Comments

Site Specific Part 2 Local Plan - Publication Plan Consultation (18/12/19 to 12/02/20)

Comment ID 71
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Consultation Point Policy NEH4 Open Spaces (View)
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Representation
Please use a separate form for each representation.

Which part of the Publication Plan does your representation relate to?
Policy NEH 4 - Open Spaces

Tests of Soundness
Do you consider the Local Plan is sound in terms of being:

Justified . No
Effective

Positively prepared
Consistent with National Policy . No

Legal and Procedural requirements
Do you consider the Local Plan has been prepared in line with legal procedural requirements? No

Reasons

Please give the reason(s) why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the statutory Duty to Cooperate.

1. Introduction
1.1 These representations have been prepared on behalf of Thorpe Malsor Estate in respect of their land interests at land west of Short Lane, Thorpe Malsor. This land is a proposed designation as ‘Open Space’ within the publication draft Part 2 Local Plan.
1.2 We consider however that there is no evidence to support the designation available at time of the consultation and as such it is not justified nor consistent with national policy. Notwithstanding this, the site does not qualify for open space on the basis that it is predominantly arable land with little demonstrable local value. The remainder of the site is formed of allotments, but these are privately run and based on private leasing arrangements.

2. Legal and Policy Context

2.1 The Council has published the Publication version (Regulation 19) Kettering Site Specific Part 2 Local Plan for consultation. This is, by definition, a completed plan which the Council considers is sound and ready for submission to the Secretary of State for Examination. The consultation document outlines the Council intend to submit the Plan in April 2020.

2.2 In relation to the development of new development plan documents, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) outline the expected approach to be adopted, while the Town and Country Planning (Local Planning) (England) Regulations 2012 sets the legal framework with associated legislation.

2.3 The NPPF sets out at paragraph 16 that Plans should “be shaped by early, proportionate and effective engagement between planmakers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees”.

2.4 Paragraph 31 states “The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned”,

2.5 Paragraph 35 states “Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where its practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – 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 – enabling the delivery of sustainable development in accordance with the policies in this Framework.

2.6 When submitting a Local Plan, the PPG (Plan Making – Paragraph 034) states “Local planning authorities must make available each of the proposed submission documents that they intend to submit to the Planning Inspectorate for examination to enable representations to come forward that can be considered at examination, under regulation 19 of the Local Plan Regulations” [our emphasis]. This point is also raised at 1.21 of the Procedure Guide for Local Plan Examinations (June 2019).

2.7 The Town and Country Planning (Local Planning) (England) Regulations 2012 Part 6 Section 17 sets out that proposed submission documents encompasses the following documents. e) “such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan”

2.8 Regulation 19 (Publication of a Local Plan) of the aforementioned legislation states that “before submitting a Local Plan to the Secretary of State under section 20 of the Act, the local planning authority must—

a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35, and

b) ensure that a statement of the representations procedure and a statement of the fact that the proposed submission documents are available for inspection and of the places and times at which they can be inspected, is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1)”
2.9 Section 35 sets out that a document is taken to be made available if it is made for available for inspection in person or by being published on its website.

2.10 The Procedure Guide for Local Plan Examinations at 1.8 states “as a minimum, the evidence base should include all documents referenced in the submitted plan”.

**Open Space Designation**

3.1 The publication Local Plan contains Policy NEH4: Open Spaces. This policy does not appear to have been included in previous iterations of the plan, with no such policy included in the ‘Draft Plan for Consultation’, which was consulted upon between June and July 2018. It is not considered that the introduction of an entirely new policy and designation at publication stage is appropriate, particularly having regard for paragraph 16 of the Framework which advocates “early, proportionate and effective engagement”. By definition, this is the Plan the Council intend to submit for Examination and as such it is not clear how the introduction of such a policy late in the Plan making process can allow for proper engagement, not least for landowners who's land is set to be affected by such a designation.

3.2 Notwithstanding the lateness of its introduction, we are highly concerned as to the lack of evidence that supports this designation. Whilst the Council has up to date evidence on ‘Historically & Visually Important Open Space’, this is a separate designation relating solely to proposed Local Green Space. Local Green Space is a specific designation covered by paragraphs 99-101 of the NPPF. It is entirely separate from the Open Space designation on the publication Plan and the evidence for it does not relate to land designated as Open Space.

