

# **Elmbridge Local Plan 2037**

## **Examination of the Local Plan**

### **Legal Compliance & the Duty to Cooperate**

### **Schedule of Matters, Issue and Questions for Stage 1 of the Examination**

**Inspector**

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## **Stage 1 Hearings**

### **Introduction**

The Inspector wishes to examine the submitted Local Plan in three stages. This document sets out the Matters, Issues and Questions (MIQs) for the stage 1 hearings relating to the legal and procedural requirements of the submitted Plan as well as the Duty to Cooperate. They do not intend to cover every issue raised by representors. They are based on the main issues identified by the Inspector, taking into account the views of the Inspector and other representors.

As the hearing sessions will take place across a number of weeks, matters have been grouped together and the deadline for the submission of statements will be set out within the individual guidance notes. Participants should be aware that the Council have published a number of additional documents to their evidence base which are located on the examination website and which representors may wish to take into account in their responses below. The Council have also produced a schedule of modifications (CD009). Please consider whether these changes would address your concerns(s). Any proposed main modifications which the Inspector considers are necessary for soundness would be subject to formal consultation in due course.

The Inspector's letter (ID-001) raised some initial questions and queries with the Council and the Council responded to this by letters (COUD001, COUD002). A further clarification in connection with corrections to the document numbers issued by the Council was made by the Council on 23 November 2023 [News & Updates](#). Agendas for the individual hearing sessions will be issued before the hearings commence.

Apart from the Council, there is no obligation for participants to produce hearing statements. You should only do so if there is something to add to your original representation, do not repeat what is in your original representation, just provide a cross reference to it where necessary. The Inspector will determine the manner in which discussions take place at the hearings. Further information regarding the Examination, hearings and format of written statements is provided in the Guidance Notes.

### **Matter 1: Legal Compliance and Procedural Requirements (including Duty to Cooperate)**

*Issue 1: Have the relevant legal requirements been met in the preparation of the Plan and is the Plan legally compliant?*

#### **Questions:**

- 1.1 Has the Plan been prepared in accordance with the Duty to Cooperate (DtC) imposed by S33A of the Planning and Compulsory Purchase Act 2004 (as amended)? This applies to the preparation of Local Plans so far as relating to a strategic matter. It is necessary for Local Planning

Authorities to demonstrate how they have complied with the DtC at the Examination stage of their Local Plan.

- 1.2 Has the Council maximised the effectiveness of the Plan by engaging constructively, actively and through an on going basis with the prescribed bodies on the relevant strategic matters identified and how has this been undertaken?
- 1.3 Has the DtC under sections 22(5)(c) and 33A of the Planning and Compulsory Purchase Act 2004 (2004 Act) and Regulation 4 of the Town and Country Planning (Local Planning) (England) Regulations (2012) (2012 Regulations) been complied with, having regard to advice contained in the National Planning Policy Framework (NPPF) and the PPG?
- 1.4 Elmbridge Borough Council has set out within its Statement of Compliance and associated update (CD014 and CD015) and associated appendices (CD016) how it considers it has complied with the DtC. The Council have also submitted a number of Statements of Common Ground (SoCG) in support of this position. What has been the nature of the cooperation undertaken and on what issues has it focused?
- 1.5 In relation to the Strategic Flood Risk Assessment (SFRA):
  - Does the work provided to date accord with the advice contained within paragraphs 159-160 of the Framework?
  - According to the letter of 10 November 2023 from the Council (COUDO002) the Council have been asked to update the SFRA Level 1 Assessment. What is the reason for this?
  - Does the modelling work undertaken appropriately address all of the possible sites within the relevant flood zones? If not why not?
  - Is there a SoCG with the Environment Agency? If not, this should be submitted with the hearing statement.
- 1.6 In what way has the Council complied with the requirements of section 19(3) of the 2004 Act and Regulations 18 and 19 of the Town and Country Planning (Local Planning (England) Regulations 2012 with regard to conducting consultation in accordance with their statement of community involvement (SCI)?

