Note of Meeting

The Inspector introduced himself as Mr Roland Punshon. He is a chartered town planner and an Inspector employed in the Planning Inspectorate (PINS). He is the person 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 Site Allocations and Policies DPD.

He introduced Mrs Fiona Waye who is the Programme Officer who assists 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 stated that the purpose of the meeting was to bring everyone up-to-date with developments on the Site Allocations DPD Examination since the closing of the Hearing sessions on the 16th November 2012. The Inspector stated that, whilst he could have sent a letter, he felt that it would be better to meet in order that he could fully explain the circumstances and give everyone the opportunity to ask questions. He undertook to make a note of the meeting which would be available on the Council’s web-site and would be sent to anyone who requested a copy.

Introduction

For the benefit of those who were less familiar with the legal process, the Inspector gave a brief explanation of the relationship between legislation and guidance and Case Law.

Site Allocations DPD – recent developments

At the Pre-Hearing meeting and at the close of the Hearing sessions on 16th November, the Inspector made clear that, once the Hearings were closed, he would not accept any further material unless he specifically requested it. This remains the case.

However, on the 19th November he had received an e-mail from Mrs Waye to say that a further letter had been received before the Hearings had been closed. Neither the Inspector nor Mrs Waye had been aware of this at the time.

The letter dated 16th November was from a company of solicitors, Wedlake Bell LLP, acting on behalf of the Stamford Chamber of Trade and Commerce (SCOTC). Briefly, the letter made 3 main points:
• That the Site Allocations Plan did not accord with the principles of sustainable development contained in the adopted Core Strategy and the NPPF.

• That the Site Allocations Plan should have identified Sustainable Urban Extensions around Stamford.

• That the SCOTC case that the Council’s Site Selection process was ‘erroneous and unfair’ was supported.

Particularly in regard of the last point, the letter drew the Inspector’s attention to some recent Case Law:

• Manydown Co Ltd v Basingstoke and Deane DC – this judgement indicated that the fact that a landowner had not promoted his land for development did not necessarily mean that the site should not be available for consideration through the development plan process.

• Save Historic Newmarket Ltd v Forest Heath DC – This made clear that the background information supporting a Council’s plan needed to be of sufficient quality in terms of information, expertise and perceived effects to ensure that those members of the public affected by the plan were able to understand why the proposals were said to be environmentally sound and why alternatives had been discounted.

The Inspector asked if anyone from Wedlake Bell LLP was attending in order that they could confirm this précis. However, no-one from the company was present.

The Inspector stated that the PINS had also issued a note to Inspectors drawing their attention to this Case Law. This also drew attention to a third judgement - Heard v Broadland District Council and others - which drew heavily on the Save Historic Newmarket decision and indicated that all alternatives should have been considered in the same depth as those sites chosen for development.

The Inspector stated that this Case Law raised significant issues and in an e-mail to the Council he suggested that it delay any re-consultation exercise on Main Modifications until it had had the opportunity to assess the implications of the Wedlake Bell letter.

The Council wrote to the Inspector on 20th December saying that it wanted to take its own legal advice on the Case Law issues raised by the Wedlake Bell letter and sought the Inspector’s agreement to the deferment of the re-consultation on the Main Modifications until that advice was received.

In the Inspector’s view this was a prudent course of action and he wrote to the Council on 14th January agreeing to this request.

The Council sought legal advice. The Inspector is not aware of what advice was received but in a reply dated 6th March the Council informed him that
the Council’s barrister had drawn its attention to another piece of Case Law (Cogent Land LLP v Rochford District Council and others) which indicated that in cases where the Council’s Sustainability Appraisal process (essentially its methodology for deciding between competing sites and policies) was deficient, it could be remedied by a re-appraisal of the document without the necessity of withdrawing the DPD and starting again. The Council asked for the Inspector’s agreement to it proceeding in like manner.

The Inspector examined the judgement and, in a letter to the Council dated 8th March, he agreed to the proposed course of action.

However, from that letter he read the following quote:

"However, I would draw your particular attention to the cautionary statement made in the last paragraph of Richard Harwood’s comment on the Cogent Land judgement in the Journal of Planning and Environment Law:-

‘The factual circumstances are also important. If the authority has made critical decisions before carrying out a lawful SEA and is not prepared to revisit them, then a later environmental report cannot cure the error. In the present case the Court accepted that the addendum report had been a genuine exercise rather than a mere justification for the decisions that had already been taken.’

