BOLSOVER DISTRICT COUNCIL
LOCAL PLAN EXAMINATION

Matter 1 Legal Compliance including Duty to Cooperate

Issue 1 - Overall, has the Local Plan been prepared in accordance with the relevant legal requirements?

Rob Routledge and Adele Rhodes on behalf of the Council
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Q1. Has the Local Plan been prepared in accordance with the Local Development Scheme [LDS]?

Council Response

1.1. The Council adopted a new Local Development Scheme at the commencement of work on the new Local Plan for Bolsover District (LPfBD) on 17th October 2014. This timetable was complied with, subject to some minor amendments. The main milestones being:


1.2. In late 2017 it was recognised that whilst we had maintained the momentum of the Plan, we needed to take stock and ensure that our evidence base was strong enough to continue forward, and that this would lead to some delay. At this time we also became part of the Government’s focus on what they considered to be underperforming authorities, and we faced the potential of intervention. This also impacted on our time lines.

1.3. Following the review of our work to date and mindful of the Government’s pressure to bring a Plan forward quickly, a new LDS was adopted on 14th March 2018 (submitted with the LPfBD as document KSD 4). The main milestone of consulting on a Publication Local Plan in May and June 2018, was met with the 6 week consultation period commencing on 2nd May 2018.

1.4. However, for a number of reasons the Council determined that moving to submission in July was not in the best interests of the Plan and following discussions with MHCLG and PINS it was agreed to delay submission until August.

1.5. The question of whether a new LDS should be drawn up, consulted on and agreed prior to submitting the Plan, took place with both MHCLG and Pins. However, as submission is not a consultation event and was only a month late, meaning no-one would be materially disadvantaged, we were advised to progress with the Plan’s submission as soon as possible.
1.6. The Plan was subsequently submitted on 31st August 2018.

Q2. Has the Local Plan been prepared in accordance with the Council's Statement of Community Involvement [SCI] and met the minimum consultation requirements in Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) [Local Plan Regulations]?  

Council Response  

2.1 Yes, the Council has carried out consultation on the Local Plan in accordance with the Council’s adopted Statement of Community Involvement (submitted with the Local Plan for Bolsover District (LPfBD) as document KSD2); and the Town and Country Planning (Local Planning ) England Regulations 2012.  

2.2 The Council's Regulation 22 (1) (c) i-v Local Plan Statement of Consultation SD4(submitted with the LPfBD as document SD4) provides a comprehensive overview of the consultation stages undertaken and methods used throughout the preparation of the LPfBD

Q3. Is the Local Plan legally compliant with respect to Sustainability Appraisal [SA]?

Council Response  

3.1 Yes, the Council’s Sustainability Appraisal (submitted with the LPfBD as document SD3) has been prepared by external consultants to meet the requirement under Section 19 (5) of the Planning and Compulsory Purchase Act 2004. Document SD3 is a report on the findings of the Sustainability Appraisal. In particular, the approach taken:  

- meets the requirements for Strategic Environmental Assessment (SEA) as set out in The Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations) and in particular that all likely significant effects of the draft Local Plan (and reasonable alternatives to it) are identified, described and evaluated;  
- addresses the judgements of relevant SEA case law;  
- takes account of best practice guidance and the relevant Planning Practice Guidance;  
- reflects the issues arising from an analysis of the evidence base (subsequently updated for each iteration of the draft Local Plan);  
- has been amended to address consultation responses.
3.2 Within the Sustainability Appraisal document, pages 2 and 3 of the Non-Technical Summary contains a summary of the sustainability assessment processes in the development of the LPfBD. The stages in the development of the LPfBD and how work on the Sustainability Appraisal informed these, (including a flow chart showing the linkages) are set out in more detail in section 5 of the main Sustainability Appraisal document (pages 14-16).

Q4. Is the Local Plan legally compliant with respect to the Habitats Regulations and any requirement for Appropriate Assessment [AA]?

Council Response

4.1. Yes, the Council's Habitats Regulations Assessment (submitted with the LPfBD as document KSD 4) has been prepared by external consultants to meet the requirements of Regulation 105 of the Conservation of Habitats and Species Regulations 2017.

4.2. Overall, the assessment concluded that most aspects of the plan will have no significant effects on any European sites, either alone or in combination. Where residual effect pathways remain, appropriate policy-based mitigation measures have been incorporated into the plan policies to ensure that proposals coming forward under the Local Plan either avoid affecting European sites entirely (no significant effect) or will have no adverse effect on site integrity.

Q5. Is the Local Plan legally compliant with respect to climate change?

Council Response

5.1. Yes, Section 19(1A) of the Planning and Compulsory Purchase Act 2004 sets the legal requirement for local planning authorities to include in their Local Plans “policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change”, this is not the same as requiring a specific policy on the subject in order to be legally compliant.

5.2. In many ways the issues of climate change are synonymous with the issues of sustainable development, sharing many of the same characteristics and needing to address many of the same issues. Therefore the Council’s response to Issue 3 and Issue 13 (Q16 and Q198 respectively) are relevant.

