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Fairford Neighbourhood Plan

Review of the SA Report prepared to accompany the
Fairford Neighbourhood Plan 2016-2031
(Regulation 16 Submission Version)

Cotswold District Council

20th March 2017

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Quality information

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1. Introduction

The Fairford Neighbourhood Plan has been submitted to Cotswold District Council (CDC) for independent examination.

CDC is currently undertaking a review of the documentation associated with the Neighbourhood Plan to establish whether the Neighbourhood Plan complies with all the relevant statutory requirements. As part of this process AECOM have been commissioned by CDC to undertake an independent review of the sustainability appraisal / strategic environmental assessment undertaken to accompany the Neighbourhood Plan.

This review therefore considers the sustainability appraisal (SA) process undertaken to date for the Neighbourhood Plan with a view to establishing whether the process undertaken meets the relevant legal requirements.

2. Method

This review is based on the regulatory requirement for the SA Report accompanying the Neighbourhood Plan to set out certain required information. In this respect AECOM have considered the following question:

- Does the documentation provide adequate evidence that the relevant regulations have been complied with?

The review has also considered in detail the extent to which the SA process has met the requirements of the relevant regulations with regards to the assessment of reasonable alternatives.

AECOM has based the evaluation on the following documents received from Cotswold District Council on 6th March 2017:

- Fairford Neighbourhood Plan 2016-2031 (Regulation 16 Submission Version);
- Fairford Neighbourhood Plan 2016-2031 Sustainability Appraisal Report (incorporating a Strategic Environmental Assessment; and
- Sustainability Appraisal Scoping Letter.

2.1 Regulatory requirements

The legal requirements for Strategic Environmental Assessment (SEA) are set out in 'Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment' (the SEA Directive) and the Environmental Assessment of Plans and Programmes Regulations 2004 (the 'SEA Regulations') which transposed the SEA Directive into domestic law.¹

The Planning and Compulsory Purchase Act (2004) sets out that development plans need to be accompanied by an appraisal of sustainability, the NPPG interprets this as SA and states that:

"Sustainability appraisal is integral to the preparation and development of a Local Plan, to identify how sustainable development is being addressed..."

NPPG Paragraph: 006 Reference ID: 11-006-20140306

The NPPG goes on to state that:

"Sustainability appraisal should meet all of the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004..."

NPPG Paragraph: 007 Reference ID: 11-007-20140306

¹ Whilst a formal SEA screening opinion was not prepared for the Fairford Neighbourhood Plan, Fairford Town Council made the decision to undertake such a process to support the development of the Neighbourhood Plan

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There are also a range of guidance documents that can be useful in guiding the independent review, these include *inter alia*:

- Implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment;²
- A Practical Guide to the Strategic Environmental Assessment Directive (the 'Practical Guide')³; and
- the National Planning Practice Guidance (NPPG).⁴

The Qualifying Body (QB) has undertaken an SA process alongside the Neighbourhood Plan. Whilst an SA is not required for Neighbourhood Plans, the QB has integrated the SEA into an SA process and documented the appraisal in a SA Report. The SA Report states that the QB has incorporated the SEA within an SA "to consider the wider social and economic effects" on the Neighbourhood Plan.

The outcome of the above is that the SEA Regulations form the legal framework for undertaking the SA process and these Regulations are therefore the definitive benchmark against which to review the SA Report.

2.2 Approach to the review

2.2.1 Procedural evaluation

The first part of the review considers the regulatory requirements associated with the SEA Regulations, and the extent to which the information presented in the SA Report enables these requirements to be met.

This element of the review is structured in a table (see **Table 3.1** below) which provides a commentary and a green / amber / red score in relation to each requirement of the SEA Regulations.

2.2.2 Evaluation of the identification and assessment of reasonable alternatives

The second part of the review undertakes an evaluation of the appraisal of 'reasonable alternatives' undertaken through the SA process.

The identification and assessment of reasonable alternatives as part of SEA processes has been an on-going issue for both Examiners and the High Court and the issue has recently been a fruitful area of legal challenge and is the area of SEA of most focus by objectors. The SA Report, as the vehicle for communicating the information regarding reasonable alternatives is thus very important to get right.

For this reason the second part of this review provides an additional focus on reasonable alternatives. In this context the following will be considered:

- Whether the narrative relating to the appraisal of reasonable alternatives is clearly presented. This will include whether: the reasons for selecting the options that were a focus of appraisal as reasonable alternatives are clearly presented.
- Whether the QB's 'outline reasons' for selecting the preferred approach subsequent to and in light of the appraisal are clearly presented.

² European Commission (2005) Implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment [online] @ http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf..

³ ODPM (now DCLG) (2005). A Practical Guide to the Strategic Environmental Assessment Directive [online] @ www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf.

⁴ See: <http://planningguidance.communities.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/>.

