

Walsall Council's Response to HBF Submissions during MM3 – Housing

The Council's formal response to the additional documents provided by the HBF is as below.

1. With regard to the relevance of the submitted documents we make the following observations.
 - a) EXAM 7 (Chiltern Inspector's initial appraisal)
 Para 2: DPD seeks to deliver the adopted Core Strategy 2011
 Para 7: The Core Strategy inspector raised concerns about the issue of deliverability as a high proportion of the supply was to come from back garden developments, which required assembly of land in different ownerships. These concerns have been confirmed by the choice of sites to be allocated in the DPD.
 - b) EXAM 8 (Chiltern Inspector's report confirming suspension of examination)
 Confirms concerns in initial appraisal
 - c) EXAM 9 (Forest of Dean inspector's interim findings)
 Paras 12 and 13: Describes relationship with core strategy. It appears that the DPD was attempting to use a newly calculated OAN (i.e. one different to that in the core strategy)
 Para 26: The new OAN moved away from an assessment at HMA level. Although there was justification for this approach for some elements of the OAN, an HMA wide approach should still have been used for other elements.
 Para 111: Concern over deliverability of some of the proposed sites and whether the 5 year supply would be met by the plan.

Walsall's SAD does not raise the issues of concern in Chiltern or Forest of Dean.

 - With respect to Chiltern, Walsall's SAD proposes to allocate a much greater number and wider range of sites. No concern has been raised over their deliverability and in any case actual delivery to date since 2009 has been in line with the trajectory in the Black Country Core Strategy.
 - With respect to the Forest of Dean, Walsall's SAD does not seek to diverge from the OAN in the BC Core Strategy: this OAN was derived from work at a regional level.
2. The HBF (at their appearance on Day 1 of the SAD examination) also referred to the 'Royal Tunbridge Wells' judgement (Cooper Estates Strategic Land Ltd v Royal Tunbridge Wells Borough Council [2017] EWHC 224 (Admin) (14 February 2017): EXAM 10), which relates to a Site Allocation Local Plan that had been prepared and adopted within the framework provided by a Core Strategy. This judgement (of 14 February 2017) post-dates the three Inspectors' reports and is also a High Court judgement so has greater legal authority than the inspectors' reports (all three of which are interim in any case). The HBF referred to paragraphs 30 and 81 of 'Tunbridge'. Paragraph 30 states, following Gladman Developments Ltd v Wokingham BC, that, "*where there are changed circumstances, should [the inspector] look beyond circumstances relevant to the Core Strategy?*" However, referring to Oxted Residential Ltd v Tandridge DC, the judge in Tunbridge concluded in para. 81 "*Although Tandridge does not bar account being taken of post CS changes, it emphatically does not require account to be taken of*

them". Of course the key finding in the Tunbridge case is that the judge refused to quash the Site Allocation Local Plan. On behalf of Walsall Council, we consider para 83 of the judgement to be most relevant:

"... Circumstances are always changing; further surveys and analysis are done. The plates beneath the planners' feet never stop moving; the plan-making process cannot always in all respects catch up with the latest movements, because the process of making even a single plan would never end: finalise and review is a perfectly lawful and sensible approach. There may be changes which the Council considers can be dealt with in the confines of a particular Plan but not others."

3. In the context of Walsall's SAD and of Walsall (where the Core Strategy housing trajectory is being met, but where – sometime after 2026 – land within the urban area might be used up whilst the rest of the borough is (almost) entirely Green Belt), we wonder about the purpose of the case the HBF is trying to make. Is the HBF seeking to send Walsall's plan-making back to square one so it would have to consider Walsall's brownfield sites together with a Green Belt review? That would generate uncertainty and – as well as setting back the delivery of our brownfield sites - it would be very likely to add considerably to the complexity and controversy of the Core Strategy Review. Such a prospect would seem to be highly counter-productive for an organisation that purports to be promoting housing delivery.

If this is the case, we would of course respectfully remind the inspector (and the HBF) of the ministerial statement of 6 March 2014

(see <https://www.gov.uk/government/speeches/local-planning>) where the minister stated that "we are

- re-affirming green Belt protection, noting that unmet housing need is unlikely to outweigh harm to the green Belt and other harm to constitute very special circumstances justifying inappropriate development.
- making clear that local plans can pass the test of soundness where authorities have not been able to identify land for growth in years 11 to 15 of their local plan, which often can be the most challenging part for a local authority."