

**City Plan Part Two Brighton and Hove City Council's Development Plan
(the Plan/Local Plan) April 2020 Examination**

Inspector – Ms R Barrett MRTPI IHBC

Programme Officer – Pauline Butcher

Inspector Note 1

Inspector's initial questions

1. I have now made progress with my initial preparatory work. I set out below a number of procedural matters and initial questions for Brighton and Hove City Council (the Council).

Hearing sessions

2. Firstly, I agree with the Council, and consider it likely that the majority of the hearing sessions can be conducted over a period of two weeks. I would, however, programme additional reserve days to allow for any over run. In terms of timing, I intend to publish the Matters, Issues and Questions (MIQs) early September, mindful of the summer break, with the deadline for responses in early October. Taking account of the Council's and my availability, the hearing sessions would be scheduled for two weeks from week commencing 1 November 2021, with an additional week in reserve.
3. Even though Pins is doing in person events, to give certainty to the programme and taking account of the difficulties encountered by colleagues in conducting blended events, I consider that the Examination should be conducted virtually. Please note that the Council should ensure that the start date for the hearing sessions is notified at least 6 weeks in advance of the sessions commencing. I would be pleased to receive the Council's formal response to these proposed arrangements.
4. I will be circulating a draft hearings programme and Guidance Note with my MIQs. The Examination is based on the Matters and Issues and not driven by the representations. The Guidance Note will outline the nature of the hearing sessions. Those who have sought modifications to the Plan and signalled a wish to be heard will be invited to the relevant hearing session(s). There is no formal presentation of evidence or cross-examination; the procedure is an inquisitorial process, with the Inspector asking questions based on the Matters and Issues identified for Examination. The Council and relevant representors will have the opportunity to provide responses to the identified Matters and Issues as set out above. There is no need for any legal representation, but lawyers are welcome as a member of a team.

Procedural and legal compliance matters

5. The submitted plan is the Proposed Submission City Plan Part Two Brighton and Hove City Council's Development Plan (the Plan/Local Plan) April 2020. That forms the basis of the Examination. I note that the submission Plan is accompanied by a Schedule of Proposed Modifications (SD02).
6. The schedule of Proposed Modifications has been subject to Sustainability Appraisal (SD06a) (SA) Health and Equalities Impact Assessment (SD07a). Does this include all proposed modifications (main and minor)? Have they been subject to HRA?
7. This is important as the Inspector notes that the schedule includes both proposed Main Modifications (MMs), included as PMXX and Minor Modifications, included as PMMXX. Whilst some of the proposed Minor Modifications (termed 'additional' in the legislation), fall within the definition of Additional Modifications (AMs), some are more significant. Some include changed policy wording or include changes that would affect interpretation of policy. Such changes would be termed 'Main Modifications'.
8. Given the above comments, would the Council review the schedule and separate suggested AMs (typographical errors, factual errors etc) from any other modifications, which are most likely to fall within the definition of MMs? The Council should hold separate running lists of all proposed MMs, AMs and consequential changes to the policies map.
9. Any suggested MMs would need to be considered as to whether they are necessary to make the Plan legally compliant and sound. Such modifications would be made by the Inspector in light of those tests. AMs do not go to the question of soundness or legal compliance and would be made solely by the Council on adoption and not by the Inspector.
10. I will discuss the evolving proposed modifications as set out in SD02 (including any debate as to whether they are MMs or AMs if necessary) at the hearing sessions, together with any other MMs that I consider necessary to address soundness or legal compliance issues as the hearings progress. The Council has already made a formal request for me to make such MMs, under section 20(7C) of the Planning and Compulsory Purchase Act 2004 (as amended).

National Planning Policy Framework 2021 (the Framework)

11. A revised Framework was published 20 July 2021. The tests of soundness, against which I will be examining your Plan, includes that it should be consistent with national policy, including enabling the delivery of sustainable development in accordance with the policies in the Framework and other statements of national planning policy, where relevant.

12. At this point, can the Council consider the potential implications of the revised Framework for the submitted Plan, given the need for consistency with it? Please have particular regard to the implications of the revised section on plan making, including para 11a and the tests of soundness (para 35d), revised sections on well designed places, including trees (section 12), healthy and safe communities (para 92b), transport (para 106d) site allocations (para 110c), appropriate densities (para 125), flood risk (para 161) and National Parks (para 176). Can the Council consider any proposed modifications to the Plan (both MMs and AMs) as a result of the New Framework?