*Issue 2: Are the likely environmental, social and economic effects of the Plan adequately and appropriately assessed by the Habitats Regulations Assessment (HRA) and the Sustainability Appraisal (SA)?*

*Questions:*

- 2.1 Is the Sustainability Appraisal (SA) adequate in terms of:

- its assessment of the likely effects of the Plan's policies and allocations,
  - the consideration of reasonable alternatives, and
  - Giving clear reasons for the preferred approach, explaining why the preferred strategy and policies were selected? (This issue relates to the legal compliance of the SA and HRA only and questions concerning the detail of the SA, outcomes and how it has informed the selection of the spatial strategy will be considered under matter 2).
- 2.2 Has the SA been undertaken as an iterative process to inform the Local Plan preparation, with reference to the flowchart contained within the Planning Practice Guidance?
- 2.3 The HRA and Suitable Alternative Natural Greenspace (SANG) Options Assessment (ENV010) advises that there is enough SANG capacity for the first 10 years of the Plan however an additional 7.5ha of land provision will be required for years 11-15. Reference is made to the possibility of two feasibility options – the extension of Esher Common SANG and the Effingham Common SANG (within Guildford Borough Council).
- What is the status of both of these options? Are these conclusions now superseded by the SANG Options Assessment, September 2023 (ENV011) which refers to the identification of Land at Field Common, Hersham?
  - How does the Council intend to address this shortfall ?
  - Overall, does the Plan provide for an acceptable approach to the provision of SANG for the Plan Period?
- 2.4 The HRA concludes that the Plan will not result in adverse effects on the Thames Basin Heaths SPA regarding atmospheric pollutants. With regards to the air quality modelling work which has been undertaken, ENV003 Air Quality Assessment refers to the assessment of 3 different growth scenarios – 2037 Baseline, 2037 Urban Growth Strategy (Elmbridge Local Plan) and 2037 Urban Growth Strategy with mitigation (Elmbridge Local Plan with a range of transport measures incorporated). Where in the evidence does it set out what is included for the urban growth scenarios and what are the transport measures referred to in the last scenario?

*Issue 3: Whether the Council has complied with the other relevant procedural and legal requirements*

*Questions:*

- 3.1 Chapter 4 of the Plan sets out a number of policies which have been identified to address climate change (CC1, CC2, CC3, CC4 and CC5). In what way will these policies ensure that the development and use of land in the Borough contributes to the mitigation of, and adaptation to, climate change?

- 3.2 In what ways does the Plan seek to ensure that due regard is had to the aims expressed in s149 of the Equality Act 2010 in relation to those who share a 'protected characteristic'?
- 3.3 Is the Plan clear in identify strategic and non-strategic policies? Does the Plan need to be more explicit in this regard? (Noting COUD002 sets out the Council's initial views in relation to this matter).
- 3.4 The key diagram at page 26 of the Plan identifies 3 broad locations for development – Whiteley Village, Brooklands College and Lower Green as set out at policy SS3.
- Are these the broad locations for development as envisaged by paragraph 23 of the Framework?
  - Does the key diagram sufficiently illustrate the broad distribution of development across the Plan area?
  - There does not appear to be any corresponding allocations in relation to these 3 broad locations for development. Is this correct? Does this present a justified and effective approach?
- 3.5 Do the proposed changes to the policies map correctly illustrate geographically the application of the policies within the Plan?
- 3.6 Paragraph 1.2 of the Plan advises that once adopted, the Local Plan will replace the 2011 Core Strategy and 2015 Development Management Plan and a cross reference is made to appendix A1. However, appendix A1 of the submitted Plan only refers to the Core Strategy policies and makes no reference to the Development Management Plan. The Council have provided an update to this in the form of appendix 4 attached to COUD002 and are requested to confirm this will be addressed as a modification to the Plan.
- 3.7 Is the Plan compliant with the Council's Local Development Scheme in relation to its form, scope and timing? What is the role of purpose of the SPD on the TBHSPA referred to within the LDS?

*C Masters*

Inspector

19 December 2023