

## **Notes of the Pre-Hearing Meeting held on Tuesday 16 April 2013 at 1400 hours**

### **Main Participants:**

Inspector: David Vickery  
Programme Officer: Annette Feeney

Main representatives for the councils:  
William Upton: of Counsel (Barrister)  
Richard Doleman: Norfolk County Council  
Adam Nicholls: South Norfolk District Council  
Paul Harris: Broadland District Council  
Phil Morris: Norfolk County Council  
Mike Burrell: Norwich City Council

and some 30 other people representing clients, themselves, council wards, parish councils, local residents' groups, and other organisations and bodies.

### **Introduction**

1. The Inspector, Programme Officer and the councils' representatives introduced themselves.
2. The Inspector informed the meeting that the purpose of this part-Joint Core Strategy (JCS) submission is to address the Judgment of Mr Justice Ouseley in *Heard v Broadland District Council, South Norfolk District Council and Norwich City Council 2012*. No other part of the adopted JCS is included, and thus this is not an Examination or a review of either the whole or the adopted parts of the JCS.
3. The Inspector stressed that at the Pre-Hearing Meeting no evidence would be heard or discussion allowed on the merits of cases or representations. It would be limited purely to the matters on the Agenda, which dealt with administrative and procedural matters relating to the hearings to be held later in May 2013.
4. The Inspector explained that the Examination is about the soundness of the Plan (i.e. the part-JCS), and that whilst he will have regard to the representations made he is not required to respond to each of them individually. The Examination started with the submission of the Plan and ends with the submission of the Inspector's report, unless the Examination is halted or suspended at an earlier stage. The Inspector's starting point for the Examination is the assumption that the councils have submitted what they consider to be a sound plan.
5. The councils are not bound to adopt the Plan if they choose not to do so. Any necessary modifications to achieve a sound and legally compliant plan that have not been subject to public consultation and/or Sustainability Appraisal are likely to be beyond the Inspector's remit and would result in the Plan being found unsound, necessitating the councils returning to an earlier stage and re-running the process.
6. The Localism Act 2001 means that if the Plan needs modifications to make it sound, then the Inspector will not be able to recommend them unless the councils make a specific written request. This is itself dependant on him finding that the councils have, in fact, complied with the legal "Duty to Co-operate" (which will be discussed

at the hearings). The Inspector asked if informally the councils were able to give him an indication about whether they would want him to make modifications to the Plan, should it prove to be necessary. **Mr Upton** replied that the councils did not see the need to make such a request at the moment, but would wait and see if modifications became necessary.

7. Whilst the Inspector aimed to be pragmatic, positive and proactive (the 'three Ps'), the final decision on the submitted policies and evidence rested with the councils. The Inspector's task is to make a judgement on the Plan's soundness and legal compliance, not to improve it, and not to re-write the Plan.
8. The Inspector explained the four soundness criteria contained in the National Planning Policy Framework - 1) positively prepared; 2) justified; 3) effective; and 4) consistent with national policy. He emphasised that those seeking changes must demonstrate why the Plan is unsound by reference to one or more of the soundness criteria or to the legal requirements.
9. Following the close of the hearings the Inspector will prepare a report for the councils with his conclusions and any modifications (changes) recommended to the Plan, the expected arrival date of which will be announced at the last hearing session. The councils will have to use the Inspector's recommended modifications if they decide to adopt the Plan.
10. The Programme Officer acts as an impartial officer of the Examination, under the Inspector's direction, and she is not an employee of any of the councils. Any queries on any aspect of the Examination should be directed to her.

### **Councils' Introductory Statement**

11. **Mr Upton** read out an introductory statement on behalf of the councils, a copy of which is attached to these notes at Appendix A.

### **Legal Questions**

12. The Inspector had set out on the Agenda a series of legal questions, which the councils answered by reading out a prepared statement, a copy of which is attached to these notes at Appendix B.

### **Progressing representations**

13. The Inspector noted that it would no longer be possible to request a change from written representations to an appearance at a hearing session as the deadline for doing so had now passed (11 April 2013). However, he emphasised that representations made only in writing will carry the same weight, and he will have equal regard to views put either at a hearing or in writing.

### **The Hearings**

14. The hearings take place over three days on Tuesday 21 May, Wednesday 22 May and Thursday 23 May 2013. The Inspector reminded people that they are not an opportunity to repeat cases already made – they will concentrate on the Inspector's "Matters and Questions for Examination".

