

PLEASE READ NOW: *These Notes replace the Inspector's Briefing Note sent out in September 2008. If you are an Agent, or part of a larger group, please ensure that ALL members of your team or group receive a copy of these Notes and act on the advice it contains*

Examination into the West of Bewbush Joint Area Action Plan

Notes of the Pre-Hearing Meeting (PHM) held at the Crawley Civic Hall on 11 November 2008

Introduction

1. The Inspector, David Vickery, introduced himself and the Programme Officer (PO), Pauline Butcher. The Councils' team introduced themselves: Barbara Childs, LDF Project Manager (Horsham); Steve Dennington, Planning Policy Manager (Crawley); Catherine Howe, Senior Environmental Officer (Horsham); Ollie Boulter, Senior Planning Officer (Horsham); Peter Home, Senior Planning Officer (Horsham); Peter Martin, Design Manager (Crawley).
2. The hearings (which are part of the overall Examination) into the Councils' West of Bewbush Joint Area Action Plan (the JAAP) will open on Tuesday 20 January 2008 at Crawley Town Hall.
3. The Inspector informed people that:
 - o the Examination started with the submission of the JAAP and would end with the delivery of his report, unless the Examination was aborted at an earlier stage;
 - o his Report is binding on the Councils, but they are not bound to adopt the JAAP if they choose not to do so;
 - o as the report is binding it severely limits the changes the Inspector can make to the JAAP. Changes involving clarifications are possible; or possibly bringing the JAAP into line with government policy; or deleting part of the JAAP, provided the remainder is satisfactory in its own right;
 - o 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 JAAP being found unsound, necessitating the Council returning to an earlier stage and re-running the process;
 - o there can be two main ways that the JAAP might be found unsound – a fundamental failure (the "showstopper"), or a cumulative failure ("death by a thousand cuts");
 - o all parties thus need to be aware of the implications of seeking changes.

The Inspector's task

4. The Inspector's task is **to consider the soundness of the JAAP**, based upon the tests of soundness set out in the 2004 version of Planning Policy Statement 12 (PPS12). Although a new version of PPS12 was issued on 4 June 2008, as the JAAP was submitted in the context of the earlier PPS12 the Inspector will assess it against the nine soundness tests in the old 2004 version. The 2008 PPS12 tests are essentially the same. The Inspector will be using the 2008 PPS12 for the up-to-date Government policies on local spatial planning. Similarly, on 27 June 2008 amendments to the 2004 Regulations came into force, but they provide that the Examination should continue under the original 2004 Regulations as the JAAP was submitted before the 27 June amendment. Appendix A contains a list of useful publications and websites for advice.
5. Following the close of the hearings the Inspector will prepare a report for the Councils with his conclusions and any changes required to the JAAP, the expected arrival date of which he will announce at the last hearing session. The Inspector will deal with broad issues in his report, and not with each individual representation.
6. 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 Programme Officer

7. Pauline Butcher is the Programme Officer (PO) and she is acting as an impartial officer of the Examination under the Inspector's direction and not as an employee of the Councils. She can be contacted on 01293 438228 or by email at Pauline.Butcher@crawley.gov.uk.
8. 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 (Appendix A) and the PO can make available electronic or paper copies on request.
9. 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 is available on the web site at:
http://www.westofcrawley.gov.uk/exam_times.html
Any procedural questions or other matters should be made through the PO.

Number of representations

10. 278 representations were received on the submitted JAAP and its 29 policies. 105 representations were received on the Alternative Development Sites and Boundary Changes.

Alternative Development Sites and Boundary Changes (ADS)

11. The Inspector noted that a number of alternative sites and boundaries have not been subject to Sustainability Appraisal (SA) and that there has been no resulting public consultation on them. **He emphasised that he would not be able to consider these unless an SA and the necessary consultation have been carried out.** The SA information and consultation would have to be provided and carried out before the close of the relevant hearing, or by the end of the hearing sessions if the site is dealt with as a written representation.
12. The Inspector went through the sites: ADS1 – the Councils believe this should be subject to a SA; ADS2 – the proposer will not undertake a SA; ADS3 – no SA needed; ADS4 - the Councils believe this should be subject to a SA, and the proposer will consider this; ADS 5 to 7 – the proposers say these were considered as part of the Councils' SA and the Councils will respond to this in their Statements; ADS8a and 8b – the proposer is preparing a SA; ADS9 – the proposer agrees a SA is needed and is considering whether to undertake the work.
13. The Inspector asked the Councils to prepare a plan indicating the West of Ifield area considered as part of the SA and to place it on the web site.