5.3. The issues of responding to and meeting the challenge of climate change are embedded within the LPfBD. Specific overarching policies for the mitigation of and adaptation to climate change in the LPfBD are:

   a. Objective B of the LPfBD sets out overarching measures to mitigate against and adapt to the impacts of change;
   b. Policy SS1: Sustainable Development;
   c. Policy SC2: Sustainable Design and Construction;
d. Policy SS3: Spatial Strategy and Distribution of Development;

e. Policy SC6: Renewable and Low Carbon Energy;

f. Policy SC7: Flood Risk;

g. Policy SC9: Biodiversity and Geodiversity;

h. Policy ITCR1: Strategic Green Infrastructure Network;

i. Policy ITCR10: Supporting Sustainable Transport Patterns; and

j. Policy II1: Plan Delivery and the Role of Developer Contributions;

5.4. All of these policies aim to work positively towards mitigating and adapting to the effects of climate change by amongst other things:

a. Focussing most development on the main towns and strategic sites where there is greater opportunity to reduce reliance on the private car and cut down on greenhouse gas emissions (criterion c); and l) of policy SS1 and policy SS3);

b. Promoting the efficient use of land and the re-use of previously developed land (criterion b) of policy SS; and criterion b) of policy SC2);

c. Promoting the reduction of energy use in new development (criterion d) of SS1; and criterion c) of policy SC2

d. Protecting and enhancing green infrastructure (criterion j) of policy SS1; criterion k) of policy SC3; policy ITCR1; policy ITCR10; and, policy II1);

e. Avoiding placing development in areas at risk of flooding (criterion l) of policy SS1; criterion c) of Policy SC2; Policy SC7:

f. Promoting the use of Sustainable Drainage Systems to effectively manage surface water drainage (criterion l) of policy SS1; criterion f) of policy SC2; Policy SC7: Flood Risk)

5.5. When read as a whole, the Council considers the plan’s policies will provide an effective tool to deliver sustainable development that meets the aims of objective B of the LPfBD – Climate Change.

Q6. Is the Local Plan legally compliant with national policy, the provisions of the Planning and Compulsory Purchase Act 2004 (as amended) [PCPA] and the Local Plan Regulations for the preparation of the plan?

Council Response

6.1. Yes, the Council has fully complied with Part 2 of the Planning and Compulsory Purchase Act 2004 (P & CPA) (as amended) relating to the production of the LPfBD as set out below.

6.2. Section 13(1) requires local planning authorities to keep under review the matters which may be expected to affect the development of their area or the planning of its development. These matters are set out in Section 13 (2) and (3). Throughout the development of the LPfBD the Council has developed and kept up to date a wide range of evidence base documents in relation to the matters set out in Section 13 (2) & (3). The completion of key evidence base documents is reported on annually.
in the Authorities' Monitoring Reports. All of these are available on-line. These documents have informed the development of the LPfBD and in many cases form part of the submission and supporting evidence to the LPfBD. The Council therefore considers it has complied with Section 13 (1) and (2).

6.3. Section 13 (4) requires the Council to consult with neighbouring authorities on any of the matters prescribed in (2) and (3). The Council has a long history of meeting with neighbouring authorities at sub-regional, county and district level to identify and discuss shared issues, and where possible/relevant develop shared evidence bases. The Council has consulted with each of its neighbouring authorities throughout plan preparation both through this regular dialogue and through formal consultation at each stage of the LPfBD’s development. The Council therefore considers that it has complied with Section 13(4).

6.4. Section 17 (7b) requires the Council to have regard to the form and content of local development documents as prescribed by Regulations. This includes a reasoned justification of the policies in the Plan and a statement of which policies of the adopted development plan are to be superseded. The new local plan will replace the existing Bolsover District Local Plan in its entirety. However, for the avoidance of doubt a modification (PM1) is proposed to list the policies in the (current) adopted Bolsover District Local Plan which would be replaced by the policies in the Local Plan for Bolsover District if they were to be adopted as Appendix 1.2 in the LPfBD.

6.5. Section 18 requires the Council to prepare a Statement of Community Involvement. The Council’s first Statement of Community Involvement (SCI) was adopted in May 2006. It has since been regularly reviewed and updated to reflect legislative changes. The SCI was updated in October 2017 (submitted with the LPfBD as document KSD2).

6.6. Section 19 (1) requires Local Plans to be prepared in accordance with the Local Development Scheme (LDS). Details of this are set out at paragraphs 1.1 – 1.6 above.

6.7. Section 19 (2) states that local plans must have regard to national policies and advice. The Council has prepared the Local Plan in conformity with the 2012 National Planning Policy Frameworks and its supporting guidance in the National Planning Practice Guidance.

6.8. Section 19 (3) requires Local Plans to comply with the local authority’s SCI. The Council’s response to Q2 above sets out how the Council has complied with the SCI in preparing the LPfBD.
6.9. Section 19 (5) requires the Council to undertake a Sustainability Appraisal of the Local Plan. As noted at in response to Q3 above, a Sustainability Appraisal has been prepared, and (submitted with the LPfBD as document SD3).

