

## **SOUTH DERBYSHIRE DISTRICT COUNCIL**

### **PLANNING POLICY POSITION STATEMENT (Amended 14<sup>th</sup> December 2006)**

#### **1. Background**

1.1 In January 2002 South Derbyshire District Council published, and consulted upon, a First Deposit Draft Local Plan containing proposals for the development and use of land within its District for the period up to 2011. A Revised Deposit Draft Replacement Local Plan (RDDLP) was placed on deposit for further consultation in January 2003.

1.2 An Inquiry into objections to the RDDLP was held by Mr Chris West LLB MCI Arb MIMgt FCIS Solicitor between 3 June 2003 and 13 February 2004. Due to the onset of ill-health following the formal closure of the Inquiry, however, Mr West was unable to complete his report into the objections heard at the Inquiry. As a result, Mr David Brier BA MA MRTPI was appointed as Joint Inspector and a report into objections, combining the work of Mr West and Mr Brier (the Report) was submitted to the Council on 17 September 2004 and was made public on 1 November 2004.

1.3 After considering the Report, the Council resolved, on 2 December 2004, to modify the RDDLP and formal modifications were published on 7 January 2005. A claim seeking judicial review of the resolution was subsequently filed in the High Court on behalf of RWE Npower PLC and Hallam Land Management Limited, and opposed by both the Council and the First Secretary of State.

1.4 On 19 May 2005 the Council resolved to withdraw the Revised Deposit Draft Local Plan having regard to the following:

- i. Whatever the outcome, the determination of the claim for judicial review would be likely to lead to significant delay in

the adoption of the RDDLP, and would inevitably give rise to uncertainty;

- ii. Under the provisions of the Planning and Compulsory Purchase Act 2004 the adoption of a new Local Development Framework (LDF) is desirable as soon as possible and in any event is required by 2007.

1.5 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) provides that “... if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

1.6 In the light of the withdrawal of the Revised Deposit Draft Local Plan, however, the Council considered it to be appropriate, in order to inform those who apply for planning permission or object to any such application, and with a view to assisting consistency in decision making, to clarify what policies and other material considerations may inform development control decisions in the period prior to the Local Development Framework having progressed to a point where it becomes a material consideration.

1.7 Accordingly, on 11 August 2005, the Council adopted this Planning Policy Position Statement. In November 2005, however, a claim was issued in the High Court seeking a judicial review of the decision of the Council to adopt the Statement. Without prejudice to the Council’s contention that the adoption of the Statement was, and remains, lawful, the Council agreed to amend certain paragraphs of the Statement in relation to the materiality of the Local Plan Inspector’s Report in the determination of applications for planning permission involving housing development, with a view to rendering the continuance of the High Court proceedings unnecessary.

1.8 This revised statement, which has also been updated to take account of revisions to National Planning Policy published since August 2005,

(see paragraph 3.5 below) was therefore adopted by the Council on 14<sup>th</sup> December 2006.

## **2. The Development Plan**

2.1 The Development Plan, for the purposes of Section 38 of the 2004 Act comprises:

- i. The Regional Spatial Strategy for the East Midlands (March 2005)<sup>1</sup>;
- ii. The Derby and Derbyshire Joint Structure Plan (Adopted January 2001)<sup>2</sup>;
- iii. The South Derbyshire Local Plan (Adopted May 1998)<sup>1</sup>;

## **3. Material Considerations**

### *General*

3.1 It has been held that in principle any consideration which relates to the use and development of land is capable of being a planning consideration. This is a very open-ended definition and means that the categories of material considerations are constantly being expanded.

3.2 Some guidance can be derived from the statutory provisions relating to the content of the development plans which specifically refers to the conservation of the natural beauty and amenity of the land; the improvement of the physical environment and the management of traffic. This undoubtedly means that physical amenity factors are material considerations but economic and social considerations can also be material as long as they relate to the use and development of land.

3.3 Certainly the modern authorities make clear that material considerations can include what might be termed as social and economic considerations, including the need for public or affordable housing.

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<sup>1</sup> Currently under review – see paragraph 3.4 below

*Draft Regional Spatial Strategy*

- 3.4 The Draft East Midlands Regional Plan published on 28 September 2006 will be regarded as a material consideration in the determination of any application under the planning Acts.

