Examination of the Chelmsford Draft Local Plan

Hearing Statement

on behalf of the

North East Chelmsford Garden Village Consortium

Matter 1 – Compliance with statutory procedures and legal matters.

Responses to Question 5 and Question 8b

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November 2018    |    AM-P Ref: 14010
Examination of Chelmsford Draft Local Plan
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Main issue – Whether the relevant procedural and legal requirements have been met.

Q5. Does the sustainability appraisal (SA) adequately assess the environmental, social and economic effects of the Plan and have the requirements for Strategic Environmental Assessment been met? In particular:

   a. Is the methodology within the appraisal appropriate and justified? Does it adequately assess the likely significant effects of policies and proposals?

   b. Does the SA test the plan against reasonable alternatives in terms of providing for the overall development requirements and its distribution as set out in the spatial strategy? Is it clear why alternatives have not been selected? (Also refer to Matter 5 – Spatial strategy)

   c. Is it clear how the SA has influenced the Plan? Is there anything in the SA which indicates that changes should be made to the Plan?

1. Representations were submitted on behalf of the Consortium to the Regulation 19 consultation to confirm that they had no substantive comments on the SA Report and that it was recognised that the SA process is iterative in nature and that it had been undertaken in accordance with best practice. The representation also noted the assessment of the Likely Significant Effects identified in the Report in relation to Strategic Growth Site 4 (North East Chelmsford) and that key objectives were appraised as being Positive or Significant Positive. Furthermore, the continuing master planning work being undertaken by the Consortium in association with the City Council and key stakeholders will be able to mitigate the potentially Significant Negative Effects in relation to Objectives 13 (Cultural Heritage) and 14 (Landscape and Townscape). Evidence to support this point will be included in the Consortium’s Hearing Statement in relation to Matter 6b.

2. Additionally, it was noted that Growth Site 4 compares well with other major strategic allocations and also in comparison to potential alternative strategic sites, such as Hammonds Farm (CFS83), which were rejected by the City Council. Hammonds Farm was rejected because “This site compares less well with Location 4 (NE Chelmsford) and the Spatial Principles and Spatial Strategy of the PSLP, in particular by not respecting the existing pattern of settlement or locating development in well-connected locations”.
3. The Consortium has agreed a Statement of Common Ground with CCC and ECC in relation to the proposed allocation of Strategic Growth Site 4 – NE Chelmsford. This confirms, inter alia, that an appropriate and robust SA/SEA has been undertaken throughout the preparation of the Local Plan in an iterative and consultative manner, which has led to the Local Plan containing the most appropriate and sustainable strategy for development and growth.

4. However, the Consortium is aware that other representors - the promoters of Hammonds Farm in particular - dispute this and claim that the SA/SEA is flawed and is not legally compliant. As a consequence, the Consortium has obtained the opinion of Christopher Katkowski QC, Leading Counsel, which is attached in full at Appendix 1. This concludes that such allegations are wrong because, in particular

   i) The Council has explained expressly and repeatedly how the consultation responses to the emerging plan consultation document and to the SAs, as well as the conclusions of the SAs themselves, were taken into account in subsequent iterations of its Local Plan.

   ii) The SA’s approach to alternative sites, mitigation measures and cumulative impacts has been consistent, transparent and has complied with the relevant regulatory requirements.

   iii) That Hammonds Farm has a different view of the merits of its site when measured against the Council’s SA matrix and plan objectives is not relevant to the legality of the SA process. The selection of a preferred option and the evaluation of that option against reasonable alternatives raise questions of planning judgement for the Council, over which it has a very broad discretion. Disagreement on the detail of a particular site’s assessment in an SA has no bearing on the SA’s legality.

