

Fairford
Neighbourhood Development Plan
SEA Consultation



July 2017

CONTENTS

1	Introduction	3
1.1	Context	3
2	Strategic EnViRonmental Assessment	4
2.1	Basic Conditions	4
2.2	Planning Practice Guidance	5
3	Fairford SEA	7
3.1	Context	7
3.2	AECOM Report	7
3.3	Fairford Sustainability Appraisal	9
3.4	Revised Site Assessment	12
3.5	Other Matters	16
3.6	Matters of clarification	16
3.7	Impacts on Emerging Local Plan	16
4	Conclusions	17

1 INTRODUCTION

1.1 Context

- 1.1.1 These representations provide the response of Gladman Developments Ltd. (hereafter referred to as **"Gladman"**) to the current consultation held by Cotswolds District Council ("CDC") on the Revised Sustainability Appraisal Report (incorporating a Strategic Environmental Assessment) and the Revised Site Assessment Report.
- 1.1.2 Gladman have been involved throughout the preparation of the Fairford Neighbourhood Development Plan ("**the FNP**" / "**the Plan**") having submitted representations throughout the plan making process. Comments made by Gladman through these representations are provided in **consideration of the Plan's ability to meet the requirements established by paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990 (as amended), specifically the FNP's ability to meet basic condition (a), (d) and (f) and should be read in conjunction with the issues previously raised through our earlier submissions.**
- 1.1.3 CDC has previously considered a number of issues with the FNP as submitted, in particular the **failing of the SEA to meet the Plan's legal requirements. Whilst the Fairford Town Council ("FTC")** has provided some additional text to the SEA and accompanying Site Assessment Report, the revisions made to these key pieces of evidence merely seek to retrofit the evidence base through an inconsequential exercise rather than a full and fair assessment of comparing individual development opportunities.
- 1.1.4 Despite Gladman raising similar concerns to those expressed by CDC in our representations to the Regulation 16 consultation, we were not formally invited to participate at the clarification meeting held on 10th May 2017. Accordingly, we are not fully aware of the issues and discussions that took place during this meeting apart from those documents which have been subsequently published during the consultation period. As such, this response seeks to analyse the revised evidence base and highlight the deficiencies in the process.
- 1.1.5 In short, Gladman remain of the opinion that the Plan is not supported by proportionate and robust **evidence and that the revised evidence fails to meet the Plan's legal requirements.**
-

2 STRATEGIC ENVIRONMENTAL ASSESSMENT

2.1 Basic Conditions

2.1.1 The legal framework governing neighbourhood plans is set out in section 38A of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) and sections 61G-N and Schedule 4B of the Town and Country Planning Act 1990.

2.1.2 To ensure that the Plan is legally compliant it must meet a set of basic conditions as set out in paragraph 8(2) of Schedule 4b of the Town and Country Planning Act 1990. The Basic Conditions to which the Plan must meet are:

(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU **obligations...**

2.1.3 For the Plan to be found in conformity with basic condition (f), it is also incumbent on the relevant bodies to ensure that the FNP is able to meet the legal requirements for SEA as set out in the SEA Directive. The purpose of the Directive is to provide a high level of protection by incorporating environmental considerations into the process of preparing plans and programmes. The SEA Directive is transposed into UK through the Environmental Assessment of Plans and Programmes 2004 (the SEA Regulations).

2.1.4 Neighbourhood plans are land use plans and set the framework for future development consent of projects and therefore fall within regulation 5(4) of the SEA Regulations.

2.1.5 Article 4(1) of the SEA Directive requires that the SA and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, are taken into account during the preparation of the plan and before its adoption or submission to the legislative procedure.

2.1.6 Article 6(2) provides that consultees **“shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan... and the accompanying Sustainability Appraisal”**. Accordingly, it is clear that the consultation is not a matter that can simply be addressed through a tick-box exercise, it must be a genuine opportunity for responses from consultees to influence both the Plan and the SA through the plan making process.

