

**Written Representations made on Behalf of Gordons Builders Merchants
Concerning the Sustainability Appraisal Accompanying the Wycombe
District Delivery and Site Allocations DPD June 2012**

**Response No. DSA12/027
Examination Reference No. 027/1/SA
Matter 2**

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1.00 INTRODUCTION

- 1.01 Tim North & Associates Ltd act on behalf of Gordons Builders Merchants, the freehold owners of land at No. 64 Holmer Green Road, Hazlemere, High Wycombe, Buckinghamshire. The company has a long affiliation with High Wycombe and now wish to find alternative premises to satisfy the needs of their business. The financial return arising from the commercial or residential redevelopment of land solely taken up by the existing builders merchants use is insufficient in today's commercial climate to allow my clients to purchase an alternative site within the High Wycombe area as part of the relocation of their business, whilst enhancing the majority of the retained area as green space. Viability considerations cannot be divorced from realistic reasonable alternatives when assessed from a SEA Directive or SEA Regulations perspective.
- 1.02 Representations have been made at all previous stages leading up to the publication of the Wycombe District Delivery and Site Allocations DPD June 2012. The current representations specifically centre on the absence of evidence on the District Council's website of an Environmental Report having been prepared in respect of the same document for the purposes of satisfying Article 5 of Directive 2001/42/EC and Regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004.
- 1.03 A letter dated 30th October 2012 was received from Mr. David Dewar, Principal Policy Officer, Wycombe District Council in which reference was made to the "*normal and accepted practice across local authorities and other public bodies nationally*" of integrating Strategic Environmental Assessments with Sustainability Appraisals.
- 1.04 No objections are raised to the underlying methodology employed by the Local Planning Authority in its Sustainability Appraisal of the Wycombe District Delivery and Site Allocations DPD June 2012. The issue which lies at the heart of these objections concerns the consequences of incorporating into a single document the Sustainability Appraisal and the Strategic Environmental Assessment. In the writer's view, the Sustainability Appraisal accompanying the Wycombe District Delivery and Site Allocations DPD June 2012 has led to the requirements of the SEA Directive and SEA Regulations not being complied with.



1.05 The “*Sustainability Appraisal of the Wycombe District Delivery and Site Allocations Plan for Town Centres and Managing Development Proposed Submission Document June 2012*” drawn to the attention of the writer by the Principal Policy Officer of the Local Planning Authority in his correspondence of 30th October 2012 analyses and scores the same DPD against various sustainability criteria or indicators of a social, environmental and economic nature. Similarly “*The Sustainability Appraisal of Development Plan Documents for the Wycombe Development Framework Scoping Report Update*” published in September 2011 sets out the framework for how Sustainability Appraisals will be carried out for DPDs forming part of the Wycombe Development Framework. It is difficult to see how the requirements of Article 5 of the SEA Directive and Regulation 12 of the SEA Regulations are met in respect of either of these two documents.

2.00 MATTER 2 - SUSTAINABILITY APPRAISAL

2.01 The purpose of these written representations is to provide additional information on those issues specifically identified by the Inspector to be considered at the Examination into the Wycombe Delivery and Site Allocations DPD June 2012. For ease of reference they are set out below:

1. How has the DSA revolved in terms of the alternatives considered? How are these evaluated and have all reasonable options been examined? Are the choices made properly justified, and is it clear from the SA why the preferred option has been chosen?
2. It has been suggested there is no evidence of an Environmental Report which is needed to meet the requirements of Regulation 12 of the SEA Directives and Regulations. What is the position?
3. The Environment Agency has concerns that the Thames River Basin Management Plan is not included in the SA reports. Does this compromise the SA process?
4. Are there any other outstanding elements or queries in relation to the SA?



2.02 These written representations are directed at providing answers to the first two specific matters identified by the Inspector set out in paragraph 2.01 above, albeit considered in reverse order.

3.00 THE ENVIRONMENTAL REPORT

3.01 Article 5(1) of the SEA Directive falls under the title of “*Environmental Report*” wherein it is stated:

“Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.”

3.02 Annex I is concerned with information to be provided under Article 5(1), subject to Article 5(2) and (3), and includes amongst other factors:-

(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;

(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; ...

(j) a non-technical summary of the information provided under the above headings.”

3.03 Regulation 12(1) and (2) and (3) are concerned with the preparation of an Environmental Report, and along with Schedule 2 of the SEA Regulations 2004, transposes Article 5(1) into domestic law.

