



Local Plans: Tips for Success

3pm, 12th April 2021

Paul Shadarevian QC, Wayne Beglan, Clare Parry
& Dr Ashley Bowes

Speakers



Paul Shadarevian QC



Wayne Beglan



Clare Parry



Dr Ashley Bowes

Upcoming Webinars



19th April 2021 -11am - **Getting to Grips with Infrastructure Projects as a Local Authority**

Speakers: Michael Bedford QC, Estelle Dehon and Ruchi Parekh

4th May 2021 -11am - **Planning for schools: academy and free school planning appeals**

Speakers: Lisa Busch QC, Harriet Townsend, Ryan Kohli and Rowan Clapp

24th May 2021 -11am -**Developing Greenfield Sites Outside Settlement Boundaries**

Speakers: Jonathan Clay, Dr. Ashley Bowes and Rowan Clapp

7th June 2021 - 11am - **Compulsory Purchase: A fresh perspective**

Speakers: Paul Shadarevian QC, Harriet Townsend, Emmaline Lambert and Dr. Christina Lienen

21st June 2021 - 11am - **Planning Case Law Update**

Speakers: James Findlay QC, Ryan Kohli, Ruchi Parekh and John Fitzsimons

Please email events@cornerstonebarristers.com if you would like any more information.

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*Promoting Sites Through the Local Plan
Process*

Paul Shadarevian QC

Essential Stages



- Anticipate emergence of new Local Plans and reviews and NPs.
- Have an idea of what the housing and employment requirements are likely to be.
- What are the spatial constraints likely to be?
- Is there any evidence of the likely spatial strategy that will be followed and its alternatives? What are their respective merits?
- Is there a likely need for a “competitive” strategy based on the spatial options available?

Essential Stages (cont.)



- Early engagement at officer level and/or PC essential, no need to wait for call for sites.
- Before call for sites stage, engage with local community and PC (whether pursuing a NP or LP allocation). Its best not to spring a surprise.
- Engagement should be informed so that the community and officers can be engaged positively but without being left with the impression that any proposals are fixed.

Positive Engagement Means



- Seeking the views of the community about the desirability of releasing the site for development and in so doing;
- Making a good case for:
 - its sustainability and the ways in which it can bring positive gains for the local community and the local environment;
 - the way in which it can fit in to the best spatial strategy having regard to constraints;
 - its deliverability;
 - the opportunities it provides for net biodiversity gains and other sustainability enhancements and initiatives;
 - the potential to engage particular delivery vehicles for certain types of housing or employment having regard both to local and borough wide needs.

Call for Sites:



- Make the site stand out;
- Justify its release by reference to likely spatial strategy(s)
- Make the case for its likely viability;
- Make the case for delivery;
- Provide an indicative trajectory based on site specific data and comparables;
- Provide illustrative layouts;
- Demonstrate how the site can integrate with and provide enhancements to transport infrastructure to maintain its long term sustainability and will provide good access to services;
- Demonstrate how the development of the site will bring additional community and environmental benefits.

Site Specific Constraints



- SSCs need to be addressed at the outset:
 - How can they be managed?
 - Are they particularly problematic?
 - Could they be overcome with solutions that would be supported by statutory and other consultees?
 - Highways: HE/HAs
 - The Natural Environment: NE/LA/Local Wildlife Organisations
 - Floodrisk: EA
 - Contamination: EA
 - Historic Environment: HE and other interest groups.
 - Other?

Proposed Allocation?



- Seek to assist LPA with policy wording in relation to allocation to avoid disagreement on effectiveness at examination;
- Complex and major allocations may need a bespoke approach that has to safeguard interests but also be realistic about phasing of development and supporting infrastructure.

Proposed Allocation?



- Provide strong support to LPA at Examination stage:
 - PINS will investigate sustainability credentials of the strategy and those of the individual sites that make it up
 - Assist in answers to MIQs and topic papers so far as relevant to the proposed allocation
 - Provide firm evidence about:
 - the deliverability of the site and its viability having regard to affordable housing requirements (if applicable), on and off site infrastructure requirements and other likely contributions;
 - realistic lead-in time to first delivery and likely annual yield over lifetime of development;
 - how on and off site infrastructure can be phased
- Be ready to provide evidence to the Examination to support the LPA's assumptions about the site and its delivery.

EFFECTIVE POLICIES



- Policy requirements must be evidence based and justified
- Drafting must be precise and capable of practical engagement and application
- No wish lists, facilitating or “encourages”. Policies should “require” compliance with their terms
- No duplication of requirements (esp. in site specific allocations, unless requirements are bespoke)
- Site specific policies should, where possible, deal effectively with phasing requirements and delivery of key infrastructure at critical stages.

