

## Charlton Neighbourhood Plan - Gladman representation

The representation submitted by Gladman (January 2021) in response to the Regulation 16 consultation on the draft Charlton Neighbourhood Plan raises a number of concerns in relation to the accompanying Environmental Report (November 2020) and the SEA process. These are summarised below:

1. **Procedural process** - the SEA “*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*”.
2. **Reasonable alternatives** - the SEA “*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*”.
3. **Assessment of alternatives** - the SEA “*fails to consider material considerations, being the positive environmental effects of rejected sites and cumulative impacts*”.

Each of these concerns are addressed in turn below.

### Procedural process

Firstly, it is important to set out the following to provide some context:

- An SEA and HRA screening opinion was produced by Test Valley Borough Council (TVBC) in October 2019 and concluded that the draft Neighbourhood Plan was not likely to have a significant effect and therefore HRA and SEA was not required.
- The draft Neighbourhood Plan was submitted for Examination in April 2020 and in response to the Regulation 16 consultation Natural England (NE) raised a concern in relation to nutrient issues affecting nationally designated sites in the Solent Region.
- In response to the comments from NE a screening opinion addendum was produced, and this concluded that an Appropriate Assessment was required under the Conservation of Habitats and Species Regulations 2017, also referred to as the HRA Regulations.
- The need for an Appropriate Assessment automatically triggers the need for an SEA in line with Regulation 5(3) of the Environmental Assessment of Plans and Programmes Regulations (2004), also referred to as the SEA Regulations.

The bullets above explain why the SEA was carried out at a later stage in the plan-making process, and also importantly demonstrates that legislative requirements are being adhered to and that comments from statutory bodies have been taken into account as part of an iterative plan-making process.

Turning to legislative requirements, it should be noted that the representation refers to the SEA Directive (Directive 2001/42/EC) numerous times and that this is no longer applicable following the withdrawal of the UK from the EU. The primary legislation is currently the Environmental Assessment of Plans and Programmes Regulations 2004 (SEA Regulations) and subsequent Coronavirus amendment in 2020. This is relevant as there are differences between them. For example, on the matter of consultation the SEA Regulations state in Regulation 13(3) that the consultation period, “*must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents*”. Whereas as stated in the representation in paragraph 2.1.6 that Article 6(2) the SEA Directive states that relevant bodies and the public “*shall be given an early and effective opportunity within appropriate time frames to express their opinion*”. Despite the differences both are clear that consultation needs to be effective and occur before adoption of the plan.

In terms of extant guidance, the National Planning Practice Guidance (NPPG) states in paragraph 040 (Ref ID: 11-040-20140306) that “*The environmental report, including the non-technical summary, must be made available alongside the draft neighbourhood plan*” and that “*The consultation bodies and the interested parties should have an opportunity to express their opinion and be given sufficient time to do so*”. In line with the SEA Regulations the guidance states that the Environmental Report must be published alongside the draft plan and that interested parties must be given an opportunity to and adequate time to express their opinion.

In summary, there is no legislative requirement for the Environmental Report to accompany the draft Neighbourhood Plan on consultation at Regulation 14. The Environmental Report must be published alongside the draft plan and effective consultation carried out within appropriate time frames prior to adoption.

The Environmental Report was published for Regulation 16 publication alongside the draft Charlton Neighbourhood Plan for a period of just under 7 weeks, from 17<sup>th</sup> November 2020 to 4<sup>th</sup> January 2021. The representations received are being taken into account through the Examination (demonstrated by this response) and, as part of the Examination process, amendments can be made to the draft Charlton Neighbourhood Plan and Environmental Report where necessary.

Taking the above into account, our position is that the legislative requirements and therefore the basic conditions have been met. The Environmental Report was published alongside the draft Neighbourhood Plan and the statutory consultees/ public have been given an opportunity to express their opinions within an appropriate timeframe (over 6 weeks). These opinions are being taken into account and still have an opportunity to influence the draft plan and the SEA.