2.2 Planning Practice Guidance

2.2.1 The Planning Practice Guidance (PPG) makes clear that in order to demonstrate that a draft neighbourhood plan contributes to sustainable development, it should be supported by sufficient and proportionate evidence and how the neighbourhood plan guides development to sustainable solutions. Whilst there is no legal requirement for a neighbourhood plan to have a sustainability appraisal prior to it being found likely to have significant effects on the environment, preparing a SA incorporating the requirements of a SEA is useful to help demonstrate that the plan is capable of delivering sustainable development, a neighbourhood plan basic condition. The guidance also makes clear that the material produced as part of the SA of the Local Plan may also be relevant to the neighbourhood plan.¹

2.2.2 The PPG provides:

“[w]here it is determined that a neighbourhood plan is likely to have significant effects on the environment and that a strategic environmental assessment must be carried out, work **on this should start at the earliest opportunity.**”²

and

“Reasonable alternatives should be identified and considered at an early stage in the plan making process as the assessment of these should inform the preferred approach.

This stage should also involve considering ways of mitigating any adverse effects, **maximising beneficial effects and ways of monitoring likely significant effects**”³.

2.2.3 This is so as to ensure that the assessment process inform the choices being made in the plan, as noted in R (RLT Built Environment Ltd) v Cornwall Council [2016] EWHC 2817 (Admin) at paragraph 32:

“The SEA Directive seeks to address that issue by requiring SEA to be an integral part of plans and programmes, so that potentially environmentally-preferable alternatives are not discarded as part of the process of approving plans and programmes without proper consideration of the environmental impacts of the various options.”

2.2.4 It is therefore clear from the above that the SEA process must inform and influence the plan at the earliest possible stage, that consultation responses must be effective to help shape the options **considered, that the SA must demonstrate ‘proper consideration’ of the environmental implications** of the various options and reasonable alternatives are considered in the same manner of detail as the preferred approach.

¹ PPG – Paragraph: 072 Reference ID: 41-072-20140306

² PPG – Paragraph: 029 Reference ID: 11-029-20150209

³ PPG - Paragraph: 037 Reference ID: 11-037-20150209

- 2.2.5 The SEA should identify any likely significant adverse effects and the measures envisaged to prevent, reduce and as fully as possible offset them. Reasonable alternatives must be considered and assessed in the same level of detail as the preferred approach intended to be taken forward in the neighbourhood plan.⁴
- 2.2.6 In assessing reasonable alternatives, the SA/SEA needs to compare the alternatives including the preferred approach against baseline environmental characteristics of the area. The SEA should predict and evaluate effects of the preferred approach and reasonable alternatives and should clearly identify the significant positive and negative effects of each alternative.

⁴ PPG Paragraph: 038 Reference ID: 11-038-20150209

3 FAIRFORD SEA

3.1 Context

3.1.1 The SEA Directive is designed to ensure that potentially environmentally preferable options that will or may attain policy objectives are not discarded as a result of earlier strategic decisions of which the development forms part. This is not what has occurred in this instance, where the FNP has been drafted in contrast to the approach taken by CDC and the SA seeks to justify this departure.

3.1.2 On 21st February 2017, CDC met to consider whether the FNP satisfied the legal criteria necessary to progress to public consultation and, subsequently, independent examination. The Council resolved that the FNP did satisfy **the criteria 'having regard to officer judgment and independent advice.'** However, it is noted that the **'independent advice' the Council received was** left unspecified.

3.1.3 Whilst the advice the Council received is uncertain, it cannot have been the Review of the **Sustainability Report (the "AECOM Report") prepared by AECOM published on 20th March 2017** as this document was published over a month after the **Council's meeting.**

3.2 AECOM Report

3.2.1 The AECOM Report identifies clear compliance issues and the failings of the initial Sustainability Appraisal (SA) as submitted under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012, in that the SA as submitted:

- Fails to properly consider reasonable alternatives;
- Fails to explain clearly why the preferred spatial strategy for the FNP has been chosen; and
- The failure to consider the effects of the FNP as a whole

3.2.2 The AECOM Report notes clear compliance issues with **the SA denoting these as 'red' indicators to** several issues.

3.2.3 **A further issue raised by AECOM and given an 'amber' rating was that there was no indication in the** SA of the specific comments received, nor how they have been directly addressed. As noted above it is imperative that consultation responses are taken into account and are capable of influencing the SA and the preferred strategy that is ultimately selected. This is a fundamental requirement of the SEA regime. It has not been achieved in this instance, as there remains a notable absence of adequate reasons in the SA demonstrating that consultation responses were taken into account and influenced the ultimate strategy chosen in the FNP. A failure to demonstrate that this requirement has been satisfied would result in any subsequent plan being unlawful.

