

Examination of the Lancaster District Strategic Policies & Land Allocations Development Plan Document and Development Management Development Plan Document Submission Drafts

Pre-Hearing Note to the Council

The Council submitted the Lancaster District Strategic Policies & Land Allocations Development Plan Document and Development Management Development Plan Document Submission Drafts (the plan) to the Secretary of State on 14 May 2018, indicating in its covering letter that it did not envisage the Hearings commencing before October 2018.

The Council then indicated via an email dated 26 July 2018 to the Programme Officer that it was content for the Hearings to commence on 5 November 2018 but declared that, *'we continue to evolve our supporting evidence base. There is on-going work in three subject areas; transport assessment, viability and air quality. The transport assessment work has been challenging to undertake because in the period during which the plan has been prepared, major new infrastructure and repairs to other major infrastructure have taken place. The transport assessment has also been delayed by the limited resources of the highways authority (Lancashire County Council).'*

The Council went on to state that it anticipated that, *"the Stage 1 (Junction Capacity) of our Transport Assessment will be completed by the end of August 2018 by our consultants White Young Green; our Air Quality Assessment will commence in August, informed by the Stage 1 Transport Assessment, and also undertaken by an external consultancy; the Stage 2 (Mitigation Measures) of our Transport Assessment will be completed by the end of September 2018, and the completed Transport Assessment and Air Quality Assessment will inform the completion of our Plan Wide Viability Assessment, anticipated in mid-October (being undertaken by our consultants Lambert Smith Hampton)".*

As a justification for this approach the Council pointed out that, *'circumstances and evidence have inevitably changed since our local plan DPDs were published and accordingly their soundness could be improved by edits to refine and update policies and supporting text. I am proposing that we undertake a period of informal consultation on emerging "suggested" modifications from 6 September 2018 to 4 October 2018. We have undertaken an informal consultation stage at previous Examinations and the Inspector then found it useful to have access to the responses received from stakeholders when appraising the helpfulness and acceptability or otherwise of the potential modifications. Any responses received could also usefully inform the continuing consideration on plan wide viability by our viability consultants. I fully acknowledge that consultation on actual proposed modifications, agreed in principle at the hearing sessions, would need to be undertaken later in the process. Keeping to this timetable will ensure that the completed Viability Study is available to inform the preparation of final statements to be forwarded to the Inspector by around mid-October'.*

I indicated that in view of this "update" the Council would be unlikely to be able to commit to the Hearings starting on 5th November 2018. I also made it clear that I would be issuing my Initial Questions (IQ) on the basis of the original Plan (which the Council had submitted because it considered the Development Plan Documents to be sound). The Council confirmed that the outcome of the suggested modifications consultation would be submitted on 9 October 2018 and requested moving the Hearings commencement date to either 10 December 2018 or 7 January 2019. In view of the Christmas and New Year holiday I agreed to move the commencement to 7 January 2019.

While the Council responded to my IQs, the expected modifications consultation evidence was not submitted as promised and on 4 October 2018, via the Programme Officer, I expressed my concerns to the Council regarding the lack of detail coming forward and the implications for the timetable in respect of preparation for my Matters, Issues and Questions, the Hearings dates, timetable and Guidance, and allowing time for those who wish to prepare Hearings Statements. In response, the Council announced in an email to the Programme Officer, dated 8 October 2018 that it had just embarked on a 4 week consultation on its draft suggested modifications, to close on 2 November 2018.

Against this background, I would point out that the plan being examined is the submitted plan and the Planning and Compulsory Purchase Act 2004 (the Act) s20 (1) requires that the local planning authority (LPA) must not submit until they think it is ready for examination. Consequently, the strong expectation is that further LPA changes will not be necessary and this is a key premise in delivering an efficient examination timetable.

