

Examination into the Welwyn Hatfield Local Plan (2013-2032) Development Plan Document (DPD)

Pre-Hearing Notes– Issued August 2017

Introduction

1. The purpose of this note is to inform statutory consultees and all those who have unresolved representations relating to the above Development Plan Document (DPD) of the arrangements that the Inspector is making for conducting Hearings into the examination of the DPD.
2. The Inspector, Melvyn Middleton BA(Econ), Dip TP. Dip Mgmt, MRTPI has been appointed by the Secretary of State to conduct the independent Examination into the soundness of the Welwyn Hatfield Local Plan (2013-2032) DPD. Louise St John Howe has been appointed as the Programme Officer (PO) to assist him in the examination.

The Hearings (which are part of the overall Examination) into the Councils DPD will open on Thursday 21st September 2017 in the Welwyn Hatfield Council Chamber, Council Offices, The Campus Welwyn Garden City, ALE 6AE

3. By way of background to the examination the Inspector would like to make the following matters clear at the outset:
 - the Examination started with the submission of the DPD and will end with the delivery of the Inspector's report, unless the Examination has to be aborted at an earlier stage;
 - the Inspector's Report will be binding on the Council but it is not bound to adopt the DPD if it chooses not to do so;
 - the changes that the Inspector himself can make to the DPD are limited to those that affect soundness;
 - changes involving clarifications will be possible; or possibly bringing the DPD into line with government policy; or deleting part of the DPD, provided the remainder is satisfactory in its own right;
 - any essential changes to achieve a sound plan that have not been subject to public consultation and/or sustainability appraisal are likely to be beyond the Inspector's remit and result in the DPD being found unsound unless the Council wished to return to an earlier stage and re-run these processes;
 - there can be two main ways that the DPD might be found unsound – a fundamental failure (the "showstopper"), or a cumulative failure ("death by a thousand cuts");
 - 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 DPD**, based upon the 4 tests of soundness set out in the National Planning Policy Framework at paragraph 182. The examination will be carried out in accordance with the relevant sections of the Planning and Compulsory Purchase Act 2004 and under the provisions of the Town and Country Planning (Local Development) (England) Regulations 2012 as amended.

5. Additionally Section 112 of the Localism Act 2011 introduced a new purpose for the examination under a new section 20(5)(c) of the 2004 Act. This is to consider whether the Council has complied with any duty imposed by a new s33A – the Duty to Co-operate.
6. Following the close of the hearings the Inspector will prepare a report for the Council outlining his conclusions and any changes required to the DPD to make it sound. He will announce the expected arrival date of the report at the last hearing session unless the Council has agreed to undertake further work. In his report, he will deal with broad issues and not with each individual representation.
7. Changes that are limited to clarification or to dealing with factual updating or correction are a matter for the Council, who will prepare a schedule of minor changes. Where more significant changes that affect soundness (main modifications (MMs)) are made, before recommending them 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. It is very likely that the MMs will be the subject of a round of public consultation. Where appropriate, changes will also need to be covered by a revised Sustainability Assessment.

Compliance with the Procedural Soundness Test

8. The Council has confirmed that it considers that it has met the statutory procedural requirements set out in the Regulations relating to the submitted version of the DPD.
9. Responses were received from a number of Statutory Consultees and from third parties:-
10. Copies of the responses from these organisations and other consultees can be found on the Welwyn/Hatfield Borough Councils' Examination website:-

<http://consult.welhat.gov.uk/portal>

11. The Council has confirmed that it has carried out its own self-assessment on soundness.

The Programme Officer

12. Louise St John Howe is the Programme Officer (PO): she is acting as an impartial officer of the Examination under the Inspector's direction and has not been involved in the preparation of the plan or the production of material for the examination. She can be contacted by telephone on **07789-486419** and by email at louise@poservices.co.uk
13. 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 its web site. The PO can make available electronic or paper copies on request.
14. During the Examination the PO will be able to advise participants on how closely the

hearing sessions are following the circulated programme. Alternatively, a regularly-updated programme will be available on the Councils' web site.

<http://welhat.gov.uk/localplanexamination>

Any procedural questions or other matters should be made through the PO.

Number of representations

15. Nearly 3,000 representations were received from around over 2,000 organisations or individuals on the submitted DPD. Of these 116 were in full support, that is, they found the plan sound whilst a number of others were broadly in support but had minor reservations.

Progressing representations

16. 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.
17. The Inspector would like to emphasise that you must notify the Programme Officer if you wish to participate in any particular session, even if you indicated earlier that you wished to participate, **by Friday 8th September for Stage 1, and by Friday 6th October for Stage 2.** In the interests of fairness it will **not** be possible to request a change from written representations to an appearance at the Hearing session on Legal Matters and the Duty to Cooperate after **Friday 8th September 2017**, and those on the Overarching Strategy and other strategic matters after **Friday 6th October 2017** due to the preparation work that has to be undertaken by other parties, particularly the Council. Dates affecting the Hearing sessions concerning Topic Specific Policies and Site Allocations will be announced later.
18. **The Inspector wishes to emphasise that his 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 DPD is unsound by reference to one or more of the tests of soundness (see attached definition of soundness).**

The Hearing sessions

19. In view of the complexity of the plan and the very large number of representations, the Inspector has decided to organise the Hearings into four separate and distinct sessions.
20. The first in September 2017 will be concerned with the Council's meeting of the tests of Legal Soundness and the Duty to Cooperate. The second in October 2017 will cover the plan's Overarching Strategy and associated Policies. The Legislation requires the Inspector to end the examination if he considers that the Council has not met the Duty to Cooperate up to the date when the plan was submitted. Therefore unless he is persuaded that the Duty to Cooperate has been met, the October Hearing sessions will not be held. The two further sets of Hearings into Topic Specific Policies and Settlement

Policies/Site Allocations are likely to be held sometime in 2018. The precise timing will be dependent on the extent to which the Inspector considers there is a need for the Council to undertake additional work (if any is needed) to make its Strategy and related Strategic Policies sound.

