

# Development Plan

## Practice Note 6

PRACTICE NOTE

06

### Soundness

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Department for

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An Roinn

**Bonneagair**

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## Preamble

This Development Plan Practice Note is designed to guide planning officers and relevant users through the key requirements for soundness of local development plans and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the **Planning Act (Northern Ireland) 2011** [the 2011 Act] and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note<sup>1</sup> and legislation the provisions of the legislation will prevail.

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<sup>1</sup> Please ensure you are considering the most up to date version of Practice Note 6 available on the Planning Portal at [www.planningni.gov.uk](http://www.planningni.gov.uk).

## 1.0 Introduction

- 1.1 A key feature of the local development plan system is ‘soundness’ which requires the development plan document to be tested in terms of content, conformity and the process by which it is produced, at independent examination (IE). The concept of testing the ‘soundness’ of local development plans is based upon established practice in England and Wales. The tests of soundness are based upon three categories which relate to how the development plan document (DPD) has been produced, the alignment of the DPD with central government regional plans, policy and guidance, and the coherence, consistency and effectiveness of the content of the DPD.
- 1.2 It is considered that the introduction of this approach will provide a more effective basis for testing the DPD at independent examination which will focus on the soundness of the DPD as a whole rather than on individual representations on specific plan proposals, designations and zonings. In addition, specific requirements for the submission of representations e.g. requirement to demonstrate how any proposed changes meet the tests of soundness and sustainability objectives of the DPD, may also help reduce the number of speculative and unsubstantiated representations received. Consequently, the intention is that this creates a shorter and less adversarial IE process and speeds up the delivery of local development plans to provide greater clarity for developers and the community.
- 1.3 The introduction of a ‘soundness’ based approach for testing development plans will therefore have implications for many aspects of the plan process ranging from preparation and consultation right through to the IE and adoption of the DPD.

## 2.0 Legislative context

2.1 **Part 2 of the 2011 Act** sets out the general requirements for local development plans. **Section 10 of the 2011 Act** deals with the IE of the DPD. A council must submit every DPD i.e. Plan Strategy and Local Policies Plan to the Department for IE. In particular, Section 10(2)(b) states that a council must not submit a DPD to the Department unless it considers that the document is ready for IE. Section 10(6) provides that the purpose of the IE is to determine, in respect of the DPD:

- a) whether it satisfies the requirements relating to the preparation of the DPD; and
- b) whether it is sound.

2.2 Furthermore, **Regulations 20 to 22 of the Planning (Local Development Plan) Regulations (NI) 2015 (LDP Regulations)** set out the requirements for the submission of documents for IE, the availability of submission documents and the publicity of the IE.

## 3.0 Tests of soundness for development plan documents

3.1 Soundness involves testing the principles, content and preparation process of the DPD against a list of key criteria. The following tests aim to provide a framework to assess the soundness of the DPD, whilst taking account of all relevant procedural, legislative and policy considerations.

### Procedural tests

- P1 Has the DPD been prepared in accordance with the council's timetable and the Statement of Community Involvement?
- P2 Has the council prepared its Preferred Options Paper and taken into account any representations made?
- P3 Has the DPD been subject to sustainability appraisal including Strategic Environmental Assessment?

- P4 Did the council comply with the regulations on the form and content of its DPD and procedure for preparing the DPD?

#### Consistency tests

- C1 Did the council take account of the Regional Development Strategy?
- C2 Did the council take account of its Community Plan?
- C3 Did the council take account of policy and guidance issued by the Department?
- C4 Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?

#### Coherence and effectiveness tests

- CE1 The DPD sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant it is not in conflict with the DPDs of neighbouring councils;
- CE2 The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base;
- CE3 There are clear mechanisms for implementation and monitoring; and
- CE4 It is reasonably flexible to enable it to deal with changing circumstances.

### **4.0 Consideration of soundness in the preparation of a DPD**

- 4.1 The purpose of an IE in respect of a DPD is to determine whether it satisfies certain legislative requirements and whether it is sound. As a council must not submit a DPD to the Department unless it considers it to be ready for IE, it must ensure that the DPD will stand up to examination and be shown to be sound. There is no presumption of soundness in legislation for a DPD. Under section 10 of the 2011 Act it is for the independent examiner to consider whether a DPD is sound or not and report thereon to the Department for consideration after the IE. Those who wish to make representations should

focus on why the DPD is not sound and how any proposed changes make the DPD sound.

- 4.2 Furthermore, as the tests of soundness relate to content, conformity and the process by which a DPD is produced, it is imperative that a council takes all necessary steps to incorporate soundness throughout the DPD process rather than leaving it to the final stages of preparation. This will help prevent the DPD being found unsound as a result of independent examination which will have time and resource implications for all parties involved in the LDP process.
- 4.3 A council should therefore rigorously assess their DPD throughout the course of its preparation to ensure that it meets the tests of soundness. Whilst not a mandatory requirement, it is considered good practice to use a checklist to provide a comprehensive and reliable record or audit of the evidence to demonstrate how a council considers it has met each of the tests of soundness. It is recommended that this information is recorded at each stage of DPD preparation when relevant evidence is readily at hand and also to spread this work over the course of the preparation process rather than compiling it at the same time as the submission of the DPD. This will also help to highlight areas which may need further consideration and ensure that the DPD is as robust as possible prior to the submission of the DPD to the Department for IE.
- 4.4 A checklist may also help to speed up the IE process and make it more efficient by linking the relevant evidence used to justify particular aspects of soundness being scrutinised by the independent examiner, particularly if a large volume of information needs to be considered. Furthermore, to assist access to the relevant evidence, the checklist may include hyperlinks to the appropriate document. Appendix 1 provides an example of a checklist from Planning Inspectorate Wales which sets out key questions and evidence which may be used to test the soundness of a DPD. A council may wish to adapt this checklist to show how their DPD meets each test of soundness as well as all relevant legislative requirements for the DPD. Further to paragraph

