

NOTE TO COUNCIL ON DRAFT 7TH SET OF PROPOSED CHANGES

1. At the September 2012 Examination hearings I sought (and obtained) agreement from participants to give a "steer" to the Council on my current thinking on the latest version of the CS before it published its final set of Proposed Changes (PCs) for consultation later this year. The Council subsequently sent me its draft 7th set of PCs and draft report for comment.
2. As a result of the Council's positive response to, initially, the reasons for the Examination being suspended and, subsequently, to the representations and discussions concerning the National Planning Policy Framework (NPPF), the areas where there remains a risk of my having to recommend main modifications to achieve a sound plan are relatively few. The comments below are primarily directed to the draft 7th set of PCs, though I also address other matters which potentially go to soundness. I also respond to the Council's request for my current thinking on the 'duty to cooperate' legal issue.
3. It is important to appreciate that the views expressed below should not be taken as definitive of the final conclusion I may reach in my report. Whilst they represent my current thinking, the decisions I come to in my report can only be made after all the representations have been considered, the hearings have finished and the complete body of evidence has been taken into account.

Green Belt

4. One of the reasons for the Examination being suspended was my concern that the CS failed to give guidance on the important 'exceptional circumstances' test which has to be met if Green Belt releases are to be justified. At the discussion during subsequent hearings I repeated my view that a policy which facilitated a Green Belt review should set out the reasoning which, in Selby, could result in exceptional circumstances being found. To further assist the Council, I also provided my thoughts on its first re-draft of policy GBXX following the September 2012 hearings.
5. The Council has broadly incorporated my latest comments into the 7th set of PCs. That being so, I have just one point in relation to the first line of paragraph 4.39j. Given that there might potentially, in time, be other circumstances which trigger the need for a Green Belt review, it could be argued that there is an over-emphasis on the word "only". It might be better to re-phrase the first line as follows:
"Thus the need for a Green Belt review is most likely to arise if sufficient deliverable/".

Scale of housing and windfall development

6. The recognition now given to the contribution from windfalls is welcomed, for it makes clear that the CS is expected to result in more

houses being delivered than the 450 dpa minimum of policy CP2, thereby satisfying the NPPF requirement to significantly boost housing supply. It also allays any residual concern of mine about overall housing numbers. However, despite the intention to allocate the full housing target (paragraph 5.28c), I am not at all certain that, as currently written, the contribution from windfalls would be counted as an addition to the 450 dpa target figure.

7. In the 5 year supply calculation (excluding the buffer element), the contribution from completed windfall sites and those committed windfall sites regarded as deliverable is proposed to form part of the built/committed supply¹. If the target remains at 450 dpa, the situation would be similar to that which applied in the past (paragraph 5.28a of the text) – the scale of need for additional sites would be reduced below the 450 dpa on allocated sites because of the contribution from built/committed windfalls. The same principle applies to the establishment of a new baseline date for the Site Allocations plan – the overall total to be allocated would be lower than the target of 450 dpa on non-windfall sites because of built/committed windfalls in the intervening period.

8. Is the above analysis correct, or have I misunderstood the process of calculating the 5 year supply and the overall scale of housing provision? If I am right, however, the final sentence of paragraph 5.28d is not consistent with the rest of paragraphs 5.28c and 5.28d and does not properly reflect the plan's stated intention to provide significantly more than 450 dpa, as illustrated in the trajectory.

9. It seems to me that there are two main ways in which this problem could be overcome. One is to specifically exclude windfalls (and other non-allocated development) from the 5 year supply calculation, the other is to increase the target figure to include some or all of the anticipated windfall supply.

Rural affordable housing

10. The inclusion of the market homes provision in policy CP6 is consistent with NPPF. However, does the reference to "100%" affordable housing in policy CP1(A)(b) remain appropriate if some market homes are now possible? On a separate matter, as now drafted policy CP6 could arguably be applied to the District's towns – is this appropriate? Would it be clearer to start the policy with "In villages....." (criterion (iii) refers to the setting of *the village*, so presumably the intention is to limit the policy to villages)?

11. It is not obvious to me why PC3.10 should be deleted, given that policy CP1A(a) makes a clear distinction between the types of development acceptable in DSVs compared with Secondary Villages. Deletion of PC3.10 raises the following question: on what types of site within DSVs would

¹ I appreciate that it was my suggestion that the text at the final sentence of paragraph 5.28d be changed from "may" to "will", but that is the usual approach and no one from the Council argued otherwise. In addition, there was no indication of how "may" would be interpreted (ie which windfall sites would be included and which would not).

development be allowed for rural affordable housing which would not otherwise be permitted? On the face of it, PC3.10 seems to make an appropriate distinction - is there something I have missed?

