Charlton

Neighbourhood Development Plan

SEA Consultation

January 2021

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1 INTRODUCTION

1.1 Context

1.1.1 These representations provide Gladman's response to the current consultation held by Test Valley Borough Council (TVBC) on the Strategic Environmental Report (SEA) to the Charlton Neighbourhood Plan (CNP).

1.1.2 Gladman have been involved throughout the preparation of the CNP 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 CNP'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 Gladman submit that the CNP is not supported by proportionate and robust evidence in accordance with legislative requirements. In particular, Gladman have significant procedural concerns with the way in which the Steering Group is seeking to retrofit the SEA process following the submission of the Plan for independent examination.

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 CNP 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 Law 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 SEA 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…". 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 SEA through the plan making process. This has not occurred during the preparation of the CNP as the SEA was only prepared following its submission for Examination under Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended).

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.

2.2.2 The PPG provides:

> *"Where it is determined that a neighbourhood plan is likely to have significant effects on the environment and that a strategic environmental assessment is necessary, work on this should start at the earliest opportunity. This is so that the processes for gathering evidence for the environmental report and for producing the draft neighbourhood plan can be integrated, and to allow the assessment process to inform the choices being made in the plan.*[1]

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

[1] PPG – Paragraph: 029 Reference ID: 11-029-20150209

options considered, that the SEA 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.

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.[2]

2.2.6 In assessing reasonable alternatives, the 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.

[2] PPG Paragraph: 038 Reference ID: 11-038-20150209

3 CHARLTON STRATEGIC ENVIRONMENTAL ASSESSMENT

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 of. This is not what has occurred in this instance, where the SEA supporting the CNP has been drafted following submission of the Plan for Independent Examination.

3.1.2 Following submission of the neighbourhood plan for examination, Natural England as part of its Regulation 16 response raised issue with wastewater from the proposed allocation of 50 dwellings. It has been confirmed that wastewater from the plan area is discharged into the Fullerton Wastewater Treatment Works, which subsequently discharges into the River Test. The River Test is located within the Solent Catchment Area and Natural England therefore believe that there is potential for likely significant effect on European designated sites located within the Solent.

3.1.3 Following the concerns expressed by Natural England, AECOM has been commissioned to undertake an independent SEA in support of the CNP. Despite this, it should be remembered that Historic England's response was that it did not have capacity to provide a response at that time, and whilst the Environment Agency (EA) mistakenly concluded that the CNP did not include any site allocations. The wording of this response suggests that it realised the plan did allocate a site would have been different. Whilst TVBC sought response from EA in the Screening Opinion 2019 it is unclear whether the Statutory Consultees were reconsulted on the Screening Opinion Addendum 2020 and whether any initial concerns relating to those bodies statutory responsibilities were raised as part of that documents preparation.

3.2 Procedural Process

3.2.1 Gladman are of the view that, in accordance with PPG ID: 11-033, the SEA should have been published for consultation alongside the pre-submission CNP through a second Regulation 14 and 16 consultations. Given the nature of the CNP's proposals, Gladman consider that Plan will likely need to be withdrawn from the examination process to allow the Steering Group time to undertake a comprehensive Regulation 14 and 16 consultations incorporating both the pre-submission CNP and SEA. A failure to do so could mean that the CNP is not legally compliant and risks the neighbourhood plan failing to meet basic condition (f) when examined.

3.2.2 In addition to the legislative process set out at section 2 of these representations, Gladman note the recent Examination of the Newbold Verdon Neighbourhood Plan[3]. The Examiner provided his report in the form of a high level findings focusing specifically on the SEA Directive. This case is relevant to the examination of the CNP as the SEA took place immediately prior to submission to the local planning authority. Within the Examiner's Report it states:

"Nevertheless, the events which have underpinned the development of the Plan in general, and the preparation of the SEA in particular, have been out of sequence. In summary format I highlight the following matters:

• consultation on the pre-submission Plan (May/July 2018) took place before the necessary screening had taken place (June/July 2018);

• the SEA Determination Notice (August 2018) post-dates the preparation of the pre-submission Plan and its consultation process;

• the attempts by the Parish Council to remedy these earlier matters were partial in their extent. I recognise that the focused consultation on the SEA in November and December 2019 sought to address some of the earlier procedural matters that had arisen in the Plan-making process. Nevertheless, there was insufficient time for interested parties to make their comments and for any such comments to be considered and, where appropriate, incorporated into the wider process. In any event measures of whatever type would have been unable to remedy the fundamental sequencing issues set out in the two preceding bullet points and which had taken place at the very beginning of the process; and

• the submitted SEA (September 2019) was prepared late within the overall process and immediately prior to submission.

