

Meeting of the Cabinet – 25th October, 2023

Report of the Director of Regeneration and Enterprise

Dudley MBC responses to Duty to Co-operate Correspondence with Sandwell Council

Purpose of report

1. To seek approval for a proposed response to Sandwell Council's Duty to Co-operate (DtC) correspondence. The resulting recommendation is required to ensure that the Council fulfils its legal obligations under the DtC and that the interests of Dudley Borough are being fully considered in the plan-making of other local authorities.

Recommendations

2. It is recommended that Cabinet: -
 - Endorses the proposed Dudley Council response to Sandwell Council's DtC letter as set out in Appendix One.

Background

3. Dudley MBC has been involved in ongoing DtC correspondence and discussions with Local Planning Authorities on their respective Local Plans.
4. The Duty to Cooperate was introduced by the Localism Act 2011 and is set out in section 33A of the Planning and Compulsory Purchase Act 2004. It places a legal duty on local planning authorities and county councils in England and prescribed public bodies (as defined in Regulations) to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation in the context of strategic cross boundary matters.

Sandwell Council Duty to Co-operate Correspondence

5. Sandwell Council consulted on its new Sandwell Local Plan Issues and Options between February – March 2023. This Plan will inform how the borough will develop in the future and provide policies to guide decisions on development proposals and planning applications for the period to 2041. Dudley provided a formal response to Sandwell's Issues and Options consultation which was approved by Cabinet 16th March 2023.
6. Under the Black Country Plan, the Black Country Authorities were offered contributions from Shropshire Council of 1,500 homes and 30ha of employment land and from Lichfield Council of 2,000 homes. There were also potential contributions from other authorities including South Staffordshire, and Cannock Chase councils but their Plans are not as far advanced as Shropshire and Lichfield.
7. Sandwell will have a housing and employment land shortfall. On this basis the Council has written to the three Black Country Authorities (Dudley, Walsall, Wolverhampton) to request an agreed approach on how the contributions from Shropshire and Lichfield, and any other further contributions, should be apportioned to each authority where it is clearly evidenced that a local authority has a housing and or employment land shortfall.

Dudley's Proposed Response

8. Given that Dudley has identified a shortfall in its own employment and housing land supply in preparing its own Draft Plan local plan, the Council is not in a position to assist Sandwell with meeting its shortfall.
9. Duty to Co-operate discussions held between officers from the four local authorities feel that the most appropriate approach to apportioning any existing and future housing contributions should be evidence based and should use net migrations flows between each Black Country local authorities and the authority providing the contribution. If this approach is agreed as the best way forward, the four Black Country Authorities will need to agree a Statement of Common Ground (SoCG) to formally confirm the sharing of the housing contributions made to the Black Country Authorities.
10. The approach to employment land is different to that of housing. Rather than being dealt with at an individual local authority level any employment land contributions from neighbouring authorities are based upon a Functional Economic Area (FEMA). Dudley Council makes up one of the Black Country authorities, along with some neighbouring authorities, in the Black Country FEMA. Any employment land contributions made from other

authorities towards the Black Country's shortfall will be dealt with and apportioned across the whole of BC FEMA rather than at an individual local authority level.

11. In line with the details in paragraphs 9 and 10 above, a Dudley Council response to Sandwell DtC letter is set out in Appendix One for which Cabinet approval is sought.
12. Subject to Cabinet approval, officers will work with Sandwell Council and authorities to develop a Statement of Common Ground for Cabinet consideration at a later date.

Finance

13. There are no direct financial implications arising from this report. Resources used for reviewing the Local Plans and providing responses are met from existing resources held within the Regeneration & Enterprise Directorate.

Law

14. The Council has a legal obligation to engage under the Duty to Cooperate, as per section 33A of the Planning and Compulsory Purchase Act 2004. By responding to these consultations, the Council is ensuring it is fulfilling its legal duties.

Risk Management

15. There are not considered to be any material risks from this report.

Equality Impact

16. There are no direct Equality Impacts arising from this report.

Human Resources/Organisational Development

17. There are no HR/OD impacts resulting from the report as any requirements will be managed from within existing resource in line with the timescales outlined.

Commercial/Procurement

18. There are not considered to be any commercial/procurement implications arising from this report.

Environment/Climate Change

19. By engaging with neighbouring local authorities on their Local Plans the Council is able to put forward matters relevant to the Councils work to address Climate Change and achieve our Net Zero target by 2041, including the promotion of sustainable and active travel.

