

HAMMERSMITH & FULHAM LOCAL PLAN EXAMINATION LEGAL COMPLIANCE, SPATIAL VISION AND STRATEGIC OBJECTIVES

2. Does the Plan acknowledge cross border issues, particularly with regard to the Duty to Cooperate, on strategic matters?

Unfortunately the Council's plan is deficient in this respect. The problem arises from the fact that the London Plan is not a development plan document according to Section 38(2) of the 2004 Planning and Compulsory Purchase Act. The Mayor was keen to assert this because he was anxious to avoid responsibility for discharging the duty, mainly because he recognised that he would have difficulty persuading the local authorities in the wider south east to accommodate London's housing shortfall (of 7,000 homes per annum). Had he been responsible for this, his failure to develop a plan to accommodate the shortfall, may have resulted a particular soundness issue for the London Plan.

Instead, the Mayor chose to evade the issue by citing this legal loophole and has passed the problem of the duty, which includes planning for the unmet housing need, onto the London boroughs to deal with, even though it made perfect sense for the Mayor to take collective responsibility for the duty as a body with spatial plan making powers (see the inspector's report on the Further Alterations to the London Plan (FALP), paragraphs 7 and 8). The Mayor, chose not to accept this argument. The inspector's report in terms of changes necessary to make a plan sound is not binding on the Mayor of London in the way that it is in the rest of the country.

It is for this reason that the London Plan does not refer to the Duty to Cooperate.

Policy 2.2E of the London Plan suggests that responsibility for the duty to cooperate, including how London's unmet need is accommodated, resides with the individual boroughs. This is clarified by paragraph 3.1.8 of the Mayor's Housing SPG (March 2016) which states:

"The tiered approach to understanding housing requirements, with a strategic London wide study supplemented by more detailed sub regional and local studies, has been an accepted approach in the context of London's two tier planning system. This approach is designed to address the requirements of the NPPF and those of Policy 3.8. It also means borough can ensure that sub-regional and local studies take account of London boundary relationships as required by Policy 2.2 of the London Plan and the Duty to Cooperate..."

This creates a particular problem for the boroughs, because it is impossible for each London Borough to know what share of the unmet need it will be responsible for negotiating over, and with whom. This is because the OAN has been assessed on a pan-London wide basis, with the overall OAN figure then being apportioned among the 33 London Boroughs. Hammersmith & Fulham should therefore assume that it is responsible for planning for the full unmet need of 70,000 homes (i.e. 7,000 x 10 years reflecting the plan period of the London Plan).

The relationship between the London Plan, the borough plans in terms of the duty to cooperate, as well as the OAN, and who ultimately has responsibility for planning for London's unmet need, is extremely unsatisfactory and very confused.

Nevertheless, it is the London Boroughs who are responsible for engaging on the duty. The Mayor's Housing SPG confirms this in paragraph 1.2.4. While the Mayor

is doing some work to discuss the issues with the planning authorities of the wider south east (e.g. Policy 2.2B) legal and planning responsibility resides with the Boroughs. The Hammersmith & Fulham Local Plan does not explain what it has done to try and accommodate London's housing shortfall, though discussion with either: a) the other London Boroughs; or b) local authorities within the wider south east.

Furthermore, Policy 2.2E of the London Plan states:

"In preparing and implementing DPDs, borough (particularly those in outer London) should work with authorities and agencies in neighbouring regions outside Greater London to develop common approaches to issues of cross-border significance."

As we referred to in our representations, the Mayor's 2013 SHMA that underpinned the FALP, includes assumptions about migration that will be material to local plan preparation outside of London. The London Plan assumes that fewer houses will need to be accommodated in London compared to the official DCLG projections which normally provide the starting point for the assessment of need, because the Mayor has assumed that more people will leave London and fewer will come to London. The difference is 12,500 households a year (see the Mayor's SHMA 2013, paragraphs 3.60 and 3.69). The Housing Need section of the NPPG reminds plan-makers that:

"Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need."

Hammersmith & Fulham is responsible to communicating and agreeing this migration assumption with the authorities of the wider south east.

The Duty to Cooperate section of the NPPG, referring to the operation of the duty in London, states that:

"Cooperation between the Mayor, boroughs and local planning authorities bordering London will be vital to ensure that important strategic issues, such as housing delivery and economic growth, are planning effectively." (NPPG, ID 9-007-20140306).

Responsibility for the issue of the Mayor's migration assumptions (12,500 households a year) and the unmet need (7,000 homes a year) is the responsibility of Hammersmith & Fulham. This is a matter of considerable cross-border importance, as the inspector acknowledged in his report (see paragraph 8). Unfortunately, the evidence base shows that this key strategic issue has never been considered, let alone addressed. The Duty to Cooperate statements refer only to work with other boroughs within London, such as Kensington & Chelsea (which is maintaining that it is unable to meet the London Plan benchmark). As such, the Local Plan has failed under the Duty to Cooperate.

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