

Response to the Planning Inspectors' *Report on the Examination of the Salt Cross Garden Village Area Action Plan of 1 March 2023*

1. A serious flaw in the Examination process

Many people said it at the time:

Responding to such an important consultation on the main modifications (MMs), some of them far-reaching and highly controversial, without the Inspectors explaining their reasons for them until after the consultation was over, put those submitting responses at a huge disadvantage.

Even if this was the normal way of doing things, it was very handy for the Inspectors to act anti-transparently in this way, thereby maximising their control of the process. One reason they gave for not explaining their decisions when the modifications were published, was that doing so would prejudice the outcome of the Examination. As it turned out, not explaining the reasons for their decisions *did* prejudice the outcome *in their favour*, because those responding were unable to give full, and fully relevant, responses to modifications that sometimes appeared to be unjustified, damaging and hard to explain.

The responses to the consultation should have been part of a considered and still time-limited negotiation over the controversial aspects of the modifications, in which all the parties concerned participated at this crucial stage in "getting to yes" – namely finding a way to address the concerns of each party. This is where the Inspectors cut the community out of any participation. They also rode roughshod over the Council. Instead of getting to yes, they delivered an autocratic "no".¹

2. A serious flaw in the attitude and approach of the Inspectors

The attitude and approach of the Inspectors becomes apparent early on in their report, in a juxtaposition of statements that shows a surprising level of unawareness. In paragraph 8, they say:

¹ See *Getting to Yes: Negotiating Agreement Without Giving In*, by Roger Fisher and William Ury of the Harvard Negotiation Project (London, Hutchinson & Co., 1983).

“We have taken account of the consultation responses in coming to our conclusions in this report and in this light we have made some amendments to the detailed wording of the MMs and added consequential modifications.”

Then comes the unwitting confession, in paragraph 9:

“None of our amendments significantly alters the modifications as published for consultation or undermines the participatory processes and sustainability appraisal/habitats regulations assessment that has been undertaken.”

In other words, and particularly in relation to the issue of climate change and net zero carbon, they did *not* take any *serious* account of the responses to the most controversial aspects of the modifications. Had they done so, some of the amendments would have been significant. The climate modifications were the ones most commented on, in the widest range of well-informed lay and expert responses; the Inspectors did not amend them. (more on this issue below under point 3).

As for the extent of the “consequential modifications”, these are so minimal as to be almost invisible. There is some minor rewording here and there; Building for Nature standards have been reinstated, but in such a way that they can be ignored; and there is a welcome tightening up of the requirement that the spine road be bisected in the future. The Inspectors’ amendments to their own modifications are indeed *not* significant, when there is every reason to believe some of them should have been. Furthermore, as explained above, the participatory process *was* undermined.

The reference to the sustainability appraisal/habitats regulations assessment seems curiously unnecessary, unless the Inspectors are being defensive. The LUC assessment was a sub-standard piece of work, with substantial internal inconsistencies, but it said what the Inspectors were probably wanting to hear in order to get the whole process over and done with.

In short, the Inspectors appear to have set out their modifications quite determined to see them through as unaltered as possible. In pursuing this goal they have also been gratuitously insulting to the Council, renewable energy experts and informed lay people, by saying that their evidence on net zero carbon requirements “lacks the necessary depth and sense of realism”. If there was a lack of depth and sense of realism in the context of a climate crisis, it lies elsewhere.

3. A wasted opportunity to *seriously* address climate change

In paragraph 37 of their report, the Inspectors say, “As discussed throughout this report, climate change is a central focus of the AAP.” Two paragraphs later, they add, “The MMs adjust some of the policies relating to climate change, but do not change the central focus of the AAP.” Many well-informed people beg to differ. The MMs unhelpfully blur that focus and damagingly reduce the effectiveness of the policies.

It would have been good to have been given an explanation at the start of the consultation why a golden opportunity to set such high standards of construction and operation was being wasted, particularly when there were already precedents (allowed despite the 2015 Written Ministerial Statement on Plan Making) to exceed Building Regulations for climate change purposes. At the time, it seemed that financial “viability” and therefore deliverability would be the most likely reasons for any, hopefully minor, modifications to the AAP. But no, that was not the case.

In paragraph 191, the Inspectors acknowledge that Aspinall Verdi’s Viability Appraisal (EV34) “demonstrated, including through sensitivity testing, that in nearly all scenarios, development of the garden village could be achieved in line with development plan policies and other costs to an extent that would generate a residual land value appreciably above the existing use plus a premium *and therefore would be viable.*” They went on to say that the Appraisal abided by NPPF paragraphs 34, 58 and 73 and related guidance. Paragraph 201 reiterates the same point. It is worth noting here that Aspinall Verdi’s Appraisal refers to the original, pre-modification text of the AAP. In other words, there was nothing wrong with Policy 2 from the viability angle.²

The Inspectors’ arguments for rejecting the Key Performance Indicators (KPIs) and wider approach in Policy 2 are labyrinthine. As they themselves admit, the legislation and guidance is in a state of flux; it can therefore be interpreted in several different ways. The Inspectors have chosen to be backward- rather than forward-looking, and doggedly literal rather than imaginative. It is therefore legitimate to argue that they have made a very questionable decision.

