South Oxfordshire and Vale of White Horse
Joint Local Plan 2041

LPA38A

LPA 38A – Explanatory Note

As part of the process of seeking to come to agreement on a Statement of Common Ground (ahead of the hearings) there was a chain of correspondence between the authorities legal teams. Those letters are included in the examination library as part of the City Council's written statement for the hearing (WS1/22). The last letter in that chain was not included due to the timing. This letter is LPA38A and is being included in the Examination Library for completeness as it is referred to in the Chronology within the SoCG.

The parties are agreed that the legal commentary in those letters must now be read in the context of the agreed Legal Principles in the SoCG and are agreed that, to the extent there are inconsistencies, it is the SoCG document that is the agreed position.

Law, Governance & Strategy

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OXFORD CITY COUNCIL

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23 May 2025

Your ref: VW/10399

Email: [redacted]

Dear Vivien

Re: Draft Bilateral Statement of Common Ground for South Oxfordshire and Vale of White Horse Joint Local Plan 2041

Draft Bilateral Statement of Common Ground for South Oxfordshire and Vale of White Horse Joint Local Plan 2014

Thank you for your letter dated 6 May 2025 in response to my letter of 14 April 2025.

I note that you seek to portray the differences between our two Councils as being "*fundamental disagreements…on matters of law".* However, proper analysis of our respective positions shows that the differences on matters of law are not great and where they do exist, the authorities support Oxford City Council's position.

The reality is, as the Council will explain at the examination hearings, the decision on whether your Councils have discharged the duty to cooperate in preparing the Joint Local Plan is not sensitive to such limited areas of legal disagreement as genuinely exist. On the evidence available, it would not be reasonable to conclude that your Councils complied with the section 33A duty *even if* the content of your letter is accepted. It is important that the limited differences between us on the law are not used to distract attention away from what really matters i.e. the substantive exercise which the Inspector must undertake.

I say that the differences on the law are limited for the following reasons:

(i) There appears to be no dispute between us that, however the role of the Inspector is described, his or her duty is to undertake an assessment and to form a planning judgment on whether it would be reasonable to conclude that there had been

compliance by the Councils with the duty (s.20(7)(b)(ii) of the 2004 Act). Whilst undertaking that assessment and forming the requisite judgment necessarily includes "a review" of all of the relevant evidence up to the point of submission, it does *not* involve a simple review of the Councils' own decision that the duty has been complied with and it is not confined to assessing whether the plan-making authority's judgment was rational (your letter para.8). The Inspectors are required to form their own judgment of what it is reasonable to conclude (see Zurich Assurance Ltd v Winchester City Council [2014] EWHC 758 (Admin) para.113) and this falls to be considered as part of the *Inspectors'* judgment on the soundness of the plan (Zurich para.114).

(ii) The assessment required of the Inspector is a rigorous one. As Paterson J held in R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government [2015] EWHC 2167 (Admin):

"[50] To come to a planning judgement on a duty to co-operate involves not a mechanistic acceptance of all documents submitted by the plan-making authority but a rigorous examination of those documents and the evidence received so as to enable an Inspector to reach a planning judgment on whether there has been an active and ongoing process of cooperation. The key phrase in my judgment is "active and ongoing". By reason of finding there were gaps as the Inspector has set out, he was not satisfied that the process had been either active or ongoing".

Whilst your Council seeks to contend that the Central Bedfordshire decision is not binding authority (your letter para.6), it was cited with obvious approval in R (St Albans District Council) v SSCLG [2017] EWHC 1751 (Admin) by Sir Ross Cranston at para.38. The St Albans case is a binding authority and the reasoning of Paterson J applies to all aspects of the discharge of the duty, not just engagement.

(iii) There is no inconsistency between the reasoning of Paterson J in St Albans and the principles laid down in Zurich and endorsed by Holgate J in Barker Mill Trustees v Test Valley Borough Council [2016] EWHC 2038 in relation to the wide margin of discretion accorded to the decision of the plan-making authority in submitting the plan. The margin of discretion reflects the fact that the Inspector is required by the Act to focus on what it is reasonable to conclude. The concept of reasonableness allows for their being more than one reasonable option which a plan-making authority might have chosen to follow. However, there is a world of difference between, on the one hand, allowing a margin of discretion where the evidence robustly demonstrates that there may have been more than one reasonable approach and on the other, applying a presumption in favour of the duty to cooperate having been discharged because the plan-making authority says it has. Applying such a presumption would be unlawful as the Inspectors are required to reach *their own* positive conclusion (see Zurich @ para.121). To the

extent that paras. 5-8 of your letter can be read as suggesting otherwise, the City Council remains of the view that your Councils are wrong.

(iv) Given this context, it falls to the Inspectors to decide for themselves whether it is reasonable to conclude that there were no "strategic matters" as defined in section 33A(4) which required your Councils to engage constructively, actively and on an ongoing basis with Oxford City Council in order to maximise the effectiveness of the Joint Local Plan's preparation. It is not open to the Councils to "self-certify" in some sort of self-serving way what is or is not a strategic matter. Further, what can reasonably be concluded to be a strategic matter which required the necessary statutory engagement requires analysis of all of the circumstances and not just consideration of the policies and proposals of the submitted plan i.e. the *absence* of policies and proposals in a submitted plan may evidence a failure to discharge the duty. That was the point which Oxford City Council was seeking to make in response to your proposition 4. On reflection, the response was too broadly cast and, for clarity, Oxford City Council accepts that what a submitted plan does and does not contain are *both* material to the discharge of the duty.

Given the narrow extent of the genuine disagreements between our Councils on matters of law, Oxford City Council can see no reason why there could not have been meaningful discussions on a Statement of Common Ground. Even where there is "uncommon" ground, it assists the process for this to be recorded in an examination document together with the matters of agreement. Further, the differences on the law are not a justification for not progressing a Statement of Common Ground addressing the areas of dispute in relation to the issue of "strategic matters". Oxford City Council remains open to agreeing a Statement of Common Ground which properly sets out the respective positions of the Councils for the benefit of the Inspectors.

Yours sincerely,

[redacted]

Emma Jackman
Director of Law, Governance & Strategy