1.2 of the Introduction which states that the concept of testing the ‘soundness’ of local development plans is based upon established practice in England and Wales, it is important to note that they have somewhat different legislative requirements and soundness tests in relation to LDPs and the evidence base needed to support a LDP in Northern Ireland will not, therefore, be exactly the same as in those jurisdictions.

## **5.0 Criteria in meeting the tests of soundness**

5.1 Whilst the term ‘sound’ is not defined in the 2011 Act, it may be considered in this context within its ordinary meaning of ‘showing good judgement’ and ‘able to be trusted’ and within the context of fulfilling the expectations of legislation<sup>2</sup>. The following section deals with each of the tests of soundness in more detail. Whilst, possible evidence is suggested for each test, these examples do not constitute an inclusive and definitive list. It is a matter for a council to decide the most appropriate evidence to demonstrate how it has met each test of soundness.

5.2 Although the tests of soundness are based upon three categories – procedural, consistency, coherence and effectiveness, there is a degree of overlap in terms of the criteria used for each test. The purpose of the IE will be to examine how the DPD meets each test and determine whether the DPD is sound as a whole.

### **5.3 Procedural Tests**

P1 Has the DPD been prepared in accordance with the council’s timetable and the Statement of Community Involvement?

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<sup>2</sup> Planning Inspectorate Wales: A Guide to the Examination of Local Development Plans.

### *Timetable*

5.3.1 The timetable is a public statement of a council's programme for the production of its local development plan. Section 7 of the 2011 Act requires a council to prepare, and keep under review, a timetable for the preparation and adoption of the local development plan. Sections 8(4)(a) and 9(4)(a) require both the Plan Strategy and Local Policies Plan to be prepared in accordance with the timetable. Regulations 5 to 8 of the LDP Regulations set out the requirements for the preparation, form and content, agreement and availability of the timetable.

5.3.2 In addition to legislative requirements, a council should also ensure that the preparation of the DPD has met the indicative dates as set out in the timetable<sup>3</sup>. In circumstances, where there have been delays to the timetable, a council should provide reasons for the delay and provide a revised timetable where relevant. It is recommended that a council prepares a chronological timeline to set out the key dates, particularly for the stages of preparation and public consultation on the DPD. This should demonstrate how it has met its requirements as set out in the timetable and also provide part of the evidence base for this test of soundness. Examples of evidence may include letters of engagement with the PAC / consultation bodies, public notices, and delivery / public consultation of key stages of the DPD within the required timescale.

### *Statement of Community Involvement*

5.3.3 The purpose of the Statement of Community Involvement (SCI)<sup>4</sup> is to outline how a council proposes to engage the community and stakeholders in exercising its planning functions. Section 4 of the 2011 Act requires a council to prepare a SCI. Sections 8(4)(b) and 9(4)(b) require both the Plan Strategy and Local Policies Plan to be prepared in accordance with the SCI. The Planning (Statement of Community Involvement) Regulations (NI) 2015 set

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<sup>3</sup> Development Plan Practice Note 3: Timetable.

<sup>4</sup> Development Plan Practice Note 2: Statement of Community Involvement.

out the requirements for the form and content, consultation and agreement of the SCI.

5.3.4 In addition to legislative requirements, a council should be able to demonstrate how it has met the proposals for community and stakeholder involvement as set out in the SCI. This may include key dates for inspection and public consultation on the preferred options paper and Plan Strategy or Local Policies Plan, various methods undertaken to engage with community and stakeholders, public notices, relevant technical supplements for the DPD e.g. community consultation participation report. Furthermore, if a council has undertaken anything in addition to the minimum statutory requirements such as public consultation on the SCI itself, it must also be able to demonstrate that it has met these requirements at IE.

P2 Has the council prepared its Preferred Options Paper (POP) and taken into account any representations made?

5.3.5 A council must prepare a POP<sup>5</sup> to inform interested parties and individuals on the matters that may have a direct effect on the plan area and to set out possible options for development as well as a council's preferred option. Section 3 of the 2011 Act Survey of District requires a council to keep under review the matters which may be expected to affect the development of its district or the planning of that development. Part 3 of the LDP Regulations sets out the requirements for the preparation of the POP.

5.3.6 Regulation 9 requires a council to engage with the consultation bodies for the purpose of generating alternative strategies and options and to take account of any comments received in the preparation of the POP. Regulations 10 and 11 set out the requirements in relation to availability and public consultation on the POP, respectively.

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<sup>5</sup> Development Plan Practice Note 5 Preferred Options Paper.

