

BRISTOL ALLIANCE (6151937)

SOUTH GLOUCESTERSHIRE CORE STRATEGY

MATTER 13 – TOWN CENTRES & RETAIL:

26 JUNE 2012

SUPPLEMENTARY HEARING STATEMENT

24 MAY 2012

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1. Introduction

Bristol Alliance

- 1.1 This Statement has been prepared by Turley Associates on behalf of the Bristol Alliance and supplements the representations made on their behalf to the South Gloucestershire Core Strategy. Details of Bristol Alliance and their interests in Bristol city centre are set out in the representations made previously (17 February 2012).

Representations Made to Date and Changes Requested

- 1.2 The representations made on Bristol Alliance's behalf are not repeated in this Statement but raise the following principal objections to the draft Core Strategy and specifically draft Policy CS14 (incorporating post-submission changes):
- The Policy is not founded on a robust and credible evidence base;
 - The Policy is not justified by evidence prepared on South Gloucestershire Council's behalf;
 - The Policy is inconsistent with the evidence prepared on the Council's behalf;
 - The Policy (and the background to its preparation) is inconsistent with the advice contained within National Planning Policy Framework (NPPF);
 - The Policy is therefore unsound.
- 1.3 As a result of these representations and concerns, Bristol Alliance considers that draft Policy CS14 should be amended to remove specific reference to planned future development of additional retail floorspace at The Mall/Cribbs Causeway and to its proposed designation as an 'emergent centre'. Specific amendments to the wording of draft Policy CS14 are set out in Appendix 1 to this Statement.
- 1.4 Consequential amendments will be required to the relevant supporting text and draft Policy CS26 to ensure that it reflects the most appropriate strategy for the future development of The Mall/Cribbs Causeway. These changes should remove the wording proposed by the Council in the December 2011 Post-Submission Changes document with particular reference to Cribbs Causeway's designation as a centre and the promotion of a greater diversity of commercial uses.

1.5 Section 2 of this Statement summarises the legal submissions relating to the duty to co-operate, Strategic Environmental Assessment and Sustainability Appraisal. The full submissions are contained as Appendix 2. Section 3 sets out Bristol Alliance's response to the Inspector's Main Issues.

2. Procedural Issues

- 2.1 Bristol Alliance has raised procedural issues with regard to the duty to co-operate in the preparation of development plan documents, and with regard to the Council's Sustainability Appraisal. The detailed submissions are set out in Appendix 2 to this statement. In summary, however, Bristol Alliance raises the following concerns.

Duty to Co-operate

- 2.2 The duty to co-operate applies to the post-submission changes put forward by the Council as these represent either the preparation of DPDs or an activity that supports the preparation of DPDs.
- 2.3 By promoting post-submission changes (after the date when the duty to co-operate came into effect) that relate to strategic matters, and then arguing that the duty does not apply, the Council are seeking to avoid complying with the statutory scheme by adopting a course of action that is not contemplated by the statutory scheme.
- 2.4 The proposal to identify The Mall/Cribbs Causeway as an 'emergent centre' and to identify a requirement to meet needs arising from outside the Council's area, all relate to 'strategic matters' that would have an impact on at least two planning areas. The Council has not fulfilled the duty to co-operate and it is therefore not open to the Inspector to recommend main modifications, as suggested by the Council.
- 2.5 Notwithstanding the legal duty to co-operate, with regard to town centre and retail matters (Policy CS14), the Council has failed to demonstrate evidence of having effectively co-operated in accordance with the requirements of NPPF paragraph 181.

Strategic Environmental Assessment and Sustainability Appraisal

- 2.6 The Inspector has previously identified the need for the Council to undertake revisions to the Sustainability Appraisal as a result of the further work that has been required. Paragraph 5.71 of the December 2011 Sustainability Appraisal states that *"In the longer term, Cribbs Causeway will perform a new wider sub-regional role"*.
- 2.7 The required environmental report is required to identify, describe and evaluate the likely significant effects of implementing the plan. The environmental report is

defective as it does not identify, describe and evaluate the environmental effects that are likely to occur if Cribbs Causeway performs a role as a sub-regional centre.

