

Key concepts in local planning: the legal requirements for examinations and soundness

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Introduction



- Topics to be covered:
 - Sources of law and good practice
 - Local plan documents
 - Timetabling and other procedural obligations
 - The purposes of examination
 - Soundness
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Sources of the law



- Five main sources of law and best practice for plan making:
 - Planning Act (Northern Ireland) 2011, Part 2
 - Planning (Local Development Plan) Regulations (Northern Ireland) 2015
 - SPPS, Part 5
 - DfI Development Plan Practice Notes
 - Case law

What comprises a local plan?



- 2011 Act envisages a two-stage plan-making process:
 - The plan strategy (s. 8)
 - Land use and development objectives
 - Strategic policies
 - The local policies plan (s. 9)
 - Land use and development policies (e.g. site allocations)
- Together, these are the development plan (s. 6)

Timetables



- Statutory requirement for all DPDs (s. 7)
- Applies to both preparation and revision of DPDs (s. 14(3))
- Councils must consult PAC, and such other consultation bodies it thinks appropriate, before preparing timetable (reg 5)

Timetables



- Contents of the timetable (reg 6):
 - Indicative dates for each stage of DPD preparation, including
 - Publication of POP
 - Publication of plan
 - Adoption of plan as a DPD
 - Indicative dates for carrying out SA and reporting the findings of SA
- Timetable must be approved by Council resolution, and sent to DfI for agreement (reg 7)
 - DfI has 4 weeks to respond

Procedural stages



- Once timetable is agreed, plan progresses to the following stages (2015 Regs):
 - Engagement with consultation bodies (listed in reg 2(1))
 - Produce POP, and make publicly available
 - Public consultation on POP (8-12 weeks)
 - Produce plan, and make publicly available
 - Must distinguish between policies and justifications, and include a map
 - Public consultation on plan (8 weeks)
 - Publicise representations received, and further 8 week consultation on site-specific representations (further responses must themselves be publicised)
 - Submit for examination

The purpose of the examination



- S. 10 of the 2011 Act
- Three purposes of the independent examination:
 - Compliance with timetable (s. 7)
 - Compliance with formalities (ss. 8 and 9)
 - Soundness
- Examiner makes recommendations to DfI, which makes the ultimate decision



The requirements of the examination

- Council must provide the specified documents in support of the DPD: reg 20(2)
 - Should not make such a submission unless (s. 10(2)):
 - Complied with 2015 Regs; and
 - It thinks the DPD is ready for examination
- DfI must publicise those docs as soon as practicable after their submission
- Examination must be publicised at least 4 weeks in advance (reg 21)
- Statutory right for those making representations to be heard at the examination (s. 10(7))

Soundness: the test



- “Soundness” not defined in the 2011 Act or the 2015 Regs
- SPPS para 5.30: soundness includes three tests:
 - Procedural
 - Consistency
 - Coherence and effectiveness
- Expanded on in Development Plan PN 6
 - PN 6 approach incorporates other procedural requirements too



Soundness: the procedural test

- PN 6 para 5.3
 - Four elements:
 - Prepared in accordance with timetable and SCI?
 - Preparation of POP and taken account of representations
 - SA and SEA
 - Compliance with regulations on form, content, and preparation procedure for DPDs?
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Soundness: the consistency test

- PN 6 para 5.4
 - Four elements:
 - Take account of Regional Development Strategy
 - Take account of Community Plan
 - Take account of Dfl policy and guidance (mainly, but not only, SPPS)
 - Had regard to other relevant plans, policies and strategies (e.g. transport, recreation etc) for this or adjoining districts
 - Though called “consistency” tests, these are in fact “take account” tests ... so inconsistencies are acceptable, as long as they are robustly justified
 - Key difference from soundness test in England
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Soundness: the coherence and effectiveness test



- PN 6 para 5.5
- Four elements:
 - (1) “a coherent strategy from which its policies and allocations logically flow”, including consistency with adjoining council’s DPDs on relevant cross-boundary issues
 - “ambitious but realistic”
 - “concise and distinctive”
 - Incorporate aims of the Community Plan
 - “Integrated with, add value to and assist” national regional and local strategies

Soundness: the coherence and effectiveness test



- (2) Realistic and appropriate having considered relevant alternatives and are founded on a robust evidence base
 - Need to be able to justify policies by evidencing how they deliver the DPD’s objectives
 - Iterative process, including POP
 - Key role for SA. Consultation responses also relevant

Soundness: the coherence and effectiveness test



(3) Clear mechanisms for implementation and monitoring

- Annual reviews of housing land supply and delivery, and economic land supply, as a minimum
- Creation of mechanisms for implementation and monitoring, e.g. working groups

(4) Reasonably flexible to enable it to deal with changing circumstances

Evidence of soundness



- Includes, but not limited to:
 - Contents of DPD/POPs themselves
 - The SA
 - Checklists for the elements of soundness
 - Consultation responses
 - Survey data and other research

What if a DPD is found to be unsound?



- Two options:
 - If examiner considers issues can be addressed through modifications, recommendations will be made
 - Otherwise, examiner will recommend withdrawal of the plan
- Ultimate decision with DfI (s. 12(1) of the 2011 Act)



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