5.3.7 A council must be able to demonstrate that it has met legislative requirements for the preparation, availability and public consultation on the POP. In preparing the POP, a council should be able to provide evidence of engagement with the consultation bodies and the public as well as how it has considered any comments and representations received as a result of this process.

5.3.8 Furthermore, in terms of the content of the POP, a council should be able to justify its preferred options by referring to evidence such as baseline information obtained through survey, research and the consultation and engagement process. An audit of this information may be provided through technical supplements. In addition, the assessment of alternatives or options as part of the sustainability appraisal of the DPD will also help to justify a council's preferred options as it should set out an objective appraisal process taking account of the evidence base and objectives for the LDP. The process of how a council arrived at its preferred options should be made evident to the independent examiner in order to determine if the POP and a council's consideration of representations meets the test of soundness.

P3 Has the DPD been subject to sustainability appraisal including Strategic Environmental Assessment?

5.3.9 The purpose of SA<sup>6</sup> is to promote sustainable development through the integration of social, environmental and economic considerations into the preparation plans and programmes such as local development plans. Section 5 of the 2011 Act requires any person who exercises any function in relation to local development plans to do so with the objective of furthering sustainable development. Furthermore, Sections 8(6) and 9(7) of the 2011 Act 2011 require an appraisal of sustainability to be carried out for the Plan Strategy and Local Policies Plan, respectively.

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<sup>6</sup> Development Plan Practice Note 4 Sustainability Appraisal incorporating Strategic Environmental Assessment.

- 5.3.10 As the sustainability appraisal (SA) for each DPD will incorporate an assessment of environmental effects, it must also comply with the requirements of the European Directive 2001/42/EC and on the assessment of effects of certain plans and programmes on the environment (SEA Directive) and the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004.
- 5.3.11 A council must be able to demonstrate that it has met all the legislative requirements regarding SA and SEA. In particular, a council should provide evidence of engagement with the consultation body regarding to the scope and level of detail of the assessment (Scoping Report), SA reports for each stage preparation leading up to the draft DPD, keys dates / public notices for public consultation and details of how any responses received were considered in the preparation of the DPD.
- 5.3.12 In addition, as both the SA/SEA assessment and content of the SA/SEA report will provide a fundamental part of the evidence base, it is likely that they will be examined throughout the course of the IE if considered relevant to other tests of soundness. A council must therefore ensure that the SA/SEA justifies the policies and proposals of the DPD and is robust enough to withstand detailed scrutiny at independent examination.

P4 Did the council comply with the regulations on the form and content of its DPD and procedure for preparing the DPD?

#### *Form and Content of the DPD*

- 5.3.13 Sections 8(2) and 9(2) of the 2011 Act set out requirements for the content of the Plan Strategy<sup>7</sup> and Local Policies Plan<sup>8</sup>, respectively and also provide for the making of regulations. Part 4 of the LDP Regulations set out the minimum

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<sup>7</sup> Development Plan Practice Notes 7 Plan Strategy.

<sup>8</sup> Development Plan Practice Notes 8 Local Policies Plan.

standards and more detailed requirements regarding the form and content of the DPD.

- 5.3.14 Regulations 12 and 13 of the LDP Regulations set out statutory requirements in terms of form and content of a DPD. These requirements should be clearly set out in the PS and LPP in order to enable the independent examiner to assess the DPD as efficiently as possible. In particular the DPD should indicate those parts of the document which comprise policies and those parts which comprise reasoned justification. A council must also ensure that the DPD meets the requirements with regard to the proposal maps which should set out the policies and proposals of the DPD spatially.
- 5.3.15 Furthermore, Regulation 14 of the LDP Regulations requires a council to take additional matters into account with the objective of preventing major accidents and limiting the consequences of such accidents by giving due consideration to Directive 96/82EC on the control of major –accident hazards involving dangerous substances. A council must be able to provide evidence of its consideration of all relevant issues in the preparation of the DPD. Technical supplements and comments from relevant consultation bodies may be used as the evidence base to justify the content of the DPD.
- 5.3.16 Schedule 2 of the EAPP (NI) Regulations 2004 sets out the information to be included in an environmental report. A council must consider this information as part of its sustainability appraisal in the preparation of its DPD. It is recommended that a council's consideration of all relevant matters and the implications these may have for the DPD is included as part of its evidence base provided by the SA report.

#### *Procedure for preparing the DPD*

- 5.3.17 Part 5 of the LDP Regulations sets out the minimum standards and more detailed requirements regarding the procedure for the preparation of the DPD. A council should undertake a thorough check to ensure that all procedural and

information requirements have been met and provide evidence to demonstrate this accordingly.

