INTRODUCTION

The Examining Inspector, Mr Roland Punshon introduced himself. He is a chartered town planner and a senior Inspector employed in the Planning Inspectorate (PINS). He has been appointed by the Secretary of State under Section 20 of the Planning & Compulsory Purchase Act 2004 to undertake the Examination of South Kesteven District Council’s Grantham Area Action Plan DPD and Site Allocations and Policies DPD.

The Inspector informed the meeting that Mrs Fiona Waye is the Programme Officer for the Examination of both documents. Mrs Waye is assisting the Inspector with the administrative arrangements for the Examination. She is the first point of contact if anyone has anything they wish to raise with the Inspector.

The Inspector made clear that the meeting was an Exploratory Meeting. The purpose of such meetings is to enable the Examining Inspector to raise with the Council any matters which he has identified in the initial study of the Examination documents and which he wishes to bring to the Council’s attention ahead of the formal Hearing sessions.

Such meetings are not the forum to discuss representations or the detailed provisions of the DPD. Those matters will be the subject of the separate Hearing sessions when representors, the Council and interested parties will be able to put their cases.

Exploratory Meetings are not open meetings in which everyone can take part. However, the Inspector advised that he would ask if anyone had any questions about anything which was unclear.

The Inspector was not expecting the Council to give definitive responses at the Meeting. He would prefer that the matters which were raised were first given measured consideration.

The Inspector undertook to prepare a Note of the Meeting. A copy would be sent to everyone who has requested a copy when they signed the Attendance List, anyone else who requests a copy and a copy will be posted on the Examination web-site.

The Inspector made clear that the Meeting was only called with regard to the Site Allocations and Policies DPD. He explained that he had already held an Exploratory Meeting in regard of the Grantham AAP. That had been on 15 February.

The Exploratory Meetings had been arranged following Notes dated 18th January and 10th February which the Inspector had sent the Council. These highlighted some matters of concern which the Inspector had identified with the Grantham AAP and the Site Allocations and Policies DPD.
and which drew the Council’s attention to various changes which had recently been made to Sections 20-23 of the Planning and Compulsory Purchase Act 2004 and which may have a bearing on how the Examination proceeds. The Inspector explained that copies were available through Mrs Waye. However, the Inspector pointed out that the Note of this Exploratory Meeting would bring all the up-to-date information relevant to the Site Allocations and Policies DPD together in one place.

LEGISLATIVE CHANGES

Changes Arising from the Localism Act

1) Post-Submission Amendment of 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 request under section 20(7C), the Inspector’s report will be confined to identifying any soundness or legal compliance failures in the DPD as it stands 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 had 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, in the Inspector’s views some of the changes are more substantial and are likely to fall within the category of ‘Main Modifications’. In addition there may be changes which are necessary to address the issues which the Inspector had raised in his Note on the Site Allocations and Policies DPD.

In these circumstances, it seemed likely to the Inspector that some ‘Main Modifications’ may be needed if the DPD is to be found sound. These could only be made if the Inspector was formally requested to do so by the Council.

However, the Inspector had been informed by PINS that, if the Council makes such a formal request, it cannot be partial or conditional. If such a request is made, the Inspector 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 and this approach appears to have worked well. With this DPD the Inspector proposed to follow the same practise and 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 the Inspector considered to be necessary are ‘unpalatable’ to the Council. A formal request by the Council for the Inspector to make ‘Main Modifications’ would mean that the Inspector would be required to recommend that the changes be made even if the Council considered them to be unacceptable.

In response to questions from parties attending the meeting, the Inspector explained that, insofar as the government’s localism agenda was concerned, he was acting in accordance with advice provided jointly from PINS and the DCLG. He explained that he only foresaw the need to make his own changes in very exceptional circumstances and that in most, if not all, cases he expected that any necessary ‘Main Modifications’ would result from negotiation with the Council and appropriate other parties. If changes which were promoted by the Inspector were unacceptable to the Council, the Council would have the option of declining to adopt the DPD. With regard to the issue of impartiality, the Inspector explained that any ‘Main Modifications’ which were promoted would be subject to a consultation exercise. If substantive representations were made against any of the ‘Main Modifications’ – even those which the Inspector had drawn up himself, these would be fully taken into account and he may conclude that any ‘Main Modification’ which is promoted is unacceptable and needs re-consideration.