6.10. Section 20 (1) requires the Council to submit the Local Plan to the Secretary of State for independent examination to determine whether it satisfies the requirements in Section 20 (5). The Council submitted their Plan on 31st August 2018 on the basis that it considered the Plan to be sound and legally compliant in all respects.

6.11. Section 33A sets out the requirements under the Duty to Co-operate for local planning authorities to co-operate with other authorities and prescribed bodies when preparing development plan documents. The Duty to Co-operate Statement (submitted with the LPfBD as document KSD5), and Statements of Common Ground (submitted with the LPfBD as KSD6 – KSD8) set out how the Council has met the statutory Duty to Co-operate. Other SOCG’s emphasise this close working relationship.

6.12. As illustrated in the responses to the questions above, the Council considers the plan is legally compliant with national policy, and has been produced in compliance with all the relevant provisions in the Planning and Compulsory Purchase Act 2004 (as amended), and the Town and Country Planning (Local Plan) (England) Regulations 2012.

Q7. Does the Local Plan make it clear, as required by Part 4, paragraph 8(5) of the Local Plan Regulations, which parts of the existing development plan it will supersede?

Council Response

7.1. Whilst it was considered that the Local Plan made it clear that it would replace the existing Plan and all of the policies in full, it is accepted that that was not categorically stated within the Plan.

7.2. The Council have therefore brought forward Proposed Modification PM1 states that “Once adopted, this Local Plan will supersede the adopted Bolsover District Local Plan and all of the policies within that document as listed in Appendix 1.2”. With this amendment it is considered that the Plan complies fully with this requirement.
Q8. Should the plan periods for the Local Plans in the Derbyshire and Bassetlaw HMA authorities be aligned?

Council Response

8.1. Whilst academically it may appear ideal if all Local Plans could be aligned, there are significant difficulties in such an approach, not least the fact that a hold up for one is a delay for all and would be counter to the Governments clear aims of seeing Plans brought forward quickly.

8.2. Prior to commencing work on a new Local Plan, Members of the Council’s Local Plan Steering Group considered 4 options for pursuing a Local Plan. One of these was to prepare a joint Local Plan with one or more neighbouring authorities. However, whilst members noted the potential advantages of this option, they wanted the Council to prepare its own plan and not be reliant on the decisions of other authorities. In addition, it was noted that this was unlikely to be feasible given that neighbouring authorities were at different stages of plan making, with two of the authorities in the HMA having adopted (part 1) Core Strategies in place.

8.3. On the basis that there is no requirement for Joint Plans, and given the Council’s wish to push forward with a Local Plan for the District, an individual Local Plan was considered to be the most efficient and suitable approach.

Q9. Should the Local Plan align with the County Council’s Strategic Statement on Planning and Health?

Council Response

9.1. The question almost presupposes that the two documents do not align, which is not the case.

9.2. The County Council’s Public Health Officers made comments on the LPfBD. Their response considered the provisions in the LPfBD against the 5 health priorities set out in the Strategic Statement on Health and Planning. These 5 health priorities reflect where the planning system can make the greatest contribution to the delivery of priorities identified in the Health and Wellbeing Strategies for Derby and Derbyshire.

9.3. These comments were overwhelmingly positive, and the LPfBD was considered to support all 5 priorities.

9.4. Within their comments, the County Council’s Public Health Officers, made two specific suggestions. The first of these was in relation to healthy aging, and noted that the design of neighbourhoods suitable for older people is not explicitly mentioned; and, that the LPfBD could be strengthened by making reference to encouraging Dementia Friendly Communities.
9.5. It is considered that the creation of neighbourhoods solely for older people is contrary to the objectives in the NPPF and LPfBD of creating mixed communities. Good design, in which neighbourhoods are in sustainable locations and are distinctive and legible benefits all sections of the population, including those with dementia or other disabilities. The LPfBD seeks to embed good design in the LPfBD through:

- a. Objective O: Place Making,
- b. PolicySS1: Sustainable Development;
- c. SC2: Sustainable Design and Construction: and,
- d. SC3: High Quality Development.
- e. LC3 Type and Mix of housing

9.6. It is therefore considered that provisions in the LPfBD does meet the needs of the elderly, but does so in an inclusive way.

9.7. The second issue raised by the County Council’s Public Health Officers was that planning applications for major residential developments of 100 dwellings or more should ideally be accompanied by a Health Impact Assessment (HIA) where there is likely to be a negative impact on population health as a consequence of the development. Following further discussion with the County Council’s Public Health Officers it was noted that there is a reference in respect of population and human health in Section 4 (2) of the Town and Country Planning Environmental Impact Assessment Regulations 2017. The County Council’s Public Health Officers have agreed that their concerns could be addressed by a modification to the LPfBD through the addition in the Glossary on ‘Environmental Impact Assessment’ to read: ‘A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment’. The council are therefore proposing this addition as a modification to the LPfBD. Subject to this modification it is considered that the LPfBD aligns with the County Council’s Strategic Statement on Planning and Health.