Progressing representations

14. 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.
15. The Inspector emphasised 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 28 November 2008**, due to the preparation work that has to be undertaken by other parties, particularly the Councils.

16. **The Inspector's 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 JAAP is unsound by reference to one or more of the tests of soundness.**
17. The Inspector stressed the need for all sides to work together during the Examination process on changes that could be made to the JAAP, whilst avoiding producing so many alterations that they together might render the JAAP unsound.

The hearing sessions

18. 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.
19. The purpose of the hearings is to concentrate on the issues that the Inspector needs to hear further about, and they are not an opportunity to repeat a case already set out in representations. The discussion will focus on the Issues for Examination (see web site) and the questions the Inspector will 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 wants covered, then invite individuals to make their contribution in response to the points he has 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.**
20. 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. All statements will have been read beforehand by the Inspector, 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.**
21. 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 is 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, focussed series of hearings and, in turn, to produce a short, focussed report.
22. 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.
23. The Inspector introduced his Issues for Examination and said that, in general, the only evidence to be submitted now should be in response to those Issues. However, in response to a question from Mr D Trench, he said that evidence on new matters which have arisen since the first representations had been submitted could be sent to him via the PO. Examples could be new Core Documents (additions to the evidence base) or changes proposed by the Councils. Such submissions should be limited to 1500 words. In response to a question from Mr Steele, the Inspector said that evidence should be succinct, and preferably limited to non-technical summaries – if necessary, the Inspector would ask for the detailed corroborative evidence.

Deliverability and Viability

24. The Inspector expressed concern about the information currently available on the deliverability and economic viability of the proposed development. He pointed to paragraph 5.6 of the 2008 PPS12 which says that one of the functions of an AAP is to set out as far as practicable the timetable for the implementation of its proposals. PPS12 also says that the infrastructure planning process should identify and have evidence for, amongst other matters, cost and funding sources (paragraphs 4.8 to 4.12 and 4.45). He

considered that this issue is particularly important in this JAAP in order to secure the delivery of the proposed planned growth (paragraph 5.4 of PPS12).

25. The Inspector suggested that the detail of such information could be less the further ahead one is looking. The PPS3 15-year period split into 3 x 5-year phases with less detailed information required on each successive phase could serve as a useful model for viability and delivery assessment in this JAAP, albeit with reduced periods to cover its three Core Phases up to its end date of 2018.
26. The Inspector indicated that he was looking to the Councils to provide high, medium and low economic viability scenarios (and hence housing trajectories), together with policies to cope with the consequences and implications of them. He suggested that such coping policies could include the flexibility to "claw-back" infrastructure omitted from earlier economically and viably difficult phases. However, he warned that radical changes to the JAAP would be difficult for him to make, and that he was concerned about compliance with the housing numbers required in the adopted Core Strategies.
27. The Inspector requested information on infrastructure costing at present day prices, with the responsibility for providing them assigned to the various players and stakeholders. All of the above matters had been identified in the Issues for Examination.

The hearings programme

28. The Hearings Programme is now on the web site, or is available in paper form from the PO. It is likely 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

Core Documents and Examination Library

29. The Councils have prepared a list of Core Documents that will be available in the Examination Library. Many of these will be available on the web site. 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. A regularly updated list will be on the web site, with paper copies available from the PO.

