MATTERS AND QUESTIONS FOR EXAMINATION: THE SNUB RESPONSE

Introduction

This is a record of the responses made by Mr Stephen Heard of the Stop Norwich Urbanisation Campaign (SNUB) to the questions posed by Mr David Vickery for the Joint Core Strategy for Broadland, Norwich and South Norfolk, Broadland Part of Norwich Policy Area Examination. All answers are in Arial 12.

Questions and Responses

Matter 1 - Legal requirements

Issues and Questions

1.Q Whether the part JCS complies with the legal requirements in the production of the Sustainability Appraisal (SA)

1.1.Q 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?

1.1.R We do not believe that the local authorities have taken on board the comments made by Mr Justice Ousley and as a result have merely re-engineered the original proposals rather than taken a serious review of the options for future house building in the Norwich Policy Area.

1.2.Q 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?

1.2A We do not believe that the reports and consultation documents produced in the early stages adequately set out how alternatives were developed and evaluated, and the reasons for selecting the preferred strategy along with adequate and quantifiable reasons for rejecting the alternatives. The audit trail of how the evidence base, consultation and SA have influenced the plan is weak and does not address the issues.

1.3.Q 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?

1.3.R It is impossible to say as the authorities have not produced any viable alternatives different from the original proposal.

1.4.Q In the light of the councils' response in SDJCS 7 and 8, have the significant environmental effects of the reasonable alternatives been correctly assessed?

1.4.R We do not believe that the authorities have completed a Strategic Environmental Assessment for all 13 alternatives.

1.5. Q Does the SA clearly set out (page 79 onwards in SDJCS 3.2) the reasons for the selection of the JCS NEGT submitted proposal (Alternative 1), and the reasons why the other reasonable alternatives were not chosen? If not, why not?

1.5.R It is difficult to see the differences between Alternative 1 and 2 as the authorities own independent review identifies small differences between the two. We therefore believe that the authorities approach is not reasonable and requires detailed examination as it is not clear how and why the decision was made.

1.6.Q Is it correct that the selection of the submitted JCS proposal Alternative I 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)?

1.6.R The authorities legal team fought a long rear-guard action to ensure that there was no link between the NDR, the Postwick Hub, Broadland Business Park and the JCS. This is clearly not the case as the proposed development is dependent on the NDR as they are not mutually exclusive. It stands to reason that any environmental appraisal of the remitted JCS NEGT area should include the environmental impacts of the proposed NDR.

1.7.Q 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 plans) 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?

1.7.R The presumption in favour of sustainable development means that every planning application will be accepted. However the government states that ‘strong environmental safeguards remain as part of the planning system, including protecting communities and the environment from unacceptable proposals’. We believe that this is an unacceptable proposal.

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

2.1.Q 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)?

2.1.R No SNUB response required.

2.2.Q 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?

2.2.R See also response to question 2.3 below.

2.3.Q 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.

2.3.R.1 The councils' *Statement of Compliance with the Duty to Cooperate*[1] provides an excellent introduction to the legal framework for the Duty and a summary history of inter council liaison stretching back to 1975. However, it is not a succinct Duty to Co-operate Statement as recommended by the PAS. Of its 26 pages only 1 section (5 Cooperation after remittal) and 1 appendix, which amounts to 3 pages in all, are directly relevant to the councils' Duty to cooperate as far as the preparation of this part of the JCS is concerned.

2.3.R.2 In section 5 *Cooperation after remittal* of the *Statement* there are only five specific meetings listed for the period from the Court Hearing in February 2012 to its preparation in December 2012:

1. A meeting on 17/05/12 with officers from Breckland, Great Yarmouth and North Norfolk district/borough councils,
2. A meeting with Anglian Water on 22/06/12,
3. Two meetings with Norfolk County Councils Children's Services on 15/02/12 and 28/03/12, and
4. A meeting with NHS Norfolk 25/04/12.

It is also mentioned that there has been continued contact with Environment Agency and Natural England. The number and type of meetings is not sufficient. A record of one of the meetings is provided. This could hardly be called a collection of correspondence, but even that is not considered sufficient by the PAS –see 2.3.G.1.

2.3.R.3 More importantly the councils' *Statement* does not contain any of the evidence recommended by the PAS (see 2.3.G.1), for example: the sharing of ideas, evidence and pooling of resources; the practical policy outcomes of co-operation; how decisions were reached and why; etc.

