



WEST OXFORDSHIRE  
DISTRICT COUNCIL

**EXAM008**

## **Note on Legal Compliance of Sustainability Appraisal**

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## Introduction

- I. This paper provides an analysis of whether the sustainability appraisal (“SA”) is legally compliant. In doing so, it adopts the following structure:
  - i. It sets out the legal requirements and relevant legal principles to be applied;
  - ii. It explains the approach which has been followed when preparing the SA;
  - iii. It identifies and addresses the principal criticisms that have been raised by parties during the examination; and
  - iv. It sets out any further steps which can be undertaken to remedy any potential defects in the SA.

## Legal Framework

### **Requirement for sustainability appraisal and strategic environmental assessment**

2. Section 19 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) sets out the requirements for the preparation of local development documents. Subsection 5 provides that a local planning authority must carry out an appraisal of the sustainability of the proposals in each development plan document and prepare a report of the findings of the appraisal.
3. The preparation of an SA ensures that the local planning authority satisfies the broad requirement in section 39(2) of the 2004 Act to prepare a local development document with the objective of contributing to the achievement of sustainable development.
4. The preparation of an SA also incorporates the need to carry out an environmental assessment of plans and programmes, otherwise known as strategic environmental assessment (“SEA”), is required by Directive 2001/42/EC (“the SEA Directive”).
5. Article 1 of the SEA Directive provides that:

“The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this

Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.”

6. The SEA Directive is transposed into domestic legislation through the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”), which largely replicate the wording of the SEA Directive.
7. In accordance with Article 3 of the SEA Directive and Regulation 5 of the SEA Regulations, an SEA is mandatory for a plan or programme which is prepared for town and country planning or land use and sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC (“the EIA Directive”).
8. “Strategic Environmental Assessment” is not a single document, still less is it the same thing as the Environmental Report: it is a process, in the course of which the Directive and the Regulations require production of an “Environmental Report” (*Cogent Land v Rochford DC* [2013] 1 P & CR 2 at [112]).
9. Strategic environmental assessment is an iterative process, and it is permissible for options to be discarded and progressively narrowed down. See, for example, *Heard v Broadland DC* [2012] EWHC 344 (Admin) per Ouseley J at [67]; and *St. Albans City and DC v SSCLG* [2010] JPL 70, at [14], where Mitting J observed that:

*“The Directive and Regulations envisage a process of decision making in which options can be progressively narrowed and clarified. Article 5.2 and Regulation 12(3) permit options to be considered and discarded so that they do not need thereafter to be re-visited or appraised, or taken into account again as alternatives to more detailed proposals made within a selected option. This is what is commonly referred to in planning circles as an “iterative” process.”*

10. Regulation 12 of the SEA Regulations sets out what an environmental report prepared under the SEA Regulations must contain. It provides that:

(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.

11. The information referred to in Schedule 2 replicates Annex I of the SEA Directive, which specifies the following information:

- (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;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects (1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (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;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

### **Content of the environmental report**

12. The responsible authority must be accorded a substantial discretionary area of judgement in relation to compliance with the required information for environmental reports. The court will not examine the fine detail of the contents but seek to establish whether there has been substantial compliance (*Seaport Investments Ltd Application for Judicial Review* [2008] Env LR 23, per Weatherup J. at [26]).

### **Requirement for consultation**

13. Article 6 of the SEA Directive sets out the requirement for consultation. It states that statutory consultees and members of the public shall be given an early and effective opportunity within appropriate timeframes to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative programme. However, neither the Regulations nor the Directive specify precisely when consultation should take place, other than that it should be before the adoption of the plan (*Cogent* at [113]).

### **Reasonable alternatives**

14. In accordance with Article 5(1) of the SEA Directive and regulation 12(2) of the SEA Regulations, the environmental report must identify, describe and evaluate the likely significant effects of the reasonable alternatives to the plan taking into account the objectives and geographical scope of the plan.

