Hearing Statement- Runnymede 2030
Local Plan Examination

Matter 1: Legal Requirements, the Duty to Co-operate and the Plan Period

On behalf of SMECH Management Company Ltd

November 2018
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0.0 Introduction

0.1 This statement has been prepared by DPDS Consulting Group (DPDS) on behalf of SMECH Management Company Ltd in respects of its property interest at the Longcross Estate, Runnymede. It sets out the response to the questions included in Matter 1 of the Hearings Programme. This matter is in relation to the Legal Requirements, the Duty-to-Co-operate and the Plan Period.

0.2 DPDS has acted on behalf of SMECH Management Company Ltd since February 2013 in respect of its property interest at the Longcross Estate, Runnymede. DPDS has engaged in the development plan process since that date and has made various representations to Runnymede Borough Council (RBC) in respect of both the former Runnymede Core Strategy and, more recently, the Runnymede 2030 Draft Local Plan.

0.3 Our previous representations have demonstrated that the plan does not comply with the requirements identified at section 20(5)(a) and (c) of the Planning and Compulsory Purchase Act 2004 and that it is not sound.

0.4 This statement should be read in conjunction with our previous representations to the Draft Runnymede Local Plan, part one and two. Hearing Statements have also been submitted on behalf of SMECH Management Company Ltd for Matters 3 (Overall spatial strategy) and 4 (Green belt boundaries and exceptional circumstances) of the Local Plan Examination.

0.5 DPDS welcome the invitation to appear at the Hearing Session to expand on the comments included in this statement and confirm that representatives from DPDS and our clients legal team will be attending the Hearing Session.

0.6 The Runnymede 2030 Local Plan was submitted on 31 July 2018 and subsequently paragraph 214 of the revised National Planning Policy Framework (NPPF) applies. References to the NPPF in this Hearing Statement refers to the 2012 version. The section of the PPG on Local Plans states: “Where plans are being prepared under the transitional arrangements set out in Annex 1 to the revised National Planning Policy Framework, the policies in the previous version of the framework published in 2012 will continue to apply, as will any previous guidance which has been superseded since the new framework was published in July 2018.” Unless otherwise indicated references to the National Planning Practice Guidance (NPPG) are to guidance that was published prior to the publication of the revised NPPF in July 2018.
1.0 Response to Matter 1

Q1.1 *Is the Runnymede 2030 Local Plan (the Plan) compliant with the Planning and Compulsory Purchase Act (2004) (as amended) and the 2012 Regulations (as amended)? In particular, is the Plan compliant with the Local Development Scheme and the Statement of Community involvement?*

No.

1.1.1

a. The Environmental Report which has been submitted does not comply with the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004;

b. The Habitats Regulations Assessment (“the HRA”) does not comply with Article 6 of the Habitats Directive, or regulation 105 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”).

c. The Council has not complied with section 33A of the Planning and Compulsory Purchase Act 2004 (the 2004 Act).

d. The requirements of section 39(2) of the 2004 Act have not been complied with, and

e. The plan is not sound (per the criteria set out in paragraph 182 of the National Planning Policy Framework (NPPF). This being so, we would invite the Inspector to recommend, pursuant to section 20(7A) of the Planning and Compulsory Purchase Act 2004, that it is not adopted.

1.1.2

a. Issue (a) is addressed when answering question 1.2

b. Issue (b) is addressed when answering question 1.2

c. Issue (c) is addressed when answering question 1.4

1.1.3 Issue (d)

a. Section 39(2) of the 2004 Act requires the Council to exercise its plan making function with the objective of contributing towards achieving sustainable development. By promoting the Longcross Garden Village site allocation (as allocated in policy SD2: Spatial Development Strategy and policy SD10), the Council have failed to fulfil this duty.

b. The Longcross Garden Village will not result in sustainable development due to the distances involved from the site to main services that residents would need to have access to. It is also incapable of providing the infrastructure to support genuinely sustainable transport choices that is fundamental to achieving modal shift from the private car and there is insufficient evidence to demonstrate that the proposed allocation can deliver the highway infrastructure critical to the delivery of the development. This is discussed in length in our representations to the consultations on the Runnymede 2030 Local Plan.
Q1.2 Is the Habitats Regulation Assessment and the Sustainability Appraisal (SA) adequate? Does the SA demonstrate that the Plan has been tested against all reasonable alternatives?

No. We consider that the Habitats Regulation Assessment (HRA) and the Sustainability Appraisal (SA) are not adequate. The reasons for this are set out below.

1.2.1 Where a land use plan is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site, the plan making authority must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of the site’s conservation objectives.

1.2.2 A staged process is to be followed. The first stage is to determine whether the plan is likely to have a significant effect (the screening stage). The test to be applied was summarised by Hickinbottom J in *R (oao Mynydd Y Gwynt) v. Secretary of State*.