- 5.3.18 Regulations 15 to 23 set out detailed requirements in relation to the availability of the DPD, public consultation, representations<sup>9</sup>, site specific policy representations, independent examination and procedures for withdrawal. It is recommended that a council prepares a chronological timeline to set out the key dates, particularly for the availability and public consultation on the DPD. This should demonstrate how it has met its statutory requirements by providing evidence, including copies of all public notices for each stage of the DPD procedure and details of where the DPD was made available for inspection. A council must also provide evidence that it has made representations available for inspection, undertaken public consultation on site specific policy representations where necessary and made counter representations available for inspection.
- 5.3.19 Regulations 20 to 22 set out the procedures and information required for the submission of documents for IE, the availability of submission documents and the publicity of the IE. Regulation 20(2) lists the documents required for the submission of the DPD for IE, including the SA report and SCI. A council must also prepare a summary of the main issues raised by representations to the POP and show how these issues have been taken into account in the preparation of the DPD.
- 5.3.20 A council may also submit any other information which it considers relevant. This will be particularly important in instances where it may be necessary to justify a specific policy for the local area or a departure from regional policy. The information provided should demonstrate to the independent examiner that a council has gone through proper preparation procedures, public consultation, and considered the environmental, social and economic effects of the policies and proposals in the preparation of its DPD.

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<sup>9</sup> Development Plan Practice Notes 9 Submission and Handling of Representations.

5.3.21 Regulation 21 and 22 of the LDP Regulations set out the requirements for the availability of submission documents and the publicity of the independent examination. Following submission of the DPD and associated documents to the Department, a council must make the submission documents available for inspection and notify consultation bodies and any person who has made a representation and / or counter representation to the DPD. A council should provide evidence that it has undertaken these requirements such as key dates for inspection, any public notices and copies of correspondence concerning the above matters. Development Plan Regulation 22 deals with the publicity of the IE to ensure that all parties involved are notified of the time and place and the details of the independent examiner within the required timescale.

#### 5.4 Consistency tests

C1 Did the council take account of the Regional Development Strategy?

5.4.1 The RDS sets the context in which to make policy and development decisions in order to achieve sustainable development throughout the region. It contains regional strategic guidance to provide long term policy direction in relation to the economy, society and environment and spatial framework guidance tailored to each component of the spatial planning framework. Sections 8(5)(a) and 9(6)(a) of the 2011 Act require a council to take account of the RDS in the preparation of the Plan Strategy and Local Policies Plan, respectively.

5.4.2 A council should ensure that the objectives, policies and proposals contained within the DPD have taken account of the regional and spatial guidance in the RDS and provide evidence as to how this has been undertaken. In preparing the DPD, a council should be able to show how policy formulation and development has taken account of the RDS. Therefore, relevant strategic guidance of the RDS should be referred to throughout the DPD to show the linkage between policies and proposals and how they help to implement the

higher level vision, aims and objectives of the RDS. Technical supplements may also be used as the evidence base to justify the content of the DPD.

- 5.4.3 Further evidence should also be provided by the SA report which must contain a review of the RDS as well as other regional and local policies, plans and programmes which provided the context for the preparation of the plan and influenced the options considered. In addition, there may be instances where, due to local circumstances, a council has included policies and proposals which may not be consistent with the RDS. In this case, a council must be able to provide robust evidence of a local justification for departure.

C2 Did the council take account of its Community Plan?

- 5.4.4 The Local Government Act 2014 introduces a statutory link between the community plan and a council's LDP. Section 77(2) of the Local Government Act requires a council to take account of its 'current community plan' in that it amends Section 8 and 9 of the 2011 Act to reflect this requirement. Therefore, in preparing the Plan Strategy or Local Policies Plan, a council must take account of the relevant community plan.
- 5.4.5 Community planning is a process whereby councils, statutory bodies and communities themselves work together to develop and implement a shared vision for their area. It involves service and function delivery to produce a community plan that sets out the direction of a council area which promotes community cohesion and improves the quality of life for all its citizens. The DPD will provide a spatial expression to the community plan, thereby linking public and private sector investment through the land use planning system.
- 5.4.6 In preparing the DPD, a council must be able to demonstrate that it has considered the Community Plan. A council should ensure that the vision and objectives of the DPD reflect the spatial aspirations of the Community Plan. It may also be useful if a council provides evidence of engagement with both the local planning and community planning process to show joint working and co-ordinated delivery mechanisms. Further evidence should also be provided by

the council's review of regional and local policies, plans and programmes in the SA report. This exercise should help to highlight any implications which the Community Plan may have for the preparation of a council's DPD.

C3 Did the council take account of policy and guidance issued by the Department?

- 5.4.7 In order to secure the orderly and consistent development of land and the planning of that development, the Department must issue policy in general conformity with the RDS and exercise its functions with the objective of furthering sustainable development. Policy and advice contained in guidance issued by the Department aims to provide a more detailed framework to set the context and ensure a consistency of approach for the preparation of a council's LDP.
- 5.4.8 Sections 8(5)(b) and 9(6)(b) of the 2011 Act require a council to take account of any policy or advice contained in guidance issued by the Department in the preparation of the Plan Strategy and Local Policies Plan, respectively. In addition, Section 20 also requires a council to have regard to any guidance issued by the Department and the Executive Office<sup>10</sup> in exercising any function under Part 2 Local Development Plans.
- 5.4.9 These statutory requirements aim to ensure that the DPD takes account of a range of policies and advice which cover the council area, particularly at the regional level. The Strategic Planning Policy Statement (SPPS)<sup>11</sup> sets out regional planning policy for the two tier planning system. It covers issues such as the purpose of planning; new overarching core planning principles, the role of Development Plans and Development Management; sustainable development, community engagement in planning. Whilst the SPPS consolidates existing subject planning policies, policy direction also provided

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<sup>10</sup> Under the Departments Act (Northern Ireland) 2016 and the Departments (2016 Act) (Commencement) Order (Northern Ireland) 2016, on 8<sup>th</sup> May 2016, the Office of the First Minister and deputy First Minister (OFMdFM) was renamed the Executive Office, the Department for Regional Development was renamed the Department for Infrastructure and the Department of the Environment was dissolved, so amending section 20(a), (b) and (c) of the 2011 Act.

