

Written Hearing Statement: Matter 1 – Compliance with statutory procedures and legal matters

on behalf of Drayton Farms Ltd and RG Carter Ltd

Greater Norwich Local Plan EiP

Matter 1; Issue 2: Does the Sustainability Appraisal (SA) including the addendum, adequately assess the environmental, social and economic effects of the Plan in accordance with legal and national policy requirements?

Overview of Current Position

- 1 Drayton Farms Ltd and RG Carter Farms Ltd have made extensive representations to the Greater Norwich Local Plan process to date, which are supported by a detailed evidence base in respect of the two sites which are proposed for allocation (GNLP0332R and GNLP0334R) or, in the case of the smaller site GNLP0334R alternatively as a contingency site.
- 2 Those representations include a careful and detailed exposition of the failure (supported by a Legal Opinion), on the part of the GNDP, to comply with the SEA Regulations 2004. The content of those representations will not be repeated here in full, so as to avoid unnecessary duplication.
- 3 However, it should be noted that to date, the GNDP have not engaged with or responded to those submissions in any substantive way. It is respectfully submitted that this is an issue which requires careful scrutiny during the examination process.
- 4 Further, the representations submitted to date make clear that, aside from serious errors and omissions in the SA process, there have been several substantive failures to ensure the GNDP meets the relevant test of soundness, as set out in the NPPF. The consequence of this is that the GNDP is not in compliance with Section 19 (2) (a) of the PCPA 2004. This legal issue is not expressly referred to within the Inspector's MIQ's (Part 1) and it is respectfully submitted that this is an issue which should be explored through additional MIQ's in due course.

Question One: Have the likely environmental, social, and economic effects of the Plan's policies and proposals been adequately assessed in the SA?

- 5 No; an adequate assessment has not been undertaken in this case. The response to this Question is predicated on the submissions already made at the Regulation 19 consultation stage, however, to assist the Inspector's these are briefly summarised below:

- 5.1 The economic and social implications of failing to take a robust approach to ensuring that site allocations are deliverable within the plan period have simply not been assessed. The GNLP rests upon the proposed allocation of large sites which have demonstrable deliverability challenges (this includes the combined sites which are described in the plan as the East Norwich Strategic Regeneration Area and the contingency site at Costessey), including examples of sites being proposed for allocation where the landowners do not support the allocation being sought by the GNDP. This creates a material risk that the plan will fail to deliver the housing and economic growth required to meet objectively assessed needs. Undertaking a robust assessment of the deliverability of larger allocations, predicated upon a proportionate but site specific evidence base, is required. The GNDP has not engaged with the shortcomings which arise from its approach to deliverability (which rests upon past delivery rates, rather than considering individual sites and their constraints) and the reasonable alternative of assessing relevant sites (where deliverability is likely to be a material risk), having regard to a proportionate but bespoke evidence base, has not been assessed;
- 5.2 The environmental effects of proposed allocations have not been adequately assessed in the SA. There has been a notable absence of objective evidence to support conclusions reached by the GNDP regarding the environmental effects which would arise from allocating sites. As expressly recognised in the Procedure Guide for Local Plan Examinations¹ (the Procedure Guide), "The plan should avoid assertions of fact that are not supported by evidence. Nor should evidence be collected retrospectively in an attempt to justify pre-conceived conclusions²". The detail of the failures to undertake an evidence based assessment of likely environmental impacts are set out in the Regulation 19 representations. However, by way of example, reference is made to the proposed allocation at Taverham (GNLP 0337) in respect of which there has been no evidence produced (in so far as we are aware) which relates to its likely landscape impacts. Consequently, there has been no assessment (whether adequate or otherwise) of the environmental effects, in landscape terms, of this proposal.

Question Two: Has the SA, including the addendum, properly assessed the likely significant effects of all reasonable alternatives including a reduced housing provision buffer?

¹ Dated 25 October 2021

² Paragraph 1.10 of the Procedure Guide

- 6 No; given the reliance of the GNLP on large allocations, which are likely to be subject to slower delivery rates, the SA has not considered the reasonable alternative of the allocation of more than one contingency site and of different scales and delivery constraints. This is an issue which should be considered irrespective of whether there is a reduction in the housing provision buffer as it is an important element of ensuring objectively assessed housing needs are indeed provided for within the relevant plan period.
- 7 There has been no attempt to assess, by reference to an objective evidence base, the effect of the reasonable alternative strategies on the provision of open space within the GNLP area. There appears to be no assessment (either qualitative or quantitative) of the capacity of the relative settlements to provide for adequate open space and formal recreation facilities. Accordingly, there is no information as to the likely significant effect of the proposed settlement hierarchy and/or the proposed allocations on the social effects of the same in so far as it relates to securing the health and wellbeing of residents within the GNLP area arising from access to formal and information recreational facilities and open space.
- 8 The provision of recreational open space is a strategic matter which should be subject to an evidence based assessment; where reasonable alternatives for the provision of open space are considered and assessed on a comparative basis. The absence of any evidence to demonstrate this matter has been addressed by the SA not only means there has been a failure to assess the likely significant effects of reasonable alternatives in this regard, but also renders the proposed open space allocations proposed by the GNLP (such as HEL4/GNDP1019) unsound.