2.3.R.4 So we do not consider that the Duty to Cooperate on this Plan has been applied on an ongoing basis, actively and constructively so far as the preparation of this part JCS is concerned.

[1] Statement of Compliance with the Duty to Cooperate Joint Core Strategy for Broadland, Norwich and South Norfolk Addressing the Judgment of Mr Justice Ouseley in Heard v Broadland District Council, South Norfolk District Council and Norwich City Council, December 2012

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

3.1.Q 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?

3.1.R.1 *Consultation Principles* [2](copy in Annex A) sets out the principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation. It says, "Thought should be given to achieving real engagement rather than following bureaucratic process". As stated in SNUB's Representation [5]:

> "It may appear that the Duty to Cooperate has been discharged, however we are of the opinion that this has been a "tick box" exercise and that the views of respondents have not been listened to or acted upon. We can see no real evidence that this submission has been noticeably altered and that public opinion has been ignored."

SDJCS 7 states that approximately 9,000 organisations / individuals were notified and that 478 organisations / individuals made representations on the JCS proposed submission document. This is a response rate of 5.3%, which is generally accepted to be very low according to planning officer discussions on the PAS website[3]. So the councils have failed to engage sufficiently with the public.

3.1.R.2 *Consultation Principles* says:

> "The objectives of the consultation process should be clear. To avoid creating unrealistic expectations, any aspects of the proposal that have already been finalised and will not be subject to change should be clearly stated. Being clear about the areas of policy on which views are sought will also increase the usefulness of responses."

In Table 2 of SDJCS 7 it can be seen that 78 of the 99 responses were considered to be 'other', as *they did not directly relate to the proposed parts for submission.* So with only 21 responses that councils consider relevant of out of a total of 99, it has failed to be clear about the objectives of the consultation process. A relevant response rate of 99 from 9,000 is a miniscule engagement level of 0.2%.

3.1.R.3 There is no plan so perfect that it does contain flaws and Mr. Justice Ousley has found the JCS to be flawed[4]. A properly conducted consultation is one means by which flaws can be identified and removed, as *Consultation Principles* says, 'It should be part of strengthening policy making…' In SNUB's Representation we could see no evidence that the views of respondents had been listened to or acted upon [5]. In the light of the councils' response in SDJCS 7 the situation has not changed because we can still see no evidence

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60937/Consultation-Principles.pdf
[3] http://www.pas.gov.uk/pas/forum/thread-maint.do?topicId=716801
[4] Case No: CO/3983/2011, IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION ADMINISTRATIVE COURT, Date: 24/02/2012, Before: MR JUSTICE OUSELEY, Between: HEARD, Claimant and BROADLAND DISTRICT COUNCIL, SOUTH NORFOLK DISTRICT COUNCIL, NORWICH CITY COUNCIL, Defendants. **Approved Judgment**

of any of the respondents' contributions being used to modify any part of the JCS. This is either because:

- The councils are adopting a 'bunker mentality', refusing to accept any external contributions and treating the consultation as 'tick box exercise' [5], or
- They have failed to garner enough useful responses.

In either case their public consultation process has failed. (One reason for the lack of responses may well be the councils' lack of engagement and responsiveness in previous public consultations.)

4. Whether the Aarhus Convention is applicable

4.1.Q 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?

4.1.R.1 *Access to Information* – The access to information primarily relied upon the access to digital technology as the information was published on line and presumed wholesale access to personal computers. Whilst hard copies were available in public libraries the volume of printed material was excessive and difficult to understand from a layman's perspective. There was no evidence of a simple easy to understand publication being delivered to local residents via the postal system. The only information that was available to all residents of Broadland District Council (BDC) was via the regular Broadland News posted to all residents. However this was a one sided publication and a formal request by SNUB to pen an article giving the alternative view was refused by BDC. We therefore do not believe that the authorities made sufficient or sustained effort to make access to information easy or that any information was balanced with both sides of the debate represented. It was left to community groups to organise public meetings to communicate information and make it accessible to the masses.