3. Review findings

3.1 Evaluation of regulatory requirements

Table 3.1 sets out a review of whether the key provisions of the SEA Regulations have been addressed through the SA Report accompanying the Submission version of the Neighbourhood Plan. This considers whether the SA Report has presented the information required by the SEA Regulations, accompanied by proposed actions to address any deficiencies highlighted.

The colour coding presented in the table is described below:

Colour	Description
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	Probable non-compliance issue, higher risk of successful legal challenge
	Potential non-compliance issue, some risk of successful legal challenge
	Likely compliance, low risk of successful legal challenge

Table 3.1: Review of regulatory requirements

Requirement of the SEA Regulations	Review comments	RAG score	Mitigation / recommended actions
The SA Report must be published alongside the draft plan, in line with the following regulations			
Authorities with environmental responsibility and the public, shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme (Art. 6.1, 6.2)	An SA Report was published alongside the Regulation 14 'Pre-submission' version of the Neighbourhood Plan for consultation from November 2016 to January 2017.		N/A
The SA Report must be taken into account, alongside consultation responses, when finalising the plan.			
The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.	The SA Report briefly summarises the consultation responses received at the scoping stage of the SA process. However there is no indication of the specific comments received, and how they have directly been addressed.		A more detailed overview of the consultation responses received at scoping, and how they have been considered and addressed would help the Independent Examiner understand comments received on the Scoping Letter from the statutory consultees for SEA (Historic England, Natural England and the Environment Agency).
Schedule 2 Requirements; does the SA Report include?			
a. An outline of the contents, main objectives of the plan or programme, and relationship with other relevant plans and programmes;	The SA Report includes the policy and plan review previously included in the SA Scoping Letter. This sets out a review of the adopted Local Plan Cotswold Local Plan 2001-11, the Waste Core Strategy. More specifically, it sets out a review of the key policies for Fairford from the emerging Cotswold District Local Plan. The review does not present a review of the other international, national, sub-regional or local plans and policies which might be of relevance to the SA process. It is unclear whether the statutory bodies for SEA (Historic England, Natural England and the Environment Agency) were content with this approach at the scoping stage of the SA.		Whilst the SA Report does include a review of the key Local Plan policies for Fairford, there is some scope for a more detailed review of other plans and policies to be included. The need to undertake this depends in part on the responses received from the statutory bodies on SEA with regards scoping; it is unclear whether this was an issue raised.

Requirement of the SEA Regulations	Review comments	RAG score	Mitigation / recommended actions
b. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;	Chapter 5 sets out an overview of the environmental characteristics of the area. The SA Report also presents the baseline information included in the Scoping Letter. This includes a table of the key environmental designations and constraints in the Neighbourhood Plan area, demographic information and the key services and facilities. It also provides an indication of the likely future baseline of the area in the absence of the Neighbourhood Plan. This is accompanied by the maps included in the 'Points of the Compass' appraisal undertaken for the SA of the Cotswold District Local Plan, which provide a useful addition to the information presented.	Green	N/A
c. The environmental characteristics of areas likely to be significantly affected;	Chapter 5 sets out an overview of the environmental characteristics of the area. The SA Report also presents the baseline information included in the Scoping Report. This includes a table of the key environmental designations and constraints in the Neighbourhood Plan area. This is accompanied by the maps included in the 'Points of the Compass' appraisal undertaken for the SA of the Cotswold District Local Plan which set out the locations of the key environmental designations and constraints in the Fairford area.		N/A
d. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC.;	Chapter 4 "Local Social, Environmental & Economic Issues" sets out the existing sustainability issues in the Neighbourhood Plan area.		N/A
e. The environmental protection, objectives, established at international, Community or national level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;	See a. above.	Yellow	See a. above.

Requirement of the SEA Regulations	Review comments	RAG score	Mitigation / recommended actions
f. The likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors. (Footnote: These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects);	<p>This is covered in Chapter 8 of the SA Report.</p> <p>This presents a table which scores the 22 policies of the Neighbourhood Plan against the SA themes utilised to present the information in the Cotswold District Local Plan SA. This is accompanied by a policy-by-policy overview of the likely effects of the each policy.</p> <p>With regard to the assessment of the Neighbourhood Plan, the SA has made a very limited attempt to consider the effect dimensions set out in the footnote to f). Positive and negative effects are discussed but there is no mention of whether or not these are significant.</p> <p>Specifically, there is no reference to the in-combination effects of the policies together (or more specifically, the effects of the plan as a whole) beyond the one paragraph summary presented in Chapter 8.</p> <p>Conclusion: the SA Report is deficient in this regard.</p>	Red	<p>There is further scope for the appraisal to be augmented to include the effect dimensions as relevant.</p> <p>There is also further scope for the SA Report to present the findings of the likely effects of the plan policies in combination, or the effects of the plan as a whole.</p>
g. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;	Mitigation measures are included with the assessment of the Neighbourhood Plan policies presented in Chapter 8.		Green
h. An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;	See Section 3.2 below	Red	
i. Description of measures envisaged concerning monitoring in accordance with Art. 10;	<p>Chapter 11 of the SA Report states that “<i>the Town Council will monitor the progress in the implementation of the Neighbourhood Plan using the measures identified in Table A</i>”. However Table A in the SA Report refers to the overview of the stages of the SA process.</p> <p>There is no indication elsewhere in the SA Report as to the monitoring measures proposed.</p>		Red
j. a non-technical summary of the information provided under the above headings	A non-technical summary has been included with the SA Report.	Green	