<sup>11</sup> The SPPS was published on 28 September 2015.

by land-use planning policies within extant Planning Policy Statements and remaining provisions within the Planning Strategy for Rural Northern Ireland continue to be in force until such times as they are replaced. A council will therefore be required to ensure that it has taken account of the prevailing regional planning policy context in the preparation of its DPD.

5.4.10 A council should therefore be able to show how policy formulation and development has taken account of the SPPS and any other relevant policy and guidance prepared by the Department. Relevant regional policy should be referred to throughout the DPD to show the linkage between policies and proposals and how they help to implement the core principles, aims and objectives. Technical supplements may also be used as the evidence base to justify the content of the DPD.

5.4.11 Further evidence should also be provided by a council's review of regional and local policies, plans and programmes in the SA report. This exercise should help to highlight any implications which regional policy may have for the preparation of a council's DPD.

C4 Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining councils' district?

5.4.12 In the preparation of the Plan Strategy or Local Policies Plan, Sections 8(5)(c) and 9(6)(c) of the 2011 Act require a council to take account of any such matters as the Department may prescribe or in a particular case direct. In addition Sections 8 and 9 also provide that the council may have regard to such other information and consideration as appear to be relevant. In addition, Section 9(5) also requires that a council's LPP must be consistent with the PS.

5.4.13 As a Plan Strategy and a Local Policies Plan contain objectives, strategic and local policies which may have implications beyond its council area, a council must have regard to other relevant plans, policies and strategies, not only in its own district but also in its adjoining area. As such, a council may have

regard to other plans and topic based strategies e.g. transport, recreation and economic development, as considered relevant and which may also have cross boundary implications for its neighbouring council. The preparation of the DPD also provides an opportunity to integrate aims and objectives of these other plans and strategies to facilitate an integrated and co-ordinated approach to the implementation of higher level regional planning aims and objectives.

- 5.4.14 Linkage to relevant plans, policies and strategies will be particularly important in helping to justify policies and proposals which reflect local circumstances pertaining to a council and its adjoining area. In order to demonstrate that a council has had regard to this information, it may wish to provide evidence of consultations with adjoining councils and / or protocols for working together to ensure that any issues which need to be taken in account have been duly considered in the preparation of the DPD.
- 5.4.15 Furthermore, representations submitted from bodies regarding the consideration of relevant plans, policies and strategies and how a council has subsequently dealt with these may also help to demonstrate how it has considered this information in the preparation of its POP and DPD.
- 5.4.16 The principle source of evidence will be provided by the content of a council's DPD and that of an adjoining council district. The DPDs will be examined to determine if they are compatible and ensure that any cross boundary issues are addressed appropriately. Technical supplements may also be used to refer to the range of documents and evidence base considered to justify the policies and proposals contained in the DPD. Further evidence should also be provided by a council's review of plans, policies and strategies in the SA report as well as transboundary consultations where applicable. This exercise should help to highlight any implications which relevant plans, policies and strategies may have for the preparation of a council's DPD.

## 5.5 Coherence and effectiveness tests

CE1 The DPD sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant it is not in conflict with the DPDs of neighbouring councils.

5.5.1 Sections 8(2) and 9(2) of the 2011 Act set out requirements for the content of the Plan Strategy and Local Policies Plan, respectively. Part 4 of the LDP Regulations set out the minimum standards and more detailed requirements regarding the form and content of the DPD.

5.5.2 A council should clearly set out a coherent strategy to deliver aims and objectives for its area in the DPD. The strategy should be ambitious but realistic setting out the long term vision for a council area. It should be concise and distinctive to a council area, reflect the challenges that a council area faces and incorporate the aims and objectives of its agreed community plan.

5.5.3 The objectives of the DPD should be informed by an analysis of the characteristics of the area and must take into account the RDS, any policy or advice contained in guidance issued by the Department as well as any such matters as considered relevant. Furthermore, in the preparation of the Local Policies Plan, a council must ensure that it is consistent with the Plan Strategy for the area.

5.5.4 A council should also ensure that the objectives of the DPD are integrated with, add value to and assist the delivery of national, regional and local policies and strategies both within and beyond its council area. A council should therefore also ensure that its strategy is not in conflict with the DPDs of neighbouring councils by assessing any likely cross boundary implications of policies and proposals contained in its DPD to help ensure its compatibility with that of the neighbouring council and facilitate an integrated and co-ordinated approach to the implementation of higher level regional planning aims and objectives.

