

INSPECTOR'S NOTE

FORMBY EMPLOYMENT ALLOCATION AND NEIGHBOURHOOD PLAN

1. The suggestion in my Note dated 18 November 2016 (EX.126) that the choice of employment allocation at Formby could be made via the Formby & Little Altcar Neighbourhood Development Plan has prompted a number of questions to me from both Sefton Council and Formby Parish Council. So that all representors are aware of these emails, the attached Q&A Annex sets out (in slightly abridged form) the questions put to me and my responses.

2. As I indicate in EX.126, the suggestion was prompted by the unwillingness of either Council to express a preference for one employment site over the other, coupled with my analysis that either allocation would be sustainable development and would be consistent with national policy. However, I understand the concerns expressed by the parties. I also believe that the release of a large site from the Green Belt has not yet (as far as I can ascertain) been achieved by means of a Neighbourhood Plan (NP), and the process has not been tested in the Courts. Nevertheless, I remain of the view that, in the circumstances set out in my Note (and elaborated in the Q&A Annex), there is no legal or policy reason why this should not be done.

3. The legal test is compliance with the 'basic conditions' set out in Schedule 4B of the Town and Country Planning Act 1990 (as amended), which in particular requires the NP to have regard to national policies and advice, to contribute to achieving sustainable development and to be in general conformity with the strategic policies of the Sefton Local Plan (SLP). As to policy, the NPPF should be read as a whole and provided the strategic decision to release one of the two alternative sites from the Green Belt is taken in the SLP (which would be the case), and in circumstances where each alternative site makes a similar contribution to the Green Belt, I do not believe that the final choice of site is, in itself, a strategic decision.

4. I made clear in EX.126 that it is not my intention to impose the choice of site on the neighbourhood plan process – I merely presented it as an opportunity for the decision to be taken locally. If the Parish Councils decide, for whatever reason, that they do not want to make the choice in the NP, I will make the decision in the SLP. The agreement of Sefton Council is also required, for two reasons. Firstly, the modification to the SLP which would defer the choice of employment allocation to the NP is not a matter on which the soundness of the Plan depends and is not, therefore, a Main Modification that I could require to be made. Secondly, Sefton Council is ultimately the authority that would have to determine whether the NP meets the 'basic conditions' before any NP referendum could be held. There is no point in Sefton Council agreeing to defer the

employment site decision to the NP if it believes there is a risk that the basic conditions test would subsequently not be met.

5. Consequently, if either the Parish Councils or Sefton Council do not support the choice of employment site being made in the NP, I will make it in the SLP. I look forward to receiving the views of all parties by 5 January 2017.

Martin Pike

INSPECTOR

21 December 2016

Annex

QUESTIONS FROM SEFTON COUNCIL (in blue)

INSPECTOR'S RESPONSE (in black)

GREEN BELT ISSUES

If the Inspector pursued the line of enabling the Neighbourhood Plan to decide which site should be allocated, would this not mean that both sites would have to be removed from the Green Belt to allow that choice to be made?

I don't see why two sites would need to be removed from the Green Belt as the Green Belt boundary alteration is integral to the allocation process. If the Parish Councils decide to make the choice in the Neighbourhood Plan, the Local Plan would set out:

1. The need for one employment site at Formby;
2. Broad details of the two potential candidate sites, including the fact that both are currently in the Green Belt, together with a clear indication that exceptional circumstances exist for the allocation of either site but not both;
3. The Parish Councils' willingness to make the decision through the Neighbourhood Plan;
4. The fact that, as part of making the allocation, the chosen site will be removed from the Green Belt.

Thus the strategic decisions are made in the Local Plan but the choice of site is made locally.

We remain concerned at the process which the Inspector is suggesting could be acceptable, specifically para 8 of the his report, viz:

8. *I appreciate that neither Sefton Council or Formby & Little Altcar Parish Councils have suggested that the choice should be made locally, so I am presenting this as an opportunity for the decision to be made by the community most affected. If the Parish Councils do not wish to take up this opportunity, or if Sefton Council has good reason for the choice not being made locally, I will make the decision as part of the Sefton Local Plan examination.*

The more so in the context of the further advice provided by Mr Pike in your e-mail that he does not "see why two sites would need to be removed from the Green Belt as the Green Belt boundary alteration is integral to the allocation process."