Given all the details in the summary above I cannot conclude that the preparation of the Plan has been supported and influenced by the SEA work. In addition, there is no compelling evidence that Stages A-D have been followed in a logical and structured fashion.

The examination process provides no ability for the independent examiner to recommend modifications to this part of the process. Any submitted neighbourhood plan either complies with the basic condition on EU regulations or it does not do so.

[3] https://www.hinckley-bosworth.gov.uk/downloads/file/6919/examiners_high_level_findings_report

As such in my judgement the submitted Plan does not meet the basic condition with regards to EU obligations.

Options

In these circumstances the Parish Council has two options as follows:

Option 1

The Parish Council withdraws the Plan.

In this scenario the examination ends, and no examination report is produced. In the event that the Parish Council decides to proceed with this option it will then be able to come to a separate local decision on whether or not it wishes to continue with any further work on preparing a neighbourhood development plan. If it wished to continue with such work, it would need to revert to the pre-submission Plan phase of the Plan.

Option 2

The Parish Council decides to allow the examination to continue.

In this scenario an examination report would be produced in due course. My recommendation to the Borough Council would be that the Plan should not proceed to referendum as it does not meet the basic conditions.

At this point the Borough Council would then need to consider my recommendation and come to its own view about the extent to which the Plan met the basic conditions." (emphasis added)

3.2.3 The Plan has been subsequently withdrawn from the examination process following the publication of the Examiner's High Level Findings.

3.2.4 The case above is similar to events which have taken place through the plan preparation process of the CNP. The Steering Group has only prepared the SEA following submission for examination. This is clearly out of sync with what is required of Article 4(1) of the SEA Directive and to ensure an iterative process is undertaken which allows interested parties to contribute towards plan preparation and the decisions made within the plan.

3.2.5 In light of the above, Gladman consider that the Plan should be withdrawn from examination and evidence updated and reconsulted under pre-submission phase of the plan making process.

3.3 Housing Needs and Site Assessments

3.3.1 Notwithstanding the comments made in section 3.2 of these representations, Gladman wish to comment upon the SEA work undertaken post submission.

3.3.2 The Steering Group commissioned AECOM to prepare a Housing Needs Assessment (HNA) in 2019. The HNA recommends a housing need of 292 over the Neighbourhood Plan period to help address a shortage of affordable housing to meet the communities needs and appropriate housing to meet the needs of an aging population. Despite the Neighbourhood Plan's own evidence, the Steering Group and local residents concluded that the housing need is 50 new homes over the plan period would best reflect the needs of the parish. The SEA states at paragraph 4.11 that:

"The decision to reduce the housing figure to 50 dwellings has been agreed with TVBC. This is confirmed within TVBC's response to the Charlton Neighbourhood Plan Examination – Examiner's Clarifying Questions (2020) (question 10).

3.3.3 The Examiner will be aware of the wording of EQ10 which states:

"EQ10. Is the Borough Council generally satisfied with the scale of housing development proposed in the neighbourhood plan?"

3.3.4 The Council's response is simply 'Yes' with no further information as to why it considers it appropriate. Indeed, the TVBC's Regulation 16 consultation response suggests the Council's expressed concern with the housing number and deviation from the Plan's own evidence as the Council states:

"It would appear that the NP is ignoring the evidence from the AECOM study."[4]

3.3.5 Gladman do not consider the housing requirement to be appropriate given that the Local Plan identifies Charlton as part of Andover as a Key Service Centre, as it is contiguous with its settlement boundary.