5. As a consequence of the position set out above, the Consortium’s response to the three parts of Question 5 is as follows:-

   a) The methodology within the appraisal is appropriate and justified. It also adequately assesses the likely significant effects of policies and proposals.

   b) The SA does properly test the Plan against reasonable alternatives in terms of providing for the overall development requirements and its distribution as set out in the spatial strategy. It is also very clear why alternatives have not been selected.

   c) The SA has clearly influenced the Plan and there is nothing in the SA which indicates that changes should be made to the Plan.
Q8. Regulation 8(5) of the Town and Country Planning (Local Plan) (England) Regulations 2012 requires any new plan to list the policies in existing adopted plans which it is intended to supersede.
   a. Is the Plan proposing to supersede any existing adopted plans and if so which ones? Is there a list of superseded policies as required by the Regulations?
   b. Appendix D within the Plan includes an extract of the existing North Chelmsford Area Action Plan (adopted in 2011) (NCAAP) and states that the provisions within this are to be carried forward. Does this mean that the NCAAP is to be kept as a development plan document and its policies omitted from the superseded policies list? If so what is the purpose of including the extract in Appendix D?

6. This is a matter for the Council.

7. Representations on behalf of the Consortium at Regulation 19 stage expressed concern regarding the status and purpose of Appendix D to the Plan. Although the Appendix states at paragraph D.1 that “it carries forward provisions from the North Chelmsford Area Action Plan (NCAAP) including the Site Allocations and Masterplan,” we question whether it is appropriate to include substantial extracts from the AAP that will be superseded both by the new development plan once adopted, an agreed masterplan and by the implementation of extant planning permissions.

8. The current adopted Proposals Map for NCAAP (At Appendix 2 with added annotations) shows the Site Allocation – Areas for Masterplanning (CP7) comprising sites at North East Chelmsford and North West Chelmsford. The majority of the sites comprising the allocation at NE Chelmsford i.e. Beaulieu and Channels are subject to extant outline planning permission and subsequent approvals of reserved matters. Development is currently at an advanced stage. The one exception is the area north of the Radial Distributor Road, which is Site Allocation 11 - Land north of the new road (page 78 NCAAP). This was always intended to be a final phase, beyond the existing plan period to 2021, because of the need to complete mineral workings prior to development.

9. With regard to the sites within North West Chelmsford, Site Allocations 1, 3 and 4 are either completed or under construction, but site Allocation 2 – Land to the south and west of Broomfield Place and Broomfield Primary School, has yet to be granted either outline or full planning permission (although applications were submitted in September 2011). For reasons relating to difficulties of delivery that can be explained by the Council, this Allocation has not been carried forward into the Draft Local Plan.
10. Site Allocation 11, known as ‘Park Farm’, is now proposed in the Draft Local Plan Policies Map to be subsumed into the proposed allocation for the New Garden Community for Major Housing and Employment, ie. Strategic Growth Site 4. It will be comprehensively planned through a masterplan-led process to be approved by the Council.

11. As a consequence of the position relating to NW Chelmsford, the Council has not included any of those NCAAP provisions within Appendix D of the Draft Local Plan. Therefore, it relates only to the provisions of NCAAP relating to NE Chelmsford in order to carry forward those proposals “as some parcels/phases are not yet fully implemented but will continue to be relied on into the plan period and beyond”.

12. However, apart from NCAAP Site Allocation 11 (Fig 20 Appendix D) all other allocations are subject to extant outline planning permissions including approved illustrative masterplans and Parameter Plans that would have been determined in the context of the NCAAP policies and provisions. Additionally, Site Allocation 28 - Bulls Lodge Quarry is also the subject of a long standing planning permission for the working of minerals. The Consortium consider that Appendix D contains material which is contrary to, and potentially in conflict with, the approach now being proposed for the New Garden Village. For example, Figure 17: Landscape Structure and Figure 19: North East Chelmsford Master Planning Principles, show notations affecting land that will be incorporated into the wider New Garden Community allocation that requires a comprehensive masterplan-led approach. Indeed, CCC adopted on 8th March a specific masterplan procedure for all the Strategic Growth Sites.