Reading NPPF para :

83. *Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.*

The Council had always understood from the above that only the local plan can alter green belt boundaries and it is not possible for a Neighbourhood Plan to do so. This is why we asked the question was the Inspector proposing to remove both sites from the green belt (with perhaps one ultimately chosen and the other then safeguarded?) to allow a choice to be made? If we have misunderstood the operation of that paragraph we would appreciate the Inspector's guidance. If he is aware of other local plans that have successfully taken this approach we would appreciate the reassurance.

I am aware of other Local Plans that have delegated decisions about site allocations to Neighbourhood Plans, but not ones that involved Green Belt land. I have asked my office to let me know of any Green Belt allocations made through Neighbourhood Plans, and am awaiting the response. I will provide a full reply to the Council once I have this information.

In relation to the principle of allocating Green Belt land in Neighbourhood Plans, the Council may find helpful the following extract from the "Government response to the CLG Select Committee Inquiry into the Operation of the NPPF", published in February 2015 (Cm 9016) – the relevant Government response is at paragraphs 21 and 22:

“Recommendation 7

We recommend that the Government amend paragraph 89 of the NPPF to make clear that development on sites allocated in an adopted neighbourhood plan, and which has the approval of the local planning authority, does not constitute inappropriate development for the purposes of the green belt. In addition, where neighbourhood plans, ahead of the local plan, make proposals to change the green belt, local authorities should have a duty to consider them as part of the local plan production process.

21. The Government does not accept this recommendation. Where a locally-led review of the Green Belt is proposed, the local planning authority will need to engage carefully with local people and other interested groups in the process. The Government supports the principle of local planning authorities working with those preparing neighbourhood plans where a review of the Green Belt is underway. But the Government is also clear that the responsibility for a review of the Green Belt rests with the local planning authority and must be conducted through the local plan process of consultation and examination. The rationale for this approach is to ensure the Green Belt is considered in the round of all the other planning issues the Council is addressing in its Local Plan and on an authority-wide, and indeed a cross-authority basis where appropriate.

22. It is already the case that neighbourhood plans can consider developing policies related to development in the Green Belt where these have regard to national policy on Green Belt and are in general conformity with the strategic policies of the adopted development plan for the local area. Planning guidance is clear that where a neighbourhood plan has been made following referendum the local planning authority should take it into account when preparing the Local Plan strategy and policies, and avoid duplicating what will be non-strategic policies set out in the neighbourhood plan.”

The extract makes clear that the strategic decisions about a Green Belt review should be taken through the Local Plan, but that policies related to development in the Green Belt can be made in Neighbourhood Plans provided there is “general conformity” with the Local Plan strategy. This is exactly what I am suggesting.

On further reflection I consider that, to give greater clarity in the Local Plan, it would be beneficial to have a direct link between the Policies Map and the further modified Local Plan policy which delegates the choice of site to the Neighbourhood Plan. This could be achieved by the use of a symbol on the

Policies Map for each of the potential sites and a link to the modified Local Plan policy - this would be one way of cementing in the Local Plan the choice that the Neighbourhood Plan has to make. Alternatively if preferred, as the site boundaries are fixed, a dotted line around each potential site with a link to the modified Local Plan policy may be an option.

PROCEDURAL ISSUES

Notwithstanding the above, even if the process were possible, wouldn't this place huge pressure on the Neighbourhood Plan process and by implication lead to major uncertainty for a strategic site identified through the local plan process?

For example, what if the Neighbourhood Plan were abandoned or if it stalled or were simply not progressed in a timely manner? What would happen if the Neighbourhood Plan were to proceed without consideration of the sites North and South Formby Industrial Estate? And finally we remain concerned as to how the Neighbourhood Plan can be empowered to make such an important planning decision. The Parish Councils could express a preference in their Neighbourhood Plan but isn't the act of removing a site from the Green Belt beyond this process?

Huge pressure on the Neighbourhood Plan process – Clearly there would be pressure, but no doubt the Parish Councils will be aware of this when deciding whether to take up the opportunity to make the decision in the Neighbourhood Plan. If they feel able to withstand the pressure, is it not better that the decision is made locally rather than being imposed by me?