"At this stage the question to be addressed by the competent authority is “Should we bother to check?”. To add some flesh to that, the precautionary approach applies; and “likely” to have a significant effect is a reference to “likely” in a European sense, i.e. not a level of chance exceeding the balance of probabilities, but merely a real risk (see, e.g., Hart District Council at [78]). The burden of proof effectively lies on the applicant, as I have explained. Therefore, where there is any real doubt as to the absence of significant effects of the proposed project on a protected area, then the competent authority must proceed to make an appropriate assessment.”

1.2.3 In *Edel Grace and Peter Sweetman v. An Bord Pleanala* the CJEU held:

“It is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out (see, to that effect, judgment of 26 April 2017, Commission v Germany, C-142/16, EU:C:2017:301, paragraph 38).”

1.2.4 Although that case concerned a project, the same principles apply to plan making.

1.2.5 At paragraph 7.4 of the May 2018 HRA (SD017P, and referred to as “the HRA”), it is said that the effects of policy SD10 cannot be screened out, and therefore the proposed allocation must be subject to appropriate assessment.

1.2.6 The conclusion reached in relation to potential adverse affects on European sites arising as a result of disturbance is (as set out at paragraphs 8.21 and 8.24 of the HRA) is that the integrity of the European sites will not be adversely affected as policy EE10 can be relied upon.

1.2.7 That conclusion is not justified in relation to policy SD10 as:

a. Policy EE10 requires SANG to be provide at a standard of at least 8 ha per 1,000 residents.

b. Paragraph 5.99 of the submission Local Plan states:

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1 [2016] EWHC 2581 (Admin) at paragraph 20(iii)
2 C-164/17 at paragraph 51
“Given the proximity of the new village to the SPA/SAC, higher standards of SANG than 8ha per 1,000 population as set out in Policy NE1 EE10 will be required to avoid significant effects, unless agreed otherwise with Natural England.”

c. Although the plan recognises that higher standards of SANG will be required for Longcross Garden Village the HRA does not identify the level of provision required in order to avoid adversely affecting the integrity of European sites.

d. The HRA relies upon policy EE10 to justify the conclusion that policy SD10 will not adversely affect the integrity of European sites.

e. Policy EE10 provides a mechanism for securing SANG as a mitigation measure, and although it requires provision of at least 8ha per 1,000 population it does not provide sufficient certainty that adequate provision (in excess of 8 ha per 1,000 population) will be secured.

f. Acting rationally, it is not possible, to come to the conclusion that it is sufficiently certain that policy EE10 will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that policy SD10 will not adversely affect the integrity of the area.

g. Further the HRA does not consider how the application of policy EE10 will, with sufficient certainty, secure adequate mitigation

1.2.8 For those reasons no adequate appropriate assessment has been undertaken in relation to policy SD10.

1.2.9 In addition, the Council’s site selection process has missed out both avoid and mitigate stages and has proceeded straight to the assumption that offsite compensation through SANG can be relied upon.

1.2.10 At page 130 of the council’s Regulation 22 Statement of Consultation (SD_016I) it is stated:

“By officers’ calculations, there are predicted to be approx. 575 dwellings that do not currently have SANG mitigation in place over the period of the Local Plan. It is predicted that further SANG would be needed in 2025. This could be delivered through bespoke solutions that could arise to meet needs. The Council is also currently exploring further site options.”

1.2.11 It is also noted that Natural England in their response to the consultation on the Runnymede 2030 Local Plan Part 2 consultation state:

“Given that the plan does not identify sufficient SANG land for the quantum of housing proposed over the course of the plan period, this may affect its deliverability. In this context, it is important to clarify that no new housing can be occupied in advance of the completion of SANG infrastructure works.”

1.2.12 The shortfall in SANG provision is acknowledged at paragraph 8.23 of the HRA. Reliance is placed on policy EE10 to justify a conclusion (at paragraph 8.24) that the plan will not adversely affect the integrity of the European sites. The conclusion at (paragraph 8.24) is qualified by the use of the words ‘technically speaking’; the meaning of the words is unclear. What is clear is that the Council, in concluding that one option is to review the plan, have not concluded with sufficient certainty that it can be said beyond all reasonable doubt that the plan as promoted, will not adversely affect the integrity of European sites.
The Sustainability Appraisal (incorporating Strategic Environment Assessment) (SA/SEA) must be prepared in such a way as to ensure compliance with the requirements imposed by section 19(5) of the 2004 Act and regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 (“the 2004 Regulations”). In order to comply with the 2004 Regulations the environmental report must identify, describe and evaluate the likely significant effects on the environment of the plan.

Regulation 12(2)(a) of the 2004 Regulations requires the environmental report to identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.

There are two main deficiencies in the SA/SEA on which SMECH Management Company Ltd rely in order to support its submission that the SA/SEA fails to meet the requirements imposed by the 2004 Regulations:

a. The failure, adequately, to consider reasonable alternatives; and
b. The failure to identify, describe and evaluate the likely significant effects on the environment of the plan.

