

Hart Local Plan Examination

Matter 1: Legal Compliance

1.0 Introduction

- 1.1 This note is submitted further to the written Opinion produced by Charles Banner on behalf of Wates Developments Limited¹ (dated 11th December 2018), and the re-opened Matter 1 hearing session on 12th December 2018, at which the Inspector invited other participants to make short written submissions on the issues raised.
- 1.2 On behalf of Gleeson Strategic Land, the promoters of the Rye Common new settlement option, we write to confirm that we agree generally with the points made by Mr Banner as to the legal deficiencies of the Council’s Sustainability Appraisal (SA) process. This note focusses on these deficiencies in the light of the assertions made by both representatives of the Council, and Counsel on behalf of the promoters of the Murrell Green / Winchfield area of search (MG/W), that the February 2018 SA Report is legally compliant and that the Council does not, as a consequence, rely on the August 2018 SA Report to rectify any deficiencies.

2.0 The Environmental Assessment of Plans and Programmes Regulations 2004 (the “SEA Regulations”)

- 2.1 The elements of the SEA Regulations most relevant to this note are summarised below:
- i. Regulation 8 – a Local Plan cannot be adopted unless the local authority has taken account of a (lawfully produced) SA Report and the opinions expressed through consultation;
 - ii. Regulation 12 (2) – an SA Report must identify, describe and evaluate the likely significant effects on the environment of the Local Plan itself and the reasonable alternatives taking into account the objectives and the geographical scope of the plan; and

¹ Itself submitted further to document reference ‘EXAM 49’ produced by the Council

- iii. Regulation 13 – the SA Report must be made available for consultation as *‘soon as reasonably practicable after the preparation of the relevant documents’*. Consultation shall include both the defined consultation bodies (defined in Regulation 5 as the Countryside Agency [now part of Natural England], English Heritage [now Historic England], English Nature [now Natural England] and the Environment Agency) and public consultees.

3.0 Sustainability Appraisal (SA) of the Hart Local Plan – SA Report February 2018 (“the February 2018 SA Report”)

3.1 The Council accepted at the re-convened Matter 1 hearing session that the February 2018 SA Report, which accompanied the submission draft Local Plan, takes an area of search for a new settlement at MG/W as a given in all assessments. It identifies no reasonable alternatives to the area of search at MG/W, be that in the form of an alternative area of search for a new settlement (such as that at Rye Common), or alternatives such as additional urban extensions to existing settlements (as advanced by some parties)².

3.2 In terms of Rye Common specifically, this is explicitly confirmed in paragraph 6.3.10 of the February 2018 SA Report which states that:

“Rye Common was not proposed for allocation by the Draft Plan (2017), nor was it considered by the Interim SA Report as part of the examination of reasonable alternatives. Similarly, in late 2017, it was decided to rule-out – for the purposes of establishing reasonable spatial alternatives – the option of allocating land for a new settlement at Rye Common.”

3.3 The Council’s failure to consider reasonable alternatives to the MG/W area of search, when there clearly are, and were, reasonable alternatives to it that include, most notably, the potential new settlement at Rye Common³, is contrary to Regulation 12 (2) of the SEA Regulations.

3.4 We would also seriously question how, in these circumstances, the Council can demonstrate that the Local Plan accords with the NPPF paragraph 182 test of being justified i.e. the most appropriate strategy when considered against the reasonable alternatives. Accordingly, this is a soundness as well as a legal issue.

² This was specifically accepted by Mr Fessey of AECOM who, the Council confirmed, spoke for the Council on SA matters.

³ A conclusion overtly accepted in the Council’s August 2018 SA Report

4.0 Sustainability Appraisal (SA) of the Hart Local Plan – Post-submission Interim SA Report August 2018 (“the August 2018 SA Report”)

- 4.1 Given the Council’s statement (contrary to the facts) that the February 2018 SA Report is legally compliant in and of itself, it is difficult to understand the Council’s rationale for commissioning what would, on its case, be a wholly unnecessary piece of additional SA work.
- 4.2 In reality, as Mr Banner’s written Opinion states concisely at paragraph 15, it is not possible to read the August 2018 SA Report as anything other than a document that was intended to, and which purports to, contribute to the environmental assessment of the Local Plan under the SEA Regulations. Indeed at the hearing sessions, the Council repeatedly relied upon the August 2018 SA Report to seek to justify its position. This was particularly the case in relation to a potential area of search for a new settlement and is not surprising, as the August 2018 SA Report is the first (and only) SA Report that identifies Rye Common as a reasonable alternative to the MG/W area of search. Indeed it states overtly at paragraph 2.2.10 that;

“At the current time, it remains the case that the scheme (Rye Common) is being actively promoted, and it remains the case that the Hart Local Plan could feasibly identify Rye Common as a New Settlement AoS, to be taken forward through a follow-on DPD.”

- 4.3 The procedural deficiencies of the August 2018 SA Report are clear.
- 4.4 Firstly, as referenced previously, the Council has sought to rely on this document to support its case at the examination hearing sessions but, contrary to Regulation 13 (2), it has failed to consult either the defined consultation bodies or the public on this document. Responses to any potential future consultation on this document would not be able to influence or inform the hearing sessions which have of course already concluded.
- 4.5 Secondly, the August 2018 SA Report was (as its title suggests) produced in August 2018. This is already more than 4 months ago yet this document is of course seeking to justify a draft Local Plan finalised as long ago as January / February 2018. We cannot see how the requirement of Regulation 13(2) for consultation to be carried out *‘as soon as reasonably practicable after the preparation of the relevant documents’* has (or can be) met in these circumstances.
- 4.6 Thirdly, and notwithstanding the above, we are not aware of any evidence to suggest that Officers and / or elected Members have, at any time since production of the August 2018 SA Report, considered its conclusions and re-visited the content of the draft Local Plan that Members originally endorsed in January 2018. This is contrary to Regulation 8(3) which requires that account is taken of the content of an SA Report. Regulation 8(3) is also breached by virtue of the Council’s failure to take in to account the opinions expressed by the defined consultees / public consultees (as the Council has not of course consulted upon the August 2018 SA Report at all).