

Public Examination into the South Hams District Council's Development Policies
Development Plan Document (DPD)

Pre-Hearing Notes– Issued 19 January 2010

Introduction

1. The purpose of this note is to inform statutory consultees and all those who have made representations on the above DPD of the arrangements that the Inspector is making for conducting hearings into the examination of the DPD.
2. The Inspector, Ian Broyd MRICS Dip TP, has been appointed by the Secretary of State to conduct the independent Examination into the soundness of the South Hams Development Policies DPD. Mr Robert Young has been appointed as the Programme Officer (PO) to assist him in the examination.
3. The hearings (which are part of the overall Examination) into the District Council's DPD will open on **Tuesday 2 March 2010** at the District Council's offices in Follaton House, Plymouth Road, Totnes.
4. By way of background to the examination the Inspector would like to make the following matters clear at the outset:
 - the Examination started with the submission of the Development Policies DPD and will end with the delivery of the Inspector's report, unless the Examination has to be aborted at an earlier stage;
 - the Inspector's Report will be binding on the Council, but it is not bound to adopt the DPD if it chooses not to do so;
 - as the report is binding it severely limits the changes that the Inspector can make to the DPD. Changes involving clarifications will be possible; or possibly bringing the DPD into line with government policy; or deleting part of the DPD, provided the remainder is satisfactory in its own right;
 - any other essential changes to achieve a sound plan that have not been subject to public consultation and sustainability appraisal are likely to be beyond the Inspector's remit and result in the DPD being found unsound. That would necessitate the Council returning to an earlier stage and re-running the process;
 - there can be two main ways that the DPD might be found unsound – a fundamental failure (the "showstopper"), or a cumulative failure ("death by a thousand cuts");
 - all parties thus need to be aware of the implications of seeking changes.

The Inspector's task

5. The Inspector's task is **to consider the soundness of the DPD**, based upon the 3 tests of soundness set out in the most recent version of Planning Policy Statement 12 (PPS12)-published in 2008. Similarly, on 27 June 2008 amendments to the T&CP (Local Development) (England) Regulations 2004 came into force. The examination will be carried out under the provisions of the amended regulations. (Appendix A contains a list of useful publications and websites for advice.)
6. Following the close of the hearings the Inspector will prepare a report for the District Council with his conclusions and any changes required to the DPD. He will

announce the expected arrival date of the report at the last hearing session. He will deal with broad issues in the Inspector's report, and not with each individual representation.

7. Most changes will be limited to clarification or to dealing with factual updating or correction. Where more significant changes are made, the Inspector will need to ensure that the rights of third parties are not prejudiced by recommendations on matters which would take them by surprise. Where appropriate, changes will also need to be covered by a revised Sustainability Assessment.

The District Council's Team and compliance with the Procedural Soundness Test

8. The main members of the District Council's team for the oral examination will be as follows: Graham Swiss (Forward Planning Manager) and James Doxford (Forward Planning Officer).
9. The District Council has confirmed that it has met the statutory procedural requirements set out in the Regulations relating to the submitted version of the DPD.
10. Responses were received from the following Statutory Consultees:
The Government Office for the South West (GOSW). Length of the document could be reduced. Requirements in a number of policies appeared too onerous, such as DP2. Parts of the DPD repeat higher level policies, such as DP4. Policies need to balance the levels and amount of evidence required for different types of planning applications.
Devon County Council. The sustainable construction credentials of the DPD could be improved and clarification needed on the application of where DP2 Landscape Character would apply.
The Highways Agency. Raised the impact on the Strategic Road Network with policies DP7, DP10, DP13, DP15 and DP16.
The Environment Agency. Suggest reference to flood risk in DP4 and DP13.
Natural England. A clearer statement on the importance of SSSIs is required.
English Heritage. Suggested improved cross referencing between DP6 and other policies and amendments to the monitoring framework.
The Regional Planning Body (South West Councils) - no representation was received.
11. The District Council has confirmed that it has carried out its own self-assessment on soundness.

