

EAST STAFFORDSHIRE BOROUGH COUNCIL LOCAL PLAN EXAMINATION

INITIAL COMMENTS, REQUESTS and QUESTIONS from the INSPECTOR to the COUNCIL

Introduction

1. The following comments, requests and questions are formulated from only an initial perusal of the submitted documentation and are not exhaustive. I have not yet formed any conclusion as to the soundness of the Plan or the robustness of the Evidence Base [EB].
2. However, I am able to say that, so far, I have not detected any matter of fundamental unsoundness such as might require an exploratory meeting or further work on the Plan by the Council at this stage.
3. The Council is asked to give answers to each specific question in bold text below by annotating and returning a version of this document, itself to become an Examination document. [F. series] The Council team may of course include any further comments or questions of their own in a separate response if necessary.
4. I have aimed in this document to cover matters of administration, documentation, comment or query that have arisen to date. Some of the earlier items may therefore have been overtaken by events. Questions on the Plan itself are limited to matters of clarification, although some may lead to further questions later in the Examination.
5. I have stopped short of identifying a full schedule of issues for consideration and discussion or providing guidance for participants or setting a hearings programme. Those matters will form the next stage of preparation, once I have the Council's responses to the questions below.

Administration, Documentation and Procedure

Programme

6. I recognise that the Council will wish to establish the programme for the Examination as soon as possible. It is now established practice to dispense with any Pre-Hearing Meeting unless there is particular need or desire for it. However, it is still too early to predict the timing of hearings with any certainty. Progress will depend to some extent on responses to these initial questions. I was proceeding on the indication in the LDS that hearings were envisaged in October but note too the suggestion in the submission letter that they might take 5 days and be held before the summer holidays if possible. The

Examination programme is not governed by the LDS in the same way as the plan preparation phase which ends on submission but the earlier date and suggested duration may turn out to be optimistic in any event. Also, it often proves best, with the return to all-embracing local plans, to hold strategic sessions on such as Duty to Co-operate, overall housing requirements etc, first and defer site sessions until later, with relatively little impact on overall timing where no major unsoundness is detected. On an initial view of the representations, I propose to follow that approach in this case. It is often preferred to avoid the main school holidays and I will always try to accommodate the convenience and preference of Council staff and representors subject to the overall public interest of efficiency. At this point, but without prejudice, I see no reason why hearings should not be complete in line with, or ahead of, the Autumn date contemplated in the LDS. **With these comments in mind, does the Council have any observations on the programming of the Examination Hearings?**

Initial Requests

7. Immediately upon being appointed and receiving the submitted documentation I asked the Programme Officer [PO] to convey to the Council the following requests:
 - a. As a first priority, revise the XL index to make it readily sortable by name of Representor [name of organisation or surname of individual] and by Policy/Site. In this connection it is noted that the consultation portal does not provide the necessary immediate access. The revised XL index was promptly provided by the PO. However it was later discovered that more work was required to ensure that all representations are correctly attributed before the Examination could confidently proceed to identifying issues and programming. This was provided on 19 May.
 - b. Provide a clearer link to the Examination web page from as near the Homepage as possible ie with a minimum number of clicks to the Examination page and in particular the Examination Library. This has been suitably achieved.
 - c. Set up the Examination Library on or linked to the Examination page on the same basis as the printed list that accompanied the submission to Pins. There should be only one version of the Library List and the Documents. At present not all the hyperlinks from the List to the documents appear to function. Including B.9-10 the Oct 2013 SA and Appendices. **Can the Council confirm when all such links will be checked and any outstanding operational matters on the website resolved?**
 - d. Produce indexes to both Documents A.2 [Original Reps - ORs] and A.3 [attachments to ORs] to facilitate navigation to specific reps. A.2 has page numbers so this should not be difficult. A.3 has no page numbers so will have to be paginated. This is

required because they cannot be reliably searched electronically. That is mainly because the numbers below 100 are formulated LP1, LP2, LP3 etc and not LP001, LP002 etc. In any event hard copies are necessary for reference. The indexes to Docs A.2 and A.3 need only be simple lists giving the rep no and the page no. Unfortunately, the contents pages to the paginated version of Doc A.2 promptly produced by the Council needs to be revised in numerical order of representation in order to function as the required index to page numbers. **Can the Council confirm when appropriately indexed versions of Docs A.2 and A.3 will be available?**

- e. Produce a composite version of the Plan [document A.1] showing the modifications scheduled in doc A.27. This was promptly provided together with copies of the Policies Maps [F.1-7] and was particularly necessary because of the need for mod no 26 to insert paragraph numbers from page 74 onward for ease of reference. The composite version will NOT be a formal submission document but an additional Council document. But it will need to be used for reference in hearing sessions.

