

REGULATION 16 CONSULTATION JULY 2015 CONSULTATION ON SEA MATTERS

REPRESENTATIONS TO THE EARLS BARTON NEIGHBOURHOOD PLAN

ON BEHALF OF REDROW HOMES (SOUTH MIDLANDS)

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1. INTRODUCTION

- 1.1 These representations have been prepared by Pegasus Group on behalf of Redrow Homes (South Midlands). They follow previous representations made to the Earls Barton Neighbourhood Plan (EBNP) at the Regulation 14 consultation in April 2014, the first Regulation 16 consultation in August 2014, the second focussed Regulation 16 consultation in March 2015, attendance at the hearing session held in April 2015, and a post-hearings consultation in May 2015.
- 1.2 These representations focus upon the recent determination made jointly by the Borough Council of Wellingborough (BCW) and the Earls Barton Parish Council (EBPC) upon the need for a Strategic Environmental Assessment (SEA) to be undertaken to support the EBNP. They address the determination process itself and its compatibility with the relevant regulations, and the Statement of Reasons and whether it has adequately addressed the likely environmental effects of the EBNP.

2. SEA DETERMINATION

2.1 Following the examination session held 29th April 2015 the Examiner advised that the statutory processes in respect of SEA had not been complied with, as no determination had been made on the requirement for SEA. On 8th June 2015 the EBPC and BCW jointly issued a determination on the requirement for SEA accompanied by a Statement of Reasons.

2.2 We set out below our comments on the determination and the Statement of Reasons. Our comments refer chiefly to basic condition 8(2)(f) – whether the making of the plan would breach or otherwise be compatible with European obligations, and basic condition 8(2)(a) – whether, having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Neighbourhood Plan. However, as we have highlighted in our previous representations, all of the basic conditions ‘interlock’ and as such the ability of the EBNP to meet the aforementioned conditions also holds implications for its ability to meet basic condition 8(2)(d) – whether the Neighbourhood Plan contributes towards the achievement of sustainable development.

Legal Framework

2.3 Regulation 8(2) of the Town and Country Planning Act 1990 (as amended) provides (as far as relevant) (where “order” is to be read as “plan”):

(2) A draft order meets the basic conditions if—

(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 contained 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”

2.4 The EBNP is a plan or project for the purpose of European law, and the relevant European provisions apply. The preparation of plans and programmes relating to the development of land is governed by Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment ("the SEA Directive") and is transposed into domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 ("The SEA Regulations").

2.5 Article 3 ("Scope") of the SEA Directive provides:

"3(1) An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects."

(2). Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

(3). Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

(4). Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

(5). Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and

programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive."

2.6 Article 4 ("General Obligations") of the SEA Directive provides:

"4(1) the environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

[...]

(3) Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3)."

2.7 Regulation 5 of the SEA Regulations consequently provides:

"5(1) Subject to paragraphs (5) and (6) and regulation 7, where–

(a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and

(b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3),

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) The description is a plan or programme which–

(a) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and

(b) sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC."

2.8 Article 5 ("Environmental Report") of the SEA Directive provides:

"1. 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 1.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

2.9 Annex 1 of the SEA Directive provides:

"Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

[...]

(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.”

2.10 Regulation 8 of the SEA Regulations (“Restriction on adoption or submission of plans, programmes and modifications”) consequently provides:

“8(1) A plan, programme or modification in respect of which a determination under regulation 9(1) is required shall not be adopted or submitted to the legislative procedure for the purpose of its adoption–

(a) where an environmental assessment is required in consequence of the determination or of a direction under regulation 10(3), before the requirements of paragraph (3) below have been met;

(b) in any other case, before the determination has been made under regulation 9(1).

(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before–

(a) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out as mentioned in regulation 7;

(b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) The requirements of this paragraph are that account shall be taken of–

(a) the environmental report for the plan or programme;

(b) opinions expressed in response to the invitation referred to in regulation 13(2)(d);

(c) opinions expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and

(d) the outcome of any consultations under regulation 14(4).”

2.11 Regulation 9 (“Determinations of the responsible authority”) further provides:

“9(1) The responsible authority shall determine whether or not a plan, programme or modification of a description referred to in–

(a) paragraph (4)(a) and (b) of regulation 5;

(b) paragraph (6)(a) of that regulation; or

(c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1) the responsible authority shall–

(a) take into account the criteria specified in Schedule 1 to these Regulations; and

(b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.”

2.12 Regulation 12 (“Preparation of Environmental Reports”) provides:

“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 and level of detail in the plan or programme;

*(c) the stage of the plan or programme in the 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.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making..."

2.13 Schedule 2 ("Information for Environmental Reports") mirrors Annex I.

2.14 In *R (oao) Bateman v South Cambridgeshire District Council* [2011] EWCA Civ 157 the Court of Appeal held that when adopting a screening opinion in the parallel context of the EIA Directive the planning authority had to provide sufficient information to enable anyone interested in the decision to see that proper consideration had been given to the possible environmental effects of the development and to understand the reasons for the decision. Such information might be contained in the screening opinion itself or in separate reasons, if necessary combined with additional material provided on request. The reasons given need to be sufficiently clear as to why the person doing the screening reached that conclusion.