13. It is clear from the guidance and requirements set out for Strategic Growth Site 4 shown by the distinctive blue background on pages 142-145 – which the Consortium interprets as being policy – and the following Reasoned Justification that the new Garden Community is effectively intended to be an extension of, and is dependent upon, the development of Channels and Beaulieu. Consequently, the Consortium in collaboration with CCC have been working to integrate fully the existing and committed developments into the overall masterplan for the new allocation. Further detail is provided in respect of Hearing Statements for Matter 6b.

14. With regard to the purpose of Appendix D, it should be noted that the extant outline planning permissions for both Greater Beaulieu Park – now known as ‘Beaulieu’ (Application Ref: 09/01314/EIA) and Channels (Application Ref: 10/01976/OUT) include several conditions that are imposed to ‘ensure compliance with the policy guidance set out within NCAAP’. For example, condition 10 of the Beaulieu permission requires
submission of reserve matter applications to demonstrate compliance with the six listed Parameter Plans. The reason for the condition is stated:

“To determine the scope of this permission in accordance with the submitted documents, to meet the strategic objectives of the Local Development Framework, in order to ensure the delivery of a high quality sustainable new neighbourhood, which accords with the master planning principles contained with the Adopted North Chelmsford Area Action Plan and to meet the objectives of the compensatory measures as set out in Section E4, E5 and E6 of the approved Landscape, Design and Management Plan, as required by the Adopted North Chelmsford Area Action Plan.”

15. Additionally, Condition 13 sets out requirements to be included in reserved matter submissions relating to layout, access, scale and appearance, public open spaces, and landscaping. The reason for the condition is:

“To ensure the delivery of a high quality sustainable new neighbourhood, which accords with the master planning principles contained within the Adopted North Chelmsford Area Action Plan and which integrates means of access, public open space, historic features, landscape and habitat creation, recreational facilities and education provision, employment provision, community facilities including the provision of primary health care and housing of mixed size and tenure including dwellings designed from the outset to promote inclusive design, maximise the independence and quality of life of future residents and to allow flexibility for future alterations and extensions to meet the potential needs of occupiers including the possibility of impaired mobility in accordance with Policies CP7, CP20, DC31 and DC36 of the Adopted Core Strategy and Development Control Policies Development Plan Document”.

16. There are also other conditions that were imposed to ensure compliance with the development principles set out in NCAAP in future detailed applications, eg. provision of allotments and community garden proposals; compensatory measures; estate parkland planting specification; and estate parkland management plan. The conditions reflect necessary actions to compensate for the erosion of the setting of the Grade I listed New Hall and its Registered Park and Garden, (as explained in D116 and D122) following principles agreed in a SoCG in 2007 between the Council and English Heritage. The necessary safeguards, both to satisfy the general provisions and the compensatory measures requirements of NCAAP, are now secured through the various conditions imposed on the extant outline planning permissions for both Beaulieu and Channels.
17. Critically, there has also been an important change in circumstances since adoption of the NCAAP with Site Allocation 27 – Pratts Farm Lane and Channels Golf Course. The NCAAP allocation provides for the leading land uses to be a golf course within open landscape with ancillary recreation and leisure development. This is shown on Figure 36 of the NCAAP. The golf course forming part of this allocation has closed in recent times. The Council have agreed to release the landowners from the planning obligations associated with the outline planning permission for the Channels development to provide for a golf course in this location.

18. Policies Map 1 of the Draft Local Plan and the policy for Strategic Growth Site 4 requires safeguarding for the existing open area currently comprising a golf course forming part of that NCAAP allocation. It is therefore also subsumed by the allocation, but the Consortium takes the view that it is not necessary for the area to be identified on Policies Map 1 or for there to be a separate requirement for the safeguarding of the area for the reasons set out in the matter in dispute in the Statement of Common Ground to be considered at the examination.

