

BLACKPOOL LOCAL PLAN CORE STRATEGY EXAMINATION

NOTE ON POLICY CS23

INTRODUCTION

1. This note sets out the Council's submissions concerning definition of the "main holiday accommodation areas" (MHAAs) and "key promenade frontages" (KPFs) within policy CS23.

CORE STRATEGY POLICY AND THE SPD

2. Policy CS23 sets out the Council's overall approach to achieving an economically viable level of quality holiday accommodation within its area. Within that broad area, distinct approaches are presented in relation to MHAAs, KPFs and the remainder of the authority's area.
3. §7.44 of the supporting text to the CS explains that MHAAs are/will be generally focused around the defined Resort Core (Fig 10) but that there is flexibility to include some areas beyond this boundary as appropriate. CS23 and the supporting text further explain that the precise boundaries of MHAAs and KPS are defined within the Council's Holiday Accommodation SPD (or any subsequent revision thereto).
4. Using the SPD to define precise boundaries in this way is intended to allow important flexibility and an ability to respond quickly in order to add or delete particular parts of an area as appropriate in light of new evidence/changing circumstances following consultation with stakeholders.

LEGAL FRAMEWORK

5. Section 17(3) of the PCPA 2004 provides that:
The local planning authority's local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area.

6. Section 17(7) further provides that regulations may prescribe which documents are to be prepared as LDDs (or if prepared are to be LDDs) and which are also development plan documents (DPDs).
7. The regulations currently in force are the 2012 Town and Country Planning (Local Planning) (England) Regulations 2012¹.
8. R.2(1) defines an SPD as:

...any document of a description referred to in regulation 5 (except an adopted policies map or a statement of community involvement) which is not a local plan

9. A “local plan” is defined by r.2(1) (and r.6) as:

...any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b)

10. Accordingly, by process of elimination, an SPD is a document which does not fall within any of the descriptions in r.5 other than:

- R.5(1)(a)(iii): i.e. a document that contains statements regarding “any environmental, social, design and economic objectives which are relevant of the attainment to the development and use of land mentioned in paragraph (i) [namely a document containing statements concerning the “development and use of land which the local planning authority wish to encourage during any specified period]
- R.5(1)(b): i.e. “where a document mentioned in [r.5(1)(a)] contains policies applying to sites or areas by reference to an

¹ The current Holiday Accommodation SPD was adopted in March 2011, and was therefore adopted under the Town and Country Planning (Local Development) (England) Regulations 2004 rather than the current 2012 Regs. Any revision to the SPD, however, will have to be prepared in accordance with the latter.

Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted”

11. Every document of a description within r.5 is an LDD (r.5(1)). Every description of document within r.5 that is defined as a local plan is also prescribed as a DPD for the purposes of the 2004 Act (r.2(1)). As a result, DPDs and local plans are coterminous in the 2012 Regs.
12. SPDs are therefore LDDs, but not DPDs (r.5(1)). Consequently, SPDs are not subject to the same requirement for independent examination as DPDs/local plans (PCPA 2004, s.20). However, they are still subject to formal rules regarding consultation and other matters (see rr.11-16).
13. Particular formal and substantive requirements are imposed on local plans and SPDs by r.8:
 - (1) A local plan or a supplementary planning document must—
 - (a) contain the date on which the document is adopted; and
 - (b) indicate whether the document is a local plan or a supplementary planning document.
 - (2) A local plan or supplementary planning document must contain a reasoned justification of the policies within it;
 - (3) Any policies contained in a supplementary planning document must not conflict with the adopted development plan.
14. The same rules apply to the revision of local plans and SPDs as to their preparation (PCPA 2005, s.26, and 2012 Regs, r.1(2)).
15. Accordingly, per the 2012 Regs:
 - An SPD may contain statements, including policies, intended to attain the kind of development or use of land which is encouraged by the development plan,
 - Any such policies, however, must not conflict with the development plan

- The policies in an SPD may apply to sites or areas by reference to an OS map
- An SPD prepared under the 2012 Regs is an LDD but is not a DPD
- The preparation of an SPD (or its revision) must therefore be subject to consultation but not to independent examination

CASE LAW

16. It is well recognised that a function of SPDs is to provide further detail in support of development plan policies.

17. However, in **R (JA Pye) v Oxford CC [2001] EWHC 870** Ouseley J also accepted that an SPG could itself set out policies e.g. in relation to affordable housing:

64. However, the power to alter or replace a plan, coupled with the statutory provisions as to its content, cannot be transmuted into a negative obligation to produce nothing else. The duty is to include those policies in the plan. It is not a duty to forswear the production of policies in another document, whether on an interim basis or in parallel with the Local Plan, or instead of a replacement or alteration Local Plan.

65. Where a plan has been adopted and an authority promotes new policies without adopting a statutorily reviewed plan, it does not breach any duty as such; rather it merely has policies to which section 54A does not apply and to which the Secretary of State may decide to attach little weight. There would otherwise be an extraordinary fetter on the ability of a local authority to formulate or express its planning policies: it could not meet changed circumstances, a change of political complexion bearing on planning policy or new government policy other than by a review or alteration of its plan, however long that would take or however urgent the need. A planning authority could not even rely on consultation deposit or yet more advanced draft versions of its plan as policies for development control purposes. The statutory provisions simply do not support such a position.

18. See also **R (Furness) v Brighton and Hove CC [2006] EWHC 2075 (Admin)** where the court (Newman J) held that it was legitimate for a local plan to refer to an SPG, and to delegate detail to the SPG, even where the SPG was yet to be formulated/adopted.
19. The power to include policies in an SPD is, of course, subject to the specific restrictions in the 2012 Regs (i.e. that policies in an SPD must not conflict with those in the development plan and certain kinds of policies, e.g. allocations, have to be put in a DPD/local plan).
20. Nevertheless, it is clear that SPDs can build on policies which have to be in a DPD/local plan by providing more precision. In **R (Howsmoor Developments Ltd) v South Gloucestershire Council [2008] EWHC 262 (Admin)** the Council's Local Plan was held to have allocated a broad area for a multi-modal interchange (MMI) and a pedestrian bridge. The Council produced a development brief showing a more precise location for the MMI and the bridge which prejudiced the opportunities for development on Howsmoor's site (which lay within the broad area). The court (Newman J) held that it had been lawful for the brief to do so since it was not itself making an allocation, but providing further detail on the allocation already made.

CONCLUSION

21. As stated above the purpose (or one of the purposes) of the SPD is to define more precisely two of the areas referred to in CS23. The Council is nevertheless intending to review the precise definition of the SPD boundaries as part of the forthcoming revision of the SPD, upon which interested parties will be consulted and able to make representations. This is consistent with the 2012 Regs themselves and with e.g. **Howsmoor** where a non-DPD (i.e. a development brief) was used to identify more precisely the siting of development within a broad allocation.

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