Statements of [Un] Common Ground

30. Statements of Common or Uncommon Ground are invited where these would be helpful in identifying points not or in dispute, thereby assisting the hearings 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. Mr Steele indicated that his client (Crest Nicholson) intended to submit such Statements with the Councils and the Highway Authority.
31. **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

32. All Statements, for both hearing and written representations, should be sent to the PO by **Monday 5 January 2009**. The original representations already made should have included all the points, documents and evidence to substantiate respondents' cases. The Inspector will therefore not allow the submission of any further material based on the original representations. Thus, all further written submissions in the Statements should only address the Issues for Examination. The Councils' 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

33. Appendix B sets out the requirements for the presentation of all statements. Its provisions should be thoroughly read and implemented as otherwise statements will be returned.
34. In the Statements from respondents it would be very helpful for the Inspector to have a brief concluding section stating:
 - What part of the JAAP is unsound?
 - Which soundness test(s) it fails.
 - Why it fails (point to the key parts of your original representations).
 - How the JAAP can be made sound.
 - The precise change/wording that is being sought.
35. From the Councils the Inspector requires Statements which say why they consider the JAAP 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

36. The Councils will be suggesting some minor changes. The Inspector has therefore asked them 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 (question from Mr Hayward).

Site visit

37. The Inspector will visit all those sites and areas referred to in the representations either before, during, or after the hearings. This will be done unaccompanied by the parties.

Procedural Soundness Test Questions to the Council

38. In response to the Inspector’s questions, the Councils said that:
 - The JAAP has been prepared in accordance with both Horsham and Crawley Councils’ Local Development Schemes of 2006 and 2007 (Test 1).
 - The JAAP has been prepared in accordance with Horsham’s and Crawley’s Statements of Community Involvement, adopted in 2006 and 2007 (Test 2).
 - The JAAP has been subjected to a SA, which has informed each stage in its preparation (Test 3).
 - A letter of confirmation was received from the South East Regional Assembly on 11 July 2008 in accordance with Section 24 of the Planning and Compulsory Purchase Act 2004 which stated that the Assembly was of the opinion that the JAAP was in general conformity with the adopted Regional Spatial Strategy (RPG9 and Alterations) and the emerging Regional Spatial Strategy (the draft South East Plan as submitted to the Secretary of State on 31 March 2006) – Test 4c.
 - Natural England confirmed on the 4 July 2008 that an Appropriate Assessment was not required for the JAAP as there would be no likely effect on the water quality and abstraction at the Arun Valley, air quality and bat foraging grounds nor would the provisions of the JAAP have a significant recreational impact on Ashdown Forest.
39. On Test 2 Mr R Coppen queried whether Crawley Council had prejudged the site selection within the JAAP by its decision on 6 April 2005 that development on Ifield Golf Course would be unacceptable. Mr Dennington said that this decision had been the culmination of the Council’s consideration of and response to Horsham Council’s Core Strategy Preferred

Options. Subsequent to that consultation response to Horsham, Crawley Council had decided in its own 2006 Core Strategy under policy W1 to carry out an investigation of the best location for the proposed housing development within the defined Area of Search, which included the golf course. It also subsequently decided to do this work jointly with Horsham Council. There was, therefore, no pre-determination of the exact development site as Mr Coppen alleged.

40. The Inspector asked Mr Coppen to consider the Council's response. He offered, if Mr Coppen so desired, the opportunity to address him on the subject at the last hearing session on 3 February 2009 under "Any Other Business".

David Vickery
12 November 2008

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 JAAP, are available on-line on the web site at:

<http://www.westofcrawley.gov.uk/Examination.html>

Format for statements

- A. Please send, where possible, emailed 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 JAAP 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. Any photographs should be submitted in A4 format and should be annotated (back or front).
- 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 four (for the Inspector, Councils and Library), e.g. if 10 people are listed for a hearing, then the PO will require 14 copies (to include one unbound, for further copying, and one hole-punched, for the Inspector). For **written representations** only four copies of statements (all unbound and just stapled, with one hole-punched) need to be submitted.
- F. No statement/piece of paper submitted in advance of, or at the hearings, will be accepted if it fails to be clearly marked, **at the top, right hand corner**, with the appropriate issue number and relevant respondent reference. The Council's Statements should be separately referenced HDCB/, followed by the issue (e.g. HDCB/Issue 1). Respondent's documents should be referenced, for example: Issue 1/1234 for respondent 1234's statement on Issue 1.
- G. 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 – **Friday 28 November**.
 - All Statements: by **Monday 5 January 2009**. (Note: the Councils' Statements should also deal with my written representations Issues, including responses – if any - to those original representations).