

Examination of the Nottingham City Council Land and Planning Policies Development Plan Document (Local Plan Part 2)

Inspector's Initial Observations and Questions

I have been appointed to examine the Nottingham City Council Land and Planning Policies Development Plan Document (Local Plan Part 2) (LAPP) and have received the submitted Plan and supporting material. I have made some progress with my initial preparatory work and I am seeking clarification from the Council, as authors of the plan, on a number of initial observations/questions in order to help facilitate the examination process.

I would be grateful if you would provide a response to these by Friday 18 May 2018.

Procedural issues

1. The Submission version of the LAPP includes a number of proposed changes which are marked as tracked changes on the Plan. These are also set out in a schedule of changes.

I note that the Council indicates that it wishes to propose these to the Examination as changes to address issues raised by representations received on the Revised Publication version of the Plan or to update the Plan. I also note that the Council has undertaken a Sustainability Appraisal (SA) screening process of the changes to the policies and policies map as a result of the proposed changes to determine if a re-appraisal of the original SA is required and that this has found that the majority of the changes are either not material or are within the scope of the original SA and that where this is not the case they have been reappraised. However, the proposed changes have not been subject to consultation.

On the basis of the above therefore and having regard to the guidance at paragraphs 1.2 and 3.3 of the PINS Procedural Practice in the Examination of Local Plans (June 2016), I consider that the Revised Publication version of the Plan, which is the version that was published for consultation in September 2017, should be the basis for the Examination and I will consider the proposed changes indicated in the March 2018 Submission version of the Plan as proposed modifications to the Revised Publication version.

It would be helpful if, at an early stage, the Council would indicate which of the proposed changes it considers are Main Modifications (MMs) and which it considers are Additional Modifications (AMs). Any further proposed changes should be similarly categorised.

Definitions of MMs and AMs are given in sections 20 and 23 of the *Planning and Compulsory Purchase Act 2004*, as amended. MMs are those which are needed to make the plan legally-compliant and sound (s20(7C) & s23(2A)(b)). AMs are those which (taken together) do not materially affect the policies in the plan (s23(2)(b) & (3)(b)).

2. Is it the Council's intention to have any further discussions with representors or to prepare any Statements of Common Ground in advance of the Hearing sessions?

Legal Compliance

3. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended) (the "Habitats Regulations") requires that competent authorities assess the potential impacts of land use plans on the Natura 2000 network of European protected sites to determine whether there will be any 'likely significant effects' on any European site as a result of the plan's implementation (either alone or 'in combination' with other plans and projects).

I note that there are currently no internationally designated sites (Special Areas of Conservation (SAC), Special Protection Areas (SPA)) within or in close proximity to Nottingham City. However, I also note that the LAPP indicates that the Greater Nottingham Aligned Core Strategies were subject of a Habitats Regulations Assessment (HRA) in light of information available which indicated that the Sherwood Forest area may be formally proposed as an SPA in the near future and that this assessment concluded that any significant effects were capable of mitigation through changes to the Core Strategy which have been made.

I note that the LAPP indicates that since it is in general conformity with the Core Strategy it is not considered that there is a need to undertake a further screening. I also note that the LAPP indicates that whilst there were no significant effects identified for the Nottingham City area of the Aligned Core Strategies, this may need to be reassessed if an SPA classification is formalised and that allocations and/or any permissions given would be reviewed, and may be modified or revoked in order to ensure compliance with the requirements of the Habitats Regulations.

I am particularly mindful that:

- the HRA for the Aligned Core Strategies was undertaken in 2012 and that the specific allocations in the LAPP were not defined at that time;
- the National Planning Policy Framework indicates that potential SPAs should be given the same protection as European Sites; and
- the Wealden judgment of March 2017 (Wealden v SSCLG [2017] EWHC) and the recent judgment (April 2018) of the Court of Justice of the European Union: People over Wind, Peter Sweetman v Coilite Teoranta post-date the HRA on the Aligned Core Strategies. These judgments relate respectively to nitrogen deposition and the need for mitigation measures to be assessed within the framework of an Appropriate Assessment rather than at the screening stage.

Therefore, in the light of all of the above I would request the Council to consider whether further work is required to ensure compliance with the Habitat Regulations. It may be useful to seek the views of Natural England on this matter.

Hearings

4. I note the Council's preference for the Hearing part of the Examination to commence on or after 10 September 2018. Having regard to the availability of Council Officers, the Programme Officer and myself and in order to avoid the summer holiday period this would seem sensible and I am agreeable to working towards this. However, it may be that this timeline will need to be reassessed if it is considered that further work is required in response to my query above regarding compliance with the Habitat Regulations. The scheduling of the Hearing part of the Examination will of course also be subject to the availability of a suitable venue and I understand the Council is liaising with the Programme Officer on this matter.
5. Information is awaited regarding those who wish to participate in the Hearing part of the Examination and it is difficult to estimate the likely duration of the Hearing sessions until the level of likely participation is known. However, I note the Council's suggestion that it may take around 3 weeks. I also note the Council's preference for the Hearing sessions to sit for 3 days each week and confirm that I would be agreeable to such an arrangement. I would suggest that the 3 sitting days should be Tuesday, Wednesday and Thursday.
6. Please note that the Council will need to ensure that the start date of the Hearing sessions is notified at least 6 weeks in advance of the start of the sessions. I will circulate a paper setting out the Matters, Issues and Questions, a Guidance Note and a draft Hearings programme in due course. The examination is based on the identified Matters, Issues and Questions and not driven by the representations.

Initial site visits

7. It would help me to make an initial site visit to the area. I would welcome the Council's advice concerning the practicality of viewing the various site allocations on an unaccompanied basis from the public realm.

Beverley Doward

INSPECTOR

Date: 14 May 2018