4.1.R.2 *Public Participation* – The Aarhus Convention requires that, 'Each Party shall provide for early public participation, when all options are open and effective public participation can take place.' (The Party being the signatory to the Convention i.e. the UK government.) As stated in SNUB's Representation [5.7]:

> The Greater Norwich Development Partnership (GNDP) had until Dec 2011 held all of their meetings, since their beginning in 2006, behind closed doors thus denying access to members of the public and elected officials who were not part of the GNDP Board. This secrecy was a serious and unsustainable breach of local democracy and local campaigners had to force them to open up the meetings. As a consequence local opinion was not given the opportunity to be heard and we therefore believe that the soundness of this strategy has been compromised by the lack of public participation.

This is one way that the preparation of the JCS by the GNDP has breached the public participation requirements of the Aarhus Convention.

4.1.R.3 *Access to Justice* - A summary of the complaint to the Aarhus Convention Compliance Committee (ACCC) in Geneva, Switzerland, made by the Kent Environmental and Community Network[5] (KECN) on June 25th 2012 is shown in Annex B. Their complaint is essentially that the UK has failed to properly implement much of Article 9 (Access to Justice) of the Convention, thus:

- There is no third party right of appeal so it is almost impossible to get access to a review procedure for a planning decision on substantive grounds.
- Even where there is a limited review procedure such as where the proposal might require an Environmental Impact Assessment, there is no practical information before the public to inform them that this procedure exists.
- The judicial review procedure can only review decisions where there is a legal procedural flaw.
- The UK costs regime regarding legal actions (the other side has to pay the other side's legal costs if they lose), this risk is prohibitively expensive for most claimants.
- Complaining to the Local Government Ombudsman (LGO) is not an effective solution for those who seek justice in planning environmental matters. This is because the LGO has no power to overturn a planning decision and because the investigative process takes too long in any event.

The findings of the ACCC are expected in the early part of this year.

4.1.R.4 In 2010, the Working Group on Access to Environmental Justice, chaired by Lord Justice Sullivan, reported[6] that the ACCC had taken the UK to task for "failing to live up to its obligations under Aarhus." Things haven't improved since then, so we believe that UK planning legislation does not fully guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of the Convention. Thus, to say that a plan does not meet the requirements of the Convention is not another way of saying that the plan has not complied with UK legislation.

4.1.R.5 We ask that you keep in mind the requirements of the Aarhus Convention when making your deliberations take note of any actions that because of their non-compliance may have affected the outcome.

[5] http://www.kecn.org.uk

[6] *Ensuring access to environmental justice in England and Wales,* Update Report August 2010, The Working Group on Access to Environmental Justice

Matter 2 - The implementation of the submitted JCS proposals

Issue and Questions

1. Q Whether policy 10's proposals and associated text for employment and housing are positively prepared, justified by the evidence, consistent with national policy, and effective

1.1.Q Please provide me with a copy of the Annual Monitoring Report 2011-2012 produced by the GNDP on behalf of all three councils. When will the 2012-2013 Annual Monitoring Report be available - in time for the May examination hearings?

1.1.R No SNUB response required

1.2. Q Given the delay in bringing forward the NEGT, are the housing delivery figures in the JCS Appendix 6 Housing Trajectory correct? For example, has Rackheath started delivering homes in 2011/12 as stated (is this not a commitment if they are built?)? And will the remainder actually start delivery in 2014/15?

1.2.R We believe that the housing figures are not correct as they are predetermined by the now discredited Regional Growth Strategy as determined by the now defunct Government Office East of England. The recent figures published by DCLG show that the housing predictions for Norwich City are falling and not increasing as predicated in the original RGS. Nationally the 2011 based projections show a lower growth in households compared with the 2008 based projections, equating to 24,900 FEWER households per year between 2011 and 2021 (see www.gov.uk/government/publications/household-interim-projections-2011-to-2021 . The housing predictions for the JCS need to be revaluated with these new projections.

1.3.Q Will the NDR be built in time (in part or in whole?) to meet the projected housing delivery dates and numbers in the Trajectory?

1.3.R PINs issued its Scoping Opinion on Norfolk CC's NDR EIA Scoping Report on Thursday 4th April 2013 and among other things the Appendices which contain a letter from the Highways Agency. (p 79-80) which expresses uncertainty over whether Postwick Hub will get through the Public Inquiry:

> "As a separate scheme to NNDR, the Postwick Hub scheme which is necessary to **release significant development in the area**, is proposed to form part of the connection of the NNDR to the trunk road. **The Postwick Hub scheme is being pursued separately to NNDR but is also included within the proposals for the NNDR due to the uncertainty of the outcome of a forthcoming Public Inquiry".**

The Postwick Hub is the start point of the NDR, as it defines the line of the proposed NDR, and is subject to a Public Inquiry which commences on the 3rd July 2013. We are of the view that the proposal for the Postwick Hub may not be approved which in turn jeopardises the construction of the NDR. We would urge that proper consideration be given to all three events ie the JCS, NDR and Postwick Hub as this is the only way to get a real perspective of the plans for development in the NEGT. The authorities have stated on several occasions that there would be no development without the NDR.