2.15 In *Larkfleet Homes v Rutland County Council* [2015] EWCA Civ 597 the Court of Appeal further held at paragraph 25: "*It is common ground that the assessment of likely significant effects on the environment should include positive as well as negative effects. That view is supported by a footnote to paragraph (f) of Annex I to Directive 2001/42/EC and by the judgment of Elias J (as he then was) in BT v Gloucester City Council* [2001] EWHC Admin 1001, [2002] 2 P&CR 33 , at paragraphs 64-70, in relation to the analogous provisions of the EIA Directive."

2.16 The European Commission Guidance on the Implementation of the SEA Directive provides:

"According to Article 4(1) the environmental assessment shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. The process of preparing the report should start as early as possible and, ideally, at the same time as the preparation of the plan or programme. The preparation of the report should normally have ended when the report is made available to authorities and the public in accordance with Article 6(1)." [emphasis added]

- 2.17 The UK Guidance "A Practical Guide to Implementing the SEA Directive" (OPDM, 2005) which remains the only comprehensive national guidance in force today provides:

"5.3 The SEA process, including preparation of the Environmental Report, is most effective when started as early as possible, ideally at the same time as the preparation of the plan or programme. SEA will often involve an iterative process of collecting information, defining alternatives, identifying environmental effects, developing mitigation measures and revising proposals in the light of predicted environmental effects. It will be important to identify an end-point where further iterations are unlikely to bring further significant improvements in predicting the environmental effects of the plan or programme." [emphasis added]