- 5.5.5 The delivery of a council's strategy will also depend upon the implementation and integrity of the policies and proposals contained in the DPD. Policies and proposals should show how a council's vision, aims and objectives for the future development of the area are to be achieved. A council must clearly show how policies and proposals relate to the objectives of its DPD and provide reasoned justification which must be readily distinguishable in the DPD document. Furthermore, the objectives, policies and proposals within the DPD should be assessed to help ensure that they are consistent between themselves.
- 5.5.6 Evidence for the coherence of the strategy will mainly be provided by the DPD. The DPD should set out the objectives for the strategy and how these are to be achieved by policies and proposals for a council area. Policies and proposals must also be supported by reasoned justification. Technical supplements may also be used to refer to the range of documents and evidence base considered to justify the policies and proposals contained in the DPD.
- 5.5.7 Further evidence should also be provided by a council's review of plans, policies and strategies in the SA report including any transboundary consultations where applicable. This exercise should help to highlight any implications which relevant plans, policies and strategies may have for the preparation of a council's DPD and also help to ensure that a council's DPD strategy is not in conflict with that of a neighbouring council. A council should also consider the compatibility of its objectives and policies and proposals to help to reduce the potential for conflicting issues arising during the implementation and delivery of its DPD.

CE2 The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base.

- 5.5.8 Sections 8 and 9 of the 2011 Act set out requirements for the preparation of the Plan Strategy and Local Policies Plan, respectively. In particular, Sections

8(6) and 9(7) require a council to carry out a sustainability appraisal and prepare a report of its findings. In doing so, a council must also incorporate the requirements of the European Directive 2001/42/EC on the assessment of effects of certain plans and programmes on the environment (SEA Directive). The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 (EAPP (NI)) set out more detailed requirements for SEA.

- 5.5.9 Similar to SEA, SA must be carried out from the outset and in parallel with the DPD and LDP preparation process. It should be an integral part of the plan making process and perform a key role in providing a sound evidence base for the plan which will play an important part in demonstrating that the DPD is 'sound'.
- 5.5.10 In order for the strategy, policies and allocations of the DPD to be realistic and appropriate, a council must be able to justify them by providing evidence of how they will help to deliver higher level objectives of the DPD in light of the alternatives available. As the council identifies the main issues which need to be addressed by the LDP, it should develop its alternative approaches to deal with them early in the plan making process. The consideration of relevant alternatives should be an iterative process and run concurrently with the LDP process from preparation of the POP right through to the LPP. Alternatives considered should be consistent with other aspects of the plan as well higher level plans and policies such as the RDS and SPPS and, in the case of the Local Policies Plan, the Plan Strategy. A council must also consider its Community Plan in the preparation of the DPD.
- 5.5.11 The process of SA should help to provide a sound evidence base to justify a council's POP and DPDs and make the decision making process more transparent. It should assist with identification of the appropriate alternatives by comparing them against the baseline environmental, economic and social characteristics of the area and also the likely situation without the implementation of the plan. The SA process also requires a council to take account of other policies, plans, programmes and sustainability objectives

relevant to the plan e.g. RDS and SPPS and where appropriate, this can be used as further justification for the strategy, policies and allocations of a council's DPD.

- 5.5.12 The SA report which accompanies the DPD will provide a fundamental part of the evidence base. Therefore the information requirements for the SA report should be clearly set out for ease of reference particularly for the IE. Baseline data, a council's review of the relevant plans and programmes, sustainability issues and problems will help justify the aims and objectives of the DPD as well as inform the development of a council's alternatives for its strategy, policies and proposals for the plan area. The SA will also help to demonstrate that the strategy, policies and proposals of DPD are the most appropriate through an objective and transparent process which should show how a council arrived at its decisions in the preparation of its DPD.
- 5.5.13 Furthermore, where a balance needs to be struck between competing alternatives, a council must be able to demonstrate how it arrived at its decision and provide relevant evidence as required. As well as SA, additional evidence may consist of responses from consultation bodies, the public consultation process and research / fact finding undertaken by a council. In addition, depending on issues raised, technical supplements may provide a useful source of evidence to justify the strategy, policies and proposals of the DPD.

CE3 There are clear mechanisms for implementation and monitoring.

- 5.5.14 Section 21 of the 2011 Act requires a council to prepare an annual monitoring report (AMR) which must contain information on the extent to which the objectives of the LDP are being achieved. Regulation 25 of the LDP Regulations sets out the minimum standards and more detailed requirements regarding the annual monitoring report.
- 5.5.15 Monitoring is essential for the delivery of the DPD and should provide the basis to trigger any requirement to amend the strategy, policies and proposals

of the DPD. As a minimum, the AMR should report on the amount of housing land and number of units built together with the amount of economic land in a council's area. A council may also include other information as it considers relevant. Where a policy is not being implemented, the AMR should state the reasons for this and set out the steps to secure its implementation.

- 5.5.16 The DPD must show how objectives, policies and proposals for the area will be implemented. Arrangements for monitoring and implementation which may include setting up appropriate structures to monitor and assess development on housing and economic land and ensuring appropriate delivery mechanisms e.g. working groups are set up to ensure that performance targets and measures are met. It may also be necessary to set out the infrastructure that will be required to support the DPD and ensure that it remains in line with prevailing regional policy, other relevant plans and programmes both within and beyond a council area.
- 5.5.17 Furthermore, a council must also undertake monitoring requirements as part of the SA and EQIA of its DPD. Where possible, a council may wish to use existing monitoring arrangements and information to reduce duplication of effort and maximise the efficient use of resources.