Duty to Co-operate (DtC)

13. S33A of the Planning and Compulsory Purchase Act 2004 (as amended) sets out the DtC. This applies to the preparation of Local Plans so far as relating to a strategic matter. Local planning authorities must demonstrate how they have complied with the DtC at the Examination stage of their Local Plan.
14. The Council confirms in its DtC statement (SD10) that most strategic matters were dealt with in the preparation and examination of the City Plan Part 1 (Part 1 Plan). However, as the DtC is an ongoing requirement the DtC statement (SD10) sets out how the Council has continued to engage with neighbouring local authorities and other prescribed groups and bodies, throughout the preparation of the submitted Plan, on a number of matters, including housing and economic needs, gypsy and traveller accommodation and the Ashdown Forest SAC.
15. Can the Council confirm whether the Plan relates to any strategic matters and whether it considers the DtC to be engaged in this case? If so, what are those matters? Has the DtC been met so as to meet the test of legal compliance?
16. To address ongoing DtC requirements, a Statement of Common Ground (SoCG) is in the process of being prepared and agreed by the constituent authorities in the West Sussex and Greater Brighton sub-region. That is intended to set out ongoing collaboration and a timetable of future work programmed to address unmet needs in general. Please can the Council advise on progress of the SoCG and whether it considers it relevant to the soundness or legal compliance of this Plan?

Conformity with Part 1 Plan

17. Regulation 8 (4) of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires policies to be consistent with any adopted development plan. Can the Council confirm whether the Plan is in accordance with the Part 1 Plan?

Local Development Scheme

18. Do the timetable and milestones for the relevant documents in the Local Development Scheme (CD11) reflect what has happened? If not, the LDS should be updated prior to the hearings.

Representations

19. Copies of the representations are displayed on the Examination website and summarised in documents SD09a series. Full copies of representations are included as SD09b, c, d and e series. It is for the Council to decide whether the representations are duly made, and also to decide whether to accept late representations. Late representations which are not formally accepted by the Council are not usually forwarded to the Secretary of State and the Inspector does not consider them. However, the Council indicates that non-duly made representations have been included in its summary of representations to the Plan. Please can the Council identify those? Can it give a clear steer as to whether it is accepting them or not?

The Scope of the Plan

20. It is necessary for me to be clear about the role and purpose of the Plan as is it not for me to re-examine issues that were covered in the examination of the City Plan Part 1 or other examinations. The scope of the Plan and what it is setting out to do and its relationship with other existing plans is confirmed at para 1.3 of the submitted Plan. That states that the role of the submitted Plan is to support the implementation and delivery of the Part 1 Plan; to complement the strategic policy framework; to identify and allocate additional development sites and to set out a detailed development management policy framework to assist in the determination of planning applications. The relationship between the submitted Plan and the City Plan Part 1 is further confirmed in the Local Development Scheme (CD11). I intend to progress this examination in accordance with that identified relationship.

21. To aid my preparation, would the Council provide a simple table that itemises what this Plan needs to provide in order to fulfil its purpose and meet the requirements of the Part 1 Plan, in terms of site allocations, development management policies and any other requirements? In particular, in respect of housing and employment land, what proportion of the overall Part 1 Plan requirement is this Plan intended to provide? In terms of housing over what part of the Part 1 Plan period? and is the purpose of this Plan to provide a five year housing land supply?

Housing

22. In line with the Oxted Residential judgment¹, I am mindful that the Plan is not required to rectify any shortcomings in the Part 1 Plan's approach to

¹ Oxted Residential Ltd v Tandridge DC [2016] EWCA Civ 414

housing land supply. The Plan does not need to re-consider objectively assessed need since its scope is clearly limited to allocating sites to meet the need established in the Part 1 Plan, amongst other things. This principle can also apply to the provision of a five year housing land supply, subject to the matters explored in the previous section. In any event, I will need to satisfy myself that the proposals in the Plan are such that the aims of the Part 1 Plan will be met and development delivered in accordance with it. At present, it appears unlikely to be necessary for me to consider whether the Council has a five year housing supply as part of this Examination (since that would require consideration of sites already allocated in other plans that are not before me). However, I will come to a final view on this once I have given your responses to these initial questions consideration.

23. Paragraphs 69 and 70 of the Framework refer to the need to identify land to accommodate at least 10% of housing requirements on sites no larger than one hectare. Can the Council confirm whether this is the case and point me to the relevant evidence?

Evidence Base

24. I have received the submission documents and evidence-based documents (and note that these have been provided on the Examination website).
25. I anticipate that the broad parameters of the growth envisaged in this Plan have been subject to viability assessment as part of the Part 1 Plan, which would have been subject to Examination. However, this Plan introduces a number of requirements that go beyond those in the Part 1 Plan, particularly the suite of development management requirements. Together they are likely to have viability implications. Please can the Council point me to the evidence that assesses the viability implications of the Plan requirements as a whole?

Neighbourhood Plans

26. The Local Development Scheme (CD11) sets out that some neighbourhood forums are at various stages of preparing a Plan (including Hove Station; Rottingdean; Brighton Marina; Hangleton and Knoll and Hove Park). Please can the Council provide an update on the progress of each one?

Supplementary Planning Documents

27. Can the Council compile a comprehensive list of the above relevant to the submitted Plan showing their status, purpose and their programme for preparation?

Next Steps

28. These are my preliminary questions. Others may follow as my preparations continue. A response to these questions by no later than midday on Monday 16 August 2021 would be appreciated. I will then issue my Matters Issues and Questions in the early part of September 2021.

R Barrett

Inspector appointed to examine the City Plan Part Two Brighton & Hove City Council's Development Plan April 2020