



LOCAL DEVELOPMENT DOCUMENTS: CONSULTING WITH THE ASSEMBLY AND CONFORMITY WITH THE REGIONAL SPATIAL STRATEGY

ADVICE FOR LOCAL AUTHORITIES

February 2007

This advice note has been produced to provide information for local authorities about the involvement and participation of the South East England Regional Assembly (the Assembly) in the preparation of local development documents (LDDs). It supersedes interim guidance produced in May 2006.

Two different types of legislative requirements are considered by this note:

- i. The statutory consultation requirements under the Town and Country Planning (Local Development) (England) Regulations 2004 to consult the Assembly on development plan documents (DPDs) and supplementary planning documents (SPDs).
- ii. The requirement in the Planning and Compulsory Purchase Act 2004 that LDDs be in 'general conformity' with the RSS.

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PART A: GENERAL PRINCIPLES

A.1 The Scope of the Assembly's Comments

- A.1.1 The Assembly will assess DPDs and SPDs against regional policy. We will focus on the general direction set out within policy documents and the likely outputs of the documents. The Assembly's comments will not generally relate to the fit of DPDs or SPDs with national policy, the process of document production or presentational issues, which will be addressed by the Government Office and other statutory consultees.

A.2 The definition of 'General Conformity'

- A.2.1 PPS12 sets out the definition of 'general conformity' as follows:

'The test is of general conformity and not conformity. This means that it is only where an inconsistency or omission in a development plan document would cause significant harm to the implementation of the regional spatial strategy ...that it should be considered not to be in general conformity. The fact that a development plan document is inconsistent with one or more policies in the regional spatial strategy ... either directly or through the omission of a policy or proposal, does not, by itself, mean that the document is not in general conformity. Rather, the test is how significant the inconsistency is from the point of view of delivery of the regional spatial strategy ...' (para 4.20).

- A.2.1 To assess the general conformity of a DPD or SPD, the Assembly will consider those matters which are deemed to be so significant that they would cause significant harm to the implementation of the Regional Spatial Strategy (RSS). This will inevitably be a matter of professional and political judgement, however to assist local authorities some guidance on those matters which could trigger an opinion that a DPD or SPD is not in general conformity is included in Annex A of this guidance note.

A.3 Weight given to RPG9 and the draft South East Plan

- A.3.1 RPG9, along with its adopted alterations, is the current adopted regional spatial strategy. The suite of RPG9 documents is set out in Annex B. The draft South East Plan (as described in Annex B) is the emerging RSS.
- A.3.2 For the sake of clarity, until the adoption of the South East Plan, the Assembly will distinguish between statutory consultation representations and opinions of general conformity based on the adopted RSS and the emerging RSS. At the current time (Spring 2007), RPG9 and the adopted alterations hold more weight than the draft South East Plan. The weight afforded to the draft South East Plan will increase as it passes through the relevant statutory procedures. However, the weight afforded to it prior to its adoption by the Government will ultimately be a judgement for the local authority and the Planning Inspectorate.

A.3.3 It is acknowledged that it may be necessary for the Assembly to revise its indicative definitions of general conformity (Annex A) once the Government's Proposed Changes to the draft South East Plan are published. Local authorities will be kept informed of any changing circumstances.

A.4 Hearings and Examinations

A.4.1 The Assembly may request to appear at a hearing or examination in the event that the Assembly considers that a DPD is not in general conformity with the RSS, and when the Assembly's concerns cannot be resolved prior to the hearing or examination.

A.4.2 Wherever possible the Assembly will respond positively to requests from the Inspectorate to attend examination hearings where a submission of non-conformity has been made.

A.4.3 Where the Assembly has made detailed representations on a DPD but does not consider that these constitute issues of general conformity, generally the Assembly will not seek to appear at the examination. However, where necessary, the Assembly will provide the Inspector with any additional information as appropriate prior to the examination through written representations. This approach is in line with advice from the Planning Inspectorate.