“12 (1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of –

(a) implementing the plan or programme; and



- (b) *reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme;*
- (3) *The report shall include such of the information referred to in Schedule 2 to these regulations as may reasonably be required, taking account of –*
 - (a) *current knowledge and methods of assessment;*
 - (b) *the contents of level of detail in the plan or programme;*
 - (c) *the stage of the plan or programme in a decision-making process; and*
 - (d) *the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment .”*

3.04 Section C of the document entitled “*A Practical Guide to the Strategic Environmental Assessment Directive*” prepared by ODPM in September 2005, is concerned with the preparation of an Environmental Report; the contents of paragraph 5.C.2 and 5.C.3 stating:-

“5.C.2 While the Environmental Report need not be issued as a separate document from the draft plan or programme, it must be clearly distinguishable.

5.C.3 An Environmental Report may be included within a document covering effects other than those on the environment, for example as part of a Sustainability Appraisal. Where this is done, the document must clearly show that the Directive’s requirements in relation to the Environmental Report have been met. This could be achieved through signposting the place or places in the document where the information required by the Directive is provided.”

3.05 In my clients’ view the requirements of Article 5(1) of the SEA Directive are not met by the Sustainability Appraisal prepared by Wycombe District Council as it relates to the Wycombe Delivery and Site Allocations DPD June 2012, and hence the same Sustainability Appraisal is outwith Regulation 12(1) (2) and (3) of the SEA Regulations.

3.06 The provisions of paragraph 5.C.4 of the document entitled “*A Practical Guide to the Strategic Environmental Assessment Directive*” are also relevant:-

“... the Responsible Authority needs to bear in mind its purpose (the Environmental Report) as a public consultation document. It is likely to be of interest to a wide variety of readers, including decision-makers, other plan/programme-making authorities, statutory consultees, non-government organisations and members of the public, and needs to be prepared with this range of users in mind. It must include a non-technical summary. A Quality Assurance Checklist is provided in this Guidance to help Responsible Authorities ensure that



the quality of the Environmental Report is sufficient to meet the requirements of the Directive."

- 3.07 No part of the Sustainability Appraisal relating to the Wycombe Delivery and Site Allocations DPD June 2012 can be readily identified as comprising an Environmental Report, despite its likely significance and interest to a wide variety of readers. It is not signposted within the Sustainability Appraisal where the Environmental Report is provided, in accordance with the SEA Directive; and no quality assurance checklist of the kind set out in Figure 7 of the document entitled "*A Practical Guide to the Strategic Environmental Assessment Directive*" is evident within the same Sustainability Appraisal to ensure the requirements of the SEA Directive are met. To these provisions can also be added that the contents of sub-paragraphs (g), (h) and (j) of Annex I to the SEA Directive [paragraphs 7, 8 and 10 of Schedule 2 to the SEA Regulations] have not been assessed, and represent a serious omission in the Council's Sustainability Appraisal.

4.00 REASONABLE ALTERNATIVES

Legislative Framework

- 4.01 The High Court judgement *Save Historic Newmarket Ltd and Others v Forest Heath District Council (2011) EWHC 606 (Admin)* was the first of a number of recent cases which considered whether there had been a breach of the requirements of the SEA Directive and SEA Regulations in the preparation of DPDs. In the Save Historic Newmarket Ltd case, the principal ground of challenge was made under Section 113 of the Planning and Compulsory Purchase Act 2004, and concerned Forest Heath District Council's Core Strategy which was adopted in May 2010 and proposed a 1200 dwelling urban extension to the north east of Newmarket, Suffolk.
- 4.02 This case centred on the duty of the Environmental Report to indicate what reasonable alternatives had been proposed to the Core Strategy policies, whether they had been considered, and how they came to be rejected. Collins J at paragraph 40 of the judgement concluded in finding on behalf of the Claimants that:-

"It was not possible for the consultees to know from it (the Final Environmental Report accompanying the Core Strategy) what were the reasons for rejecting any alternatives to the urban development, where it was proposed or to know why the increase in residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not



sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive and so relief must be given to the Claimants.”

4.03 In a more recent High Court judgement involving *Heard v Broadland District Council South Norfolk District Council and Norwich City Council (2012) Env L.R. 23*, the Broadland Joint Core Strategy was held by Ouseley J to be unlawful because the alternatives to the proposed urban extension to the north east of Norwich had not been assessed in accordance with the SEA Directive. Mr. Justice Ouseley considered that various SAs/ERs were deficient because, inter alia:-

- Such assessment of alternatives as there was had not been carried out on the same basis as the preferred option [54]
- No explanation had been provided of the alternatives selected [ibid]
- No cross reference to any document had been provided where the identification and equivalent appraisal of alternatives could be found [ibid]
- No explanation of the reasons for selecting the alternatives dealt with were evident [61]; and without such reasons it was difficult to see whether or not the choice of alternatives was deficient [66 – the requirement is to assess the plan against ‘reasonable’ alternatives]; and
- A purposive interpretation of the SEA Directive requires an outline of the reasons for the selection of the preferred option (even though not an express requirement of the SEA Directive) and this was also absent [69-70].