1.4.Q What is the status of the application for 3,500 homes in North Sprowston, submitted in October 2012? How does this fit into the Housing Trajectory?

1.4.R The Beyond Green Development is, we believe, at the Outline Planning Development stage and is awaiting the outcome of this review of the remitted JCS before submitting a full planning application in the summer of 2013. We believe that the 3,500 homes are part of the remitted 9,000 homes and that this is the first stage of the proposed NEGT developments.

1.5.Q Does the above indicate more than a "slight variance" in the Housing Trajectory? Is it of sufficient significance to warrant amending the Trajectory to reflect reality to date?

1.5.R We believe that the proposed development of 3,500 homes in North Sprowston are not sustainable as it urbanises the countryside in and around Sprowston which represent the creeping urbanisation that local residents face in the NEGT as the urban sprawl from Norwich moves out of the city boundary and encroaches into agricultural land and the surrounding countryside. We would counter that 3,500 houses is probably the sum total of new houses required in the NEGT as its overall contribution of a reduced quantity of houses for the who of the Norwich Policy Area.

1.6.Q Given the above, and the allowance for smaller sites in the 3CS, is the submitted JCS flexible enough to deal with any changing circumstances (JCS para 7.17 and table), even though funding for part of the NDR is now more certain?

1.6.R We do not believe that the JCS has been flexible at all and all local commentary and objections have been centred on the facts that the recommended proposals following the court case are similar to the proposals prior to the court case. Local authorities have not taken the opportunity afforded to them by the court case to withdraw back to the planning stage and deliver real alternatives for local residents to consider. They have merely entrenched their position and not delivered any flexibility.

We do not believe that funding for the NDR is now more certain in fact we believe that as the UK is on the precipice of a triple dip recession the actual realisation of funding, rather than the mere allocation of funds, will never materialise. There are flaws in the arguments that the NDR will receive additional funding from the National Infrastructure budget as it does not link with the European Trunk Network at the A47 and therefore cannot be deemed to be a significant infrastructure project; the decision to link the NDR to the Postwick Hub via a side road order precludes it from being described as such. We also believe that the additional local authority funding of £40m to close the so called funding gap is now in jeopardy as the political control at Norfolk County Council has changed since the local elections on May 7th and the predisposition to use local funds may now not be available. The reduction of the Community Infrastructure Levy (CIL) for the proposed houses in the NEGT has also jeopardised funding for the NDR as a portion of the CIL was to be used for the funding of this road. Representations have been made to BDC in April to request information on the impact that this CIL reduction has in the development plans for the NEGT but to date we have not received a response.

There is also a risk that the new powers being developed by the DfT, to pass funding decisions to the Local Enterprise Partnerships from April 2015, could shift the proposed

funding to improve the existing East to West trunk road (A47) rather than the NDR which does not improve the existing European Trunk Road Network.

1.7.Q Exactly what limited capacity in numbers is there for the delivery of homes ahead of the NDR? Is it as the 7.17 table or as the North Sprowston planning application or other?

1.7.R We do not believe that the authorities have planned for development in the event of no NDR even though senior officials and officers have publically stated that there would be no development without the NDR. This is mere window dressing with no Plan B for either the NDR or the houses should either or both fail at some stage of the application process. This shows a total lack of regard to the management of risk with no risk mitigation strategies in place.

1.8.Q NPPF paragraph para 48 allows for windfall sites to be included in the housing supply figures provided there is compelling evidence they will continue to come forward. Are the councils' now arguing in SDJCS 14 that windfalls should be included in the submitted and adopted JCS, thus taking the housing numbers up to 42,000, which would be at the higher end of the range set out in its Table I?

1.8.R We believe that these plans are ignore windfall sites and any additional houses built as a result of these windfall developments will be in addition to the 36,000 taking the final number of houses to an even higher level.

