

**INSPECTOR'S NOTE TO NORTHAMPTONSHIRE COUNTY COUNCIL**

**ADJOURNMENT OF THE HEARINGS and THE WAY FORWARD**

Background

In the week 31<sup>st</sup> March - 3<sup>rd</sup> April, I held a number of Hearing sessions into the Core Strategy, culminating with a procedural session on the last morning. There I indicated to the Council that, on the basis of what I had heard during the week, if I were to write my report now, I would not be able to find the Core Strategy sound. The principal reason is that of inadequate justification.

However, I stated that I would afford the Council every reasonable opportunity to support its Plan and, to that end, I undertook to set out the areas of the Plan in relation to which additional evidence would be required. The Hearings sessions were adjourned *sine die* to allow me time to prepare this note; for the Council to respond; and, if the Council chose to follow that route, for evidence to be submitted and distributed. In the event that additional material is submitted, it would be in accordance with a set timetable, with a view to resuming the Hearings on a date to be agreed.

Soundness

For the avoidance of any doubt, I draw the Council's attention to the box below paragraph 4.52 in PPS12 which sets out the tests of soundness. The first of these is that it must be JUSTIFIED. Further explanation of the test is given in the box and in paragraphs 4.36 and 4.37 which say that:

*Core strategies must be justifiable: they must be:*

- *founded on a robust and credible evidence base; and*
- *the most appropriate strategy when considered against the reasonable alternatives.*

*They should be based on thorough evidence and the evidence base should contain evidence that the choices made by the plan are backed up by background facts.*

I made a particular point of referring to the need for evidence at the Pre-Hearing Meeting. I sought it through several of my initial written questions to the Council; in my Issues and Matters for discussion; and at the Hearings. Regrettably, the Council has not been able thus far to provide substantial evidence relating to some important parts of the Plan.

Rigour

At the procedural session, some of the discussion centred on the rigour with which an individual Inspector can be expected to pursue evidence in relation to the test of justification. My approach is guided entirely by PPS12, which makes clear the importance of the independent examination. Paragraph 4.48 says that it is *vital* that the plan is the most appropriate; and paragraph 4.49 explains that the rigour of the process remains unchanged (compared to the earlier PPS12), with Inspectors

looking for the same quality of evidence and content. Unlike under the old Local Plan system, the Examination is not an Inquiry into objections made to the Plan. Rather, the process is one where the Inspector identifies areas for discussion based partly on matters raised in representations, but also based on the duty to examine the Plan by reference to the tests of soundness. In this case, the lack of justification for parts of the Plan was a matter of concern not solely for me but also for some representors. There is therefore no question that these matters would be considered at the Hearings.

In the absence of the cross-examination which characterised Local Plan inquiries, it is incumbent upon the Inspector to test the evidence. With respect to S78 appeals, the Courts have found that in the less formal Hearing situation, Inspectors should adopt an inquisitorial role. The Council accepts that it is appropriate to apply this same approach to DPD Examinations. Indeed, there would be little purpose in the Hearings if the evidence was not so tested. PPS12 (§ 4.49) says that the independent examination is in part to provide assurance. There will only be confidence in the system if the examination is carried out with appropriate rigour.

That said, there is some flexibility in the way in which Inspectors may handle Examinations where during the course of Hearings it becomes apparent that the Plan has not been sufficiently justified. In circumstances such as this, it has become commonplace to allow Councils time in which to marshal their evidence or to provide new material to support their Plan. That is an option in this case. I would emphasise, however, that following this course of action will only be of benefit to the Examination if the Council is sure in its own mind that the necessary evidence is available, or can be made available within a reasonable timescale; and that it is likely to be sufficient to justify the Plan. Clearly, there is little point in taking time, trouble and expense to produce evidence that is unlikely to be satisfactory.

### Outcomes

If additional material is submitted, the Hearings would resume after sufficient time has been afforded to me and other participants to consider it. The Hearings will inevitably have to go over some of the ground already covered in the early sessions, where it was not possible for me or certain representors to examine matters in sufficient detail. I would then proceed to report to the Council on the plan, but there is no guarantee or implication that the acceptance of additional evidence will be sufficient to enable me to find the Plan sound.