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Local Plans – Local Authority Tips

Dr Ashley Bowes

Before Submission – Evidence Base



- Invest the time
- Think critically
- Work together with your neighbours
- Have an eye on reasonable omission sites
- Does the Plan follow logically from the evidence?

After Submission – Before Examination



- With promoters and other authorities:
 - Topic papers
 - SoCGs
 - Deliverability and Trajectory
- Ask to recommend MMs if necessary (s.20(7C) PCPA)

After Examination



- Modifications are likely so:
 - Revisit the SA with an open mind
 - Ensure consultation in line with SCI

Adoption



- Adoption must be by resolution of the full Council
- Power to adopt tightly controlled (see s.23 PCPA)
- Subject to legal challenge (see recent South Ox JR)

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Duty to Co-operate

Wayne Beglan

Binary = derailing



- The soundness tests do not permit consideration of omission sites by inspectors
- So, often indirect attacks are employed by larger omission sites
- Similar approach can be used in criticisms of SA by omission sites, often twinned



A recap on the Legislation – the duty



- S.33A PCPA 2004
- “**must** co-operate . . . in maximising effectiveness . . .
.[of activities undertaken]”
- “requires the person-(a) to engage **constructively**,
actively and on an **ongoing basis** . . .”
- “have regard to the activities of a person . . .”

A recap on the Legislation – the persons



- LPA
- County council that is not an LPA
 - Highways
 - Education, etc
- Bodies of a Prescribed Description
- Also consider LEP and LNPs
- The Prescribed Bodies include:
 - Highways Authorities
 - EA
 - Historic England
 - Natural England
 - CAA
 - Homes England
 - CCG's
 - Mayor of London

DtC limited to Strategic Matters



“(4) For the purposes of subsection (3), each of the following is a “**strategic matter**”—

- (a) sustainable development or use of land that has or would have a **significant impact** on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and
- (b) sustainable development or use of land in a two-tier area if the development or use— (i) is a county matter, or (ii) has or would have a significant impact on a county matter.”

- Re-occurring case examples of Key Strategic Matters
- Spatial strategy
- Housing
- Employment
- Green Belt
- Infrastructure

What a difference 7 years makes



2012

- For plans submitted in transition
- NPPF 2012 - §§178-181
- PPG 2014
 - “make every effort to secure co-operation . . .”
 - “produce effective and deliverable policies . . .”
 - “robust and comprehensive”

2019

- For later plans
- NPPF 2019 - §§24-27
- PPG 2019
 - “produce, maintain and update” SoCG
 - “proportionate” and “concise” detailing key information”
 - SoCG “the means [to demonstrate DTC compliance]” c.f. ID:61-031

The Main Cases. . .



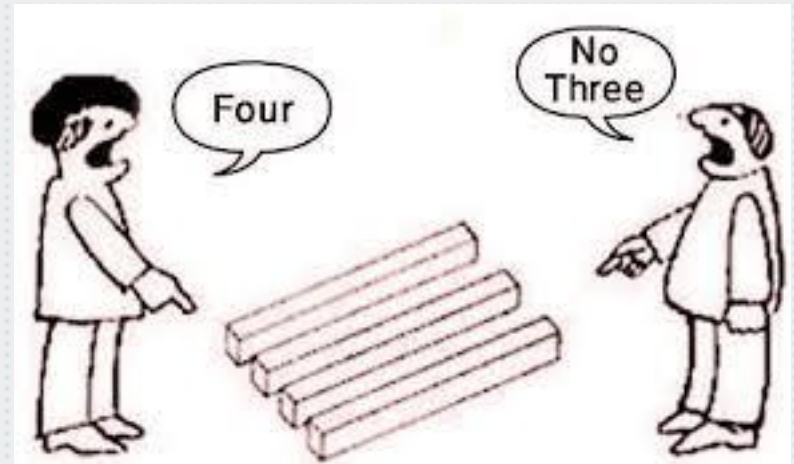
- Zurich (2014) – “strategic matters”, “joint approaches”
- Selby DC (2015) – “sword of Damocles”
- Central Beds (2015) – “reasonable to conclude”
- Barker Mill Estates (2016) – “knowing the answer”
- St Albans (2017) – “impasse” on the correct HMA
- Sevenoaks (2020) – the “margin of appreciation”

Not a duty to agree . . .



In case of disagreement

- Demonstrate engagement
- On constructive, active and ongoing basis
- Decision makers must be involved in discussions
- Identify parameters of what has been agreed, and what is left outstanding



Headlines from the reports . . .