### **Housing deliverability and reserve sites**

15. **Mr Pugh-Smith** (of Counsel) on behalf of his clients (Landstock Estates Ltd, the Landowners Group Ltd and United Business and Leisure (Properties) Ltd) requested that the Inspector add an additional question for consideration ("*what are the implications on the emerging Site Allocations DPDs/AAPs in South Norfolk and Norwich if the submitted spatial strategy cannot be delivered?*"), and to bring into Matter 2 the conclusions on the alternative sites questions in Matter 1 or,

alternatively, to allow his clients to attend the Matter 1 hearing. The submitted part-JCS contained a Sustainability Appraisal (SA) report which embraced other areas, and this Plan could not isolate a particular area and still make it a sound plan. Therefore, a Reserve Sites DPD should be considered with an Addendum SA report (as in the Cogent court case) as otherwise the Plan could be found unsound on housing delivery: (<http://www.bailii.org/ew/cases/EWHC/Admin/2012/2542.html> ).

16. He said that the part-JCS was an all-or-nothing proposal – there was no Plan B if, for example, the Northern Distributor Road did not come forward and so housing delivery did not happen. This fragmented approach was not acceptable, and nor should it be left in the hope that something would turn up.
17. **Mr Upton** disagreed because the Examination was not into these other emerging Plans, and any resolution would have to be within the part-JCS plan area and/or be separately made by the other emerging Plans. If there was a problem, it was possible to suspend the Examination to enable further work to come forward.
18. The Inspector said that he was confident that the questions he had already posed would reveal whether or not there might be problems with housing delivery. If so, then the hearings would be the time to discuss possible solutions through suggested modifications. The question suggested by Mr Pugh-Smith's clients seemingly presumed the solution to a hypothetical delivery problem and so the Inspector would not ask it at this stage, although it could be considered later. The Inspector preferred Mr Pugh-Smith's alternative solution of inviting his clients' to the Matter 1 hearing session as that would enable him to have the benefit of their expert input into the soundness of this aspect of the Plan, and would mean that they were fully informed when Matter 2 was discussed later. He therefore asked the Programme Officer to add Mr Pugh-Smith's clients to the Matter 1 hearing.
19. The Inspector asked if the parties could bear in mind and later address him on (if it became necessary) his concerns about housing solutions which went outside the Plan area (as expressed in his letter to Barton Wilmore of 25 March on the Examination web site); and also paragraphs 103 (4) & (5) and 106 (1) & (2) in the Cogent court case where the Judge commented that the Core Strategy should be of a broad strategic nature which did not pre-empt later plans – did that apply in this case, given the 2012 Local Planning Regulations?

#### **Matters and Questions clarification**

20. The Inspector pointed to a number of clarifications he had made on 10 April 2013 concerning Questions 1.10 and 1.12 under Matter 2, which are available on the Examination web site. He also referred to Question 1.9 under Matter 2 in that new "practitioner" advice had been issued nationally on housing need forecasting, to which he would have regard with that question (particularly the Companion Guide and Assumptions Report). The advice is available on: <http://www.howmanyhomes.org/>.
21. In response to two questions from **Miss Carlo** on behalf of the Norwich and Norfolk Transport Action Group (NNTAG) the Inspector said that everything in the submitted part-JCS which lies within the defined plan area (the North Eastern Growth Triangle) would be before him for examination. And he clarified that the draft Policies Map is a geographical expression of the submitted part-JCS policies and text (and of existing adopted policies). The parties should tell him if it was not or if something was missing.

#### **Broadland Business Park extension**

22. **Miss Carlo** had asked the Inspector to consider the Broadland Business Park extension in Policy 9 as part of the Examination. He had replied that he had been appointed to examine the soundness and legal compliance of the submitted part-JCS, and that submission did not include the proposal at Broadland. Nor did it form

part of the High Court Order which remitted parts of the adopted JCS. That Broadland proposal formed part of the already adopted JCS. Thus, it was not a question of his not agreeing to consider Broadlands: rather it was that legally he is not able to do so. Therefore, if NNTAG had queries about the details of that part of the policy for Broadland (including queries about the Policies Map and its legalities), then that would have to be pursued separately from this present Examination, either directly with the councils involved or through the courts.