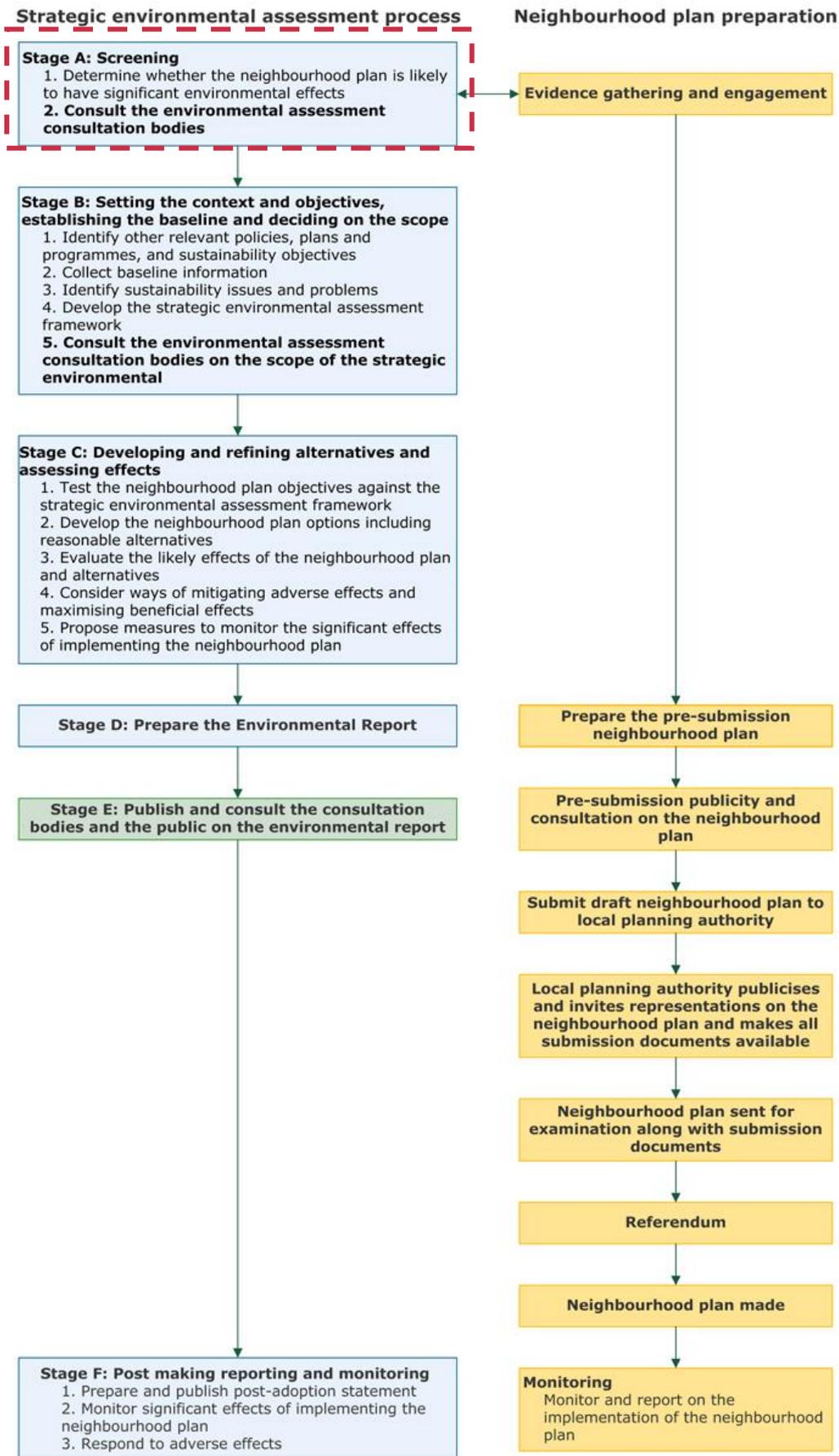
Policy framework

- 2.18 The requirements of European Union and UK law are now reflected in Chapter 11 of the PPG which is a material consideration for the purposes of basic condition 8(2)(a). The PPG provides practical guidance to qualifying bodies in how SEA should be addressed during the plan-making process, and therefore whether it is appropriate to make the plan in the light of defects in the preparation of the evidence base and obvious failures to have regard to provisions of EU law at the correct stage, and indeed at all.
- 2.19 The PPG has been in force since 6th March 2014. It was available in draft form from August 2013, almost one year before the EBNP was submitted under Regulation 15. The SEA Directive and Regulations are of even longer-standing. Notwithstanding this, it is notable that there is not a single reference to the PPG in the Basic Conditions Statement which in itself is further indicative of the

narrow approach adopted by the qualifying body and the failures in supervision by the Borough Council.

- 2.20 The PPG expressly requires that a determination on the need for SEA is required at the earliest possible stage during the plan-making process.
- 2.21 This is most clearly shown in the diagram overleaf, extracted from the PPG (paragraph 033).

Continued overleaf



2.22 Paragraph 029 advises that where an SEA is required to be carried out:

"...work on this should start at the earliest opportunity. This is so that the process 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 made in the plan" [emphasis added]

2.23 A determination is required at the earliest possible stage in order to ensure that the SEA process and the environmental report (if required) can inform the preparation of the Neighbourhood Plan itself. It is not a process that can be retro-fitted.

2.24 Paragraph 041 provides advice on whether the SEA environmental report should be revised if the Neighbourhood Plan itself is revised following responses to consultation. It is again made clear that it is an express legal and policy requirement that SEA work should be undertaken prior to the issue of a draft Neighbourhood Plan if it is to be consulted upon at the draft stage.

2.25 Paragraphs 037 and 038 then explain that where SEA is required, reasonable alternatives should be assessed during the drafting of the Plan to the same extent as the preferred approach.

2.26 The above aspects of the PPG therefore put beyond doubt the requirement for an early determination on the need for SEA.

2.27 The PPG is intended to ensure legal guidance with the SEA Directive, Regulations and Commission Guidance. Screening must take place at the outset of the evidence gathering stage, significantly prior to Regulation 14 consultation. The suggestion of a screening report being published after Regulation 15 submission, Regulation 16 consultation and indeed even after the examination hearing is plainly not compliant.

2.28 Screening is one of the few regulatory controls available in the neighbourhood planning context to ensure that Neighbourhood Plans are produced with robust evidence at the outset. If likely significant environmental effects are identified, then a full report must be produced including the assessment of reasonable alternatives; the PPG indicates that this must be interwoven with the preparation of the Neighbourhood Plan itself so that environmental considerations can inform the eventual direction and policies of the Plan.

2.29 A thorough determination process will therefore help to provide the necessary clarity to inform this next stage of plan preparation and assist in public participation (including both members of the public and representatives of the development industry).

The Wellingborough/Earls Barton Route

2.30 This has not occurred in the case of Earls Barton and Wellingborough.

2.31 As late as the Examination stage, the Borough Council made public representations that no final screening determination had been carried out and that the determination would instead take place after receipt of the Examiner's Report.

2.32 The test for the Examiner in respect of SEA is three-fold:

- (1) basic condition 8(2)(f): Whether the making of the Plan would breach the SEA Directive.
- (2) basic condition 8(2)(f): Whether the making of the Plan is otherwise compatible with EU obligations;
- (3) basic condition 8(2)(a): Whether it is appropriate to make the Plan having regard to national policy and the advice of the Secretary of State for Communities and Local Government (namely the Planning Practice Guidance)

2.33 All requirements must be met. Partial compliance is not lawful nor in any event should it be acceptable as a matter of correct plan-making practice.

2.34 The above requirements are closely related to basic conditions 8(2)(d): the requirement for the Plan to contribute to the achievement of sustainable development and 8(2)(e): general conformity with strategic policies in the development plan: where, as here, there has been no examination of an up-to-date Local Plan including consideration of its sustainability appraisal pursuant to sections 19 and 20 of the Planning and Compulsory Purchase Act 2004.

