

**Matter 1
Issue (a)
Representor No 6426
Persimmon Homes
Severn Valley**

BATH PLACEMAKING PLAN EXAMINATION

August 2016

Statements for the Bath Placemaking Plan Examination

Matter 1 – Procedural Requirements

Issue: Whether the Placemaking Plan meets the Legal Process and Requirements?

- (a) Has the plan been prepared in accordance with the Local Development Scheme?

Since the submission version of the Bath Placemaking Plan was published in December 2015 and comments submitted by Persimmon Homes Severn Valley we note that the Local Development Scheme has been further revised. At the time of our comments the LDS timetable identified three plans – the Placemaking Plan DPD, the Core Strategy Partial Review DPD and the Core Strategy Review DPD. However in the revised version (CD/PMP/G19), the summary timetable now only includes the Placemaking Plan DPD and the Core Strategy Review DPD in addition to the Joint Spatial Plan and various other DPDs and SPDs. The timetable is supported by profiles of the two plans identified, the Placemaking Plan DPD and the Core Strategy Review DPD.

However, it is disappointing that having been revised, there is still lack of clarity relating to changes to the Core Strategy and the combination of the two plans. The purpose of the Placemaking Plan DPD is set out as follows, *'this is a place focused plan, containing both site allocations and updating planning policies for the Development Management. The Placemaking Plan constitutes Part II of the Local Plan.'* There is absolutely no reference to this plan including any alteration to the Core Strategy text or policies.

In respect of the Core Strategy DPD Review the LDS says *'currently the Core Strategy constitutes Part I of the Local Plan but it will be incorporated with the Placemaking Plan in due course to form a single Local Plan.'* This appears in the profile for the Core Strategy Review, where the timetable set out is to commence the plan in December 2016 and work towards adoption in 2018.

Therefore, the LDS identifies that the incorporation of the Placemaking Plan with the Core Strategy to form a single Local Plan is intended to be achieved in the preparation of the Core Strategy DPD Review, not as part of the current preparation of the Placemaking Plan. Therefore, in our view, the current Placemaking Plan does not accord with the organisational arrangements for the two plans set out in the LDS.

However, this failure is further compounded by the fact that the resulting Submission Draft Placemaking Plan, is not just a combined Core Strategy and Placemaking Plan, but that it includes changes to the Core Strategy that could not have anticipated from looking at the LDS. Whilst some of these are minor changes, there are other more significant changes to the Core Strategy both to policies and text (for example to Policy RA1 and to paragraph 509 relating to major development sites in the Green Belt). Such changes are not the function of:

1. A *'Place-Focus Plan containing both site allocations and updated policies for Development Management'* as identified in the LDS; and
2. A plan which complements the strategic framework in the Core Strategy, as set out in paragraph 9 of the plan.

This position is further confirmed by the Placemaking itself. Indeed its title is the '*Bath and North East Somerset Placemaking Plan.*' In the introduction, paragraph 5 separately sets out the role of '*the Core Strategy Part I of the Local Plan*' and '*the Placemaking Plan, Part II of the Local Plan*' which '*will cover site allocations, detailed Development Management Policies as well as local designations for different places within the district.*' Finally '*details of other documents under preparation are set out in the Local Development Scheme*' but there are none which set out the current approach of a combine Placemaking Plan and partially reviewed Core Strategy.

As set out above paragraph 9 says the Placemaking Plan '*complements the Strategic Framework the **Core Strategy** by setting out detailed development and design principles for identified and allocated development sites, as well as a range of policies for managing development and protecting valued assets across Bath and North East Somerset.*' (Our emphasis)

The appropriate relationship between different plans within and forming '*the development plan*' of a Local Planning Authority has been provided in an up-to-date Court of Appeal Judgment of the 29th April 2016 in the case of Oxted Residential Development and Tandridge District Council (Case Number C1/2015/0851) attached Appendix 1 to this statement. Whilst the precise challenge in that case concerned the adoption of the Local Plan Part II which was not informed by objectively assessed housing needs of the district, the legal principles established apply directly to the position of the Bath and North East Somerset Placemaking Plan.

The Oxted case was also considered by the Inspector currently examining the West Berkshire Housing Site Allocations DPD in July 2016. Again we recognise the precise circumstances in West Berkshire are different. There, the case supports the Council's position that it does not need to withdraw its Part II plan. To make it absolutely clear in respect of the BANES Placemaking Plan, we are not suggesting the plan needs to be withdrawn, simply that the changes it makes to the Core Strategy are unlawful and should be deleted.

We refer particularly to paragraphs 31, 32, 38, 39 and 40 of the Oxted Judgment. From this we highlight four issues which are directly parallel and applicable to the position in respect of the BANES Placemaking Plan:

1. At paragraph 31 of the Judgment, a Development Plan may comprise several documents and there is nothing to prevent adoption of a Development Plan document '*simply because the Core Strategy may require revision.*' Clearly by including amendments to the Core Strategy, including policies, in the Placemaking Plan, the Council have concluded that the Core Strategy does require revision despite the fact that this is not identified as a purpose of the Placemaking Plan either in the LDS or the plan itself.
2. Following on from this, the quotation in paragraph 40 from the Inspector's Report on the original Oxted Appeal, which was unsuccessfully challenged, that the Council accepted some elements of the Core Strategy needed updating and that the Council had agreed to undertake a review (where in that case work had already started). Again, the BANES LDS has identified a Core Strategy Review and a timetable for carrying it out.
3. At paragraph 38, to highlight the concept of a modular structure for the Development Plan, constructed from a series of individual elements to be read together but prepared at different times. Therefore in this

case if there are no changes required to the Core Strategy it is not necessary to combine the 2 documents and thus can remain as separate documents.

4. At paragraph 39, to highlight that the scope of the Local Plan Part II in the Oxted Case is plain from the text in its introduction and from the policies it contains, in the same way that paragraphs 5 and 9 are clear about the purpose of the BANES Placemaking Plan.

Conclusion

We conclude as follows:

1. That the BANES Placemaking Plan has not been prepared in accordance with the LDS.
2. That the contents of the BANES Placemaking Plan go beyond its role and function to '*complement the Strategic Framework in the Core Strategy*' set out in its introduction.
3. That the changes the Bath Placemaking Plan makes to the Core Strategy are unlawful and should be deleted in accordance with the Court of Appeal Judgment in Oxted Residential Ltd v Tandridge District Council.
4. That the Council should modify the plan to remove these inconsistencies.

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Appendix 1

Oxted Residential Development and Tandridge District Council document.