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INSPECTORS' ISSUES AND QUESTIONS – PART 2

This note contains the main issues we have identified in relation to matters not addressed in the Inspectors' Issues and Questions Part 1 including sites and topic policies other than housing.

As before, these have been asked in order to assist in determining the soundness and legal compliance of the Local Plan and will form the basis of the hearing sessions to be held. They may also be addressed in any hearing statement. General advice about statements is contained in our guidance note.

There is no need for the Council to respond to site related questions for every individual site. However, if it wishes to address the matters raised more generally then that would be helpful. The questions below will however provide an indication of the types of issues likely to be addressed in the site specific hearings.

Should, as a result of these questions, changes be proposed by the Council to any of the policies or text then these should be included in a schedule of proposed changes to the submission plan. This should be published prior to the examination hearings.

Issue 12:

Are the site allocations justified and deliverable or developable within the plan period having regard to any constraints and consistent with national policy? Is there sufficient detail on form, scale, access and quantum?

- i) Have site allocations been undertaken on a consistent basis having regard to the evidence base, including the SHELAA and the SA?
- ii) Are the allocated sites consistent with strategic objectives set out in Policy SP1 and the expectations of other relevant policies, including SP2-SP7, HOU3a and HOU5?
- iii) Would the individual or cumulative effect of sites along the A20 conflict with Policy S7 on settlement separation?
- iv) Have all relevant planning issues or impediments that may inhibit development been considered and adequately addressed?

- v) Are there exceptional circumstances which justify any major development in an AONB?
- vi) In allocating sites, has sufficient attention been paid to the effect on landscape and local character?
- vii) In allocating sites, has sufficient attention been paid to the effect on biodiversity assets, including protected habitats, and to designated and non-designated heritage assets?
- viii) In allocating sites, has sufficient attention been paid to mineral safeguarding areas?
- ix) Which infrastructure is critical to the delivery of the individual site? Where contributions are specified, are they necessary and justified by the evidence base?
- x) Do the allocations contain sufficient detail, particularly with regard to the contributions required for community uses or infrastructure, and have all of the expectations in the supporting text been adequately reflected in the policy itself?
- xi) Have the individual and cumulative transport related implications of allocated sites been fully assessed and are measures to address them sufficiently clear and deliverable?
- xii) Have the individual and cumulative education implications of allocated sites been fully assessed and are measures to address them sufficiently clear and deliverable?
- xiii) Are allocated sites in accessible locations with good access to everyday facilities by a range of means of transport? Does the Plan provide an adequate basis to address any areas of deficiency?
- xiv) Have the site allocations been made in accordance with Diagrams 2 and 3 of the PPG on Flood Risk and Coastal Change (ID7), including the application of the sequential and exception tests?
- xv) In allocating sites has the Local Plan taken account of paragraph 112 of the NPPF which expects local planning authorities to seek to use areas of poorer agricultural land in preference to that of a higher quality?
- xvi) Is the overall mix and scale of development proposed for each site justified? For mixed use and non-residential sites, is it clear what form of 'employment', 'commercial' or 'other employment generating uses' would be considered acceptable and would this be consistent with other policies in the plan, including Policy EMP9?
- xvii) Is there a consistent approach to cross referencing between policies, for example parking requirements referring to Policy TRA3a/TRA3b or references to affordable housing in policy or supporting text?

Topic Policies – General Questions

- i) Does the Local Plan, when taken as a whole, include a strategy and policies designed to ensure that the development and use of land contribute to the mitigation of, and adaption to, climate change?
- ii) Policies TRA3a, ENV2, ENV3a, ENV3b, ENV4, ENV9, COM2 and COM3 and a number of individual site policies refer to various SPDs, other Council strategies or documents prepared by other organisations. As these are not part of the development plan and are subject to change without examination, is requiring compliance with them justified and consistent with legal and national policy requirements? If not, are there another ways of expressing the Council's intended approach within these policies?
- iii) Does the Local Plan, when taken as a whole, adequately promote the health and well-being of the community?

Issue 13:

Are the employment topic policies justified, deliverable and consistent with national policy? Will they be effective?