3. Inspectors' Main Issues

- 3.1 The Inspector has identified main issues to help guide discussion at the forthcoming hearing session. Those main issues upon which Bristol Alliance wishes to comment further are set out below and supplement those representations made previously.

Is the spatial strategy the most appropriate one for the area and will it deliver the sustainable development objectives promoted in the Planning framework?

- 3.2 The spatial strategy (specifically draft Policies CS14 and CS26) is not the most appropriate for the South Gloucestershire area and will not deliver sustainable objectives as promoted through the NPPF. Specifically, the spatial strategy seeks to confer inappropriate importance to the out-of-centre Mall/Cribbs Causeway retail area and to make provision for retail expenditure arising outside the plan area, which will be detrimental to other centres within both South Gloucestershire and the wider sub-region.
- 3.3 The policy approach set out in the NPPF is that need should be objectively identified and then met (core planning principle 3, paragraph 17). In particular local planning authorities are advised to use their evidence base to meet the quantitative and qualitative needs for retail floorspace (paragraph 161). An essential element of that process is that need (including need for retail floorspace) should be objectively assessed.
- 3.4 The strategy promoted for the future development of The Mall/Cribbs Causeway has not been identified following an appropriate assessment of retail spending patterns and the implications of further development at The Mall/Cribbs Causeway. Indeed, the Council's own evidence base (Retail Study Update and Impact Assessment) states at paragraph 3.3 that *"the study is not intended to assess the need for growth at Cribbs Causeway."*
- 3.5 The limitations of the Retail Study Update and its assessment of impact are further emphasised by the comments set out by the consultants at paragraph 4.2 of the Retail Study Update.
- 3.6 It is clear that the planning strategy for the future of The Mall/Cribbs Causeway would previously have been a matter that would have been considered through a

review of the Regional Strategy, which would have included a full assessment of retail patterns in the wider sub-region. There is no basis for expansion of The Mall/Cribbs Causeway within the current Regional Strategy. Indeed, RPG10 states that any proposal to extend or develop the existing regional shopping centre at Cribbs Causeway should be brought forward and fully justified in a future review of Regional Planning Guidance (Policy EC6). The draft Revised RSS (July 2008) states at Policy TC2 that *“the strategic extension of the existing major shopping centres of Cribbs Causeway and Clarks Village will not be supported.”*

- 3.7 The Government’s intention to revoke regional strategies does not remove the importance of assessing appropriately the influence of regional shopping developments on a regional scale prior to considering their expansion. The core principles identified in the NPPF make it imperative that any allocations are based upon objectively assessed need (paragraph 17), and that policies to support the viability and vitality of centres should be pursued (paragraph 23). There is no sufficient evidence base available to the Inspector for him to determine that a spatial strategy that proposes significant expansion at The Mall/Cribbs Causeway is appropriate.

Are the Council’s proposals for economic development well founded and are they likely to support the local economy and encourage growth in the wider sub-region?

- 3.8 As set out within Bristol Alliance’s representations, the evidence prepared by the Council relies on the results of a household telephone survey that closely reflects the administrative area of the Council only. It cannot, therefore, accurately consider the regional draw of The Mall/Cribbs Causeway area or consider retail spending patterns across the region and the overlapping spheres of influence of other centres, including Bristol, Bath, Weston-super-Mare, Newport, Cheltenham and Gloucester. It is clear that an assessment of future retail capacity and floorspace requirements at a regionally-significant destination should be undertaken at an appropriate scale and should not be limited by a survey that is closely related to one local authority boundary area.
- 3.9 It is noted that the evidence base prepared on behalf of the Council (Review of Additional Evidence Base on Retail and Town Centre Matters, RTP/HollissVincent, July 2011) considers the future of The Mall/Cribbs Causeway by reference to the lessons learnt from the Lakeside and Merry Hill regional shopping centres. In both

these cases an important distinction should be drawn: prior to their designation as a 'centre', both were the subject of detailed empirical analysis at an appropriate regional scale and their future was determined through reviews of the relevant Regional Strategies. Favourable comparisons should not be drawn in aid of the Mall/Cribbs Causeway case, where no comparable studies exist and where the extant RS does not support further expansion.

