

DERBY CITY LOCAL PLAN PART 1: CORE STRATEGY EXAMINATION GUIDANCE NOTES FOR PARTICIPANTS (DRAFT)

Introduction

1. These Guidance Notes have been prepared to assist those individuals and organisations who are involved in the Examination of the Derby City Local Plan Part 1: Core Strategy (CS). The CS was formally submitted to the Secretary of State on 18 December 2015 following a six week consultation period. If anyone has any comments or queries on the content of the Guidance Notes or the accompanying list of Matters, Issues and Questions these should be made to the Programme Officer by **26 February 2016**, after which they will be issued in their final form.

Inspector and Programme Officer

2. The Secretary of State has appointed the Inspector, Mike Moore BA(Hons) MRTPI CMILT MCIHT, under Section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'), to hold the Examination into the CS.
3. Carmel Edwards is the Programme Officer (PO). She is acting as an impartial officer for the Examination under the Inspector's direction. Her contact details are:

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4. The PO's main tasks are to liaise with all parties to ensure the smooth running of the Examination, to organise the hearing programme, to ensure that all documents received both before and during the hearings are recorded and distributed, to keep the Examination Library and to assist the Inspector with administrative and procedural matters. She will advise on any programming or procedural queries. Any matters which the Council or participants wish to raise with the Inspector should be addressed to the PO. Anyone who has a disability that could affect their contribution to or attendance at hearings should contact the PO as soon as possible so that any necessary assistance can be provided.

Purpose and nature of the Examination

5. It is important to note that the "Examination" relates to the whole process of examining the plan, from the time the CS was submitted to the Secretary of State to the submission of the Inspector's report to the Council.
6. The Inspector's task is to consider whether the CS meets the requirements of section 20(5) (a-c) of the 2004 Act and associated regulations and whether it complies with the requirements of the National Planning Policy Framework ('the Framework'). These requirements comprise whether the **legal requirements** have been met, whether the Council has complied with the **duty to co-operate**; and whether the plan is **sound**. The Framework indicates that a sound plan is **positively prepared, justified, effective** and **consistent with national policy**. The Council should rely on evidence collected while preparing the CS to demonstrate that it meets the requirements of the Act. Those seeking main modifications (changes) to the CS (those necessary for the plan to be sound or legally compliant) have to demonstrate why the document does not meet the requirements and how the suggested changes would address any failure.
7. Key elements in the Examination process include:
 - The starting point for the Examination is the assumption that the Council has submitted what it considers to be a sound plan;
 - The Inspector has to consider the representations made on the submitted plan;
 - The Inspector is not required to consider each and every point made in every objection or to report on them, but to use the representations as the starting point in considering the Examination requirements;
 - It is not the Inspector's role to seek to improve the CS or to make it 'more sound' but to seek to address unresolved issues through round table discussion or consideration of the original written representations.
 - The Inspector also has to exercise his duties under section 39 of the 2004 Act with the objective of contributing to sustainable development and to take account of the presumption in favour of sustainable development in the Framework.
8. The Examination will proceed on the basis of the Derby City Local Plan – Part 1 – Core Strategy: Pre-Submission document (August 2015) (Document CD001).
9. The first stage of the Examination is the **assessment of the written evidence**, including the representations, by the Inspector. He will then define main Matters and Issues. All those who made representations on the Pre-Submission document in the consultation between August and October 2015 will have an opportunity to make further written statements in response to Questions relating to the matters and issues.
10. The **hearing sessions** are intended to be an inquisitorial process under the Inspector's direction. They will address the Matters, Issues and Questions as appropriate.

11. Following the close of the hearings the Inspector will **prepare a Report for the Council** with his conclusions on legal compliance and soundness. It will include details of any recommended main modifications.
12. Sources of further guidance on local plan examinations are contained in the Appendix at the end of this Note.

Representations on the Core Strategy

13. Some 550 representations (from 81 organisations and individuals) were received on the Pre-Submission CS document in the August to October 2015 consultation.
14. Respondents should have already indicated whether their views should be dealt with in a written form or whether they wish to discuss them at a hearing session. **Both methods will carry the same weight and the Inspector will have equal regard to views made at a hearing or in writing.**
15. Those who wish to proceed by written means can rely on the representations that they have already submitted. Those who consider the plan to be unsound or contrary to the legal requirements may submit further written statements relating to the Inspector's Questions prior to the hearings (see paras 28 to 37). The right to participate in a hearing extends only to those who propose changes to the CS. There is no need for those supporting the CS or merely making comments to take part in the hearings although they may attend as observers. However, the Inspector may invite persons to be heard at the hearings where he thinks they are needed to enable the soundness of the plan to be determined.
16. If any party wishes to change from an appearance at a hearing session to written representations (or from a written representation to an appearance) they should inform the PO by **31 March 2016**. Anyone who has not already indicated whether or not they wish to be heard, will be assumed to be satisfied that they can rely upon their written representations and will not be invited to take part in the hearings.