Question Three: Have all potential site allocations been assessed on a comparable basis?

- 9 No; it is impossible to ascertain whether sites which were deemed to be reasonable alternatives by the SA 2020 have been assessed on a comparable basis. Further, the available information strongly indicates that sites which were deemed to be reasonable alternatives have not in fact been assessed on a comparable basis.
- 10 As the Procedure Guide recognises, "Plans which allocate sites for development will need to be supported by evidence demonstrating that the LPA has followed a logical and consistent method to identify and select the allocated sites and reject alternatives" (emphasis added).³

³ Paragraph 1.11 of the Procedure Guide

- 11 In this case, the selection of allocations from a number of reasonable alternative sites did not result from an objective assessment process which was grounded in evidence. Instead, the GNLP took the 'shortlist' of reasonable alternative sites and held a series of meetings, which consultees and stakeholders were not privy to.
- 12 The Site Assessment Process Methodology, published by the GNDP confirm this, stating, "the shortlist of 'reasonable alternative' sites was then discussed in detail with highways, development management, flood authority and children's services colleagues to come up with a list of preferred sites for allocation. Written comments were also provided by minerals and waste. Each group of colleagues undertook their own assessment of the sites and then roundtable discussion took place in the form of workshop sessions, where the merits of each site were debated and agreements sought on the preferred sites for allocation. In some cases, further discussions and negotiation was needed to ensure that all parties were happy with the sites that had been chosen".
- 13 This is a clear breach of the SA Regulations 2004, which require (amongst other things) public consultation to be effective. It is obvious that consultees cannot be effectively consulted on decision making processes which are entirely opaque. There is no information available as to what the deliberations at the various meetings took into account, what (if any) evidence they were based upon and how an objective, fair and comparative assessment process was ensured. This is wholly unsatisfactory.
- 14 Further details of the legal errors which arise from the flawed process adopted by the GNDP are provided within the Regulation 19 Submissions. However, it is respectfully submitted that the available information demonstrates (without doubt) that the provisions of the SA Regulations 2004 have not been adhered to and, consequently, there is no proper basis on which the Inspectors could be satisfied that the reasonable alternatives for site allocations have been assessed on a comparative basis, having regard to a proportionate and transparent evidence base.
- 15 By way of example, it is simply not possible to understand the basis upon which the contingency site (GNLP2043/0581) has been selected by contrast with the reasonable alternatives GNLP0332R and/or GNLP0334R. In locational terms, the sites are comparable (within the current parish boundary of a 'cluster village' but immediately adjacent to the built up area of larger settlements which falls within the 'urban fringe'). The Site Assessment Booklets specifically record express findings regarding the significant adverse landscape impacts of the contingency site, but there is no evidence available to understand how this was taken into account as part of the decision to select the site in preference to others when dealing with likely landscape impacts (including GNLP0332R and/or GNLP0334R). It appears neither the SA nor the Site Assessment Booklets engage with or

assess, on any objective basis, the deliverability prospects of the contingency site when compared with reasonable alternatives.

- 16 Having regard to the GNDP's responses to the Inspector's Initial Questions⁴ it would appear that this has resulted in the selection of a contingency site, which is unlikely to be deliverable; it is difficult to understand how this could be reasonably be said to support the strategy of the GNLP – the very purpose of a contingency site is that it will be able to deliver if other, more complex sites, fail to do so. In short, the reasons for the selection of the contingency site are entirely opaque; the exact opposite of what is required by the SEA Regulations.
- 17 Finally, it should be noted that there is no information available as to how the GNDP and the SA process has taken into account the detailed evidence base submitted in support of reasonable alternative sites, including GNLP0332R and GNLP0334R. This is a major omission.
- 18 It is respectfully suggested that care needs to be taken in ensuring that the GNDP are not permitted to rely upon post-event rationalisations at this stage of the plan process to support decisions which were made without regard to evidence. It is critical (in order to secure compliance with policy and the law) that the SA process (grounded in a proportionate and transparent evidence base) properly inform the decisions made.

Question Four: Is it clear how the SA has influenced the Plan and the choice of spatial strategy? Does it support the spatial strategy or is there anything in the SA which indicates that changes should be made to the plan?

- 19 It is far from clear how the SA has influenced the Plan with respect to the allocations which are proposed within it.
- 20 As the Inspector's will be aware, the GNDP produced and relies upon 'Site Assessment Booklets' in an effort to appraise all sites which were considered to be 'reasonable alternatives' and thereafter select the preferred allocations.
- 21 It is entirely unclear how the 'Site Assessment Booklets' relate to the SA and the assessment process set out therein. Indeed, in some cases, the conclusions reached in the Site Assessment Booklets are in direct conflict with the outcome of objective assessments within the SA itself.

⁴ See paragraph 78 of the GNDP's response

22 To this extent is difficult to conclude that the SA has in fact influenced and/or properly informed the selection of site allocations as part of the plan process. The timeline during which the Site Assessment Booklets were prepared (by reference to the SA process) is opaque and there is no proper transparency as to how the SA 2021 approached the information contained within Site Assessment Booklets. It certainly appears that the conclusions of the Site Assessment Booklet drove the outcome of the SA 2021, as opposed to undertaking an objective assessment process grounded in a robust evidence base.

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14 January 2021