

South Kesteven Site Allocations and Policies DPD

Note for those attending the Exploratory Meeting

NB This Note expands on the Note sent by the Inspector to the Council 9 February 2012

LEGISLATIVE CHANGES

Localism Act

1) Changes to Development Plan Documents (DPDs)

Section 112 of the Localism Act came into force on 15 January. This makes key changes to Sections 20-23 of the Planning and Compulsory Purchase Act 2004. Under the amended Section 20, if the Inspector is to make changes to the DPD to address issues of soundness or legal compliance (referred to as 'Main Modifications'), the Inspector needs to be formally requested to do so by the Council.

In the absence of a formal request under section 20(7C), the Inspector's report will be confined to identifying any soundness or legal compliance failures and, if there are such failures, recommending non-adoption of the Plan.

Minor changes to the DPD (now known as 'Additional Modifications') are a matter solely for the Council and the Inspector will not be considering or endorsing 'Additional Modifications'. With the Site Allocations and Policies DPD documents, the Council has submitted a 'Schedule of Proposed Changes'. In most cases the changes identified would fall into the category of 'Additional Modifications' and would therefore be matters solely for the Council.

However, some are more substantial, for instance the changes which the Council wishes to introduce to address the issues arising from the Water Cycle Study. In addition there may be changes which are necessary to address the issues which I raise in this Note (see below). In these circumstances, it seems likely to me that some 'Main Modifications' may be needed if the DPD is to be found sound. As I have said, I could only make these changes if formally requested to do so by the Council.

However, I have been informed by Planning Inspectorate that, if the Council makes such a request, it cannot be partial or conditional. If such a request is made, I must make ALL of the changes necessary to make the DPD sound whether these have been proposed by the Council or not.

In the past Inspectors have worked closely with the Councils and representors through the course of the Examination to produce mutually acceptable changes to address any shortcomings. I intend to adopt a similar practise with this DPD and I would seek to ensure that the Council had 'ownership' of any 'Main Modifications' which may be necessary.

However it may be that some of the changes which I consider to be necessary are 'unpalatable' to the Council. Nonetheless I would be required to recommend that they be made.

If the necessary changes are so extensive or significant as to require what is effectively a Plan re-write, I have been advised that I should indicate that the Council's request that I should make changes is inappropriate in these circumstances. For instance, if I found that the Site Selection process employed in the Site Allocations and Policies DPD was fundamentally flawed, the changes necessary to address the issue could involve a substantial re-write of the DPD and may not be capable of being reasonably addressed by 'Main Modifications'.

In these circumstances I consider that the Council needs to give careful consideration to what is likely to be involved before making any request for me to make 'Main Modifications'.

2) Duty to Cooperate

Since 15 November 2011, the Section 33A of the Planning and Compulsory Purchase Act 2004 establishes a 'duty to co-operate'. The Planning Advisory Service (PAS) has produced a guide "*A Simple Guide to Strategic Planning and the 'Duty to Co-operate'*" which gives useful advice.

The 'duty to co-operate' is principally aimed at ensuring that adjoining Councils work together to produce 'joined-up' plans in the absence of guidance from the strategic level given that the government has a clear intention to abolish Regional Strategies.

However, it is **not limited to that**. It covers a number of other public bodies in addition – for instance it requires that full co-operation is carried out with people like highway authorities, the Environment Agency, etc

This 'duty to co-operate' is not subject to these provisions of Section 20 of the Act – the section which deals with changes to the Plan. I would not be able to introduce changes to remedy any shortcomings required to address a failure to comply with the 'duty to co-operate' even if the Council requested me to do so. A failure to adequately demonstrate that the 'duty to co-operate' has been fulfilled would therefore be fatal to the DPD. The DPD would fall at the first hurdle without there being any opportunity to recover the situation.

National Planning Policy Framework

I have recently been informed that, following its consultation process, the National Planning Policy Framework (NPPF) is likely to be issued in the next 6 weeks.

Whilst I am obviously aware of the contents of the Draft NPPF, I do not know what the final document might contain. Nor am I aware of what

measures may be put in place to enable the NPPF to be taken into account in the Examination of DPDs.

In the past it has been established practise that advice which emerges during Examinations needs to be fully taken into account during the Examination process. However, in the case of the NPPF there has been some suggestion that the government may put transitional arrangements in place – although my understanding is that these may only apply to those DPDs which have been recently adopted.