At the Pre-Hearing Meeting, I set out a number of possible outcomes of the Examination. One was that I could find part of the Plan sound, but not another. This Core Strategy covers 2 related but severable parts, concerned with minerals and waste. If the Council felt, on reflection, that it could justify one part but not the other then I see no reason why the Council should not, if it thought appropriate, decide to proceed with part only. This would naturally have to be subject to appropriate revisions being made to the Local Development Scheme and to complying with other procedural requirements. I am not encouraging the Council to follow this course of action, but simply pointing out that it may be an option. Detailed consultation with the regional Government Office on the means whereby this could be achieved would of course be necessary.

The Council indicated at the procedural session that, if it took the view that it could not provide the necessary evidence, or if it felt that the tests imposed are set at an unachievable level, then it would seek to withdraw the Core Strategy. That is not something to be done lightly; and it is not something I am urging. It is a matter solely

for the Council, in consultation with the Government Office. I therefore recommend the Council to liaise closely with the GO before making any decision as to the way forward. It is fortunate that a representative of the GO, though not present during the procedural session, attended the other important sessions of the Hearings and will therefore be fully aware of the background to the present circumstances.

The Council's representative stated that, if the Core Strategy were to be withdrawn, then the Council may not resubmit it, but instead rely on its adopted Minerals and Waste Local Plans. Such a choice is not something over which I have any influence. But, needless to say, such an approach would have a number of important implications for minerals and waste planning in Northamptonshire, not least in relation to the other MWDF documents programmed to be submitted. Again, I would recommend close liaison with the Government Office.

### The evidence required - general

It is a reasonable expectation that the Council is already in possession of the evidence I seek. After all, as paragraph 4.49 of PPS12 says, the starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. To reach that conclusion, I assume that the Council must have satisfied itself that the evidence it possessed was sufficient to justify the Plan.

If the Council considers that the material already available is unlikely to be sufficient to justify the Plan, then additional material may have to be sought. There is the danger that this could lead to "post-justification" of the Plan. That of course is to be avoided. Evidence should be of an objective character; and care should be taken not to "cherry pick" material that supports the Council's case while disregarding contrary evidence. The application of clearly identified, consistent objective criteria to alternative strategies / policies will go a long way to demonstrate that the Council has been even-handed with its evidence base. Experience of the Hearings thus far should show that I will seek to test any new evidence rigorously.

I appreciate that some choices in the plan will have been made on the basis of professional judgment. I have already explained during the Hearings that planning decisions commonly require the exercise of judgment; and I am not calling into question the judgment of the Council's professional staff. However, judgment requires some evidential base in every case. It is this evidence I now seek.

As PPS12 (§4.37) says, the evidence gathered should be *proportionate to the job being undertaken by the plan*. I do not expect the Council to undertake new, large-scale, detailed research in support of its case. Nor do I expect voluminous evidence to support every minor choice taken in the Plan. Nonetheless, I do expect evidence that is of substance, to which appropriate weight can be attributed to justify the Plan, and which is sufficient to counter the adverse representations made. I would, for example, expect the Council to have made reasonable efforts to obtain material from published sources and from stakeholders in the process, such as statutory bodies and the minerals and waste industry. It should make it clear where evidence does not exist.

The new evidence may on occasion give rise to a need to make changes to the Plan. But I do not expect any such changes to be substantial, since that would go beyond the intention of the exercise to support the Plan as submitted; and it would suggest that the Plan is not sound. Nonetheless, in some circumstances, it may be necessary for the Council to carry out new formal consultations or to carry out revised sustainability appraisal if the nature of the changes proposed is likely to be

material to the concerns of stakeholders. If that might occur, please raise the matter with me in order to agree the appropriate procedure.