PART B: DEVELOPMENT PLAN DOCUMENTS

B.1 DPDs: The Legislation

Statutory Consultation Requirements

- B.1.1 It is a statutory requirement for local authorities to consult the Assembly on DPDs 'to the extent that the local authority thinks that the proposed subject matter of the DPD affects the [Assembly]' at the Pre-submission Consultation stage (Reg 25).
- B.1.2 If the Assembly is consulted at the Pre-submission Consultation stage then there is a further requirement on local authorities to provide the Assembly with documentation at the Pre-submission Public Participation stage (Reg 26) and at the Submission stage (Reg 28).
- B.1.3 Section B2 sets out further detail about consulting the Assembly at these three stages.

Requesting Opinions of General Conformity

- B.1.4 Subject to certain exclusions¹, the policies contained in a DPD must be in conformity with either:
- i. the policies in a core strategy (if one has been adopted); or
 - ii. the policies in the RSS and development plan (if no core strategy has been adopted)².
- B.1.5 It is a practical requirement that the local authority must come to a view as to whether the DPD is in conformity with the RSS.
- B.1.6 On the same day that a local authority submits a DPD to the Secretary of State it must request from the Assembly an opinion as to the general conformity of the document with the RSS³. It should be noted that this requirement also applies to Proposals Maps.
- B.1.7 Section B2 sets out further detail about requesting an opinion of general conformity from the Assembly.

B.2 DPDs: Consulting the Assembly

- B.2.1 This section sets out more detail about the stages of DPD production at which the Assembly should be consulted, and the ways in which the Assembly will respond.

¹ See Regulation 13(6) and Regulations 13(7), (9) and (10), Town and Country Planning (Local Development) (England) Regulations 2004 for details of the exclusions

² Regulation 13(6), Town and Country Planning (Local Development) (England) Regulations 2004

³ Planning and Compulsory Purchase Act 2004 Section 24(2)(a), and Regulation 30 of The Town and Country Planning Regulations (Local Development) (England) 2004

DPD topics that may affect the Assembly

B.2.2 As set out in section B.1, there is some flexibility about which DPDs the Assembly should be consulted on. To offer guidance to local authorities, the following list summarises some of the subject matters of DPDs that may affect the Assembly, and therefore that the Assembly should be consulted on:

- i. Core Strategy;
- ii. Minerals Core Strategy;
- iii. Waste Core Strategy;

Local authorities may wish to consult the Assembly on the following DPDs if it is considered these raise regionally significant issues.

- iv. Housing DPDs (including Affordable Housing and Site Allocations);
- v. Employment DPDs (including Site Allocations);
- vi. Development control DPDs;
- vii. Gypsy and Traveller DPDs;
- viii. AAPs where these relate to development within Regional Hubs, or major site-specific mixed use proposals
- ix. Minerals Site Allocations DPDs;
- x. Minerals Development Control DPDs;
- xi. Waste Site Allocations DPDs; and
- xii. Waste Development Control DPDs.

B.2.3 The above list should not be considered to be exhaustive. In cases of uncertainty, the local authority should contact the Assembly to ascertain if it wishes to be consulted.

B.2.4 The Assembly should be consulted on any DPD coming forward in advance of the Core Strategy, even if this does not fall into the above categories, as the chain of conformity will not have been tested.

B.2.5 The Assembly does not wish to be consulted on Proposals Maps prior to the submission stage.

Regulation 25: Issues and Options

B.2.6 Whilst, as set out in B.1 above, local authorities should consult the Assembly on DPDs if the subject matter affects the Assembly, it is also a requirement of PPS12 that throughout the preparation of DPDs, local authorities have regard to the RSS.

B.2.7 For the majority of Issues and Options consultations, it is likely that the Assembly will have few comments on the document.

B.2.8 However, it is recognised that in some instances, for whatever reason, a local authority may feel that it is important to gain the Assembly's views on a particular strategic option being considered that affects the Assembly or is not in line with regional strategy. In these instances, it is requested that the local authority explain, in a letter to the Assembly, the key strategic issues

related to the issues and options being explored and on which the local authority is requesting views from the Assembly.

