

SOUTH GLOUCESTERSHIRE CORE STRATEGY

Skeleton Submissions on behalf of the Bristol Alliance

1. As set out in its hearing statement the Bristol Alliance submits:
 - a. The duty to co-operate (section 33A Planning and Compulsory Purchase Act 2004 (“PCPA 2004”)) applies to the post submission changes to policies CS14 and CS26;
 - b. The Council have failed to comply with that duty to co-operate; and
 - c. The approach taken by the Council, by promoting post submission changes to policies by introducing changes relating to strategic matters, undermines the statutory scheme for plan preparation and has not proper basis in law.
2. These submissions repeat those set out in Appendix 2 to the Bristol Alliance’s Hearing Statement and respond to paragraph 3 of the LPA’s Position Statement on Matter 1 which in turn refers to Topic Paper 1.
3. The issues:
 - a. Does CS14 include a policy or proposal for the sustainable development or use of land which has or would have a significant impact on at least two planning areas, and is therefore a strategic matter?
 - b. Does the duty imposed by section 33A(1) apply to the post submission changes?
 - c. If the duty does apply, has it been complied with?
 - d. Does the procedure followed by the Council fall within the ambit of the statutory code for the preparation of development plans?

Strategic Matter

4. This issue is not in dispute:
 - a. LPA Topic Paper 1

- i. It is accepted that the post submission changes relating to Cribbs Causeway/the Mall relate to “strategic matters” as defined in section 33A(4)(a) PCPA 2004 (**4.1, 4.12**)

Does the duty apply to post submission changes?

5. The LPA recognise that there is no legal power to make post submission changes (**SG17 para.7, TP1 para. 2.10**).
6. The LPA have put forward the changes as suggestions as to how the inspector may wish to modify the plan (**TP1 para. 2.10**)
7. The LPA contend that:
 - a. The post submission changes do not form part of plan preparation, as preparation ceases on submission.
 - b. The purpose of examination (as provide by section 20(5)(c) PCPA 2004) is to examine whether the local planning authority complied with any duty imposed on them by section 33A in relation to the document’s preparation. (underlining for emphasis).
8. The LPA’s submissions:
 - a. Do not address the question of whether the post submission changes fall within section 33A(3)(e) as activities that support the preparation of the DPD. That issue is raised in Appendix 2 to the Bristol Alliance’s hearing statement.
 - b. Do not address a further issue raised in the Bristol Alliance’s hearing statement, namely that the approach taken by the Council does not follow the legislative scheme (Appendix 2 to the Bristol Alliance’s Hearing Statement, paragraph 33(a))
9. The Bristol Alliance’s submissions:
 - a. It is submitted that the duty to co-operate does apply as examination of the South Gloucestershire Core Strategy is an activity falling within section 33A(3) as it either
 - i. Falls within section 33A(3)(a), being the preparation of development plan documents; or
 - ii. Falls within section 33A(3)(e) as an activity which supports the preparation of a development plan document.
 - b. It is submitted that the examination of the DPD forms part of the preparation of the DPD as:

- i. On the particular facts of this case, the post submission changes formed part of the preparation of the DPD, and were proposed after the duty to co-operate was enacted.
 - ii. If the LPA's submissions were adopted it would be open to a LPA to add post submission changes which related to strategic matters and thereby avoid having to comply with the duty to co-operate. Adoption of such procedure would undermine the purpose of the legislation.
 - iii. Preparation of a DPD is not complete until adoption.
 - iv. Section 19 PCPA 2004, which is headed "preparation of local development documents" imposes duties on LPAs when preparing DPDs (sub sections (2), (3) and (5)); those duties are to be carried out before submission. However, section 19 does not indicate that preparation is restricted to activities which take place prior to submission.
- c. If the submissions relating to preparation of the DPD are rejected, it is submitted that examination is an activity which supports the preparation of a DPD.
- i. Section 33A(3)(d) refers to activities which prepare the way for preparation of a DPD.
 - ii. Section 33A(3)(e) adds a further category, namely activities which support the preparation of a DPD. It is clear from the fact that paragraph (e) introduces a separate and distinct category from paragraph (d), that paragraph (e) activities do not have to precede or "prepare the way for" preparation of a DPD.
 - iii. Examination is an essential part of the process of preparing a DPD and can lead to modifications, as a result there can be no doubt that (if it does not form part of preparation) it is an activity which supports preparation of a DPD.