The Programme Officer

12. Robert Young is the Programme Officer (PO): he is acting as an impartial officer of the Examination under the Inspector's direction and is not an employee of the Council. He can be contacted by email at robert.young@southhams.gov.uk. or on tel 01803 861257 .
13. The main tasks of the PO are to liaise with all parties to ensure the smooth running of the Examination, to organise the hearings programme, to ensure that all documents received both before and during the hearings are recorded and distributed, and to keep the Examination Library. Copies of the Examination

documents are available on various web sites and links are provided in Appendix A to this note. The PO can make available electronic or paper copies on request.

14. During the Examination the PO will be able to advise on how closely the hearing sessions are following the circulated programme. Alternatively, a regularly-updated programme will be available on the Council's web site http://www.southhams.gov.uk/sp-forward_planning-development_policies_.htm

Any procedural questions or other matters should be made through the PO.

Number of representations

15. 276 representations were received on the submitted DPD from 31 bodies and individuals. Of these 34 were in support, that is, they found the plan sound.

Progressing representations

16. Respondents have already indicated whether their views should be dealt with in a written form or whether they feel that they need to come and discuss them orally at a hearing session. **Both methods will carry the same weight and the Inspector will have equal regard to views put at a hearing or in writing.** Attendance at a hearing session will only be useful and helpful if you wish and need to participate in a debate.
17. the Inspector would like to emphasise that in the interests of fairness it will **not** be possible to request a change from written representations to an appearance at a hearing session after **Friday 5 February 2010**, due to the preparation work that has to be undertaken by other parties, particularly the Council.
18. **The Inspector wishes to emphasise that his starting point for the Examination is the assumption that the Council has submitted what it considers to be a sound plan. Those seeking changes must demonstrate why the DPD is unsound by reference to one or more of the tests of soundness.**

The hearing sessions

19. The hearing format will provide a relaxed and informal setting for dealing with issues, with little cross-examination, by way of a discussion led by the Inspector. Those attending may bring with them professional experts. Barristers and solicitors, if present, will be treated as part of their team.
20. The purpose of the hearings is to concentrate on the issues that the Inspector feels he needs to hear further about. They are not an opportunity to repeat a case already set out in representations. The discussion will focus on the Issues for Examination which are those identified in the District Council's Consultation Statement produced under Regulation 28 (see web site: http://www.southhams.gov.uk/reg_28_statement.pdf) and the questions that the Inspector may pose in the relevant final agenda issued a week or so before the hearing session (to be placed on the web site). **The emphasis will be on the tests of soundness.** The Inspector will make a few brief comments on the matters he wishes to have covered, then invite individuals to make their contribution in response to the points raised. The agenda may indicate whom the

Inspector is minded to call upon to open on a given topic, but **all will have an equal chance to contribute.**

21. The Inspector will then draw those present into the discussion in such a way as to enable him to gain the information necessary to come to a firm conclusion and decision on the matters before him. The Inspector will have read all statements beforehand, so there will be no formal presentation of evidence. There will be an opportunity within the discussion to ask questions of the other side. **No more evidence can be submitted once the hearing session has closed.**
22. The hearings will be inquisitorial, rather than adversarial. The Inspector will endeavour to progress them in an effective and efficient manner, keeping a tight hand on the discussions and time taken. As part of that process, it will be the Inspector's aim to minimise the amount of material to that necessary to come to informed conclusions on the issues of soundness. In that way he hopes to conduct a short, focused series of hearings and, in turn, to produce a short, focused report.
23. In order to run efficient sessions the Inspector will not permit repetition of points at hearings: a good point made ten times does not become a better point.
24. The main Issues identified by the Council in its Regulation 28 statement are:
 - How consistent is the Development Policy DPD with other DPD's (including the emerging RSS) and SPD, and are the linkages and cross-references clear?
 - Is there enough evidence on the local context to justify the policy provisions-employment protection, parking, housing mix, high quality design, sustainable construction, open space, landscape character etc?
 - How reasonable are the S106 provisions?
 - How reasonable is the amount of evidence required to support an application.