2.35 It is not merely 'regrettable' or 'unfortunate' that in the case of Earls Barton, an early determination has not taken place or a question of simple 'oversight' or 'accident'. It is a sustained, un-explained and fatal error of law in a plan-making

process, caused to a significant extent by the Local Planning Authority's evident failure to investigate the requirements of the Planning Practice Guidance, contrary to basic condition 8(2)(a), the terms of the PPG itself and contrary to their statutory duty under paragraph 3 of Schedule 4B of the Town and Country Planning Act 1990.

- 2.36 The determination has only been made at the 'eleventh hour' at the very end of the Examination of the plan and ten months after its submission.
- 2.37 The late stage has ensured that the likely significant effects of the Plan have not been identified correctly or indeed at all.
- 2.38 Consequently, these likely significant environmental effects have not been taken into account during the preparation of the plan.
- 2.39 The Plan has therefore been produced without the requisite environmental report, which itself has not been the subject of consultation and the Plan therefore cannot proceed to referendum.
- 2.40 In Section 3 below, we address the specific contents of the Screening Report against the legislative and case law requirements and by reference to the practical planning and environmental factors, before addressing the basic conditions in Section 4.

3. STATEMENT OF REASONS

- 3.1 The SEA determination letter is accompanied by a joint Statement of Reasons as to why the EBPC and BCW do not consider that SEA is required. It presents a 'checklist' of the relevant provisions of Schedule 1 of the SEA Regulations.

Preliminary Matters

- 3.2 As a first preliminary matter, we note that the Joint Statement of Reasons is stated to be produced by the Principal Policy and Regeneration Manager for BCW and the Parish Clerk for EBPC.
- 3.3 Regulations 2, 5 and 12 of the SEA Regulations require that the "responsible authority" is correctly identified and that the "authority" must be a single, decision-making entity. The paradigm example is a local planning authority: here the Borough Council, which statutorily "makes" the Plan pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA). The "responsible authority" cannot as a matter of law or plan-making practice be identified as the parish council, who have neither the statutory authority to "make" the plan pursuant to section 38(6) PCPA 2004 nor the practical expertise to make the necessary legal and technical judgments with respect to the application of the Directive. The joint identification of the Borough Council and the Parish Council (through its parish clerk) as the joint, dual or hybrid responsible authority and the screening determination as their joint determination is therefore an error of law.
- 3.4 A second preliminary matter is that there is no indication that the identified Officer has the delegated authority to make the determination under the Council's Scheme of Delegation. This is a ground of review that has been raised in a separate judicial review brought by Crown Developments to the Loxwood Neighbourhood Plan, promoted by Chichester District Council: CO/1812/2015 granted permission to proceed to a substantive hearing.
- 3.5 A Council officer can only make a relevant determination if the authority to do so has been delegated to that officer (as in the EIA context: *R v St Edmundsbury Borough Council ex p Walton [1999] Env. L.R. 879*).
- 3.6 Whilst delegated authority with respect to planning policy may have been conferred in respect of identified neighbourhood planning functions, it is wholly

unclear from the letter that that delegation has been extended to determination as to whether SEA is required.

- 3.7 If the respective Officer has no authority to make the purported regulation 9 determination that SEA was not required, then the decision would further be unlawful on that basis.

Statement of Reasons

- 3.8 The Statement of Reasons has been premised upon the fundamental misconception that it is necessary only to carry out an assessment of the environmental effects of Policy EB.GD1, that is the allocation of a single large site at The Grange.
- 3.9 There is no reference to and nor any evidence of any evidence of any consideration of the potential environmental effects arising from the counterpart policy, EB.GD2, which seeks to impose a tightly-drawn settlement boundary to restrict the growth of the village beyond the pre-determined and artificially low housing figure to be delivered through the Grange allocation.
- 3.10 A settlement boundary of this nature is capable of giving rise to significant environmental effects but as the policy has not even been referred to, none of these have been assessed. This has arisen, notwithstanding repeated reference in our consultation representations to the failure to assess the effects of such a policy.
- 3.11 We set out below aspects of the Statement of Reasons whereby the joint response by EBPC and BCW fails to take into account the impact of the setting of a housing limit and settlement boundary.

