

Examination into the Newark & Sherwood Allocations and Development Management DPD

Matter 1 - Duty to Cooperate and Other Legal Requirements

Tuesday 5 November 2024

Representor: TOWN-PLANNING.CO.UK Agent Organisation (if applicable): Representor Number: 037 Representation: 0087 Person Appearing: Anthony Northcote <i>HNCert LA(P), Dip TP, PgDip URP, MA, FGS, ICIQB, MLoL, MCMI, MRTPI</i>

MATTER 1: DUTY TO COOPERATE AND OTHER LEGAL REQUIREMENTS

Issue 3 - Whether the Plan has been prepared in compliance with other legal requirements

MIQ 1.11 Has the Plan been prepared in accordance with the scope, timescale and content set out in the submitted Local Development Scheme (CD10)?

No, it hasn't - a Local Development Scheme is required under section 15 of the Planning and Compulsory Purchase Act 2004 (as amended). This must specify (among other matters) the development plan documents (i.e. local plans) which, when prepared, will comprise part of the development plan for the area. The Local Development Scheme must be made available publicly and kept up-to-date. It is important that local communities and interested parties can keep track of progress. Local planning authorities should publish their Local Development Scheme on their website.

Preparation of the DPD up to the first publication stage took place under the provisions of the Local Development Scheme (dated November 2022), that LDS is not included in the examination library. However, it did not set out that in any way that the DPD Review will amend policies in the Amended Core Strategy. As such the DPD Review failed to comply with the provisions of the Local Development Scheme. Section 19 (1) of the Planning and Compulsory Purchase Act 2004 prescribes that "*development plan documents must be prepared in accordance with the local development scheme*".

Prior to the second publication stage the Council revised their Local Development Scheme (dated July 2023) (CD10). In that LDS (CD10) in the table in section 2.2.0 it sets out the following relevant text in relation to the DPD Review:

“Role and Content: To review progress of the Allocations & Development Management DPD to ensure that the policies and proposals within the DPDs are still fit for purpose and to prepare policies and allocations to meet pitch provision for Gypsies & Travellers.”

The LDS (CD10) in the table in section 2.2.0 continues:

“The Inspector examining the Amended Core Strategy has set out that the District Council needs to carry out a new Gypsy & Traveller Accommodation Assessment (GTAA), this will be carried out over the next nine months at the same time a review of Development Management Policies will be undertaken to ensure that they are in line with the newly published version of the National Planning Policy Framework.”

The LDS (CD10) is therefore clear to a reader that the review of the Allocations and Development Management DPD was only to address an update to the Development Management Policies in the DPD (CD17) and to address matters relating to the matter of required pitches for Gypsy & Traveller provision. Nowhere does it explain to a reader that the DPD Review would be undertaking a partial review of the Amended Core Strategy (CD16).

The Newark & Sherwood Allocations and Development Management DPD as submitted is seeking to do two separate things: undertake a Review of the existing Newark & Sherwood Allocations and Development Management DPD (2013) (CD17); and to be a Partial Review of the Newark & Sherwood Amended Core Strategy (2019) (CD16). This means that the DPD Review fails to comply with the provisions of the Local Development Scheme as required under section 19 (1) of the Planning and Compulsory Purchase Act 2004.

I have raised this concern with reluctance, but the Council had the opportunity to rectify the position between the first and second publication stages. It could have chosen to split the two elements and undertake consultation on the Core Policies as a partial review of the Amended Core Strategy. Unfortunately, the Council did not choose to address the concerns that I set out in my representation.

Proposing to amend policies in the Amended Core Strategy through a review of the DPD raises concerns. The manner in which it is being done is through a backdoor type of method without the clear and transparent up-front way that should be followed. The Amended Core Strategy contains strategic policies which are not found in the Allocations and Development Management DPD. The consultation on the plan review is clearly badged as relating to the DPD; as such parties interested

only in strategic policies in the Amended Core Strategy may reasonably have chosen not to look at this DPD consultation.

The proposed review of Core Policies 1 and 3, together with creating a new Core Policy 2A should have been taken forward as a limited scope review of the Amended Core Strategy in line with paragraph 33 of the NPPF.

Unfortunately, in my view the Allocations and Development Management DPD as submitted has not been prepared in compliance with legal requirements.

Outcome Sought

The legislative requirements for the examination are contained in the Planning and Compulsory Purchase Act 2004 (as amended) (PCPA) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). Some guidance on procedure is also provided in Planning Practice Guidance.

