

## **BRIEFING ON LEGAL POSITION**

**SEPTEMBER 2019**

### **1. INTRODUCTION**

- 1.1 At the workshop session with Green belt groups in September it was agreed that a note be circulated outlining the implications of preparing a Joint Development Plan (JDP) or a Spatial Development Strategy (SDS).
- 1.2 This note sets out a brief chronology of the process to date and then outlines the process for preparation and approval of a Development Plan Document and the Spatial Development Strategy.

### **2. PROCESS TO DATE**

- 2.1 In November 2014, AGMA recommended to the 10 GM authorities that they agree to prepare a joint Development Plan Document ("Joint DPD"), called the Greater Manchester Spatial Framework ("GMSF"). Further, the recommendation was that AGMA be appointed by the 10 authorities to prepare the GMSF on their behalf.
- 2.2 Over the course of 2014/15, the 10 authorities secured the approvals required to enable the GMSF to be prepared and for that preparation to be carried out by AGMA on their behalf.
- 2.3 Also in November 2014, the GM Devolution Agreement was entered into. Pursuant to the Devolution Agreement, it was proposed that powers be conferred on the GMCA similar to those available to the London Mayor pursuant to Part VIII of the Greater London Authority Act 1999, which relate to the preparation and publication of a Spatial Development Strategy ("SDS"). Other combined authorities subsequently adopted the same approach in their schemes.
- 2.4 Since the conferment of SDS powers was first proposed, there has been a recognition that the GMSF joint DPD may effectively become the SDS, once the power/duty to produce this latter document was enacted. To that end, provisions were suggested which would enable the GMCA/Mayor to adopt, for the purposes of the SDS, any work done up to that point on the GMSF DPD (so as to avoid unnecessary duplication of work in preparing the SDS).
- 2.5 The first draft of the GMSF DPD was published for consultation on 31st October 2016. Initially, it was consulted upon for 8 weeks, with the consultation due to finish on 23rd December 2016. Due to the significant interest generated by the draft plan, the consultation period was extended to 16th January 2017, resulting in a total consultation period of 11 weeks.
- 2.6 In December 2016 the Greater Manchester Combined Authority (Functions and Amendments) Order 2016 was made. This Order conferred on the GMCA/Mayor functions, equivalent to those in the Greater London Authority Act 1999, relating to the preparation of a SDS. However, at that stage, the SDS could only be prepared as a high level strategic document and could not allocate sites for development.
- 2.7 In early 2017, the Housing White Paper "Fixing Our Broken Housing Market" was published for consultation. This contained a number of proposals, including the

proposal that certain SDSs (those requiring unanimous agreement of the members) be given the ability to allocate strategic sites.

- 2.8 The Combined Authorities (Spatial Development Strategies) Regulations, governing the form, content and procedure for SDSs outside London, were laid in Parliament on 10th July and came into effect on 9th August 2018. With a subsequent minor amendment, these Regulations allow the SDS to identify “strategic allocations”. There remains an issue regarding the identification of the Green Belt boundary around GM (which is a “designation” rather than an “allocation”, and so is not currently allowed in the SDS due to the wording of the Regulations). Discussions about a possible further amendment to the Regulations, to include “strategic designations”, are ongoing with MHCLG.
- 2.9 On 27th July 2018, the GMCA/AGMA made an “in principle” decision to move towards preparing the next draft of the GMSF as a SDS, rather than as a joint DPD, subject to the relevant Regulations being in place to allow this. The purpose of this “in principle” decision was to indicate the preference of GMCA/AGMA to prepare and adopt the document as a SDS, but without making a final decision to move to the SDS process. The reason why a final decision was not made is that there are issues which have to be checked, considered and, where necessary, resolved before the document can be “converted” into a SDS. In particular, the issue mentioned above about the inclusion of “strategic designations” needed to be resolved before a final decision can be made to move to the SDS process (or, indeed, to continue to prepare GMSF as a joint DPD).