19. Consequently, there is no need for Appendix D to be included in the Plan. It serves no purpose given the protection afforded to the NCAAP provisions within the above planning permissions. Furthermore, Site Allocations 11, 27 and 28 are affected by a change in circumstances: they are now proposed to be integrated and incorporated into the Plan as part of the allocation of Strategic Growth Site 4, i.e. a high quality comprehensively-planned new sustainable Garden Community and will be the subject of the Council’s master planning process.
Introduction

1. We are instructed to advise the North East Chelmsford Garden Village Consortium on the legality of the Sustainability Appraisals (“SAs”) which have been prepared by the Chelmsford City Council (“the Council”) to inform its emerging Local Plan.

2. In particular, we are asked to consider the allegation in Hammonds Farm’s March 2018 “Review of the Chelmsford Local Plan Sustainability Appraisal” to the effect that the SA process is “not legally compliant”.¹

3. As we explain below, that allegation is wrong. In particular:

   (i) The Council has explained expressly and repeatedly how the consultation responses to the emerging plan consultation documents and to the SAs, as well as the conclusions of the SAs themselves, were taken into account in subsequent iterations of its Local Plan.

   (ii) The SAs’ approach to alternative sites, mitigation measures and cumulative impacts has been consistent, transparent and has complied with the relevant regulatory requirements.

   (iii) That Hammonds Farm has a different view² of the merits of its site when measured against the Council’s SA matrix and plan objectives is not relevant to the legality of the SA process.

The selection of a preferred option and the evaluation of that option against reasonable

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¹ See §6.11.

² See its Appendixes A -C to Hammonds Farm’s March 2018 “Review of the Chelmsford Local Plan Sustainability Appraisal”.
alternatives raise questions of planning judgment for the Council, over which it has a very broad discretion. Disagreement on the detail of a particular site’s assessment in an SA has no bearing on the SA’s legality.

4. Before addressing the allegations raised by Hammonds Farm, we set out the general approach to assessing the legality of SAs.

Legality of SAs

5. The function of an SA is to assess the likely significant environmental effects of an emerging plan. The emerging plan must then, as its policies develop, have regard both to the findings of the SA, and to the public consultation responses to both the previous plan and the previous SA.³

6. The contents of an SA are governed by Regulation 12(3) and Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.

7. The focus of the SA process is on a particular plan, i.e. the authority’s preferred option. The selection of that preferred option, and the judgment on whether it best meets the objectives it seeks to attain involve broad questions of judgment for the Council, which cannot be disturbed unless irrational.⁴

8. Reasonable alternatives to the preferred option must be considered. Which alternatives are “reasonable” is another question of evaluative judgment for the Council over which it has a


broad discretion\(^5\) which cannot be disturbed unless irrational.\(^6\)

9. Determining whether and to what extent alternative options will achieve a plan’s objectives raises a further question of evaluative judgment for the Council, which cannot be disturbed unless irrational.\(^7\)

10. The SA must include reasons for selecting its preferred option over the reasonable alternatives, but those reasons only need to be outline.\(^8\) The SA only needs to include the main reasons so that consultees and other interested parties are aware of why reasonable alternatives were chosen as such and, similarly, why the preferred option was chosen as such.\(^9\)

11. Other matters which must be considered in the SA are:

(i) Measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan;\(^10\) and

(ii) An assessment of the plan’s likely significant effects on the environment, including cumulative impacts.\(^11\)

12. The Council must be accorded a substantial discretionary area of judgment in relation to

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\(^5\) Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2014] EWHC 406 (Admin), Sales J at §90,


\(^7\) R. (Friends of the Earth England, Wales and Northern Ireland Ltd) v Welsh Ministers [2016] Env. L.R. 1, Hickinbottom J at §88(vi).

\(^8\) §8 of Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.


