

Note from the Inspector regarding the Localism Act

Everything I'm about to say is based on the Planning Inspectorate's current understanding of the Act which came into effect on 15 January. This is one of a number of examinations that will be among the first to test that understanding which can only really be developed over time as the courts becomes involved which they very surely will. What I have said in the Guidance Notes about the outcomes of the examination has to some extent been overtaken. I set out part of this in a letter to the Council which is on the web site as CD13.52. As I understand the new s20(7C), if the Council asks me to recommend modifications to the Plan to make it legally compliant and sound I must do so. Once such a request is made, a recommendation that the plan is unsound cannot be made. The Council has yet to make such a request and I would urge that it does not do so until the end of session 7 at the earliest. The Council will already be aware from my very first communication in October (CD13.1), my issues and questions in November and my session agendas of last week that I have some serious concerns about the soundness of the submitted plan. I very much hope that during the sessions over the next two weeks we will all be able to work together to reach some kind of consensus as to the modifications that need to be made to the plan. During session 7 both the Council and I will have to consider whether we are in a position to know what modifications we think are required to make the plan sound. My hope would be that a schedule of these might be available from the Council. However, it may be the case that we will have to adjourn that session and complete it at a later date when both I and the Council have had a chance to reflect on the hearing sessions and the totality of the evidence. I will then ask the Council at the end of session 7 (either 9 Feb or some later date) if they would wish these modifications to be made. If I consider that these are all that are needed to make the plan sound and that they are sound in themselves I would invite the s20 (7C) request.

However, it may be that I consider others are required that the Council is either unable or unwilling to propose. In that case, if I receive the request I will have to make those changes myself. By not proposing them itself, it is implicit that the Council would not wish me to do so. The Council will have to consider how it deals with this should this situation arise. My current understanding is that the Council cannot invite me to make only the modifications that it proposes; this would be a conditional or partial request and would amount, as a matter of law, to no request at all. I would then have to find the plan unsound. It is my intention that these matters should become clear to the Council as the sessions progress but this may not be possible. Finally, it may be that I consider the changes that are necessary are so extensive that they amount to a re-write of the plan. In those circumstances I would not be able to comply with s20(7C) and should this arise I will encourage the Council to withdraw the plan and I would not wish to receive a request under s20(7C) in view of the mandatory effect that it has. If one is nevertheless made I would then seem to have little option but to request that the Secretary of State instructs the Council to withdraw the plan. It seems to me at present that all these possible outcomes are still in play.