still in production at that point. We worked through its assumptions with the districts at that point, spending a good deal of effort working through comments, including taking legal advice. All of this was significantly in advance of the Regulation 19 consultation in November 2023.

It is not clear to us from the letter how we could have meaningfully met the duty to co-operate in this regard, if our recorded actions were insufficient. Having established in paragraph 10 of your letter that the prospect of some parties joining the study was always "very remote, if not non-existent" we do not understand the conclusions of paragraphs 14 and 15. They seem to indicate that we were required to allow for meaningful input (over and above consultation and the conversations afterwards) into the HENA as it was developed, even though it was already evident that the essence of a housing needs assessment separate to the standard method was disagreed with. Clarity on this point would be welcome, for both our and others future Local Plans.

Reading the letter, it seems that the biggest cause of concern is that the HENA looked at the whole of Oxfordshire, and it is for this reason that it could not take place without significant involvement of the other authorities in its development, and in the distribution. However, it is not acknowledged in Paragraph 17 or elsewhere that the clear rationale, as advanced by both the City Council and the HENA itself, was that the chosen distribution was intended to reflect where the need was arising.

This may not be agreed with, but it is surprising that this point is not engaged with at all. Instead, the letter says it seems to be a deliberate policy choice with a clear objective without articulating what the policy choice is. We continue to believe that this is a needs-based decision, gathered through technical needs-based evidence that does not require engagement from those that have chosen to not take part, and neither this paragraph – nor any other – advances a compelling argument otherwise.

Duty to co-operate in relation to moving away from the standard method

Furthermore, it is implied that there is a duty to co-operate issue because we did not consult three adjoining districts on our decision to move away from the Standard Method. However, this is simply not true, and we do not consider it constitutes a failure of the duty to co-operate.

During the Oxfordshire Plan, all parties agreed that we needed to explore other means beyond SM collectively. Following that, the City Council simply maintained (as others were absolutely aware) that the same issues remained existing in Oxford. We set this out at Reg18 part1 at paragraph 2.5: "*We consider that circumstances are likely to exist in Oxfordshire that justify using an alternative method to calculate housing need, owing to its important role in the local and national economy*" and "*it is considered there are reasons to diverge from the standard method in Oxfordshire (as discussed in relation to the options below)*".

Given that the failure of the Oxfordshire Plan lay in part because some districts considered there was reason to continue to divert from standard method and other districts considered no reason not to use standard method from the base period/s of the plan/s, the views of all sides did not need further

discussion. It is clear that other districts did not agree there was justification for us to move from the standard method, but we consider that as a failure to agree, not a failure in the duty to co-operate.

Late formal request to accommodate unmet need

The letter, at paragraph 22, says there is no evidence of either formal or informal direct requests to accommodate unmet need before the formal requests sent to districts on 22nd December 2023. However, no party has said that there had been a lack of clarity on unmet need, the City Council had been clear about that for a long time.

In the letter itself, at paragraph 24, it is acknowledged that in the note of August 2023 we set out for the neighbours that the implications of the HENA and HELAA would be unmet need. As noted at the hearings, we also raised that there was likely to be unmet need as early at Regulation 18 Part 1 where it was stated: *“we may not be able to meet all the housing need in Oxford so the calculated need won’t necessarily be the housing target in the Plan - that is the housing requirement”* (page 27).

Also, seemingly in contradiction to that, in paragraph 21 of the letter it says it had been clear for some time that the Council’s position is that there would be significant unmet housing need. In any case it is not concluded in the letter that any late request constitutes a duty to co-operate or any other kind of soundness or legal issue. Therefore, we question its inclusion in the letter.

Lack of Memorandum of Understanding on unmet need

It is unclear in the letter whether the lack of a new Memorandum of Understanding regarding unmet need represents a soundness issue that would constitute a failure of the plan or need for it to be withdrawn.

In paragraph 28 it is said there are concerns with us relying on previous commitments to take unmet need when they are in previous plans and based on a different assessment of housing need, without any apparent attempt to discuss how the full unmet need identified should be apportioned between other authorities or to establish a new memorandum of understanding.

The memorandum of 2016 was needed because it was before allocations were made. It committed the districts to make the allocations. Now the allocations and housing requirements are in extant plans, so it is not clear why a new memorandum of understanding would be an expectation. It remains in place.

Paragraph 29 of the letter seems to set out an expectation that we could have resolved where all the unmet need would be located ahead of this examination. The other authorities were clear at the hearings and in writing that they will not participate in these discussions until the need is established through our examination. We do not consider it is right to conclude that our plan must wait for all the other plans.

Justification for moving away from the standard method

It is surprising to us that the letter appears to strongly support the adequacy of the current standard method in terms of supporting economic growth and providing much-needed housing, whilst at the same time the Government is consulting on proposed changes to the standard method because it is not fit for purpose and does not identify adequate housing.

The wording saying the standard method is ‘advocated’ in Government policy and guidance (Paragraph 32) is inaccurate. The NPPF is clear it should be understood and is a starting point, but it is also clear there may be reasons for departing from it- it does not advocate for it. We are concerned that the standard method does not reflect the housing need nationally, let alone in Oxford with acute challenges.

Paragraph 35 of the letter states that meeting the unmet need from the HENA 'would clearly have significant implications for the other authorities'. We dispute this since we have clearly shown they already have allocated sufficient sites for our unmet needs for the vast majority of the plan period, with some residual unmet need remaining to be planned for. Also, critically, whether or not there are implications for neighbouring authorities and the scale of unmet need has no bearing on whether the calculation of need is valid.

Our understanding is that Paragraph 44 is inaccurate in its representation of the PPG. The part quoted relates specifically to use of the 2014-based household projections (not 'population projections' or 'demographic data'), and nothing more.