Council Priorities and Projects

20. Responding to these Local Plan consultations will assist with current wider Council Priorities including:
- People have access to a range of housing offers that are affordable, accessible and attractive, meeting the needs of our diverse communities
 - Business, residents and visitors benefit from improved highways and travel connectivity through multi-modal offer
 - Levelling up inequalities is ensuring all borough towns and neighbourhood have good access to services, retail and leisure opportunities
 - People have a safe and welcoming indoor and outdoor environment which promotes healthy, physical and active lifestyles



Helen Martin
Director of Regeneration and Enterprise

Report Author: Vicki Popplewell
Planning Policy Manager
Telephone: 01384 814136
Email: vicki.popplewell@dudley.gov.uk

Background Papers

None

Appendices

Appendix One – Dudley Council's response to Sandwell Council DtC correspondence

Appendix One

Director of Regeneration and Growth
Sandwell MBC
Sandwell Council House
Freeth Street
Oldbury
B69 3DE

Dear xxx ,

Sandwell Local Plan – Duty to Cooperate

Thank you for your letter of 31st May 2023 which helpfully sets out the timetable for the preparation of the next stages of the Sandwell Local Plan and seeks the views of Dudley Council on a number of related Duty to Cooperate issues.

As you are aware, Dudley Council is in the process of developing its Local Plan. Subject to Cabinet approval, it is our intention to consult on the draft Plan (Regulation 18) in November/December 2023. The plan period for our new local plan will be to 2041.

Please find Dudley's formal response to Sandwell Duty to Co-operate letter as approved by the Council's Cabinet.

The Strategic Issues

We note and confirm that current legislation and guidance requires that the Black Country Authorities (BCAs) have a Duty to Cooperate with each other on strategic matters that cross administrative boundaries.

We agree that in a Black Country context, at this stage, the principal strategic issues that affect the preparation of the Sandwell Local Plan remain those set out in the ABCA letter of 26th April - meeting unmet housing needs, meeting unmet employment needs and strategic transport issues. There may also be intra Black Country issues which will need to be dealt with through the Plan process; for example, matters relating to mineral infrastructure and strategic waste facilities. Along with issues of more local significance, including site

specific proposals that will arise through the preparation of the Sandwell Local Plan and the Dudley Local Plan that may require further and ongoing engagement.

Strategic Housing Issues

We note that Sandwell Council will be writing to Shropshire and Lichfield Councils, regarding their submitted Local Plans, asking them to confirm that the housing 'offer' made to the Black Country Authorities, as a whole, still remains. We also note that Sandwell Council will be writing to all other authorities where Local Plans have progressed up to Regulation 19 stage and from whom the BCAs anticipate that a potential contribution may arise (South Staffordshire (Reg 19), Stafford (Reg 18), Solihull (examination), Bromsgrove (Reg 18), Telford & Wrekin (Reg 18) and Cannock Chase (Reg 19 approved by Cabinet but not yet consulted on).

We recognise that it is important to understand how any contributions that have been made to the Black Country as a whole can be apportioned between the BCAs in order to give certainty for individual Local Plans to progress. Specifically, given the cessation of work on the Black Country Plan (BCP), all the BCAs need to determine the extent of the shortfall between housing need and forecast supply in their area, taking into account contributions from neighbouring areas, in order to progress individual Local Plans and inform ongoing Duty to Cooperate work. The cessation of the BCP does not alter the needs of the four BC authorities as a whole, nor the total supply within their combined areas.

We recommend that this apportionment is in two stages. Firstly, it is important to understand the extent to which existing and forecast supply can accommodate identified housing needs over the Local Plan period. This stage 1 work will establish the housing shortfall for each of the BCAs.

In the case of Dudley, we have prepared a Draft Dudley Local Plan (Regulation 18) which we hope to publish for a six – week consultation in November 2023. In preparing our draft Plan our up-to-date evidence (including our latest SHLAA and Urban Capacity Study) suggests that Dudley's housing need over the plan period is 11,954 homes. Our housing land supply set out in the draft Plan to 2041 (based on our most recent SHLAA and Urban Capacity Report) will provide for 10,876 homes. This will leave us with a shortfall of 1,078 homes. On this basis we are not be in a position to contribute to meeting Sandwell's housing need and will instead be seeking contributions from neighbouring local authorities under the Duty to Co-operate.

The next stage should apportion any contributions to the individual BCAs which can evidence a housing shortfall from Stage 1. It is essential that this

apportionment approach is evidence based and reflects the likelihood that new homes built in the contributing authority will directly address the needs arising in the receiving authority. This likelihood can be estimated by considering historic patterns of migration between different areas, giving the apportionment figure credibility and a strong degree of certainty. On this basis, we strongly recommend that the level of apportionment is proportionate to the actual functional relationship between the exporting area and the individual BCA where the shortfall arises. The most robust dataset to base this approach on is migration data available on an annual basis from ONS, which is based on a combination of administrative data taken from the National Health Service Central Register, the Patient Register Data System and the Higher Education Statistics Agency.