4.04 The term “*reasonable alternatives*” as set out in Article 5(1) of the SEA Directive and Regulation 12 of the SEA Regulations are matters considered in 5.12 and 5.14 of the guidance prepared by the European Commission entitled “*Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment*”:-

“5.12 In requiring the likely significant environmental effects of reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives .¹ The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated

¹ Compare Article 5(3) and Annex IV of the EIA Directive which require the developer to provide an outline of the main alternatives studied and an indication of the main reasons for his choice, taking into account the environmental effects.



in a comparable way. The requirements in Article 5(2) concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen ...

5.14 The alternatives chosen should be realistic. Part of the reason for studying alternatives is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article I. Deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I(h).

Evaluation of Options

4.05 The Sustainability Appraisal accompanying the Wycombe Delivery and Site Allocations DPD June 2012 does not reveal within the document the reasons for the selection of alternatives; and neither has there been any analysis on a comparable basis as required by the SEA Directive of the preferred options and selected reasonable alternatives. This criticism extends to the alternative promoted by Gordons Builders Merchants as set out in their representations to the Wycombe Delivery and Site Allocations DPD June 2012 of amalgamating Policies DM10, DM11 and DM12 into a single policy, the amended version of which is set out below:-

"1. The highest level of protection will be given to sites and species of international and national importance, development affecting them will not normally be permitted.

2. Development proposals which would result in the loss, fragmentation or reduction in the size of green spaces shown on the proposals map and/or would significantly harm directly or indirectly other designated sites of nature conservation or geological interest or protected species including those shown on the proposals map will only be permitted where it has been demonstrated that:

- a. the development would contribute to and enhance the natural and local environment; and*
- b. the development within the green space is necessary; and*
- c. a substantial element of the green space is retained and its overall character and quality maintained; and*



- d. the impact arising from the development can be mitigated or compensated to achieve a net overall gain in biodiversity or geodiversity; and*
- e. it has been clearly demonstrated that the benefits of the development outweigh the harm to the biodiversity or geological conservation interests.*

3. All development (where appropriate) will be required to contribute towards the:

- i. improvement of the Green Infrastructure Network;*
- ii. delivery of Corridor Opportunity Areas (as identified on the proposals map); and*
- iii. improvement of Biodiversity Opportunity Areas (as identified in the Biodiversity Action Plan)."*

4.06 It is acknowledged that whilst options to certain policies have been evaluated from a purely Sustainability Appraisal perspective, no information is contained within the same Sustainability Appraisal as to why the options examined have been selected, and not others.

4.07 It is not possible, for instance in the case of Policy DM4, to deduce from the Sustainability Appraisal why the preferred option has been chosen in preference to the alternative option. This is despite the fact that both options when measured against relevant social, environmental and economic indicators are identical; with the alternative option scoring the same as the preferred option in terms of “*significant positive*” and “*positive*” effects on the various selected criteria. This consideration is important in that throughout the various stages leading up to the Wycombe Delivery and Site Allocations DPD June 2012, Gordons Builders Merchants have consistently stated that policies equivalent to DM4 as currently worded will not allow them the necessary financial return with which to purchase a suitable alternative site within the local area.

4.08 Whether assessing Policies DM10 and DM12 individually, or a proposed new policy involving the amalgamation of Policies DM10, DM11 and DM12; no further analysis has been carried out in the selection of reasonable alternatives of the consequences of developing the frontage of 64 Holmer Green Road for residential purposes to a depth broadly equivalent to adjoining properties, leaving the remainder of the woodland green space to be the subject of nature conservation enhancement measures.



5.00 CONCLUSION

5.01 It follows in the case of the area of green infrastructure owned by my clients on Map 12 Widmer End/Great Kingshill, that reasonable alternatives surrounding a mixed use proposal have not been assessed. No option is evaluated which would allow the company to move to alternative premises, retaining existing customers and staff, thereby according with the positive proactive approach to employment generating development sought by current government policy; whilst allowing for an enhancement of those nature conservation/biodiversity interests of the retained green infrastructure beyond a situation of “*no change*”, opening up the same area to the public.