

NEW SOUTHWARK PLAN EXAMINATION GUIDANCE NOTES FOR PARTICIPANTS 10 DECEMBER 2020

Version 1.0

Introduction

1. These notes have been prepared to assist those individuals and organisations who are involved in the Examination of the New Southwark Plan ('the Plan'). The Plan was formally submitted to the Secretary of State on 16 January 2020.

Inspectors and Programme Officer

2. The Secretary of State has appointed the Inspectors, Philip Mileham and David Spencer, under Section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) ('the 2004 Act'), to hold an Examination into the soundness and legal compliance of the Plan.
3. Jacqueline Christie is the Programme Officer (PO). She is acting as an impartial officer for the Examination under the Inspectors' direction. The main tasks of the PO are to liaise with all parties to ensure the smooth running of the Examination, to organise the hearing programme, to ensure that all documents received both before and during the hearings are recorded and distributed, to maintain the Examination Library (principally in an electronic format) and to assist the Inspectors with administrative and procedural matters.
4. Any matters which the Council or participants wish to raise with the Inspectors should be addressed to the PO. Anyone who requires assistance or special facilities for disabled persons should contact the PO beforehand to enable appropriate arrangements to be made. The PO contact details are:

Jacqueline Christie

Tel: 07840 647 604

Email: EIP.Programme.officer@southwark.gov.uk

Purpose and nature of the Examination

4. The Inspectors' task is to consider whether the Plan meets the requirements of section 20(5) (a-c) of the 2004 Act and associated regulations and whether it complies with the requirements of the National Planning Policy Framework ('the Framework'). These requirements comprise (i) whether the **legal requirements** have been met, whether the Council has complied with the **duty to co-operate**; and whether the plan is **sound**. As part of the legal requirements, there is also a Regulatory requirement that the Plan is in general conformity with the London Plan.

5. The Framework indicates that a sound plan is **positively prepared, justified, effective** and **consistent with national policy**. The Council should rely on evidence collected while preparing the Plan to demonstrate that it meets the requirements of the Act. Those seeking main modifications (changes) to the Plan (those necessary for the plan to be sound or legally compliant) have to demonstrate why the document does not meet the requirements and how suggested changes would address any soundness failure.
6. The key elements in the Examination process are:
 - The starting point for the Examination is the assumption that the Council has submitted what it considers to be a sound plan;
 - The Inspectors have to consider the representations made on the submitted plan. For the purposes of this Plan the Inspectors are considering those representations made at the following stages: (i) the Proposed Submission Version (PSV) 2017/18; (ii) the Amended Policies Version (APV) 2019; and (iii) the Council's Proposed Changes (August 2020).
 - The Inspectors are not required to consider each and every point made in every objection or to report on them, but to use the representations as the starting point in considering the Examination requirements;
 - It is not the Inspectors' role to seek to improve the Plan or to make it 'more sound' but to seek to address unresolved issues through round table discussion or consideration of the original written representations.
7. The hearing sessions are intended to be an inquisitorial rather than adversarial process under the Inspectors' direction. They will address particular topics selected for discussion by the Inspectors from the soundness requirements and the representations made at the three stages outlined above.
8. Following the close of the hearings the Inspectors will prepare a Report for the Council with their conclusions on legal compliance and soundness. Under section 20(7C) of the 2004 Act the Council can request to the Inspectors to recommend any main modifications to the plan that are necessary to make it sound and legally compliant. The Council can make minor changes to the plan at any time up to its adoption. These should not materially affect the substance of the plan, its overall soundness or the submitted sustainability appraisal. They need not form part of the Examination.
9. The Inspectors will work with the Council to ensure that any necessary main modifications are supported by evidence and are subject to the same process of sustainability appraisal, publicity and opportunity to make representations as the submitted plan. Any main modifications should include the precise wording of the text and be set out in an Examination document.
10. Further guidance on the Examination process can be found in:
 - The Planning and Compulsory Purchase Act (2004) and associated Local Planning Regulations (2012)
 - The Planning Inspectorate's Procedure Guide for Local Plan Examinations – 6th Edition (November 2020)

11. Government advice about the implications of the coronavirus for local plan examinations, which will be updated regularly, is available at <https://www.gov.uk/guidance/coronavirus-covid-19-planninginspectorate-guidance>
12. In light of the ongoing public health situation with Covid19 and to provide certainty that the hearings will take place, it has been agreed between the Inspectorate and Southwark Council that this will take place in a virtual format via Zoom with sessions being live-streamed for those who would like to observe proceedings. Separate guidance notes on participation at virtual hearings will be published early in 2021. The virtual hearings will be held in a format which satisfies the legal right to be heard.

