

Christa Masters MA (Hons) MRTPI
Eastleigh Local Plan Inspector
c/o Mrs Louise St John Howe
Programme Officer

Corporate Management Team

Our Ref: NT/PS/1158
Your Ref:
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9 October 2020

Dear Ms Masters,

**RE Examination of the Eastleigh Borough Local Plan 2016 – 2036
MM84 and 85 addressing Policy HA2 (Mercury Marina)**

I write further to recent correspondence between the Programme Officer and the Council's Planning Policy Senior Specialist (Mr Graham Tuck) concerning potential modifications to the Policy HA2 allocation under the emerging Local Plan. For the reasons set out below, the Council respectfully requests that you reconsider your decision not to accept the Council's Statement of 25 September 2020 on the issue.

Background

As you know, Policy HA2 was discussed at the hearing session on 16 January 2020, as were a range of proposed modifications to it, including proposals by the site owner, Marina Developments Ltd, to (among other things) delete the hotel from the Policy and replace it with a residential-led allocation. Following that session, the Council proposed that the HA2 allocation be deleted from the Plan.

However, you wrote to the Council on 18 May 2020 (ED73) explaining that you "currently intend to recommend that [Policy HA2] be modified rather than deleted". You stated that, in the light of your views, you "would be grateful if [the Council] could confirm how [it] would like to proceed" but made clear that you were not "presently seeking any comments on the content of [your] letter from other parties". The Council interpreted your letter as an expression of your current views and an invitation to confirm how it wished to proceed in the light of those views and proceeded on that basis.

At a meeting on 25 June 2020, the Council's Cabinet resolved to approve the sending of correspondence to you to progress the examination. In so doing the Cabinet has accepted the need, in accordance with your post hearings advice, to make major changes to the Plan (e.g. to delete the SGO) and to progress further evidence (e.g. regarding settlement gaps). As part of this, Cabinet also resolved that the correspondence should state the Council's continuing policy position of no residential development on the HA2 site and explain that the Council would like to work with you through the examination process to seek a Plan which can be found "sound" by you and "adopted" by the Council. The Council subsequently wrote to you on 6 July 2020 (ED74) to draw your attention to the Cabinet decision (and the Report on which it was founded).

On 15 September 2020, Mr Tuck emailed the Programme Officer an updated Main Modifications Schedule, including MM84 and 85, which addressed Policy HA2. The email explained the background and noted that the Council was preparing a further Statement on the Policy. Mr Tuck subsequently emailed the Statement to the Programme Officer on 25 September 2020.

On 2 October 2020, the Programme Officer emailed Mr Tuck, stating that you had asked her to return the Statement as you were not intending to repeat the content of ED73, and that you had asked her to pass on the following note:

"As with all other hearing sessions, the purpose of the hearing was to probe the evidence presented, ask questions of the participants and hear the oral contributions as necessary. At this hearing, there was a comprehensive discussion regarding the policy allocation and the proposed changes put forward by the Council and a representor. I have considered this evidence and reached a conclusion on it as set out in my letter of 18 May. I have not requested further evidence to be prepared in relation to the matter and the Procedural Guidance for Local Plan Examinations is very clear that it is inappropriate for parties to make further submissions countering the arguments of others."

The Council's Position

As set out above, the Council has proceeded publicly on the understanding that ED73 set out your current intentions at that time and invited a response from the Council, which it sought to provide through the Statement. However, you have now made it clear that you have not requested further evidence on this subject and have declined to accept the Statement. For the reasons set out below, the Council respectfully asks that you reconsider your position on this issue.

The Procedure Guide for Local Plan Examinations (to which you have referred) is clear that an Inspector is afforded a degree of flexibility in conducting Local Plan examinations, enabling her to adapt the procedures to deal with situations as they arise, so as to achieve positive outcomes in a range of circumstances (Introduction, paragraph 3). This flexibility is important, given the complexity of Local Plan examinations, and the great importance of examinations leading to Plans that are both “sound” and capable of being adopted by Local Planning Authorities.

The Procedure Guide is clear that, because the examination process is inquisitorial, unsolicited representations are generally not accepted, but it is equally clear that an Inspector may at any stage request additional material to inform her conclusions on the soundness or legal compliance of a Plan (paragraphs 3.17 to 3.21 and 5.18). Such requests are commonplace (including in this Local Plan examination) and are helpful in ensuring a thorough examination. On some occasions, fairness may require that other participants with an interest in the topic may be given the opportunity to comment on it, something which can readily be done either at a later hearing session or in writing (paragraph 5.13).

In this case, the Council respectfully contends that it is appropriate that you accept and consider its Statement on Policy HA2 in order to ensure that your conclusions on soundness and Main Modifications are robust and fair. As I hope is clear to you, the Council is strongly opposed to residential development on the Policy HA2 site. The Statement provides important evidence in support of its position which should not be ignored. Moreover, there can be no unfairness to other parties in your considering the Statement so long as an opportunity is provided for other interested parties to comment in line with paragraph 5.13 of the Procedure Guide.

Furthermore, since Councillors and other interested parties in the local community are likely to wish to raise the issues set out in the Statement in response to the Main Modifications consultation in any event, declining to accept the Statement will not avoid consideration of the issues. However, it will mean that other interested parties are not properly aware of the Council’s position at this stage, which may prejudice them in responding to the consultation.

For those reasons, the Council respectfully requests that you reconsider your position, accept submission of the Statement, and invite comments from other interested parties to allow the issues to be explored and resolved. In order to keep to the current timetable, the Council considers that comments should be invited as part of the Main Modifications consultation. Moreover, the Council

considers that the consultation should address both your current preferred option for the Policy HA2 allocation and the Council's proposal to delete the allocation, which would ensure that the views of interested parties on both options are fully understood and avoid the risk of further consultation being needed in due course (see paragraph 6.11 of the Procedure Guide).

I look forward to hearing from you.

Yours sincerely

Nick Tustian
Chief Executive