15. In *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 (Admin) at [67] Jay J. summarised the following principles regarding the application of Regulation 12 and the requirement to assess reasonable alternatives:

*“(1) It is necessary to consider reasonable alternatives, and to report on those alternatives and the reasons for their rejection;*

*(2) While options may be rejected as the Plan moves through various stages, and do not necessarily fall to be examined at each stage, a description of what alternatives were examined and why has to be available for consideration in the environmental report;*

*(3) It is permissible for the environmental report to refer back to earlier documents, so long as the reasons in the earlier documents remain sound;*

*(4) The earlier documents must be organised and presented in such a way that it may readily be ascertained, without any paper chase being required, what options were considered and why they had been rejected;*

*(5) The reasons for rejecting earlier options must be summarised in the final report to meet the requirements of the SEA Directive;*

*(6) Alternatives must be subjected to the same level of analysis as the preferred option.”*

16. Although reasonable alternatives must be assessed, there is no requirement to consider or give reasons for the rejection of obvious non-starters (*Heard* at [66]). This concept was explained in more detail by Hickinbottom J. in *R (Friends of the Earth v The Welsh Ministers* [2015] EWHC 776 (Admin) at [88] and then re-applied in *R (RLT Built Environment Ltd v Cornwall Council* [2016] EWHC 2817 (Admin) at [40] – [41], where Hickinbottom J. held that:

*“(iv) “Reasonable alternatives” does not include all possible alternatives: the use of the word “reasonable” clearly and necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.*

(v) Article 5(1) refers to “reasonable alternatives *taking into account the objectives... of the plan or programme ...*” (emphasis added). “Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”. The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no “reasonable alternatives” to it.

(vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does not have to be included in the SEA Report or process.”

### **Curing defects in the SEA**

17. Defects in the SEA process can be cured through the production of a subsequent document, such as an addendum, providing that an adequate assessment has been carried out and consulted upon prior to adoption (*Cogent Land v Rochford DC* at [124] – [127]; applied by the Court of Appeal in *No Adastral New Homes v Suffolk Coastal DC* [2015] Env LR 28 at [47] – [55], which held that there was no distinction between inadequacy of reasons and inadequacy of process when applying this principle).

18. In these circumstances, the procedures involved in independent examination of a plan by an Inspector, including examination in public, provide a consultation process which is capable of fulfilling the consultation requirement in Article 6 of the Directive (*Ashdown Forest Economic Development LLP v SSCLG* [2015] Env LR D1, per Sales J. (as he then was) at [89]).<sup>1</sup>

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<sup>1</sup> Although the decision of Sales J. was overturned on appeal, the Court of Appeal did not disagree with this aspect of his judgment, which has also been cited with approval by the Court of Appeal in *No Adastral* at [53].

## **Approach taken in SA**

19. An appropriate Sustainability Appraisal (“SA”), incorporating the requirements of an SEA, has been carried out by independent sustainability consultants throughout the plan preparation, with reappraisal at each stage of the process.
20. The methodology for the SA is set out in part 2 of the SA Report (CD2), which explains how the framework of SA Objectives (set out at Table 2.1) was developed.
21. In accordance with regulation 12(5) of the SEA Regulations, the scope of the report was developed through consultation with statutory consultees and other consultees on the Council’s LDF database in 2007. The results of this exercise are set out in the 2007 Scoping Report (SA5). This scoping exercise and the relevant baseline information was updated through further scoping reports in 2008 and 2009.
22. Further updates to the baseline information are set out in part 3 of the SA Report (CD2).
23. Following consideration of the SA at the first examination hearing sessions in 2015, Inspector Emerson found the general scope and approach of SA to be adequate (see para. 9.2 of IN15). However, the examination hearings were suspended to allow for further work on the housing requirement following a finding that it was not justified.
24. The proposed main modifications to the submitted plan, including the uplift in the housing requirement from 10,500 to 15,950 homes, have been reappraised through an SA Addendum Report (CD10). The SA Addendum provides a comprehensive re-appraisal of all previous options, including those that were previously discarded, along with further consideration of new options that have subsequently emerged.
25. As part 2 of CD10 makes clear, the SA Addendum builds upon the previous SA work carried out, ensuring consistency in approach and the assessment of options.
26. In considering the proposed main modifications, the SA Addendum adopted a staged approach considering:

- i. The implications of the uplift in the housing requirement on the spatial strategy, levels of housing and & employment growth, and the directions of strategic growth;
  - ii. The options for allocating additional development;
  - iii. The significance of the proposed main modifications; and
  - iv. Any significant changes to and implications for the previous findings in the SA Report (CD2).
27. The staged approach formed part of an iterative process, whereby appropriate options were narrowed down at each stage of the assessment, enabling the consideration of reasonable alternatives to be proportionate to the stage of the assessment (i.e. having regard to higher level decisions which had already been taken regarding the spatial strategy in the plan).
28. First, the SA Addendum reappraised the spatial strategy which, in light of the uplift in housing, included a full reappraisal to two alternatives, Option 5 (New Village) and Option 4 (Transport Corridors) that were previously scoped out at the Issues and Options stage in 2008. Paragraphs 4.11 – 4.14 of CD10 explain the reasons for progressing with Option 2 (Three Towns) and Option 5 (New Village). There is no criticism of this approach.
29. The SA Addendum then reappraises the levels of housing and employment growth promoted through the plan. It concludes that a higher level of housing growth can be taken forward in line with the requirement of the SHMA due to the new spatial strategy which includes the option for a new garden village to meet Oxford's unmet needs (see para. 4.21 of CD10). In relation to employment growth, the previously preferred option of steady growth through dispersal is considered to remain valid, and any additions that were not previously considered are subject to appraisal under the assessment of the relevant policies (para. 4.23 CD10).
30. Next, the SA Addendum reappraises the strategic options for growth in accordance with the spatial strategy, starting with consideration of each of the three main towns. This

includes a reappraisal of all previously considered options that remain relevant,<sup>2</sup> by reference to the previous assessment in the SA Report (CD2) where appropriate,<sup>3</sup> and a completely fresh appraisal of new options that have subsequently emerged following the submission of the plan.<sup>4</sup> It is clear from this assessment that all potential strategic sites at the three main towns were considered and assessed through the SA Addendum. This is not in dispute. Nor is it suggested that the alternative options were not subject to an equal level of assessment. Instead, the principal complaints are that the SA does not carry out a comparative assessment between sites at the 3 main towns, or between strategic sites and different combinations of non-strategic sites. For the reasons set out further below, these criticisms are misguided, and do not undermine the legality of the SA.

31. After considering strategic growth options at the three main towns, the SA Addendum then looks at Strategic Options for growth at Eynsham. As is set out further below, this section of the SA needs to be seen in the context of the new spatial strategy which, in addition to the Three Towns Option, also seeks to allocate land for the development of a new village to assist in accommodating the unmet needs of Oxford City Council.
  
32. Having considered and assessed all of the potential strategic options for growth which would accord with either the Three Towns or New Village options, the SA Addendum considers the potential for allocating additional growth through non-strategic site allocations in other areas of the district. As the SA Addendum recognises, this exercise is a product of the need to meet the uplift in housing number.<sup>5</sup> However, it is important to note that this approach remains consistent with the spatial strategy, which seeks to supplement the concentration of strategic growth with a limited amount of dispersal across

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<sup>2</sup> I.e. excluding sites that now have a resolution to grant permission, such as East Carterton, or those which have been allocated as non-strategic sites (REEMA), per para. 4.32 of CD10.

<sup>3</sup> It is perfectly acceptable for the SA Addendum to refer back to assessments carried out in earlier documents, providing that this is clearly signposted so as to avoid an unnecessary paper chase and the conclusions remain valid (see *Calverton Parish Council*). Where there has been reliance on previous assessments, this clearly set out in SA10 along with the reasons why any conclusions remain valid. That is a matter of judgement for the local planning authority, which is not a matter of legal compliance unless the conclusion reached is irrational.

<sup>4</sup> For example, Land to the West of Downs Road & Minster Lovell and North East Carterton, which are appraised at Appendix IV of CD10a.

<sup>5</sup> Para. 3.14 of CD10.

the district.<sup>6</sup> As paragraph 3.15 of CD10 explains, the non-strategic sites assessed were those that were identified as “best aligning with the Spatial Strategy and being the most sustainable”.