23. **Miss Carlo** alleged that the High Court judge had been misled about the Broadland extension's involvement in the North East Growth Triangle (NEGT) and that it had mistakenly been left out of the Court Order which remitted parts of the adopted JCS. The Inspector said that he could not see Broadland in the Order, apart from the judge's reference to it in paragraph 2(b) which specifically stated that it was "*not a NEG T dependant proposal*". He was unable legally to go behind a Court Order and do something different from what was clearly stated in it. The Inspector did not have the authority to alter a Court Order, and he was bound by it. If NNTAG disputed it, then that was a matter for the courts and not for him.

### **Advance information**

24. **Miss Carlo** for NNTAG had asked the councils for specified advance information to assist in the preparation of NNTAG's statements. The councils had given NNTAG a web link to the current Annual Monitoring Report and said that, as normal, the next one is likely to be published in December 2013. An application for the Rackheath low carbon community had yet to be submitted and so a schedule of new dwellings delivered could not be provided. The North Sprowston application submitted in October 2012 remains undetermined, and the issue of how it fits into the Housing Trajectory will be set out in the councils' forthcoming statement and a statement of common ground. Similarly, the evidence base document setting out the need for the 25 hectares of employment land proposed in policy 10 will be set out in the councils' forthcoming statement – although the submitted Plan does indicate in it what evidence is relied upon.
25. **Miss Carlo** said that she was satisfied by the councils' answers. The Inspector pointed out that any evidence in the council's statements could be rebutted verbally at the hearing sessions, and if necessary with a short written statement provided it was kept very short.

### **Procedural queries**

26. The councils' had asked the Inspector a series of procedural questions about the hearings, and the Inspector repeated his replies for the information of all participants. Normally three seats for the councils' representatives would be preferable in order not to dominate the hearing table. Further advisors, if necessary should sit behind those seats. But the Inspector was unlikely to object if in specific sessions, or in dealing with specific questions, the councils feel that more than three people are needed in order to deal with the subject matter (subject to the numbers being reasonable in comparison to others present).
27. On the recording of hearing sessions, the hidden recording of sessions cannot be stopped because the Inspector would be unaware that it is occurring. But if he saw it being done then he would ask those present if they object and why. The Inspector would then need to decide (bearing in mind that the event should be as open as possible) whether any disruption or prejudice would be caused by recording the proceedings. This does not apply to the use of voice recording to assist in the provision of an official transcript, although no request for this had been made to him and therefore there will be none made.
28. On the word limit, this is set at 3,000 words per statement. It would be very helpful if the councils produced combined statements for each of the two Matters on all the questions within them. However, the Inspector was conscious that this

may mean that it would not possible to do this within the 3,000 word limit. Going slightly over the word limit would be acceptable, but going over it significantly might produce concerns from representors on grounds of unfairness. In such circumstances, the councils should consider splitting the questions in each Matter (in numerical order) into separate documents which each meet the 3,000 word limit. The councils will have seen that many of the questions are aimed at representors and thus do not require a reply from them, and so this fact can just be clearly and shortly stated underneath the particular question.

29. On the submission of new documents at hearings, as a principal these would not be allowed. However, the Inspector would make a decision on the day as to whether to accept them based on a number of factors such as their relevance, complexity and who was asking to submit them. He would also consider whether any such documents required, in the interests of fairness, the adjournment of the hearings in order to give the parties time to consider them. If there are to be such documents then they should be kept as short as possible – say, two to three A4 pages.

### **Hearings programme**

30. There were no queries on the draft hearings programme. **Mr Upton** mentioned that a representative(s) from Beyond Green would appear on behalf of the councils at the hearings to assist in providing housing delivery information.

### **Further representations**

31. The Inspector referred participants to his Guidance Notes for the deadlines for all statements and to its Appendix B for details on word limit and submission protocols.

### **Examination Library**

32. The Inspector said that most of the necessary documents appear on the councils' web site, and so should not be copied in statements. Paper copies are available to be viewed, but the Programme Officer should be contacted first.

### **Modifications**

33. The Inspector said that if modifications were necessary, then these would have to be advertised and/or be the subject of Sustainability Appraisal before his report was submitted. The procedures would be dealt with at the last hearing session.

### **Site visits**

34. The Inspector said that he had already that day looked at the NEG T by driving around many of its roads, particularly the radial routes. He had noted that he could see over much of the land as there were no leaves on trees or bushes. He asked participants to let the Programme Officer know if any particular part should be seen by him or if an accompanied visit was necessary onto private land.