- 3.10 The approach taken by the Council to plan for the future of The Mall/Cribbs Causeway has been prompted by representations (and supporting documentation) prepared and submitted on behalf of the owners of The Mall. These representations are based on the results of an 'exit survey' of existing customers at The Mall and not a household survey of residents within the relevant catchment area. This exit survey is not robust for the purposes of modelling retail expenditure patterns across the region. The Council commissioned a review of these representations but has failed to undertake a sufficiently thorough assessment based upon a robust and credible evidence base.
- 3.11 It is also noted that the Council's own evidence base identifies capacity within the South Gloucestershire area as a whole for 34,000 sq m net comparison goods retail floorspace by 2026. The Council's approach set out within draft Policy CS14 instead proposes to plan for a total of 51,000 sq m net comparison goods floorspace. The Council therefore proposes to identify 50% more comparison goods floorspace than that recommended by their own retail consultants, which they seek to justify on the basis of retail expenditure drawn from beyond their administrative area. It is submitted that it is wholly inappropriate for the Core Strategy to adopt such an approach, particularly when neighbouring authorities either already have Core Strategies in place, or are well-advanced in their preparation.

Is the retail hierarchy well-founded and have the consequences of further expansion of The Mall/Cribbs Causeway area on local and regional shopping patterns been fully assessed?

- 3.12 For the reasons set out above and within the representations submitted previously, Bristol Alliance does not consider that the proposed identification of The Mall/Cribbs Causeway within the retail hierarchy is well-founded.
- 3.13 The consequences of the Council's unilateral approach to the future of The Mall/Cribbs Causeway will be to deter future growth and investment within policy-

compliant centres elsewhere within the sub-region. The Council's approach will encourage investment at The Mall/Cribbs Causeway to the detriment of other centres within the Council's own area and appears to be motivated solely on the basis that The Mall/Cribbs Causeway is the largest retail destination within the Council's area. The approach advocated in draft Policy CS14 will be to undermine the potential for future investment in other centres, including Yate and Thornbury, which are established centres serving the South Gloucestershire community.

3.14 The overlapping nature of catchment areas and the influence of retail destinations within the sub-region also requires a more strategic approach to be adopted. Bristol City Centre (and other centres within the sub-region) is likely to suffer significant adverse retail impact associated with proposals to increase retail floorspace at The Mall by c.38%. This is acknowledged by the Council's evidence base.

3.15 It is noted that no proper assessment of retail impact (based on empirical survey data) associated with proposed additional development has been undertaken. The evidence base that has been prepared notes that the expansion of The Mall/Cribbs Causeway indicates "*potentially harmful impacts on Bristol City Centre and Weston-super-Mare.*" (paragraph 5.11). Most significantly, the Council's consultants conclude that:

"...it is important that any expansion proposals beyond Option 1 [20,000 square metres] are accompanied by a full, cumulative, retail impact assessment that is supported by a fresh survey of retail patterns and an assessment of the vitality and viability of catchment area centres as part of the process for considering any subsequent planning application." (Our emphasis)

3.16 Ignoring this recommendation, the Council's approach is to provide for 35,000 square metres net additional comparison goods floorspace at The Mall/Cribbs Causeway and to identify the area as an 'emergent centre' through draft Policy CS14. Should the Policy be confirmed as currently proposed, future planning applications up to 35,000 square metres will be in accordance with an up to date development plan and will not therefore be required to be subject to further retail impact assessment or the sequential approach set out within NPPF. Bristol Alliance submits that this is wholly inappropriate and that the impact on other centres must be properly considered at this plan preparation stage.

3.17 Bristol Alliance (and other objectors and stakeholders, including Bristol City Council and Destination Bristol) is concerned that the approach proposed by the Council will serve to encourage investors and occupiers to consider The Mall/Cribbs

Causeway in preference to other, policy compliant, town and city locations within the established retail hierarchy.

Is the hierarchy and role of the various centres appropriately defined in policy CS14?

- 3.18 Bristol Alliance considers that the identification of town, district and local centres and parades within draft Policy CS14 is appropriate to their roles within the retail hierarchy. Bristol Alliance also considers that is appropriate for Policy CS14 to direct new investment in main town centre uses to the town and district centres identified.