3.2.4 The revised SA merely seeks to retrofit the SA process. This is an issue previously flagged by AECOM even prior to the publication of the revised SA. **That AECOM's concerns regarding retrofitting** remain valid is reflected in paragraph 1.7 of the amended SA, which confirms **that 'no modifications to the Neighbourhood Plan have been necessary as a result of this revised report.'** In light of the

fundamental issues raised by both AECOM and Gladman, it is very surprising that this has not resulted in any amendments.

3.2.5 Following the clarification meeting, it is noted that CDC/AECOM were required to prepare a more detailed note setting out their technical comments on the areas of concern to FTC. Whilst this note has not been made available as part of the consultation material, it would have been useful to see the technical advice to assess whether these issues have been fully factored into the SA report.

3.2.6 It is noted that the AECOM Report states in respect of alternative approaches to FNP1 that:

“The appraisal findings have been presented through a narrative approach which discusses in very broad terms the relative merits of the options. This is accompanied by table which sets out scores in relation to each of the SA themes through which the SA Objectives of the SA Framework have been grouped.

Whilst this process sets out distinct options relating to the spatial strategy for the Neighbourhood Plan, it is not clear as to the detail of the options. For example, the exact location of development under each of the options is not clear, and no maps are provided to aid understanding in this regard. A further element relates to the level of growth to be delivered through each option. For example, it is unclear as to what level of housing growth has been considered through each option, including the number of dwellings to be taken forward.

The appraisal findings are also not particularly in depth. The narrative has not broken down the assessment findings by SA theme, and it is instead a broad assessment of the options. As such it is difficult to gain a good understanding of the relative merits of each of the options with regards to the various elements considered through the SA process. The current findings instead suggest that there are not significant differences in the sustainability performance of each option, and the relative sustainability performance of the options are relatively similar, with some minor exceptions. However, given the level of detail of the appraisal, and the uncertainties as to what has been appraised in terms of **housing numbers and location, it is difficult to establish what the ‘on the ground’ effects of each option are likely to be.”**

3.2.7 The Revised SA has now taken the decision to depart, without justification, from the broader spatial options originally considered through the Regulation 16 consultation material and the SA (incorporating SEA) now assesses individual sites against the SA/SEA objectives and not spatial options.

3.2.8 However, it is important to note that the appraisal findings from the earlier assessment highlighted that the findings of that assessment that there are no significant differences in the sustainability performance of the spatial approach and that they are relatively similar with some minor exceptions.

3.3 Fairford Sustainability Appraisal

3.3.1 The SA process should be iterative, and changes made to the evidence should inform the choices and decisions made. As already highlighted, the SA supporting the previous iterations of the Plan came to the conclusion that the spatial approach in effect scored the same.

3.3.2 **The SA is internally inconsistent, as it notes that “no cumulative effect” is predicted from the two site allocations proposed in the FNP because “the sites are not connected functionally or visually though both lie on the eastern side of the Town”⁵.** Yet at paragraph 4.1 the SA states:

“The dominant sustainability issue in the Town relates to the effects of the rapid and major growth of the town in the last five years. Although each planning application for the major schemes consented in that period seemed able to show that their individual effects on local infrastructure could be successfully managed, and were not sufficient in scale to outweigh the presumption in favour of sustainable development, the local community is now seeing first hand, the emergence of those cumulative effects”.

3.3.3 **The above demonstrates a clear misunderstanding of the meaning of ‘cumulative effects’.** That there has been a misunderstanding is further demonstrated in the summary section to section 8 at **paragraph 8.27 where it states that “...no accumulative negative effects have been identified. This is primarily because the positive and negative effectives identified for each policy are reasonably well-distributed throughout the town, rather than focused on only one area.”**

3.3.4 Cumulative effects are not limited to spatial effects. Development in one area can have off-site impacts that interact with other off-site impacts from development in yet another area. Transport is a classic example: development in one area may impact a junction some distance away, which in turn may be impacted by another distal development, and the developments, taken together, may exert a tipping-point effect on the junction.