The evidence required – specific

1. Table CS1 / Policy CS1 and its supporting text

- The full derivation of the figures in Table CS1 should be provided. This should include extracts from the original documents used as source data together with the methodology used. Several of the figures in table CS1 are combined – ie they combine quantities of waste from different waste streams. In the interests of clarity, these should be disaggregated both for arisings and means of treatment / disposal. Care should be taken to ensure that account is taken of the residual waste that is predicted to come from advanced treatment, and to avoid double counting of this material in the total arisings. If, following the discussion of provision for hazardous waste treatment / disposal, the Council wishes to review its figures for that waste stream, this should be made explicit. Naturally, the opportunity should be used to correct arithmetical and any other errors in the figures, so that they total correctly. Any consequential changes to Table CS1, Policy CS1 or any of the figures in the supporting text should be set out clearly in the Schedule of Changes.

2. Policy CS4 and supporting text

- The Council should provide the information upon which it took the decision to follow the particular spatial strategy for minerals and rejected the alternatives. In particular it is essential that the information that underlay the Sustainability Appraisal is provided, together with the methodology used to assess or rank the alternatives. As an example of inadequate evidence, I have already drawn attention to Table 7 of the SA Environmental Report (Preferred Options). This shows 4 options under Issue C10 (*Ensuring the supply and quality of sand and gravel - river valley deposits vs glacial deposits*) compared to the 20 SA objectives. I must assume that in order to make such a comparison, information would have been available relating to those 20 objectives. Unfortunately, Appendix 2 *Baseline Information* in that document shows much of that data “to be collected”; and none has been brought to my attention. What information was therefore actually available? What form did it take? If not in quantified form, what assumptions / predictions were made, or what proxies used? And how, in practice was the choice made? I refer the Council to PPS12 (§ 4.38) in this connection. Similarly, the commentaries in Table 8 appear to provide the main reasons for the choices, but the connection between these and Table 7 are unclear. They are brief and may be inconsistent. For example, Option C10(D) was rejected both because it may result in disturbance to unexploited areas AND because of cumulative impact. The 2 could be argued to be mutually incompatible. The commentary for the chosen option - C10(C) - could be applied with greater weight to Option (D), which scored lowest. As things stand, this document, which appears to have been a major input into the decision-making processes for the Core Strategy, does not have my confidence.

- It is possible that any part of the SA may be the subject of more detailed examination in the resumed Hearings. The Council should therefore be in a position to justify the choices made. If it is unable to supply me with the material on which the SA was based and a clear explanation as to how the decisions were made, the credibility of the Plan would be substantially harmed.
- Unless absolutely necessary, I would want to avoid considering the merits of individual sites (this being a matter for the Site Allocations DPD). Nonetheless, the individual site assessments have been referred to by the Council in support of the spatial strategy. That seems to me to be putting the cart before the horse. Even so, if these are to be relied upon, then I will need to be provided with a description of how this material informs the strategy.

### 3. Policy CS3

- Details should be provided of what factors were taken into account in making the choice of acceptable locations for inert waste disposal, and for rejecting alternative approaches.

### 4. Other matters

- Only part of the Plan has been considered at the Hearings so far. If the Council is not confident that it presently has the evidence to support other aspects of the Plan (for example in relation to those matters raised by me in my initial questions and in my Issues and Matters document), then in the knowledge that it may be required to justify its choices, it should prepare and distribute the material it intends to rely on. This places the Council under no greater obligation than at the submission stage, when the evidence base should have been available to all participants in any event.

### Other areas of concern

Unconnected with the inadequacy of the evidence base, there are a number of other areas of concern to me that have arisen during the Hearings sessions which, in fairness to the Council, I should bring to their attention:

- Implementation and Monitoring. The Council has undertaken to review the contents of Table CS3 following the discussion on the first day. I do not propose to rehearse those matters again. If left unaltered, there is a strong possibility that the Plan could be found unsound by reference to the test of effectiveness. However, I am satisfied that changes could be made without the need for further consultation. While highly detailed justification for the particular targets and trigger points is unnecessary, nonetheless the Council should explain on what basis they were chosen; that they are realistic; and that they will be effective in facilitating the proper monitoring of the Plan and identifying any needs for intervention. In view of the apparent lack of baseline information, the Council should be able to show that the indicators chosen will be available.