If the duty does apply, has it been complied with?

10. In the note prepared for the pre hearing meeting (**SG 17 para. 10**) the LPA contended that there was no prejudice to neighbouring authorities as they were consulted on the post submission changes and as they could appear at and make representations at the hearing.
11. In **TP1** the LPA contend that they have made genuine efforts to engage with Bristol City Council and other local planning authorities (4.20). The efforts relied upon are:

- a. A meeting with Bristol City Council (“BCC”) on 8th November 2011 (**TP1 para. 4.16**)
 - b. BCC were invited to meetings to discuss the Roger Tym December 2011 report (**EB63**) and BCC attended such a meeting on the 19th January 2012 (**TP1 para. 4.18**)
12. In their hearing statement, BCC (at 1.7) state that the changes have not been the product of collaborative working. It appears that the meeting on the Roger Tym report took place after the post submission changes had been published.
13. The duty to co-operate imposed by section 33A requires more than holding a meeting, it requires a person to “co-operate” (section 33A(1)) and in particular, to engage, constructively and actively (section 33A(2)(a)). The contact with BCC has not been such as to amount to co-operation within the meaning of section 33A.
14. Further, there is no evidence to demonstrate that the Council co-operated with the bodies prescribed for the purposes of section 33A(1)(c), as set out in regulation 4(1) of The Town and Country Planning (Local Planning) (England) Regulations 2012, or with the West of England Local Enterprise Partnership. It is not sufficient to indicate that such bodies were notified (see **TP1 paragraph 4.4**)¹.
15. The LPA’s Position Statement for Matter 13 proposes further changes to policy CS14. It is unclear whether any consultation has taken place on these changes, and there is no evidence of any co-operation with other local planning authorities or with the prescribed bodies.
16. The Bristol Alliance submits that, in relation to the proposed changes to policies CS14 and CS16, the duty to co-operate has not been complied with.

The procedure

17. The approach taken by the LPA would undermine the statutory scheme as:
- a. There is no statutory provision for post submission changes.
 - b. The proposed submission changes cannot and should not be treated as suggestions for main modifications which the inspector could make as:
18. The statute (section 20(7C) PCPA 2004) contemplates that, if asked to do so by a LPA, an inspector who
- a. Does not consider that the requirements listed at section 20(5)(a) have been complied with and that the plan is sound

¹ TP1, paragraph 5.1 appears to refer to future co-operation not co-operation on the post submission changes

- b. Considers that the duty to co-operate has been complied with can recommend modifications
- c. It is clear that the modifications contemplated (section 20(7C) are those which would ensure compliance with the requirements listed at section 20(5)(a) and that would make it sound.
- d. The Council are attempting to use the modification procedure to introduce changes which:
 - i. Are not made in response to a finding made by the inspector that the plan fails to comply with any section 20(5)(a) requirement
 - ii. Are not made in response to a finding made by the inspector that the plan is not sound,
 - iii. Are made to introduce policies relating to strategic matters, which if made earlier in the process (and after 15th November 2011), it accepts, would have been subject to the duty to co-operate.

19. The inspector should rule that:

- a. The duty to co-operate applies and has not been complied with; or
- b. He will not accept and will not examine the proposed changes to policy CS14, as there is no legal mechanism for the Council to put forward to such changes at this stage;

20. If the inspector does not make rulings (a) or (b) (at paragraph 18), he should find the proposed changes to policies CS14 and CS26 unsound.

21. The Bristol Alliance also relies upon the submissions relating to SA/SEA set out in Appendix 2 to its hearing statement.