

Rossendale Local Plan Examination

MATTERS, ISSUES AND QUESTIONS (MIQs)

Hearing Statement of Richard W. Lester

Matter 1 – Legal and procedural matters

Issue - Has the Plan been prepared in accordance with statutory procedures and Regulations?

Question f) Has the Plan been prepared in accordance with the Council's Local Development Scheme?

Response: No, for the following reasons.

F.1 Section 19(1) of the Planning and Compulsory Purchase Act 2004 requires development plan documents to be prepared in accordance with the Local Development Scheme (LDS). If the Council does not have an approved LDS, it is impossible for any draft Local Plan (LP) to comply with section 19(1).

F.2 A deficiency in the content of the LDS might render it impossible for the LP to comply with section 19(1).

F.3 The question arises: Has the Council approved an LDS? Until December 2018 its purported LDS was entitled "Local Development Scheme and Proposals Map Timetable (December 2016): https://www.rossendale.gov.uk/download/downloads/id/13582/local_development_scheme.pdf

F.4 The Council website stated https://www.rossendale.gov.uk/info/210148/local_plan/10629/emerging_local_plan/3 :

Local Development Scheme (Local Plan Timetable)

The latest Local Plan timetable was agreed at the Council meeting held on Wednesday 14th December 2016. The timetable called Local Development Scheme is available to view [link to page mentioned in paragraph 1.3 above].

F.5 The minutes of that Council meeting https://www.rossendale.gov.uk/download/meetings/id/8663/minutes_of_the_meeting_14th_december_2016 do not at any point use the expression "Local Development Scheme". It is true that the document mentioned in paragraph F.3 above was appended to the report and that the minutes recite that the Leader of the Council introduced the report and informed members of 'the next stages in the

process' and 'the outline of the timetable from two meetings ago' and that 'there was a need to revisit the timescales and therefore the timetable had changed'. However, the resolutions, as minuted, were simply:

1. *That Council supports the publication of the draft Local Plan in mid-2017 for public consultation purposes.*
2. *All future minor amendments to the Plan to be delegated to the Planning Manager in consultation with the Portfolio Holder.*

The stated Reason for Decision was:

The Local Plan is a key policy document for the Borough. It is important that it is evidence based (sic) to support the choices that will need to be made.

F.6 There is nothing in that minute to suggest that members gave any consideration to the LDS beyond the date for regulation 18 consultation on the draft LP. There is therefore nothing to support the claim on the website that the LDS was approved on 14 December 2016.

F.7 In August 2018 the Council was asked, pursuant to freedom of information legislation, to provide all minutes and/or records of decision(s) to approve their current LDS. In reply, under reference JW/FOI/6588, the Council provided links to the records of their Cabinet meetings in various months between July 2004 and February 2010 and of Full Council meetings in February 2005, August 2005, February 2007, February 2010, February 2012, December 2014, February 2016 and July 2018. Notably, the reply did not refer to the Council meeting of 14 December 2016., although it did contain also the link referred to at paragraph F.3 above. This reply must be taken as confirming that, contrary to the claim on the Council website, there was no approval of the LDS on that date.

F.8 The position up to December 2018 was therefore either that there was no approved LDS or that the current LDS was actually the last one to be approved before December 2016. That was the document dated January 2016 and submitted to the Council meeting of 24 February 2016 https://www.rossendale.gov.uk/download/meetings/id/8247/fl_rossendale_local_plan, which was in similar format, but with different dates in its timetables, to the one dated December 2016. The Council resolved https://www.rossendale.gov.uk/download/meetings/id/8304/minutes_of_the_meeting_24th_february_2016 to:

Agree the Local Development Scheme (LDS) as the timetable for production of the new Local Plan.

The difficulty with treating the document dated January 2016 as the current LDS up to December 2018 is that it was no longer readily available on the Council website, that it was not up-to-date and that the Council had publicised a different document as its LDS. Absent an LDS, it is submitted that it was impossible for any iteration of the emerging LP to comply with section 19(1) of the Act of 2004.

F.9 In case those submissions be not accepted, the following observations are made about the purported LDS, which apply equally to the versions dated January 2016 and December 2016 and one that emerged in December 2018. It refers to the LP and to Community

Infrastructure Levy (CIL). CIL is not relevant for present purposes. As to the LP, all that the LDS contains is a coloured timetable and a similarly coloured key specifying the relevant regulations in the Town and Country Planning (Local Planning) (England) Regulations 2012.

F.10 What an LDS is required by section 15 of the Act of 2004, but in Rossendale's case fails, to do is to specify the local development documents which are to be development plan documents and the subject matter and geographical area to which each development plan document is to relate. These matters cannot be left to inference - section 15 uses the word "specify".

F.11 Section 15(7) of the Planning and Compulsory Purchase Act 2004 provides:

to bring the scheme into effect, the local planning authority must resolve that the scheme is to have effect and in the resolution specify the date from which the scheme is to have effect.

F.12 Until December 2018 the last time that the Council passed a resolution in compliance with section 15(7) was 29 February 2012 for an LDS for the period 2012 to 2015. That LDS was already well out of date by the time of the Regulation 18 consultation. The draft Local Plan was not being prepared in compliance with any LDS.

F.13 On 12th December 2018 a new LDS was approved by the Council, "to be effective from" the next day. Titled 'Local Development Scheme and Proposals Map Timetable 2018 to 2021', it is similar to its predecessors, but with different dates. The Council website, says, in the same words as before, that it is effective from 13th December 2018.

F.14 Having regard to the phraseology on the website, noted at paragraphs F.4 and F.13 above, It is difficult to resist the conclusion that the Council hold the erroneous belief that the LDS and a plan production timetable are one and the same. The fact is that the latter is merely one component of the former.

F.15 It is submitted that the lack of specificity in any version of the purported LDS as to subject matter and geographical area makes it impossible for the emerging LP to conform with it.

F.16 Therefore, the draft LP must be considered to be not legally compliant and must be rejected.

Richard W. Lester

29th August 2019