

Vale of White Horse Local Plan (the “Plan”)

Part 2 Examination

Matter 1. Duty to cooperate and other legal requirements.

Statement by Daniel Scharf MRTPI - Ref 826174

1.0 Introduction

- 1.01 This statement refers to the legal obligations which apply to the soundness of a local plan. There are a number of sections of different Acts conferring duties on local authorities and which are applicable to the contents of development plans.
- 1.02 The statement relates to the principle of sustainable development which is the ‘golden thread’ that runs through plans compliant with the NPPF, and the relevant law, and to the absence of relevant policies or provisions in the Plan. Reference is made to examples of policies in other plans that attempt to meet these requirements.
- 1.03 The Government ratification of the Paris Climate Agreement might qualify as a ‘legal requirement’ and most obviously raises the bar in respect of the need and urgency of reducing carbon emissions. The carbon dioxide in the atmosphere is measured at 411 ppm and moving away from the estimated safe level of 350 ppm. The Government has announced that a third runway will be built at Heathrow on the assumption that emissions from air travel could be offset by other sectors. These factors place enormous pressure on the land use planning system that is responsible for and could be instrumental in the reduction of about 50% of carbon emissions, principally from buildings and road transport.
- (<https://drive.google.com/file/d/0B2VqOwDufNpbeVE3aIBCRnJ4NjA/view>).
- Unless the powers available through development plans are applied to the

full, even these savings, which comprise some of the lower hanging fruit, may not be achieved.

2.0 Legal background

2.01 Planning and Compulsory Purchase Act 2004

Preparation of local development documents

S.19 Development plan documents **must** (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change. (emphasis added)

2.02 The LPA accepts that the Plan fails this test. The Foreword makes no mention of the greatest challenge for land use planning to address, that will be how to reduce carbon emissions by about 60% while proposing 40% growth in housing, employment and associated infrastructure. This absence sets the tone for the Plan. In the Executive Summary 20 policies are listed including those relevant to "Protecting the Environment and Responding (sic) to Climate Change". However, none of these policies actually mitigate against increased carbon emissions. This omission was picked up in the *Sustainability Assessment* that points out that, "No proposed LPP2 Development Policies are focused on climate change mitigation/low carbon development, recognising that a strong policy framework is provided by Core Policy 40 (Sustainable Design and Construction) and Core Policy 41 (Renewable Energy). ... Significant effects are not predicted, recognising that climate change is a global issue (and hence local actions can have only limited effect)."

2.03 However, the SA does not draw out the difference between responding or adapting (ie CP40), and the absence of mitigation policies. Even these policies are worded in a discretionary or permissive manner that would have no real effect. As if to confirm the failure to comply with s.19, AECOM says that this does not matter as local actions don't matter in the context of the global problem.

2.04 **Duty to co-operate in relation to planning of sustainable development**

s.33A

(1) Each person who is—

a) a local planning authority, ...or

(c) a body, or other person, that is prescribed or of a prescribed description, must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,...

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and...

This section is relevant in the case of the Vale of White Horse that is committed to meeting a substantial number of dwellings that it has agreed

with Oxford City Council cannot reasonably be built within the City. The form of policy being proposed by Oxford City Council to comply with s.19 of the 2004 PCPA is at para 5.01 below. It is unacceptable for development serving the same purpose to be built to significantly lower standards in the VWH through the failure to comply with both ss.33A &19. It is also very likely that a significant number of residents will commute to London from Radley, Didcot and Oxford stations. In these circumstances the approach being taken in London to mitigating carbon emissions is also relevant and is included at para 5.03 below.

2.05 **s.39.Sustainable development**

(1) This section applies to any person who or body which exercises any function—

(a)

(b) under Part 2[F2 of this Act] in relation to local development documents;

(2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development.

Mitigating against climate change is a significant element of ‘sustainable development’ and has not been adequately dealt with in the Part 2 Plan (or Part 1). Evidence for this can be found in the housing that has been developed since the policies in the Part 1 Plan have been in operation. Housing has been allowed in car dependent locations and to standards no higher than the current Building Regulations, and with no onsite generation. The fact that surveys suggest that the construction has even failed to meet these inadequate standards (the performance gap) support the need for post occupancy evaluations (see Oxford City policy at para 5.01 below).

3.0 **Planning for Climate Change: a Guide for Local Authorities**

http://www.rtpi.org.uk/media/2852781/TCPA%20RTPI%20planning%20for%20climate%20change%20guide_final.pdf (is taken as the frame for discussing relevant legislation and Government policy).

