

## **GUIDANCE NOTE FROM THE INSPECTOR**

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### **INTRODUCTION**

1. This Guidance Note explains the procedures which will be followed during the examination of the District Local Plan 2011-2033 (the Plan). It is intended to assist those who made representations on the Plan before it was submitted, and particularly those who wish to appear in person at the forthcoming hearing sessions.
2. More detailed information about the examination process and the legislation concerning plan preparation can be found in the documents listed in Annex A.

### **INSPECTOR AND PROGRAMME OFFICER**

3. The Plan was submitted to the Secretary of State for independent examination on 21 September 2018. I am the Inspector who has been appointed to carry out the examination.
4. The Programme Officer is Louise St John Howe. She is an impartial officer of the examination, working under my direction. She will assist me with administrative and procedural matters; make arrangements for the forthcoming hearing sessions; act as the channel of communication outside the hearings between myself, the Council and other participants; manage the despatch and receipt of any necessary examination documents; and keep the examination library and website up to date.
5. The postal address, email address and telephone number for the Programme Officer are provided above.

### **PURPOSE OF THE EXAMINATION AND THE INSPECTOR'S ROLE**

6. My role is to determine whether the Plan has been prepared in accordance with the relevant legal requirements of the Planning and Compulsory Purchase Act 2004; to determine if it is "sound" (see below); and ultimately to prepare a report for the Council to recommend whether or not it should be adopted.
7. To determine whether the Plan is sound, I will consider it against the tests set out in paragraph 182 of the National Planning Policy Framework, March 2012<sup>1</sup>. These are that a plan should be:

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<sup>1</sup> Paragraph 214 of the National Planning Policy Framework published in July 2018 clarifies that policies in the previous Framework will apply for the purpose of examining plans submitted on or before 24 January 2019.

- **Positively Prepared** – based on a strategy which seeks to meet objectively assessed development and infrastructure requirements;
  - **Justified** – the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence;
  - **Effective** – deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
  - **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.
8. The starting point for the examination is that the Council considers the Plan to be legally compliant and sound. Those seeking changes to the Plan must demonstrate why it is not, by reference to the legislation and/or one or more of the soundness tests above. In reaching my findings, I will take account of all of the representations made in accordance with Regulation 20 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), i.e. those representations made in response to the Plan published by the Council for consultation between 18 December 2017 – 29 January 2018. I will also take account of the supplementary representations made during March – May 2018 in response to the Council’s specific invitation<sup>2</sup>.
  9. However, it should be understood that my role is to determine whether the Plan is legally compliant and sound as it stands. It is not to improve it, or to make it “more” sound. Thus I am not required to cover each and every point raised in the representations, but rather to identify and address the main issues upon which the matters of soundness and legal compliance turn.
  10. In relation to the specific site allocations in the Plan, it is not my role to examine the soundness of sites which might have been put forward but which the Council has not included. These are often termed “**omission sites**”. Therefore, subject to the right to be heard (see below), such sites will not normally be discussed at the hearing sessions. Rather, should it be the case that additional sites need to be included in the Plan (because, for example, an allocated site is found to be unsound), I will look to the Council to decide which ones should be brought forward for examination. These would need to be subject to consultation and possibly Sustainability Appraisal. Further hearing sessions might then be necessary.

### **Main Matters and Issues for the Examination**

11. I have identified 16 Matters, each with a number of associated main issues and detailed questions, upon which the legal compliance and soundness of the Plan depends. These are set out in my **Matters, Issues & Questions (MIQs)** document, which has been issued with this Guidance Note. My examination of the Plan, including during the hearing sessions, will focus upon the MIQs.

### **My Report and Changes to the Plan**

12. After the hearing sessions have closed, I will prepare a report for the Council setting out my conclusions about the Plan and my recommendations in relation to its

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<sup>2</sup> In relation to this matter, I am aware of the judgement in the case of *CK Properties (Theydon Bois) Limited vs Epping Forest District Council*.

adoption. If I conclude that the submitted Plan is legally compliant and sound in all respects, I will recommend that it is adopted.

13. However, if I find that it is not legally compliant or sound, I might be able to recommend "Main Modifications" (MMs) to correct this. Before I can recommend MMs, the Council must formally request that I do so at some point before the examination closes. The MMs must be consulted upon to ensure that the rights of interested parties are not prejudiced, and it might also be necessary for them to be subject to Sustainability Appraisal. The Council could then adopt the Plan, incorporating the MMs.
14. The Council might also decide to make minor alterations to the Plan before it is adopted which do not materially affect its policies or concern soundness. These are referred to as "Additional Modifications". The Council is accountable for any such changes and they do not fall within the scope of my examination. With the exception of MMs and Additional Modifications, the submitted Plan cannot now be changed.

### **PROGRESSING REPRESENTATIONS ON THE PLAN**

15. Some people who made representations on the Plan at the Regulation 20 stage have indicated whether their views can be dealt with in written form, or whether they need to be communicated in person at a hearing session. I will give equal weight to both methods and so it is only necessary to attend a hearing if you have specific points to make in light of my MIQs.
16. Furthermore, the right to participate in a hearing extends only to those who have proposed changes to the Plan which might be necessary for soundness and/or legal compliance; and the right is limited to the policies or matters which were the subject of the original representation. This strictly excludes those who have simply commented on a policy, and people seeking to respond for the first time. Exceptionally however, I might invite particular individuals or organisations to appear; and anyone is welcome to attend the sessions to observe.