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3.2 Evaluation of reasonable alternatives

3.2.1 Is the narrative relating to the appraisal of reasonable alternatives clearly presented?

Schedule 2 (h) of the SEA Regulations sets out that 'outline' reasons for setting the alternatives dealt with are required to be presented. Alongside, case law suggests that the SA Report should include an overview of what alternatives were considered through the SA process.

In this context the SA Report presents an appraisal of alternatives for two key policies of the Neighbourhood Plan, as well as a 'do nothing' option for the remaining policies. The policies and options considered, and a commentary on the appraisal of these options is presented below.

Policy FNP1

Policy FNP1 relates to the spatial strategy for the Neighbourhood Plan. The assessment considers three alternative options in this regard, which consider different spatial approaches to delivering housing in the Neighbourhood Plan area. These are as follows:

- Option A: Cotswold District Local Plan approach
- Option B: Land west of Fairford
- Option C: Land east of Fairford

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.

Policy FNP18

The second policy for which alternatives have been considered relate to the employment allocation proposed through FNP18. Two options have been considered in this regard, which either allocates 1) the land for housing or 2) as a mixed use scheme of housing and employment uses.

The appraisal is again not particularly in depth, and is not broken down by SA theme. Whilst the findings suggest that the delivery of the employment land option is the most appropriate in economic terms and in relation to supporting the vitality of the town, findings relating to the majority of the SA themes have not been presented.

DRAFT**Alternatives considered for other policies**

Alternatives are considered for the other policies, but these are limited to a 'do nothing' option. In this context the appraisal sets out the policies for which a 'do nothing' option would lead to tangible sustainability effects which differ to the preferred option (i.e. the current Submission version of the plan).

Again, the appraisal is not particularly in depth, and findings are not broken down by SA theme. Instead the effects for which policies for which tangible effects are deemed likely to occur briefly summarised, with no reference to the SA Framework.

3.2.2 Are the QB's 'outline reasons' for selecting the preferred approach subsequent to and in light of the appraisal clearly presented?

Case law suggests that the SA Report should include an overview of the following:

- What alternatives were chosen (or preferred) for the draft plan and why; and
- What alternatives were discarded (not included) in the draft plan and why they were discarded.

As highlighted above the assessment has considered a number of options. This has taken the approach of comparing the chosen 'preferred option' with other alternative options. As such it is uncertain whether these alternative options were considered prior to the preferred option being finalised, or whether the assessment in effect comprises a 'checklist' of the preferred option against other options.

The findings of the appraisal of reasonable alternatives have also not been accompanied by a clear overview of the reasons for selecting the preferred approach. Instead the appraisal suggests that differences between the options are likely to be negligible, and "*...in no policy case does the alternative offer a clearly better sustainable outcome than the option preferred in the Plan.*"

Whilst this precludes the need to define why the preferred option has been chosen, without the provision of more detailed appraisal findings it is difficult to see how this conclusion arrived at. This is a particularly important element in relation to options for Policy FNP1, given that spatial strategy presented in the Neighbourhood Plan is different to that of the emerging Local Plan.

4. Conclusions

AECOM recognises that a considerable amount of work has been undertaken in writing the Neighbourhood Plan and preparing the evidence base. However, if a plan is required to undertake an SEA then certain processes need to be adhered to. This is in order to ensure that the SEA exercise is compliant with the law but also to ensure that the SEA informs the plan making process to ensure that the plan provides “*for a high level of protection of the environment*” and contributes “*to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development...*”

This review has highlighted a number of deficiencies and queries in the process and the documentation provided. A number of these deficiencies can be readily addressed with the provision of additional information. These deficiencies vary in severity and in many cases it will be a matter for the Examiner, or in the extreme case, judge, to be the final arbiter. Clearly the more work that can be done to amend these deficiencies the more the risk of the plan being found not to meet the basic conditions is reduced.

In three instances this review views there to be a clear compliance issue. This relates to the following:

- The options considered as reasonable alternatives, and the appraisal of these options lack sufficient detail.
- The SA Report does not explain clearly why the preferred spatial strategy for the Neighbourhood Plan has been chosen in light of the findings of the appraisal.
- There is no appraisal of the effects of the Neighbourhood Plan as a whole, and only of individual policies.

These three elements need to be rectified to minimise the risk of the Examiner deeming the Neighbourhood Plan to be not sufficient to meet the basic conditions.