- 3.01 The failure to build sustainably in accordance with NPPF para 14 (implying standards close to zero carbon) has been a main contributory factor in bringing the term 'sustainable development' and the planning system itself into disrepute. The RTPI and TCPA amongst others have sought to rectify this by describing how the planning system could be instrumental in securing low or zero carbon development. Extracts from its joint publication *Planning for Climate Change: a Guide for Local Authorities* explain how the preparation and approval of development plans could ensure that the planning system plays its important role in the transition to a low/zero carbon economy.
- 3.02 'The Section 19 duty is much more powerful in decision-making than the status of the NPPF, which is guidance, not statute. Where local plan-policy which complies with the duty is challenged by objectors or a planning inspector on the grounds, for example, of viability, they must make clear how the plan would comply with the duty if the policy were to be removed. Whatever new policy may emerge, compliance with the legal duty on mitigation must logically mean compliance with the provisions of the target regime of the Climate Change Act.'(p 9). For the Plan to be sound it must firstly meet the legal requirements. This could and should be achieved by also being consistent with the NPPF.
- 3.03 'Although the current National Planning Policy Framework contains strong policy on climate change, delivery on the ground through local plans has been relatively poor, particularly on issues such as carbon dioxide emissions reduction and heat stress, which have received relatively little attention. In 2016, the TCPA research report *Planning for the Climate Challenge?* revealed that: 'local plans in England are not dealing with carbon dioxide emissions reduction effectively, nor are they consistently delivering the adaptation actions necessary to secure the long-term social and economic resilience of local communities... The large-scale failure to implement the clear requirements of national planning policy is a striking finding, ...'(p4).' The planning system needs to change if carbon reduction targets are to be met and to regain public confidence.
- 3.04 *Paris Agreement , United Nations, Dec. 2015*. Ratified by the UK Government

http://unfccc.int/files/essential_background/convention/application/pdf/english_pariis_agreement.pdf

The 1.5 degree aspiration (the UK accepts that serious and possibly irreversible harm could be caused through even 2 degrees of warming) is extremely challenging. It is extremely unlikely to be achieved globally if relatively highly developed countries like the UK do not reduce their emissions to zero by about 2050, and the earlier the better. It is equally unlikely that the UK will meet its targets without the proactive involvement of the land use planning system, contrary to the advice of AECOM being relied on in the Plan, that local actions do not matter.

3.05 Some sectors have particular challenges in reducing emissions; agriculture, power generation, industry and the military. There is a role for the land use planning system in ensuring that the building sector becomes carbon negative to compensate for the failures of other sectors (including air transport and shipping). The Plan should also include policies to secure a transition to a zero carbon (at point of use) transport system.

3.06 Whilst the '*The Clean Growth Strategy: Leading the Way to a Low Carbon Future*. HM Government, Oct. 2017' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651916/BEIS_The_Clean_Growth_online_12.10.17.pdf might not have the status of legislation it does represent the latest Government position that is far more ambitious than the Plan in terms of carbon emissions.

3.07 The **Climate Change Act 2008** forms the legal basis for carbon budgets to which the Government is committed. ie

	Carbon budget level	Reduction below 1990 levels
	MtCO ₂ e*	%
Third carbon budget (2018 to 2022)	2,544	37 by 2020
Fourth carbon budget (2023 to 2027)	1,950	51 by 2025
Fifth carbon budget (2028 to 2032)	1,725	57 by 2030

For monitoring purposes a sound Plan must specify the emissions reductions being secured through policies in the Plan (the Sustainability Appraisal suggests that there are none) and ensure that these policies are consistent with national budgets.

- 3.08 *Adapting to Climate Change in the UK: Measuring Progress. Progress Report. Committee on Climate Change, Adaptation Sub-Committee, Jul. 2011.*
<https://www.theccc.org.uk/publication/adapting-to-climate-change-in-the-uk-measuring-progress-2nd-progress-report-2011>. Without looking closely at land use planning, the Committee is sceptical that current Government policies are consistent with the above carbon reduction budgets – particularly in the absence of carbon capture and storage. On that latter point the Plan could have but has not included policies that would enable carbon sequestration through land use and forestry.

