

# **EXAMINATION OF THE OF NOTTINGHAMSHIRE AND NOTTINGHAM WASTE LOCAL PLAN**

## **GUIDANCE NOTE FROM THE INSPECTOR**

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### **Purpose**

1. The Nottinghamshire and Nottingham Waste Local Plan (August 2023) (the Plan) was submitted to the Planning Inspectorate on behalf of the Secretary of State for Levelling Up, Housing and Communities on 5 March 2024 for independent Examination.
2. This Note provides information about the Examination of the Plan and is intended to assist with the efficient running of the Examination. It also assists those who have made representations on the Plan as part of the pre-submission consultation processes and those who wish to appear in person at the Hearing Sessions. It concerns procedural and other aspects of the Examination process.
3. The term "Examination" refers to the whole process during which the Inspector considers the Plan. It starts with the submission of the Plan by Nottinghamshire County Council and Nottingham City Council (the Councils) to the Planning Inspectorate and ends when the Inspector's Report is formally submitted to the Councils. Therefore, the Examination process has already started.
4. Annex A contains a list of publications that provide advice.

## **Inspector's role**

5. The Inspector appointed to hold the Examination is Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE. He has four main roles:
  - To consider whether the Plan has been prepared in accordance with the Duty to Co-operate (DtC) as required by the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011;
  - to consider whether the Plan meets the legal requirements of the Planning and Compulsory Purchase Act 2004 as amended, and also whether it meets the requirements of the Town and Country Planning (Local Planning)(England) Regulations 2012;
  - to consider whether the Plan is sound; and
  - to carry out the Examination with the objective of contributing to the achievement of sustainable development as set out in section 39 of the Planning and Compulsory Purchase Act 2004.
7. Unlike the other requirements, there is no scope to remedy any shortcomings with respect to the Duty to Co-operate. If the Duty to Co-operate has not been complied with, the Plan will fail.
8. If the Inspector considers that the Plan has shortcomings with respect to legal compliance and/or soundness, the Councils may request him to make such modifications (main modifications) to the Plan as are necessary in order to rectify these shortcomings. Main modifications (MMs) are changes that tend to affect the substance or application of a policy.
9. The Inspector will not consider "additional modifications", such as matters of clarification, factual updating or correction, which do not affect legal compliance or soundness.

## **Main Modifications, Additional Modifications and Submission Policies Map Modifications**

10. The Examination will be focused on the Policies which the Plan seeks to amend. The Councils have requested that the Inspector

recommends any MMs that he considers necessary to secure the soundness and/or legal compliance of the Plan.

11. Consequently, during the course of the Examination, the Inspector will consider whether any soundness or legal compliance problems could be addressed by changes to the Plan in the form of MMs that he may recommend. It is important to emphasise that the Inspector's task in these regards is one of ensuring adequacy and not perfection. Consequently, if elements of the Plan are considered by the Inspector to be sound or legally compliant as submitted there is no scope for him to recommend MMs that would make them 'more' sound/legally compliant.
12. Additional Modifications (AMs) are distinct from MMs in that they comprise changes to a Plan that do not materially affect its policies or their interpretation. These can include such things as typographical corrections and factual updates. The Inspector is not empowered to recommend AMs, which are made by the Councils in advance of the adoption of the Plan.
13. The Plan does not propose to allocate sites for waste development, nor allocate land for other strategic matters. As such, the Councils do not propose to prepare a specific Policies Map for the Plan. In any event, a Policies Map is not a development plan document and the Inspector does not therefore have the power to recommend MMs to it. However, in some instances consequential changes to the policies maps of constituent District Councils within Nottinghamshire, including Nottingham City Council, might be necessary in order to capture any spatial implications of MMs. Were this to be the case it would be for the Councils to produce a schedule of Policy Map changes alongside the MMs for consultation at the relevant stage.

## **Soundness**

14. The soundness of the Plan is based upon the four soundness criteria set out in the National Planning Policy Framework (the NPPF), namely that the draft Plan is: Positively prepared, Justified, Effective and Consistent with national policy.
15. On the 19 December 2023 the Secretary of State for Levelling Up, Housing and Communities published its revised National Planning Policy Framework (NPPF) alongside other revisions to national policy. Paragraph 230 of that document makes clear that the Plan will

continue to be examined against the version of the NPPF published on 5 September 2023.