Further Requests

8. I have the following further requests and queries on documentation:
 - a. Please produce a copy of the Policies Maps [F2-7] annotated to show the names of the sites and a post code where possible. The Maps are commendably legible and this assistance will enable me conveniently to undertake my initial unaccompanied tour of the Borough before the hearings. I note that I already have the maps in the SHLAA, so no special printing is required and a manually annotated copy would suffice. This is simply an aid to my personal [satellite] navigation. These versions do not therefore need to become an Examination document. **Will the Council please confirm when this can be available?**
 - b. I note that the revised SA, consultation and report have just become available but from the submission letter and the Council information via the PO on 16 May, twelve other outstanding documents are yet to be provided and added to the Examination Library and web page, some in June but others with no date of delivery. Before the hearings, the evidence on which the Council relies should be clearly established. Where fresh documents supersede or add to previous evidence (eg F9/B9) this should be noted by cross reference on the Library List. Representations on the draft Housing Choice SPD and Council responses may be also be submitted as background examination documents. If any of the late documents is not available after all, this needs to be made clear. Submitting late evidence can result in objection and possible delay or adjournment of hearings. **Can the Council yet confirm, either, when all these documents will be**

available, or alternatively, that they will not be produced at this stage?

Relationship of the ESLP to SPD Consultation

9. I have already been involved in correspondence with respondents to the Council consultation on the draft Housing Choice SPD, pointing out that it is not a matter for this Examination, save in as much as the degree to which the ESLP relies on later DPD/SPD may be an issue. Otherwise it is important that this Examination and the Council's consideration of the response to its SPD and its adoption are kept separate – this Examination cannot appear to anticipate the Council's deliberations in this matter. **Does the Council accept that position or otherwise have any comment?**

Relationship of the ESLP to any future CIL Schedule

10. More important, the ESLP and its evidence base on infrastructure provision and development viability, in particular Docs C14-15, merge consideration of the viability/deliverability of the ESLP with a future CIL Schedule. It does not yet appear to be determined whether ESBC will submit a CIL Schedule for Examination and certainly there is no indication of a CIL Schedule being examined in conjunction with the ESLP. Therefore, unless that situation alters within the timescale of this Examination, it is essential that this Examination does not anticipate any future CIL Examination. **Does the Council accept that position or otherwise have any comment?**

Late Representations

11. Doc A.26 is an un-indexed dossier of late representations entitled *Representations received under regulation 20 – Late representations*. First, if they were late they were not duly made under regulation 20. Second, it is for the Council to determine whether to treat these late representations as duly made and place them before the Examination. Best practice is that each is considered on merit as to whether acceptance is exceptionally justified in the interest of natural justice where others may have held back from making a representation after the deadline. Clearly the Council has decided to accept the reps in doc A.26 as they form part of the submission and appear in the XL index. I do not interfere with, or comment upon, that decision but it will be for me ultimately to ensure that the Examination fairly takes account of all points of view on an equal basis. My current concern is that these additional representations should be given a representation number, be properly attributed by policy and incorporated into the database. Doc A.26 also needs to be paginated and indexed in the same way as Docs A.2 and A.3. **Can the Council confirm:**

- a. that all the late representations in Doc A.26 are to be treated as duly made.**

- b. when the late representations will be numbered, attributed by policy and incorporated into the database, and**
- c. that, with the representations in Doc A.26 incorporated, the representations database is complete?**