- It need not be DTC failure that authorities in HMA have agreed a mistaken position – Woking unmet need: **Waverley, Guildford**
- Can be DTC failing to rely on “impasse”. Can be DTC failing for insufficient engagement re SRFI and locating unmet needs beyond the GB: **St Albans 1 and 2**
- Can be DTC failing to not “formally” seek early assistance for newly emerging unmet need, even if unlikely neighbours could assist: **Sevenoaks**
- Can be DTC failing to say “we cannot meet our own need” and therefore cannot assist our neighbour (re Green Belt): **Chiltern & South Bucks**
- It need not be DTC failure that authorities in HMA are not meeting exported unmet need in full: **Luton and Central Beds**

Pay particular attention to: Outcomes



- The lens: Always looking to Plan Policies – how has DTC shaped these?
- And done so (if appropriate) from an early stage
- Ultimate Q is one of Planning Judgment for the inspector: *"is it reasonable to conclude"* that DTC has been met?

Outcomes 2



- Outcomes can include:
 - What is agreed;
 - Identifying what is not agreed and how it may be addressed
 - Identifying common parameters / methodology / approach for studies / evidence base
 - Agreeing conclusions from studies

The importance of audit



- DTC tested by reference to available evidence
- Means detailed record keeping is required
- Should be done over time, and from an early stage
- DTC annual statements can be useful (see PPG / regulatory requirements); and maintaining indexed internal record over time
- Chronology useful, but may not be sufficient: Use primary material

The future



- Unfortunate that DTC bringing a number of plan processes to a halt, with withdrawal and “clean slate”, typically in areas of high housing pressure
- Future options:
 - Aligning plan making where DTC issues arise
 - A power in the inspector to secure compliance;
 - Yet more prescriptive guidance
 - A return to more EM – early indications of likely failure due to DTC

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Legal challenges to local plans

Clare Parry

Topics



- When?
- What?

When-Manydown



Basingstoke and Deane Local Plan (2011 to 2029)

Adopted May 2016



Basingstoke
and Deane

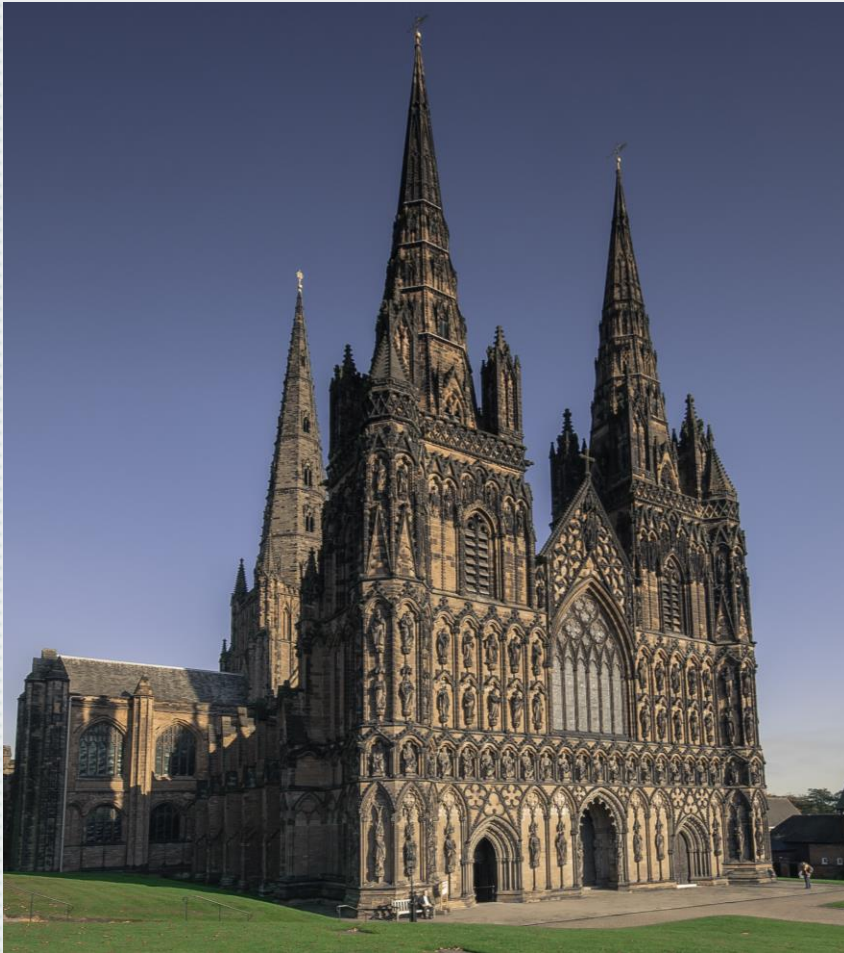
When-Manydown



When-CK Properties



When-IM Properties



What?



- SEA/reasonable alternatives
- Calculation of housing need
- Green belt
- Duty to cooperate
- Consistency with other plans.
- Habitats regulations assessment.



Any Questions?

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