16. Paragraph 35 of the NPPF advises on the meaning of each of these criteria as follows:
  - (a) **Positively prepared** - the plan should provide a strategy which, as a minimum, seeks to meet the areas objectively assessed needs, and is informed by agreements with other Councils/Authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
  - (b) **Justified** – the plan should be an appropriate strategy, taking into account reasonable alternatives, and based on proportionate evidence;
  - (c) **Effective** – the plan should be deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
  - (d) **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the NPPF.
17. Further details of the Examination process are set out in the Planning Inspectorate’s publication Examining Local Plans: Procedural Practice. See Annex A for details of how to access this document.

### **The Examination Process**

18. The starting point for the Examination is that the Councils have submitted what they consider to be a sound plan. Those seeking changes must demonstrate why the plan is unsound by reference to one or more of the tests of soundness.
19. Unresolved issues concerning soundness or legal compliance may be addressed through discussion at the Examination Hearings and/or through consideration of written representations. It should be emphasised that the Inspector’s role is not to improve the Plan or to make it ‘more’ sound but to determine whether or not it meets the

soundness tests as it stands. For example, if an alternative version of a policy is put forward, the Inspector cannot recommend it as an improvement if the Plan is already sound in that respect.

20. The Inspector has identified Matters for Consideration, Issues on which the soundness of the Plan depends and Questions which the Councils will be asked to respond to (MIQs). Representors may also submit responses to the questions relevant to their representations by the deadline, and in the format, set out in this note. These will be added to the Examination website.
21. The Inspector will aim to work with the Councils and the other Examination participants in a positive, proactive, and pragmatic manner. He will examine the soundness of the whole Plan, having regard to the representations submitted, rather than just the objections made. The hearing process is informal with “round table” sessions addressing particular topics, rather than the more formal, traditional format of a public inquiry. Accordingly, there will be no formal presentation of parties’ cases or cross-examination. The Inspector is proceeding on the basis that those who have made representations wish to see the adoption of a sound plan and will consequently be approaching the hearing discussions in a solution orientated manner.
22. After the Hearings have closed, the Inspector will prepare a report for the Councils with conclusions and recommendations. The report will deal with broad issues, and not with individual representations. If the Inspector finds it to be legally compliant and sound in all respects, the report will recommend its adoption. If it is found that the Plan is legally non-compliant or unsound in any respect, the Inspector can recommend main modifications to make it compliant and sound. The report will deal with the main issues concerning the soundness of the Plan, taking into account the representations received.
23. If main modifications are recommended by the Inspector, further consultation will need to take place so that the rights of interested parties are not prejudiced. Where appropriate, main modifications may also need to be covered by a revised Sustainability Assessment and have regard to Habitat Regulations. The Councils may then, if they so wish, formally adopt the Plan, incorporating the recommended main modifications.

## **Programme Officer**

24. The Programme Officer (PO) for the Examination is Ian Kemp. For the purposes of the Examination Ian acts as an impartial officer of the Examination, under the Inspector's direction, and not as an employee of the Councils. The contact details for Ian are provided on page 1 of this Guidance Note.
25. The PO's main tasks are to liaise with all parties to ensure the smooth running of the Examination, to organise the Hearings Programme, and to ensure that all documents received both before and during the Hearings are recorded and distributed. Copies of all the Examination documents, including the representation forms and further written submissions, will be available in the Examination Library. Any other procedural questions or other matters that you wish to raise prior to the Hearings should be directed through Ian rather than the Councils.

## **Representations**

26. Representations have been received on the Plan from individuals and organisations (the "representors"). These have been published on the Examination website in documents CD4, CD5 and CD6 at the following address:  
  
<https://www.localplanservices.co.uk/nottswastelpexamination>
27. The Inspector will take account of all written representations as well as those delivered orally during the Hearing Sessions. Both have equal weight. Those who simply wish to rely on their previous submissions need take no further action; they can rely on what they have already submitted in writing. The right to participate in a Hearing extends only to those who propose changes to the Plan in order to make it sound and legally compliant and is limited to those policies or matters which were the subject of the original representation. This is one of the differences of the Examination process compared to other planning procedures.
28. There is no need for those supporting the Plan to take part in the Hearings. If anyone wants to make a further written submission supporting their position, it should be focussed on the MIQs identified for the relevant Hearing sessions.