\(^10\) §7 of Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.

compliance with the required information in environmental reports. When considering the legality of an SA process, what must be examined is not the fine detail of the SA’s contents but whether there has been substantial compliance with the information required by the Regulations. The question is “whether the specified matters have been addressed rather than considering the quality of the address”.\textsuperscript{12}

13. Any deficiencies in earlier SAs can be cured by subsequent SAs.\textsuperscript{13}

14. Finally, as Sullivan J said in \textit{R (Blewett) v Derbyshire County Council} [2003] EWHC 2775 (Admin) at §41:

\begin{quote}
“In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant’s environmental statement will always contain the “full information” about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting “environmental information” provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations ... but they are likely to be few and far between.”\textsuperscript{14}
\end{quote}

\textbf{Response to Hammonds Farm’s representations}

15. We now turn to the allegations in Hammonds Farm’s March 2018 “\textit{Review of the Chelmsford Local Plan Sustainability Appraisal}”. § references are to paragraphs in those representations.


\textsuperscript{13} \textit{Cogent Land LLP v Rochford DC} [2013] 1 P. & C.R. 2, Singh J at §124.

Section 3: Issues and Options SA

16. §3.4: The first allegation is that this SA did not assess the alternative spatial strategy of a large new settlement against the full SA framework. However:

(i) It was for the Council to determine whether or not a large new settlement including Hammonds Farm was a reasonable alternative spatial strategy, and that decision was a matter for its evaluative judgment.

(ii) The Council was perfectly entitled to decide – as it did – that a large settlement including Hammonds Farm was not a reasonable alternative spatial strategy, and the reasons for excluding it\(^{15}\) are clear. Hammonds Farm plainly disagrees with the Council’s reasons, but a disagreement on the merits is irrelevant to an assessment of the SA’s legality.

(iii) In any event, as we discuss below, subsequent SAs have addressed the merits of an alternative spatial strategy including Hammonds Farm against the full range of environmental criteria in the SA matrix, so this point has been overtaken by events.

Section 4: Preferred Options SA

17. §4.5: Hammonds Farm asserts that the results of the Issues and Options consultation process were not explained, and it is unclear whether and how consultation responses were taken into account in formulating the Council’s preferred option. However, the material in the documents which addresses this point is extensive:

(i) The Council published a feedback report in June 2016\(^{16}\) which addressed the consultation responses to the Issues and Options consultation in detail, and over several hundred pages.

\(^{15}\) §1.4.26-28 on p.11 of the Issues and Options SA.

\(^{16}\) https://www.chelmsford.gov.uk/EasySiteWeb/GatewayLink.aspx?alId=32650
(ii) That feedback report fed into Preferred Options SA,\textsuperscript{17} which made plain repeatedly that
the preferred options were only developed following consideration of the comments
received in the Issues and Options SA consultation.\textsuperscript{18}

(iii) That point was also made plain in the Preferred Options consultation document itself.\textsuperscript{19}

(iv) Further, the Preferred Options SA repeatedly explained how the consultation responses to
the Issues and Options consultation had been taken into account to inform the Council’s
emerging policies.\textsuperscript{20}

(v) Finally, Appendix B to the Preferred Options SA presented a detailed schedule of
consultation response to the Issues and Options SA arranged by consultee, which
summarised the content of each consultation response and then set out comments or
actions to respond.

18. \textbf{§4.6:} the allegation is that the results of the SA and the evidence base did not support the
Council’s decision to support its preferred spatial strategy. However:

(i) It was for the Council to evaluate the merits of its preferred and alternative spatial
strategies against the SA matrix, and against its plan objectives. As the cases summarised
above make clear, it had a broad discretion when conducting that exercise.

(ii) The Council was perfectly entitled to decide that alternative spatial strategy performed less
well than its preferred strategy, and the reasons for that decision are clear. Hammonds

\textsuperscript{17} See e.g. §5.3.102 of the Preferred Options SA.

\textsuperscript{18} Ibid. at e.g. §1.1.1, §1.3.8, §4.3.5 and §5.3.67.

\textsuperscript{19} E.g. at §1.9.

