

Planning Consultation (DPD)

From: Tom Rocke
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With reference to the above consultation, please see attached representations on behalf of Landsec.

I would be grateful if you would kindly acknowledge receipt.

Many thanks.



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Your Ref:

Our Ref: LAND0001

Date: 11 April 2018

Sustainability Appraisal Consultation 2018
Forward Planning
Mid Devon District Council
Phoenix House
Tiverton
EX16 6PP

Dear Sirs

**MID DEVON LOCAL PLAN REVIEW EXAMINATION
SCHEDULE OF AMENDMENTS MADE TO THE SUSTAINABILITY APPRAISAL UPDATE (2017)
REPRESENTATIONS ON BEHALF OF LANDSEC (ID: 6269)**

With reference to the above matter, I set out below some brief representations on behalf of Landsec.

Process

The guidance on sustainability appraisal is unequivocal that:

*A sustainability appraisal is a systematic process that **must** be carried out **during the preparation** of a Local Plan. ...*

*... It can be used to test the evidence underpinning the plan and help to demonstrate how the tests of soundness have been met. Sustainability appraisal should be applied as an **iterative process informing the development** of the Local Plan. ...*

*Section 19 of the Planning and Compulsory Purchase Act 2004 requires a local planning authority to carry out a sustainability appraisal of **each of the proposals** in a Local Plan **during its preparation**.¹*

*Sustainability appraisal is required **during the preparation** of a Local Plan. The local planning authority **must** carry out an appraisal of the sustainability of the proposals. This will help the authority to assess how the plan will contribute to the achievement of sustainable development. ...²*

¹ PPG, Paragraph: 001 Reference ID: 11-001-20140306

*Sustainability appraisal is **integral to the preparation and development** of a Local Plan, to identify how sustainable development is being addressed, so work should start at the same time that work starts on developing the plan. ...³*

It is therefore clear that:

- SA 'must' be 'integral' to the 'preparation' of a Local Plan.
- SA must be carried out of 'each of the proposals' and must inform the preparation of the Plan as a whole.

This process is confirmed in the flowchart contained in the PPG which makes it clear that the SA must precede submission of a Local Plan for Examination⁴.

The process is flawed in this instance in that, as has been acknowledged by the suspension of the Examination, the commissioning of the review from LUC and the findings of that review, and the 2018 updates to the SA, the sustainability appraisal of the Local Plan prior to submission was deficient.

Having regard to the clear advice relating to SA, the consequence of the decision to amend the Plan to incorporate a major new proposal at J27, with wide-ranging consequential amendments to other policies given the implications for the sustainable development strategy of the Plan, ought properly to have been withdrawal of the submission draft Plan, followed by SA of the revised portfolio of policies and proposals. Only in that way would the SA have properly informed the Local Plan as a whole, and would it be possible to ascertain whether, considered overall, the Plan will contribute to the achievement of sustainable development. Moreover, it is clear from the chronology of events documented by LUC, that the decision to include Policy J27 in the Plan was not 'informed' by the SA.

The updates to the SA therefore seek to provide retrospective justification for a Plan that is of very different complexion, and incorporates major new proposals that have not been subject to robust and comprehensive SA 'during its preparation' (that is, pre-submission). The consequence is a 'patchwork quilt' of a SA that is almost unintelligible even to a professional eye given the need to piece together elements from a multitude of documents. Whilst the lack of clarity was foreshadowed in the LUC report, the response has been inadequate, and endorses the conclusion that the Plan should have been withdrawn and subject to a new SA as a whole. Whilst it is understood why it may have been difficult for LUC to make this recommendation, it would have been prudent for the Council to have read between the lines of their critique and to have responded accordingly.

The SA process has therefore not been discharged properly or appropriately. It has not properly informed the preparation of the Plan in its current form. Moreover, the recent updates have simply sought to provide

² Ibid, Paragraph: 005 Reference ID: 11-005-20140306

³ Ibid, Paragraph: 006 Reference ID: 11-006-20140306

⁴ Ibid, Paragraph: 013 Reference ID: 11-013-20140306

retrospective justification for the revised Plan as submitted, a wholly illegitimate purpose for SA and an incorrect deployment of its function.

Consideration of Reasonable Alternatives

It is correctly acknowledged in the LUC report that the allocation of land at Junction 27 is a 'key' proposed modification to the Local Plan⁵, and in relation to which they were asked to advise on whether the SA Update (2017) had adequately considered reasonable alternatives. In responding to that question, LUC relied on the Council's advice that "... *an important element in the sequential site selection of main town centre uses is that proposals cannot be disaggregated...*"⁶. For this reason the review did not consider the constituent parts of the policy, and focused only on alternative options for the location of the proposal⁷. However, their recommendation was that a brief statement should be included in the SA update to evidence and explain why disaggregated options were not being considered as reasonable options for the purposes of SA.

As pointed out in representations to the Proposed Submission Plan, the advice to the Council by two separate consultants has been that the proposals do not meet the sequential test since there are opportunities to accommodate parts of them on sequentially-preferable sites. Moreover, NLP's specific advice was that "... *the Council **can** consider the scope to disaggregate or change the content of the proposed development at EW, when considering the appropriateness of a plan allocation*"⁸.

