

OPDC Local Plan examination

Addendum to Inquiry Document ID43

I have again been urged to hold hearing sessions on two further issues;

- (1) Whether the OPDC knowingly submitted an unsound plan on 4th October 2018. I have previously indicated that it forms no part of my remit to go beyond the examination of the plan itself. My remit is set out in s20(5) and s20(7) of the Planning and Compulsory Purchase Act 2004, of which the first is relevant to this issue;

(5) The purpose of an independent examination is to determine in respect of the development plan document

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

S19 is concerned with the form and content of the Local Plan. S24(1) concerns conformity with the London Plan. S33A concerns the Duty to Cooperate.

The local planning authority's responsibility to prepare what it considers to be a sound document ready for examination is contained within s20(2) of the Act. S20(2) of the Act is not one of the sections of the Act with which I am required to determine compliance. The question is therefore outside my remit.

- (2) Whether the extent of the Modifications proposed renders the process unlawful. The Modifications are extensive, as I noted in my e-mail of 15 March 2021 (ID35). Section 20(7) of the Planning and Compulsory Purchase Act covers this question. In particular, sections 20(7B) and 20(7C) apply in the current circumstances ;

(7) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) considers that, in all the circumstances, it would be reasonable to conclude—

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and give reasons for the recommendation.

(7A) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Subsection (7C) applies where the person appointed to carry out the examination—

(a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that—

*(a) satisfies the requirements mentioned in subsection (5)(a), and
(b) is sound.*

There is no limit placed on the extent of the modifications which I am required to recommend in order to comply with s20(7C).

Mr Justice Cranston's judgment in *IM Properties Ltd v Lichfield District Council* [2015] EWHC 2077 (Admin) <https://www.bailii.org/ew/cases/EWHC/Admin/2015/2077.html> is also relevant to the question. In paragraph 57 of his judgment he states;

57 In my judgment section 20(7)—20(7C) contemplates that changes of substance can be made to the local plan. The legislative history is that subsections (7)—(7C) were introduced into section 20 by section 112 of the Localism Act 2011. As originally enacted, section 20(7) provided: "The person appointed to carry out the examination must (a) make recommendations; (b) give reasons for the recommendations". The amendments to section 20 increase the scope for planning inspectors to recommend changes so as to enable local plans to be found sound. Previously plans would have to be found to be unsound and therefore unable to proceed to adoption. The Localism Act 2011 has changed that. There is no limitation in the statutory language preventing a "rewrite" of the local plan (whatever that language might mean, when any change is a rewrite). The 2013 planning inspectorate guidance does not compel a contrary conclusion. While under section 19(2)(a) regard must be had to guidance, such guidance must give way to the legislative intention. In any event it does not purport to be exhaustive ("may consist" in para 4.24).

I again confirm that I do not intend to hold hearing sessions into these two issues. The examination will focus on the soundness of the plan. The hearings which I have arranged will focus on the ability of the modifications proposed to render the plan sound.

P. W. Clark

Inspector

6 January 2022