

South Oxfordshire Local Plan 2034

Legal Advice Note on Climate Change issues

Robert Walton QC

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1. This Note sets out a summary of the advice I gave to SODC Officers via MS Teams on 01.09.20.
2. The key issue here is whether the Council can lawfully adopt the Plan in the light of the provisions of the Climate Change Act 2008 (“the 2008 Act”).
3. In short, the answer to this is “Yes”.
4. Section 1 of the 2008 Act reads as follows:

“(1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline”¹.

5. As can be seen, Parliament has imposed the target for 2050 on the Secretary of State, not individual Local Planning Authorities. The 2008 Act does not impose any specific duties on Local Planning Authorities in relation to the preparation of their Local Plans.
6. In contrast, section 19 of the Planning & Compulsory Purchase Act 2004 provides that:

“Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.”

¹ Section 1(2) defines the 1990 baseline as the aggregate amount of— (a) net UK emissions of carbon dioxide for that year, and (b) net UK emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas.

7. The Government's position on the preparation of Local Plans is set out in the NPPF² and the NPPG³.

8. The NPPF says that:

"Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for ... planning measures to address climate change mitigation and adaptation" (paragraph 20);

"Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures⁴⁸. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure".

Footnote 48 reads: "In line with the objectives and provisions of the Climate Change Act 2008".

9. The NPPG says that:

"How can the challenges of climate change be addressed through the Local Plan?

There are many opportunities to integrate climate change mitigation and adaptation objectives into the Local Plan. Sustainability appraisal can be used to help shape appropriate strategies in line with the statutory duty on climate change and ambition in the Climate Change Act 2008.

Examples of mitigating climate change by reducing emissions:

- Reducing the need to travel and providing for sustainable transport
- Providing opportunities for renewable and low carbon energy technologies
- Providing opportunities for decentralised energy and heating
- Promoting low carbon design approaches to reduce energy consumption in buildings, such as passive solar design

² National Planning Policy Framework 2019

³ National Planning Practice Guidance – published online.

Examples of adapting to a changing climate:

- Considering future climate risks when allocating development sites to ensure risks are understood over the development's lifetime
- Considering the impact of and promoting design responses to flood risk and coastal change for the lifetime of the development
- Considering availability of water and water infrastructure for the lifetime of the development and design responses to promote water efficiency and protect water quality
- Promoting adaptation approaches in design policies for developments and the public realm

Engaging with appropriate partners, including utility providers, communities, health authorities, regulators and emergency planners, statutory environmental bodies, Local Nature Partnerships, Local Resilience Forums, and climate change partnerships will help to identify relevant local approaches.

Paragraph: 003 Reference ID: 6-003-20140612

How can adaptation and mitigation approaches be integrated?

When preparing Local Plans and taking planning decisions local planning authorities should pay particular attention to integrating adaptation and mitigation approaches and looking for 'win-win' solutions that will support sustainable development. This could be achieved in a variety of ways, for example:

- by maximising summer cooling through natural ventilation in buildings and avoiding solar gain
- through district heating networks that include tri-generation (combined cooling, heat and power); or
- through the provision of multi-functional green infrastructure, which can reduce urban heat islands, manage flooding and help species adapt to climate change – as well as contributing to a pleasant environment which encourages people to walk and cycle.

Local planning authorities should be aware of and avoid the risk of maladaptation (adaptation that could become more harmful than helpful). For example, designing buildings to maximise solar gain in winter without thinking through the implications for overheating in summer.

Sustainability appraisal and, where required, Environmental Impact Assessment, can be useful for testing the integration of mitigation and adaptation measures and the long term implications of decisions.

Paragraph: 004 Reference ID: 6-004-20140612".

10. As can be seen, the Government's position is that there are a number of options open to LPAs in terms of the approach they take in their Local Plans to climate change adaptation and mitigation. It will be a matter of each LPA to decide what approach it wants to take, with the soundness of the approach being tested at independent examination.
11. The draft South Oxfordshire Local Plan has specific climate change policies, prepared in line with the NPPF and the NPPG, see in particular new policy DES11 (which has been modelled on the equivalent policy in Oxford City's recently adopted Plan) and DES9 as proposed to be modified. The Inspector has indicated in his Preliminary Findings letter of 28th August that he is content with the approach being put forward.
12. There are of course a range of views that can be taken as to what the Plan's policies should say about climate change – some contributors to the EiP said it is not doing enough, others said it imposed too great a burden on developers - but in my view the approach taken in the Plan is certainly lawful.



Robert Walton QC

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