\textsuperscript{20} E.g. at §5.3.30, §5.3.35, §5.3.49, §5.3.54, §5.3.58, §5.3.69, §5.3.80, §5.3.87, §5.3.97, §5.3.102 of the of the
Preferred Options SA.
Farm disagrees with the Council’s assessment, but disagreement on the merits is irrelevant to an assessment of the SA’s legality.

19. **§4.10**: the allegation is that the Council should have consulted on its preferred option before issuing the Preferred Option Consultation. However:

   (i) The consultation requirements which relate to emerging plans are set out in the Town and Country Planning (Local Planning) (England) Regulations 2012, and particularly at Regulations 18 and 19.

   (ii) There is no requirement to consult on a preferred option emerging out of the issues and options consultations before issuing the preferred option consultation itself.

   (iii) In any event, the preferred option consultation was not a final decision. It was a consultation. It allowed consultees a full opportunity to comment on the merits of the preferred option and of reasonable alternatives to that option, and Hammonds Farm took up that opportunity. So the allegation that the Council’s procedure was somehow unfair is hopeless. There was a full consultation. The regulatory requirements for consulting on emerging plans are clear, and the Council complied with them.

20. **§4.11**: the allegation is that the SA was prepared on the basis of “pre-determined decisions” made by the Council. This point ignores the extensive analysis summarised above of the way in which the consultation responses from the Issues and Options SA fed into the Preferred Option Consultation. It also ignores the exhaustive analysis of the alternative options’ sustainability. The suggestion that the Council’s position was somehow “pre-determined” is flatly contradicted by the documents, which demonstrate in detail how the SA informed the emerging plan.

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21 See in particular Appendix F to the Preferred Options SA.
21. §4.14: Hammonds Farm alleges that the Council’s preference of the preferred spatial option was preferred over the “Alternative Spatial Strategy: Urban Focus with Growth at Hammonds Farm and Key Service Settlements” without regard to mitigation measures. But that is wrong. The SA’s assessment of the alternative spatial strategy considered mitigation measures in detail, and in the same way that mitigation measures had been taken into account when assessing the preferred option.

22. §4.17: The allegation is that the site-specific assessments failed to take account of mitigation measures. However:

(i) The SA was not required to have regard to proposed mitigation measures on a site-by-site basis.

(ii) That was for good reason: to ensure that all of the sites in Appendix G could be considered equally. Unsurprisingly, Hammonds Farm’s professional advisers supported that approach, noting that they were:

“pleased to see that in order to ensure equality within the site appraisals, the SA has been undertaken without taking into account associated site allocation policies, or mitigation provided by other Local Plan policies.”

(iii) In any event, as above, the Preferred Options SA considered mitigation measures for the Hammonds Farm alternative spatial strategy in detail and across the full range of

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22 See the “commentary” column of pp.F47-F63 in Appendix F to the Preferred Options SA.

23 See the “commentary” column of pp.F31-F46 in Appendix F to the Preferred Options SA.

24 In appendix G to the Preferred Options SA.

25 See §4.3.9 in the Preferred Options SA.

26 P.B69 in Appendix B to the Pre-Submission SA.
environmental criteria in the SA matrix.  

23. **§4.18:** the allegation is that the Preferred Option SA failed to consider the cumulative impacts of the “Alternative Spatial Strategy: Urban Focus with Growth at Hammonds Farm and Key Service Settlements”. However:

(i) The requirement to consider cumulative impacts relates to the proposed plan. The SA was not required to assess the cumulative impacts of alternative strategies.

(ii) The requirement to give reasons for the rejection of alternatives arises separately and, as explained above, those reasons only need to be outline, i.e. to include the main reasons why the preferred option was selected over any reasonable alternatives.

Section 5: Pre-submission SA

24. **§5.2:** the allegation made against the Preferred Option SA (and dealt with above at §17) is repeated, i.e. that the Pre-Submission SA did not show how previous rounds of consultation fed into its decision-making. This point is wrong:

(i) In January 2018, the Council published a Preferred Options Consultation feedback report which addressed the consultation responses to the Issues and Options consultation in detail, and over several hundred pages.