- B.2.9 Assembly officers will then offer an informal view on proposed subject matters that affect the Assembly. In some cases it may be appropriate for Assembly officers to meet with local authority officers to discuss strategic options in more detail. Further information about informal discussion and consultation is included in section D.2.
- B.2.10 If no representation is received from the Assembly, it should be assumed that the Assembly has no comment to make on the issues and options consultation.

Regulation 26: Preferred Options

- B.2.11 The Assembly will provide officer level comments relating to the content of the preferred options consultation document as assessed against the emerging regional spatial strategy only (as the draft South East Plan is likely to have gained increased weight over RPG9 by the time the DPD reaches submission and examination stage).
- B.2.12 As set out in A.1.1 the Assembly's comments will focus on the general direction set out within policy documents and the likely outputs of the documents. Where possible, these comments will distinguish between:
- i. Concerns that, if carried forward to the submission document, may lead to an opinion from the Assembly that the document is not in general conformity with the RSS; and
 - ii Concerns that, whilst relating to the soundness of the document and its fit with regional policy, are not considered to be issues of general conformity.
- B.2.13 If the Assembly has no comments to make on a preferred options consultation, for the avoidance of doubt Assembly officers will submit a representation that the Assembly has no comment to make on the document at this stage.
- B.2.14 If no representation is received from the Assembly, it should be assumed that the Assembly has no comment to make on a preferred options consultation, however, should this situation arise, Assembly officers will be happy to provide clarification for the purposes of the local authorities' statements of consultation.
- B.2.15 Following a preferred options consultation, Assembly officers will be happy to discuss any issues of concern raised in the Assembly's representations with local authority officers. Section D.1 provides more information about informal discussion.

Regulation 28: Submission Draft

- B.2.16 The Assembly should be consulted on all DPDs at submission stage. Depending on the extent to which the subject matter affects the Assembly,

the Assembly may chose to make representations on the DPD. However, if it is not considered that the subject matter affects the Assembly, no representations will be made.

- B.2.17 Where the Assembly chooses to make representations on the submitted document, these will relate to the soundness or conformity of the document or policies within the document, but may not be issues which in themselves compromise the general conformity of the document. These representations will be submitted on the standard representation form, where this can be submitted electronically.
- B.2.18 All Assembly responses under Regulation 28 are endorsed by the Regional Planning Committee, by a sub-group of members of the committee with delegated powers to agree the Assembly's responses to Regulation 28 consultations. Assembly officers present the sub-group with a report and recommendations for agreement by the members. A copy of this report will made be available to the local planning authority with the Assembly's formal representations.

Regulation 30: Request for an Opinion of General Conformity

- B.2.19 A written request for an opinion of general conformity should be made to the Assembly for all DPDs, on their submission to the Secretary of State.
- B.2.20 The Assembly will assess the general conformity of DPDs in line with section A.2 and Annex I of this advice note.
- B.2.21 The Assembly's Opinion of General Conformity will be provided in the form of a letter from the Assembly setting out whether the Assembly considers the submitted DPD to be in general conformity with the RSS.
- B.2.22 All the Assembly's responses under Regulation 30 are endorsed by the Regional Planning Committee, by a sub-group of members of the committee with delegated powers to agree the Assembly's responses to Regulation 30 consultations. Assembly officers present the sub-group with a report and recommendations for agreement by the members. A copy of this report will be made available to the local planning authority with the Assembly's formal representations.
- B.2.23 Should the local authority receive no opinion of general conformity within the statutory time period, it should be assumed that the DPD is in general conformity, in line with paragraph 4.21 of PPS12.
- B.2.24 Sections D.2 and A.4 set out the Assembly's procedures when the Assembly feels that a DPD may not be in general conformity with the RSS.