CE4 It is reasonably flexible to enable it to deal with changing circumstances.

- 5.5.18 As a LDP will provide a long term planning framework for a council area, a DPD is unlikely to be effective if it cannot deal with unexpected or changing circumstances. Social, economic and environmental issues may change over time and the DPD should be able to handle this uncertainty by alternative strategies if considered necessary.
- 5.5.19 A council should test and monitor the effectiveness of its policies and proposals to determine the extent to which LDP and DPD objectives are being achieved. Furthermore where a policy is not being implemented, the AMR must identify that policy and include a statement of the reasons why that

policy is not being implemented and the steps that a council intend to take to secure its implementation. Alternatively, a council may prepare a revision of the LDP to replace or amend the policy. Therefore, the AMR will provide an important source of evidence to ascertain if policy changes or a review of the DPD will be required.

5.5.20 Furthermore, the assessment of alternatives as part of the SA<sup>12</sup> will also provide a source of evidence to demonstrate that a council has considered the implications and outcomes of the relevant alternatives for the DPD. Development Plan Practice Note 4 provides guidance on the assessment of alternatives as part of SA of the POP and DPD.

## **6.0 The role of the Department**

6.1 Under Regulation 2 of the LDP Regulations, the Department is listed as a 'consultation body'. As a minimum, a council is required to meet these requirements in relation to 'consultation bodies', regarding engagement and consultation at particular stages and aspects of the LDP process. This will ensure that the Department is kept informed and up to date throughout the preparation process. In particular, these requirements will also facilitate the oversight role of the Department to ensure that a DPD has taken account of the RDS and other Departmental policy and guidance.

6.2 Furthermore in keeping with its oversight role, the Department may also advise a council in the interest of good practice. This may provide an opportunity for a council to address any issues or make an amendment to the DPD prior to its formal submission to the Department for IE. Once a council submits a DPD to the Department for IE, it may only withdraw it following a direction from the Department. Therefore, in order to avoid a protracted plan process, it is recommended that a council and the Department adopt a good practice approach of both formal and informal engagement throughout the LDP process.

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<sup>12</sup> Development Plan Practice Note 4 Sustainability Appraisal incorporating Strategic Environmental Assessment.

## **7.0 What happens if a DPD is found unsound?**

- 7.1 Where the independent examiner considers that statutory requirements and tests of soundness have not been met and where these issues cannot be addressed through modifications, it will recommend that the DPD should be withdrawn. If the Department agrees, it will direct a council to withdraw the DPD in accordance with Section 12 of the 2011 Act and Regulation 23 of the LDP Regulations.
- 7.2 Following this and depending upon the nature of the issues, a council must amend the DPD and repeat the relevant statutory requirements as set out in the 2011 Act and LDP Regulations. Only when a council considers that it has met these requirements, it must resubmit the amended DPD to the Department for IE. As this will undoubtedly lengthen and prolong the LDP process, a council must ensure that all statutory requirements and tests of soundness have been addressed accordingly in the first instance to ensure that the integrity of the DPD can withstand detailed scrutiny by IE.

## **Appendix 1 – An example of a checklist from Planning Inspectorate Wales**

### **Procedural Tests**

#### **Test 1: Prepared in accordance with the Local Development Scheme (LDS)**

##### Key Questions:

- Is the DPD identified in the authority's LDS?
- Have the details set out in the LDS such as the role, rationale or scope of the DPD been met?

##### Evidence:

The LPA's LDS and their self assessment of soundness where produced. A DPD which was not included in the LPA's LDS should not come forward to examination.

#### **Test 2: Prepared in compliance with SCI (where adopted) or 2004 Regulations (where not adopted)**

##### Key Questions:

- Having regard to the nature of the DPD, have all of the relevant consultation/ participation procedures set out in the SCI been carried out?
- If no SCI exists, have the minimum requirements of the Town and Country Planning (Local Development) (England) Regulations 2004 been met?

##### Evidence:

The LPA'S SCI; the Consultation Statement produced for the DPD which should show how the LPA has carried out its consultation procedures and how these relate to their SCI or the Regulations; the Regulations; and the LPA's self assessment of soundness where produced.

### **Test 3: Plans and policies subject to SA**

#### Key Question:

- Has SA been carried out in relation to the particular DPD in question?

#### Evidence:

The SA Report. The outcome of the SA process will be tested under the later tests of coherence, consistency and effectiveness.

### **Conformity Tests**

#### **Test 4: Spatial plan consistent with national policy in general conformity (with the RSS for the Region (or SDS in London), and had proper regard to any relevant plans, policies and strategies relating to the area and adjoining area**

*Part a: Is the spatial plan which has regard to other relevant plans, policies and strategies.*

#### Key Questions:

- Does the DPD reflect the guidance on spatial planning which is set out in national policy?
- Has adequate account been taken of the relationship between the proposals in the DPD and other requirements, such as those of utility companies and agencies providing services in the area including their future plans or strategy and any requirements for land and premises, which should be prepared in parallel?
- It is clear how the DPD relates to other plans and strategies such as local transport plans which will influence the delivery of policies and proposals in the plan?