Uncertainty and abandoned or stalled Neighbourhood Plan – Again, this will no doubt feature in the Parish Councils' decision on whether to take up the opportunity offered to it. From the Formby community's very capable participation at the examination it is clear that it understands the complexities of the plan making process, and the publication of the consultation draft Neighbourhood Plan demonstrates its commitment to on-going active participation in planning matters. Unless Sefton Council has information to the contrary, there seems no reason to question the Parish Councils' commitment to completing the Neighbourhood Plan process. Nevertheless I appreciate Sefton Council's concern and, to allow for unforeseen problems, it would be sensible to include a contingency clause in the Local Plan which sets a time limit on the decision being made through the Neighbourhood Plan so that the employment allocation is not unduly delayed.

Neighbourhood Plan proceeding without consideration of either employment site – If this occurred, the Neighbourhood Plan would not "be in general conformity with the strategic policies of the Local Plan" or "be aligned with the strategic needs and priorities of the wider local area" (NPPF 184/185) and the 'basic conditions' test would not be met. In these circumstances it is likely that Sefton Council would have strong grounds for not agreeing to send the Neighbourhood Plan to referendum.

Concern about Neighbourhood Plan being empowered to make such an important decision – An important planning objective of Government is to give power to local communities to make non-strategic decisions which affect them. Sefton Council might like to look at the Thame Neighbourhood Plan in South Oxfordshire, which allocates land for 775 houses and a 3ha employment site – this demonstrates that important decisions can be made by a local community through a Neighbourhood Plan (which now forms part of the development plan).

DEADLINE FOR RESPONSE

We have a number of concerns relating to paragraph 10 of the November 2016 note and the 23rd December deadline the Inspector has set, namely :

“I welcome the views of Formby and Little Altcar Parish Councils and Sefton Council on this suggestion as soon as possible, preferably by 23 December 2016. Other parties with an interest in this matter may also wish to comment.”

Firstly, we feel that the final phrase is a bit ambiguous, because it is open-ended, and could lead to the situation where people feel that they can continue commenting beyond that date. Being aware of the Sefton public’s desire to be involved in the Local Plan process, we wonder whether possible comments received after this date could still need to be taken into account by the Inspector. Our concern is that this could uncertainty, if it were to arise, could make it difficult for the Inspector to be able to close the examination.

Secondly, we would like to point out that the Sefton Council offices are closed from 23rd December – 3rd January inclusive, and is likely to close early on 22nd December. This means that we would not be able to publish any responses on the web until the offices re-open on 4th January at the very earliest. We therefore wonder whether it would be more appropriate to extend the period for commenting until after the Christmas break to (say) 3rd January, otherwise any responses sent to you will just be sitting in Council e-mail in-boxes?

I indicated at paragraph 11 of my Note following the November hearings (EX.126) that parties would have 14 days to comment on the implications of the Meols Cop (Sainsbury’s) decision for the Formby employment site choice. This takes us up to 23 December, when the Council offices are closed.

I have also agreed with Formby Parish Council that their decision on whether to accept the opportunity to make the choice through the Neighbourhood Plan can be put back to 5 January 2017 to fit in with their meetings schedule.

For these two reasons, and to keep matters simple, it would be sensible to have one revised date of 5 January 2017 for all comments previously expected by 23 December (ie the Parish Council’s decision, any further comments on the Neighbourhood Plan proposal from third parties, and any comments on the implications of the Meols Cop decision).

QUESTIONS FROM FORMBY PARISH COUNCIL (in blue)
INSPECTOR'S RESPONSE (in black)

1. Mr Pike states that he wants a response by the 23rd December from the Parish Council. Is this to let him know which site is preferred or to let him now that we wish to make the decision?

The December response date is to let me know whether or not the Parish Councils wish to make the decision on the choice of employment allocation at Formby through the Neighbourhood Plan, not which site is to be preferred.

2. Mr Pike refers to the Sainsbury's outcome which could have an impact on our decision and this decision is not yet out from the Secretary of State and we would like to have a look at this decision and how it will impact us. He says that we have 14 days from the date of the decision from the Secretary of State which is due on the 8th December, but what happens or what would be the position if it is not published then and published after this date, when would the response time be then?