29. Whether views are expressed in writing or orally they will carry the same weight and the Inspector shall have equal regard to views expressed by both methods. Attendance at a Hearing session will only be useful if you need to participate in a discussion concerning the soundness or legal compliance of the Plan. **Should you wish to participate in any of the Hearing sessions, please advise the Programme Officer of your intention to do so by Friday 30 August 2024.** In doing so you should inform the Programme Officer of the specific session(s) of interest. Those who wish to proceed by written means can rely on what they have already submitted or submit further representations if considered necessary.
30. In some circumstances it may be appropriate for a participant to reach an agreed position with the Councils and to set this out in a Statement of Common Ground. Such a Statement might contain the wording for a proposed main modification. All Statements of Common Ground should be received by the PO a minimum of 5 working days before the Hearing day.

### **Omission Sites**

31. Some representations may be concerned with what are informally known as 'omission sites'. These are sites which have not been allocated in the Plan. Representors should be aware that it is not the role of the Examination to consider these sites, which will not be discussed at the hearing sessions. Should it be the case that sites are required to be included in the Plan to make it sound, then the Inspector would look to the Councils in the first instance to decide which alternative or additional sites should be considered.

### **Statements**

32. All written statements, which should only be made in response to questions within the MIQ document, should be sent to the PO by **Friday 30 August 2024**. This deadline relates to the receipt of both paper and electronic copies. Statements should concentrate on responding to the MIQs of relevance. Representors are also welcomed to comment on new evidence which may have arisen since the original representations were submitted as part of their written statements. Statements will be placed on the Examination website.
33. Annex B sets out the requirements for the presentation of all statements. Its provisions should be read and implemented to avoid

statements being returned due to non-compliance. Please note the 3,000 word limit, which cannot be exceeded. Notwithstanding this, as the Councils are required to respond to every question set out in the MIQs document, there may be justifiable instances where its statements exceed the 3,000 word limit.

34. Essentially, the Inspector needs to know the following from those submitting further written statements:
- What part of the Plan is unsound.
  - Which soundness criterion it fails.
  - Why it fails (point to the key parts of your original representations).
  - How the Plan can be made sound.
  - The precise modification and/or wording that you are seeking.
35. The Councils may submit statements on each Main Matter saying why it considers the Plan to be sound in that particular aspect and, if applicable, where main modifications would be appropriate to address any soundness or legal compliance issues.

## **Hearings**

36. The Hearings will open at **10.00 hours on Tuesday 15 October 2024** and will be held in person at:

**The Rufford Suite  
Nottinghamshire County Hall,  
Loughborough Road,  
West Bridgford  
NG2 7QP.**

37. The Hearings are scheduled for 15 October 2024 to 18 October 2024 (inclusive). At this stage, the Inspector is of the view that sitting on 18 October 2024 is unlikely to be necessary, but this date is retained as a contingency. The format will provide an informal setting for dealing with issues by way of a discussion led by the Inspector. Those attending may bring with them professional experts, barristers and solicitors, whom if present will be treated as part of their team.



38. The purpose of the Hearings is to concentrate on the Inspector's MIQs. The discussion will focus on the Inspector's questions, guided by an agenda, together with any additional points raised by the written statements.
39. Those participants present will be asked to introduce themselves. The Inspector will likely ask the Councils to open and outline its position. Participants will then be invited to make their contributions. The Hearings will progress with the Inspector drawing those present into the discussion in such a way as to draw out the information necessary to come to a decision on the relevant matters. It is not an opportunity simply to repeat a case already set out in written representations.
40. The discussion will be structured around an agenda which will be issued in its final form shortly before the hearing session. The emphasis will be on testing for soundness. The Inspector will make a few brief comments on the matters they want to be covered, then invite individuals to make their contribution in response to the points they have raised. Where there are a large number of representors who wish to speak on the same matter the Inspector may ask for a number of spokespersons to be agreed to participate in the hearing session. All participants will have an equal chance to speak.
41. There will be an opportunity within the discussion to ask questions of the Councils where appropriate but there will be no cross-examination. No more evidence should be submitted once the hearing session has closed unless the Inspector expressly invites or allows it. The Inspector will conduct a short, focussed series of hearings which, in turn, will lead to a short, focussed report.

