

Amber Valley Borough Local Plan: Pre-Submission Local Plan

Guidance Notes on Legal Compliance and Soundness

The representations made to this consultation will be treated as formal representation and will be examined by an independent Planning Inspector. The purpose of an examination is to consider whether the Local Plan complies with the legal requirements and is 'sound'.

As this is now a formal stage immediately prior to the examination process, your views should relate to the legal compliance and soundness.

For this consultation we are asking you to consider two primary questions:

1. Is the Local Plan Legally Compliant?

If your response is about the way in which the Local Planning Authority (LPA) has prepared the Local Plan, then these are likely to relate whether or not it is **legally compliant**.

2. Is the Local Plan Sound?

If your response is about the content of the Local Plan and its proposals, then these are likely to relate to whether or not it is **sound**.

If you consider the Plan to be unsound we will ask you to identify why:-

- It is not positively planned?
- Is it not justified?
- Is it not effective?
- Is not consistent with national policy?

A set of guidance notes have been produced to help you complete the Amber Valley Borough Local Plan: Pre-Submission Local Plan response form to ensure that your comments can be considered as fully as possible during the plan-making process.

Date Protection

Please note that your submitted comments will be used in the plan process for the lifetime of the Local Plan in accordance with the Data Protection Act 1998. Your response cannot be treated as confidential as they will be available for public inspection and may also be made available to Derby City Council and South Derbyshire District Council in the preparation of their Local Plan.

Is the Plan Legally Compliant?

This is the first test that needs to be met in order to adopt the Local Plan.

Select YES – if you think that the Local Plan is **legally compliant**.

Select NO – if you think that the Local Plan is not **legally compliant**. If you consider that the LPA have not met the legal requirement in the preparation of the Local Plan, please use the response form to tell us why.

The Planning Inspector will check that the Local Plan meets the legal requirements under **section 20(5)(a) of the Planning and Compulsory Purchase Act 2004** before moving onto the test of soundness.

You may wish to consider the following before making a representation on legal compliance:

- The Local Plan should be within the current Local Development Scheme (LDS) and the key stages should have been followed.
<http://www.ambervalley.gov.uk/lds>
- The process of the community involvement for the Local Plan should be in general accordance with the Council's Statement of Community Involvement (SCI). www.ambervalley.gov.uk/usefuldocuments . The SCI sets out the Council's strategy for involving the community in the preparation and revision of documents for the Local Development Framework (LDF) and the consideration of planning applications.
- The Local Plan should comply with the **Town and Country Planning (Local Planning) (England) Regulations 2012**. On submission, the Council must publish the documents prescribed in the regulations, and make them available at their principal offices and on their website.
- Whether a Sustainability Appraisal (SA) has been done and published. It should identify the process by which the SA has been carried out, the baseline information used and the outcomes of the process. The Sustainability Appraisal is a tool for appraising policies to ensure they reflect social, environmental and economic factors.
- Whether the requirements of the Duty to Co-operate have been met. The Localism Act, section 110, and the National Planning Policy Framework, paragraphs 178 to 181, creates a duty on all local planning authorities and other bodies to cooperate with each other to address strategic issues in the preparation of the Local Plan. Further information about the Duty to Co-operate can be found in the National Planning Practice Guidance (<http://planningguidance.planningportal.gov.uk/>)
- The Local Plan should have regard to national policy and guidance issues by the Secretary of State.

Is the Plan Sound?

This is the second test that needs to be met in order to adopt the Local Plan. To meet the Test of Soundness, the Planning Inspector is required to consider if the Local Plan has been **positively prepared, justified and effective** and is **consistent with national policy**.

You may wish to consider the following before making a representation on soundness:

Positively Prepared:-

- This means that the Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.

If you think that the assessments are not objective or do not take sufficient account of unmet needs in neighbouring authorities then your comments relate to whether our Local Plan has been positively prepared or not.

Justified:-

- This mean that the Plan should be founded on a robust and credible evidence base involving:
 - Evidence of participation of the local community and others having a stake in the area; and
 - Research/fact finding: the choices made in the plan are backed up by facts
- The Plan should provide the most appropriate strategy when considered against reasonable alternatives. These alternatives should be realistic and subject to sustainability appraisal.
- The Plan should show how the policies and proposals help to ensure that the social, environmental, economic and resource use objectives of sustainability will be achieved.

If you think that the evidence doesn't support the choice made in the Local Plan or there are realistic alternatives then your comments relate to whether it is justified.

Effective:-

- This means the Plan should be deliverable, embracing:
 - Sound infrastructure delivery planning;
 - Having no regulatory or national planning barriers to delivery;
 - Delivery partners who are signed up to it; and
 - Coherence with the strategies of neighbouring authorities
- The Plan should be flexible and able to be monitored
- The Plan should indicate who is to be responsible for making sure that the policies and proposals happen and when they will happen.

- The Plan should be flexible to deal with changing circumstances, which may involve minor changes to respond to problems such as lack of funding for major infrastructure proposals.

If you think that what is proposed in the Local Plan will not happen as the required infrastructure cannot be provided, the groups who will deliver elements of it haven't signed up to it, the Local Plan does not join up with the strategies of neighbouring authorities or does not comply with any of the above then your comments relate to whether the Local Plan is effective or not.

Consistent with national policy:-

- The Plan should be consistent with the National Planning Policy Framework. Where there is a difference, Council's must provide clear and convincing reasoning to justify their approach. Conversely, you may feel that the Local Plan should include a policy or policies which depart from national policy in order to meet a clearly identified and fully justified local need.

In this instance it will be important for you to say what the local circumstances are which justify a different policy approach to that in national policy and support your assertion with evidence.

Further detailed guidance on the preparation, publication and examination of a Local Plan is provided at www.planningportal.gov.uk and at www.pas.gov.uk