1.9.Q I have some concerns over the technical justification for the SHMA's range of estimates (Hll) set out in SDJCS 14: namely, the inclusion of a 2006 affordable housing 'backlog' (does this form part of the total housing need, and is not added to it?) and the increase in market housing numbers solely in order to provide more affordable homes (which are but one segment of the housing market and should not be the determinant of overall housing need or numbers). Please would the councils comment on this, bearing in mind the Government's 'Practice Guidance' on SHMAs and the NPPF's requirement to meet objectively assessed needs based on household and population projections.

1.9.R We would concur with your concerns as SNUB have always stated that the housing need can easily be met with a reduced number of houses. It appears that the authorities are attempting to meet the housing wants of local residents along with an unknown number of inward economic migrants from the rest of England and beyond. We are convinced that the planned houses are as much to generate income for local authorities rather than concentrating on satisfying the need. Authorities, and in particular BDC, have raided their financial reserves to keep council tax at an artificial low level and are reliant on the additional CIL, New Homes Bonus and additional council tax to replenish their financial reserves. If they are unable to achieve this they will face an unpalatable increase in council tax or the spectre of bankruptcy.

1.10.Q Please would the councils provide me with relevant updates to SDJCS 14 once the new Government household formation figures are produced (expected imminently) and the East of England Forecasting Model is updated (Spring 2013, if done annually?).

1.10.R No SNUB response required.

1.11.Q Given the above SDJCS 14 points, does the housing forecast in SDJCS 14 provide a robust and justified evidential basis for the scale of the proposed development in policy 10?

1.11.R We do not believe they do as the evidence used for the remitted JCS is not sound nor withstands any detailed scrutiny.

1.12.Q Is there an up-to-date evidence base document setting out the need for the 25 hectares of employment land as proposed in policy 10?

1.12.R SNUB believe that the employment opportunities and land are non-existent in the NEGT as all recent new employment opportunities have been outside of the NEGT. Most notably these have been in the south west of Norwich centred around the Science Park and in the east of the county centred around the off shore industry. The reliance on the Rackheath and Airport Industrial sites and the Broadland Business Park are flawed as all three sites have vacant premises with no indication of inward investment that would generate sufficient employment to sustain the necessary number of residents.

1.13.Q Does the area indicated in Appendix 5 of the submitted JCS represent a justified and realistic 'area of search' within which areas sufficient to accommodate the various components of the proposed growth triangle can be found?

1.13.R SNUB to comment?

1.14.Q Does the submitted JCS provide sufficient strategic guidance for achieving a single co-ordinated approach to the future planning of this large area with its multiple ownership and complex infrastructure issues?

1.14.R SNUB to comment?

1.15.Q What is the councils' evidence-based response (I have seen that in SDJCS 8) to the concerns raised about the impact of traffic from the submitted JCS policy 10 proposals' traffic on Wroxham and the A1151 Wroxham Road? Please would the councils tell me where to find the evidence which lies behind their statement that "overall the growth in the NEGT is not predicted to have a significant impact"?

1.15.R The latest traffic predictions from NCC show that traffic flows along the A1151 actually increase with the building of the NDR and are considerably less without the construction of the NDR.

1.16.Q What are the councils' detailed response (rather than the generalised policy based answer in SDJCS 8)) to the concern raised by the RSPB in its representation about the delivery of the Broads Buffer Zone Scheme? If it is in the evidence, please direct me to it.

1.16.G Out of interest, the PAS recommends:

- Policy which seeks to minimise the loss of higher quality agricultural land and give great weight to protecting the landscape and scenic beauty of National Parks, the Broads and AONBs.

1.16.R We have already commented on the threat to the ecological balance of the Norfolk Broads and the close proximity of this proposed development. We have seen nothing in the revised submission that diminishes this threat. The authorities seem to suggest that a “green” buffer zone in the north of the NEGT zone is adequate to provide adequate

protection to the landscape and scenic beauty of the Broads. We would disagree and suggest that the only sure way of minimising the loss of higher quality agricultural land and provide adequate protection to the Broads and the natural environment is not to develop the NEGT area.

1.17.Q Is the information contained in the latest version of the Local Investment Plan and Programme (LIPP), particularly that in Table 11.1, reflected in the Infrastructure Framework in Appendix 7 of the JCS for the policy 10 proposals? If not, should it?

1.17.R No SNUB response required.