One of the provisions of the Draft NPPF requires that housing allocations be increased by 20%. A requirement to do this would clearly have a significant impact on both Submitted DPDs. Until the NPPF is issued, its impact on the DPDs is difficult to assess.

SITE ALLOCATIONS AND POLICIES PLAN

I have spent the last few days reading through the Representations which have been made. With a Site Allocations DPD it is only to be expected that representations will be made on the basis that an alternative site is a better option than the site chosen by the Council. In cases where the Council's adopted site selection process is clear, the relative merits of individual sites can be relatively simply assessed. However, with this Site Allocations DPD there are a number of representations which draw into question the basis on which the site selection process has been undertaken. If the site selection process is found to be so faulty as to be unsound then the whole foundation of the DPD is removed.

I have read the relevant provisions of the DPD but I have seen no objective evidence to explain why some Local Service Centres have been chosen to receive housing allocations whilst others have not. I have studied your Evidence Document dated October 2011 with its Appendix 1a Site Assessment Spreadsheet. On the face of it, the 'traffic light' system employed seems relatively crude and it is not entirely clear how it has been employed. All of the assessment criteria appear to carry the same weight in the process even though some are clearly 'show-stoppers' whilst others can be only subjectively assessed. There appears to be no obvious way in which sites which have generally similar characteristics have been objectively weighed against one another. The matter is further clouded by the late publication of the Water Cycle Study. Again, on the face of it, this casts some doubt on at least the phasing of the housing allocations. I have noted the relevant entries in your Schedule of Proposed Changes. However, it could be argued that the implications of this Study should be fully assessed and taken into account before sites are allocated and/or phased.

You will appreciate that, at present, I am working without the Council's response to the representations which have been made and that it is difficult in these circumstances to make a proper assessment. Nonetheless, because it would be fundamental to the soundness of the DPD, I consider that this is a matter which will need to be explored early in the Examination process.

In my earlier Note on the Grantham AAP I raised issues surrounding delivery, phasing and monitoring. I have repeated these below in an Appendix in the interests of completeness. Whilst the provisions of the Site Allocations and Policies DPD appear to be less dependent on the delivery of infrastructure (setting aside the drainage issues), I have similar concerns about overall delivery.

Roland Punshon

INSPECTOR

Appendix

Delivery Issues – taken from Note on Grantham AAP

As you will be aware the Government places great importance on the issue of delivery of DPD provisions. In the first place, delivery of the strategy should be reasonably assured by soundly based DPD provisions. However, difficulties in delivery may arise and in these circumstances the Monitoring and Implementation Strategy of the document is vitally important. A properly formulated Monitoring and Implementation Strategy will enable the Council to identify shortfalls and failures in the delivery of the plan provisions in good time and will allow it to respond flexibly to bring delivery 'back on track'. This is especially important in circumstances where the delivery of the DPD provisions is reliant on a small number of large elements which are themselves dependent on infrastructure improvements as failure to deliver on any one of these could have serious consequences for the whole plan. A properly formulated Monitoring and Implementation Strategy will also enable others to measure the performance of the DPD against its delivery targets.

I consider that a Monitoring and Implementation Strategy to support a strategy such as that which you propose should contain a number of essential elements:

1. The objective which the DPD is seeking to deliver.
2. The indicators which will be employed to measure delivery of that objective. These should be clearly set-out, objective measures and there should be a clear indication of how the information will be collected and over what timetable.
3. The targets which the Council seeks to achieve. Unless these targets are based on 'trajectories' of delivery over the plan period it may not be possible to react to shortfalls in a timely fashion. The targets need to be readily measurable and subject to clear timetables of delivery.
4. The triggers which will indicate any unacceptable divergence from targets. Slight divergences from targets – especially if they are identified over short time spans – may not, in themselves, indicate major problems in terms of delivery. It is therefore important to make pragmatic judgements about what level of divergence over

what period would necessitate action by the Council to remedy the situation.

5. The contingencies which unacceptable divergence from targets would set in motion. Often the reasons behind divergence from targets will need to be established before a suitable contingency can be identified. Nonetheless, the Council should show a commitment to act in an appropriate manner if delivery of the plan provisions is threatened.

My initial view is that, even if I considered that delivery of the provisions of this DPD was reasonably certain, the Monitoring and Implementation Strategy in the DPD fails to provide the type of robust methodology that is necessary and needs to be considerably strengthened.