<p>Does the plan or programme a) determine the use of a small area at a local level, or b) propose a minor modification of an existing plan or programme subject of the regulations?</p>	<p>The EBPC/BCW states that “<i>The EBNP only seeks to designate the use of sites at a local level that are not strategic in scale</i>”. That statement is simply wrong. The EBNP seeks to constrain residential development within the whole neighbourhood plan area for a 15 year period to a fixed quantum of housing with minimal windfall additions. The policy seeks to prevent development on all other non-allocated sites</p>
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	<p>and constrain the population within the village for the full plan period. This entry therefore makes no reference to the fact that the EBNP constrains development on those sites which have not been allocated and lie beyond the settlement boundary; it effectively determines the use of all land within the whole parish area, which cannot on any reasonable assessment be described as a small area. Moreover the plan will give rise to transboundary effects with respect to other parish council areas within the Borough, through the displacement of housing provision to other, less sustainable settlements if housing need is to be met.</p>
<p>The degree to which the plan or programme sets a framework for projects and other activities, either in regard to location, nature, size and operating conditions, or by allocating resources</p>	<p>EBPC/BCW simply state here that the EBNP cannot provide for development which significantly exceeds that of the adopted Core Spatial Strategy (CSS). This statement does not answer the statutory question raised by Schedule 1 of the Regulations. The Statement does not assess the degree to which the Plan itself seeks to set a planning framework for projects, including residential development, simply providing the above generalised reference to "development". In any event, the reference to the CSS is misguided and gives serious doubt as to the robustness of the exercise undertaken. The CSS may have been put in place historically but the CSS is now accepted to be out-of-date and is demonstrably not meeting the NPPF's unequivocal requirement to "<i>boost significantly</i>" the supply of housing. The plan-makers' stated intention is to introduce the EBNP and its proposed settlement boundary as a more recent planning framework of housing constraint. It is that imposition of a new settlement boundary and the degree to which that framework impacts upon projects, their location, nature and size that must be</p>

	<p>assessed. Finally, neither the basic conditions nor the NPPF prevent a Neighbourhood Plan from allocating sites in excess of an out-of-date strategic requirement.</p>
<p>The degree to which the plan or programme influences other plans and programmes including those in the hierarchy</p>	<p>Whilst the EBPC/BCW are correct in saying Neighbourhood Plans is in strict policy terms at the “<i>bottom tier</i>” of the statutory policy pyramid in the sense that it covers a component area within the Local Plan area, the reality is that the EBNP (including its housing target) is intended to sit in a strategic policy vacuum for an indefinite period of time. The suggestion that there will be two “tiers” is thus misleading and inaccurate. The emerging Neighbourhood Plan has already been used to influence the emerging Joint Core Strategy (JCS) which has sought to draw its rural housing targets from work undertaken for Neighbourhood Plans where applicable. Evidently a decision has been taken in the preparation of the higher-order JCS to set rural targets on the basis of emerging Neighbourhood Plan work rather than to meet objectively assessed need.</p> <p>It is therefore already clear and in due course will be highly likely that the EBPC are in fact trying to argue that by making provision for a pre-determined quantum of housing at this stage, this should form the effective final stage in plan-making for the village, locking off all further development through the establishment of the settlement boundary in the prospective Local Plan. Such arguments would of course be unsound, when the scale of the housing shortfall is recognised at statutory examination, but the statutory test is one of “influence”. The Screening Report has to grapple with the practical reality of the future use of the Neighbourhood Plan</p>

	<p>to influence a higher-level plan. A mere reference to the “bottom tier” is wholly insufficient and in any event misrepresentative to the point of constituting an error in the determination and inadequate reasoning per <i>Bateman</i>.</p>
<p>The relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development.</p>	<p>It is first asserted that “<i>Neighbourhood Plans are required by legislation to help achieve sustainable development. This includes environmental sustainability, as one of the three pillars identified in the NPPF.</i>” No reference is made to any specific environmental considerations. Reliance is placed exclusively on the statutory test in basic condition 8(2)(d).</p> <p>It is then stated that: “<i>The primary objective of the EBNP is to plan positively and achieve a sustainable level of growth whilst maintaining both the built and natural environment of the village and the surrounding rural area.</i>” Again no reference is made to any specific environmental consideration, including notably the population, human health, infrastructure, highways and built environment considerations all of which are impacted (both positively and negatively) by the imposition of a settlement boundary.</p> <p>The response to this criteria simply does not address the statutory question and refers in the alternative only to very generalised policy aims. That is a breach of the requirements of the Schedule and contrary to the <i>Bateman</i> reasoning requirements.</p>
<p>Environmental problems relevant to the plan or programme</p>	<p>The EBPC/BCW state that “<i>one of the key provisions of the EBNP is to direct growth away from the Nene Valley SPA</i>”. This statement is not reflected in the supporting evidence for the EBNP; for example there</p>

	<p>is no reference in the Housing Site Selection Process document to this having been the case; the statement is therefore unsubstantiated. The Basic Conditions Statement and the EBNP refer briefly to the SPA but only in respect of the developer contributions policy and access to open space, and not the location of development. This response further fails to identify the following pressing environmental effects within Earls Barton and Wellingborough arising from a failure to provide for sufficient housing: constraint on population numbers within the village, homelessness and overcrowding, outward commuting, inadequate utilities and infrastructure in the absence of long-range planning and consequent impacts on human health.</p>
<p>The relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).</p>	<p>It is asserted that "<i>The plan is not relevant in this instance</i>" although express reference is later made to directing development away from an SPA, protected by European law. This factor has not been assessed, which is a further deficiency.</p>
<p>The characteristics of the effects and of the area likely to be affected, having regard, in particular, to:</p>	
<p>The probability, duration, frequency and reversibility of effects</p>	<p>This section only refers to the plan strategy to mitigate traffic impact through the location of allocated development on the apparent conclusion that traffic or highways impacts are the only such qualifying environmental factor (although this is not identified in the above category). On several occasions it has been confirmed that alternative</p>

