

## **Appendix 2 – Counsel Opinion on changes between GMSF 2020 and PfE 2021**

### **OPINION**

1. I am instructed by the GMCA to consider whether (a) the Places for Everyone [“PfE 2021”] Publication Plan 2021 draft joint development plan document “has substantially the same effect” “with respect to the areas of” the 9 Greater Manchester Authorities<sup>1</sup> which have prepared it, as (b) Greater Manchester’s Plan for Jobs, Homes & the Environment [“GMSF 2020”] Publication Plan 2020 did.
2. GMSF 2020 was prepared by the 9 PfE 2021 authorities *and* Stockport Council as their joint plan (a plan for the 10) however subsequently Stockport withdrew from the agreement to prepare a joint plan. The remaining 9 authorities have prepared PfE 2021 as their joint plan (a plan for the 9).
3. GMSF 2020 had reached the stage of publication under Regulation 19 of the 2012 Local Plan Regulations<sup>2</sup>. The combined effect of Section 28 of the Planning and Compulsory Purchase Act 2004 and Regulation 32(2) of the 2012 Local Plan Regulations is that if PfE 2021 “has substantially the same effect” “with respect to the areas of”<sup>3</sup> the 9 remaining authorities as GMSF 2020 did for the areas of these 9 authorities *then* PfE 2021 can proceed to publication under Regulation 19 without having to go back to an earlier stage in the process.
4. In my opinion, the word “substantially” in this context should be given its ordinary meaning of “for the most part” “essentially”<sup>4</sup> or to put it more colloquially *by and large*.
5. The report to the PfE Joint Committee scheduled for 20<sup>th</sup> July 2021 analyses the differences between PfE 2021 and GMSF 2020 and explains that they arise for one or other of five main reasons, namely:
  - 1) As a direct result of the withdrawal of Stockport Council from the process;
  - 2) As a direct result of changes to government policy;
  - 3) As a direct result of new evidence / information;
  - 4) As clarifications of wording, and
  - 5) As corrections of typographical errors.

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<sup>1</sup> Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan

<sup>2</sup> The Town and Country Planning (Local Planning) (England) Regulations 2012

<sup>3</sup> To quote from Regulation 32(2)

<sup>4</sup> OED

6. The report elaborates and discusses each category of change before concluding that PfE 2021 has substantially the same effect as GMSF 2020 with respect to the areas of the 9 authorities in question.
7. I have considered the report and the conclusion it reaches in this regard, and I have been able to compare PfE 2021 with GMSF 2020 for myself assisted by the officers' analysis.
8. Two points arise. *First*, in the event that the Joint Committee agrees with the officers' conclusion (that PfE 2021 has substantially the same effect as GMSF 2020 with respect to the areas of the 9 remaining authorities) would this conclusion be vulnerable to a legal challenge by judicial review on the basis that it is unreasonable? I put the question in that way because whether the two plans have substantially the same effect is a judgment-call for the Joint Committee, not for the courts. Instead, in the event of a legal challenge the court would consider whether the Joint Committee's conclusion is perverse in the sense of being so unreasonable that no reasonable authority could have reached that conclusion. Put another way, was the conclusion legally open to the Joint Committee. As can be seen from the nature of the concept, this is a high hurdle for any would-be challenger to surmount.
9. In my opinion, it is entirely open to the Joint Committee to agree with the officers' conclusion on the basis of the reasoning set out by the officers in the report. I fail to see how any such conclusion could be held to be unreasonable in the sense just explained. In other words, if the Joint Committee wishes to agree with the officers, it should feel itself legally free and able to do so.
10. *Secondly*, in my opinion, not only is the conclusion reached by officers one which it would be lawful for the Joint Committee to agree with, it is also the correct conclusion to reach. PfE 2021 does have substantially (as in for the most part, essentially, by and large) the same effect for the areas of the remaining 9 authorities as the GMSF 2020 did for their areas. I agree with the officers' reasoning.

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**1.2 Christopher Katkowski QC**

**1.3 22<sup>nd</sup> June 2021**

Kings Chambers