PART C: SUPPLEMENTARY PLANNING DOCUMENTS

C.1 SPDs: The Legislation

Statutory Consultation Requirements

C.1.1 The regime for SPDs is different to DPDs. There are no pre-consultation requirements to consult with regional planning bodies. Rather, it is a statutory requirement for local authorities to provide information to consultation bodies, such as the Assembly, 'to the extent that the local authority thinks that the proposed subject matter of the SPD affects the [Assembly]' at the public participation stage (Reg 17).

C.1.2 Section C.2 sets out further detail about consulting the Assembly at this stage.

Requests for Assembly Opinions of General Conformity

C.1.3 The policies in an SPD must be in conformity with either:

- i. the policies in the core strategy;
- ii. the policies in any other DPD; or
- iii. if neither of the above apply, any old policy⁴.

C.1.4 The Planning and Compulsory Purchase Act allows that local authorities may request from the Assembly an opinion as to the general conformity of the SPD with the RSS⁵.

C.1.5 PPS12 advises that the local planning authority should make an assessment of whether the SPD is in general conformity with the RSS, and confirms that:

'The local planning authority may seek the opinion of the regional planning body ... as to whether the supplementary planning document is in general conformity.'
(para 4.41)

C.1.6 Section C.2 sets out further detail about consulting the Assembly at this stage.

C.2 SPDs: Consulting the Assembly

C.2.1 This section sets out more how and when the Assembly should be consulted on SPDs, and the ways in which the Assembly will respond.

Regulation 17

C.2.2 The Assembly will only be interested in SPDs that cover strategically important issues. To offer guidance to local planning authorities, the

⁴ Regulation 13(8), Town and Country Planning (Local Development) (England) Regulations 2004

⁵ Planning and Compulsory Purchase Act 2004 Section 24(2)(b)

following list summarises some of the subject matters of SPDs that may affect the Assembly, and that the Assembly should be consulted on:

- i. Affordable housing;
- ii. Transport
- iii. Planning obligations/Developer contributions;
- iv. Sustainable development/Sustainable construction; and
- v. Environmental protection and climate change.

- C.2.3 The above list should not be considered to be exhaustive. In cases of uncertainty, the local authority should contact the Assembly to ascertain if it wishes to be consulted.
- C.2.4 Local authorities should also consider consulting the Assembly on SPDs linked to Local Plan or Structure Plan policies in advance of an agreed Core Strategy or parent DPD.
- C.2.5 If the Assembly has no comments to make on an SPD consultation, for the avoidance of doubt Assembly officers will submit a representation that the Assembly has no comment to make on the document.
- C.2.6 If no representation is received from the Assembly, it should be assumed that the Assembly has no comment to make on a SPD consultation.

Request for an Opinion of General Conformity

- C.2.7 SPDs that are supplementary to a DPD are subject to the chain of conformity, ie they will be in conformity with a DPD that is in itself in general conformity with the South East Plan. Therefore, non conformity of these SPDs is not expected to arise often.
- C.2.8 The Assembly therefore recommends the approach set out in PPS12: in the first instance the local authority should make an assessment against the regional spatial strategy. The Assembly does not wish to automatically receive requests for opinions on all SPDs. However, if concerns about the general conformity of the document are identified by the local authority, then the local authority should approach the Assembly for a confirmation as to the general conformity of the document.
- C.2.9 Sections D.2 and A.4 set out the Assembly's procedures when the Assembly feels that a SPD may not be in general conformity with the RSS.

PART D: INFORMAL DISCUSSION AND CONSULTATION

D.1 Informal Discussion

- D.1.1 Assembly officers will welcome informal consultation with LPAs throughout the LDD production process. Contact details are set out in D.3.
- D.1.2 Particular stages where the LPA may feel informal feedback from the Assembly would be useful include:
- i. Issues and Options: Where the LPA would welcome a steer on a particular strategic issue or option
 - ii. Preferred Options: Where the LPA would welcome advice from the Assembly on strategic matters when refining issues and options; or
 - iii. Further discussion of the Assembly's comments on a Preferred Options document.