Other issues (not exhaustive) that the Inspector will raise are:

- Policy DP2-basis of the "Undeveloped Coast" notation-it runs deep inland (Appendix 10). Policy CO1 of RSS seeks distinction between developed and undeveloped coast.
- Policy DP6-whether the Council proposes to produce a local list of buildings of architectural or historic interest that lie outside Conservation Areas that would be protected.
- Policy DP8- i) whether the policy applies only to **Public** Open Space-see heading to the policy; ii) whether private playing fields should be shown on the proposals map; iii) evidence of open space need on which open space policy is based (Open Space, Sport & Recreation DPD-Annex 3 and Section 3).
- Policy DP13-whether the protection of temporary touring sites should be included in the policy.
- Policy DP17-whether the term "original dwelling" needs to be defined and whether the term "significant" needs definition.
- Appendix 7-Monitoring Framework-whether "targets to be developed" have been progressed.

25. In general, the only evidence to be submitted now should be in response to those Issues. However, evidence on new matters which have arisen since the first representations were submitted can be sent to me via the PO. Examples could be where new Core Documents (additions to the evidence base) have been produced, or changes proposed by the Council. **Such submissions should be limited to 3000 words.**

The hearings programme

26. The Hearings Programme will be posted on the Council's web site, or will be available in paper form from the PO. It may be subject to change and will be updated. It will be for individual participants to check the timing and progress of the hearings, either on the web site or with the PO, and to ensure that they are present at the correct time. The hearings sessions will normally start at 10.00am and 2.00pm each day. A short break will be taken mid morning and mid afternoon. Lunch will be taken about 1.00pm. **The present estimate is that the hearings will not last more than 2 days.**

Evidence Base and Examination Library

27. The Council has prepared a list of Core Documents that will be available in the Examination Library. The list will be available for viewing on the Council's web site http://www.southhams.gov.uk/sp-forward_planning-development_policies_.htm They include Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs), key evidence documents, and other documents that the parties are likely to refer to. Accordingly, parties should **not** attach extracts of these documents to their Statements, as they are already Examination documents. Any changes to the list will be shown on the web site, with paper copies available from the PO.

Statements of [Un] Common Ground

28. Statements of Common or Uncommon Ground are invited where these would be helpful in identifying points that are not, or are, in dispute. This will assist the hearings process to concentrate on the key issues that truly need public discussion. They could for example include: agreed wording of a suggested change to a policy criterion, or agreed factual information; or areas or points of disagreement.
29. **This work should commence now, with the aim of completing them in time to feed into the relevant hearing Statement.** However, as a last resort, agreed documents will still be accepted if submitted at least 2 weeks before the relevant hearing.

Statements

30. All Statements should be sent to the PO by **12 February 2010**. The original representations already made should have included all the points, documents and evidence to substantiate respondents' cases. All further written submissions in the Statements should only address the Issues for Examination. The Council's Statements may also include any desired responses to the matters raised by the original representations (both written and hearings), and should include any suggestions for minor editing changes and/or minor changes to the wording of

policies or explanatory text (see also below).

Form of Statements

31. The Inspector's requirements for the presentation of all statements are appended as Appendix A. Its provisions should be thoroughly read and implemented as otherwise statements will be returned.
32. In the Statements from respondents it would be very helpful if should give a brief concluding section stating:
 - What part of the DPD is unsound?
 - Which soundness test(s) it fails.
 - Why it fails (point to the key parts of your original representations).
 - How the DPD can be made sound.
 - The precise change/wording that is being sought.
33. The Inspector will require Statements from the Council which say why they consider the DPD to be sound in that particular aspect and why the changes sought by other parties would make it less sound or even unsound.