Alternatives

There is a failure to identify, describe and evaluate the likely significant effects on the environment of extending existing settlements as an alternative to promoting development on the DERA site.

In our view, there are a number of sustainable settlements within Runnymede Borough, albeit also within designated Green Belt, that have the potential to accommodate development in a far more sustainable pattern than the Garden Village proposal at Longcross (policy SD10). The lack of alternative development strategy testing as part of the SA/SEA process is considered to be a major defect in the report as required by the 2004 Regulations.

It is not sufficient to rely upon the Green Belt Review documentation as being an assessment of the likely significant effects on the environment (as appears to be the Council’s approach at page 6 of Part 3A of the January 2018 SA/SEA report (SD 018M)) as:

- The Green Belt Review does not identify, describe and evaluate the likely significant effects.
- It is the SA/SEA report which must contain the assessment of those effects.

Likely significant effects

The SA/SEA fails to identify, describe and evaluate the likely significant effects on the environment of the plan.
1.2.20 It is said that the proposal for Longcross Garden Village are expected to have an “uncertain effect on traffic and congestion”\(^3\).

1.2.21 Table 3.1 of the SA Addendum (SD_018P) in relation to policy SD10 states:

“The Local Plan and the A320 study put forward a range of mitigation to combat the effect of development on traffic levels and congestion. However, until the investigations on the A320 are complete it is not possible to rule out negative effects. The mitigation for this uncertain effect at this point is for the Council to consider further evidence on final designs and effectiveness of mitigation as the A320 study process continues and development with associated Transport Assessments come forward.”\(^4\)

1.2.22 Negative impacts are not ruled out, yet they are not identified, described or evaluated.

**Q1.3 Does the Plan as a whole accord with s19(1A) of the Act by including policies that are designed to secure that the development and use of the land in the Borough contribute to the mitigation of, and adaptation to, climate change?**

1.3.1 No comment.

**Q1.4 Has the Council engaged constructively, actively and on an on-going basis with all relevant organisations on the strategic matters that are relevant to the Plan’s preparation, as required by the Duty to Co-operate?**

1.4.1 No. We do not consider that the council has engaged constructively with relevant organisations on strategic matters that are relevant to the Plan’s preparation. The Environment Agency are identified (at regulation 4(1)(a) of the Town and Country Planning (Local Planning) (England) Regulations 2012 as a body prescribed for the purposes of section 33A(1)(c) of the 2004 Act.

1.4.2 In our representation to the consultation on the Runnymede 2030 Draft Local Plan Part 2 in relation to the Outline Water Cycle Study (2018) (SD_007R), we highlighted that the Environment Agency in their representations to the consultation on the draft Local Plan earlier this year concluded that at that time they considered the Local Plan to be ‘unsound’ for a number of reasons. One of the reasons was whether there would be sufficient infrastructure capacity to accommodate the increase in effluent flow from Local Plan growth which in turn could lead to environmental problems through sewer flooding. The Environment Agency in their representation to the Runnymede 2030 Local Plan Part 2 consultation still have soundness concerns with regards to infrastructure capacity.

1.4.3 It is very concerning that the council has got to this very late stage in plan preparation where key statutory bodies, such as the Environment Agency and Highways England, outline that their soundness concerns have not been overcome. The council has therefore not engaged, in relation to strategic matters, constructively with bodies to whom the duty to co-operate applies.

1.4.4 It is also noted in the council’s Statement of Consultation (SD_0161) that Statements of Common Ground with the Environment Agency and also the Highways England will be prepared where identified concerns cannot be fully resolved. It is unclear whether these Statements of Common

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\(^3\) Table 3.1, page 66, SD018P
\(^4\) SD 018P page 66
Ground have been prepared, this again highlights that the council has not engaged constructively with relevant organisations.

1.4.5 We consider that the council has not met the requirements of the Duty to Cooperate and therefore has failed to meet the requirements of section 33A of the Planning and Compulsory Purchase Act 2004.

Q1.5 *Is the Plan period (2015-2030) justified? If not, how should this be rectified?*

1.5.1 **No.** The NPPF (2012) at paragraph 22 states that Local Plans should “...be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date;”. If the plan were to be adopted in 2019, the plan period from adoption would only be 11 years.

1.5.2 The council in their Runnymede Local Plan Overview Document (SD_021A) at paragraph 16 note that the council’s decision to shorten the plan period by substituting an end date of 2030 might necessitate an early review. It is of note that the last adopted Runnymede Local Plan was adopted in 2001 and therefore the council has persistently failed over many years to get a Local Plan in place. The Ministry of Housing, Communities and Local Government were so concerned with this persistent failure that the council were put under ‘Local Plan intervention’. We therefore have concerns that based on past performance an “early review” would not be an effective approach. We would also like to highlight the general effectiveness of “early review” mechanisms that have been put in place following other Local Plan examinations.