Paragraph 45 says that use of 2021 Census data just for Oxford would lead to a need lower than the standard method. We have made it very clear that we are aware of the decrease in population from the projection and that this does not undermine the HENA approach or decision to deviate from the standard method. We have put forward the case that this itself demonstrates that there is very serious suppression of household growth which is a limitation of using that data. We do think that should have been acknowledged in this paragraph without noting the counterargument offered.

Economic dynamism is said to not be a reason to divert from the standard method. Paragraph 47 of the letter says, 'While Oxford City has a buoyant economy, the standard method would provide additional housing, which would support jobs growth.' It is not accurate to say the standard method accounts for the need for housing to support a high growth economy, as the presence of a growth deal (and the expected economic growth) is listed as a reason to divert from the standard method.

Paragraph 47, in its first sentence, misrepresents what we put forward as exceptional circumstances. We put forward three exceptional circumstances in BGP.001, which are:

- that the 2014-based demographic projections are inaccurate in Oxford
- that there is suppression of household formation (evidence in the demographic data, evident in affordability issues and evident in high-levels of in-commuting) and
- that economic growth is not well factored in to standard method.

Affordability issues and high levels of in-commuting are not arguments we put forward as exceptional circumstances in and of themselves.

Paragraph 47 of the letter says: 'However, the PPG advises that the affordability adjustment is applied to take account of past under-delivery. There is no need to address under-delivery separately.' However, the PPG does not categorically state that the affordability adjustment will always take account of all past under-delivery, it actually says: 'The affordability adjustment is applied to take account of past under-delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately. Where an alternative approach to the standard method is used, past under delivery should be taken into account.'

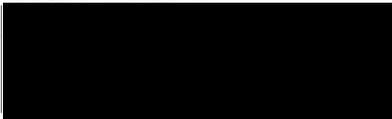
It should not be implied, as it is in the letter, that the PPG *rules out* past under-supply as an exceptional circumstance because an affordability uplift is included, not least because past suppression of household formation is not the same as past under-delivery, and also because it does not say the affordability adjustment will always take care of all past under-delivery. The significant suppression of household formation over many decades in Oxford creates evidential issues and is well beyond some past under-delivery factored into the standard method through the affordability ratio.

We think the risk stated in paragraph 50 of the letter about double counting is false. The HENA attempts to identify a need for Oxford (and Cherwell) only. Whilst it has done this by looking at Oxfordshire, the 'distribution' is merely and very simply to identify where the HENA need calculated is arising, to create an entirely needs-based scenario relevant to Oxford. If other authorities apply the Standard Method to their area this has no link to Oxford's need number. They are separate to one another and there are not two separate distributions of the same number.

Conclusion

In conclusion, whilst we entirely respect the right of the Planning Inspectorate to form views contrary to what we consider are sound evidentiary arguments, we believe that the recent letter disappointingly falls short in terms of accuracy, consistency and interpretation. Much of this may be issues of clarity that can be resolved with amendments to the original letter, and we appreciate you taking the opportunity to review and, where you feel appropriate, amend or add further detail to your findings.

Yours sincerely,



Rachel Williams
Planning Policy and Place Manager

Some parts of the letter are currently opaque in their conclusions, and there are some inconsistencies and inaccuracies which make it hard for us to draw conclusions about where the duty to co-operate was failed, and therefore how best to move forward. We outline these issues in the letter, but a summary of specific points for consideration on adding clarity to the letter is provided below, along with some proposals that would resolve the issues as we see them.

- The criticisms in paragraphs 10 or 11 should either removed, or not named as criticisms, or it should be clearly concluded that they are considered failures of the duty to co-operate.
- The unevidenced assertion in paragraph 8 and paragraph 10 that Oxford and Cherwell clearly intended to utilise existing work and continue with the OGNA immediately on collapse of the Oxfordshire Plan should be removed.
- It should be made clearer in the letter what the expectation is in terms of the duty to co-operate and involving other districts in the HENA, including correcting the inconsistencies in Paragraphs 11 and 12
- It should be acknowledged in paragraph 17 or elsewhere that the *intent* of the distribution method was to assign need to where it was arising, in order to understand true housing need.
- There should be more clarity in the letter about whether our decision to move away from the standard method created a failure of the duty to co-operate; last two sentences of paragraph 32 and the reference in paragraph 16 should be deleted because they are not relevant either to the duty to co-operate or whether it was justifiable to move away from standard method.
- Paragraph 22 should be deleted as requests clearly were made, albeit not formally, and there is no conclusion in any event that this is a failure of the duty to co-operate.
- The discussion around unmet need in paragraph 28 and 29 should be more focused, as it is unclear what is considered a fundamental issue, why it would be considered a fundamental issue, and there is no acknowledgement of the strategic difficulties of forcing agreement on unmet need when the need is not established.
- Paragraph 32 should not say that the standard method is advocated.
- Paragraph 35 should be deleted for the reasons set out in the letter
- The reference to the PPG in Paragraph 44 should be corrected
- Paragraph 45 should be corrected in regard to its reference to the point around 2021 Census data for Oxford being lower than projections
- The wording suggesting that the standard method ‘would provide additional housing, which would support jobs growth’ should be clarified. It is not clear additional to what, or why it is considered adequate in all cases to support economic growth, especially when growth deals are noted as a reason for departure.
- The summary of what we put forward as exceptional circumstances, in Paragraph 47, should be amended to reflect those which were put forward by the City Council as exceptional circumstances.
- The wording in Paragraph 47 about the affordability adjustment, past under-delivery and historic suppression of household growth should be corrected and clarified
- The incorrect assertion about double counting in paragraph 50 should be amended.