33. Finally, the SA Addendum screens the proposed policy modifications for significance.<sup>7</sup> Where significant changes have been proposed, a summary of the SA findings for each of those policies, including any proposed mitigation measures, is set out.

### **Analysis of principal criticisms**

34. Various parties have raised a number of criticisms with the approach taken in the SA which, it is alleged, render it unlawful. These criticisms can be grouped under the following principal issues:

- i. The level of detail included in the assessment;
- ii. Failure to undertake an inter-settlement comparison of alternative strategic sites at the other main towns;
- iii. Failure to undertake some form of multi-tiered assessment of the impacts of a single strategic site with various combinations/bundles of non-strategic sites;
- iv. Approach to the consideration of strategic growth at Eynsham; and
- v. Failure to consider reasonable alternatives to non-strategic allocations

35. Each of these points is addressed in turn below. Ultimately, the key issue is whether there has been substantial compliance with the legislative requirements, bearing in mind that many aspects of an SA rely on matters of professional judgement which will inevitably differ from one person to another.

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<sup>6</sup> See Table 4.3 of CD2 and para. 4.3 of CD10.

<sup>7</sup> See Appendix 6 of CD10.

### **Level of detail included within assessment**

36. It is important to bear in mind that SA/SEA is a process that is often (as in this case) comprised of many pieces of work carried out over a number of years, and that the level of assessment must be proportionate. It is informed by the professional judgements of those who have been involved in undertaking the work. Those judgements, which relate not simply to the conclusions reached, but also the approach, scope and detail of assessment, will inevitably differ from one professional to another. For these reasons, the courts have recognised that authorities carrying out assessments should be afforded a substantial margin of discretion.
37. The SA must be proportionate to the level of detail in the plan and the stage of the plan in the decision-making process. It should also have regard to the extent to which certain matters are more appropriately assessed at different levels in the decision-making process in order to avoid duplication of the assessment process.<sup>8</sup> Having regard to these factors, national guidance indicates that the SA should focus on undertaking an assessment of the likely significant effects of the plan, and that it “does not need to be done in any more detail, or using any more resources, than is considered appropriate”.<sup>9</sup> As is set out above, that is a matter of judgement for the Council and its SA consultants.
38. In accordance with regulation 12(5) of the SEA Regulations, the Council has consulted on the scope and level of detail that should be included in the SA. The baseline information has been reviewed and updated at each stage of the SA, and there are no outstanding objections from statutory consultees regarding the level of assessment.
39. Bearing in mind the need for a proportionate exercise, the SA draws upon other technical documents which make up the evidence base of the plan. In addition to this, it makes use of other available information, such as data on the Defra Magic Maps and the Environment Agency’s flood risk zones.

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<sup>8</sup> Per regulation 12(3) of the SEA Regulations.

<sup>9</sup> NPPG ID 11-009-20140306.

40. All reasonable alternatives have been assessed on an equivalent basis, using the same level of detail. Previous conclusions have been reconsidered, and updated where appropriate. In addition to this, any new options that have emerged during the process have been subject to a full assessment.
41. Despite being included within the same SA Objective, landscape and historic impacts have been independently assessed, scored and reported on.
42. Cumulative effects are considered at paragraphs 4.84 and 4.85 of CD10. In addition to this, paragraph 4.52 confirms that the cumulative impacts of development within each town or sub-area have also been considered.
43. Having regard to all of the above, the Council maintains that the level of detail provided in the SA is appropriate, proportionate and legally compliant.

#### **Comparative assessment of strategic options for growth**

44. It has been suggested by various parties that the SA should have undertaken a comparative assessment between strategic site options at each of the three main towns. This approach is misguided, and would be contrary to the spatial strategy, namely, the Three Towns approach.
45. The assessment of reasonable alternatives must be undertaken having regard to the objectives of the plan, including the spatial strategy which seeks (in the first instance) to direct growth to the three main towns and the garden village. It is accepted that the preferred spatial strategy is a reasonable approach, which has been subject to an appropriate level of assessment through the SA.<sup>10</sup> In order to give effect to that strategy, it is necessary to consider the potential for strategic growth options at each of the main towns, which is precisely what the SA Addendum does. It does not rule out development at sites in one main town in favour of sites at other main towns, since such an approach would undermine and distort the spatial strategy. Instead, the SA Addendum considers all