In circumstances where a formal request is made by the Council and the Inspector considers necessary changes are so extensive or significant as to require what is effectively a DPD re-write, the Inspector would indicate that the Council’s request is inappropriate. In such a case the Council could withdraw the DPD and ‘take a step back’ in the process, address the issues raised by the Inspector, re-consult and then re-submit the DPD for Examination.

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. However, it is not limited to that. The ‘duty’ requires co-operation with a number of other public bodies – 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 the provisions of Section 20 of the Act – the section which deals with making changes to the DPD after Submission. Even if the Council requested him to do so, the Inspector
would not be able to introduce changes to remedy any shortcomings required to address a failure to comply with the ‘duty to co-operate’. 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.

The Inspector explained that his initial view was that the issue of the ‘duty to co-operate’ may be a less significant issue in the Site Allocations and Policies DPD than it was in the Grantham AAP. However, there were issues with regard to the way in which drainage issues had been handled and it would be necessary for the Council to demonstrate that the ‘duty to co-operate’ had been fulfilled.

3) National Planning Policy Framework

The Inspector had recently been informed that, following a consultation process, the National Planning Policy Framework (NPPF) was likely to be issued before Easter.

Whilst the Inspector was obviously aware of the contents of the Draft NPPF, he did not know what the final document might contain. Nor was he 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 practice that strategic and national advice which emerged during Examinations needed to be fully taken into account during the Examination process. In the case of the NPPF there had been some suggestion that the government may put transitional arrangements in place – although the Inspector’s understanding was 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. However, the Inspector felt that it may not be prudent to rush into the Examination process until the NPPF’s impact is known.

SITE ALLOCATIONS AND POLICIES DPD

1) Site Selection

The Inspector explained that he had read through the Representations which have been made and that he had recently received the Council’s responses to the Representations although he had not yet had the opportunity to go through them.

*NB The Inspector had also received the Council’s responses to representations made on the Grantham AAP. He considered that these are very useful documents as they set out the Council’s position with regard to individual representations. They are available for inspection by interested parties and the public. Whilst Mrs Waye could provide paper copies, they are large documents.*
and there will be a copying charge. In these circumstances the Inspector suggested that, in the first instance, interested parties should look at the documents on the Council’s web-site as they may only be interested in the entries made against their own representations or made in respect of a particular subject area.

The Inspector explained that, 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. Such a finding on the Inspector’s part could be fatal to the DPD.

The Inspector’s concerns in this regard are in 2 main parts:

Firstly, he had read the relevant provisions of the DPD but could not see any objective evidence to explain why some Local Service Centres have been chosen to receive housing allocations whilst others had not.

Secondly, the Inspector had studied the Evidence Document dated October 2011 with its Appendix 1a Site Assessment Spreadsheet. On the face of it, the ‘traffic light’ system employed seemed relatively crude and it was not entirely clear how it has been employed. All of the assessment criteria appeared to carry the same weight in the process even though some were clearly ‘show-stoppers’ whilst others could be only subjectively assessed. There appeared to be no obvious way in which sites which have generally similar characteristics have been objectively weighed against one another.

In the Inspector’s view, the matter is further clouded by the late publication of the Water Cycle Study. Again, on the face of it, this cast some doubt on at least the phasing of some of the housing allocations. Whilst the Council had made relevant entries in the Council’s Schedule of Proposed Changes, it could be argued that the implications of this Study should have been fully assessed and taken into account before sites were allocated and/or phased.

