

Part C: Representation

(Please fill a separate sheet for each representation you wish to make)

Q1. To which part of the document does this response relate?

Title of document	SA of the Dudley Local Plan: Regulation 19 SA Report		
Paragraph/section	5.3	Policy	
Site		Policy Map	

Responses can address any of the Supporting Documents and Evidence by relating them to the resulting paragraph, policy or site in the Dudley Local Plan.

Q2. Do you consider the Local Plan is:

- | | | |
|---|------------------------------|--|
| 1. Legally compliant | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Sound | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Complies with the Duty to co-operate | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

(Mark as appropriate)

Please refer to our guidance notes for help with the above definitions - 1 to 3.

Q3. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Please see enclosed response.

Continue on a separate sheet if necessary.

For official use only

Respondent No:		Representation No:		Date received:	
----------------	--	--------------------	--	----------------	--

Q4. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at Q3. above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Please see enclosed response.

Continue on a separate sheet if necessary.

Please note: *In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.*

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

For official use only

Respondent No:		Representation No:		Date received:	
----------------	--	--------------------	--	----------------	--

Q5. If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing session(s)?

No, I do not wish to participate in hearing session(s)

Yes, I wish to participate in hearing session(s)

Please note, that while this will provide an initial indication of your wish to participate in hearing session(s), you may be asked at a later point to confirm your request to participate.

Q6. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

St Modwen Homes are keen to participate in the hearing sessions for the Local Plan examination to contribute positively to the area's growth and sustainability ambitions. St Modwen Homes contend that engaging in these sessions will provide benefits, namely to collaborate with other stakeholders to achieve a sound and justified Local Plan.

Please note, the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.

Representations cannot be kept confidential and will be available for public scrutiny, including your name and/or organisation (if applicable). However, your contact details will not be published.

Completed representations forms can be submitted by emailing: planning.policy@dudley.gov.uk

Please enter **Dudley Local Plan Representation** in the subject field of the email.

Alternatively, completed consultation forms can also be submitted by post to: **Planning Policy, Planning Services, Dudley Council, Council House, Priory Road, Dudley DY1 1HF by 5pm 29 November 2024.**

For official use only

Respondent No:		Representation No:		Date received:	
----------------	--	--------------------	--	----------------	--

Sustainability Appraisal of the Dudley Local Plan: Regulation 19 SA Report Response by RPS on behalf of St Modwen Homes

Housing spatial growth options

As stated in the response from to DLP1, St Modwen Homes objects to the development strategy on the basis that it fails to seek to provide a sufficient quantum of housing in the plan period, especially in the context of the draft NPPF 2024 which sets out a clear signal of intent for Local Plans already at Regulation 19 stage. The approach by the Council will leave a significant shortfall of between c.13,000 to c.20,000 dwellings. The DLP fails to provide sufficient land to meet the minimum housing needs, as per NPPF paragraph 11(b), and will need to ensure that additional housing land is provided through Green Belt release. The Council previously accepted through the Black Country Plan that not all of its development needs could be met through brownfield sites in the urban area and accepted that Green Belt release was required.

The DLP approach through DLP1 is flawed. The Sustainability Appraisal fails to take into account the reasonable alternatives for housing growth and therefore would not be justified as per NPPF paragraph 35(b). Therefore, draft Policy DLP1 is unsound.

Chapter 5 of the ‘Sustainability Appraisal of the Dudley Local Plan: Regulation 19 SA Report’ (Lepus Consulting, September 2024) (‘the SA’) sets out the various housing growth options assessed in sustainability terms. Table 5.1 of the SA outlines the three housing options subjected to the appraisal, as replicated below.

Table 1 Sustainability Appraisal of Housing Options (summary of Table 5.1 of the SA, September 2024)

Option	Description of Option
Option 1	Urban area alone – “brownfield first” strategy Shortfall in housing supply
Option 2	Urban area uplift in regeneration corridors and centres Potential shortfall in housing supply
Option 3	Majority urban area uplift in regeneration corridors and centres, with smaller areas of low-quality open space, plus DtC contributions. Requires contributions from DtC partners to eliminate shortfall in housing supply.

The preferred approach of the Council is set out at para 5.3.10 which states “Option 3 – selected – would address housing need through a balanced spatial approach.” Therefore, the DLP’s strategy is one proposed to be most closely aligned with Option 3.

There is seemingly no rationale for the three housing options appraised, other than that they “have been identified through consultation and close working with stakeholders, considering the most recent stakeholder comments received in response to the Regulation 18 DLP consultation and the use of the Council’s supporting evidence base document ‘Options to the Preferred Strategy’.” (para 5.2.2) Notwithstanding this, the DLP’s approach is flawed.

Firstly, the preferred option, option 3, is effectively a duplication of Option 2, especially if the potential (and unconfirmed) contributions to Dudley (table 4.2 of the Duty to Co-operate Statement, October 2024) do not ultimately get agreed or confirmed. The result would be greater shortfall in housing supply. Option 3 is somewhat disingenuous as it refers to meeting its housing requirement whilst proposing an element to be

exported out of the Borough. Also in this respect, the PPG¹ confirms that the reasonable alternatives are to be identified “taking into account the objectives and the geographical scope of the plan or programme”. Consequently, it is not within the remit or scope of the SA to appraise the sustainability credentials of exporting housing growth outside of the administrative area of the Dudley Borough. Indeed the SA confirms: “The high-level assessment of housing growth is limited, as the options relate to broad distribution of housing within the borough and a proportion to be exported through DtC, resulting in uncertain impacts being identified for some SA Objectives”. Which the Council are obviously used to given the previous working together of the Black Country Authorities under the preparation of the Black Country Plan.

