

Examination into the Eden Local Plan (2014-2032) Development Plan Document (DPD)

Guidance Notes– Issued March 2016

Introduction

1. The purpose of this note is to inform statutory consultees and all those who have unresolved representations relating to the above Eden Local Plan (the '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 Eden Local Plan (2014-2032) DPD. Tony Blackburn 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 Monday May 9th and progress through the week at Penrith Methodist Church, Wordsworth Street, Penrith, CA11 7QY. Paragraph 26, below, provides further information regarding the format of the hearings.

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 under the provisions of the T&CP (Local Development) (England) Regulations 2004 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 Councils have 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. Where more significant changes that affect soundness (main modifications) 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. 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 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 Examination website:
<http://www.eden.gov.uk/planning-and-development/planning-policy-for-eden/eden-local-plan-2014-to-2032/eden-local-plan-2014-32-examination/>
11. The Council has confirmed that it has carried out its own self-assessment on soundness.

The Programme Officer

12. Tony Blackburn is the Programme Officer (PO): he 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. He can be contacted by telephone on 01254 260286 and by email at programme.officer@eden.gov.uk, or by post at 15 Ottawa Close, Blackburn, BB2 7EB.
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 Examination web site noted above.

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

Number of representations

15. 354 representations were received from 70 organisations or individuals on the submitted DPD. Of these two were in full support, that is, they found the plan sound without reservation whilst a number of others were broadly in support but had minor reservations.

Progressing representations

16. Respondents have already indicated in their representations 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 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 15th April 2016**, due to the preparation work that has to be undertaken by other parties, particularly the Council.
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 Appendix B for definition of soundness).**

The Hearing sessions

19. 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 direct cross-examination. Those attending may bring with them professional experts. Barristers and solicitors, if present, will be treated as part of their team.
20. 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 DPD 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 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.**

21. 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.**
22. 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 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.
23. 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.
24. The main Issues are set out in the accompanying Issues and Questions for Examination document produced by the Inspector.
25. **In general, the only evidence to be submitted now should be in response to those Issues and questions accompanying this note** (a further opportunity regarding 'site specific' and other matters will be advised at a later date – see paragraph 26 below). 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, including those responses to the Inspector's Issues and Questions, should be limited to 3000 words.**

The Hearings Programme

26. The Hearings Programme will be posted on the Examination website 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 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. **The present intention is to hear evidence on the Location Strategy and overall targets and distribution of development in addition to Legal Soundness and the Duty to Cooperate during the first week. These will be followed by discussions on Development Policies against which there are representations. A further session of Hearings will take place later in the year (dates and issues to be advised in due course) when site specific matters will be discussed along with any Development Policies not previously discussed. 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

27. The Council has prepared a list of Core Documents that is available in the Examination Library and may be viewed via the Examination web site. 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

28. 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.
29. **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

30. All Statements should be sent to the PO by **Friday 22 April 2016**. The original representations already made should have included all the points, documents and evidence to substantiate each respondents' cases. All further written submissions in the Statements should only address the Issues for Examination. The Council's 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).

Form of Statements

31. 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.
32. 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.
33. 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 and Modifications

The Council may ask the Inspector to consider further changes to those already proposed (library item AD02) as the examination progresses. Details of these will be advised via the Examination web page where those further 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. In addition to submission by email (unless the respondent does not have access to email), **four paper copies** of statements, including appendices, should be sent to the Programme Officer. For those submitting by email by the date quoted below, the relevant paper copies should follow promptly and ideally be despatched no later than the following working day.
- 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 changing from written representations to a hearing appearance will be 7pm **Friday 15th April 2016**.
 - All Statements: by 7pm **Friday 22nd April 2016**.

Appendix B

Tests of soundness (from NPPF para 182):

- 1. Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- 2. Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- 3. Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- 4. Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.