

FAVERSHAM CREEK NEIGHBOURHOOD DEVELOPMENT PLAN

Guidance and Directions (2)

Timothy Jones, Barrister, FCI Arb,

No 5 Chambers

14th September 2015

Guidance and Directions (2)

1. All communications required or requested below should be made in writing to me c/o Ms Natalie Earl, Senior Planner, Planning Policy, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT, natalieearl@swale.gov.uk no later than 4pm on Monday 28th September. This applies to paragraphs 9 to 15 and 19 below.
2. In my Guidance and Directions of 15th July 2015 I drew attention to the following:
 - (1) the principal purpose of the examination is to consider whether the NDP meets the basic conditions. These are:
 - (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the NDP;
 - (b) the making of the NDP contributes to the achievement of sustainable development;
 - (c) the making of the NDP is in general conformity with the strategic policies contained in the development plan for the area of Swale Borough Council (or any part of that area);
 - (d) the making of the NDP does not breach, and is otherwise compatible with, EU obligations; and
 - (e) The making of the NDP is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (either alone or in combination with other plans or projects).
 - (2) I am also required to consider: whether the NDP is compatible with Convention rights as defined in the Human Rights Act 1998; whether the NDP complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Act 2004; and whether the area for any referendum should extend beyond the neighbourhood area to which the NDP relates,
 - (3) The normal rule for neighbourhood planning representations is that they are conducted by written representations with any site visit being unaccompanied. A public hearing should be held when the examiner (a) considers that a key issue should be examined in more depth or (b) to ensure a person has a fair chance to put a case. It is up to the examiner to decide who is invited to speak.
 - (4) An accompanied site visit may be required where it is necessary to access land that is not publicly accessible.
3. I am concerned that the implications of this may not be fully understood. In particular:

(1) It is not my role to decide what I would have included within the NDP if I had been the qualifying body. It is my role to see if it meets the statutory tests.

(2) Except to the extent necessary to carry out my statutory role, I do not have the duty, or even the power, to consider alleged illegality or alleged maladministration, or to review the past conduct of any person or body. What a person or body may or may not say at the time of a referendum is not within the role of an examiner.

(3) Public hearings are only in respect of key issues and only if I consider either that such an issue should be examined in more depth or to ensure a person has a fair chance to put a case. As such it is unlikely that an examiner would require a hearing in respect of the whole of a substantial plan. It is not appropriate for concerns to be raised or detailed for the first time at a hearing. Persons with a different point of view have a right to advance notice of the views of others. It is not necessary to speak at a public hearing in order to draw my attention to statutory provisions, legal authorities, policy or practice guidance, or any other document. Public hearings are formal statutory proceedings. They are not public meetings or consultation events.

(4) Since site visits are not occasions to give evidence, while accompanied site visits may be required where it is necessary to access land that is not publicly accessible, they are less likely to be required where land is publicly accessible. They are not an occasion for participation, but are solely for viewing.

4. My Guidance and Directions of 15th July 2015 remain in force.

5. I am grateful for the responses to the requests in paragraph 6(3) of those Guidance and Directions and have given careful consideration to them. I am satisfied that there is no need to hold a public hearing to ensure any person has a fair chance to put a case. In particular there is no evidence before me that any participant in the NDP process suffers the disadvantage of illiteracy or of a lack of literacy or written fluency in the English language.

6. I have concluded that certain key issue should be examined in more depth and the directions below relate to these. Those issues are detailed in the Appendix to these Guidance and Directions. The absence of an issue should not be read an indication that I do not consider it to be important. Rather it means that I am satisfied that I can deal with it on the basis of the written representations and other papers before me.

7. In respect of the key issues that I have identified in the Appendix, among other things I shall wish to hear views as to whether the proposed minor modifications are in fact minor modifications and the consequences if they are not.

8. In deciding who is to be permitted to speak, I must bear in mind that the purpose of the public hearing is to inform me in respect of key issues that I consider should be examined in more depth. As such it does not assist me to hear two or more people say the same thing;

although one person may make it clear that he is authorised to speak on behalf of other persons The following persons will be permitted to speak at the sessions of the public hearing:

- (1) In respect of any session, a single representative of Faversham Town Council;
- (2) In respect of any session, a single representative of Swale Borough Council;
- (3) In respect of any session, a single representative of Historic England;
- (4) In respect of any session, a single representative of the Faversham Creek Trust and the Brents Community Association;
- (5) In respect of the session relating to Standard Quay and Standard House, Ms Sue Cooper;
- (6) In respect of any session, Ms Anne Salmon;
- (7) In respect of any session, Ms Jeanne Taylor; and
- (8) In respect of any session, Ms Janet Turner.