Suggested changes-Proposed Minor Changes

34. Following its consideration of the representations to the published Development Policies DPD, the Council issued a schedule of some 180 Proposed Minor post publication changes (October 2009). The Council has requested the Inspector to consider the suggested changes as part of the examination http://www.southhams.gov.uk/sp-forward_planning-development_policies_.htm Respondents were notified of those changes in an email from the PO dated 17 December 2009. The Inspector will be considering the proposed changes in the light of the background to the examination that appears in the Introduction to this note.
35. The Council may ask the Inspector to consider further changes to those already proposed as the examination progresses. Should that arise, the Inspector will ask the Council to prepare a special Examination web page – a Schedule of Rolling Changes - where those changes will be cumulatively listed on a regularly updated basis (a "living document"), as well as being dealt with in detail at each hearing session. Respondents should monitor this in case they wish to comment upon them.

If there are any questions arising from this note they should be passed to the Inspector through the PO.

Ian Broyd

INSPECTOR

Appendix A

Format for statements

- A. Please send email electronic versions of all Statements and Appendices to the PO (in Word or PDF format), as well as the paper copies below.
- B. Submissions should be succinct, with the avoidance of unnecessary detail and repetition of the original representation. It is the quality of the reasoning that carries weight, not the bulk of the documents. There is no need for verbatim quotations from the DPD or other sources of policy guidance. It is vital that the fundamental elements are set out clearly and succinctly – the Examination is not the place for surprise contributions!
- C. None of the statements should be longer than **3,000 words**. Any submissions longer than this will be returned by the PO for editing. Statements should be prepared on A4 paper, printed on both sides, and **not bound** but just stapled.
- D. Supporting material in the form of appendices to statements should be limited to those which are **essential** and should not contain extracts from any publication that is already before the Examination, such as the Core Documents and nationally available Government guidance – a paragraph or page reference will suffice. Any appendices should have a contents page and be paginated throughout. Whilst the word limit does not include text in appendices, they should respect the aim of succinctness. Anyone submitting appendices should indicate in their statement which parts are particularly pertinent and on which they are especially relying.
- E. Those appearing at **hearings** should send sufficient copies of all statements to the PO for issuing to each participant, plus 3 (for the Inspector, the Council and Library), e.g. if 4 people are listed for a hearing, then the PO will require 7 copies (to include one unbound, for further copying, and one hole-punched, for the Inspector).
- F. All participants should adhere to the timetable for submitting statements. **Late submissions and additional material are unlikely to be accepted on the day of the relevant session** since this can cause disruption and result in unfairness, and can result in an adjournment of the hearing. If material is not received by the deadlines stated below, the PO will assume that you are relying only on the original representations:
 - Statements of Common Ground: in time to feed into Statements, or (as a last resort) at least **2 weeks** before the relevant programmed hearing if agreed.
 - Last date for changing from written representations to a hearing appearance will be **5 February 2010**.
 - All Statements: by **12 February 2010**. (Note: the Council's Statements should also deal with the Inspector's written representations Issues, including responses – if any - to those original representations).

Appendix B

List of relevant legislation and guidance

A. Legislation.

These documents can be searched for and found on: <http://www.opsi.gov.uk>:-

- Planning and Compulsory Purchase Act 2004
- The Town and Country Planning (Local Development) (England) Regulations 2004
- The Environmental Assessment of Plans and Programmes Regulations 2004

This document can be searched for and found on: <http://www.communities.gov.uk>:-

- European Directive on Strategic Environmental Assessment (2001/42/EC)

B. Government Policy and Guidance

These can be found by using the search facility on: <http://www.communities.gov.uk>

- Planning Policy Statement 12: Local Spatial Planning (PPS12) [2008]
- Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents
- A Practical Guide to the Strategic Environmental Assessment Directive
- Local Development Framework Monitoring: A Good Practice Guide

C. Plan Making Manual

The Plan Making Manual accompanies the 2008 PPS12. It has been produced by the Government and is delivered via the Planning Advisory Service website.

<http://www.pas.gov.uk/pas/core/page.do?pageId=51391>

D. Guidance from the Planning Inspectorate

See: http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/index.htm, but most of this relates to the new PPS12 and amended Regulations.

E. Examination and Background Documents

Many of the above and most Core Documents, including the DPD, are available on-line on the web site at:

http://www.southhams.gov.uk/sp-forward_planning-development_policies_.htm