3.09 **Planning and Energy Act 2008**

‘Sets out powers for local authorities to require a proportion of the energy need related to new development to be sourced in the locality of the development, through renewable or low-carbon generation. This enables what is known as a Merton-style approach which can be used to develop zero-carbon policy. This required new developments to generate at least 10% of their energy needs from on-site renewable energy equipment, in order to help reduce annual carbon dioxide emissions in the built environment. The policy then spread out nationally, but with the expectation of the commitment to zero carbon in 2016 the policy was considered redundant. After the cancellation of zero-carbon policy, the Merton rule approach remains a powerful way to achieve energy-positive or zero-carbon development.’(p 10)

- 3.10 ‘The Act allows local authorities and communities to reap the benefits of local renewable energy generation and supports the adoption of Merton-style renewable energy requirements, provided they are consistent with national policy. National policy is the 2015 Written Ministerial Statement, which allows LPAs to set Code for Sustainable Homes level 4 energy standards.’(p11) In failing to require development to achieve a standard

above the current Building Regulations the Plan is not compliant with this Act.

- 3.11 **National Planning Policy Framework** 'NPPF core planning principles. The NPPF makes clear that climate change is a core planning principle. Paragraph 17 states: 'planning should... support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy)'. To be in conformity with the NPPF, local plans should reflect this principle, ensuring that planning policy clearly and comprehensively deals with climate change mitigation and adaptation.'(p13)'
- 3.12 'Mitigation and renewable energy: The NPPF sets out a positive vision of local plans securing 'radical reductions in greenhouse gas emissions' (paragraph 93). Footnote 16 in Paragraph 94 of the NPPF makes clear that decisions should be taken in line with the 2008 Climate Change Act, which requires an 80% reduction of carbon dioxide emissions by 2050. Since compliance with national law and policy is central to the soundness test of local plans, compliance with the Climate Change Act is a clear obligation on both the Planning Inspectorate and LPAs.' (p 13)
- 3.13 A Written Ministerial Statement May 2015) in which provision in relation to energy performance was made as follows:
'For the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations **until** commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill.'(emphasis added)

‘Consequently, both the TCPA and the RTPI (and other stakeholders) believe that LPAs are able to set standards above the building regulatory minimum. A 19% reduction in carbon dioxide emissions on the regulatory minimum is a sound ‘standard’ for LPAs to aim for (provided there is an evidence base to support viability, etc.)’ (p 21). Once a zero carbon or even a CSH B standard is specified in the development plan, it would be open to a developer to include points regarding viability as ‘other material considerations’. This would prove to be difficult given the relatively low level of extra costs that are involved in raising the build standard from the current Part M by 19% or even the 40% referred to in other plans. Building to a lower standard would not be ‘sustainable’ and benefit from the presumption in the NPPF, given that such buildings would need to be upgraded at significantly greater costs by about 2050 (having been responsible for unnecessary amounts of carbon meanwhile).

4.0 Support for the transition

- 4.01 When considering whether a development should be found to benefit from the ‘presumption’ in the NPPF an appeal inspector found that even by building to CSH level 4 the proposed development would not “consume its own smoke”(APP/N2345/A/12/2169598) that would be left for future generations to deal with. The Plan should be found to be unsound if development could accord with the policies but not be carbon neutral (or negative).
- 4.02 It should also be noted that the RICS has published 'Whole life carbon assessment for the built environment'.(http://www.rics.org/Global/Whole_life_carbon_assessment_for_the_BE_%20PG_guidance_2017.pdf). One of the objectives of the report is, "The incorporation of such targets into sustainable development policies for the built environment, planning requirements,...". This very thorough contribution to reducing carbon emissions from built development will gather dust unless planning requirements expressed in development plan policies comply with the above legislation.

- 4.03 The requirements in the Self-build and Custom Housebuilding Act 2015 (as amended) to provide serviced plots to those on the statutory register held by the local planning authority will not be met unless there are much stronger policies in the Plan (eg reserving multiple plots from larger developments). In the absence of these policies the contribution to the overall housing supply intended by Parliament will not be achieved.

5.0 Other Plans

5.01 Oxford Local Plan

a) All new development proposals **must reduce carbon emissions by 40% (of regulated energy use)** compared to the minimum base set by building regulations by: .

