

OPINION

1. I am asked to advise Savills in relation to the independent examination of the Joint Area Action Plan (“JAAP”) for the West of Crawley area. That JAAP has been prepared by Crawley Borough Council and Horsham District Council. The independent examination under s.20 of the Planning and Compulsory Purchase Act 2004 is currently underway and a question has been raised as to the conformity of the JAAP with the Core Strategy which in Horsham District was adopted in 2007. Policy CP 6 of that Core Strategy identifies the area West of Crawley as a Strategic Location. The policy provides (inter alia) :

“Development will be programmed in order to enable the completion of 2,500 homes and other uses, including employment provision, by 2018.”

2. A question has arisen as to the significance of the potential for the development not to be completed by 2018.
3. As s.20(5) of the 2004 Act explains:

“The purpose of an independent examination is to determine in respect of the development plan document –

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 34 relating to the preparation of development plan documents;

(b) whether it is sound.”

4. I shall consider the requirements under (a) in turn.

5. Section 19(1) provides that local development documents must be prepared in accordance with the local development scheme. No issue arises here on that point as I understand it.
6. Section 19(2) sets out in subsections (2) (a) to (j) the matters to which the local planning authority must have regard in preparing the document. Amongst those, subsection (2) (h) identifies “any other local development document which has been adopted by the authority.” It is not as I understand it suggested that the authorities have failed to have regard to any of the matters listed in s.19(2), subject to this point about conformity.
7. Section 24 requires conformity with the Regional Spatial Strategy. Again there is no suggestion of any failure in relation to the RSS either in terms of RPG9 or of the emerging South East Plan.
8. The Regulations made under s.17(7) (and under other powers) are the Town and Country Planning (Local Development)(England) Regulations 2004, as amended in 2008.¹
9. Regulation 6 identifies core strategies² and area action plans³ as local development documents which must be specified as local development documents (“LDD’s”) in a local development scheme and Regulation 7 identifies core strategies⁴ and area action plans⁵ as documents which must be development plan documents (“DPD’s”)

¹ See SI/2008/ No. 1371

² Reg.6(3)

³ Reg.6(4)

⁴ Reg7(a)

⁵ Reg7(b)

10. Under Part 4 of the Regulations dealing with the “Form and Content of Local Development Documents and Regard to be had to Certain Matters”, Regulation 13(6) provides:

“(6) Subject to paragraphs (7), (9) and (10), the policies contained in a DPD must be in conformity with either -

(a) where a core strategy has been adopted, the policies in the core strategy,

(b) in any other case, the policies in the development plan as referred to in paragraph 1(1)(b) of Schedule 8 to the Act.”

11. The “exceptions” in subsections (7), (9) and (10) are not relevant. (7) only applies where a core strategy has not been adopted. (9) explains that the requirement does not apply to the proposals map and (10) makes the rather obvious point that the requirement does not apply to the core strategy itself.

12. So here the Core Strategy has been adopted so Regulation 13(6)(a) applies. The JAAP is a DPD: see Regulation 7(b). So the policies contained in the JAAP must be in conformity with the policies in the adopted core strategy.

13. So the Planning Advisory Service online Plan Making Manual is right when it says that where an adopted core strategy exists it is “a legal requirement” that other development plan documents should conform with the core strategy.⁶

14. So the policies of the JAAP must be in conformity with the policies of the Core Strategy. That is the legal requirement. If the policies in both say either expressly or in effect that the “development will be programmed in order to enable the completion of 2,500 homes and other uses, including employment provision, by 2018” then the

⁶ See the webpage “Chain of conformity of development plan documents.”

policies of the JAAP will be in conformity with the policies of the Core Strategy and the legal requirement is met. It is the words of the policies that have to be in conformity to meet the legal requirement under s.20 (5) (a). That appears to be the case here.

15. Of course the Inspector also has to consider “soundness” under Section 20(5)(b). The 2008 edition of PPS12 on “Creating strong safe and prosperous communities through Local Spatial Planning” advises that “To be ‘sound’ a core strategy should be JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY”.⁷

“Effectiveness” means that core strategies must be deliverable, flexible and able to be monitored⁸. Paragraph 5.2(1) explains that these principles of justification and effectiveness apply equally to other DPD’s – including therefore to the JAAP. The advice on deliverability⁹ and flexibility¹⁰ as part of effectiveness is also therefore relevant when considering the soundness of the JAAP. The advice on flexibility may be particularly important here in these uncertain times economically. If the JAAP allows some flexibility in the timing of the development coming forward that would not in my view make it unsound in accordance with the advice in PPS12. If the policies in both the Core Strategy and the JAAP are in conformity in saying that the development will be programmed to enable the completion of 2,500 homes etc. by 2018, the legal requirement is met but equally it would seem that the JAAP could still be sound if it also incorporated some degree of flexibility in the spirit of paragraph 4.46 of PPS12. That would seem to me to be eminently sensible in current circumstances.

⁷ 4.52 and box following

⁸ 4.44

⁹ 4.45

¹⁰ 4.46

16. There is the following additional benefit. Section 24 requires ‘general conformity’ with the RSS. The South East Plan is expected to be published by the Secretary of State very soon with an end date of 2026. A degree of flexibility in the JAAP would probably assist in achieving conformity with the new RSS. The most recently adopted element of the development plan takes precedence in the case of any conflict: s.38(5).
17. I should deal with the two suggestions in my letter of instruction that the legal requirement of conformity arising from s.20(5)(a) and Regulation 13(6)(a) may in some way be side stepped or qualified. I do not agree with either suggestion.
18. Firstly¹¹ it is suggested that the publication of the final RSS before the publication of the Inspector’s report and subsequent adoption of the JAAP given that the South East Plan will have an end date of 2026 and given that the South East Plan would then have precedence in the case of any conflict with the JAAP, somehow would “extend the lifespan” of the JAAP. I do not agree. That sequence of events has no bearing on the statutory provisions which establish the legal requirement of conformity. Those events however do have a bearing on the benefits of some flexibility in the JAAP, as I explained above, in considering the soundness of the JAAP.
19. Secondly it is suggested that because s.19(2)(j) requires authorities in preparing their LDD’s to have regard to “such other matters as the Secretary of State prescribes” and because GOSE do not object and there is the imperative in PPS3 to deliver housing, these may be “relevant material considerations against the technicality of the 2018 date.” Again these events have no significance in terms of the statutory provisions requiring conformity. Further when statutes speak of matters “prescribed” by the Secretary of State, they mean in Regulations. It is the Regulations here which establish

¹¹ Under Point 2 in my letter of instruction

the legal requirement. Section 19(2)(j) gives the Secretary of State the power to set out in Regulations any other matters which the authorities should have regard to in preparing their LDD's. It does not remove, undermine or have any relevance to the statutory requirement arising from s.20(5)(a) and Regulation 13(6)(a).

20. Nevertheless in my opinion the legal requirement is met here with both the policies in the Core Strategy and in the JAAP seeking to achieve the completion of the development by 2018. The policies are then in conformity and the legal requirement is met. If the JAAP then makes reference to the possibility of all the development not being achieved by 2018 that does not in my view necessarily undermine the soundness of the JAAP in the light of the advice in PPS12 on flexibility and in the light of all the circumstances. Ultimately of course that is a matter of judgment for the Inspector but in my opinion it is certainly open to him in law to find that the JAAP both meets the legal requirement and is sound in those circumstances.

21. If I can be of any further assistance I can be contacted through Chambers.

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