Should The Mall/Cribbs Causeway be designated as a Sub-Regional Centre and what implications does this have for other retail locations both locally and regionally?

- 3.19 The Council propose, through the Post-Submission Changes document, to classify Cribbs Causeway as an 'emergent centre' to which investment in main town centre uses is to be directed. The definition of The Mall/Cribbs Causeway as an 'emergent centre' has no basis within NPPF, and 'emergent centre' is not a definition that should be taken forward as a means of encouraging further investment at an out-of-centre location. The implications of such an approach will be to encourage further investment to the detriment of established and policy-compliant retail centres within the South Gloucestershire area and the wider region.
- 3.20 Bristol Alliance considers that in the absence of an appropriate, robust or credible evidence base that considers fully the impact of further retail development at The Mall/Cribbs Causeway, it is wholly inappropriate for Policy CS14 to confer a positive policy status to an out-of-centre location.

Is the expansion of The Mall/Cribbs Causeway consistent with the principles set out in the Planning Framework?

- 3.21 Paragraph 23 of the NPPF provides clear guidance on setting policies that ensure the vitality and viability of town centres. The Council's approach to the designation of The Mall/Cribbs Causeway does not accord with this guidance and will lead to an out-of-centre facility becoming the focus for future retail development within the South Gloucestershire area. This approach will fail to promote centres that are the heart of a community and will lead to an out-of-centre location dominating future retail provision to the detriment of other more established centres.
- 3.22 It is further clear that the policy approach proposed to be adopted for The Mall/Cribbs Causeway will allow significant retail expansion at an existing out-of-centre location. In the absence of a robust and credible evidence base to support such an approach, policies within the Core Strategy should ensure that the future development of main town centre uses at The Mall/Cribbs Causeway is considered in accordance with the guidance contained within paragraphs 24 to 27 of the NPPF.
- 3.23 In addition, NPPF paragraph 156 identifies the 'strategic priorities' that should be included within Local Plans. These priorities include the provision of retail, leisure and other commercial development. Paragraph 157 confirms that plans should be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations. Paragraph 158 further confirms that local plans should be based on adequate, up to date and relevant evidence and that this should take account of relevant market and economic signals. This includes the need for retail development (paragraph 161).
- 3.24 For the reasons set out above, it is clear that the evidence prepared on the Council's behalf has failed to accord with this guidance.
- 3.25 Paragraphs 178-181 provide advice regarding the need to plan strategically across local boundaries. The future planning of The Mall/Cribbs Causeway is a 'strategic priority' (as identified by paragraph 156) and should clearly be subject to joint working between relevant local authorities and stakeholders, as advocated by this advice.
- 3.26 Representations by neighbouring authorities (BCC, N. Somerset, B&NES et al) serve to emphasise that this process has not adequately taken place. Other than engagement with the owners of the existing Mall, whose representations have led

to the significant change in policy approach now put forward at this late stage, there is no evidence that collaboration has taken place with other relevant stakeholders.

- 3.27 Bristol Alliance therefore considers that notwithstanding our submissions regarding the 'duty to co-operate', the draft Core Strategy has not been prepared in accordance with the requirements of NPPF. It is therefore considered that the policies relating to the future development of The Mall/Cribbs Causeway are not sound.

