



THE PURPOSE OF THE EXAMINATION

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OUTLINE

- (1) The Legal Requirements (Section 20(5)(a))
- (2) The Duty to Co-operate (Section 20(5)(c))
- (3) Soundness (Section 20(5)(b))
- (4) Options for the inspector (section 20(7A), (7B) and (7C))
- (5) Issues for those promoting development

The Purpose of the Examination (1)

Section 20(5) Planning and Compulsory Purchase Act 2004
("PCPA 2004")

- (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.

Purpose of the Examination (2)

Preparation and then examination are sequential stages in a process (*Samuel Smith v. Selby DC* [2015] EWCA Civ 1107 at paragraph 28)

Examination takes place once the LPA considers that preparation of the plan (under section 19 PCPA 2004) is complete

Legal Requirements (1) – section 19

Section 19 PCPA 2004

Section 19(1) – imposes a positive obligation to prepare DPDs in accordance with the local development scheme

Section 19(2) – specifies matters to which the LPA must have regard (additional matters are prescribed by regulation 10 of the 2012 Regulations)

Section 19(2)(a) contains one of the few references, in legislation, to “national policies and advice contained in guidance issued by the Secretary of State”.

The question for the inspector at the examination stage (section 20(5)(a)) is not whether the LPA have complied with section 19, but whether the plan complies with section 19 (***Samuel Smith*** at paragraph 33)

Legal Requirements (2)

Section 19(5) PCPA 2004

Sustainability Appraisal

Environmental Assessment of Plans and Programmes Regulations 2004

Regulation 12 –

An environmental report is
to be prepared

Assessment Criteria	Question	Site Reference																
		BRA028	BRA029	BRO006	BRO007	BRO008	BRO009	BUR017	CRA005	DES014	DES040	GED003	GED004	KET002	KET015	KET023	KET024	KET025
Yield		Up to 10	Up to 15	1	5	Up to 15	Up to 15	Up to 7	Up to 15	Up to 15	Up to 15	6	3	6-7	12-14	2	4	1
Accessibility to	Facilities	~	~	✓	~	~	*	✓	~	✓	✓✓	✓	~	✓✓	~	✓✓	✓✓	
	Pedestrian/cycle links	xx	xx	✓✓	xx	✓✓	x	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	
	Public Transport	✓	x	✓	x	✓✓	x	✓✓	~	~	✓✓	✓✓	~	✓✓	✓✓	x	✓✓	
	Settlement hierarchy	~	x	~	~	~	~	✓	~	✓	✓	~	~	✓✓	~	✓✓	✓✓	
Health		✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	~	x	✓✓	✓✓	✓✓	✓✓	✓✓	
Skills		✓✓	~	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	
Liveability	Impact of noise or odour	~	✓✓	✓✓	✓✓	~	~	✓✓	✓✓	✓✓	✓✓	~	✓✓	✓✓	~	✓✓	✓✓	
	Compatible development	✓✓	x	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	x	✓✓	
	Size of site	✓✓	x	✓✓	✓✓	✓✓	✓✓	✓✓	x	x	x	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	
Biodiversity impact on	Protected species	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	✓✓	~	✓	✓✓	✓✓	✓✓	✓✓	
	Ecological features	✓✓	xx	✓✓	✓✓	✓✓	✓✓	✓✓	✓	✓✓	✓	✓	✓	✓	✓	✓	✓✓	
Landscape		✓	xx	✓✓	✓	✓	✓	✓✓	✓	✓	✓	xx	xx	✓✓	~	✓✓	✓✓	
Cultural		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	~	~	xx	xx	✓	✓	

Legal Requirements (3) –section 24(1)

Section 24(1) – general conformity with the regional strategy or spatial development strategy

This requirement is of particular relevance in London – where general conformity with the London Plan is to be considered.

Whether there is general conformity is a matter of degree, and of planning judgment, a loose approach is to be adopted
(Persimmon v. Stevenage BC [2006] 1 WLR 334, at paragraphs 22 and 25)

Regulation 21 of the 2012 Regulations requires the Mayor to provide an opinion as to whether a local plan is in general conformity with the London Plan

Legal Requirements (4) – regulations

The Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) set out the requirements for plan making

Regulation 8(4) -

(4) Subject to paragraph (5), the policies contained in a local plan must be consistent with the adopted development plan.

That regulation is likely to be of particular relevance when considering site allocations plans prepared after a core strategy has been adopted.

Legal Requirements (5) – Practical Points

LPA Perspective

Ensure that the SA/SEA meets the requirements of the regulations.

- Does it contain such of the information referred to in Schedule 2 to the 2004 Regulations as may reasonably be required?
- Are reasonable alternatives considered.

Those making representations

If promoting an alternative site or strategy – has the site or strategy been assessed in the SA/SEA?