3.3.6 Notwithstanding TVBC's lack of an appropriate response, this does not absolve the Steering Group from ensuring that the housing requirement contained within the CNP should have been tested appropriately through the SEA process. The SEA process should be iterative, and changes made to the evidence should inform the choices and decisions made. As already

[4] Test Valley Borough Council Regulation 16 consultation response: Page 21 - Comment SH10

highlighted, the SEA process followed submission of the Neighbourhood Plan and merely seeks to retrofit this legal process which it cannot do.

3.3.7 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 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."

3.3.8 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."[5]

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

3.3.9 In this instance, where the Neighbourhood Plan 'strongly disagrees' with its own supporting evidence of housing need, 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 through the process of plan preparation and not as a measure to retrofit the Plan's evidence.

3.3.10 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."[6] *The SEA is obliged to give adequate reasons for selecting particular options as "reasonable alternatives", and reasons for rejecting those options it did reject."*

3.3.11 Gladman do not consider that the SEA adequately considers its ability to deliver a higher quantum of housing to meet its needs and should have tested a range of housing figures (e.g. 100 dwellings, 150 dwellings, 200 dwellings, 292 dwellings etc) to assess whether higher quantum of housing could reasonably be delivered in order to meet the plan's objectives. Instead a capacity based approach has been undertaken with consideration of specific sites and there ability to deliver the 50 dwelling target of what the Steering Group considers to be its housing needs rather than what the AECOM assessment has identified. The SEA states:

"All options perform equally in terms of providing sufficient housing to meet the identified needs of the community, as it is assumed that all options will deliver the same quantum of growth."[7] (emphasis added)

3.3.12 The SEA therefore fails to appropriately test the Plan's ability to deliver higher levels of development to meet the actual identified housing need of 292 dwellings over the plan period.

3.3.13 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. The SEA fails to fully consider the positive impact of development of sites considered, as with

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

[7] SEA Appendix B – See 'discussion' opening paragraph on page 140

other sites not preferred by the CNP. Both positive and negative effects must be considered for the SEA to be legally compliant. The reasons for discounting sites are not supported by evidence and detailed considerations but merely generalised statements that do not consider site specifics. By way of example, table 5.2 has not been tested in the same manner as the preferred approach and the SEA Report does not provide for negative effects associated with developing preferred option. For instance, the site selection was based on a natural extension to the development currently being progressed. It lies outside of the current settlement area whereas all other sites have been discounted for this reason and rejected sites are also scored with insufficient reasonings behind the evidence. Whilst it is noted that the selected sites were assessed in Appendix B, Gladman consider that insufficient consideration has been given towards ways in which methods for mitigating adverse effects can be achieved in order to maximise beneficial effects and this is a fundamental failure of the SEA.

3.3.14 Gladman assert that in respect of how the SEA has reached its considerations it is not supported by sufficient evidence as reasoning for discounting sites from the assessment and the Plan does not comply with the SEA Directive and fails to demonstrate its consistency with basic condition (f).

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 CNP has been drafted following submission of the Plan and contrary to the approach of the CNP's evidence base nor have reasonable alternatives been tested in an appropriate manner.

4.1.2 Gladman consider that there are clear compliance issues with what is required from the SEA Directive. In particular,

- It fails to provide an iterative process allowing interested parties to contribute towards the process having only been prepared following submission of the Plan and its supporting evidence base to TVBC for independent examination.
- 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; and
- It fails to consider material considerations, being the positive environmental effects of rejected sites and cumulative impacts.

4.1.3 Accordingly, not only is it impermissible in the circumstances to seek to "retrofit" the SEA process, it is clear that the SEA as submitted is not fit for purpose as evidenced by the concerns raised in this submission.

4.1.4 Given the matters raised throughout this response, Gladman consider that the Plan should be withdrawn from the Examination process and reconsulted upon and resubmitted for examination as per the decision taken in Newbold Verdon. However, should the examination of the Plan proceed then Gladman request that the examination is opened up through a public hearing(s) to discuss the issues raised and formally request that we are afforded the opportunity to participate at the hearing session(s).