This data is published over an extended period (2001-19) in the form of net flows – the difference between outflows and inflows. The relationship between the individual BCAs and Shropshire and Lichfield (those areas where Local Plan are the most progressed and where ‘offers’ have been made on a Black Country basis - 1,500 homes from Shropshire and 2,000 homes from Lichfield) is set out in Table 1 below.

Table 1 – net migration flows between the BCAs and Shropshire and Lichfield 2001-19

BCA	Net Movements to Shropshire	Proportion of all BCAs	Net Movements to Lichfield	Proportion of all BCAs
Dudley	2,702	28.7	224	3.4
Sandwell	1,614	17.2	1,208	18.5
Walsall	1,374	14.6	4,710	72.1
Wolverhampton	3,715	39.5	391	6.0
Total	9,405	100.0	6,533	100.0

This data shows that all BCAs are net ‘exporters’ of people to Shropshire and Lichfield. Wolverhampton has the strongest relationship with Shropshire (39.5% of net outflows from the BCAs), followed by Dudley (28.7% of net outflows from the BCAs), whereas Walsall has the strongest relationship with Lichfield (72.1% of net outflows) and Dudley has only a limited migration relationship with Lichfield. Using this approach, and subject to the stage 1 exercise, each of the BCAs would receive a proportion of the Shropshire and Lichfield ‘offers’ proportionate to their share of the net outflow figure as set out in Table 2 below.

Table 2 – potential contributions (homes) apportioned between BCAs

BCA	Apportionment from Shropshire	Apportionment from Lichfield
Dudley	431	68
Sandwell	258	370
Walsall	219	1,442
Wolverhampton	593	120
Total	1,501*	2,000

*Due to rounding up

It could be argued that migration can only arise when homes are available for households to move to. Past net migration rates therefore may not reflect future rates where an authority increases its housing supply. However, even in areas of high housing growth, new homes only account for a small proportion of the housing supply. If the Black Country met its housing needs in full (76,076 homes between 2020 and 2039), this would equate to a less than 1% annual growth in the total housing stock. Most household moves involve existing homes rather than new build. Use of past migration rates to apportion housing offers from neighbouring authorities therefore provides a robust methodology.

In order to confirm this approach, we recommend that all of the BCAs sign a single Statement of Common Ground confirming the ‘share’ of the overall BCA offer as set out in Table 2, subject to the Stage 1 exercise.

Going forward, we also recommend that this two-stage process could be applied to other, less progressed Local Plans where the BCAs are seeking a contribution towards meeting unmet needs. However, in the case of contributions offered to the Greater Birmingham and Black Country Housing Market Area (HMA) as a whole, the approach would need to be widened to cover all authorities in the HMA which can demonstrate a shortfall, including Birmingham.

Strategic Employment Issues

Your letter summarises the current and potential contributions from neighbouring areas to address the shortfall of employment land which arises across the Black Country Functional Economic Area (FEMA). The FEMA corresponding to the geography of the BCAs.

Given the need to establish and plan for needs arising across FEMAs as a whole and as set out in the Planning Practice Guidance (PPG), the approach to addressing the shortfall is different to that for housing. Contributions secured through current Statements of Common Ground between the BC

FEMA authorities and Shropshire and South Staffordshire Councils have potential to provide some 133.6 ha towards BC FEMA needs, which would reduce the overall Black Country FEMA shortfall. The BCAs should individually and collectively continue to engage with other neighbouring authorities preparing Local Plans which have a functional relationship with the BC FEMA, to help address the shortfall across the BC FEMA as a whole. The focus for this work will be those areas identified in the EDNA as having strong or moderate relationships with the BC FEMA (Bromsgrove and Tamworth) and other areas which have an evidenced relationship with the BC FEMA (Stafford and Telford & Wrekin). At the same time, the BCAs should continue to maximise all opportunities to accommodate needs arising through the preparation of individual Local Plans. For this reason, it is not considered necessary to apportion the current and potential contributions between the BCAs.

You will be aware that the Economic Development Needs Assessment is being updated in order to provide the most up to date position on forecast employment land demand and supply. This work will confirm the scale of the shortfall that Duty to Cooperate activity should seek to address.

Summary

In summary, the Council welcomes the progress being made with the preparation of the Sandwell Local Plan and the proposed approach towards meeting the Duty to Cooperate. We strongly commend the proposed approach towards the apportionment of housing contributions and that for employment land. As set out above, we also recommend that this approach is formalised through a Statement of Common Ground between the BCAs.

Yours sincerely