² Paragraph 194 of the Inspectors’ report does say, quite reasonably, that further work on viability is likely to be needed during the detailed phasing.

However, that disagreement is secondary to the way the Inspectors have enforced their decision, namely by emasculating Policy 2 and the measures for implementing it successfully. This is where the delay in giving their reasons is so damaging. Had we known their reasons at the beginning of the consultation, a negotiation could have taken place that would have resolved the disagreement.

The Inspectors seem to have baulked at the prescriptive nature of the policy and its KPIs. OK, let's accept that point of view. They themselves point out "the evolving of zero carbon building policy" and changing standards in response to "technological and market advancements". So perhaps the KPIs, which were the result of hours of discussion, research and hard work, should have been recommendations only, as the optimum way of achieving net zero carbon at the time of writing and for the short- or even medium-term foreseeable future. The wording could have been changed to allow the KPIs to be modified in line with evolving best practice – *as long as the requirement to achieve net zero carbon development remained in place*. Instead, the Inspectors have not only seriously emasculated the policy, but introduced precisely the kind of ambiguity and loopholes that they claim to be wanting to avoid.

The new, slightly adjusted, wording for Policy 2 begins: "Proposals for development will be required to align with the District Council's ambition for achieving net zero carbon at Salt Cross." *So let's have a negotiation, in an atmosphere of mutual respect, to see how 100% net zero can be achieved within a more flexible approach.*

4. Serious absence of explanation

The modifications to Policy 2 have had the effect, without sufficient or any explanation, of throwing out not just one but three babies with the bathwater:

- Given the alignment point above, why has the 100% use of low and zero-carbon energy been thrown out along with the (over-)prescriptive means of achieving it?
- Why has "wherever possible" been added to fossil fuel avoidance in GV3/MM2, and the later short paragraph on fossil fuels been deleted? There is no explanation for this. MM4 does include the rather ambiguous clause "minimising the use of fossil fuels to zero", but this contradicts and cannot compete with the "wherever possible" loophole in GV3/MM2.

- Why has the *concept* of Zero Operational Carbon Balance been removed? Surely this is one of the most important aspects of “the central focus of the AAP”. There is no specific explanation for this either.

Biodiversity and other issues – what is major and what is minor?

On a number of occasions (eg, MMs 12, 17 and 22), the Inspectors have added the phrase “for major development”, but they have not explained why they have added it, or what it means. Where does major end and minor begin? This is important because much of the Salt Cross site could be developed in parcels too small to be classified as major, and developers would therefore be able to bypass the requirements on, for example: green and blue infrastructure; a biodiversity net gain strategy; reports on air quality, lighting, noise, ground conditions and contamination, and soil management. Most of these are as relevant to a small self-build parcel of development as to large proportion of the site (by size or impact).

What “major” means in practice needs to be spelt out. Better still these requirements should apply to *all* development. Otherwise, the choice of words undermines the requirement.

On the subject of green infrastructure, MM12 remains unchanged, which means that green roofs, in themselves a positive concept, could be installed at the expense of rooftop solar panels. Thus, the flexibility to adopt solar panels as one way of achieving zero operational carbon balance has been markedly reduced, while more greenfield land on the site has been made vulnerable to development. It would be better to include green *walls* as the preferred option, leaving more roofs available for local renewable energy production. The Inspectors’ modifications have not addressed ways to optimise this balance, despite being prompted to do so.

Two warnings on biodiversity net gain:

- (1) there is evidence to suggest that the new land management of a large part of the site is degrading its habitat and biodiversity, so any new metric should refer back to previous assessments, when it was being well managed for wildlife; and
- (2) “off-site enhancements” should be as close to the site as possible, in preference to Conservation Target Areas that are comparatively distant and less likely to provide direct benefits to Salt Cross.

5. Some serious developments nearby – Botley West Solar Farm and the A40

PVDP's PR booklet announcing the proposal for Botley West Solar Farm is dated November 2022. The Inspectors, whose report is dated 1 March 2023, could have raised the implications of this massive development in their final report, but didn't. This is a shame because the vast area of solar panels proposed on either side of the Evenlode and Lower Road, and further upstream, will have an effect on cumulative flood risk for Salt Cross (and other settlements nearby such as Eynsham and Cassington).

In addition, references in the AAP to the "protection and enhancement of key views" are no longer relevant, given that those views will now be of hectares of solar panels on hillsides. Botley West may also affect land values for residential development.

The other development, or lack of it, which the Inspectors will also have known about, is the delay to the A40 'improvements'. Some of these may not now be implemented in the foreseeable future, for cost reasons. Again, no mention of the potential implications for Salt Cross.

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