	<p>options (such as land at Station Road) will not give rise to unacceptable highways impacts. This section does not refer to and therefore does not consider the potential effects of constraining of the population of the village through the settlement boundary policy, the impacts of outward commuting, nor the infrastructural impacts which might occur later in the plan period by way of 'unplanned' development.</p>
<p>The cumulative nature of the effects</p>	<p>It is asserted that "<i>the cumulative nature of the effects can be characterised by the impact the residents of the level of new homes planned for Earls Barton will have on the environment.</i>" Reference is then made purely to the traffic, waste, recreational and water impact of the additional permitted development through the Plan's allocation. This fails to take account and assess the cumulative impact of the constraint on all other new forms of development via the use of the settlement boundary (as set out above, in respect of population, human health, infrastructure and highways).</p> <p>It is then asserted that "<i>the cumulative impact of potential development across North Northamptonshire (including the borough) has been considered as part of the SEA for the CSS</i>". The CSS is out of date and with it the SEA work. Reference to a historical document for these purposes is thus erroneous and a serious deficiency in the composition of the screening report. The reasoning is further inadequate per <i>Bateman</i>.</p>
<p>The transboundary nature of the effects</p>	<p>The screening determination euphemises the effect of the plan by referring to the "<i>managing of development</i>". It makes no reference to the active constraining effect of the settlement boundary (i.e. stopping all further development above a pre-</p>

	<p>determined number) and the inevitable impact that the qualifying body's decision to pre-determine its own housing provision figure in advance of strategic policies in an up-to-date Neighbourhood Plan will lead to the displacement of much needed housing to other settlements in the Borough, including settlements lower in the settlement hierarchy.</p> <p>It is completely inaccurate and displays no proper consideration of the environmental issues involved to assert that the "<i>effect would be minimal</i>" upon other parishes or boroughs. A restrictive settlement boundary imposed in this manner will inevitably direct that development to these smaller settlements and thus less sustainable locations which could give rise to adverse environmental effects, in respect of population, human health, infrastructure, highways, and also in respect of biodiversity, water, waste and air considerations.</p> <p>A plan that is premised on a village taking its purported "<i>fair share</i>" of housing in an era of recognised Borough-wide shortage (confirmed by no fewer than four Inspector's Reports, including Inspector Manning's) is proceeding on a wholly imaginary basis in assuming that the failure to provide for that shortfall in the second-most sustainable settlement can have no more than minimal consequences. There has been no attempt to identify, name or consider those adjacent parish councils or the other higher settlements where growth may be directed through applications and appeals, such as Irchester and Wollaston (which have been the subject of further appeals and have Neighbourhood Plans that have not yet progressed as far as Earls Barton's). Again the response to the question is deficient and fails the <i>Bateman</i></p>
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	requirements in respect of reasoning.
The risks to human health or the environment (for example, due to accidents)	<p>Although the EBNP is not likely to pose any direct significant risk to human health or the environment, the fact that it will inevitably divert development to other locations may result in risks elsewhere (e.g. through increased air pollution arising from higher levels of car usage in less-sustainable settlements).</p> <p>Furthermore, the artificial constraint upon population within Earls Barton may result in adverse impacts to health relating to overcrowding, homelessness and inadequate housing. These impacts are considered during the examination of Local Plans; the EBNP stands in place of the Local Plan and will do so for an indefinite period (subject only to the 15 year outer limit). It therefore risks perpetuating these adverse impacts for a prolonged period of time.</p>
The magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected)	<p>It is stated here that "<i>Neighbourhood Plans have a very limited ability to influence the delivery of strategic levels of development and this neighbourhood plan in particular only seeks to direct development to a small area at local level</i>". In reality this is not the case at Earls Barton, and does not reflect the intentions of the qualifying body. The strategic distribution of development in the emerging Joint CSS is apparently already being influenced by the Neighbourhood Plan (notwithstanding the serious questions of soundness which arise from such a strategy). In addition, the artificial constraint on development in the EBNP (and the corresponding inability to meet housing need within Earls Barton) will direct development to less-sustainable locations which could give rise to adverse environmental effects, in respect of population, human health, infrastructure, highways,</p>

	<p>and also in respect of biodiversity, water, waste and air considerations.</p> <p>As such, the magnitude and spatial extent of the likely environmental effects are much greater than EBPC/BCW assert; as the EBNP is apparently influencing a CSS which covers four boroughs/districts, and is likely to direct development to other settlements within the Borough of Wellingborough.</p>
<p>The value and vulnerability of the area likely to be affected due to (i) special natural characteristics or cultural heritage; (ii) exceeded environmental quality standards or limit values; or (iii) intensive land use.</p>	<p>Whilst the consultation bodies confirmed that they were satisfied that the EBNP would not give rise to unacceptable impacts in any of these regards, the EBNP is likely to divert development towards less-sustainable locations where it cannot be guaranteed that there will not be adverse environmental effects upon areas of greater value and/or vulnerability.</p>
<p>The effects on areas or landscapes which have a recognised national, Community or international protection status.</p>	