- In two tier areas, does the DPD integrate effectively with plans prepared by the county council/ district council?

Evidence:

Depending on the nature of the DPD, a range of documents may be relevant, similar to those set out under test 7 below. The LPA's self-assessment of soundness, where produced, should indicate how this test has been met. Of particular significance will be representations from bodies that consider that the DPD either does not have sufficient regard to other relevant strategies for which they are responsible.

*Part b: It is consistent with national planning policy.*

Key Question:

- Does the DPD contain any policies or proposals which are not consistent with national planning policy and, if so, is there a local justification?

Evidence:

PPGN's and PPS's and any representations from the relevant GO. Any local studies or other information which provide the basis for departing from national planning policy.

*Part c: The plan is in general conformity with RSS.*

Key Question:

- Does the DPD contain any policies or proposals which are not in general conformity with the RSS? If so, is there a local justification?

Evidence:

The RSS and any representations from the Regional Planning Body. Any local studies or other information which provide the basis for departing from regional policy.

**Test 5: Regard to authority's community strategy**Key Question:

- Does the DPD have regard to the Community Strategy by setting out policies and proposals which deliver key components of that strategy so far as they are consistent with or in general conformity with higher level planning policy and relate to the use and development of land?

Evidence:

The Community Strategy and any representations from the Local Strategic Partnership, where they have prepared the Community Strategy.

**Coherence, Consistency and Effectiveness Tests**

**Test 6: Strategies/policies/allocations in the DPD are consistent within and between DPDs prepared by the authority and by neighbouring authorities, where cross boundary issues are relevant.**

Key Questions:

- Do the policies clearly relate to the objectives in the submitted DPD or a related DPD (eg. The Core Strategy)?
- Are the policy objectives within the DPD themselves consistent?
- Is it clear how the DPD relates to other plans in the authority's LDF and to other relevant plans prepared by neighbouring authorities?
- Where there are overlaps, are these consistent/ complimentary?

- Are there any obvious gaps in the coverage of the DPD having regard to its purpose and the relevant requirements set out in national PPS's?
- Is it clear how any cross boundary issues are addressed?

Evidence:

The LPA's LDF and neighbouring authorities LDF's will be the principle source of evidence. The DPD should be clear what its purpose is and should show how the policies and proposals within it relate to other parts of The LDF and where relevant neighbouring authorities LDF. The DPD should explain, where necessary, why there may be perceived inconsistencies.

**Test 7: Strategies/policies/allocations represent most appropriate in all circumstances, having considered the relevant alternatives, and are founded on a robust and credible evidence base.**

Key Questions:

- Is it clear that the LPA considered all reasonable options and alternatives in preparing the DPD?
- Are the assumptions in the DPD set out clearly and are they supported by evidence?
- Does the evidence clearly support the policies in the DPD?
- Is the evidence robust and credible – ie. has it been prepared in accordance with national policy and good practice guidance?
- Where a balance has been struck in taking decisions between competing alternatives – is it clear how those decisions have been taken?

Evidence:

SA Report - this will be a fundamental part of the evidence base.

Depending on the nature of the DPD and the character of the area, there will be a range of other evidence required to assess this test. For Example; a Core Strategy's evidence may involve: urban capacity studies, urban and

rural regeneration strategies, local housing assessments, regional and local housing and economic strategies, local transport plans; health and education programmes and strategies; infrastructure providers' investment programmes and strategies; environmental programmes and assessments of waste management needs. However the aforementioned are suggested examples only and do not constitute a definitive and inclusive list.

### **Test 8: Clear mechanisms for monitoring and review**

#### Key Questions:

- Does the DPD contain targets and milestones which relate to the delivery of the policies, including housing trajectories where the DPD contains housing allocations?
- Is it clear how these are to be measured and these linked to the production of the AMR?
- Are the delivery mechanisms and timescale for implementation for the policies clearly identified?
- Is it clear who is intended to implement each policy? Where the actions required to implement policy are outside the direct control of the LPA is there evidence that there is the necessary commitment from the relevant organisation to implementation of policies?
- Do the processes for measuring the success of the DPD accord with national guidance?
- Does the DPD explain how its key policy objectives will be achieved?

#### Evidence:

Similar to that required to assess test 7. In relation to site-specific allocations, however, this may include viability assessments of alternative sites. Relevant evidence might include reports or representations by main public and private sector delivery bodies.

## **Test 9: Reasonably flexible to enable the DPD to deal with changing circumstances**

### Key Questions:

- Is the DPD flexible enough to respond to a variety of, or unexpected changes in, circumstances?
- Are there DC policies written in a generic form to enable them to provide a robust and consistent framework for considering planning applications?

### Evidence:

The AMR will be an important source of evidence. Sensitivity testing of the policies in the DPD to potential changes in the assumptions that underpin them (such as economic growth or transport provision), and other sources of evidence for the DPD (see test 7) would help to demonstrate the robustness of the DPD to change.

Where there is a significant risk, the LPA should identify contingency options that will achieve the objectives of the DPD in the event that the policy in question cannot be delivered. The DPD should set out the basis for the contingencies identified.

*Source: 'A Guide to the Examination of Local Development Plans', Planning Inspectorate Wales.*



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