1.18.Q In the light of NPPF paragraph 173 onwards, please would the councils provide me with the necessary information to assess the financial viability of the proposals in policy 10. The information should be provided bearing in mind the advice set out in the "Viability Testing Local Plans" document of June 2012 by the Local Housing Delivery Group, which is available on: http://www.nhbc.co.uk/NewsandComment/Documents/filedownload .47339.en.pdf.

1.18.R No SNUB response required.

1.19.Q Should any of the 'gaps' and 'suggested indications' on page 96 onwards of the SA report (SDJCS 3.2) be incorporated in the Appendix 8 Monitoring Framework of the JCS? If so, what?

1.19.R No SNUB response required.

1.20.Q What are the two sets of parallel dotted grey lines on the first plan of the Policies Map of the Growth Triangle in SDJCS 4.1?

1.20.R No SNUB response required.

Annex A Consultation Principles

This guidance sets out the principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation. It is not a 'how to' guide but aims to help policy makers make the right judgements about when, with whom and how to consult. The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken, and thought should be given to achieving real engagement rather than following bureaucratic process. Consultation is part of wider engagement and whether and how to consult will in part depend on the wider scheme of engagement.

Policy makers should bear in mind the Civil Service Reform principles of open policy making throughout the process and not just at set points of consultation. Modern communications technologies enable policy makers to gather information and to consult more quickly and in a more targeted way than before, and mean that the traditional written consultation is not always the best way of getting the right evidence. This guidance replaces the Code of Practice on Consultation issued in July 2008.

Subjects of consultation

There may be a number of reasons to consult: to garner views and preferences, to understand possible unintended consequences of a policy or to get views on implementation. Increasing the level of transparency improves the quality of policy making by bringing to bear expertise and alternative perspectives, and identifying unintended effects and practical problems. It should be part of strengthening policy making and should involve understanding the effects of the policy on those affected. The objectives of any consultation should be clear, and will depend to a great extent on the type of issue and the stage in the policy-making process – from gathering new ideas to testing options.

There may be circumstances where consultation is not appropriate, for example, for minor or technical amendments to regulation or existing policy frameworks, where the measure is necessary to deal with a court judgment or where adequate consultation has taken place at an earlier stage. However, longer and more detailed consultation will be needed in situations where smaller, more vulnerable organisations such as small charities could be affected. The principles of the Compact between government and the voluntary and community sector will continue to be respected[1].

Timing of consultation

[1] "Where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach." The Compact (Cabinet Office 2010) para. 2.4) 2

Engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account. There are several stages of policy development, and it may be appropriate to engage in different ways at different stages. As part of this, there can be different reasons for, and types of consultation, some radically different from simply inviting responses to a document. Every effort should be made to make available the Government's evidence base at an early stage to enable contestability and challenge.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary between two and 12 weeks. In some cases there will be no requirement for consultation at all and that may depend on the issue and whether interested groups have already been engaged in the policy making process. For a new and contentious policy, such as a new policy on nuclear energy, the full 12 weeks may still be appropriate. The capacity of the groups being consulted to respond should be taken into consideration.

Making information useful and accessible

Policy makers should think carefully about who needs to be consulted and ensure the consultation captures the full range of stakeholders affected. Information should be disseminated and presented in a way likely to be accessible and useful to the stakeholders with a substantial interest in the subject matter. The choice of the form of consultation will largely depend on the issues under consideration, who needs to be consulted, and the available time and resources.
Information provided to stakeholders should be easy to comprehend – it should be in an easily understandable format, use plain language and clarify the key issues, particularly where the consultation deals with complex subject matter. Consideration should be given to more informal ways of engaging that may be appropriate – for example, email or web-based forums, public meetings, working groups, focus groups, and surveys – rather than always reverting to a written consultation. The medium should be appropriate for the subject and those being consulted. Policy-makers should avoid disproportionate cost to the Government or the stakeholders concerned.

Transparency and feedback

The objectives of the consultation process should be clear. To avoid creating unrealistic expectations, any aspects of the proposal that have already been finalised and will not be subject to change should be clearly stated. Being clear about the areas of policy on which views are sought will also increase the usefulness of responses.

Sufficient information should be made available to stakeholders to enable them to make informed comments. Relevant documentation should normally be posted online to enhance accessibility and opportunities for reuse. As far as possible departments should use the Government's single web platform to enable stakeholders to find information on consultations as easily as possible.
Departments should make clear at least in broad terms how they have taken previous feedback into consideration, and what future plans (if any) they may have for engagement.