3.12 Our assessment illustrates that the potential for significant environmental effects of policy EB.GD2 has been overlooked despite the policy’s central role in the strategy of the EBNP. This is an error in plan-making terms but also in law as the policy will give rise to significant environmental effects that have not been assessed. Nor critically has an environmental report been produced which sets out the reasonable alternatives to the policies in the plan (including allocation of land at Station Road, set out further below) and assesses those on an equivalent basis:

- Policy EB.GD2 is a means of enforcing an artificially low housing target for the village; our previous representations throughout the process have illustrated why the target is too low in light of an acknowledged need in Wellingborough which is not being properly catered for in adopted and emerging plans. The EBNP's allocation and exclusion of land enforces this low target which does not reflect the correct need for housing in Earls Barton, identified in a policy-compliant manner through an objective assessment of need (paragraph 47 of the NPPF).
- As the EBNP covers a fifteen-year period it is likely that 'unplanned' development will have to come forward during the period, particularly when the housing shortage in Wellingborough is prolonged further into the future, or if there are changes to national policy and guidance to promote additional development over restrictions in Neighbourhood Plans, as the logical consequence of the recent Productivity Plan, *Fixing the Foundations*¹. Such 'unplanned' development will give rise to significant environmental effects on population and material assets, for example in terms of transport and utilities provision (even if these can be the subject of mitigation, financial contributions and monitoring), which have not been assessed through an environmental report and the reasonable alternatives process. The evidential picture is therefore incomplete.
- While the housing shortage in Wellingborough continues, the settlement boundary at Earls Barton will inevitably displace much-needed housing towards less sustainable locations, whilst depriving those in Earls Barton in housing need of market and affordable housing. As we have repeatedly advised (and as noted by two Planning Inspectors in the Earls Barton appeals at Station Road and Compton Way), Earls Barton is the second-most sustainable settlement in the district and can accommodate development in a sustainable way. Other settlements are unlikely to be as sustainable, and indeed 'unplanned' proposals elsewhere might give rise to significant environmental effects, which will not be considered at all under SEA processes. In the light of a severe housing shortfall, the need to provide new housing may well outweigh other environmental considerations, resulting in less-sustainable forms of development.

¹ Cm 9098

- 3.13 As we have highlighted many times during the preparation and examination of the EBNP, the plan's strategy and its consequent policies were essentially pre-determined. It was decided at an early stage in the plan-making process that the full quantum of development would be concentrated in a single site to the north of the village, with a settlement boundary used to seal off the entirety of the rest of the village from housing growth (save for minimal windfall development).
- 3.14 A qualifying body that intends to embark upon such a plan-making strategy needs to request screening of such a plan by the local planning authority at the very earliest stage, so that the plan approach and the need for an environmental report and the plan's likely significant environmental effects are identified and presented in a transparent fashion, properly to inform pre-submission consultation, as well as formal Regulation 14 consultation prior to submission and Regulation 16 submission consultation.
- 3.15 Simply to evade that requirement and then present a screening determination after the hearing phase of the examination shortly prior to the production of the Examiner's paragraph 10 Report is an attempt to retro-fit a statutory requirement and reverse-justify the plan-making choices.
- 3.16 This has had the effect that no environmental report has been produced and no reasonable alternatives have been identified, assessed and presented.
- 3.17 The EBNP therefore lacks the robust evidence to justify the broader plan strategy and the eventual selection and rejection of sites as required under the PPG. Whilst the PPG requires that SEA is given careful consideration from an early stage, it is evident that the determination process has not taken full account of the potential significant effects arising from a central part of the plan (namely the settlement boundary).

4. RECOMMENDATION AND CONCLUSION

- 4.1 The actions of the Qualifying Body and Local Planning Authority amount to errors of law, preventing the recommendation of the plan to proceed to referendum under paragraphs 10 and 12 of Schedule 4B of the Town and Country Planning Act 1990.
- 4.2 The last-minute determination on the need for SEA means that SEA cannot have been properly considered during the drafting of the EBNP's policies, contrary to the expectation that SEA work is to inform plan preparation.
- 4.3 The determination itself shows no consideration to the potential environmental effects of the settlement boundary at policy EB.GD2. The settlement boundary is one of the central policies of the EBNP and plays a pivotal role in shaping (in this instance by restricting) development in Earls Barton for a fifteen year period; it should have been properly considered in determining the need for SEA.
- 4.4 The EBNP does not meet the requirements of EU obligations and therefore cannot meet basic condition 8(2)(f); nor has its preparation followed the detailed guidance in the PPG, therefore it cannot meet basic condition 8(2)(a). Given that SEA is a process designed to assess the environmental effects of the Plan to help achieve sustainable development, the deficiencies in the EBNP in this respect further amount to a breach of basic condition 8(2)(d), exclusion of SEA is likely to frustrate (as opposed to contribute to) the achievement of sustainable development.
- 4.5 The only way to fully rectify the deficiencies in respect of SEA is to hold that the Plan cannot proceed to referendum pursuant to paragraph 10(4)(a) of Schedule 4B.
- 4.6 The qualifying body should recommence preparation of the Neighbourhood Plan with an initial and comprehensive SEA screening determination. This would allow the potential environmental effects to be comprehensively assessed at the required early stage, a formal determination then to be issued, with the realistic and likely outcome that an environmental report would then be generated and the evidence to be considered throughout the preparation of the Plan.
- 4.7 The recent determination by EBPC and BCW cannot as a matter of law amount to compliance with Regulation 5 of the SEA Regulations as it comes far too late in