- i) Why is the impact on rural roads highlighted in criterion d) of Policy EMP1, but not those in urban areas? Is there any reason why the reference to mitigation in criterion d) of Policy EMP1 is not included in the similar criterion in policies EMP3, EMP4 and EMP5? Is the approach to development on rural roads in these policies consistent with that outlined in Policy TRA7 and what is meant by "inappropriate"?
- ii) Policy EMP1 refers to 'rural settlements', Policy EMP2 refers to 'HOU3a villages', Policy EMP3 refers to 'rural areas' and EMP5 refers to 'the countryside'. Do these all relate to different geographical areas and, if so, are they clearly defined so as to give clarity on the scope of each policy?
- iii) Is the intention for policies EMP1 – EMP5 to relate to all employment generating development or only those within the 'B' Use Class? In terms of effectiveness, is the scope of these policies sufficiently clear?
- iv) Is Policy EMP2 consistent with paragraph 22 of the NPPF in terms of the long term protection of allocated employment sites? Why is the impact on neighbouring occupiers or the environment not a consideration in Tenterden and HOU3a villages? Should the policy address employment sites and premises outside Ashford, Tenterden or HOU3a villages?
- v) Although only expressed in paragraph 5.154, is the reference to the removal of permitted development rights consistent with PPG (ID 21a-017-20140306) which indicates that there should be exceptional circumstances for this?
- vi) How does the approach in Policy EMP4 to leisure and office uses relate to Policy EMP9 in terms of the sequential test? Would conversions be exempt? If so, what is the justification for this and should it be reflected in one or other of the policies?

- vii) Is Policy EMP5 consistent with paragraph 28 of the NPPF in terms of promoting economic growth in rural areas? What is the justification for expecting an essential need for new premises to be in the countryside and how would this be assessed?
- viii) Is Policy EMP6 consistent with paragraph 21 of the NPPF, in terms of development not being over-burdened by combined requirements of planning policy expectations and is the policy justified in terms of need and the effect on viability? Given that delivery is provided by others, how will the policy support expansion of Fibre to the Premises (FTTP)? What is meant by "reasonably sized" employment proposals?

Issue 14:

Are the retail, leisure and tourism topic policies justified, deliverable and consistent with national policy? Will they be effective?

- i) Is it the intention for 'town centre uses' in policies EMP7 and EMP8 to reflect the definition of 'main town centre' uses in the NPPF and the Local Plan Glossary? If so, should this be made clear and what role does residential development have in this? Are the boundaries of the primary shopping areas (PSA) (including the extension), primary frontages and, where applicable, secondary frontages justified by evidence?
- ii) Is the approach to primary and secondary frontages set out in policies EMP7 and EMP8, which is permissive of all Class A uses, consistent with paragraph 23 of the NPPF, particularly in relation to promoting competitive town centres that provide customer choice and a diverse retail offer? Would this approach be effective in supporting the vitality and viability of the centres in the long term?
- iii) In Policy EMP9, is the distinction in the sequential test between the PSA for retail development and town centre for other uses justified and consistent with paragraph 24 of the NPPF? Should the reference to Policy SP4 be SP5?
- iv) The NPPF states that development should be refused if it likely to have a 'significant adverse impact' on investment and the vitality and viability of a town centre (paragraphs 26 and 27). Is the approach outlined in criterion b) consistent with this, both in terms of the test and/or the scope of the assessment? In setting the local threshold for impact tests, has the Council had regard to the matters listed in the PPG (Reference ID: 2b-016-20140306)? Is the same threshold justified for retail, leisure and office uses?
- v) For effectiveness, should the exception to small scale retail and service provision in paragraph 5.203 be made explicit in policy? What would be the approach for small scale development outside defined centres not covered by Policy EMP10?
- vi) Is what constitutes a 'village centre' in Policy EMP10 clearly defined? In terms of the loss of shops and services, does Policy EMP10 provide sufficient clarity? Does the policy provide a satisfactory basis to ensure the vitality and viability of local and village centres are supported and which ensures their roles are maintained?

- vii) Has the Council had regard to the PPG (Reference ID: 2b-007-20140306) in drafting Policy EMP11 as this sets out what should be considered when planning for tourism? Is the plan positively prepared in terms of articulating a vision for tourism and identifying optimum locations for tourism development?