3.3.5 **This reflects another ‘red flag’ issue noted by AECOM, in that there is no reference to the in-combination effects of the policies together, or more specifically, the effects of the plan as a whole.** The SA remains deficient in this respect. The reasons that are provided are not only inadequate but **are also clearly premised on a fundamental misunderstanding of the meaning of ‘cumulative’ and ‘in-combination’ effects.**

3.3.6 Moving on to consider the assessment of reasonable alternatives considered in section 9 of the revised SA, the requirement to assess reasonable alternatives has been subject to significant litigation. The principles have been summarised by Hickbottom J in R (RLT Built Environment Ltd) v Cornwall Council [2016] EWHC 2817 (Admin) at paragraph 40:

“In R (Friends of the Earth England, Wales and Northern Ireland Limited) v The Welsh Ministers [2015] EWHC 776 (Admin) at [88], after considering the relevant authorities (including Heard v Broadland District Council [2012] EWHC 344 (Admin), and Ashdown

⁵ Paragraph 8.3. See also paragraph 8.4

Forest Economic Development LLP v Secretary of State for Communities and Local Government [2014] EWHC 406 (Admin)), I set out a number of propositions with regard to **“reasonable alternatives” in this context. That case concerned the law in Wales, but it is** derived from the same SEA Directive and the regulations that apply in Wales are substantially the same as the SEA Regulations. The propositions, so far as relevant to this case, are as follows:

“(i) The authority’s focus will be on the substantive plan, which will seek to attain particular policy objectives. The EIA Directive [i.e. Council Directive 85/337/EC] ensures that any particular project is subjected to an appropriate environmental assessment. The SEA Directive ensures that potentially environmentally-preferable options that will or may attain those policy objectives are not discarded as a result of earlier strategic decisions in respect of plans of which the development forms part. It does so by imposing process obligations upon the authority prior to the adoption of a particular plan.

(ii) The focus of the SEA process is therefore upon a particular plan – **i.e. the authority’s preferred plan – although that may have various options within it. A plan will be “preferred”** because, in the judgment of the authority, it best meets the objectives it seeks to attain. In the sorts of plan falling within the scope of the SEA Directive, the objectives will be policy-based and almost certainly multi-stranded, reflecting different policies that are sought to be pursued. Those policies may well not all pull in the same direction. The choice of objectives, and the weight to be given to each, are essentially a matter for the authority subject to (a) a particular factor being afforded particular enhanced weight by statute or policy, and (b) challenge on conventional public law grounds.

(iii) In addition to the preferred plan, “reasonable alternatives” have to be identified, described and evaluated in the SEA Report; because, without this, there cannot be a proper environmental evaluation of the preferred plan.

(iv) “Reasonable alternatives” does not include all possible alternatives: the use of the word “reasonable” clearly and necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.

(v) Article 5(1) refers to **“reasonable alternatives taking into account the objectives... of the plan or programme...”** (emphasis added). **“Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”. The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no “reasonable alternatives” to it.**

(vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does **not have to be included in the SEA Report or process.**"

3.3.7 Further, in *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2015] EWCA Civ 681 it was said:

"In *Heard v Broadland District Council* (cited above), at paragraphs 66-71, Ouseley J held that where a preferred option – in that case, a preferred option for the location of development – emerges in the course of the plan-making process, the reasons for selecting it must be given. He held that the failure to give reasons for the selection of the preferred option was in reality a failure to give reasons why no other alternative sites were selected for assessment or comparable assessment at the relevant stage, and that this represented a breach of the SEA Directive on its express terms. He also held that although there is a case for the examination of the preferred option in greater detail, the aim of the Directive is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever may be the preferred option."⁶

3.3.8 In this instance, different approaches are proposed within the FNP and the emerging Local Plan to **achieve the objective of sustainable development. When the Neighbourhood Plan 'strongly disagrees' with the local planning authority's approach, and takes a different path, there is an even greater obligation to provide full, comprehensive, and evidence-based reasons setting out why the preferred approach has been selected.**

3.3.9 **Moreover, as per the decision in *Ashdown Forest*, "where the authority judges there to be reasonable alternatives it is necessary for it to carry out an evaluation of their likely significant effects on the environment, in accordance with regulation 12(2) and paragraph 8 of Schedule 2... In order to make a lawful assessment... the authority does at least have to apply its mind to the question."⁷ The SA is obliged to give adequate reasons for selecting particular options as "reasonable alternatives", and reasons for rejecting those options it did reject. The SA does not do so.**

3.3.10 Firstly, it is difficult to see that the various sites were assessed in the same manner as there is no single comprehensive consideration of both preferred and rejected alternatives. There is real concern that the preferred and rejected options have not been considered in a similar manner. This is dealt with further below in the context of the Revised Site Assessment.