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<sup>10</sup> See paras. 4.1 – 4.14 of CD10.

potential strategic options at each of the three main towns, giving clear reasons as to why certain options have not been progressed.<sup>11</sup>

46. Furthermore, notwithstanding that the approach adopted in the SA is appropriate, it is also inaccurate to say that it has prevented an inter-settlement assessment of the environmental effects and sustainability benefits of different strategic growth options. The critical point is that all options were appraised, and that this appraisal was undertaken on an equal basis. Accordingly, the appraisal does enable consideration of the effects of the selected sites along with all other sites as reasonable alternatives. Therefore, at its highest, this complaint is simply one about presentation, i.e. that the alternative strategic sites have not all been placed within the same table, and that the consideration of strategic options for growth has been split under subheadings for different settlements. This does not preclude comparison between sites, and it does not make the SA unlawful.

47. Finally, it should be noted that the SA Addendum adopts precisely the same approach to the consideration of strategic options as the SA Report (CD2). The approach was not previously criticised, and Inspector Emerson considered that it was adequate.

### **Comparison between strategic and non-strategic sites**

48. The alleged failure to compare the impacts of strategic sites with non-strategic sites is unrealistic and represents a further misunderstanding of the level of assessment that is required. It is also contrary to the Three Towns objectives in the plan. As the Inspector recognised at the hearing sessions, it would be absurd if every option previously discarded had to then be subsequently resurrected and re-appraised against endless alternative combinations or bundles of different options to see whether it may result in a different conclusion. Such an exercise would be virtually impossible to undertake, extremely difficult to understand and entirely disproportionate to the nature of the assessment that is required. It would also be entirely contrary to the well-established practice of adopting an iterative process when undertaking SAs. The spatial strategy of the local plan is for development to be concentrated at the three main towns with limited dispersal elsewhere

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<sup>11</sup> See paras. 4.29, 4.30, 4.36 and 4.37 of CD10.

and the addition of a new village. Setting aside the new village, the application of that strategy seeks to maximise (so far as it is sustainable) development at the three main towns. The SA therefore starts by appraising all options for development at the three main towns, then it considers the options for meeting Oxford's unmet needs through the creation of a new village, and only then does it go on to consider dispersed non-strategic sites after concluding that there are no more suitable options for development at the three main towns. Where sites have been discarded as unsuitable and unsustainable, they do not become more suitable, and therefore appropriate for allocation, simply because they are compared against different alternatives.

### **Approach to development at Eynsham**

49. The complaint regarding the approach to Eynsham in the SA Addendum needs to be considered in light of the revised spatial strategy, which includes the promotion of a new village (Option 5) to meet Oxford City's needs. This option forms part of the high level spatial strategy, sitting alongside the three towns approach, and therefore merits consideration for strategic allocations on a similar basis. Whilst this section of the SA Addendum is entitled "Directions of Growth at Eynsham", it is clear that it is considering strategic options to meet Oxford City's needs,<sup>12</sup> and it should be considered on that basis. In this context, there is nothing inconsistent with the approach taken in the SA to the assessment of growth at Eynsham and the spatial strategy.
50. Furthermore, it should be recognised that Eynsham is, in itself, regarded as one of the most sustainable settlements, ranking third in the district and making it the most sustainable of all the rural service centres.<sup>13</sup> Given its relative sustainability, it is entirely consistent for Eynsham to receive further development to meet the district's needs through the process of limited dispersal, and in addition to the allocations intended to meet Oxford City's needs.

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<sup>12</sup> See paragraphs 3.11 and 3.12 of CD10, which highlight the proximity to Oxford and the role that these allocations would have in helping to deliver Oxford's unmet housing needs. See, also, paras. 4.44 and 4.45 of CD10.

<sup>13</sup> See the sustainability hierarchy set out in the site selection paper.

51. Insofar as consideration of reasonable alternatives for meeting Oxford City's needs is concerned, the SA Addendum (quite properly) draws upon other work, including the work carried out by the Oxfordshire Growth Board,<sup>14</sup> to explain why the proposed options at Eynsham were considered to be the only reasonable alternatives.