Issue 15:

Are the topic policies for transport justified, deliverable and consistent with national policy? Will they be effective?

- i) Do policies TRA2-TR7 provide an effective basis to promote opportunities for sustainable transport modes and is the approach sufficiently aligned to the growth strategy?
- ii) Are the multi-storey car parks (MSCP) referred to in Policy TRA2 those identified in the Ashford Town Centre Area Action Plan? Is the policy justified and positively prepared in terms of meeting identified needs for additional MSCPs and would it be effective in delivering the need?
- iii) The WMS of 25 March 2015 introduced additional text to be read alongside paragraph 39 of the NPPF. In light of this, what is the clear and compelling justification necessary to include parking standards to manage the local road network? Are the individual standards in policies TRA3a, TRA3b and TRA9 justified? As the standards are expressed as minima, how would proposals which sought to provide higher levels of parking be assessed?
- iv) Is it the intention that exceptions to parking standards would only be allowed where *required* by the Council? Is this approach justified? Would applicants be permitted to make a case for a departure from the standards if the same circumstances applied? If so, should the policy be expressed differently? Should Policy TRA3b also refer to 'minimum' standards for consistency?
- v) Is Policy TRA4 consistent with paragraph 154 of the Framework in that the provision of bus services is not a Council function? How would it be used to react to a development proposal? Is it clear in what circumstances planning obligations would be required and is the approach consistent with legal and national policy requirements?
- vi) Is Policy TRA7 consistent with paragraph 32 of the NPPF, particularly in relation to the consideration of impact and mitigation? If the intention is that the effect of development is to be assessed through Transport Assessment or Statements, then would Policy TRA7 be more effective if the provisions and potential outcomes of Policy TRA8 were made clear?

Issue 16:

Are the topic policies for the natural and built environment justified, deliverable and consistent with national policy? Will they be effective?

Natural Environment

- i) Is Policy ENV1 consistent with paragraphs 113, 117 and 118 of the NPPF? In particular, does it make an appropriate distinction between the hierarchy

of designated sites so that protection is commensurate with their status and fully recognises the role of mitigation? Is it clear to which parts of the policy the sixth paragraph relates and does this lead to any contradiction and inconsistency with what comes before? Is it justifiable to ask for financial contributions 'in lieu' of mitigation or is the intention for this to refer to financial contributions in lieu of on-site mitigation?

- ii) Is the difference between the types of development considered in the second and third paragraphs of Policy ENV2 sufficiently clear to make the policy effective? Is it reasonable to expect all development on the edge of the Green Corridor to make a positive contribution to the factors listed?
- iii) In Policy ENV3b, is it justified to expect development within the AONB to 'conserve *and* enhance' the character of the landscape in the first bullet point? Is it justified to expect all development within an AONB to 'enhance' their special qualities? Is this consistent with the first paragraph of the policy?
- iv) Is Policy ENV4 too prescriptive, particularly in terms of specifying such things as beam angles? Is this likely to provide sufficient flexibility to address individual circumstances? What is the justification for identifying the area as a 'dark sky zone' and would the policy be effective in delivering this aspiration?
- v) To what extent are the features included Policy ENV5 protected by other policies in the plan? What is the justification for selecting these particular features and not others? Is the policy consistent with the NPPF, including paragraph 118, in terms assessing impact, mitigation and the benefits of development?
- vi) Is Policy ENV6 consistent with paragraphs 100-105 in the NPPF and is it sufficiently clear to be effective? Is the preference for development in Flood Zone 1 relevant or appropriate to all types of development? What is the justification for a separate set of criteria for development which has failed the sequential and exception tests and do some of the criteria duplicate what is already required in these tests in any event?
- vii) Is Policy ENV8 too prescriptive with regard to connection to the sewerage system for all developments, particularly for housing in rural areas? Would this policy restrict development that otherwise accords with other policies, including HOU5, EMP4 and EMP5? How would the reduction in quality and quantity of the water supply be assessed and is it justifiable for any reduction to lead to refusal?
- viii) Does criterion a) of Policy ENV9 duplicate the requirements of policies ENV6 and ENV8? If so, are the requirements consistent? Are criteria b) – j) likely to be applicable and achievable for all forms of development and SuDS? This policy is directed to all development as referred to in paragraph 5.360. Is this reasonable?
- ix) Does Policy ENV10 contain an appropriate balance between maximising renewable and low carbon energy development while ensuring adverse impacts are addressed satisfactorily? Is the policy based on robust and up-

to-date assessment of what might be deliverable? What is the justification for the submission of a Sustainability Assessment and what bearing would it have on decision making, particularly where developments meet criteria a)-e)? For effectiveness, should the reference to the production of Landscape and Visual Impact Assessments be included in the policy?