*Planning Policy Statements/Guidance and Circulars*

- 3.5 The following Statements of National Planning Policy are material considerations in the determination of any application under the planning Acts:

<a href="#">PPS1</a>	Delivering Sustainable Development (February 2005)
<a href="#">PPG 2</a>	Green Belts (January 1995)(amended March 2001)
<a href="#">PPS3</a>	Housing (November 2006)
<a href="#">PPG 4</a>	Industrial and Commercial Development and Small Firms (November 1992)
<a href="#">PPG 5</a>	Simplified Planning Zones (November 1992)
<a href="#">PPS 6</a>	Planning for Town Centres (March 2005)
<a href="#">PPS7</a>	Sustainable Development in Rural Areas (August 2004)
<a href="#">PPG 8</a>	Telecommunications (August 2001)
<a href="#">PPS 9</a>	Biodiversity and Geological Conservation (August 2005)
<a href="#">PPS 10</a>	Planning for Sustainable Waste and Management (July 2005).
<a href="#">PPS 11</a>	Regional Planning (September 2004)
<a href="#">PPS 12</a>	Local Development Frameworks (September 2004)
<a href="#">PPG 13</a>	Transport (March 2001)
<a href="#">PPG 14</a>	Development on Unstable Land (April 1990) Annex 1: Landslides and Planning (April 1990) Annex 2: Subsidence and Planning (February 2002).
<a href="#">PPG 15</a>	Planning and the Historic Environment (September 1994)
<a href="#">PPG 16</a>	Archaeology and Planning (November 1990)
<a href="#">PPG 17</a>	Planning for Open Space, Sport and Recreation (July 2002)
<a href="#">PPG 18</a>	Enforcing Planning Control (December 1991)
<a href="#">PPG 19</a>	Outdoor Advertisement Control (March 1992)

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<sup>2</sup> These Plans are saved under the 2004 Act Transitional Provisions until September 2007

<a href="#">PPG 20</a>	Coastal Planning (September 1992)
<a href="#">PPG 21</a>	Tourism (November 1992)
<a href="#">PPS 22</a>	Renewable Energy (August 2004)
<a href="#">PPS 23</a>	Planning and Pollution Control (November 2004)
<a href="#">PPG 24</a>	Planning and Noise (September 1994)
<a href="#">PPG 25</a>	Development and Flood Risk (July 2001)

3.6 The Council will also have regard to Ministerial Circulars, including, but not limited to, the following:

11/95	The Use of Conditions in Planning Permissions
2/99	Environmental Impact Assessment
05/2005	Planning Obligations
01/2006	Planning for Gypsy and Traveller Caravan Sites

*Supplementary Planning Guidance (SPG)*

3.7 The following SPGs are current and will therefore be used as a material consideration by the council for as long as their parent Local Plan Policy is saved. When appropriate, they will be reviewed in accordance with the new requirements to become SPD in support of a policy in the new Core Strategy and a timetable for their preparation incorporated into a future amended Local Development Scheme:

- i. Housing Design and Layout  
(Adopted Local Plan Housing Policy 11)
- ii. Extending Your Home  
(Adopted Local Plan Housing Policy 13)
- iii. Display of Advertisements  
(Adopted Local Plan Environment Policy 12)
- iv. Trees and Development  
(Adopted Local Plan Environment Policy 9 & Housing Policy 11)
- v. Industrial & Office Design & Layout  
(Adopted Local Plan Employment Policy 8)
- vi. Swadlincote Walking Strategy

- (Adopted Local Plan Transport Policy 7)
- vii. South Derbyshire Cycling Strategy  
(Adopted Local Plan Transport Policy 8)
  - viii. The Provision of Outdoor Playing Space in New Development  
(Adopted Local Plan Policy Recreation & Tourism Policy 4)
  - ix. Historic South Derbyshire  
(Adopted Local Plan Environment Policies 12 & 13)
  - x. Swadlincote Townscape Audit  
(Adopted Local Plan Environment Policy 12)

*Local Plan Inspector's Report*

- 3.8 The Report of Mr Brier into objections to the RDDLP comprises an independent assessment of the policies and proposals for the development and use of land within the District by a duly qualified planning inspector, having regard to representations made by objectors to, and supporters of such policies and proposals, and by the council, together with other material considerations including Planning Policy Guidance and Circulars where appropriate. Mr Brier did not however hold the inquiry and accordingly did not have the benefit of hearing for himself the evidence adduced and submissions made at the inquiry in respect of any objection that was heard at the inquiry.
- 3.9 The Report, having been published by the Council in November 2004, is in the public domain and forms part of the overall planning context for the consideration of proposals for Development within the District, but subject to the qualification made in the last paragraph.
- 3.10 The council may have regard to the Report in determining applications for planning permission submitted in advance of the adoption of the Local Development Framework as a potentially material consideration.
- 3.11 In the light of the publication of the Draft East Midlands Plan in September 2006 and of revised Government Planning Guidance on Housing (PPS3) in November 2006, however, the council no longer

considers the Housing Chapter of the Report<sup>3</sup> to be a material consideration in the determination of applications for planning permission relating to housing development submitted in advance of the adoption of the Local Development Framework.

- 3.12 In considering the weight, if any, to be given to the Report in the determination of any specific planning application (except an application relating to housing development), the council will have regard, inter alia, to the extent to which the Report's findings and conclusions depend upon evidence given and submissions made at the inquiry and to any representations subsequently made in this respect. Where weight has been given to the Report in the determination of any planning application, this will be recorded in the reasons given by the council for granting or refusing planning permission.

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<sup>3</sup> Chapter 4 pages 77 to 230 inclusive