the plan-making process. It essentially represents an attempt at 'repair work' through the backfilling of the evidence base to legitimise the pre-determined plan strategy rather than a genuine effort to inform the direction of the plan and therefore enable inclusive, properly informed public participation in the plan-making process, including the consideration of the reasonable alternatives in an environmental report.

- 4.8 As an absolute reserve position, if the Examiner is nonetheless minded to permit the EBNP to proceed to referendum on a modified, reduced basis (for example simply recognising the EB.GD1 allocation and the recreational/community policies) then he should, if it is respectfully submitted, require the deletion of the settlement boundary policy at EB.GD2.

Conclusion

- 4.9 In the above section, the following three tests were posed:

- (1) basic condition 8(2)(f): Whether the making of the Plan would breach the SEA Directive.
- (2) basic condition 8(2)(f): Whether the making of the Plan is otherwise compatible with EU obligations;
- (3) basic condition 8(2)(a): Whether it is appropriate to make the Plan having regard to national policy and the advice of the Secretary of State (namely the Planning Practice Guidance)

- 4.10 In response to (1) and (2), the EBNP is in breach of and is not "*otherwise compatible*" with EU obligations under the SEA Directive nor the implementing SEA Regulations. That is sufficient such that the Examiner should now make a recommendation that the Plan cannot proceed to referendum under paragraph 10 of Schedule 4B.

- 4.11 It is also not appropriate to make the plan in these circumstances where no regard has been paid to the advice contained in the PPG. Again, the Examiner should make a recommendation that the Plan cannot proceed to referendum under paragraph 10 of Schedule 4B.

- 4.12 As an absolute reserve position, the Examiner should recommend the deletion of Policy EB.GD2 from the Neighbourhood Plan in its entirety (including references in

the diagrams). This would allow all applications to be determined in accordance with the presumption in favour of sustainable development under paragraph 14 of the NPPF. Such applications would benefit from the national policy presumption but would only be granted permission where the adverse impacts of granting development – including environmental considerations – significantly and demonstrably outweighed the benefits.

- 4.13 The Station Road appeal site, which was deprived consideration under the above process would therefore make the substantial contribution to sustainable development identified by Inspector Manning.
- 4.14 As identified in submissions at the Examination, Inspector Manning carried out an intensive, fully informed, local, 'on the ground' assessment of the site and conditions in the village. His approach to inspection was neither "*light-touch*" nor superficial (to use the *Woodcock* terminology in respect of Mr McGurk's Hurstpierpoint/Sayers Common Report at paragraph 137). The Inspector had full regard to the requirements of national planning policy and the importance of contributing to sustainable development. The Manning Report, and principally its rejection of the settlement boundary as a control mechanism on sustainable development, is a material consideration which is highly relevant to the assessment of basic conditions 8(2)(a), (d), (e) and (f) and cannot be excluded under 8(6). A decision to endorse the settlement boundary, as an already "*out-of-date*" policy contrary to the findings of that Report would not merely be contrary to good planning practice, sustainable development and the legal requirements identified above, but would be unlawful in general administrative law terms.

5. UPDATE TO THE EXAMINER

- 5.1 We wish to conclude by highlighting a recent policy development which affects the EBNP and its ability to meet basic condition 8(2)(a) in respect of meeting national policy.
- 5.2 On 10th July 2015 the Chancellor and First Secretary of State, George Osborne MP, and the Secretary of State for Business, Innovation and Skills, Sajid Javid MP, issued a document entitled "*Fixing the Foundations*" which includes policy announcements for planning. This document has reaffirmed the Government's commitment to increase housing supply. The EBNP and its restrictive settlement boundary policy (fixing the housing number to an artificially low level such that it underprovides for housing need) evidently runs contrary to this commitment.
- 5.3 In the context of basic condition 8(2)(a), which states that "*Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order (or neighbourhood plan)*", we consider that the EBNP does not comply with the policies and guidance contained in "*Fixing the Foundations*" as jointly issued by the Secretaries of State. The issue of that document is a relevant material consideration to the Examiner's assessment of the EBNP and represents a significant material change in the Government's intentions since the examination of the EBNP commenced in March 2015.