### **After the hearings**

35. No more evidence can be submitted once a hearing session has closed, unless the Inspector expressly invites it.

### **Hearing practicalities**

36. **Mr Pugh-Smith** asked if lunch arrangements could be provided due to the distance of the rooms from facilities. The Programme Officer said she would enquire whether the Football Club's caterers would be able to provide sandwiches etc for those requesting them in advance. The Inspector mentioned that there was a restaurant within the Club: see <http://www.canarycatering.co.uk/yellows.php>. The

Inspector mentioned that it might be possible to provide private meeting rooms for participants, although there might be a charge (interested participants should contact the Programme Officer).

37. The Inspector thanked everyone for their assistance. The meeting closed at around 16.35 hours.

David Vickery: 18 April 2013

## Appendix A - Introductory Statement on behalf of the local planning authorities by Mr Upton.

1. This examination is into part of the Joint Core Strategy ("JCS") that has been prepared by three local planning authorities: Broadland District Council, Norwich City Council and South Norfolk District Council. The three councils, together with the county planning authority Norfolk County Council, have continued to work together as the Greater Norwich Development Partnership (GNDP) throughout this plan preparation process. The JCS is an important part of the Local Plan for each of these areas, and the Strategy will guide the future development and use of land in the period up to 2026.
2. As has always been the case, the JCS itself is a high level strategy and it is not the whole of the development plan for these areas. As the Introduction to the Joint Core Strategy states:

*"1.2 The JCS sets out the long-term vision and objectives for the area, including strategic policies for steering and shaping development. It identifies broad locations for new housing and employment growth and changes to transport infrastructure and other supporting community facilities, as well as defining areas where development should be limited. It helps co-ordinate and deliver other services and related strategies ...*

*"1.3 In many areas existing infrastructure is at, or near, capacity. The JCS is designed to deliver substantial growth in housing and employment but this is dependent on investment to overcome the deficiency in supporting infrastructure. The JCS cannot be delivered without the implementation of the Norwich Area Transportation Strategy including the Northern Distributor Road. Other fundamental requirements include significant investment in green infrastructure, education, waste and water infrastructure including Whitlingham sewage treatment works and a range of other community facilities.*

3. The specific part of the JCS that have been submitted for examination relate to the parts of the Joint Core Strategy that were remitted following the decision of the High Court by Mr Justice Ouseley on 24 February 2012, in the case of Heard v Broadland District Council, South Norfolk Council and Norwich City Council [2012] EWHC 344 (Admin). In a nutshell, whilst several of the grounds were dismissed, Mr Justice Ouseley found that those parts of the Joint Core Strategy concerning the Broadland part of the "Norwich Policy Area", including the North East Growth Triangle (and the distribution of the 9,000 dwellings intended for that area) should be remitted for further consideration and that a new Sustainability Appraisal for that part should be prepared.
4. As the Inspector has confirmed, and everyone should know by now, it is important to understand that this submission is not therefore a review of the whole Joint Core Strategy (JCS); the parts of the JCS which were remitted by the High Court were set out in detail in the Court Order (see doc SDJCS 2). Those parts of the JCS not subject to the remittal remain adopted by the local planning authorities, and do not form part of this submission for examination. This is in accordance with Parliament's intention that the High Court has the power to remit part of a plan and give detailed directions as to the action to be taken in relation to the document, rather than the blunt instrument of just quashing the relevant part of the plan under challenge (pursuant to section 113(7) to (7C) of the Planning and Compulsory Purchase Act 2004 as amended by the Planning Act 2008).
5. This examination is therefore being carried out in a context where the overall policies in the plan, with regard to matters such as the total housing numbers and the distribution of housing and employment (in the areas other than that in the

Broadland part of the Norwich Policy Area) are established. Indeed, the Housing and Employment distribution in South Norfolk and Norwich City remains the same as does housing and employment distribution in the rural part of the Broadland area not in the NPA.