Representations on the Plan and the right to be heard

13. A total of 561¹ duly made representations were accepted on the published Plan. In addition a further 153 representations were received on the Council's Proposed Changes consultation (August 2020). Those who wish to proceed by written means can rely on the representations that they have already submitted. The right to participate in a hearing extends only to those who propose changes to the Plan. There is no need for those supporting the Plan or merely making comments to take part in the hearings although they may observe the hearings on-line. However, the Inspectors may invite persons to appear or be heard at the hearings where they think they are needed to enable the soundness of the plan to be determined.
14. The Inspectors encourage all those who anticipate that they may wish to be heard at the hearing sessions to consider the following:
 - (i) Whether your views are expressed in writing (either through your original representations or through a statement in response to the Inspectors' Matters, Issues and Questions) **or** made verbally during the hearing sessions **both methods carry the same weight.**
 - (ii) You can only be heard in relation to your soundness objections to those policies or parts of the Plan as per your representations. Additional statements in response to the Inspector's MIQs and the hearings are not an opportunity to widen the scope of your soundness objections.
 - (iii) It is anticipated that there will be 4 weeks of hearings. A separate draft hearings programme document has been produced and will be updated once the Programme Officer has received confirmation of those who still wish to be heard.
15. **If you wish to be heard you should confirm this in e-mail/writing to the Programme Officer, indicating which session(s), relevant to your representations, you wish to attend, by no later than noon on Monday 11 January 2021.** This includes confirmation from those who indicated in their initial representations that they wish to participate. **Whether your views are**

¹ 334 on the PSV and 127 on the APV

expressed in writing or verbally during the hearing sessions both methods will carry the same weight.

The Policies Map

16. Under the relevant legislation, a local plan is accompanied by a policies map. As part of the examination it is not the role of the Inspectors to directly examine the policies map. However, the policies map is clearly a critical geographic illustration of how the policies will be applied, accordingly potential changes to it will be discussed during the hearing sessions. The Council should maintain a comprehensive list of any changes it proposes to the policies map, or ones that the Inspectors suggest are necessary, throughout the examination process. The list will be published on the examination website and the Inspectors' report may refer to it as necessary.

The Hearings Programme and COVID-19

17. Given the current restrictions and public health measures in relation to the COVID-19 pandemic, the examination hearings for Southwark will be held virtually using Zoom. This will allow for people to be heard either online or via telephone. A significant number of Local Plan examination hearings have already taken place using this technology and it is now a proven means for Inspectors to examine Plans and allow for those with an interest in the Plan to be heard. Separate guidance will be published on participating at virtual events and a test event for participants will be organised.
18. If you have any particular queries or concerns in relation to COVID-19 and your attendance at the hearings please contact the Programme Officer.
19. The draft programme is based on the hearing sessions opening on 23 February 2021.

Procedure at the hearing sessions

20. The hearing sessions for the Examination will normally commence at 10.00 hours for morning sessions and 14.00 hours for afternoon sessions with a break for lunch at about 13.00 hours. In some instances, earlier starts may be programmed (please check the hearings programme). The daily hearings should finish by around 16.30 hours. Short breaks will be taken mid-morning and mid-afternoon.
21. A more detailed programme for the hearings, once the number of participants is confirmed, will be published in advance of the hearings and participants will be notified. When the detailed programme is published, if you have any queries on it, please raise them with the PO. The detailed Programme will be available on the web site, or, on request, in paper form from the PO.
22. Every effort will be made to keep to the Programme, but late changes may be unavoidable. The PO will inform participants of any late changes to the timetable but it will be the responsibility of individual participants to keep themselves up to date and to ensure that they are present at the correct time.

Inspectors' Matters, Issues and Questions

23. The Inspectors have issued their "Matters, Issues and Questions" (MIQs) that the Examination will focus on. These are based on their assessment in terms of soundness and legal compliance having regard to all of the representations made and on-going clarifications with the Council on key matters. The MIQs will form the basis of the discussions at the hearing sessions and the subsequent report.

Procedure at the Hearing Sessions.

24. The hearings will focus primarily on issues of soundness. The hearing format will provide an informal setting for dealing with the issues by way of a discussion led by the Inspectors. Those attending may bring with them professional experts but there will be no formal presentation of evidence, cross-examination or formal submissions. There is no need for participants to have legal representation but where this occurs such advisors will be treated as part of the participant's team, as appropriate.
25. The discussion for each Matter will focus on the Inspectors' issues and questions. The Inspectors will begin by making a few brief comments on the matters to be covered, before inviting participants to make their contribution to the debate in response to the points raised. All participants will have an equal chance to contribute and there will be an opportunity to ask questions. The hearings will be conducted on the basis that everyone taking part has read the relevant documents, although participants will be able to refer to and elaborate upon relevant points, as necessary. The Inspectors will endeavour to progress the hearings in an effective and efficient manner, keeping a tight hand on the discussions and time taken. As part of that process, they will aim to minimise the amount of material to that necessary to come to informed conclusions on the issues. **It is also important that participants should not seek to introduce new material at a hearing session.**
26. At the hearings, the Inspectors will aim to work collaboratively with the Council and all participants in a proactive, pragmatic and problem-solving manner. Those taking part should aim to be co-operative and constructive and be willing to discuss potential changes that would overcome any soundness problems.