4. Conclusions and Modifications

- 4.1 Based on the submissions made within Section 2 and Appendix 2 of this Statement, Bristol Alliance does not consider that the approach to retail development at The Mall/Cribbs Causeway set out in the draft Core Strategy is legally compliant. It is submitted that the Council's duty to co-operate applies to both the preparation of development plan documents and activities that support the preparation of DPDs. In this case, the duty to co-operate therefore applies to the evidence base and the post-submission changes that have been put forward by the Council.
- 4.2 The issues relating to the duty to co-operate should be considered in context:
- The post submission changes to policies CS14 and CS26 and the associated reasoned justification seek to identify Cribbs Causeway as a centre performing a sub-regional role.
 - Those changes relate to strategic matters.
 - Under the current planning policy framework, such a designation would be made in the regional strategy.
 - The duty to co-operate has been introduced to ensure that proposals relating to strategic matters are the product of discussion and co-operation between local planning authorities.
 - The approach taken by the Council, to identify a sub-regional shopping centre in changes to a core strategy, whether or not in breach of the statutory requirements, runs counter to the approach required by legislative and planning policy.
 - Any decision that permitted the Council to make the proposed changes, whether as main modifications or otherwise, would undermine the policy objectives that inform the legislative framework and the NPPF.
- 4.3 It is also considered that the December 2011 Sustainability Appraisal is defective in that it does not identify, describe or evaluate the environmental effects that will occur if The Mall/Cribbs Causeway performs a role as a sub-regional centre.
- 4.4 Even if it is held that the duty to co-operate did not apply, it is still necessary for the Inspector to consider whether the Core Strategy is sound and consistent with national planning policy. For the reasons set out above, it is not considered that

the draft Core Strategy is consistent with NPPF paragraphs 23-27, 157-158, 161 and 178-181.

4.5 It is also necessary for the draft Core Strategy to be both justified and effective. This Statement demonstrates that the draft Core Strategy cannot be considered sound for the following reasons.

4.6 The draft Core Strategy is not **justified** in that:

- The document is not founded on a robust and credible evidence base, involving evidence of participation by others with an interest in the area;
- The document is not based on choices supported by factual evidence; and
- The Council has not adequately considered alternative strategies and has not undertaken an appropriate sustainability appraisal of these alternatives.

4.7 The draft Core Strategy is not **effective** in that:

- The draft Core Strategy is not effective in delivering sustainable economic growth in accordance with national planning policy or the policy approach in place in neighbouring local authorities.

4.8 The draft Core Strategy is not **consistent** with national planning policy and the Council has not provided *clear* and *convincing* reasons to justify their approach.

4.9 The deficiencies identified in these submissions can be overcome by:

- The Council withdrawing the proposed changes to CS14 and CS26 and the reasoned justification; or
- If the Council do not withdraw those changes, the inspector should not recommend main modifications that include the changes to CS14 and CS26 put forward by the Council.

4.10 If either course was followed the CS could be adopted.

Appendix 1 – Proposed Alternative Wording to Policy CS14

- 4.11 Set out below is Bristol Alliance's proposed revised wording of Policy CS14. This wording would address Bristol Alliance's objections to that policy. The proposed wording is based on that found within the Core Strategy Proposed Changes Version (December 2010). Further consequential changes will be required to Policy CS26 to ensure that it accurately reflects the strategy now proposed.

POLICY CS14 – TOWN CENTRES AND RETAIL	
The Council will work with partner organisations and the local community to protect and enhance the vitality and viability of existing and new centres in South Gloucestershire:	
<i>Centres</i>	<i>Role and Function</i>
Town Centres	
Bradley Stoke	New Town centre, serving Bradley Stoke and other communities in the North Fringe of Bristol
Emersons Green	Serves Emersons Green and rural area. Town centre. Opportunity for expansion to serve new housing.
Kingswood	Larger <u>High Street shopping and service</u> centre serving Kingswood and the wider area of the East Fringe of Bristol.
Thornbury	Market town serving Thornbury and wide rural area
Yate (including Station Road)	Market town serving Yate and wide rural area
Chipping Sodbury	<u>Market town</u> Serves the local community and wide rural area, and is complementary to Yate

Downend	Provides convenience shopping and services for Downend area <u>High Street shopping and service centre</u>
Filton	Provides e Convenience shopping and services centre for Filton area
Hanham	Provides convenience shopping and services for Hanham area <u>High Street shopping and service centre</u>
Staple Hill	Provides convenience shopping and services for Staple Hill area <u>High Street shopping and service centre</u>
District Centres	
Patchway (new)	New centre to be developed by extending the existing local centre to support Charlton Hayes development
Sainsbury's/B&Q, Stoke Gifford (new)	New centre to be investigated to serve the Stoke Gifford, Harry Stoke, UWE and Cheswick village area
Local Centres & Parades	
49 Centres/Parades (listed in Table.3)	Provide local level services
<p>New investment in main town centre uses (as defined in PPS4 <u>NPPF</u>) will be directed into the town and district centres, consistent with the scale and function of the centre, including making provision for 344,000 sq. m. net of new comparison <u>goods</u> floorspace by 20246. This provision will be identified in the Sites and Policies, <u>Sites and Places</u> Development Plan Document.</p> <p>Development in local centres/parades will be to meet local needs only, of a scale appropriate to the role and function of the centre/parade, and where it would not harm the vitality and viability of other centres.</p>	