### **Pre-Hearing Statements**

17. The hearings will be structured around the MIQs. So that I can focus the sessions further, I would like the Council to respond to *all* of the MIQs in advance, in written pre-hearing statements. Others who made representations seeking changes to the Plan may also submit statements in response to the relevant questions, but this is not a requirement.
18. All statements should clearly identify the Matter, Issue and Question to which they relate. They should be as succinct as possible and not exceed **3,000 words** per Matter (i.e. including all issues and questions). The Council will have discretion because it must answer every question, **but any statements prepared by others which exceed the word limit might not be read.**
19. Statements should respond directly to the MIQs, and should neither repeat the original representation, nor introduce new arguments or evidence. Appendices should only be included where absolutely necessary and not simply to increase the word count.
20. Two paper copies and an electronic version of each statement should be provided, with essential appendices collated into a single PDF file. Statements will be made

available on the examination website and participants in the hearing sessions should access them in this way. Other than these statements, no other written material will be accepted, including during the Hearings, unless I specifically request it.

21. There are three separate deadlines (all in 2019) for the submission of statements to the Programme Officer as the sessions will take place over several weeks. The deadlines are set out on the **Provisional Hearing Programme** (see below), and summarised as follows:

- **5pm on Thursday 24 January for sessions 12 – 26 February;**
- **5pm on Thursday 21 February for sessions 19 – 27 March;**
- **5pm on Thursday 25 April for sessions 14 – 23 May.**

22. Late statements will be returned other than in exceptional circumstances.

### **Hearing Sessions & Programmes**

23. Hearing sessions are scheduled to take place over 6 weeks in 2019 as follows:

- **Tues 12 – Thurs 14 February (3 days);**
- **Mon 25 – Tues 26 February (2 days);**
- **Tues 19 – Thurs 21 March (3 days);**
- **Tues 26 – Weds 27 March (2 days);**
- **Tues 14 – Thurs 16 May (3 days);**
- **Weds 22 – Thurs 23 May (2 days).**

24. The venue for all sessions will be **Epping Forest District Council, Civic Offices, 323 High Street, Epping, Essex CM16 4BZ**. The sessions will start at 9.30 or 10am and finish by 5.30pm unless otherwise agreed with participants, with appropriate breaks during the day.

25. A **Provisional Hearing Programme** has been published with this Guidance Note. **If you have a right to be heard, and you wish to exercise that right, you must contact the Programme Officer by 5pm on Friday 21 December 2018** to confirm which sessions you wish to attend in relation to which Matters. You need to do this even if you indicated that you wished to appear on your original representation. If you do not contact the Programme Officer by the deadline, it will be assumed that you do not wish to appear and I will rely upon your written submissions.

26. Final hearing agendas will be published approximately one week in advance of the sessions. The agendas will be subject to change and it is the responsibility of the participants to keep up to date and informed by reference to the Council's website.

27. The purpose of the hearing sessions is to focus discussion on the matters which will be helpful to me. A hearing is neither an opportunity to repeat a case which is already set out in written representations, nor to make a new case which is not already in evidence. The sessions will proceed by way of a structured discussion which I shall lead. They will be inquisitorial rather than adversarial. There will not normally be any formal presentation of cases, or cross-examination of any participant. Attendees may bring professional experts with them, but they, along with any Barristers and solicitors present, will be treated as any other participant.

28. I shall endeavour to run the hearings in an efficient and effective manner within the

time constraints of the programme. My aim is to conduct clear, focussed hearings and to produce a succinct report.

#### **SITE VISITS AND CLOSING THE EXAMINATION**

29. Insofar as I consider it necessary to my assessment of the Plan, I shall visit sites and areas before, during or after the hearings. I shall do this on an unaccompanied basis without prior notification, unless it is necessary to go onto private land.
30. The examination will remain open until my report is submitted to the Council. However, no further representations or evidence will be accepted after the hearings have closed unless I specifically request this. Any late, unsolicited material will be returned.

*Louise Phillips*

INSPECTOR

November 2018.

## **ANNEX A**

### **SOURCES OF INFORMATION AND ADVICE**

#### **A. The Council's Website**

The documents associated with the examination of the plans are available at:

<http://www.efdclocalplan.org>

If you do not have access to the internet, documents and other information can be obtained from the Programme Officer.

#### **B. Relevant Legislation and National Policy**

The following legislative documents can be searched for and found at:

<http://www.legislation.gov.uk/>

- *Planning and Compulsory Purchase Act, 2004*
- *Planning Act, 2008*
- *Local Democracy, Economic Development and Construction Act 2009*
- *Localism Act, 2011*
- *The Town and Country Planning (Local Development) (England) Regulations 2012*

The National Planning Policy Framework and Planning Practice Guidance can be found at:

<http://www.gov.uk>

#### **C. Guidance from the Planning Inspectorate**

The Planning Inspectorate has produced guidance on examining development plans:

- *Examining Local Plans: Procedural Practice in the Examination of Local Plans, 4th Edition v.1, June 2016*

This document is available at:

<https://www.gov.uk/guidance/local-plans>