The justification now included in the SA Update in relation to Junction 27 in response to LUC's advice provides little in the way of evidence to rebut the advice given to the Council by their consultants. Reliance is placed on Secretary of State decisions in relation to planning applications, and therefore specific proposals put forward by applicants which it is not within the remit of local planning authorities to change. Moreover, they have completely ignored other decisions of the Secretary of State that auger in the opposite direction to which their attention has been drawn in evidence to the Examination⁹.

Contrary to the position relating to the consideration of planning applications through the development management process, it is completely within the domain of local planning authorities to decide on land allocations to include within its Local Plan having regard to identified needs and objectives. Whilst all duly-made representations received from landowners and developers should be taken into account, a local planning authority is not bound to entertain specific proposals when making allocations, and is at liberty to disaggregate and decrease the scale of site that is allocated. It is, after all, simply allocating a proposed use of land not determining a specific proposal submitted by an applicant and which a local planning authority is not entitled to change. If an intending developer wishes to pursue an alternative proposal, including, as in this instance, one incorporating additional elements (such as Class A1 (Retail)), the need for which is not supported by either the plan strategy or evidence base, it remains open for them to do so through a planning application and to provide material evidence in support of a different scheme.

⁵ LUC Report, para. 1.16

⁶ Ibid, para. 1.17

⁷ Ibid, para. 1.23

⁸ SSE17, para. 2.69, emphasis added

⁹ Hearing 1, Position Statement on behalf of Landsec, para. 4.6

It is therefore considered that the Council's position regarding disaggregation is not supported by evidence, is untenable and incorrect. As such, the basis on which the consideration of alternative options has been rejected, is unsound.

It is clear from the questions set by the Inspector for the Examination Hearing that he wishes to test the robustness of the sequential test, as well as the synergy between elements of the proposed allocation. If the Council is incorrect, and it is found that it is appropriate to entertain disaggregation for the purposes of making site allocations in a Local Plan, then the SA will be flawed given that it will not have considered reasonable alternatives to the proposals for Policy J27.

For reasons set out in representations to the Submission Plan, exclusion from the plan allocation of elements that have not been justified and conflict with its strategy does not preclude a promoter from pursuing a planning application for them at a later date as part of a composite scheme, and making the required justifications through the development management process.

The consideration of reasonable alternatives has also failed to test reasonable alternative strategies for meeting the tourism objectives of the plan. As was again pointed out in representations, the evidence base contemplates a multi-faceted tourism strategy, one strand of which involves a major tourist facility at Junction 27. However, it does not identify a major visitor attraction at Junction 27 as an absolute requirement that is critical to the economic strategy for the district. The consideration of reasonable alternatives therefore ought properly to have considered a scenario incorporating the other strands but excluding a major facility at Junction 27. In excluding this option the SA has failed to consider reasonable alternatives.

For the foregoing reasons it is concluded that the SA Update is not robust. It has incorrectly excluded the consideration of reasonable alternatives in part owing to erroneous assumptions relating to the sequential test.

Scope of Impacts

In his questions in relation to Hearing 1 the Inspector correctly questions whether a 'regional' need for the comparison goods floorspace has been demonstrated¹⁰. This correctly acknowledges the potential spatial scale of the impacts to which the proposals will give rise, and the spatial extent over which it is necessary to conduct the sequential test and assess economic impacts.

For reasons set out in the 'Critique of Retail Evidence' submitted with their original representations, it is Landsec's view that neither the sequential test, nor the assessment of impacts, have been carried on a regional scale. Moreover, the assessments that have been undertaken are flawed, and significantly underestimate the impacts on existing investment with which the J27 proposals will compete most directly.

¹⁰ Hearing 1, Policy J27, Issue 2

Given the flaws in the retail evidence submitted by the promoters in support of the allocation, and the absence of detailed evidence of its own commissioned by the Council, there is considered to be no robust basis for the assessment of the economic impacts of the J27 proposals in the SA. The assessment in the SA that the proposal would give rise to positive impacts in retail terms, is therefore untenable given that the scope of the assessment has been inadequate having regard to the nature of the proposal.

Conclusions

Having regard to the foregoing considerations we maintain the view that the SA update has failed to address the shortfalls of the document, and that it provides neither adequate nor robust sustainability appraisal of the J27 proposals. It clearly manifests an attempt at retrospective justification of proposals that have wider reaching implications for the overall plan strategy, and give rise to impacts reaching beyond the district boundaries, and therefore of a scope and scale which the SA framework was neither intended to assess, nor is it fit to do so. Moreover, given that the SA is premised on false and inaccurate assumptions regarding the assessment of alternatives, it is flawed in its approach to dealing with such matters.

We therefore maintain the view that, should the Council be minded to continue with the J27 proposals, the Plan should be withdrawn, the SA framework be revisited to render it fit for purpose and soundly based with regard to the approach to alternatives, and the outcomes of the SA process be used to inform the provisions of the Plan rather than seek to provide retrospective justification for them.

Please do not hesitate to contact me should you require anything further.

Yours faithfully

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Director