This will be achieved by:

- Identifying in the ~~Sites and Policies~~, Sites and Places Development Plan Document centre boundaries, primary shopping areas, shopping frontages, and development opportunities in accessible locations within and on the edge of centres;
- Encouraging retail, commercial, leisure and cultural development within a centre of an appropriate type and scale commensurate with its current or future function;
- Safeguarding the retail character and function of centres by resisting developments that detract from their vitality and viability and protecting against the loss of retail units;
- Applying the sequential approach when considering proposals for new town centre uses not located within a designated centre;
- Requiring impact assessments for edge-of-centre and out-of-centre proposals with a floorspace over 1,000 sq. m gross;
- Encouraging convenient and accessible local shopping facilities to meet day to day needs of residents and contribute to social inclusion.

Shops and services, both in urban and rural areas, are also safeguarded from loss under Policy CS13 and policies in ~~PPS4~~ NPPF.

~~A future development strategy for Cribbs Causeway, including The Mall, will be prepared in line with the Plan's Spatial Strategy and Policy CS26. This may include the creation, and then designation, of a town centre to serve the proposed new communities. In the interim, p~~Proposals for all new floorspace at The Mall will be considered as out-of-centre development and assessed ~~considered~~ against relevant national policies, ~~the need for the development to maintain the vitality and viability of The Mall,~~ the needs of the growing nearby population, the potential impact on the vitality and viability of other centres and other policies in the Core Strategy.

Development proposals at the Cribbs Causeway and Longwell Green Retail Parks will be treated as out-of-centre locations and will need to satisfy the sequential test and not lead to significant adverse impact on existing centres. The future role of Abbey Wood Retail Park is being addressed under Policy CS25.

Appendix 2 – Procedural Issues

The Duty to Co-operate

Introduction

1. The Council has produced a document entitled “Duty to Co-operate” (SG17) in which they state (amongst other things):
 - a) Plan preparation had been completed prior to the enactment of section 110 of the Localism Act 2011 on 15th November 2011.
 - b) The post submission changes are suggestions made by the Council to the inspector as to main modifications he may wish to recommend.
 - c) The duty to co-operate does not apply to modifications.
2. The inspector has stated that “The CS was submitted before the legislative requirement came into effect and the duty to co-operate does not, therefore, apply in this instance to the South Gloucestershire Core Strategy”¹.
3. The Bristol Alliance’s position is as follows:
 - a) The duty to co-operate applies to:
 - i) “the preparation of development plan documents” (Section 33A(3)(a) Planning and Compulsory Purchase Act 2004 (“PCPA 2004”))
 - ii) “activities that support activities within any of paragraphs (a) to (c)” (Section 33A(3)(e))
 - b) The duty to co-operate applies “so far as relating to a strategic matter” (Section 33A(3)).
 - c) The term “strategic matter” is defined in section 33A(4)(a) as:

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with

¹ Inspector’s Guidance Note for Participants paragraph 7.6; PA 12

infrastructure that is strategic and has or would have a significant impact on at least two planning areas,

- d) The duty to co-operate applies to the post submission changes put forward by the Council as they fall within either paragraph (a) or (e) of section 33A(3).
- e) The proposal (in CS14) to identify Cribbs Causeway as an emergent centre with a sub regional role, and to identify a requirement for floorspace to meet need arising outside the Council's area, together with the reference to working towards designation of a sub-regional centre in paragraph 9.26 and policy CS26 all relate to strategic matters as they contemplate development that would have a significant impact on at least two planning areas.
- f) The Council has not fulfilled the duty to co-operate and therefore it is not open to the inspector to recommend main modifications.
- g) Alternatively, in the event that the Council's argument that the duty to co-operate does not apply is accepted, the plan is not sound for the following reasons (in addition to those relating to retail impact) as:
 - i) The changes which are subject to objection were proposed after the duty to co-operate applied.
 - ii) The changes are not consistent with national policy relating to retail development
 - iii) The LPA has failed to demonstrate evidence of having effectively co-operated, contrary to the policy set out in paragraph 181 of the NPPF.

