Surrey Waste Local Plan

Surrey County Council Response to Inspector’s Query received 4 September 2019 regarding the Sustainability Appraisal (Environmental and Sustainability Report)

“Having reviewed the responses to the MIQs, Matter 1b, Questions 9, 10 and 11, it will be necessary to discuss the Sustainability Appraisal as part of the first Hearing session. Having regard to the responses received from the Council and representors, I consider that the SA does not currently comply with the requirements of the EA Regs. In particular, the results of the appraisal do not feed into a clear explanation within the SA of why the policies and allocations in the plan have been selected and alternatives rejected.

The Council will be aware that concerns have been raised by representors at the absence of reasoned justification within the SA for the selection and rejection of reasonable alternatives. Whilst reference has been made within the Council’s statement to other documents, the Courts have also held that it is not acceptable when reading the final SA to have to go on a paper chase to find information (Save Historic Newmarket v Forest Heath DC & SSCLG [2011] EWHC 606 (Admin)). To this end, the Council may wish to refer to Calverton PC v Nottingham CC [2015] EWHC 1078 (Admin), which contains a helpful summary of established law considering treatment of alternatives in SA reports.

It would be helpful to understand how the Council proposes to address this matter, prior to the start of the Hearing sessions. To this end, I would welcome a response from the Council on this issue before Wednesday 11 September. This correspondence and the Council’s response will also need to be published on the examination website.”

1.1 The Council is grateful to the Inspector for the opportunity to comment. The Council is also anxious to ensure that the relevant regulations are complied with and this note sets out how the Council proposes to address this issue.

1.2 It is noted that the Inspector is concerned that the SA does not currently comply with the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (EA Regs) because the results of the appraisal do not feed into a clear explanation within the SA of why the policies and allocations in the plan have been selected and alternatives rejected.
1.3 In this regard, Regulation 12 of the EA Regs provides:

“Preparation of Environmental Report

12.—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this Regulation.

(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.”

1.4 To provide further instruction on the content of the SA and treatment of alternatives, the Inspector references Calverton PC v Nottingham CC [2015] EWHC 1078 (Admin) which in turn references Save Historic Newmarket v Forest Heath District Council [2011] JPL 1233 and Heard v Broadland DC [2012] Env LR 233, which states that:

(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.

1.5 The Inspector’s related MIQs (Matter 1b; questions 9, 10 and 11) are as follows:

9. Does the SA comply with the provisions of the Environmental Assessment of Plans and Programmes Regulations 2004 (EA Regs) in identifying, describing and evaluating the likely significant effects on the environment of implementing the Plan, together with economic and social factors?

10. Is it clear how the SA influenced the final plan and how the Plan addresses the requirement for any mitigation measures? Has the inter-relationship of effects, including cumulative impacts, been addressed? Have the requirements for Strategic Environmental Assessment been met, including in respect of cumulative impacts?

11. Has an adequate site assessment process been undertaken? Is there adequate coverage of all reasonable alternatives and have they been similarly evaluated to the preferred option? Have outline reasons been given in the SA for selecting the alternatives dealt with and a
description given of how the assessment was undertaken? Have reasons been given for rejecting alternatives?

1.6 MIQ11 is most directly related to the Inspector’s concern that “the results of the appraisal do not feed into a clear explanation within the SA of why the policies and allocations in the plan have been selected and alternatives rejected”.

1.7 While the Council’s response to MIQ 11 (See hearing statement on Matter 1 (Ref: SCCD-003)\(^1\)) signposts documentation it does not specify, nor summarise, the relevant text within the documentation and so this could be taken as resulting in a ‘paper chase’ of the type to be avoided as mentioned in the case law, identified by the Inspector, ‘that it is not acceptable when reading the final SA to have to go on a paper chase to find information (Save Historic Newmarket v Forest Heath DC & SSCLG [2011] EWHC 606 (Admin))’.

1.8 To remedy this matter, and to help ensure that the results of SA appraisal do ‘feed into a clear explanation within the SA of why the policies and allocations in the plan have been selected and alternatives rejected’, the Council propose to provide a new section within the Sustainability Appraisal that essentially brings together and summarises the information currently signposted in the Council’s response to MIQ11.

1.9 This updated SA will appraise, and be published alongside, the Main Modifications arising during the examination. Publication with the Main Modifications would allow representors an opportunity to comment on the compliance of the updated SA with the EA Regs and hence allow the Inspector to reach a conclusion on this matter taking account of any comments. Ultimately this new section would be included in the final Sustainability Appraisal considered by the Council when it adopts the Plan.