It is vital, therefore, that any review of the SA/SEA processes undertaken by the Council needs to be sufficiently robust and transparent to ensure that there is no perception that it has been simply ‘a paper exercise’ to justify conclusions previously reached."

**Site Allocations DPD – future actions**

The additional re-assessment work proposed by the Council could lead to a range of outcomes. The Inspector summarised these as:

- It could justify the conclusions which the Council reached in originally preparing the DPD and the DPD could need no modification at all.

- It could justify the conclusions which the Council reached in originally preparing the DPD with the Main Modifications which came out of the Hearings sessions.

- It could justify the conclusions which the Council reached in originally preparing the DPD with the Main Modifications which came out of the Hearings sessions and other Main Modifications.

- It could conclude that there is very little of the originally prepared DPD which can be justified in which case it would need to go back to the beginning of the process.
Until the Council’s re-assessment work has been carried out it cannot know where the DPD will fall within that range of outcomes and it is pointless to speculate.

The Inspector stated that where the matter falls on the range of outcomes will dictate how the Examination will proceed. If the Examination can proceed by way of Main Modifications, the Council would need to undertake another consultation exercise on the re-assessment process itself and any Main Modifications which arise from it together with the Main Modifications already discussed at the Hearings - if these are still applicable. If the exercise results in necessary Main Modifications which are so wide-ranging that the DPD is beginning to look like an entirely different plan, it may be necessary for the Council to withdraw the DPD and to submit an entirely new document.

In response to questions raised at the Meeting the Inspector made the following points:

As the Inspector had pointed out at the Exploratory Meetings, the fact that the Examination was underway did not prevent the Council from making decisions on planning applications put before it. The Council had responsibilities in respect of the national objective of encouraging house building. In response to a suggestion from the SCOTC the Inspector felt it was unfair to ask the Council officers attending the meeting whether they would be prepared to institute a moratorium on the receipt of planning applications and planning decisions until development issues pertinent to the DPD were resolved by way of the Examination. A decision of this significance could only be made by the Council Members.

However, the Inspector pointed out that, the Council could not refuse to accept applications and, if it refused to determine the applications, the applicant would have the right of appeal to the Secretary of State against non-determination. The Inspector’s attention was drawn to one application at Stamford where the Council had resolved to grant permission and to another at Long Bennington where the Council had deferred a decision pending the outcome of the DPD Examination. He was informed that the Stamford decision may be subject to judicial review. However, the Inspector did not have the necessary expertise to give any guidance on this process.

The Inspector understood the frustration of those involved who saw planning decisions being made which they felt should be more appropriately made through the development plan process. However, it was beyond his powers to prevent this.

(NB After further consideration of the matter the Inspector is of the view that, even where the Council has granted permission on a given site, it would be sensible to include the site in the allocations of the DPD as this would set the parameters which would guide future applications should the original permission not be implemented.)
The Inspector made clear that it was his intention that the Council’s re-assessment of its site selection processes would be examined as part of the Examination process along the same lines as he had employed in the earlier Hearing sessions – working down from the general principles of the re-assessment exercise to the detailed assessment of individual sites. He confirmed that he would give consideration to any Representations made which argued that the extent of Main Modifications made by the Council would warrant preparation of a new plan.

It was suggested to the Inspector that the re-opened Site Allocations and Policies DPD Examination should run alongside the Examination of the re-submitted Grantham Area Action Plan. However, some took a different view. The Inspector left it to the Council to consider. He has had the following response from the Council:

‘The Council had already given some thought to this. Notwithstanding the logistical issues that might arise from managing two plans at the same time but each at different stages, the SAP, unlike the GAAP, has not been withdrawn and, therefore, remains at a very advanced stage of preparation. As such the Council are keen to progress the SAP to adoption at the earliest opportunity and to unduly delay moving forward with it might be perceived by some to be unfair to those whose interest lay in the SAP. Whilst there are indeed links between the two Plans, the Council considers that these are capable of being managed without the two Plans being considered together.’

**Timetables**

In terms of timetables, the Council informed the meeting that its re-assessment of the site selection processes involved in the preparation of the Site Allocations and Policies DPD should be complete by the end of June 2013. These would then need to be consulted upon – a consultation period of 6 weeks. The Inspector would then need to consider the Representations which were made and prepare for the Hearing sessions. The Hearings would therefore begin at the end of September 2013 with the Report being prepared before the end of the year.

The Council was of the view that the Grantham Area Action Plan would be re-submitted in September 2013.