In light of my response to question 1 above, do the Parish Councils believe that the Sainsbury's decision will influence whether or not they choose to make the Formby employment decision in the Neighbourhood Plan (as opposed to the Sainsbury's decision potentially having an impact on the choice between the two Formby employment allocations)?

3. The full parish councils only meet one a month and our next meeting is on Tuesday 6th December although we are unable to get all the Little Altcar Councillors there and this is a joint Neighbourhood Plan. This item is on the agenda but Councillors are already asking how we can make any decision without all the facts in front of us. Our next full meeting would then be on the 3rd of January 2017 when we would be able to get all the Councillors together. The problem we also have is the Clerk to the Parish Council being available as she finishes for Christmas on the 22nd December until after the new year. It may well be we will have to call an extraordinary meeting but this is difficult to do at this time of year due to many Councillors having other things on and knowing when the Sainsbury's decision is actually going to be published.

I am happy to put back the date for the Parish Councils' decision on whether or not to choose the employment site at Formby through the Neighbourhood Plan to fit in with Parish Council meetings, provided the delay is relatively short – this is why I set the “preferably by” date of 23 December. You say there is a meeting on 3 January when you would be able to get all Councillors together – presumably it would be OK if I put the date back to **5 January 2017**?

4. Whilst we understand from the promoter of the south site that there is a 5,000 petition been submitted for this site we are unable to find this on the website and the Councillors feel it is also important to know what the petitioners have signed up to. In other words was it made clear in the petition what they signed up for and that was a sports facility together with retail. If we could be provided with the exact wording that was used it would help in our decision making process.

As I clarified at the hearing session on 1 November, the online petition is not a document that has formally been submitted to the examination (ie. it is not in the examination library). I believe that Sefton Council knows how to access the petition.

5. I note that there would be a delay to the Neighbourhood Plan if we had to ask the public what their preference was and to consult on this. Obviously this is going to take some time with either a referendum or a 6 week consultation although if we were asking the public we would prefer a referendum so as it was clear what they were agreeing to and that the result would be an honest view of the residents. What is the position with the Local Plan if we do not know which site is going to be put in. Does the Local Plan proceed with a caveat relating to the employment site being inserted at a later date when the decision has been made?

If the Parish Councils decide to make the choice of employment site at Formby through the Neighbourhood Plan, the Local Plan would effectively delegate that decision to the Neighbourhood Plan. As required by the NPPF, the Local Plan would deal fully with the 'strategic priority' by setting out:

- a) the need for one employment site at Formby;
- b) broad details of the two potential candidate sites, including the fact that both are currently in the Green Belt, together with a clear indication that exceptional circumstances exist for the allocation of either site but not both;
- c) the Parish Councils' willingness to make the choice of site through the Neighbourhood Plan.

The Local Plan would not need to be amended at a later date once the Neighbourhood Plan is brought into force because the Local Plan and the Neighbourhood Plan would together make up the statutory development plan for the Formby area.

6. By referring the matter back to the community is he wanting the actual community to make the decision eg a referendum or is he wanting the Parish Councils to make the decision on their behalf.

The Neighbourhood Plan process would have to follow the procedures set out in statute (helpfully summarised in the Government's Planning Practice Guidance). In short, the Parish Councils would choose the employment site in their preferred Neighbourhood Plan and, subject to the Plan meeting statutory requirements and being tested by an independent examiner, that choice would then have to be agreed by a majority of the community through a referendum.

7. A Councillor has raised a question as to whether or not the Parish Council taking the decision on which employment site to use would have a legal implication for the Parish Council. I think what they mean is could the parish council be taken to court for preferring one site over another?

From a quick look at the legislation I think there is the opportunity for a party to seek a judicial review by the courts ("A court may entertain proceedings for questioning anything relating to a referendum....." is the wording of section 61N(3) of the Town and Country Planning Act 1990, as amended by section 38C of the Planning and Compulsory Purchase Act 2004). However, I will seek further advice and clarify this in due course.

Subsequent clarification: As stated above, the Neighbourhood Plan can be challenged on legal grounds. However, any challenge would be made against Sefton Council (the authority that "makes" the Neighbourhood Plan under the legislation) rather than the Parish Councils.