

IN14 Supplementary Questions relating to matters 1 to 5: legal, procedural and other general matters, and the Plan's spatial strategy

Matter 1: legal, procedural and other general matters

Issue 1.1: Was the Plan prepared in accordance with relevant legal requirements?

Withdrawal of Stockport Metropolitan Borough Council from the Plan

A legal opinion in response to the following questions is requested from GMCA in order to inform our consideration of this issue and the discussion at the hearing session on 1 November 2022:

SQ1.1. (a) Does regulation 32(2)(b) require consideration of whether the Plan has substantially the same effect on each of the 9 local planning authorities individually rather than, or as well as, the plan area as a whole and the 9 authorities collectively? (b) If we decide that the Plan needs to be modified, would we need to consider whether the modified Plan has substantially the same effect as GMSF 2020, or did the requirement cease to apply when the Plan was submitted for examination? (c) If we decide that the Plan does not have substantially the same effect as GMSF 2020 on the areas of the 9 local planning authorities, what would be the implications for the examination? Would it be a legal and/or soundness failing that could be rectified during the examination in some way?

- 1.1 The response to SQ1.1 which follows has been drafted by Christopher Katkowski KC, leading counsel acting for the GMCA in relation to the Examination of the PfE Joint DPD and constitutes the legal opinion requested by the Inspectors in IN14.

Introduction:

- 1.2 The effect of section 28 (1), (6) and (7) of the Planning and Compulsory Purchase Act 2004 when read together with Regulation 32 (2) and (3) of the Town and Country Planning (Local Planning) (England) Regulations 2012 in relation to the PfE Joint DPD was to allow PfE 2021 to be published under Regulation 19 of the 2012 Regulations and thereafter submitted for independent examination without the 9 local planning authorities who are parties to PfE having to re-take any prior procedural steps. They could carry on rather than having to start all over again.
- 1.3 These provisions apply in circumstances where PfE 2021 “with respect to the areas of” the 9 [PfE] authorities “has substantially the same effect” as the GMSF 2020 did on these 9 authorities.

- 1.4 The words “substantially the same effect” found in Regulation 32 (2) are not defined and so are to be taken as words used in their ordinary, normal, way, and so “substantially” should be read as meaning “for the most part; essentially” (OED).
- 1.5 The decision of the Places for Everyone Joint Committee, comprising representatives of each of the 9 authorities, that PfE 2021 has substantially the same effect on the authorities as the GMSF 2020 did, and to recommend to the 9 authorities that they approve PfE 2021 for publication and thereafter submit it for independent examination was made on 20 July 2021. Each of the 9 authorities decided between 20 July 2021 and 28 July 2021 to publish under Regulation 19 and thereafter submit for independent examination, with the exception of Manchester City Council whose decision to submit PfE 2021 for independent examination was made on 6 October 2021.
- 1.6 The legal effect of a decision made by a public authority (here, by the 9 local planning authorities to publish under Regulation 19 and thereafter to submit for independent examination) is that it (here the decision to take procedural steps in relation to a joint local plan) is conclusively presumed to be legally valid unless and until ruled otherwise by a court of law.
- 1.7 In any such legal challenge the court would have considered whether it was open to the authorities to decide as they did (was it perverse of them to do so) and not whether the court thought the authorities were right to make the decision they did.
- 1.8 The time for any legal challenge by way of judicial review to the decisions in question has long since expired. No such legal challenge was brought. This means that the decision to publish and to submit PfE 2021 must be treated as legally valid.
- 1.9 It is not open to the Inspectors to reconsider the judgment-call made by the 9 authorities that PfE 2021 has substantially the same effect on them as the GMSF 2020 did on them. This judgment was for the 9 authorities to make. Even the courts would not have considered the merits of the decision.
- 1.10 The role of the Inspectors is defined in section 20 (5) of the 2004 Act, s.20(5)(a) in particular for the point in hand. The consideration of the decision to publish and thereafter to submit a Joint Local Plan on the basis that it has substantially the same effect as the previous iteration does not fall within the “purpose of an independent examination” as defined in section 20(5). This makes good sense as the decision in question was for the plan-making authorities and depended upon a judgment-call (whether of “substantially the same effect”) which it fell to them to make.
- 1.11 In straightforward terms, what has been done cannot now be questioned.

SQ1.1(a)

- 1.12 Given what has been said above the answer to this question is of academic interest only. The answer is that the judgment-call was whether PfE i.e. the Plan as a whole had for the most part the same effect on the 9 remaining authorities collectively as the GMSF did on them collectively. However, the question whether PfE did or didn't have this effect could perfectly well be arrived at by each authority asking whether its particular administrative area was for the most part affected the same by PfE as by the GMSF because if so it necessarily must be the case that the effect collectively is for the most part the same.

SQ1.1(b)

- 1.13 The Inspectors would not need to consider whether PfE with any main modifications they decide to recommend would have substantially the same effect as the GMSF 2020 as the issue which arose under section 28 and Regulation 32 has been and gone and concerned whether the 9 authorities were legally able to publish and thereafter submit PfE.