Procedure at the hearing sessions

17. The hearing sessions for the Examination will commence on **26 April 2016** at 10.00 hours. Subsequent sessions will normally start at 10.00 hours and 14.00 hours with a break for lunch at about 13.00 hours, although earlier starts may be programmed in some instances (please check the hearings programme). They should finish by about 17.00 hours. If convenient, short breaks will be taken mid-morning and mid-afternoon.
18. After initial sessions on legal compliance and the duty to co-operate, the hearings will focus primarily on issues of soundness. There will be a series of hearing sessions based on the matters that the Inspector has identified in the list of Matters, Issues and Questions.
19. The hearing format will provide an informal setting for dealing with issues

by way of a discussion led by the Inspector. Those attending may bring with them professional experts but there will be no formal presentation of evidence, cross-examination or formal submissions. There is no need for participants to have legal representation but where this occurs such advisors will be treated as part of the participant's team, as appropriate.

20. The hearing sessions will follow agendas which the Inspector will prepare after reading the further statements. The discussion will focus on the issues identified on the agenda and the questions posed. The hearings will be conducted on the basis that everyone taking part has read the relevant documents, although participants will be able to refer to and elaborate upon relevant points, as necessary. The Inspector will endeavour to progress the hearings in an effective and efficient manner, keeping a tight hand on the discussions and time taken. As part of that process, he will draw those present into the discussion in such a way as to enable him to come to a firm conclusion on the matters and issues. It is important that participants should not seek to introduce new material at a hearing session.
21. Where there are issues on which many people wish to be heard and have similar concerns they should nominate a group spokesperson to put forward their case. In order to run efficient sessions the Inspector will not permit repetition of points at hearings: a good point made many times does not become a better point.
22. At the hearings, the Inspector will aim to work collaboratively with the Council and all participants in a proactive, pragmatic and problem-solving manner. Those taking part should aim to be co-operative and constructive, and be willing to discuss potential changes that would overcome any unsoundness problems.

Hearings programme

23. A draft Programme for the hearings, putting dates and times to the issues and subjects to be examined, has been published. If you have any queries on it, please raise them with the PO. The Programme will be available on the web site, or in paper form from the PO.
24. Every effort will be made to keep to the Programme, but late changes may be unavoidable. The PO will inform participants of any late changes to the timetable but it will be the responsibility of individual participants to keep themselves up to date and to ensure that they are present at the correct time.

Evidence Base and Examination Library

25. The Council has prepared an Examination Document List. Copies of this and the documents themselves can be seen on the [Council's website](http://www.derby.gov.uk/environment-and-planning/planning/localplanpart1corestrategyexamination/) (<http://www.derby.gov.uk/environment-and-planning/planning/localplanpart1corestrategyexamination/>). The list should represent the Council's full evidence base for the Examination. Further documents may be added as the Examination progresses – for example, in response to a request from the Inspector.

26. A number of documents have been added to the Examination Library since consultation took place on the Pre-Submission CS. Where relevant, respondents can refer to these in any further written statements on the Matters, Issues and Questions (see para 29).
27. In addition to the Core Documents, the Examination Library will contain copies of representations and further statements. The PO will assist anyone wishing to see and/or copy any documents.

Statements responding to Matters, Issues and Questions

28. The representations made on the Pre-Submission CS should have included all the points and evidence to substantiate respondents' cases and **it is not necessary to submit further material based on the original representations**. Please note that although respondents may have made representations at earlier stages of the plan process, the Inspector only has copies of the representations made in response to the August to October 2015 consultation.
29. From now on, any further written submissions should mainly be limited to responding to the Inspector's Matters, Issues and Questions for examination. The only exception will be new matters that have arisen since the representations were submitted (for example, where additional documents have been included in the Examination Library by the Council) and any modifications that are promoted during the course of the Examination (see below). Respondents may refer to new Documents or new matters in statements they intend to submit in relation to the Inspector's Matters and Issues. All further statements (electronic or hard copy) must be received **by 31 March 2016**.
30. When submitting further statements respondents should focus on:
 - Which particular part of the CS is unsound.
 - Which of the soundness criteria it fails to meet.
 - Why it fails (point to the key parts of your original representations).
 - How the CS can be made sound.
 - The precise modifications/wording that you are seeking.
31. From the Council the Inspector needs a general response to each of his Matters, Issues and Questions. On legal compliance and the duty to co-operate the Council should provide a brief statement indicating its conclusions on each of the headings in the Inspector's list, cross referring to the evidence base as appropriate. Other parties should answer only those questions which follow from the representations they made on the Pre-Submission plan. They should not stray beyond those issues relevant to each original representation.
32. Submissions should set out the fundamental elements of cases, since the hearings are not the place for new points or evidence to be presented for the first time. There is no need for verbatim quotations from the CS or other sources of policy guidance. 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 documents in the Examination Library. However it is essential that statements indicate clearly the paragraph or page of the document that is being relied on. Anyone submitting appendices with their statements should indicate in their statement which parts are particularly pertinent and on which they are especially relying by reference to page or paragraph numbers.