### **3. JOINT DEVELOPMENT PLAN DOCUMENT PROCESS (DPD)**

- 3.1 The January 2019 consultation was known as a “Regulation 18” consultation (Reg. 18 of the Local Planning Regulations 2012), and was a consultation on the “subject of a local plan”. This was for an 8 week period (statutory minimum of 6 weeks required), and closed in March 2019.
- 3.2 Following this, the next stage is the “Publication stage”, which is a formal consultation on the draft joint DPD pursuant to Reg. 19 of the Local Planning Regulations. There is a statutory minimum consultation period of 6 weeks.
- 3.3 The draft joint DPD and the representations made in the previous (Publication) stage are then sent to the Secretary of State (the “Submission stage”), pursuant to Reg. 22 of the Local Planning Regulations. It should be noted that the submission of the joint DPD at this stage will require the approval of each of the 10 Full Councils. In practice, many authorities take the document to Full Council for approval for both Publication and Submission, on the basis that the joint DPD itself will not change between those two stages (although representations are invited at Publication, these are then simply submitted to the SoS along with the draft DPD).
- 3.4 An Examination in Public takes place at which a Planning Inspector will consider the joint DPD and representations made in respect of it and determine whether the DPD is capable of being adopted, either with or without amendments.
- 3.5 Assuming that the document is capable of adoption, whether with or without amendments, the ultimate decision to adopt must be taken by each of the 10 Full Councils.

### **4. SPATIAL DEVELOPMENT STRATEGY (SDS)**

- 4.1 If the decision is made to transition to an SDS, the next stage will be the formal “public participation” stage (section 335 of the Greater London Authority Act 1999, as modified by the Greater Manchester Combined Authority (Functions and Amendments) Order 2016). This is, essentially, a consultation for a minimum of 12 weeks. Under the terms of the 2016 Order, the exercise of this function by the Mayor requires a unanimous vote in favour by all members of the GMCA (see Article 15(4)).
- 4.2 Following public participation, the Mayor needs to arrange an Examination in Public (there is no equivalent to the “Submission stage” of a joint DPD). Following the Examination in Public, the Mayor may publish (adopt) the SDS, but must take certain matters into account in making the decision to publish it, including the report and recommendations flowing from the EiP. Under the terms of the 2016 Order, the decision to publish (adopt) the SDS also requires a unanimous vote in favour by all members of the GMCA.
- 4.3 Notwithstanding the above, in November 2018, the City Mayor of Salford and Leaders of the other 9 authorities made a commitment to obtain approval of their full councils prior to the next consultation.

## COMPARISON OF SDS/DPD

	<b>SDS (current Regulations)</b>	<b>DPD</b>
<b>Content</b>	Can only contain 'strategic matters' (para 17, NPPF) as set out in NPPF (para 20)	Can contain both strategic and non-strategic policies (para 18, NPPF)
<b>Can strategic sites be allocated?</b>	Yes. The Combined Authorities (Spatial Development Strategy) Regulations 2018, as amended, contain provision at Reg. 5(6) for strategic allocations to be identified on a map base. The regulations have been made under the powers conferred by (amongst others) section 343 of the Greater London Authority Act 1999, as applied with modifications by the Greater Manchester Combined Authority (Functions and Amendments) Order 2016. Section 343(1)(a) in particular allows for the regulations made using this power to deal with the "form and content" of the Spatial Development Strategy.	Yes
<b>Can a Green Belt boundary be designated?</b>	No. Whilst the SDS could make strategic allocations within the Green Belt and, in so doing, effectively remove such land from the Green Belt, it would not be possible to identify precisely, on a map base, the new Green Belt boundary resulting from that allocation. This is because the regulations only allow for strategic allocations to be shown on a map base. Any other policies must be shown on the key diagram or the inset diagram, which are not permitted to be illustrated on a map base. The identification of Green Belt boundary is not an allocation, but is a designation. There appears to be a 'gap' in the regulations in that it does not permit strategic designations to be shown on a map base. The net result is that under the current regulations an SDS can remove land from the Green Belt, but only local/neighbourhood plans can redefine the Green Belt boundary.	Yes
<b>Statutory consultation period</b>	Minimum of 12 weeks	Minimum of 6 weeks
<b>Approval process</b>	Mayor requires the unanimous support of the GMCA.  However the 10 Leaders have committed to seeking full council approval prior to consultation on next GMSF	Requires approval by the 10 full councils at Submission and Adoption stage