This site selection process would be fundamental to the soundness of the DPD. In these circumstances the Inspector considered that this was a matter which would need to be explored early in the Examination process. Should The Inspector find that the site selection methodology was fundamentally flawed, he found it difficult to see how the DPD could be modified to make it sound.

In response to questions raised by parties attending the meeting, the Inspector explained that Examinations were no longer undertaken on the basis that ‘the DPD is presumed to be sound unless shown to be otherwise’. Whilst the Council would naturally be expected only to submit
a DPD which it considered to be sound, the Inspector made no such presumption. He also explained that the guiding principle behind the process was that of ‘sustainability’ – which could cover a wide range of factors. He explained that rival sites could have differing ‘sustainable’ qualities and these would need to weighed, one against the other, in deciding which was the most ‘appropriate’ choice. Should there be a need to allocate additional sites or to replace one proposed allocation with another, the Inspector confirmed that any impact on, for example, listed buildings or Conservation Areas would be taken into account and he would expect that such matters had been fully taken into account in the Council’s site selection processes.

2) Delivery

The Inspector pointed out that 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’. In response to questions the Inspector pointed out that a properly designed Monitoring and Implementation Strategy would enable the Council to identify and respond to any unforeseen consequences of its strategy and to changes in circumstances and, if necessary, to bring forward revised policies to address these.

A properly formulated Monitoring and Implementation Strategy would also enable others to measure the performance of the DPD against its delivery targets.

In the Inspector’s view a Monitoring and Implementation Strategy to support a strategy such as that which is proposed 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 with partners if delivery of the plan provisions is threatened. The contingency may involve a review of a particular policy or part of the strategy or a change in emphasis.

The Inspector’s initial view was that, even if he considered that delivery of the provisions of this DPD was reasonably certain, the Monitoring and Implementation Strategy in the DPD failed to provide the type of robust methodology that was necessary and that it needed to be considerably strengthened.

In response to questions put by parties attending the Exploratory Meeting, the Inspector made clear that one of the tests of soundness which he needed to apply was whether or not the DPD was in accordance with the adopted Core Strategy. He was not empowered to make changes to the Core Strategy to reflect changing circumstances in the 2 years since it was adopted. The Inspector’s view was that, if the Core Strategy had become out-dated then the Council, as part of its monitoring responsibilities, should be considering whether steps were needed to address the issue. In the Inspector’s view this reinforced his views on the importance of a robust Monitoring and Implementation Strategy.

**CONCLUSION**

In these circumstances the Inspector’s current view was that the Site Allocations and Policies DPD was likely to require some ‘Main Modifications’ if it is to be found sound. However, much would depend on whether or not the Council’s site selection procedure is shown to be robust. It may be that the process which has been gone through is more objectively robust that it would first appear to be to the Inspector and that his concerns could be allayed by a comprehensive explanation of the way in which the process was operated. If that is so the Inspector felt that his concerns on this matter and the matter of the Monitoring and Implementation Strategy issues could be dealt with by relatively straightforward amendments. However, the Inspector wishes to make clear that this view may not apply to other parts of the DPD.

**FUTURE ACTIONS**

The Inspector suggested to the Council a potential way forward with the Examination:
Hopefully the NPPF will be published before Easter and the Council can review its DPDs in the light of the up-to-date guidance.

The Council should produce a paper by 30 March to comprehensively explain to parties how the site selection process operated. The Inspector will give a view on whether or not he considers that the Examination is capable of proceeding with the DPD as it stands or with amendment. If he consider that that possibility exists, then he would arrange an early Hearing session where interested parties can give their views on the paper and the subject in general.

A second exploratory meeting has been arranged on 16\textsuperscript{th} April to address outcomes from the Exploratory Meeting on the Grantham AAP. By that time the NPPF should have been published. The Inspector suggested that issues arising from the Exploratory Meetings into both DPDs could be discussed on that date. At that meeting, processes for taking the DPDs forward and timetables could be discussed.

The Programme Officer will contact parties to inform them of the meeting arrangements.

The Council has agreed to this process.