Proposed Changes and Procedure for Main Modifications

- 12. Doc A.27 sets out a *Table of Modifications* intended to add clarity following the pre-submission public consultation. I take it that the Council regards these as minor or additional modifications not addressing soundness and beyond the scope of the Examination. If so, I do not necessarily agree. Some involve relatively substantial changes and I shall consider relevant submissions that any of these changes amount to a Main Modification (MM) affecting soundness. Provisionally I consider that modifications 37, 39, 55, 72, 74, 75, 76, 78, 109, 110, 143 and 147 may justify consideration as MMs. I may at a later stage, either before or during the hearings, raise points of clarification on others.
- 13. I note that the submission letter incorporates the Council's formal request under s20(7C) of the 2004 Act as amended by the Localism Act that I recommend MMs where necessary to make the Plan sound. Any such MMs will be agreed as far as possible with the Council during the hearings. Established practice is that MMs are subject to public consultation by the Council before my Report is finalised. Guidance on this matter is to be found at para 4.24-28 of *Examining Local Plans Procedural Guidance - The Planning Inspectorate December 2013 (3rd Edn V.1)*.
- 14. Where any of the modifications in Doc A.27 are treated as MMs, they can be incorporated into such consultation after discussion at the hearing, with or without further amendment. I do not consider that any change so far proposed need delay the Examination at this stage. **Can the Council confirm that it is content with that approach?**

Topic Papers

- 15. Some of the Topic Papers [B16-26] post-date the pre-submission consultation in October-November 2013. These are helpful in explaining the Council's position but, where they contain information additional to the consultation evidence base, it will be necessary for me to draw attention to them and to consider any relevant comments on them that Representors may wish to make during the Examination. Such matters can be covered in Position Statements for the hearings or if appropriate by written representation. Meanwhile for clarity, **can the Council confirm (a) which if any of the Topic Papers were subject to pre-submission consultation and (b) whether it is the intention of the Council to submit**

additional Topic Papers or to rely on providing Position Statements on the issues for discussion at the hearings?

Evidence Base updates

16. Some of the Evidence Base (EB) documents [eg C1, C17 with its replacement Appendix 4, C2] contain April 2014 updates. Like the Topic Papers, where these updates contain information additional to the consultation EB, it will be necessary for me to draw attention to them and to consider any relevant comments on them that Representors may wish to make during the Examination. Such matters can be covered in Position Statements for the hearings or if appropriate by written representation. Meanwhile for clarity, **can the Council confirm (a) by way of a schedule of references to the relevant sections of the submitted written evidence, which documents contain April 2014 updates and (b) whether it is the intention of the Council to submit any additional updates to the evidence documents already submitted?**

Venue Visit and Site Tour

17. I hope to make an initial visit to the District during June/July to meet the PO, view the chosen venue for the hearings and make an unaccompanied tour of the sites named in the Plan. **Can the Council yet confirm the venue?**

Comments and Questions on the Submitted Plan and Evidence Documents

Planning Practice Guidance (PPG)

18. The PPG [D.2] published nationally in March 2014 replaces many of the former national guidance documents on which the evidence base expressly relies. The PPG does not change national advice overall and substantially incorporates most of its key contents. Therefore no further broad re-consultation should be necessary merely because the PPG has been published. However, it will be necessary during the Examination to consider any comments the Council or Representors may wish to make upon the PPG as whether it affects the thrust of the EB or the soundness of the Plan. In particular, several EB documents inevitably retain references to the former guidance or the pre-publication *beta* version of the PPG. Such matters can be covered in Position Statements for the hearings or if appropriate by written representation. **However, does the Council wish to make any general comment on the PPG at this stage?**

Content, Presentation and General

Ranging, roughly in plan order, from possible minor errors to substantial questions of content. The main aspect of soundness that might be engaged is Effectiveness in terms of whether the Plan is internally consistent and clear in its message.