⁶ *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2015] EWCA Civ 681 - Paragraph 10

⁷ *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2015] EWCA Civ 681 – Paragraphs 37 and 42

3.3.11 Secondly, there is no consideration of the environmental impact of the emerging Local Plan strategy as a whole. Gladman contend that there is no doubt that the strategy promoted in the **emerging Local Plan is a “reasonable alternative” even though the Town Council “strongly disagrees” with the approach taken by CDC. As Ouseley J stated at paragraph 66 in Heard v Broadland DC [2012] EWHC (Admin) only an “obvious non-starter” is exempt from the requirement to be assessed as a reasonable alternative.** The SEA Directive does not require consideration of alternatives that are clearly environmentally inferior, but all alternatives which are “reasonable” must be assessed. Whilst we have a number of concerns relating to the site by site assessment, only site by site assessments are set out in the FNP. It cannot be said that atomized consideration of individual aspects equates to consideration of the whole.

3.4 Revised Site Assessment

3.4.1 Whilst the Revised Site Assessment Report has been amended to take into consideration the concerns raised by AECOM, Gladman contend that the methodology underlying the assumptions made in the report has not been consistently applied across both the chosen and rejected options for development. As outlined earlier through this response, the need to undertake a comparative and equal assessment of options against clearly defined criteria through SEA testing is necessary in order for the FNP to satisfy the basic conditions.

3.4.2 The Revised Site Assessment Report fails to properly consider land at Horcott Road. It fails to fully consider the positive impact of the development of the site, as with other sites not preferred by the FNP. Both positive and negative effects must be considered for an SA to be legally compliant. The reasons for rejecting land at Horcott Road are not supported by evidence informing the emerging Local plan (which does not consider there to be a gap between Horcott and Fairford), nor by evidence provided by **Gloucestershire County Council’s** Archaeologist (which considers the site can be developed as any heritage interest of the site can be dealt with by way of condition), nor in relation to the impacts on the surface water storage of the site as schemes can be and are routinely designed to retain surface water runoff plus 40% to take account of climate change (thus the site **would, if developed, retain and improve its “valuable water storage capacity” as noted in the Revised Site Assessment Report**). Whereas mitigation measures for similar issues have been **considered and applied to the assessment of the Plan’s** preferred options for growth, no consideration to these issues were given to land at Horcott Road or other rejected sites. As such, the Plan has not assessed reasonable alternatives in the same manner or with the same level of detail, nor provided the same consideration of mitigation measures as the **Plan’s preferred** approach.

3.4.3 Where the revised SA assesses land at Horcott Road and comes to the conclusion that the site is not considered suitable or acceptable for allocation in the FNP, this has not emerged from technical evidence. It is merely public opinion or generalised comments (the Revised Site Assessment Report does acknowledge that **the assessments are partly based on “the legacy of any expressed community opinions” (page 3)**). Gladman provide the following response to the assessment criteria below:

- Environmental quality – The site would not lead to increase sewerage pollution due to mitigation measures introduced.
 - Biodiversity – In support of the outline application, the ecology report demonstrates that the level of bat activity identified over the survey periods was low and no significant community routes or foraging areas were identified. The migration and enhancement of the proposed **development will ensure the ‘favourable conservation statuses’ of all species identified using the study area will be maintained and therefore may properly be considered to accord with the Conservation of Habitats & Species Regulations 2012 (as amended).**
 - Flood Risks – The site is capable of coming forward and would not lead to increased flooding. This is confirmed by the Environment Agency in concluding that the site as having low environmental risk as it would not be located within Flood Zones 2 or 3. See response to Regulation 16 consultation and supporting technical note provided by Enzygo for further details. Further, **mitigation measures have been considered acceptable for the plan’s preferred approach yet Policy FNP14 openly restricts the ability to raise surface levels to ensure effective mitigation is achieved.**
 - Traffic – In respect of the application on the site and the impact on the local highway network, no technical reasons for refusal were raised by County Council highways officers. As such, the highways concerns are unfounded by any technical evidence. Further, CDC have highlighted concerns over some of the preferred allocations and their ability to come forward on highways grounds.
 - Listed Buildings/Scheduled monuments/Conservation area – The Site Assessment suggests **that this area plays an important role of the ‘rural setting’ of the Fairford conservation area and views of buildings in the distance (St Mary’s Church).** The technical evidence supporting the outline application demonstrates that the site makes a negligible contribution to the significance of the Conservation Area through setting and is not prominent in views from the western approach to the Conservation Area. In addition, it is noted that the preferred approach allocates sites within or adjacent to the conservation area yet these sites are considered acceptable due to existing screening provided by hedgerows. These considerations are not afforded to Horcott Road.
 - Rural Character – The assessment **states that “the site is in an area of open old fields which previously extended into open countryside to the west and is now screened by trees and is now screened by a group of houses at The Mere”.** Whilst the assessment has been updated to take account of Landscape Character Assessments for preferred sites (e.g. the revisions to Leafield Road), there is still no appropriate consideration of landscape character assessments in respect of the rejected sites. As such, this is not a comparable assessment supported by robust evidence. Further, some of the sites selected could have an adverse impact on the special landscape area/AONB.
-

- Land resources – No assessment of the site against different BMV classifications has been undertaken. It is noted that in support of Leaffield Road allocation the commentary provided **states the site is ‘not considered to be of ‘best and most versatile’ quality. Whereas in** considering land at Horcott Road, the commentary states “a significant part of the site is classed as best and most versatile agricultural land”. The site comprises of grades 2, 3a and 3b agricultural land and is typical of land around Fairford and the wider area. We question how this consideration has been given without undertaking an evaluation of land **classifications for each of the sites considered despite the issue being raised by CDC on FNP’s** preferred sites.
 - Open/Green Space considerations – The emerging Local Plan states that Horcott and Fairford are an integral part of the same settlement area and any separation is imperceptible on the ground. The LVA and subsequent work undertaken by FPCR to support the outline planning application demonstrates that the character of the two areas will not be discernibly altered or affected to any significant degree by the proposed development.
 - Amenity potential – The assessment considers the main amenity value of the site to be visual from PROW. However, its delivery would provide sympathetically designed open space and landscaping arrangements. These benefits are considered positive in terms of recreational uses on preferred sites.
 - Community – The site is not removed from main town social facilities being either comparable or significantly closer to many community facilities within the Plan area than the **plan’s preferred** approach.
 - School access – The site is within the preferred maximum range for walking distances to access school facilities. Further, planning permission has been granted on multiple sites within this vicinity demonstrating the principle of development in this area is acceptable in terms of access to school facilities.
 - Health access – Comparable walking distance than Leaffield Road and significantly closer to facilities than land off Rhymes Lane.
 - Distance to Town Centre – The site is within walking distance to the Town Centre and is significantly closer than several of the proposed allocations. **No evidence that ‘significant shopping would probably require car use, and footpath improvements would be required to enable reasonable disabled access’ is provided** to support this assertion. Whilst the development of the site will provide improvements to the public realm, where necessary, **this ‘negative’ view point has not been considered against** some of the preferred development options which are significantly further in distance.
 - Employment access – the site is within close vicinity of employment facilities yet the assessment suggested “limited capacity and is currently occupied mainly by a mixture of light industrial, service (e.g. motor) and wholesale/distribution businesses.” These facilities
-

provide important employment opportunities to local community members and again the **negative phrasing in this element of the assessment is not reflected in the FNP's** consideration of its preferred approach.

- Infrastructure – In terms of infrastructure each of the proposed allocations provide potential positive benefits that may arrive through the delivery of each of the sites yet no consideration of the potential positive infrastructure benefits which may arise from land at Horcott Road and other rejected sites is considered.

3.4.4 In light of the evidence contradicting the preferred approach, reasoning explaining why FTC disagreed with the evidence concerning the site are also required.

3.4.5 As previously noted in our submission to the Regulation 16 consultation, the case in R (Stonegate) v Horsham [2016] EWHC 2512 (Admin) concerned a claim under section 61N of the Town and Country Planning Act 1990 to challenge the decision to make the Henfield Neighbourhood Plan. The challenge was successful and Patterson J **quashed the Council's decision to make the plan** because of a failure to correctly carry out a proper SA.