6. To comply with the High Court Order, the parts of the JCS remitted by the judgment have been treated as having been taken up to the Regulation 19: Publication of a Local Plan Stage (previously known as the 'pre-submission stage'), and as not having been examined or adopted.
7. Since the judgment was delivered, the local planning authorities have carried out the necessary further work and public consultation required before the plan could be submitted for examination, including undertaking a new sustainability appraisal. They have also taken into account the responses to that consultation, and the changes that have occurred in national and local policy - including the National Planning Policy Framework, the Duty to Co-operate, the effect of the revocation of the East of England Plan and the progress that has been made on the other parts of the Local Plan in their areas.
8. As you would expect, the local planning authorities consider that the text of the remitted parts of the JCS that they have submitted for examination is sound. Although the submitted plan is in substance the same as the parts of the plan submitted for adoption in 2010/11, its content has been assessed and considered on the basis of the new and updated evidence.
9. The documents relevant to this submission have all been made available through the GNDP website. The submission documents have been available for inspection at the Offices of South Norfolk, Norwich City, Broadland District and Norfolk County Council. In addition the documents have been made available at a number of local libraries throughout the Council's area. They include the evidence base that was used for the JCS as a whole.
10. The main members of the councils' team have been introduced at the Pre-Hearing Meeting. The officers are drawn from the local authorities that make up the GNDP, and each of them is in a position to speak on behalf of all of the local planning authorities. The main team is:
  - (a) William Upton, of Counsel;
  - (b) Richard Doleman, Norfolk County Council;
  - (c) Adam Nicholls, South Norfolk District Council;
  - (d) Paul Harris, Broadland District Council;
  - (e) Phil Morris, Norfolk County Council;
  - (f) Mike Burrell, Norwich City Council.

The Councils have asked URS to be present for the questions relating to the Sustainability Appraisal. The Councils may also wish to invite the promoters of certain strategic sites to attend for the sessions relevant to them, and whether this is proved to be necessary may depend on the extent of any Statement of Common Ground that is reached with them.



## Appendix B

### Agenda item 6

#### Legal Questions for the councils and councils' responses

1. Has the part JCS been prepared in accordance with the Local Development Scheme?

Yes. The Local Development Schemes of the 3 councils are in the submission documents; reference SDJCS12.1 (Broadland), SDJCS12.2 (Norwich City), SDJCS12.3 (South Norfolk). All 3 identify the preparation for examination of the parts of the Joint Core Strategy following the High Court Judgment and Order.

2. Is the part JCS in general accordance with the Statements of Community Involvement and public consultation requirements?

Yes. SDJCS 5, SDJCS5.1 SDJCS5.2 SDJCS5.3, contain evidence of compliance with each of the councils' Statements of Community Involvement and public consultation requirements. SDJCS 5 is the statement of compliance dated November 2009 submitted for examination in 2010 with an update as of December 2012. The update concludes that *"The councils consider that there have not been any changes that would result in an update to the Statement of Compliance with Statements of Community Involvement being required."*

3. Has the part JCS been subjected to Sustainability Appraisal?

Yes. The consideration of the part JCS has been informed by Sustainability Appraisal. The full Sustainability Appraisal was carried out by independent consultants URS and the Sustainability Appraisal Report, its appendices and the Non-Technical Summary form document SDJCS 3, part of the plan submission.

4. Has the part JCS had regard to the Sustainable Community Strategy?

Yes. Further detail can be found in SDJCS 13. That paper sets out the current position of each of the Sustainable Community Strategies and concludes *"The four Sustainable Community Strategies remain adopted. None have been updated since the submission of the JCS in March 2010. Consequently, no changes are required to align the submission of the remitted parts of the JCS with the current SCS."*

5. Has the part JCS had regard to national policy?

Yes. The councils have completed the National Planning Policy Framework compatibility Self Assessment Checklist. This is submission document SDJCS15. The checklist summarises how the councils consider that the part JCS has had regard to national policy.

6. Has a Habitat Regulations Assessment been prepared, and have its conclusions been taken into account in the part JCS?

Yes. An HRA was been prepared for the JCS as a whole. The first 3 pages of SDJCS 10.1 provide an update to support submission of the part plan and is signed by the Environment Agency, Anglian Water and Natural England.

7. Has the Duty to Co-operate been complied with?

Yes. A statement of compliance with the Duty to Co-operate is available as submission document SDJCS 16. A summary appears on page 6 and para 7.3 of the summary states. *"The further plan-making processes that have occurred have been undertaken in a context of the current GNDP joint working arrangements and cooperation and also in the context of significant historic levels of cooperation. It is the councils' opinion that, if the work on the remitted text is taken to be further 'plan making', that work has complied with the two tests of effective cooperation required by Section 33A."*