19. **Should there be additional (minor) modifications (AMs) to remove unnecessary narrative in Part 1 on the consultation, previous consultations and detail of other Docs eg LDS and SCS – other than briefly to include the essential points for compliance - in order to streamline the LP document?** The EB does not need to be repeated in the Plan.
20. Part 2 is repetitious of previous text in Part 1 and duplicative of later policy, eg the historic narrative in paras 2.1-11 and 2.26-28 could be confusing and Part 3 Policies 1-2 and their text repeat all of this information. **Is Part 2 necessary in its present form?**
21. **Do the strategic policies inappropriately incorporate Development Management matters?** – eg SP20 on Retail, SP24 on Design, SP25 on Historic Environment, SP28 on Low Carbon Energy Generation
22. The Plan document is difficult to 'navigate'. **Could there be AMs to provide a comprehensive table of contents by sub-heading, policy, site etc, bringing forward and incorporating the Index of Strategic Polices on page 73 which is in fact not an index but a list?**
23. Para 1.28 – **Does there need to be an update re the Spatial Plan for Recovery and Growth and does this have implications for the provisions of the Plan?**
24. Para 1.29 – **Does this need updating re the Duty to Co-operate statement now submitted?**
25. Para 1.42 – **is this necessary and are all the documents listed now referenced as Examination Documents?**
26. Para 1.57 - Is it definitive enough to say that the "Council would want to consider in some detail" the Brookhay Villages and Twin Rivers Park strategic project the - **will this project affect the strategy of the plan within the Plan period or not?**
27. Para 1.72 - **Could the HA trunk road review influence the Plan before adoption? How are the transport constraints of the road network taken into account in the strategy as per bullet 3 of the Key Challenges on page 32?**
28. Para 2.15 – **does 'the Borough' deserve an initial capital 'B' throughout?**

29. Para 2.41 – **what precisely is meant by ‘employment sectors’? Is there a superfluous word in line 4?**
30. Para 2.43 – **what is meant by ‘Camps’?**

Policy Matters

Also essentially clarification of both the Plan with some reference to the Evidence Base documents

31. Development Distribution generally

What precisely is meant by ‘development allowance’? Is it anywhere defined?

Is it sufficient to rely on windfalls to fulfil Tier 1-3 settlement requirements?

Is it right to cap development when the ‘development allowance’ is met?

32. Housing Supply generally –

Does the part of the supply already committed need updating after April 2012?

Does the part of the supply already committed need updating with respect to the two residential permissions = 550 units, by way of a MM to Policy SP4?

Does the calculation of requirement/supply take into account PPG on student housing etc?

Doc B.16 conflates strategy and supply – **where is the main up to date supply evidence at a suitable cut-off date?**

Doc B16 p19 – **what is the difference between Options 1 and 2?**

Strategic Policy [SP] 4 – **How do the sites named relate to the SHLAA sites by reference number?**

Where is the rationale of site selection from the SHLAA set out and justified?

33. SP6 - **what is meant by a new DPD and how would it redress a shortfall?**
34. SP7 – There seems to be a potentially confusing overlap between strategic allocations and SUEs.
- Why is there no separate annotation on the Proposals and Inset Maps for SUEs?**
- How does the employment element of SUEs relate quantitatively to Policy SP5?**

Where is Beamhill and is it the only SUE not listed in SP4-5?

How do SUEs fit spatially and quantitatively with the overall spatial strategy of the Plan?

35. SP8 - the text reads like a policy itself but with criteria in different terms from the policy it supports, eg the text defines "appropriate development" but that term does not occur in the policy - **should the text and the policy be compressed into a single set of criteria of policy status with the text limited to explanation?**
36. SP9 – Infrastructure Delivery and Implementation

What is the interrelationship between the HDH LP and CIL Viability Study 2014 [C.14] and the Fordham Affordable Housing Viability Study of 2010 [C.6]?

Should the Examination look first at the 2014 report on Affordable Housing viability and refer to the 2010 study to back the 25% "average" or 40% maximum contribution?
[see also Q39 below]

What is the relevance of the CIL evidence and suggested CIL rates – are these merely putative rates to inform overall Plan viability?

In Doc C.14, where are the details of abnormal costs referred to in paras 7.21 and 10.10d with cross-ref to Table 9.3? Table 9.3 does not show these, nor are they readily seen on any other table on site modelling.

Where between Docs C.14 and C.15 is the overall cost of additional infrastructure calculated against funding sources to determine the funding gap acknowledged in C.14 para 13.36?