Has regulation 8(4) of the 2012 Regulations been complied with (e.g. site allocations plan)

In London – can any point be taken on general conformity with the London Plan

Duty to Co-operate (1)

Section 33A PCPA 2004

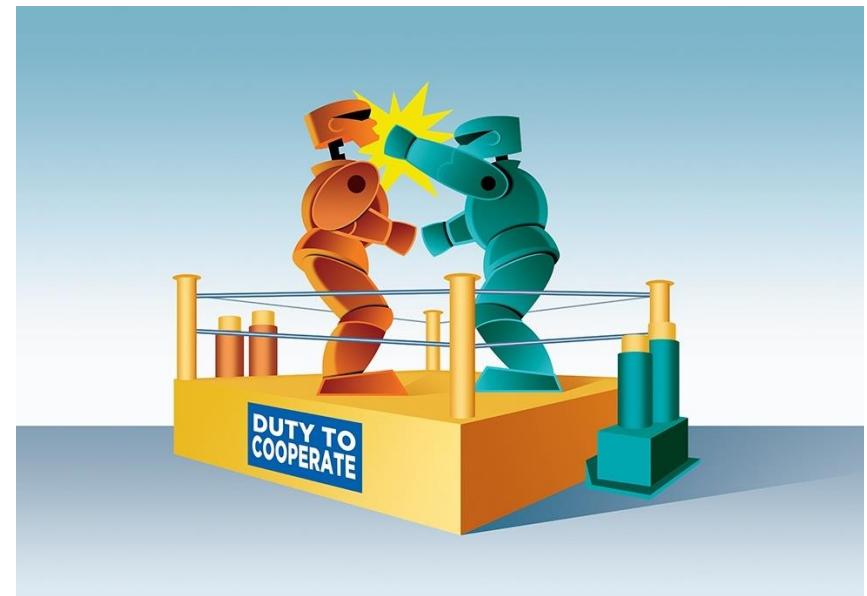
- The duty to co-operate applies in relation to the persons described in section 33A(1)
 - (a) a local planning authority,
 - (b) a county council in England that is not a local planning authority, or
 - (c) a body, or other person, that is prescribed or of a prescribed description,

Regulation 4(1) of the Town and Country Planning (Local Planning) (England) Regulations 2012 prescribes the bodies and persons for the purposes of section 33A(1)(c)

Duty to Co-operate (2)

The extent of the duty – section 33A(2)

- (2) In particular, the duty imposed on a person by subsection (1) requires the person—
- (a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and
 - (b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).



Duty to Co-operate (3)

Following a rigorous examination of the documents it is for the inspector, as a matter of planning judgment, to determine whether the engagement was constructive, active and ongoing (*R(oao Central Bedfordshire) v. SSCLG* [2015] EWHC 2167 (Admin) at paragraph 50, *St Albans v. SSCLG* [2017] EWHC 1751 (Admin) at paragraph 39)

The duty to co-operate is not a duty to agree, but once there is disagreement that is not an end to the duty to co-operate (*St Albans* paragraph 51)

There is no need for an inspector to balance matters where there was co-operation with matters where there was not (*St Albans* at paragraph 54)

Duty to Co-operate (4)

The time at which the duty is to be fulfilled

The duty applies to plan preparation (section 33A(3)).

In ***Samuel Smith*** (paragraph 47) the Court of Appeal held that the duty did not apply when an examination is suspended for main modifications to be produced and consulted on.

However, when considering soundness an inspector will consider the degree of co-operation with neighbouring authorities (***Samuel Smith*** paragraph 44)

Duty to Co-operate (5) – Practical Points

- The duty to co-operate applies to all areas of the plan but is of particular importance when need (e.g. for housing) is not met in the plan area, or in adjoining LPA areas.
- Given that the duty applies at the preparation stage and failure to fulfil it cannot be put right by an inspector:
 - LPAs should ensure that the duty has been fulfilled before submission (even if further action is required and submission is delayed)
 - It is prudent for compliance with the duty to be considered at an early stage in the examination process. If an inspector has a concern an exploratory meeting may be held (PPG paragraph 22).

Soundness (1)

There is no statutory definition of the word ‘sound’ in section 20(5)(b) PCPA 2004.

Testing of soundness is a matter of planning judgment exercised within the statutory scheme in the light of relevant policy and guidance (*Oxted Residential v. Tandridge DC* [2016] EWCA Civ 414, at paragraph 27)

Guidance on soundness is given at paragraph 182 of the NPPF- this may change when the NPPF is revised.

There is no presumption that a plan is sound (*Blyth BC v. Persimmon* [2008] EWCA Civ 861). The examination starts on the basis that the LPA have submitted a plan which it considers is ‘sound’

Whether a plan meets objectively assessed needs and whether it is consistent with national policy are often the main issues.

Options for the Inspector (1)

- (1) If the inspector considers, in all the circumstances, it would be reasonable to conclude that the section 20(5) requirements are met the inspector must recommend adoption (section 20(7)(b)).
- (2) If those requirements are not met, the inspector must recommend non-adoption (section 20(7A)).
- (3) If the inspector does not consider that it would be reasonable to conclude that the section 20(5)(a) requirements are satisfied and the plan is sound, but does consider that the duty to co-operate has been fulfilled, then if asked to do so by the LPA, s/he must recommend modifications of the document that would make it comply with the section 20(5)(a) requirements and make it sound.

Options for the Inspector (2)

Option (3) may be thought to be the most common

The legislation envisages that it is for the inspector to propose modifications to make the plan comply with the section 20(5)(a) requirements and to make it sound, however it is invariably the LPA who put forward the main modifications.

Issues for those promoting development (1)

1. For those opposed to the plan as a whole – investigate whether a point can be taken on the duty to co-operate.
2. Seek to combine points on the legal requirements with soundness points.
 - (a) In London – consider general conformity
 - (b) On site allocations plans – consider consistency with the core strategy
3. If challenging OAN-
 - (a) Use the PPG to frame submissions
 - (b) Provide robust technical evidence

Issues for those promoting development (2)

4. If promoting an alternative or additional site or strategy
 - (a) ensure that the site or strategy has been assessed as a reasonable alternative in the SA/SEA.
 - (b) Consider the need for assessment under the habitats regulations.
5. If supporting an allocated site, assist the LPA on any technical issues and on delivery.
6. Address all four soundness issues (as relevant)