9. If any other person wishes to speak, they should notify me, identifying the session at which they wish to speak and saying why they wish to speak and how their contribution may help me carry out my tasks. The identification of specific persons in the previous paragraph does not mean that I have a predisposition not to permit others to speak provided they notify me by the time specified. I would be particularly interest to hear from persons who live on or immediately next to any land being considered in the session concerned, who own any land on or immediately next to any land being considered in the session concerned, or who expect to have a substantially different point of view from those who have been invited to speak at the session. Applications to speak must be made by the persons concerned or by someone who has express authorisation to make the application on their behalf. It does not help me to have several people saying the same thing.

10. While I have specified a single representative in paragraph 8 (1) to (4) above, I may look favourably on an application for more than one person to speak, provided each such person only speaks on a discrete topic or topics and there is no substantial overlap between them. So, for example, there might be one speaker on heritage and one on planning.

11. Anybody who has commitments that prevent them attending on a particular day or particular days should let me know.

12. Anybody who alleges non-compliance with a statutory provision should identify the provision concerned, and the person, persons or category of persons who have or are likely to have suffered substantial prejudice as a result.

13. I note that the Faversham Creek Trust and the Brents Community Association want to be certain that their representations have been communicated fully to me. This does not require a hearing. Any person or body that wishes to may submit a list of documents with which they consider I should have seen. This direction only permits submission of a list of

documents that have already been submitted in the NDP process. It does not permit further comment or argument.

14. Any statutory provision, legal authority, examiner's report and planning appeal decision upon which a party relies shall be supplied to me. Relevant passages should be sidelined on the left. Please do not copy irrelevant material, such as pages containing only information on High Court challenges at the end of an appeal decision, lengthy passages in a judgment dealing with irrelevant issues, or arguments about costs at the end of a court transcript.

15. The venue for the public hearing is the Jubilee Room, The Alexander Centre, 15 - 17 Preston Street, Faversham, Kent, ME13 8NZ.

If any participant has any special requirements in terms of access or otherwise they should inform me.

16. The public hearing will commence at 10.00 am on Monday 5th and (unless subsequently directed) at 9.30 am on subsequent days. My practice is to start promptly at the appointed time.

17. The provisional timetable for the hearing is set out in the table in the Appendix. Times may vary considerably (and probably will vary at least to some extent). There will normally be a mid morning and a mid afternoon break. These and lunch breaks will take place at a convenient point in the proceedings. So, for example lunch breaks will not necessarily be at 1pm or 12.45pm. In each session where I am considering a policy of policies, I shall also consider proposed modifications to it. If a session finishes early, a site visit may be interposed.

18. It is not as yet clear to me which locations require my site visit to be accompanied. Where one takes place, I hope that participants will agree in advance what they wish me to see. I shall not enter private land (other than on a public right of way) without the consent of the landowner. During any accompanied site visit I should be accompanied by at least one person from each side of any difference as to the future use of the land being visited or viewed. No evidence will be given or argument advanced on the site visit. The place to give evidence is through written representations and, to the extent allowed, at the public hearing.

19. Any proposed modifications should indicate the precise modification sought, including in the case where additional text is proposed exactly where this is to be inserted.

Timothy Jones, Barrister, FCI Arb
No 5 Chambers
15th July 2015

Appendix: Provisional timetable

Session 1, Monday 5th October 10 am to 1pm

Opening comments and procedural matters

Whether the NDP complies with the provisions made by or under sections 38A and 38B of the Planning and Compulsory Act 2004, together with whether, in the event of a finding that there has been a failure to comply with these provisions, whether anybody has suffered substantial prejudice as a result and whether the matter is capable of rectification.

The following in the section on Creekwide policies: proposed modification to add a policy HE4, the paragraph on moorings on page 36, and policy INF5.

Session 2, Monday 5th October 2pm to 5pm

Site specific policies: Site 2 Ordnance Wharf and site 3 BMM Weston.

Session 3, Tuesday 6th October 9.30 am to 12.45 am

Site specific policies: Site 4 Swan Quay and Site 5 Frank and Whittome

Session 4, Tuesday 6th October 1.45 pm to 5.00 pm

Site specific polices: Site 8 Standard Quay and Site 9 Standard House.

Session 5, Wednesday 7th October 9.30 am onwards

Overruns from previous sessions and matters that have arisen during the course of the hearing that require further consideration

Site visits

Closing