I would also remind the Council, having regard to the Act s20 (7B & 7C), the 2012 Local Planning Regulations (various) and the Planning Practice Guidance on local plans (Paragraph: 004 Reference ID: 1200420160519) that it is for me to consider how any suggested modifications to the submitted Plan should be addressed and therefore, whether they are necessary for the soundness of the Plan and acceptable. As made clear in the aforementioned statute and guidance, once submitted for examination, the substance of a submitted plan can only be changed through a process of main modifications (MMs). These can only be made if they are (1) recommended by the Inspector and (2) necessary to achieve a sound plan. Furthermore, consultation under Regulation 19 appears to relate to the period before submission and Regulation 22 to the submission of a plan for examination.

In which case, I am concerned that there is no provision in statute that allows the Council to revise and re-submit a plan that has already been submitted to the Secretary of State for examination without first withdrawing it. I consider that it would not be lawful to examine/make recommendations on what purports to be a "revised plan" as there is no statutory basis to do so. The Plan being examined is therefore the originally submitted and not the revised Plan. My report will recommend MMs to the originally submitted Plan, but only where necessary to achieve soundness.

To reiterate, after submission there are only two ways a plan can be changed. Firstly, through main modifications if these are required to make the plan sound and/or legally compliant. However, these can only be recommended by the Inspector. Secondly, additional (or minor) modifications (which are changes that do not materially affect policies) can be made by the Council on adoption. However, these are a matter solely for the Council and not for my consideration. Consequently, there is no provision in the legislation or guidance for the Council to replace the submitted plan with a different amended version. Nor is it the role of the examination to deal with changes that would 'improve soundness'.

Therefore, should the Council decide not to withdraw but rather proceed on the basis of the originally submitted plan subject to the updated evidence, I would like to know at this stage if the Council considers, as a result of the additional work undertaken, that any aspect of their Plan is unsound and if so what they propose to do to remedy the situation? I will require the Council to divide any suggested changes it wishes to make to the Plan into two schedules, one covering potential main modifications and the other, suggested additional modifications. I would then need to treat the former as a schedule of proposed MMs, which I may or may not find to be necessary to achieve sound development plan documents. The examination will then need to consider whether each of the Council's suggested MMs is necessary to achieve a sound plan and this will be explored in the hearing sessions. I could of course, put forward further modifications to the MMs proposed by the Council and I am not obliged to only consider the MMs suggested by the Council in the 'Revised Plan'.

That being the case, and notwithstanding the Council's recent email dated 9 November 2018 outlining further steps the Council wishes to take, I would prefer that the Council does not engage in carrying out any further evidence work or suggested changes to the plan before first discussing and agreeing that work with me. Moreover, I would require as soon as possible, revised DPD documents, with tracked changes showing all of the proposed modifications, including explanations/justification for the changes.

The Council would also need to set out whether or not this additional evidence has been consulted upon, in line with what would be expected at Regulation 19 stage to ensure fairness. If not, then consultation will be required and the Council should set out a clear timetable for this to take place. The Council should be aware that it will not be possible to hold hearings on any matters which are informed by these additional studies/evidence until the consultation has been concluded. It would be useful for the Council to clarify what topics are covered by this evidence and if it is wide-ranging i.e. cutting across a number of distinct issues.

The Council should clearly set out a timetable for this work and the likely commencement date for the Hearing sessions. This timetable will need to factor-in the time now needed to deal with any representations submitted in response to the Council's consultation (on both any suggested MMs and the additional evidence in general). I will have to take these into account

and I will need to offer those who are objecting the chance to be heard at the upcoming hearing sessions. In addition, I will need to look again at my initial questions in the light of the foregoing and time should be allowed for amended questions to be formulated by me and answered by the Council.

Following the Hearing sessions, any of the proposed modifications that I deem to be necessary as MMs to ensure the soundness of the DPDs, would then be subject to further consultation and Sustainability Appraisal, possibly including an assessment under the Habitats Regulations.

I look forward to hearing from you in due course with a clear indication on how you wish to proceed.

Richard McCoy
Inspector
19 November 2018