37. SP 10-15 – these are an unrelated series of qualitative provisions often repetitious of other sections of the Plan. **Should they be recast in a more logical sequence to incorporate all quantitative and qualitative development requirements for strategic allocations in a single section of the Plan in order to make it more readily comprehensible?**
38. SP16 – Meeting Housing Needs - **should the policy incorporate the table from the text and should there be some stated tolerance or flexibility in meeting the percentage requirements? Would this policy be better placed nearer the overall housing requirement of SP4?**
39. SP17 – Affordable Housing

Proposed Modification 78 avoids the question how the average 25% outturn is to be calculated and monitored. However, taking account of the *Blyth* and *Wakefield* cases,

should a clear target percentage be stated in this Local Plan rather than in the Housing Choice SPD, still subject to negotiation where necessary, based on an up to date Affordable Housing Viability Study?

Does the wide variation in house price and between urban/rural areas and main towns justify consideration of area approach to Affordable Housing?

Is it intended to update the 2010 AHVS or is it in effect regarded as background to the more recent viability study?

40. SP19 – Sites for Gypsies, Travellers and Travelling Showpeople - **Is there more up to date G&T evidence?**

41. SP20 – Retail

How is the Overall Catchment Area defined?

How does SP20 establish the aim of adequate additional floorspace to meet identified need?

Is it intended to be limited or capped with respect to retail impact [apart from out of centre proposals]?

Where are the allocations to make it effective – is definition of Town Centre Boundaries sufficient to induce retail development to come forward?

Are Primary and Secondary Shopping Frontages defined in sufficient detail on the Inset Maps – ie by individual unit?

Does SP20 inappropriately mix strategic and development management matters?

42. SP27 - Flood Risk

How does Policy SP27 and its text apply the Sequential and Exception Tests of the NPPF paras 100-104 and the flood risk guidance of the PPG to allocations in areas of flood risk or make provision for their application to future proposals? If they have been considered, where is this expressly demonstrated in the Plan of Evidence Base?

The SFRA update assesses the allocated sites but does not seem to apply the sequential and exception tests to their selection.

Are the full Appendices A-G to the SFRA Doc C.20 comprised in new documents C.75-92?

Where are the earlier Level 1 and 2 SFRAs referred to in Doc C.20?

43. SP34 – Health and SP35 Transportation – **should infrastructure requirements noted on Doc C.15 be specifically identified at policy level?**

Evidence Base Documents

44. Doc B.25 – Duty to Co-operate Statement

para 1.6 - ref to PPG = Planning *Practice* Guidance [not Policy]

para 6.3 – **How does the LEP housing study relate to the HMAs or influence the evidence supporting this Plan?**

para 7.6 – **has the need for leisure development been quantified?**

para 12.3 – **Can the Council provide specific references expressly demonstrating how the six cross-boundary issues identified in the DTC statement are addressed in the Plan?**

page 21 – **How is the ongoing EB work with Staffs CC related to, and does it affect, the IDP [C.15] and/or allocations of the submitted Plan?**

45. Doc C.1 – SHMA update

What is the relationship of Doc C.1 to the 2012 SHMA [C.3] - **should the Examination refer primarily to C.1?**

Para 2.1 – previous guidance is replaced by PPG pp356-374 – **is any change of emphasis to be noted?**

Para 2.8 – it is not clear whether it was impossible to do a joint SHMA or merely difficult. The reasons are noted but **was the result tested against neighbouring SHMAs in any way?**

Fig 3.8, paras 3.26, 3.32 refer to 2012 data and the 2001 Census – **is any update necessary?**

Para 3.65 – **would it be possible to redefine a HMA into which E Staffs would properly fit, leaving aside the practicalities of concluding an assessment and the reasons given for not doing so?**

Para 3.67 – **which recent Examinations specifically are referred to here?**

Paras 6.67-71 – **which are the years to which the 5 yearly results refer?**

Fig 6.3 - **Where are the activity rate/labour force : jobs ratio/population projections of Fig 6.3 justified?**

Page 142 - **Where/how are Scenarios 1 and 2 calculated?**

Para 6.95 – **is further evidence to the Examination anticipated from new ONS 2014 data releases?**

Paras 6.106 and 6.109 – **how does it necessarily follow that there is no serious risk that the requirement for Burton-Swadlincote has been under-estimated? What if similar growth applies elsewhere especially in South Derbyshire where requirement is less than economic predictions might indicate?**

B J Sims

2 June 2014