SQ1.1(c)

- 1.14 On the basis of what is set out in the Introduction above, the decision referred to cannot arise. There is no question of a "legal failing" as the decision made by the 9 authorities as a matter of law is conclusively presumed to be legally valid and the point does not fall within the remit of the examination as defined in section 20(5). In addition, and unsurprisingly, the point has nothing to do with whether PfE is "sound" as defined in NPPF paragraph 35.

Superseded policies in existing local plans

SQ1.7. (a) Which local planning authorities with safeguarded land / protected open land would be without a development plan policy relating to such land if policy JP-G11 and Appendix A were modified as proposed? (b) What would be the implications for development management in those districts?

- 1.15 No local planning authorities with safeguarded land / protected open land would be without a development plan policy relating to such land if policy JP-G11 and Appendix A were modified as proposed.
- 1.16 Whilst Policy CP8 'Green Belt and Safeguarded Land' of the Wigan Local Plan Core Strategy will be superseded by the Places for Everyone Plan, Wigan will not be left without a policy relating to safeguarded land if Policy JP-G11 and Appendix A were modified as proposed. Policy GB2 'Safeguarded Land' of the [2006 Wigan Replacement Unitary Development Plan](#) still forms part of the development plan for Wigan Borough and is not proposed to be superseded by the PfE Plan. Policy GB2 designates safeguarded land in the borough and provides a policy framework to manage its future release.

Plan period

SQ1.12. What modifications would be required to the Plan, including to the policies relating to the need for and supply of land for new homes and for industrial and warehouse development, if the plan period were extended to (a) 2038; (b) 2040; and (c) 2042?

SQ1.12 will be responded to by midday on Wednesday 26 October 2022, the deadline set by the inspectors for responding to this question.

Issue 1.2: Is the role of the Plan, and its proposed relationship with local plans and neighbourhood plans, legally compliant and consistent with national policy?

Relationship with local plans and neighbourhood plans

SQ1.9. Would the proposed main modification set out a clear framework for local plans in terms of the approach to considering development outside the existing urban area (including on land that is currently designated as safeguarded land, protected open land or Green Belt) if the evidence available at the time the local plan was being prepared indicates that objectively assessed needs for housing or other uses cannot be met within the urban area?

PfE Response

- 1.17 The PfE response to Q1.9 provided some clarity in respect of the relationship with local plans and neighbourhood plans. In particular the proposed modifications to paragraphs 1.26, 1.57 and 1.58 make it clear the status of the PfE plan and the fact that it will set specific targets to be taken forward in local plans.
- 1.18 As explained in the PfE responses to IN5 any reference to the selective release of Green Belt is purely about the allocations in the Plan. As such, it is not intended that local plans would be expected to release any further protected land outside the urban area to meet their needs identified within this plan. Should that be the case, however, any such proposal would be subject to the requirements set out in national policy, including as appropriate, that around exceptional circumstances.
- 1.19 The proposed modification to paragraph 11.2 was intended to offer clarity as to the role of district local plans in relation to allocating land from the district's existing land supply in meeting the spatial strategy and distribution of development set out in the PfE plan. It is, however, considered that a degree of ambiguity could still exist in relation to this, particularly if the evidence available at the time a local plan was being prepared indicates that the districts needs for housing and/or other uses cannot be met within the urban area.

- 1.20 Consequently, it is proposed to replace the main modification, set out in the PfE response to Q1.9, with the following main modification, to ensure that a clear framework is provided for local plans in terms of the approach to considering development both within and outside the existing urban area within individual local plans following the adoption of the PfE Plan.
- 1.21 Proposed Main Modification to paragraph 11.2:
The majority of the development required to deliver this Plan's spatial strategy will be within the existing urban area. Figure 11.1 'Existing land identified for office, industrial/warehousing and housing development 2020' shows the existing land identified for office, industrial and housing development through our land availability assessments. This land supply is updated annually and includes the identification of suitable brownfield sites and where appropriate the optimisation of density ratios, in line with the overall strategy. As appropriate, district Local Plans will allocate sites from this supply.

New paragraph

As appropriate, district Local Plans will allocate sites from this supply reflecting the spatial strategy and the distribution set out in tables 6.1, 6.2 and 7.2, to ensure that objectively assessed needs for housing and other uses can be met. In the event that it proves necessary to look to land beyond the existing supply, as updated, national planning policy would apply including in the case of the Green Belt the requirement for exceptional circumstances.

Matter 4: Green Belt

Issue 4.1 Were all reasonable options for meeting the identified need for housing and employment development on land that is not in the Green Belt fully examined

Land within existing urban areas

SQ4.1. Has updated information about the existing supply of housing and/or employment land, and completions since 2020, in each district been published relating to (a) 2021 and (b) 2022? If so, please provide updated versions of Tables 6.1, 6.2 and 7.1 to reflect the most up to date, comprehensive information available.