3.4.6 In Stonegate, as here, there was no evidence to support the view expressed for the rejection of one option over the preferred option beyond assertions by local residents. Patterson J noted that while the:

"Office of the Deputy Prime Minister's Practical Guide to Strategic Environmental Assessment Directive advises that predictions do not have to be expressed in quantitative terms as qualification is not always practicable and qualitative predictions can be equally valid and appropriate it goes on to say in paragraph 5.B.11:

"However, qualitative does not mean 'guessed'. Predictions need to be supported by evidence, such as references to any research, discussions or consultation which helped those carrying out the SEA to reach their conclusions."⁸

3.4.7 Gladman therefore assert that FTC have failed to apply a consistent methodology in respect of a number of assessment criteria. As such, the Plan does not comply with the SEA Directive as it has failed to demonstrate sufficiently that it will achieve the delivery of sustainable development and is therefore contrary to basic conditions (a), (d) and (f).

⁸ R(Stonegate) v Horsham [2016] EWHC 2512 (Admin) – Paragraph 73

3.5 Other Matters

3.6 Matters of clarification

3.6.1 Gladman note that the amendments to the SA have resulted in a number of alterations to the SA. We would seek clarification why specific consideration of FNP2, FNP3, FNP16, FNP18, FNP19 and FNP22 have all been removed without explanation. A category-based assessment does not absolve the policies from the need to be considered as a whole. **The approach in the SA is muddled: for “site-specific” policies we are given specific detail on the Table D criteria but no holistic assessment of the policy; whereas for non “site-specific” policies we are given no detail on the specific Table D criteria but are provided with a further holistic assessment of the policy.** As reasonable alternatives are considered in section 9 the inconsistent approach in section 8 makes little sense. Paragraph 8.26 recognises that with few exceptions the policies are inter-connected. They should therefore all be assessed in the same manner.

3.7 Impacts on Emerging Local Plan

3.7.1 **The Council made clear in its response to the Regulation 16 consultation that “CDC’s long standing strategy within the emerging Local Plan has been to deliver site allocations to meet our objectively assessed need. We are not in a position where we can readily drop any of the proposed site allocations – to do so would require a reconsideration of all our proposed allocations, and therefore further consultation.”**

3.7.2 As highlighted in section 3.3 of our Regulation 16 consultation **response, whilst the Council’s** housing allocations are outside the remit of this examination and are subject to the examination process against the tests of soundness outlined in paragraph 182 of the Framework, the intention of the FNP has always been to put forth an alternative strategy to the Local Plan allocations.

3.7.3 One of the most fundamental objectives of the Framework is to ensure that local planning authorities have a Local Plan in place that meets objectively assessed housing needs in full. The approach taken by the FNP fails not only to have regard to the direction of growth taken in the Local Plan contrary to the PPG but may have severe implications on the progression of the Local Plan in the event that the Council does decide to review the housing allocations in the Plan in light of whatever decision is made.

4 CONCLUSIONS

- 4.1.1 The SEA Directive is designed to ensure that potentially environmentally preferable options that will or may attain policy objectives are not discarded as a result of earlier strategic decisions in respect of plans of which the development forms part. However, this is not what has occurred here, where the FNP has been drafted contrary to the approach taken by the Council and the SA seeks to justify the departure, nor has it tested all options through the site assessment process in the same manner.
- 4.1.2 Gladman consider that there are clear compliance issues between the Revised SA and Site Assessment Report and what is required from the SEA Directive. In particular,
- It fails to provide adequate reasons for the preferred options against reasonable alternatives and does not assess all sites in the same level of detail as the preferred approach;
 - It fails to consider material considerations, being the positive environmental effects of rejected sites and cumulative impacts; and
 - Is based on wholly inadequate evidence and has not taken into consideration new evidence or facts.
- 4.1.3 **Accordingly, not only is it impermissible in the circumstances to carry on with the “retrofit” process,** it is clear that the SA was not fit from purpose from the outset as evidenced by concerns raised not only by Gladman but CDC themselves.
- 4.1.4 Given the matters raised throughout this response, Gladman reiterate our previous request that the examination is opened up through public hearing to discuss the issues raised and again formally ask that we are afforded the opportunity to participate at the requested hearing session(s).
-