

**Joint Core Strategy for Broadland, Norwich and South Norfolk,
Broadland Part of Norwich Policy Area Examination**

**The Councils' Response to Matter 1
Day 1, 21 May 2013**

Matter 1 – Legal requirements

- 1. Whether the part JCS complies with the legal requirements in the production of the Sustainability Appraisal (SA)**
 - 1.1. In the light of the councils' response in SDJCS 7 and 8, would representors explain exactly what parts of the High Court Judgement and Court Order have the councils not complied with?**
 - 1.2. In the light of the councils' response in SDJCS 7 and 8, would representors say whether all the reasonable alternatives been identified with the reasons for their selection? Is there any other evidence that representors, in the light of the councils' responses, want to place before me to help me decide whether these are reasonable alternatives?**
 - 1.3. In the light of the councils' response in SDJCS 7 and 8, would representors say that the selected reasonable alternative sites' assumptions are correct in terms of housing numbers likely to be delivered?**
 - 1.4. In the light of the councils' response in SDJCS 7 and 8, have the significant environmental effects of the reasonable alternatives been correctly assessed?**
 - 1.5. Does the SA clearly set out (page 79 onwards in SDJCS 3.2) the reasons for the selection of the JCS NEGAT submitted proposal (Alternative 1), and the reasons why the other reasonable alternatives were not chosen? If not, why not?**

The Councils' Response

These questions are primarily addressed to the representors. The Inspector has noted where the Councils have addressed these issues. The main focus is on the issue of reasonable alternatives.

The SA sets out the staged process that was used for the selection and assessment of reasonable alternatives. That work identified three reasonable alternatives and these were assessed on a comparable basis. Page 79 of the SA explains that selection of the most appropriate option was taken to a meeting of the GNDP Board on 19 July 2012. The Board paper and minutes and subsequent reports to the three local planning authorities are in the evidence library to support this submission (STA 13.3 to STA 13.8). The Board paper (STA 13.1) sets out the process gone through to determine reasonable alternatives and at section 5 has a discussion of the merits of the three reasonable alternatives. This discussion is captured in sections 6.3.4 to 6.3.6 on page 79 of the SA (SDJCS 3.2) and the discussion is structured to clearly articulate the reasons for rejecting alternatives two and three and the reasons for selecting alternative one as the most appropriate option to take forward.

- 1.6. Is it correct that the selection of the submitted JCS proposal Alternative 1 has been assessed in the SA report as being partly dependant on the delivery of the Northern Distributor Road (pages 62, 63 and 80 of SDJCS 3.2)? Is this realistic (see 3.4.11 last bullet and 4.11.23)?**

The Councils' Response

Yes, in the sense that the NDR is recognised as a key element of the Norwich Area Transportation Strategy (NATS). The NATS implementation plan identifies strategic transport interventions to support the growth strategy set out in the Adopted JCS and this part of the JCS that is under examination. The NDR itself is a proposal of the County Council and is considered for the purposes of the SA to be in the baseline. This was a point covered in the judgment of Ouseley J in Heard v. Broadland DC and others [2012].

The approach taken to the delivery of the NDR is realistic. Since the examination and adoption of the JCS the NDR has been granted programme entry by the DfT and the County Council is continuing to work to secure delivery of the NDR. Certainty of delivery of the NDR continues to increase and the expected opening date is spring 2017. The latest position on delivery of the NDR can be found in the report to Norfolk County Council's cabinet dated 3 December 2012. A copy of this report has been added to the examination library as document T19.

Additionally, the adopted parts of the JCS include, from paragraph 7.11 to 7.18, a contingency strategy to manage the situation should the NDR be significantly delayed or be unlikely to be delivered.