Economic growth

12. Whilst the general approach to the rural economy and the changes resulting from the September 2012 hearings are consistent with NPPF, the latest wording for part C of policy CP9 raises a number of issues. The first is definitional – it is not entirely clear to what areas the “Rural Economy” heading applies, and whether this is the same as “rural areas” in the first sentence of part C. I assume from Part A (3) that it relates to DSVs, SVs and the countryside – is that correct, and should it be specified?

13. Secondly, the first sentence of part C seems not to apply the “sustainable” test of NPPF paragraph 28 to all development. Thus a small scale, well designed building for employment development on a greenfield site in open countryside in a remote part of the District would appear to gain support from the policy, even though it might be regarded as unsustainable because of its location and/or use of greenfield land. It seems to me that the NPPF qualification that all rural development should be sustainable is an important one.

14. On a matter of presentation, the inclusion of certain types of site (C.2) in a list which otherwise refers to categories of use and development appears somewhat out of place, especially as the policy starts with “Development proposals for.....”

Renewable and low carbon energy

15. The addition of the first new paragraph to policy CP14 closely follows NPPF paragraph 97 and is fine (though it might be easier to comprehend if the two main elements were better separated). The second new sentence is poorly phrased as drafted, for it could be taken to imply that Council support might *not* be given for schemes within ‘identified suitable areas’; I suggest the “if” after ‘neighbourhood plans’ is replaced by “including those”, or similar.

16. The assessment criteria then follow. The first set deletes the previous reference to ‘identified suitable areas’ (deleting PC6.85) and is appropriate. There then follows a repeat of the criteria with the ‘identified suitable areas’ clause of PC6.85 retained – I assume this is an error, for if not the policy does not make sense.

Other matters

17. I have no specific comment on the other PCs now proposed in the 7th set. Of course, it is not possible to say that this will remain the position following receipt of representations on these PCs and the consideration of them at the final hearing session in February 2013.

18. Other than the one topic below, the various concerns I have expressed on a range of other matters throughout the Examination have largely been addressed, at least to the extent that (on current thinking) they are unlikely to be the subject of recommendations by me of main modifications which have not been suggested by the Council.

Identification of DSVs

19. I do remain concerned about the inclusion of Fairburn as a DSV. The objective analysis in CS/CD22e, as updated by evidence during the Examination, does not support such designation. Nothing in NPPF changes this - there is no compelling evidence that additional housing would lead to a more sustainable rural community or enhance its vitality. Unlike Appleton Roebuck (the other settlement where the objective analysis calls DSV designation into question), no case is advanced that Fairburn is part of a recognised group of villages where development would support services in other villages nearby (indeed the reverse is true, for the nearest villages to Fairburn are already identified as DSVs). On the evidence thus far, I am likely to recommend deletion of Fairburn as a DSV.

20. The recent identification of Escrick as a DSV is soundly based on the objective evidence and, for that reason, appears justified. However, I appreciate the argument that, as it is almost completely surrounded by Green Belt, its inclusion as a DSV might imply that some development on Green Belt land is inevitable. In my view that is not the case - the tests of policy GBXX would have to be applied to any potential Green Belt releases at Escrick and the outcome should not be predetermined by designation as a DSV. I believe that such a qualification should be made explicit in policy CP1A (a) - perhaps by a notation (similar to the linked villages asterisk) which states that Escrick is largely surrounded by Green Belt and any development on Green Belt land would have to accord with policy GBXX and the results of any Green Belt review.

Duty to cooperate

21. I gave my ruling on the legal aspect of the duty to cooperate in April 2012, concluding that it does not apply in this case (INSP/12). The argument that this finding does not allow me to recommend main modifications seems, on the face of it, to have little merit because s20(7) of the 2004 Act consistently refers to *any* duty imposed by s33A - I interpret this as allowing for situations in which (for whatever reason) the duty to cooperate does not bite. Clearly I cannot reach a firm conclusion on this point until I have considered the full legal submissions to be put to me early next year, but my initial view is that s20(7C) does apply and that I have the power to recommend main modifications.

Martin Pike

INSPECTOR
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