D.2 Discussions following opinions of non general conformity

- D.2.1 In cases where the Assembly feels that a DPD or SPD is not in general conformity with the RSS, Assembly officers will endeavour to work with the local authority and Government Office to resolve concerns prior to the examination. The Planning Inspectorate supports this approach.

D.3 Contact Details

- D.3.1 Formal consultations on LDDs should be sent to:

Catriona Riddell
South East England Regional Assembly
Berkeley House
Cross Lanes
Guildford
Surrey GU1 1UN

- D.3.2 For all other enquiries, including requests for informal discussions, please contact:

Sue Janota
E: suejanota@southeast-ra.gov.uk
T: 01483 555238

Or:
Cath Rose
E: catherinerose@southeast-ra.gov.uk
T: 01483 555235

ASSESSMENT OF GENERAL CONFORMITY WITH THE RSS

I. General Principles

- 1.1 The issue of an opinion by the Assembly that an LDD is not in general conformity with the RSS would be likely to arise, where in the Assembly's opinion:
- i. An area of policy in a proposed LDD:
 - does not reflect the general requirements of, and the general thrust of, corresponding relevant policy areas in the RSS; and
 - there is inadequate justification to demonstrate that an exception should be applied to the area of policy on the basis of the particular circumstances of the local authority;to the extent that the difference would cause significant harm to the implementation of the RSS, and/or
 - ii. There are policy omissions from the LDD that should reflect corresponding policy areas from the RSS that have not been adequately justified by the particular circumstances of the local authority to the extent that the difference would cause significant harm to the implementation of the RSS.
- 1.2 The lists below set out some examples of situations which may give rise to the Assembly expressing an opinion that a DPD is not in general conformity with the draft South East Plan or RPG9.
- 1.3 Whilst RPG9 is currently the statutory development plan, and the draft South East Plan has less weight, it should be noted that in the vast majority of cases, if a DPD is in general conformity with the draft South East Plan it will also be in general conformity with RPG9.
- 1.4 In all cases the application of these criteria will be subject to the Assembly's interpretation based upon the justification and associated evidence provided by the local authority to support any proposals which may appear to contravene the criteria.

2. Failing the General Conformity Test

Draft South East Plan – examples of where a LDD would cause significant harm to the implementation of the RSS

- 2.1 Spatial Strategy
- i. Insufficient policy weight afforded to key elements of the spatial strategy so as to threaten the delivery of the draft South East Plan objectives.
 - ii. Where relevant, insufficient policy weight afforded to key elements of the sub-regional strategy so as to threaten the delivery of the sub-regional strategy.

- iii. Promotion of large scale new residential, employment or mixed use development outside urban areas (or outside sustainable urban extensions) so as to undermine the overarching urban renaissance objectives of the draft South East Plan, unless this is in line with regional or sub-regional strategy.
 - iv. Clear identification of how the DPD reflects the spatially specific aspects of the draft South East Plan and relevant sub-regional strategies, including, in Core Strategies, the broad distribution and quantum of development and infrastructure provision.
- 2.2 Implementation, Infrastructure Provision and Phasing
- i. A failure to clearly set out how the core strategy or other DPD will be implemented.
 - ii. A failure to clearly identify the necessary additional infrastructure required to serve the area and to meet the needs of the development proposed, and the timing of its provision in relation to the phasing of the proposed development.
 - iii. A failure to safeguard land required for national, regional or sub-regional infrastructure proposals.
- 2.3 Housing
- i. A failure to provide for the levels of district housing allocation in the draft South East Plan through a policy commitment to deliver the relevant district housing allocation in Core Strategy policy.
 - ii. A failure to provide for an appropriate amount of affordable housing in line with regional and sub-regional policy objectives.
- 2.4 Employment and education
- i. A failure to demonstrate how the employment and educational needs of the population will be met.
 - ii. Promotion of major retail, office, or leisure development (>10ha or 10,000 sqm) outside the identified network of major town centres.
- 2.5 Sustainable natural resources
- i. Insufficient emphasis on a combination of policy measures required to address the sustainable use of natural resources including support for sustainable construction, waste minimisation and reuse, energy efficiency and renewable energy and water efficiency.
 - ii. A failure to guard against the sterilisation of minerals resources, or to make cross reference to county-level minerals and waste development frameworks.
- 2.6 Transport
- i. The absence of policies designed to rebalance the transport system in favour of non car modes.
- 2.7 Minerals