- 1.7. SDJCS 15 says that the NPPF's presumption in favour of sustainable development is not stated explicitly in the JCS. However, the NPPF says (paragraph 15) that Local Plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally. This is legally a local plan (albeit one which is an addition to an existing plan) and the PINS model policy wording has not been used. My present inclination is that the model wording should be included as a modification to policy 10. Are there any convincing reasons why this should not be done? And should such a policy only apply to the content of this plan and not to the remainder of the adopted JCS?**

The Councils' Response

This is a debate about the method by which this intention should be achieved, rather than about the contents of the presumption. The guiding principle is now that the "Local Plan" for any planning authority's area is made up of a number of development plan documents. It also remains the law that "If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)" (s.38(5) Planning and Compulsory Purchase Act 2004).

The councils' view about the proposed inclusion of this policy in the remitted part of the JCS remains as set out in SDJCS 15. Any amendment to the remitted text could only relate to those parts of the JCS affected by the remitted text.

Any amendment made to policy 10 of the JCS can only apply to the submission parts of the JCS, or possibly to the locations for major new or expanded communities covered by policy 10, and not to the whole of the area covered by the adopted JCS. Having an overarching policy that only applies to part of the area would be confusing.

The most suitable way to ensure that the presumption in favour of sustainable development applies to each 'Local Plan' is through the other development plan documents being produced by each authority as part of each of their "Local Plan". This is an unusual situation which should be treated as an exception to the 'model policy'. It is not necessary in this instance to carry out a major modification such as this.

The Councils are in the process of incorporating the presumption in each of their Local Plans. Norwich City Council has included a policy covering the presumption in favour of sustainable development through its emerging Development Management DPD, which was submitted for examination on 17th April 2013.¹ Policy 1 of the plan establishes the sustainable development principles for Norwich.

South Norfolk Council is at the preferred options stage of its Development Management Plan². The consultation is still open and runs from 27 March 2013 and closes on 22 May 2013. Strategic policy 1.1 covers the presumption in favour of sustainable development.

Broadland District Council has the opportunity to include such a policy in its forthcoming Development Management Plan³, which will then be subject to its own examination. Broadland consulted the public and other stakeholders on an 'Issues & Options' document relating to the Development Management DPD between September and December 2011. Whilst there has been some slippage in timescale since the publication of the LDS in December 2012, Broadland's current intention is to publish a proposed submission Development Management Policies document by the end of 2013.

Copies of the latest versions of the three council's development management policies can be found in the evidence library (documents BD-B15, BD-N9 and BD-SN 2.4)

However, if the Inspector is of the view that an amendment to policy 10 is required for soundness purposes, this can be discussed further. As can be seen, the councils do not oppose this in principle.

¹ <http://www.norwich.gov.uk/news/Pages/LocalPlanDocumentsSubmittedForExamination.aspx>

² <http://www.south-norfolk.gov.uk/CARMS/meetings/cab2012-11-26ag7appB.pdf>

³ http://www.broadland.gov.uk/housing_and_planning/4310.asp

2. Whether the Duty to Co-operate has been satisfied

2.1. What references are made in the three councils' Annual Monitoring Reports to the Duty (as required in Regulation 34(6) of the 2012 Local Planning Regulations)?

The Councils' Response

The three Councils prepare a joint Annual Monitoring Report including the JCS. The latest published report for the monitoring year 2011/12 can be found on the GNDP website at <http://www.gndp.org.uk/our-work/joint-core-strategy/monitoring/> and is also available in the evidence library as document MN-2. The Duty to Cooperate is addressed in Appendix B of the AMR (library reference SDJCS16).

2.2. Have any meetings with the members (as opposed to officers) of the adjoining LPAs and the Regulation 4 prescribed bodies taken place as I cannot find them in SDJCS 16?

The Councils' Response

The duty in this instance would apply to the area covered by the remitted text, the Broadland part of the Norwich Policy Area ("NPA"), all of which lies within the wider JCS area. The Councils have found that the GNDP Board provides a forum for area-wide councillor discussions (across the whole of the GNDP area). The duty to co-operate relates to strategic planning issues, and it is important to note that Norfolk County Council is part of the GNDP. The County Council have reported the JCS to Cabinet and in this way, any countywide issues of significance such as education, adult social services, minerals and waste and highways and transport have been taken into account. The Leaders of Norfolk councils (districts and County) also meet quarterly, with planning issues occasionally featuring on the agenda.