- 1.22 Yes, updated land supply information, about the existing supply of housing and employment land for each PfE district has been published relating to both 2021 and 2022. It has been published on [MappingGM - GMODIN](#). Tables 6.1, 6.2 and 7.1 have been updated to reflect the most up to date, comprehensive information available (2022), see below. Housing and employment land completions for 2021/22 have been collated by districts as part of the regular annual updates.

Table SQ4.1A: Table 6.1 Office land supply 2021-2037

District	Existing Supply 2022-2037 (sqm floorspace)			Places for Everyone Allocations (sqm floorspace) ¹	2021/22 Completions	Total 2021-2037
	Brownfield	Greenfield	Mixed			
Bolton	56,780	3,447	10,512	-	423	71,162
Bury	1,177	-	-	-	107	1,284
Manchester	1,750,965	128,484	3,306	21,500	63,535	1,967,790
Oldham	67,093	-	14,905	-	361	82,359
Rochdale	19,753	81,249	-	-	856	101,858
Salford	309,102	-	-	-	37	309,139
Tameside	16,317	570	-	-	960	17,847
Trafford	187,034	15,000	-	-	2,905	204,939
Wigan	-	2,055	-	-	0	2,055
Places for Everyone	2,408,221	230,805	28,723	21,500	69,184	2,758,433

¹ Excluding floorspace identified in baseline supply or anticipated to be delivered post-2037.

Table SQ4.1B: Table 6.2 Industry and warehousing land supply 2021-2037

District	Existing Supply 2022-2037 (sqm floorspace)			Places for Everyone Allocations (sqm floorspace) ²	2021/22 Completions	Total 2021-2037
	Brownfield	Greenfield	Mixed			
Bolton	195,913	115,295	8,653	386,000	55,817	761,678
Bury	10,725	6,859	-	491,000	-	508,584
Manchester	37,838	12,855	-	25,000	83,663	159,356
Oldham	83,171	-	59,031	136,720	385	279,307
Rochdale	137,572	203,311	-	244,000	3,838	588,721
Salford	224,862	3,454	-	320,000	5,143	553,459
Tameside	59,867	52,489	1,716	160,000	14,617	288,689
Trafford	414,439	-	26,115	92,160	33,616	566,330
Wigan	67,041	277,605	33,117	60,500	455	438,718
Places for Everyone	1,231,428	671,868	128,632	1,915,380	197,534	4,144,842

² Excluding floorspace identified in baseline supply or anticipated to be delivered post-2037.

Table SQ4.1C: Table 7.1 Sources of housing land supply 2021 to 2037

District	Strategic Housing Land Availability Assessment			Allowances ³	Places for Everyone Allocations 2022-2037 ⁴	2021/22 Completions	2021-2037 Land Supply
	Brownfield land	Greenfield land	Mix brownfield land and greenfield land				
Bolton	9,786	2,729	0	1,116	0	561	14,192
Bury	3,486	566	360	282	3,450 ⁵	289	8,433
Manchester	48,920	2,830	9,837	518	0	3,959	66,064
Oldham	7,415	1,228	1,262	765	1,868	506	13,044
Rochdale	5,503	2,291	574	-780	4,006	553	12,147
Salford	29,246	2,040	1,229	1,583	1,500	2,818	38,416
Tameside	4,940	714	455	466	1,630	419	8,624
Trafford	13,516	2,145	825	237	3,926	501	21,150
Wigan	10,578	5,333	172	620	1,600	1,333	19,636
Places for Everyone	133,390	19,876	14,714	4,807	17,980	10,939	201,706

³ The allowances have been updated to reflect the latest data on small sites average past completions and identified supply. The small sites windfall allowances are now applied from 2027 onwards instead of 2026. The allowances for Trafford now include a deduction for demolitions as their SHLAA land supply is now gross rather than net.

⁴ Excluding homes completed or identified in existing land supply and homes anticipated to be delivered post-2037.

⁵ Excludes JPA9: Walshaw in view of the main modification proposal in [M17.1](#) in response to Issue 17.3 to remove this 1,250 home allocation from the Plan.

Matter 5 Key Diagram and policies JP-Strat1 to JP-Strat11

Issue 5.3 Is the purpose and nature of policies JP-Strat1 to JP-Strat11 clear such that they will be effective?

SQ5.3. How, if at all, should the Plan be modified to clarify the intended purposes of policies JP-Strat1 to JP-Strat11 as described above?

PfE Response

- 1.23 The revised PfE response to PQ47 published on 27 May 2022, states that the purposes of policies JP-Strat1 to JP-Strat11 are to provide (a) strategic justification for the site allocations in chapter 11 of the Plan and (b) a strategic framework for local plans, but not to set out specific requirements to be taken forward in local plans or inform the preparation and determination of planning applications.
- 1.24 In order to clarify the status of these policies, it is proposed that a Main Modification should be made to the introductory section of Chapter 4, with the inclusion of a new paragraph after paragraph 4.22 as follows:

The Policies within this Chapter establish the overall spatial strategy for the Plan. In addition, Policies JP-Strat1 to JP-Strat11 provide a strategic framework for local plans.