21. The Hearing format will provide a relaxed and informal setting for dealing with issues,, by way of a discussion led by the Inspector and with little (if any) direct cross-examination. Those attending may bring with them professional experts. Barristers and solicitors, if present, will be treated as part of their team. Questioning of persons with opposing views through the Inspector will be encouraged and welcome.
22. The purpose of the Hearings is to concentrate on the issues that the Inspector feels he needs to hear further about. They are not an opportunity to repeat verbatim a case already set out in representations. The discussion will focus on the accompanying Issues and Questions for Examination document, which the Inspector has prepared, following his initial assessment of the LDF and an appraisal of all of the representations. This will be revised into an Agenda about a week before the Hearings begin, in the light of any further submissions received and/or suggested changes made to the plan by the Council in the intervening period. **The emphasis will be on the tests of soundness.** The Inspector will make a few brief comments on the matters he wishes to have covered and then invite individuals to make their contribution in response to the points 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.**
23. 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. The Inspector will have read all statements beforehand, 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 a Hearing session has closed unless specifically requested by the Inspector.**
24. 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 the time taken. As part of that process, it will be 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, focused series of Hearings and, in turn, to produce a short, focused report.
25. 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.
26. The main Issues for the first session of two days are set out in the accompanying Issues and Questions for Examination documents produced by the Inspector.
27. In general, the only evidence to be submitted now should be in response to those Issues and questions. However, evidence on new matters which have arisen since the first representations were submitted can be sent to the PO. Examples could be where new Core Documents (additions to the evidence base) have been produced, or changes proposed by the Council. **Such submissions should be limited to 3000 words.**

The Hearings Programme

28. The Hearings Programme will be posted on the Examination website

<http://welhat.gov.uk/article/6939/Hearing-Sessions>

or will be available in paper form from the PO. It may be subject 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 hearing 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.

The present intention is to hear evidence on the matters of Legal Soundness and the Duty to Cooperate on the first day. The Overarching Strategy, together with the overall targets and the related Policies, will be considered in the second session about a month later. These will be followed by discussions on the Topic Specific Policies, against which there are representations, in early 2018. A further session of Hearings will take place later in that year when site specific matters not previously discussed will be discussed along with any other outstanding issues. The delay is to avoid the need to adjourn the site specific matters if it were to be found that elements of the overall Development Strategy were unsound and required major revision. There will be an opportunity for a round-up session at the end of each set of Hearings.

Evidence Base and Examination Library

29. The Council has prepared a list of Core Documents that will be available in the Examination Library. The list will be available for viewing on the Examination's web site.

<http://www.welhat.gov.uk/article/6940/Examination-Library-evidence-base>

30. They include the National Planning Policy Framework, the National Planning Practice Guidance, 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. Any changes to the list will be shown on the web site, with paper copies available from the PO.

Statements of [Un] Common Ground

31. Statements of Common or Uncommon Ground are invited where these would be helpful in identifying points that are not, or are, in dispute. This will assist the Hearings process 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.
32. **This work should commence now, with the aim of completing it 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 session.

Statements

33. All Statements for the September Hearing should be received by the PO by **Friday 8th September 2017** and for the October Hearings by **Friday 6th October 2017**. The original representations already made should have included all the points, documents and evidence to substantiate each respondent's case(s). 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, and should include any suggestions for minor editing changes and/or minor changes to the wording of policies or explanatory text (see also below). The latter will be compiled in a separate list from the Main Modifications, covering all of the Minor Changes.

Form of Statements

34. The Inspector's requirements for the presentation of all statements are appended as Appendix A. Its provisions should be thoroughly read and implemented by Hearing participants as otherwise statements will be returned.
35. In the Statements from respondents it would be very helpful if they could give a brief concluding section stating:
- What part of the DPD is unsound?
 - Which soundness test(s) it fails.
 - Why it fails (point to the key parts of your original representations).
 - How the DPD can be made sound.
 - The precise change/wording that is being sought.
36. The Inspector will require Statements from the Council which say why it considers the DPD 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-Proposed Minor Changes

37. The Council may ask the Inspector to consider further changes to those already proposed as the examination progresses. The Inspector has asked the Council 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.

If there are any questions arising from this note they should be passed to the Inspector through the PO.

Mel Middleton

INSPECTOR

Appendix A

Format for statements

- A. Please send email 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 DPD 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 from representors 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**, just stapled.
- 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 3 (for the Inspector, the Council and the Library), e.g. if 4 people are listed for a hearing, then the PO will require 7 copies (to include one unbound, for further copying, and one hole-punched, for the Inspector).
- F. 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, result in unfairness and could 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 notifying PO that you wished to participate at the hearing sessions is **Friday 8th September 2017 or Friday 6th October 2017**.
 - All Statements: by **Friday 8th September 2017 or Friday 6th October 2017**. (Note: the Council's Statements should also deal with the Inspector's written representations Issues, including responses – if any - to those original representations).