Documents and Examination Library

27. The Council has prepared a set of submitted Documents which are available on the Examination website. Further documents may be added as the Examination progresses – for example, in response to a request from the Inspector. **It is important that participants at the hearings are familiar with the relevant submitted documents**, including additional evidence documents and topic papers prepared by the Council on, and since, submission in January 2020.

28. In addition to the examination documents, the website contains copies of the representations on the submitted Plan and any further statements. The PO will assist anyone wishing to see any documents.

Statements responding to the Main Issues and Questions

29. The representations made on the Pre-Submission New Southwark Plan should have included all the points and evidence to substantiate respondents' cases and **it is not necessary to submit further material based on the original representations.**

30. From now on, any further written submissions should be limited to responding to the Inspectors' Main Issues and Questions for the examination.

31. Any written statements in response to the Inspectors' questions should be submitted **no later than 5pm on Wednesday 27 January 2021.** Statements should be submitted in accordance with the guidance in paragraphs 37 and 38 below and submitted to the Programme Officer.

32. When submitting further statements, you should answer only those questions which follow from the representations you have made on the Pre-Submission plan. They should not stray beyond those issues relevant to your original representation. Respondents should focus on:

- Which part of the Plan is unsound.
- Which of the soundness criteria it fails to meet.
- Why it fails (point to the key parts of your original representations).
- How the Plan can be made sound.
- The **precise modifications/wording that you are seeking.**

33. From the Council the Inspectors will need a general response to each of the questions, cross referring to the evidence base as appropriate.

34. Submissions should set out the fundamental elements of cases, since the hearings are not the place for new points or evidence to be presented for the first time. There is no need for verbatim quotations from the Plan or other sources of policy guidance. Supporting material in the form of appendices to statements should be limited to those which are essential and should not contain extracts from any publication that is already before the Examination, such as the documents in the Examination Library. However it is essential that statements indicate clearly the paragraph or page of the document that is being relied on. Anyone submitting appendices with their statements should indicate in their statement which parts are particularly pertinent and on which they are especially relying by reference to page or paragraph numbers.

35. Participants **should not include links to web pages in their statements.** The content of websites can change, and it is important that all parties are clear about what is being referred to.

36. **Statements of Common Ground** are a useful way of narrowing the issues in dispute, thereby assisting the hearings to concentrate on the key issues that

genuinely need discussion. Statements of Common Ground should be submitted by at least the Friday before the relevant hearing session to enable uploading on the website and pre-discussion consideration by the Inspectors.

37. Those submitting further **written statements** (and appendices) should send, where possible, emailed electronic versions to the PO (in Word or PDF format). **Individual statements are required for each matter being addressed. Please do not address multiple matters within the same statement.**
38. Statements should be no longer than **3,000 words per Matter**. The Council may exceed the limit. Any submissions which are excessively long or contain irrelevant or repetitious material may be returned by the PO for editing.
39. All participants should adhere to the timetable for submitting further statements. Normally, the deadline for statements is 2-3 weeks (as per the Inspectorate's Local Plan Procedure Guide). In the case of this plan examination, given the likely disruption to normal working patterns arising from COVID-19, a total of 5 weeks is being allowed for statements to be submitted. If, because of the COVID-19 you are likely to have difficulties submitting a statement by 27 January 2021 please contact the PO at the earliest opportunity. **Late submissions and additional material are unlikely to be accepted**, since this can cause disruption and result in unfairness, and can cause an adjournment of the hearing. If material is not received by the deadlines stated, the PO will assume that you are relying only on the original representations.

Modifications to the Plan

40. Under section 20(7C) of the 2004 Act the Council should request to the Inspectors to recommend any main modifications to the plan that are necessary to make it sound and legally compliant. Participants should note that there is no provision for main modifications to be requested in relation to the legal duty to co-operate: the plan as submitted either meets or fails that test. Minor changes (additional modifications) to the plan (those changes that would not materially affect the application of policy) are a matter for the Council and not subject to examination.
41. The Inspectors will work collaboratively with the Council and other participants to ensure that any necessary main modifications are clearly identified, supported by evidence and are subject to the same process of sustainability appraisal, publicity and opportunity to make representations as the submitted plan.

Site Visits

42. The Inspectors will make unaccompanied site visits to the Plan area during the course of the Examination. If it is considered essential that the Inspectors would need to visit a particular site on an accompanied basis, then this should be raised with the PO as soon as possible.

Close of the Examination

43. The Examination will remain open until the Inspectors' report is submitted to the Council. However, the Inspectors will not accept any further representations or evidence after the hearing sessions have finished unless they specifically request further information. Any late or unsolicited material is likely to be returned.

Submission of Inspectors' Report to the Council

44. The date of the Inspectors' Report will largely depend on the content, extent and length of the Examination. They will aim to confirm the likely date at the end of the final hearing session.

Philip Mileham and *David Spencer*
Inspectors.

10 December 2020