

The Planning Inspectorate

PINS NOTE 02/2012r2

To: All Inspectors

Date of Issue: 03 February 2012

Last updated: 28 February 2012 – removal of reference to Bassetlaw UDP and inclusion of dates of adoption statements for Thurrock Council & Bassetlaw District Council added to paragraph 2.

Currency: review at 6 months after issue

THURROCK & BASSETLAW: ADOPTION OF CORE STRATEGIES

Background

1. This note gives advice to Inspectors and Procedure Teams concerning matters that have come to light in appeals casework recently and relating to the development plan position in Thurrock and Bassetlaw.
2. When conducting their preparation work Inspectors have discovered issues relating to the policy position which has been set out on a number of recent appeals, namely that these LPAs have adopted their Core Strategies after dealing with an application but before the related appeal has been decided. Thurrock adopted its Core Strategy and also their Development Management DPD on 21 December 2011 and Bassetlaw has adopted its Core Strategy and Development Management DPD on 22 December 2011. In a number of appeal cases, this has not been communicated to PINS and we have had to seek details of the newly adopted policies from the LPA. Those policies in turn need to be seen and addressed by the appellant and any other parties, causing delay and confusion.
3. Some LPAs appear to believe that an appeal will be determined on the basis of the development plan position at the time of the Council's decision, as opposed to that at the time of the Inspector's determination of the appeal. Case law on the weight of updated policy confirms that the latter position is correct: to do otherwise is unlawful.
4. Therefore, should the policy or policies change in the period between refusal and appeal, the Inspector would require such policies as part of the appeal papers, as they would be material to the appeal decision. These may be attached to the questionnaire and addressed in the Council's representations on the appeal, however experience has indicated that this is not always the case. PINS will ask the LPAs concerned to review all current casework to ensure that the correct policy situation has been stated, and in future to make sure that this is done for all casework.

5. We will also advise the LPAs involved that this approach is intended to assist rather than to imply criticism and seeks to avoid charges of unreasonable behaviour, leading to appellants incurring expenditure unnecessarily, which may lead to claims for costs.
6. These matters arose because of the sharp eyes of Inspectors and case officers. We have taken measures to ensure that other Authorities are alert to the issue by posting messages on the Planning Portal and contacting Authorities direct. Inspectors are nonetheless requested to remain vigilant to the matter and, whilst not urging you to look at, let alone rely upon, Council web-sites routinely, it might be that where something in a representation leads you to suppose that the development plan position is at a critical point, visiting the web-site initially may allay or confirm those concerns, thus prompting you to ask the case officer to seek advice of the parties.

Action

7. Inspectors should be aware of the matters that have arisen in these cases and will need to arrange where necessary (via the case officer) for the latest current policies to be supplied by the LPA and copied to the parties. If there is any doubt as to the awareness of the appellant's side of the changed policy position, steps should be taken to ensure they have the opportunity to comment, either at the hearing or inquiry or in written representations cases via a suitable letter sent by the case officer. Inspectors are particularly asked to have due regard to decisions that have been sent to Despatch but have yet to be issued.
8. Please contact XXXX if you have any queries on this Note, XXXX if it concerns appeals casework which you are currently handling or XXXX if it concerns Secretary of State or DPD casework.

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Director of Quality, Strategy and Plans