The legislation in sections 20(7),(7A),(7B) & (7C) of the PCPA allows for three possible outcomes to the examination:

- The Inspector finds that the plan is sound and legally compliant as submitted: in these circumstances the Inspector must recommend that the plan is adopted;
- The Inspector finds that the plan is unsound and/or legally non-compliant as submitted, but that it is possible to make it sound and legally compliant by making main modifications to it. In these circumstances the Inspector must recommend the necessary main modifications, if requested to do so by the LPA. The main modifications must relate directly to the reasons why the Inspector has found the plan unsound or legally non-compliant;
- The Inspector finds the plan unsound and/or legally non-compliant as submitted, and that it is not possible to make it sound and legally compliant by making main modifications to it. In these circumstances the Inspector must recommend non-adoption of the plan. In practice, the LPA would be asked to consider withdrawing the plan before any such recommendation was made.

In my view the only way to seek legal compliance at this stage is for the LPA to invite the Inspector to make a main modification striking out in full the suggested Core Policies 1, 2A and 3 and associated text in Section 8 - Homes For All Paragraphs 8.1 to 8.20. With Section 8.0 being retitled 'Gypsy and Traveller Provision'.

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Issue 4 - Core Strategy Review

MIQ 1.18 The Core Strategy is due for review in accordance with Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. What are the implications for the Amended Allocations & Development Management DPD resulting from a review of the Core Strategy.

The Council is under a legal obligation through Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 to undertake a review of the policies of the Amended Core Strategy because it is now more than 5 years old. It should be noted that the legal requirement is at least every 5 years.

Paragraph 33 of the NPPF states: *“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary¹⁸. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.”*

Planning Practice Guidance Reference ID: 61-062-20190315 advises:

“To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.

Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.

There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.”

Previously in the early stages of the plan review that led to the Amended Core Strategy the Council was proposing to amalgamate the Core Strategy (CD16) and the Allocations and Development Management DPD (CD17) into a new single Local Plan. However, through the plan review process the council chose to decouple the proposed new single Local Plan back into two parts. This has continued to lead to the strategic policies and the allocations being contained in two separate development plan documents that continue to be looked at separately. In my view this is not in the best interests of local planning for the District and continues to lead to difficulties as to consistency and how the separate development plan documents can be examined in isolation.

The DPD is seeking to allocate sufficient land and sites required by strategic policies that are now more than 5 years old. As such it is effectively looking at sites required to deliver strategic requirements for housing, employment, retail etc. that are actually potentially out-of-date.

The Amended Core Strategy is based on ‘The housing requirements for Newark & Sherwood District between 2013 and 2033 are a minimum of 9080 dwellings’ as set out in Spatial Policy 2. That is 454 dwellings per annum. Planning Practice Guidance advises that where an authority’s housing requirement figure is more than 5 years old and needs updating, the Housing Delivery Test measurement rule book sets out the target that will apply. The Indicative Local Housing Need published in December 2024 by the Government sets out a higher annual figure for Newark & Sherwood of 494. This suggests that if the strategic policies were revised now as they should have been then a higher strategic housing requirement would be likely. This in turn would have implications for whether additional sites are required.

The Indicative Local Housing Need using the revised methodology that were consulted on recently by MHCLG suggests increasing the annual housing requirement for Newark & Sherwood to 730 dwellings. Whilst that methodology is not yet in force and has been subject to criticism, it does indicate a direction of travel.

The DPD review started in September 2019 with issues consultation and we are now more than 5 years later with adoption of the DPD likely to be in mid-2025. The plan preparation process has been very slow. The Council do not set out any plans in the Local Development Scheme (CD10) to undertake any review of the Amended Core Strategy, despite a review being legally overdue.

To be sound any DPD must be positively prepared, justified, effective and be consistent with national policy. The timing and dated nature of the Amended Core Strategy raises concerns as to how the Council is meeting the test of being positively prepared and how the DPD is consistent with national policy when it is based on delivering strategic policies that should themselves have been reviewed already.

Outcome Sought

The legislative requirements for the examination are contained in the Planning and Compulsory Purchase Act 2004 (as amended) (PCPA) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). Some guidance on procedure is also provided in Planning Practice Guidance.

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In my view the Inspector should recommend that the DPD if adopted should be subject to immediate review alongside the strategic policies, ideally in a single combined Local Plan to ensure that the policies and the allocations are collectively delivering the strategic development needs of the District.

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11th October 2024