The Duty to Co-operate

4. The duty to co-operate is imposed by section 33A of the PCPA 2004.
5. Section 33A came into effect on enactment of section 110 of the Localism Act 2011, on 15th November 2011.
6. The duty to co-operate has been introduced to ensure that, in a planning system which has no regional strategies, local planning authorities co-operate in relation to strategic matters. Under the planning system which included regional strategies, sub-regional shopping centres would have been identified in the regional strategy.

7. The importance given to the duty to co-operate is reflected in the fact that:
 - a) One of the purposes of independent examination is to determine whether the local planning authority have complied with any duty imposed by section 33A in relation to the preparation of the plan (Section 20(5)(c) PCPA 2004).
 - b) If there has been a failure to comply with the duty it is not open to an inspector to recommend main modifications (Section 20(7B)(b) PCPA 2004).
8. The duty to co-operate applies in relation to the activities specified in section 33A(3). Those activities include:
 - a) The preparation of development plan documents (section 33A(3)(a) PCPA 2004); and
 - b) Activities that support activities within any of paragraphs (a) to (c) of section 33A(3) (section 33A(3)(e) PCPA 2004).

The issues in dispute between the Bristol Alliance and the LPA

9. The LPA contend that “The duty to co-operate does not apply to the suggested modifications and they do not form part of the plan preparation which is the section 19 stage of the process prior to submission and is described as such in the legislation.”²
10. It is submitted on behalf of the Bristol Alliance that:
 - a) The Post Submission Changes do form part of the preparation of the DPD.
 - b) In the alternative, the Post Submission Changes comprise activities that support the preparation of the DPD.
 - c) The duty to co-operate applies.

² SG17 paragraph 8

The Bristol Alliance's submissions on Issues of Fact

11. The proposal (in CS14) to identify Cribbs Causeway as an emergent centre with a sub regional role, and to identify a requirement for floorspace to meet need arising outside the Council's area, together with the reference to working towards designation of a sub-regional centre in paragraph 9.26 and policy CS26 all relate to strategic matters as they contemplate development that would have a significant impact on at least two planning areas.
12. The LPA have not engaged, constructively, actively and on an ongoing basis with neighbouring planning authorities, and in particular with Bristol City Council in relation to the preparation of the post submission changes to policies CS14 and CS26 and their reasoned justification.

Bristol Alliance's submissions on whether the duty to co-operate applies

The status of the Post Submission Changes

13. There is no provision in the PCPA 2004 or the Town and Country Planning (Local Planning) (England) Regulations 2012 (or the Town and Country Planning (Local Development) (England) Regulations 2004) which contemplates post submission changes.
14. The LPA invite the inspector to treat the post submission changes as being suggestions as to the modifications he may wish to recommend³.
15. The inspector's power to recommend main modifications (at the request of a local planning authority) only arises if the inspector considers that, in all the circumstances it would be reasonable to conclude that the local planning authority had complied with the duty to co-operate⁴.
16. The effect of the LPA introducing proposals relating to strategic matters at the post submission change has led to the following consequences:
 - a) The plan which is being subjected to examination includes substantial changes, including identification of an emergent sub-regional shopping centre (a strategic matter), which did not form part of the submission

³ SG17, LPA's Note on the Duty to Co-operate– paragraph 7

⁴ Section 20(7B) PCPA 2004

version of the plan, and in respect of which the LPA have not engaged with other local planning authorities and the prescribed bodies.

- b) If the plan incorporating proposed changes had been submitted in December 2011, there can be no doubt that it would have been subject to the duty to co-operate and that an inspector would have found that the duty had not been fulfilled.
- c) By adding “post submission changes” after the enactment of the Localism Act 2011 (on 15th November 2011), and by now submitting that the duty to co-operate does not apply, the LPA are pursuing a course of action which undermines the legislative objectives of section 33A of the PCPA 2004.