(i) providing the highest standards of sustainable design and energy efficiency in accordance with the requirements of climate change science, the IPPC, the UK Climate Change Act 2008, NPPF, VOWHDC Local Plan 2031, and in line with Oxford City Council's preferred options in the Local Plan (2016-2036) for energy performance or carbon emissions targets, or with superseding guidance and legislation where legally required or where higher standards are set. ;

(ii) incorporating renewable energy and heating sources. These may include solar PV and thermal heating and or connection to a future district heating network, heat pumps, sustainable biomass'

(iii) appointing an expert energy advisor to ensure implementation of, and provide post construction evidence to the District Council of compliance with, the above conditions. The latter shall include:

- * thermal images of the building, thermal bridging and air tightness for every building;
- * commissioning records of heating, ventilation systems and low carbon systems (solar thermal, heat pumps etc.);
- * smart metering and feedback from residents.

b) Non-residential development proposals will be supported where they achieve a level of performance equivalent to BREEAM excellent or above (such as Passivhaus standards), to be demonstrated at the planning application stage **with a minimum energy/carbon performance of 40% reduction compared with Building Regs base case.**

Not only would development within the City take place on land of higher value than that in the VWH, but residents would know that the structure had been properly specified and inspected in construction. There would be no concerns about fuel poverty or retrofitting. There can be no justification for development of a lower standard to be able to accord with a development plan in an adjacent area.

5.02 **London Plan**

‘The Mayor seeks to achieve an overall reduction in London’s carbon dioxide emissions of 60 per cent (below 1990 levels) by 2025. It is expected that the GLA Group, London boroughs and other organisations will contribute to meeting this strategic reduction target, and the GLA will monitor progress towards its achievement annually.’ It is logical for ‘other organisations’ to include commuter areas such as the VWH and for these districts to have equivalent ambition and standards (see s33A of the PCPA 2004).

GG6 To help London become a more efficient and resilient city, those involved in planning and development must:

A. seek to improve energy efficiency and support the move towards a low carbon circular economy, contributing towards London becoming a zero carbon city by 2050.

5.03 **‘Zero -carbon commitment**

Policy SI2: Minimising greenhouse gas emissions

'A - Major development should be net zero-carbon. This means reducing carbon dioxide emissions from construction and operation, and minimising both annual and peak energy demand in accordance with the following energy hierarchy:

- 1) Be lean: use less energy and manage demand during construction and operation.
- 2) Be clean: exploit local energy resources (such as secondary heat) and supply energy efficiently and cleanly. Development in Heat Network Priority Areas should follow the heating hierarchy in Policy SI3 Energy infrastructure.
- 3) Be green: generate, store and use renewable energy on-site.

B - Major development should include a detailed energy strategy to demonstrate how the zero-carbon target will be met within the framework of the energy hierarchy and will be expected to monitor and report on energy performance.

C - In meeting the zero-carbon target a minimum on-site reduction of at least 35 per cent beyond Building Regulations is expected. Residential development should aim to achieve 10 per cent, and non-residential development should aim to achieve 15 per cent through energy efficiency measures. Where it is clearly demonstrated that the zero-carbon target cannot be fully achieved on-site, any shortfall should be provided:

- 1) through a cash in lieu contribution to the relevant borough's carbon offset fund, and/or
- 2) off-site provided that an alternative proposal is identified and delivery is certain.

D - Boroughs must establish and administer a carbon offset fund. Offset fund payments must be ring-fenced to implement projects that deliver greenhouse gas reductions. The operation of offset funds should be monitored and reported on annually.'

There can be no justification for the VWH to be operating at lower standards that would, by definition, result in unsustainable development.

6.0 Summary

- 6.01 The VWH seems to have prepared a plan which will not contribute to the achievement of sustainable development (see housing and transport policies) or to mitigate carbon emissions. This seems to have been a deliberate policy (in the face of representations and confirmed by the sustainability assessment) that would result in development which would be unsustainable (ie needing to be upgraded by 2050) and at a lower standard than those being built in at least two of the areas of housing need to which the housing in the VWH would be contributing.
- 6.02 For the Plan to be sound it would need to specify a level of energy efficiency above the current Building Regulations (between 19% and 40%) and also address the unmitigated emissions (eg on site generation) and ensure that these measures are being installed and overall emissions are being monitored.
- 6.03 There are missed opportunities policies relating to transport (eg the low carbon transition to AVs and EVs) and land use (eg forest gardening and soil protection) that could have demonstrated that the legal requirements referred to above were at least being recognized if not adequately addressed.
- 6.04 The Government has produced a Clean Growth Strategy, a 25 Year Environment Plan, and has signed up to the Paris Climate Agreement and the Sustainable Development Goals, all of which have higher carbon reduction targets and aspirations than would be achieved by the deposit Plan.