33. Participants should not include links to web pages in their statements. The content of websites can change and it is important that all parties are clear about what is being referred to. Where it is necessary to refer to a website, an appropriate extract can be included as an appendix to the statement.
34. Participants should attempt to reach agreement on factual matters and statistics before the hearings start and everyone is encouraged to maintain a dialogue with the Council and other parties in advance of the hearings. **Statements of Common Ground** are a useful way of narrowing the issues in dispute, thereby assisting the hearings to concentrate on the key issues that truly need public discussion. They should be submitted in accordance with the timetable for further statements.
35. Those submitting further **written statements** (and appendices) should send, where possible, emailed electronic versions to the PO (in Word or PDF format) as well as 3 paper copies (for the Inspector, Council and PO).
36. Statements should be no longer than **3,000 words per Matter** (1,500 words for new matters or responses to any modifications). The Council may exceed the limit if replying to a large number of questions. Any submissions which are excessively long or contain irrelevant or repetitious material may be returned by the PO for editing. Statements should be on A4 paper, and not bound but stapled; plans or diagrams should fold down to A4 size. All statements should be marked in the top right hand corner with the Matter number and name of the respondent.
37. All participants should adhere to the timetable for submitting further statements. They should avoid circulating additional material during the hearings. **Late submissions and additional material are unlikely to be accepted**, since this can cause disruption and result in unfairness, and can cause an adjournment of the hearing. If material is not received by the deadlines stated, the PO will assume that you are relying only on the original representations.

Modifications to the Plan

38. Under section 20(7C) of the 2004 Act the Council has requested the Inspector to recommend any main modifications to the plan that are necessary to make it sound and legally compliant. Participants should note that there is no provision for main modifications to be requested in relation to the duty to co-operate: the plan as submitted either meets or fails that test. Minor changes to the plan are a matter for the Council.

39. The Council has submitted a Schedule of Proposed Minor Modifications (document CD002) with the CS. In the first instance the Inspector will discuss with the Council, through the PO, whether any of these are main modifications necessary for soundness or legal compliance.
40. The Inspector will work collaboratively with the Council and other participants to ensure that any necessary main modifications are supported by evidence and are subject to the same process of sustainability appraisal, publicity and opportunity to make representations as the submitted plan. Any main modifications suggested by the Council should include the precise wording of the text and be set out in a Schedule which will be placed on the Examination web page. This will be updated as required and respondents should monitor this in case they wish to comment at the appropriate time. Any main modifications that the Inspector considers are necessary for soundness or legal compliance will be subject to public consultation, usually after the hearings have closed and before he submits his report.

Site visits

41. The Inspector will visit relevant sites and areas referred to in the plan or representations before, during, or after the hearings. This will generally be done unaccompanied by the parties.

Close of the Examination

42. The Examination will remain open until the Inspector's report is submitted to the Council. However, the Inspector will not accept any further representations or evidence after the hearing sessions have finished unless he specifically requests further information. Any late or unsolicited material is likely to be returned.

Submission of Inspector's Report to the Council

43. The date of submission of the Inspector's Report will largely depend on the content, extent and length of the Examination. He will aim to confirm the likely date at the end of the final hearing session.

Appendix – Useful Guidance

Further guidance can be found in:

- The Planning and Compulsory Purchase Act (2004) and associated regulations
- The Planning Inspectorate's guidance (See www.gov.uk/guidance/local-plans)
 - Examining Local Plans: Development Plan Documents: Procedural Practice December 2013 (3rd Edition v2)
 - Examining Development Plan Documents: Learning from Experience September 2009 (which highlights experience up to that date)
- The Planning Advisory Service's guidance on Local Planning (www.pas.gov.uk/local-planning)