Does the duty to co-operate apply?

- 17. 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
 - a) Falls within section 33A(3)(a), being the preparation of development plan documents; or
 - b) Falls within section 33A(3)(e) as an activity which supports the preparation of a development plan document.
- 18. It is submitted that the examination of the DPD forms part of the preparation of the DPD as:
 - a) 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.
 - b) 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.
 - c) Preparation of a DPD is not complete until adoption.
 - d) 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.

19. 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.
 - a) Section 33A(3)(d) refers to activities which prepare the way for preparation of a DPD.
 - b) 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.
 - c) 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.

Soundness

20. Even if, contrary to the submissions made on behalf of the Bristol Alliance, the inspector held that the duty to co-operate did not apply, it would still be necessary to consider whether the DPD was sound.
21. When considering whether the plan is sound, consistency with national policy should be considered (paragraph 182 of the NPPF).
22. At paragraph 181 of the NPPF it is stated that LPA’s will be expected to demonstrate evidence of having effectively co-operated to plan for issues with cross-boundary impacts when their plans are submitted for examination.
23. This DPD is not sound as the LPA have not demonstrated effective co-operation with neighbouring authorities on the changes proposed to policies CS14 and CS26.

Conclusions

24. The duty to co-operate applies to the DPD as proposed to be changed.
25. The LPA have not fulfilled that duty.

26. If the LPA continue to promote the post submission changes the inspector will have to find that the duty to co-operate has not been fulfilled and will have to recommend non-adoption (section 20(7A) PCPA 2004).
27. It would be open to the LPA to withdraw its invitation to the inspector to recommend modifications to policies CS14 and CS26, and if they do so, the legal impediment to adoption of the plan which is identified in these submissions will be removed.

Main Modifications

28. The power to recommend main modifications only arises when:
 - a) The conditions set out at section 20(7B) of the PCPA 2004 are satisfied; and
 - b) The local planning authority asks the inspector to recommend main modifications.
29. Section 20(7B) provides:

(7B) Subsection (7C) applies where the person appointed to carry out the examination—

(a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.
30. The legislative scheme contemplates that a local planning authority will request an inspector to make main modifications following findings that the plan is unsound, and that the duty to co-operate has been fulfilled.

31. In this case the Council has proposed changes, which it considers should be treated as main modifications⁵, before the inspector has made findings as to soundness and the duty to co-operate.
32. The main modifications proposed cannot be recommended by the inspector as the condition in section 20(7B)(b) PCPA 2004 has not been fulfilled.
33. The process followed by the Council:
 - a) Does not follow the legislative scheme;
 - b) Seeks to introduce changes to the plan which relate to strategic matters (as defined in section 33A(4) PCPA 2004);
 - c) Seeks to introduce those changes after the duty to co-operate came into effect, by means not contemplated by the legislative scheme, and which could not be recommended by an inspector as a main modification.

Strategic Environmental Assessment and Sustainability Appraisal

34. In his letter dated 15th August 2011 the inspector identified the need to undertake revisions to the SA as a result of the further work which was to be carried out following the inspector's expression of views in that letter (see paragraph 23(e)).
35. The duties:
 - a. *Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004:*

12.— Preparation of environmental report
(1) Where an environmental assessment is required by any provision of [Part 2](#) of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—
 - (a) implementing the plan or programme; and*
 - (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.*

⁵ See SG17 paragraph 7

(3) The report shall include such of the information referred to in [Schedule 2](#) to these Regulations as may reasonably be required, taking account of–

(a) current knowledge and methods of assessment;

(b) the contents and level of detail in the plan or programme;

(c) the stage of the plan or programme in the decision-making process; and

(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in [Schedule 2](#) may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.

36. At paragraph 5.71 of the December 2011 Sustainability Appraisal it is stated that “In the longer term Cribbs Causeway will perform a new wider sub-regional role”:

- a) The environmental report is required to identify, describe and evaluate the likely significant effects on the environment of implementing the plan or programme.
- b) The environmental report is defective as it does not identify, describe and evaluate the environmental effects which are likely to occur if Cribbs Causeway performs a role as sub-regional centre.