As a final point, it should be noted that at this stage the statutory consultees have not raised any significant concerns or objections to the Environmental Report. A meeting on 14<sup>th</sup> September 2020 between TVBC, Charlton Parish Council and AECOM explored the scope of the alternatives to be considered for the assessment. The Environmental Report then identified and evaluated all reasonable alternatives and concluded that the draft Neighbourhood Plan is not likely to result in any significant negative effects.

## Reasonable alternatives

The representation raises a concern in relation to the level of housing need used to inform the identification of reasonable alternatives. The Environmental Report (November 2020) sets out how reasonable alternatives were established in Chapter 4. Paragraphs 4.9 to 4.13 explain how the indicative requirement of 50 dwellings for the plan period was identified. The Housing Needs Assessment (HNA) produced by AECOM in 2019 is acknowledged and it is then explained in paragraph 4.10 that the Steering Group and local residents concluded, through community consultation, that a housing requirement of around 50 new homes over the plan period would be more appropriate and reflect the needs of the parish taking existing commitments into account (92 dwellings). Paragraph 4.11 states that this was discussed and agreed with TVBC.

The SEA Regulations state in Regulation 12(2) that the Environmental Report “*shall identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives taking into account the objectives and geographical scope of the plan*”. It is clear from the vision and objectives of the draft Charlton Neighbourhood Plan that the plan has wider ambitions than to just meet future housing needs; this includes a desire to maintain the distinct identity of the community, to enhance the village environment and rural landscape, to protect the historic environment and promote biodiversity. It is also evident that community consultation and engagement plays a critical role in the development of the plan and future evolution of the village. Taking the vision and objectives of the plan into account, it is therefore appropriate for the wider factors outlined above, including current evidence around existing commitments, to inform the identification of the housing requirement used to establish reasonable alternatives through the SEA process.

The representation refers to a number of legal judgments; however, in summary it has been well established through the courts that the relevant authority (in this case TVBC) has a “*substantial area of discretion*” with regard to the identification of reasonable alternatives.<sup>1</sup> TVBC as the relevant authority determined that a housing requirement of 50 dwellings for the plan period is appropriate, in light of evidence, the adopted Local Plan (2016) as well as the emerging New Local Plan. The SEA therefore explored potential alternatives to deliver this requirement based on the site options available. In our view the SEA meets regulatory requirements and is in line with extant guidance in relation to the identification and evaluation of reasonable alternatives.

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<sup>1</sup> Ashdown Forest Economic Development LLP v SSCLG [2014] EWHC 406 (Admin)

## Assessment of alternatives

The representation states that, *“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 other sites not preferred by the CNP”*.

The detailed assessment of reasonable alternatives is presented in Appendix B and summarised in Chapter 5 of the Environmental Report (November 2020). The four options were all assessed independently and consistently through the SEA process. It is clear from the summary assessment table that some of the rejected options perform better against certain SEA themes compared to the preferred option. For example, Option D was found to perform more positively against the socio-economic SA themes compared to Option A (the preferred option) as there is greater potential to integrate with the existing settlement form; access to services, facilities, and sustainable travel; and opportunities to support active travel. We therefore reject the assertion that the options have not been assessed in the same manner or that positive impacts for rejected options were not considered.

The representation goes on to state that the reasons for discounting options are not supported by evidence and detailed considerations. The SEA Regulations only require that the Environmental Report presents an *‘outline of the reasons for selecting the alternatives dealt with’*. The Environmental Report (November 2020) presents these outline reasons within Table 5.2. There is no requirement or need to support these outline reasons with detailed supporting evidence. This has again been well established through existing case law.

Finally, we note in Chapter 4 of the representation that cumulative impacts are referred to; however, there is no other reference to cumulative impacts within the representation and we are therefore not clear what these concerns are. The SEA process for the draft Charlton Neighbourhood Plan has considered cumulative effects where necessary. For example, references to the HRA Report and potential cumulative effects on nationally designated sites in the Solent Region through increased nutrient inputs in paragraphs 6.5 to 6.9.