

Tips on the process for plan-makers and objectors

Jacqueline Lean

Key requirements (1)

$\frac{L}{C}$

- Plan Strategy: requirements in s.8 Planning Act (Northern Ireland) 2011:
 - Must take account of (a) regional development strategy (b) any policy/advice given by Department; (c) such matters as Department may prescribe/direct. Includes SPSS
 - Sustainability appraisal (s.8(6))
 - Strategy to be prepared in accordance with Council's statement of community involvement (s.8(4))
-

Key requirements (2)



- Local policies plan: requirements in s.9 Planning Act (Northern Ireland) 2011:
 - Must be consistent with Plan Strategy
 - Must take account of (a) regional development strategy (b) any policy/advice given by Department; (c) such matters as Department may prescribe/direct. Includes SPSS
 - Sustainability appraisal (s.9(7))
 - Strategy to be prepared in accordance with Council's statement of community involvement (s.9(4))
-

Key requirements (3)



- Further requirements in The Planning (Local Development Plan) Regulations (Northern Ireland) 2015
 - Including consultation with “consultation bodies” (reg 9) and the public (reg 11)
 - SEA (usually incorporated within SA)
 - ‘Soundness’ (s.10(6)(b))
-

Tips for councils: plan preparation



- Does the plan meet the objectives / fulfil the aims set out in s.8(2) / s.9(2)? How?
 - Consistency with SPPS / Regional Development Strategy / Plan Strategy?
 - Need for a robust evidence base
 - Rational and proportionate approach to key issues – eg site selection
 - Clear mechanisms for implementation and monitoring?
- 

Tips for councils: plan preparation



- Ensure that the SA/SEA meets the requirements of the SEA Regulations
 - Does it contain such of the information contained in Sch 2 of the SEA Regs as may reasonably be required?
 - Are reasonable alternatives considered?
 - Have other key assessments been carried out? (eg HRA)
 - What are your back-ups?
- 

Tips for councils: plan preparation



- Consultation / management of key stakeholders
 - “Consultation bodies” (during preparation of preferred options paper).
 - Includes council for adjoining district (cf duty to cooperate in PCPA 2004) & NI Housing Executive
 - Politicians
 - Developers / potential opponents to plan

 - Compliance with Statement of Community Involvement
-

Examination: general points



- Predominantly a written process: even on main issues
 - After initial submission of material by Council (including representations received) no further written material should be sent in “unless the Commissioner requests it” (para 28)
 - Commissioner may request information from Council / other parties / parties who have not made representations if considers there are gaps on matters going to soundness of plan, or if that party may have something material to add on soundness (paras 27 & 29)
 - Critical to get initial submissions / representations right – and ensure any necessary technical docs are appended
-

Examination – PAC Guidance



‘Procedures for Independent Examinations of Local Development Plans’ (April 2017)

Soundness

[11] The purpose of an examination is to determine whether a plan satisfies statutory requirements and is sound. Legal compliance and soundness are overlapping concepts. **In carrying out the examination, the Commissioner will apply a series of tests taken from the Department’s Development Plan Practice Note (DPPN) 06.** These tests are set out in Appendix 3. The soundness tests will be considered in the round, taking into account the supporting text in DPPN 06, and an overall judgment will be formed.

[12] It is very important that all participants appreciate that **the focus of the examination and the Commissioner’s report will be on the soundness of the plan and not on individual representations or sites.** This represents a fundamental change from the development plan system that existed before the 2011 Planning Act came into force.

Examination – PAC Guidance Appendix 3 ‘Soundness’ (1)



Procedural tests

P1. Has the plan been prepared in accordance with the council’s timetable and the Statement of Community Involvement?

P2. Has the council prepared its Preferred Options Paper and taken into account any representations made?

P3. Has the plan been subject to sustainability appraisal including Strategic Environmental Assessment?

P4. Did the council comply with the regulations on the form and content of its plan and on the procedure for preparing the plan?

Examination – PAC Guidance Appendix 3 'Soundness' (2)

$\frac{L}{C}$

Consistency tests

- C1. Did the council take account of the Regional Development Strategy?
- C2. Did the council take account of its Community Plan?
- C3. Did the council take account of policy and guidance issued by the Department?
- C4. Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?
-

Examination – PAC Guidance Appendix 3 'Soundness' (3)

$\frac{L}{C}$

Coherence and effectiveness tests

- CE1. The plan sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant is it in conflict with the plans of neighbouring councils.
- CE2. The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base.
- CE3. There are clear mechanisms for implementation and monitoring.
- CE4. The plan is reasonably flexible to enable it to deal with changing circumstances.
-

Tips for Councils – examination (1)



- Robust evidence base submitted to support plan
 - Written material: executive summary, referencing supporting material, with key points in bold/underlined, demonstrating clearly how key requirements are met
 - Identify main issues and key points in response: who is going to deal with what?
 - Remember SA & SPPS
-

Tips for Councils – examination



- Be prepared to be flexible/creative with solutions
 - Remember ultimate objective to get a sound plan adopted - be prepared to consider/pursue potential modifications if this seems a way to overcome points of concern
 - Possibility for plan examination to be suspended (or suspended in respect of identified elements) if concerns at pre-hearing assessment
-

Examination – PAC Guidance

Representations

L
C

[13] People who make representations seeking to change a plan are strongly advised to state clearly why they consider the plan to be unsound, having regard to the tests in Appendix 3. The Commission recommends councils to provide forms similar to that in Annex A to the Department’s DPPN 09 and encourages people making representations to use the council’s form. Each suggested change should be the subject of a separate representation. **Every representation should say precisely how the plan should be changed in order to achieve soundness. It should be supported, succinctly, by all the evidence thought necessary to justify the proposed change. There will be no further opportunity to submit information unless the Commissioner requests it.**

[14] The substance of the representations is of more significance than the number of people making representations. Where several people share a common view on how a plan should be changed, **they are encouraged to cooperate with each other, pool resources and make a single representation.**

Tips for objectors

L
C

- To participate at examination, must say in your representation you wish to be heard orally
- Any points on soundness must be raised during examination: ***Trustees of Barker Mills Estates v Test Valley BC [2017] PTSR 408 paras 78-80***
- Need to front-load your case: ensure any technical / supporting material submitted with representation

Tips for objectors



- Focus on the tests the Inspector has to apply: is the Plan sound?
 - Seek to combine points on the legal requirements with soundness
 - For Plan Strategy : how does it accord with SPSS?
 - For local policies plan: are the policies consistent with the Plan Strategy?
 - Has there been compliance with consultation requirements / statement of community involvement?
-

Tips for objectors



- Consider co-ordination with other objectors: eg developers' forum
 - Be aware interests may not always align / scope for disagreement/conflict: how will this be managed?
 - A good point only needs making once. Avoid repetition (and/or inconsistency!)
 - What is your ultimate objective? Be aware the risks of unforeseen consequences
-

Tips for those promoting sites



- Has site been SA/SEA assessed?
- If supporting Council proposal: assist with any technical issues and on delivery
- If identifying an additional or alternative site:
 - Why is the Plan unsound without it? (eg target housing trajectory / supply & look for 'showstoppers')
 - Address all relevant issues with soundness relevant to your site
 - Any support from other objectors?

A few practical points



- Written material taken as read at examination – don't repeat/read: focus on key issues that need to be explored
- Avoid "undue legalism"
- For objectors: pick your points
- For Council: importance of venue/resourcing should not be underestimated. Do you have what you need for successful examination – and what is needed by PAC / public?