- On a related topic, the Council has set itself firmly against the idea of explicitly incorporating flexibility / contingencies into the Plan, and although Table CS3 identifies trigger points for correction / mitigation measures, no such measures appear to have been considered or incorporated into the Plan. I remind it of the guidance of PPS12 (§ 4.46): that *a strategy is unlikely to be effective if it cannot deal with changing circumstances; plans should be able to show how they will handle contingencies*; and (where there is less than maximum certainty about the deliverability of the strategy) *the core strategy should show what alternative strategies have been prepared to handle this uncertainty and what would trigger their use*. The Plan itself identifies some areas of uncertainty (eg the maintenance of landbanks / the amount of post-treatment residual waste) and there is no doubt that recent economic events add a further substantial degree of uncertainty in relation to several assumptions built in to the Plan. In these circumstances, unless the Council can show how the Plan addresses the matter of flexibility, it risks a finding of unsoundness by reference to the test of effectiveness. I therefore urge the Council to think carefully about its stance on this matter.
- In view of the guidance of PPS12 (§4.45), it is a matter of concern to me that, from evidence already heard, the Council does not appear to have engaged particularly actively with some stakeholders in its consultation on the Plan. A lack of response from a neighbouring authority to a general consultation does not equate to demonstrating coherence with the core strategy of that authority. Note that § 45 says that the evidence of consistency with other relevant plans and strategies *must be strong enough to stand up to independent scrutiny*. Once again, I urge the Council to be ready to support its position in relation to this test.

### Changes

In addition to the Schedules of Changes drawn up prior to the Hearings, a number of additional changes were suggested during the course of the Hearings. First, please could the Council bring the Schedule up-to-date with the new suggested changes, giving an explanation as to why they are considered necessary. Second, could the Council ensure that any consequential changes resulting from these suggestions are also captured. Third, I must emphasise that, while I will consider those suggestions, it is the Plan as submitted that I will be examining for soundness. Fourth, I have some concern that the Council has been prepared to make some fairly important concessions by putting forward these recent changes. Amongst these are that the Council will make a specific provision for non-inert waste disposal; that it will seek to maintain mineral landbanks; that it will not promote the idea of carbon offsetting at this stage; and that its monitoring and implementation section requires major revision. I make no comment on the value of these Changes. However, apart from their individual importance, the fact that the Council sees fit at this late stage, to seek to amend parts of the Plan may be seen cumulatively to undermine the credentials of the Plan as submitted.

### Timescales

In the interests of maintaining public confidence in the system, and bearing in mind that the full evidence base should have been in place on submission of the Plan, it would not be appropriate to adjourn the Hearings for a prolonged period. At the procedural session, the Council agreed to respond to this note within 3 weeks. If for any reason it is unable to do so, or more time is required, for example in order to

obtain a formal resolution from Council Members, please let me know without delay. Similarly, if the Council has any queries about what I expect them to do, or any comments generally about this note or the process, please contact me through the Programme Officer.

If additional material is to be submitted, I will be prepared to adjourn for an absolute maximum of 6 months from the date of adjournment (ie to resume no later than 5<sup>th</sup> October 2009). However, I would hope that it would be possible to resume earlier. If the Council feels able to comply, that period should allow for the submission of the additional material; its distribution to me and to all relevant representors; and time for all participants to prepare for the Hearings. A detailed set of timescales for submission / distribution etc and for the resumption of the Hearings will be agreed through the Programme Officer.

If at any time during the adjournment the Council wishes to have a further procedural meeting, or a more formal Exploratory Meeting, then I am happy to have one arranged. Such a meeting might, for example, provide an opportunity to discuss the nature of the evidence, progress, or other procedural matters. If the adjournment is to exceed 3 months, I think it would be advisable to programme a procedural session in any event.

**Jonathan G King**  
Inspector

8<sup>th</sup> April 2009