Practical considerations

Consultation exercises should not generally be launched during local or national election periods. If there are exceptional circumstances where launching a consultation is considered absolutely essential (for example, for safeguarding public health) departments should seek advice from the Propriety and Ethics team in the Cabinet Office.

Departments should be clear how they have come to the decision to consult in a particular way, and senior officials and ministers should be sighted on the considerations taken into account.
The consultation process is also linked to the need for collective agreement in policy making at an early stage before any public engagement that might be seen as committing the Government to a particular approach. Ministers are obliged to seek the views of colleagues early in the policy making process and the documents supporting consultations should be cleared collectively with ministerial colleagues. If departments are intending to use more informal methods of engaging with stakeholders they should think about at what point, and with what supporting documentation, collective agreement should be sought. For instance, a 'call for evidence' should be cleared collectively. The Cabinet Secretariat will be able to advise on particular cases.

This guidance does not have legal force and does not prevail over statutory or mandatory requirements[2].

[2] Some laws impose requirements for the Government to consult certain groups on certain issues. This guidance is subject to any such legal requirement. Care must also be taken to comply with any other legal requirements which may affect a consultation exercise such as confidentiality or equality.

Annex B Summary of KECN Aarhus Complaint

Summary of Complaint

1) The facts of this complaint are based on planning application YO9/0627/SH concerning the proposal to construct a new Sainsbury's superstore in Hythe, Kent, UK. However, this complaint does not only apply to YO9/0627/SH. It applies necessarily to many similar applications where third parties feel aggrieved about the environmental impacts of a planning proposal but have such limited third party rights of appeal.

2) Our complaint is essentially that the UK has failed to properly implement much of Article 9 of the Convention. Firstly, that there is no third party right of appeal so it is almost impossible to get access to a review procedure for a planning decision on substantive grounds [Article 9(2)(b) and (3)]; secondly, that even where there is a limited review procedure such as where the proposal might require an Environmental Impact Assessment, there is no practical information before the public to inform them that this procedure exists [Article 9(5)]; thirdly that the judicial review procedure can only review decisions where there is a legal procedural flaw [Article 9(2)(b) and (3)], and finally because of the UK costs regime regarding legal actions (the other side has to pay the other side's legal costs if they lose), this risk is prohibitively expensive for most claimants[(Article 9(4)]. Complaining to the Local Government Ombudsman is not an effective solution for those who seek justice in planning environmental matters. This is because the LGO has no power to overturn a planning decision and because the investigative process takes too long in any event (Article 9(4)].

3) As a result of the above named breaches of Article 9, there is a serious barrier to environmental justice in the UK.

4) The Sainsbury's superstore case is a good illustration of why KECN believes that the UK has failed to properly implement Article 9 of the Convention. Despite, the fact that there were meritorious, substantive and procedural arguments against permission being granted to Sainsbury's, KECN and the group it was assisting (SECN), were unable to get the decision reviewed on substantive or procedural grounds. Access to environmental justice was not possible.

5) In the UK, the only way a third party can get a substantive review of a planning decision is to try and get the planning application called-in by the Secretary of State before permission is granted so that a public inquiry can be held into the matter. This rarely succeeds. In fact out of half a million planning applications submitted annually, approximately only 50 are called-in by the Secretary of State. Whereas there exists a right of appeal on substantive grounds for any applicant for planning permission whose planning application is refused.

6) Another option is to attempt to judicially review the planning decision in the High Court. This is highly risky, prohibitively expensive and the judicial review procedure only reviews the procedural legality of the decision made, and thus if there is no legal procedural flaw, judicial review is not an option.

7) With regard to an Environmental Impact Assessment, there is a limited right of review. Any concerned party can ask the Secretary of State to consider undertaking a Screening Opinion upon a particular proposal to determine whether an Environmental Impact Assessment is required or not. However, there is no practical information before the public to tell them that this procedure exists.

8) The last option, which is only available to the dissatisfied party if legal proceedings are not available (unless good reasons exist to justify not going to court), is to make a complaint to the Local Government Ombudsman (LGO), about 'maladministration causing injustice'. This is rarely a satisfactory remedy in the planning sphere mainly because legal proceedings are in theory available and the LGO does not provide effective, adequate or timely remedies.