- i. The absence of a policy commitment to meet the sub-regional recycled and secondary aggregates apportionment⁶ targets set out in the draft South East Plan.
- ii. The absence of a policy commitment to meet sub-regional primary aggregates apportionment targets in line with RPG 9 (as amended) and the draft South East Plan.
- iii. A failure to assess the need for wharf and rail facilities and safeguard strategic sites for minerals processing and imports.
- iv. The absence of policy that identifies and safeguards existing mineral sites, proposed sites, and 'areas of search' for minerals extraction and processing.

2.8 Waste

- i. A failure to make sufficient provision in policy for waste management capacity equivalent to waste arising and requiring management within the sub-region's boundaries, plus a policy commitment to provide landfill capacity for a declining amount of waste from London.
- ii. A failure to provide a policy commitment to delivering regional landfill diversion targets set out in both RPG 9 (as amended) and the draft South East Plan and include proposals to achieve this.
- iii. The absence of a policy commitment to delivering recycling and composting targets set out in both RPG 9 (as amended) and the draft South East Plan and a failure to include proposals to assist this.
- iv. A failure to identify new waste sites and safeguard existing sites suitable for expansion.

RPG9 – examples of where a LDD would cause significant harm to the implementation of the RSS

2.9 It is not considered that any instances are likely to arise where a DPD is in conformity with the draft South East Plan but not RPG9. However, conformity against RPG9 will also be assessed, against the following criteria

- 2.10 A core strategy which conflicts with the following Key Principles
- i. Urban areas should be the main focus for development.
 - ii. Greenfield development should normally take place only after other alternatives have been considered.
 - iii. The pattern of development should be less dispersed.
 - iv. The South East's international connections should be developed.
 - v. Economic opportunities should be increased by raising skill levels and reducing disparities between different parts of the region.
 - vi. Sufficient housing, and in particular affordable housing, should be provided.
 - vii. The development of housing should be more sustainable, providing a better mix of sizes, types and tenures.

⁶ Apportionment figures have been informally agreed by the Regional Aggregates Working Party (RAWP) and will be subject to testing at the draft South East Plan Examination in Public (EIP).

- viii. Development should be located and designed to enable more sustainable use of the Region's natural resources.
- ix. There should be continued protection and enhancement of the Region's biodiversity, internationally and nationally important nature conservation areas, and enhancement of its landscape and built and historic heritage.
- x. Countryside and rural communities should be sustained through economic diversification which respects character and enables sustainable agriculture and forestry.
- xi. Increased ability to meet normal travel needs through safe walking, cycling and public transport with reduced reliance on the car.
- xii. Transport investment should support the spatial strategy.

2.10 In addition:

- i. The absence of policy measures required to address waste minimisation and reuse.
- ii. The absence of policy measures required to support energy efficiency and increase generation and use of renewable energy.
- iii. The absence of policies designed to rebalance the transport system in favour of non car modes.
- iv. Promotion of major retail, office, or leisure development outside major town centres.

THE ADOPTED AND EMERGING RSS

The adopted Regional Spatial Strategy

- Regional Planning Guidance 9 (March 2001)
- RPG9 Alterations - Regional Transport Strategy (July 2004)
- RPG9 Alterations – Ashford Growth Area (July 2004)
- RPG9 Alterations – Energy Efficiency and Renewable Energy (November 2004)
- RPG9 Alterations – Tourism and Related Sport and Recreation (November 2004)
- RPG9 Alterations – Milton Keynes and South Midlands Sub-regional Strategy (March 2005)
- RPG9 Alterations – Water and Minerals (June 2006)

The emerging Regional Spatial Strategy

- Draft South East Plan (March 2006)