3.3 The only evidence published on the Council's website relating to open space available is the Open Space Needs Assessment (2007), which was prepared against the now revoked PPG17, and the Open Space and Allotments (2012) document. The Open Space Needs Assessment is now 13 years old and cannot be reasonably be used to support any designation of land now, particularly given it is a study of needs, which are likely now out of date and secondly it dates prior to the introduction of the Framework. The Open Space and Allotments document is more up to date, though having reviewed the document again it is clear this has not directly informed the designation of land as Open Space in the publication draft. It therefore considered that there is no published evidence available to support the proposed designation.

3.4 Policy NEH4: Open Spaces refers to a document titled the Open Space Strategy (OSS) for Kettering Borough (2019). This document is also referenced at paragraph 8.47 of the reasoned justification. The document however is not publicly available. A search on the Council's website indicates that there is still an ongoing consultation (Appendix 1) in regards to this document and that it was otherwise unavailable. As referenced at paragraph 2.9, the Procedure Guide for Local Plan Examinations is unequivocal that “as a minimum, the evidence base should include all documents referenced in the submitted plan” [our emphasis].

3.5 It was queried with Kettering Planning Policy Officers (Appendix 2) whether the Open Space Strategy was the document to support the allocation; or whether there was any evidence to support the allocation beyond this. However, correspondence received from the Council (and appended to these representations) simply outlined that beyond the, as yet unpublished, Open Space Strategy, there is only the Green Infrastructure Delivery Plan published evidence in support of Policy NEH4. On examining this document however, the Green Infrastructure Delivery Plan does not directly influence the proposed Open Space designations. We are therefore unclear on what basis the designations are based, beyond any evidence presumably included in the Open Space Strategy which is not yet available.

3.6 With regards to the process undertaken, we would expect the Council to have gathered an appropriate evidence base prior to any policies having been written. Paragraph 31 of the Framework confirms that policies should be underpinned by “relevant and up-to-date evidence”. We would also expect for the Council to enable fair and reasonable consultation on such proposals and evidence base, as set out at paragraph 16 of the Framework. In this case the designation has been introduced at the last available moment and supported by no evidence, with documents referred to in the Policy and supporting text also unavailable.

3.7 If the Council decide to proceed with of the currently proposed Local Plan in April 2020 as currently suggested, we consider NEH4 is unsound in that it is neither justified nor consistent with national policy as set out at paragraph 35 of the Framework. On that basis, Policy NEH4 should be deleted. We do not feel this would unduly impact on the Plan or its strategic aims, not least because this was a policy not deemed necessary until Regulation 19 stage and is a non-strategic policy.
There remains the opportunity for local neighbourhood plan groups to develop such designations through forthcoming Neighbourhood Plans. Decision makers would be able to consider the role of the Open Space Strategy and whether it amounted to a material consideration in any decisions.

3.8 If, however this is a policy the Council feels is vital to the integrity of the Plan, the Council are entitled to reconsult at Regulation 19 following the publication of the requisite evidence.

3.9 The Council cannot however, introduce evidence to support the designation between now and the submission of the Plan, or during the Examination itself. The lack of any evidence to support a Local Plan designation is a matter of soundness. The introduction of fundamental evidence, of which there has been no fair opportunity to comment, is in our opinion a legal failure on which there would be compelling grounds for legal challenge. We would consider it disproportionate to risk the entire plan for such a designation and would urge the Council against such an approach. Regulation 19 is clear that submission documents must be available for inspection during the consultation and Part 6 Section 17 sets out that proposed submission documents includesdocuments considered to be relevant in making the Plan. Clearly if a document forms the evidence by which a designation within the Plan is based, the document must be relevant in the making of the Plan.

Proposed Actions/Changes

Please explain what changes or actions are needed to make the Local Plan legally compliant.

3.10 We therefore consider that the publication Plan is unsound in that Policy NEH4 is not justified due to the lack of supporting evidence and not consistent with national policy in the lack of supporting evidence and lack of engagement prior to its inclusion in the draft Plan. The policy should therefore be deleted to ensure that the Local Plan is sound.

Attendance at the examination hearings

If you are seeking to change the Plan, would you like to attend the examination hearings? Yes

If Yes, please outline the reason(s) why, below.

To discuss the draft allocation, its soundness and application in detail. Particularly in light of no evidence having been put forward/published in respect of the NEH4 openspace allocations.

Notifications

Do you wish to be notified?

- When the Plan is submitted for independent examination?
- When the Inspector's Report is published?
- When the document is adopted?