### **The Evidence Base (Core Documents) and Examination Library**

42. The Councils have prepared a list of the evidence core documents that will be available in the Examination Library. As each written submission is received it will be added to the evidence base, as will any other new evidential documents accepted. These documents may be accessed via the Examination website, which will be regularly updated. The Examination Website address is:

<https://www.localplanservices.co.uk/nottswastelpexamination>

## **Site visits**

43. The Inspector may wish to visit certain sites or areas before, during, or after the hearings. These visits will be unaccompanied, unless access is required. If the Inspector would need to be accompanied at such visits the arrangements would be discussed in more detail at the Hearings, and in correspondence with the PO.

## **Closing remarks**

44. The Inspector urges everyone to:

- Make the best use of the remaining time before the start of the hearing sessions to ensure statements are submitted on time.
- Ensure that the timescales and deadlines are adhered to as otherwise Examination attendance may have to be rearranged or curtailed.
- Be aware of the Examination documents, the supporting evidence, and any other relevant material produced by the Council.
- Focus on the "Matters and Issues" document and the NPPF soundness criteria.
- Check the Examination website regularly and/or be in contact with the Programme Officer.

## **Closing the Examination**

45. The Examination will remain open until the report is submitted to the Councils . However, no further representations or evidence will be accepted after the respective Hearing has closed, unless the Inspector specifically request it. Any late unsolicited material will be returned.

*Stephen Normington*

INSPECTOR

## **ANNEX A - List of relevant legislation and guidance**

### **Legislation**

The Planning and Compulsory Purchase Act 2004

The Localism Act 2011

The Town and Country Planning (Local Development) (England) Regulations 2012 (as amended)

### **Government Policy and Guidance**

National Planning Policy Framework (NPPF) 5 September 2023

National Planning Policy for Waste (2014)

Planning Practice Guidance (web-based resource)

### **Guidance from the Planning Inspectorate**

Procedural Practice in the Examination of Local Plans can be found at:

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations>

### **Examination and Evidence Base Documents**

The Examination web site can be found at:

<https://www.localplanservices.co.uk/nottswastelpexamination>

## **ANNEX B - FORMAT FOR STATEMENTS**

1. Please send, where possible, e-mailed electronic versions of all Statements and Appendices to the PO (in PDF format). These will be included on the Examination website. Paper copies can be submitted but the preference is for Hearing Statements to be submitted electronically.
2. The Inspector emphasises the need for succinct submissions with the avoidance of unnecessary detail and repetition of the original representation.
3. It is the quality of the reasoning that carries weight not the bulk of the documents. There is no need for verbatim quotations from sources of policy guidance. It is vital that the fundamental elements are set out clearly and succinctly – the hearing sessions are not the place for surprise contributions.
4. Statements should not be longer than **3,000 words** for each Matter addressed. Any written statements should be prepared on A4 paper, stapled and hole punched. Any oversized plans or diagrams should be folded to A4 size and listed as Appendices.
5. Supporting material in the form of appendices to statements should be limited to that which is essential. Any appendices should have a contents page and be paginated throughout. Whilst the word limit does not include text in appendices, the aim of succinctness should be respected. Anyone submitting appendices should indicate in their statement which parts they are especially relying upon.
6. **A separate statement should be submitted for each Main Matter covered. Multiple Main Matters should not be combined into a single statement.** Each statement should specifically address questions covered within an individual Main Matter. This will assist distribution, publication and understanding during the Hearing Sessions.
7. All participants must adhere to the timetable for submitting statements set out above. Late submissions and additional material will not be accepted since this can cause disruption and result in unfairness. If material is not received by the stated deadlines, the PO will assume that original representations only are being relied upon.
8. All paper copies of statements should be addressed to the PO at the postal address given above.