This option should therefore be removed, and the SA be amended to clarify that the growth options presented by the Council are therefore Option(s) one or two. However, and fundamentally the distinction between Options one, two (and three) are all too narrow. Whilst the four separate housing quantum options are not set out in order to illustrate the proportional difference, it can be estimated that Option 1 would be create a shortfall of 699 homes, in addition to the removal of the centres uplift of 164 dwellings.

Given the draft NPPF 2024 will result in a clearly significant distinction from the appraised options and its sustainability implications. In this regard, the “Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in the plan. They need to be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made.”

By omitting a growth option that aligns more closely with the likely growth required under the draft NPPF 2024, for example an option with a range of between 23,698 (1,394 dwellings per annum x 17 years) and 27,098 (1,594 dwellings per annum x 17 years). The DLP has artificially omitted a reasonable and realistic alternative which is highly likely to become the position required to be undertaken once confirmed in the next couple of months. This approach would be more positive and less negative in sustainability impacts, whilst still meeting the objectives of the DLP.

In this respect, whilst R (Friends of the Earth) v Welsh Ministers [2015]¹⁸ confirms it is for the plan-making body to identify the reasonable alternatives, Hickinbottom J sets out:

“Article 5(1) refers to “reasonable alternatives taking into account the objectives... of the plan or programme...” (emphasis added). “Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”.” (paragraph 88)

Consequently, the SA as currently prepared is unsound as the DLP has failed to identify and test the sustainability implications of a growth option within a range of between 11,169 and 27,098 dwellings as a reasonable alternative. For this reason, Draft Policy DLP1 is unsound as it conflicts with NPPF paragraphs 32 and 35(c).

Duty to Cooperate

As set out at para 4.6 of the ‘Spatial Strategy Development: Supporting Evidence Base’ (October 2024) document sets out how the DLP intends to export the 699 shortfall elsewhere in the Greater Birmingham and Black Country Housing Market Area (“GBBCHMA”) through the Duty to Cooperate. Consequently, Dudley Council has published a Duty to Cooperate Statement (October 2023) setting out how it assumes the shortfall will be addressed elsewhere through the individual local plans of counterpart HMA authorities.

Whilst Dudley Council considers it is managing the requirements of the Duty through the plan preparation process, it nonetheless confirms that “At the time of preparing the Dudley Local Plan Publication Plan

¹ PPG ID: 11-019-20140306

(Regulation 19), the four Black Country Authorities have been working on an approach to determine how contributions received from neighbouring local authorities could be apportioned between the Black Country authorities. The potential contribution towards meeting Dudley's unmet need is indicated in the table above. This approach is subject to all the Black Country Authorities agreement via a Statement of Common Ground which is currently being progressed."

Firstly, in the absence of any signed statements of common ground, RPS disagrees that the DLP is fulfilling the Duty requirements. NPPF paragraph 35(c) confirms that plans are sound if they are "based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground".

The PPG² confirms that the preparation of statements of common ground with neighbouring authorities will contribute to demonstrating whether the duty has been met:

"How will the duty to cooperate be considered at local plan examination?"

The local plan examination will first assess whether a local planning authority has complied with the duty to cooperate and other legal requirements. The Inspector will use all available evidence including statements of common ground, Authority Monitoring Reports, and other submitted evidence (such as the statement of compliance prescribed by Planning Inspectorate's examination procedure guidance) to determine whether the duty has been satisfied." [Emphasis added]

The absence of any SoCG at this stage reinforces the apparent issues between the four Black Country Authorities and its counterpart HMA authorities as it is clear there remains a number of areas of disagreement. As later set out, it is noted that the BCA has identified several areas of disagreement with Solihull within their joint 'Statement of Common Ground between Solihull MBC and the Black Country Authorities' (April 2021), underpinning the examination into the Solihull Local Plan. The Black Country Authorities also objected to the site selection process underpinning the Solihull Local Plan through its response to Matter 3 (The housing requirement/overall housing provision).

Given that the Black Country Authorities recognise that the contributions from some authorities "would need to be attributed to meeting the needs of Birmingham" (paragraph 2.23), it is wholly inappropriate to 'bank' an unknown portion of the contribution as being attributed solely to Dudley. This is the case for South Staffordshire, Cannock Chase and Solihull who have each not specified to whom their contributions are attributed.

In this context, NPPF paragraph 35(c) requires that cross-boundary strategic matters are "dealt with rather than deferred" and, at this stage of the BCP plan-making process, it is fundamentally unclear how the residual shortfall will be met. The DLP should therefore seek to ensure that the housing supply within its administrative areas is truly maximised prior to being exported to other areas. This consequently points to the need for the Black Country Authorities to identify an understanding of the functional relationship between itself and the HMA constituent authorities, and to assess the likely effect of jobs-based growth within the Black Country upon demand for new housing.

As set out later in these representations, the BCA will be required to identify and release additional land from the Green Belt for housing. To align with the spatial recommendations of the GBHMA Strategic Growth Study, the BCP should allocate land at Uffmoor, Dudley.

² PPG ID: 61-031-20190315