52. For example, in the section outlining the approach to the consideration of reasonable alternatives, the SA Addendum states that:

“The options to the north and west [i.e. the Garden Village and West Eynsham SDA] were progressed as reasonable alternatives since they are closest to Oxford and are most likely to be deliverable with regard to helping meet Oxford's unmet housing needs.”<sup>15</sup>

53. Furthermore, and in addition to the LUC Report, the Site Selection Topic Paper explains that consideration had been given to other options (aside from the six assessed in the LUC report), including options at Carterton and Long Hanborough, but these were scoped out by the joint working group at an early stage of the process.<sup>16</sup>

54. The selection of the new Garden Village and the West Eynsham SDA as the only reasonable alternatives for meeting Oxford's unmet needs is clearly set out. As the decision in *RLT Built Development* makes clear, that was a matter of evaluative judgement for the local authority and there is nothing irrational about the approach that was adopted. Nor is there anything unlawful in taking the view that there are no reasonable alternatives and therefore only assessing the preferred options for meeting Oxford City's needs through the SA Addendum.

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<sup>14</sup> Including the LUC Report (SD14).

<sup>15</sup> See para. 3.11 of CD10.

<sup>16</sup> See para. 5.35

## **Appraisal of non-strategic sites**

55. In response to questions raised during the Stage 2 Hearing Sessions regarding site selection, the Council has prepared a site selection topic paper to explain the approach that it has taken. As part of this paper, the Council has set out those sites which have not been proposed as allocations in the draft plan, but which the SHELAA nevertheless recognised may have some development potential (“the Grey Sites”).
56. The topic paper explains why the Grey Sites were not ultimately proposed as potential allocations. However, after further consideration of the matter, the Council accepts that these Grey Sites should be appraised through the SA as reasonable alternatives to the proposed non-strategic allocations.<sup>17</sup> In this respect, the Council accepts that the current SA requires further work.
57. It is now clearly established that omissions in the SA / SEA process are not fatal, and can be addressed through further work.<sup>18</sup> In the present case, the Council proposes that it takes the following steps to undertake this work:
- i. The Council will undertake a further SA of the Grey Sites which it has identified in the Site Selection Topic Paper;
  - ii. The Council will then consult on the additional SA work for a period of 6 weeks.
  - iii. The Council will then consider the output from the additional SA and the consultation responses and decide whether, on the basis of those, it should make any further modifications (i.e. additions or substitutes) to the non-strategic site allocations in the draft plan.
  - iv. In the event that further changes are proposed, they can then be considered through further examination sessions, if necessary.

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<sup>17</sup> Currently, only those sites which are proposed to be allocated have been assessed through the SA (see paras. 3.13 – 3.15 and 4.51 – 4.52 of CD10 and Appendix 5 of CD10a).

<sup>18</sup> See *Cogent Land v Rochford DC*; endorsed by the Court of Appeal in *No Adastral*.

58. In addition to remedying the SA, the proposed timetable set out above could also dovetail with any consideration of further additional site allocations, should the Inspector come to the conclusion following the Stage 3 hearing sessions that the Council is unable to demonstrate a five year housing land supply on the basis of the existing proposed allocations

59. For the reasons set out above, the Council does not consider that there are any further issues with the SA. However, should the Inspector have outstanding concerns regarding any other aspect of the SA, the Council would propose that they be addressed in a similar manner.

## **Conclusion**

60. For all the reasons set out above, the Council considers that the SA has been prepared in accordance with all relevant guidance and legislation, and that it achieves substantial compliance with the legal requirements.

61. The exception to this, is the assessment of the non-strategic site allocations. Having reviewed the position on this and having regard to the conclusions reached in the SHELAA regarding the suitability of other sites (the Grey Sites), the Council now accepts that these Grey Sites should also have been assessed in the SA as reasonable alternatives to the allocated sites. However, this omission is not fatal to the SA process and can be addressed through the preparation of a further SA addendum.

62. The Council has proposed a timetable for addressing this omission and it considers that this timetable can tie in with any further work which may need to be undertaken (and subject to further SA) depending on the Inspector's conclusions after the Stage 3 hearing sessions.