The Broads Authority is part of the GNDP, and the NPA does not abut any adjoining Local Planning Authorities (LPAs), with the exception of a short boundary with Breckland District. All surrounding LPAs to the GNDP (North Norfolk, Great Yarmouth, Waveney, Mid-Suffolk, Suffolk County, Breckland and King's Lynn & West Norfolk) have been consulted, and with the exception of Breckland DC, Suffolk CC and the Broads Authority, there have been no issues raised (and these three authorities have not raised any objections). It is standard practice that official representations made by an adjoining authority would either have been made by their Cabinet/Executive Committee, or agreed by the appropriate Cabinet member.

Officers represent councils (and councillors), and if officers consider that any representations made raise matters that could necessitate a councillors' meeting, then there would be an additional meeting. In the event, there has been no need to have additional meetings, and none have taken place.

In relation to the relevant Regulation 4 bodies, the Environment Agency and Natural England have previously signed a Statement of Common Ground with the

GNDP councils (following a number of meetings), the Highway Authority (Norfolk County Council) and the Homes and Communities Agency sit on the GNDP Board, and meetings have previously taken place with the Primary Care Trust and English Heritage. The NATS Civil Aviation Authority was written to during the Regulation 20 consultation, but responded with a letter saying that they no longer need to be consulted on strategic planning matters. The Office for Rail Regulation was also written to during the Regulation 20 stage, but did not respond. As with adjoining LPAs, no duty-to-cooperate failures (either legal or soundness-related) have been asserted by any Regulation 4 body.

- 2.3. Do the councils and representors consider that the Duty on this Plan (which is but a part of the JCS) has been applied on an ongoing basis, actively and constructively so far as the preparation of this part JCS is concerned? If not, why not, bearing in mind the councils' responses to the representations made on the Duty? Please note that parish councils are not prescribed bodies.**

The Councils' Response

Yes, see the answer above, and also the Duty to Co-operate paper SDJCS16.

- 3. Whether the public consultation processes have been correctly carried out**

- 3.1. In the light of the councils' response in SDJCS 7, exactly what is wrong with the councils' public consultation procedures? What legislation or Statement of Community Involvement do they fail to comply with and why?**

The Councils' Response

The Councils consider that this matter needs to be addressed by those objecting. The Councils do not believe that there have been any failures to comply with legislation or any of the three Statements of Community Involvement (SDJCS 5, SDJCS 5.1, SDJCS 5.2 and SDJCS 5.)

- 4. Whether the Aarhus Convention is applicable**

- 4.1. In May 2005, the UK Government agreed to implement the Aarhus Convention. Aarhus has three main themes: *Access to information* – public bodies should provide information and respond to requests for it, and this is primarily implemented in the UK through the Environmental Assessment of Plans Regulations 2004; *Public participation* – the agreement sets out minimum requirements for public participation in various kinds of environmental decision making; *Access to justice* – the UK relies on existing judicial review procedures. My initial finding, therefore, is that as the Aarhus Convention has been implemented in the UK through domestic legislation, any alleged failure in its implementation is a matter for the courts, and not for me. Even so, what is the problem, and what do the parties think I should or**

can do about it? Is this in effect another way of saying that the plan has not complied with UK legislation?

The Councils' Response

The Council agree with the approach taken by the Inspector that this is another way of saying that the plan has not complied with the UK legislation. It does not raise a separate point. Furthermore, the relevant provisions of the Aarhus Convention are expressed in a general fashion. The member states are afforded a margin of appreciation in the way in which they implement these requirements in their own detailed domestic legislation. The UK has clearly adopted legislation and development plan regulations that are in accordance with the Aarhus Convention.