- x) Has the effect on viability and delivery of Policy ENV11 been assessed? Should the policy refer to viability as well as practicability in relation to exceptions to meeting the standard?
- xi) Has the effect of Local Plan policies on air quality been fully assessed? Does Policy ENV12 provide an effective way to promote the shift toward low emission transport?

Built Environment

- xii) Do policies ENV13-ENV15 include a positive strategy for the conservation and enjoyment of the historic environment in accordance with paragraph 126 of the NPPF?
- xiii) Is Policy ENV13 consistent with statutory requirements for heritage assets and paragraphs 126-140 of the NPPF, particularly in relation to the consideration of substantial and less than substantial harm and public benefits? Is the policy sufficiently clear as to what heritage assets it seeks to address, particularly in light of policies ENV14 and ENV15?
- xiv) To be consistent with legal and national policy requirements, should all references in Policy ENV14 to 'character *and* appearance' be amended to 'character *or* appearance'? Should the policy also refer to the 'setting' of a conservation area? In criterion e) what is the meaning of an 'appropriate' use and how would it be assessed? Is the last paragraph expressed sufficiently clearly to be effective? What is meant by 'inappropriate' demolition, alteration or extension and how would it be assessed? For effectiveness, should the issue of views form part of the main assessment criteria?
- xv) Is Policy ENV15 consistent with Policy ENV13 and paragraphs 131 – 134 of the NPPF in terms of its approach to the consideration of harm to designated heritage assets? Is the policy also consistent with the PPG (Reference ID: 18a-040-20140306) in terms of assessment? Should the process of initial assessment, followed by desk based survey and then a field evaluation only when necessary be more clearly set out?

Issue 17:

Are the topic policies for community facilities justified, deliverable and consistent with national policy? Will they be effective?

- i) Does the Local Plan, including policies COM1 and IMP1 provide sufficient clarity as to when and how development would be required to contribute to the community's needs or infrastructure? Would the limitations on the pooling of S106 contributions have any implications for the delivery of critical or strategic facilities or infrastructure, particularly prior to the adoption of a CIL?

- ii) Table 4 identifies a need for a number of different types of open space. Paragraph 5.433 states that not all of this provision will be delivered through development. In light of this, does the Local Plan provide a positively prepared and effective mechanism for delivering play, open space and sports needs of the district? Would Policy COM3 be effective in meeting the need for 3.36 ha of additional allotment land?
- iii) Is the plan positively prepared in relation to cemetery provision? Should the Local Plan identify a site or sites for additional cemetery facilities in light of the need identified in paragraph 5.452?

Issue 18:

Does the Local Plan have clear and effective mechanisms for implementation, delivery and monitoring?

- i) Is the intention within Policy IMP1 for 'all development' to make provision for infrastructure through planning obligations or CIL consistent with CIL Regulations and paragraph 204 of the NPPF? Is the policy sufficiently flexible to address changing economic conditions?
- ii) The first two paragraphs of Policy IMP2 and the first sentence of the third do not relate to 'deferred contributions'. For clarity and effectiveness, should consideration be given to addressing these matters under Policy IMP1? What is the justification for requiring 'clawback' from developers in the event viability increases? How would this be assessed and implemented?
- iii) Is Policy IMP3 consistent with paragraph 154 of the NPPF, which states that only policies which provide a clear indication of how a decision maker should react to a development proposal should be included in the Plan?
- iv) In assessing the viability of the Local Plan, has the effect of the requirements of Policy IMP4 been taken into account? Is the requirement for financial contributions justified and consistent with the CIL Regulations and paragraph 204 of the NPPF? Is the relationship between Policy IMP4 and COM1 clearly set out?

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INSPECTORS

21 February 2018