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27 See the “commentary” column of pp.F47-F63 in Appendix F to the Preferred Options SA.
29 §8 of Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.
30 *R. (Friends of the Earth England, Wales and Northern Ireland Ltd) v Welsh Ministers* [2016] Env. L.R. 1, Hickinbottom J at §88(xii).
(ii) The feedback report fed into the Pre-Submission SA,\(^{32}\) which made it clear how the plan’s
development had followed consideration of comments received in the Preferred Option
Consultation.\(^{33}\)

(iii) That point was also made plain in the Pre-Submission Plan document itself.\(^{34}\)

(iv) The Pre-Submission SA repeatedly explained how the responses previous rounds of
consultation had been taken into account to inform the development of the Council’s
policies.\(^{35}\)

(v) Further, Appendix B to the Pre-Submission SA presents a detailed schedule of consultation
response to the Issues and Options SA arranged by consultee, which summarises the
content of each consultation response and then set out comments or actions to respond.

25. \(\S 5.5:\) the allegation is that a response in Appendix B to the Pre-Submission SA to one of the
comments of Suzanne Bangert of Terrence O’Rourke\(^{36}\) was “incorrect”. However:

(i) This point, even if right, has no bearing on the legality of the SA process as a whole.

(ii) In any event, it is wrong. The comment was a complaint that the Council had given
insufficient weight to the alleged benefits of Hammonds Farm. In response, the authors of
the SA noted, correctly, that this point “principally relates to the Local Plan as opposed to
the SA”. The way in which benefits and harms of competing spatial strategies are evaluated
against the plan’s objectives is a matter for the Council through its emerging policies and,
as we explain above, it has a very broad discretionary judgment as to how that exercise is

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\(^{32}\) See e.g. pp.F49-F50 in Appendix F to the Pre-Submission SA.

\(^{33}\) Ibid. at e.g. §1.1.3 and §1.4.5.

\(^{34}\) Ibid. at e.g. §1.10.

\(^{35}\) Ibid. at e.g. §5.3.19, §5.3.36, §5.3.44, §5.3.51, §5.3.53.

\(^{36}\) At p.B71 of Appendix B to the Pre-Submission SA.
done. The role of the SA is to assess the Council’s proposals, not to conduct the weighing of planning benefits against harms.

26. §5.7: the allegation is that there has not been the requisite “integrated approach” to developing the emerging plan alongside the SAs. But that point ignores the mass of material, much of which we cite above, which explains how the SAs and consultation responses to the SAs have informed the Council’s emerging plan process. The point is emphasised throughout the documents, e.g. at §1.2.6 of the of the Pre-Submission SA:

“Through an ongoing and iterative appraisal process, the SA of the Chelmsford Local Plan has supported the development and refinement of the Plan by appraising the sustainability strengths and weaknesses of emerging policy and proposals. The SA process has sought to promote the integration of sustainability considerations into the preparation of the Local Plan and the selection and refinement of preferred options. In this context, this SA Report builds on the SA work completed to-date and considers the environmental, social and economic effects of the Pre-Submission Local Plan.”

And at §5.7.1 which notes that:

“the SA has been undertaken iteratively alongside and informing the development of the Local Plan. In this context, a number of measures were identified in the SA Report that accompanied the Preferred Options Consultation Document concerning recommended changes to the proposed Local Plan policies and the site-specific development requirements contained in Chapter 7. Appendix J lists these recommendations together with the Council’s response.”

27. §5.9 & §5.15: this repeats the allegations in relation to mitigation measures summarised and dealt with above at §21 – §22. As we have explained, the Council was correct to assess individual sites without regard to possible mitigation, and mitigation measures were considered in detail for both its preferred and alternative spatial strategies.

28. §5.10: the allegation is that Hammonds Farm was not assessed in the same level of detail as the preferred option. That is wrong:
(i) The SA’s methodology was clear and consistent. In relation to proposed and alternative site allocations, it stated at §5.4.3 that:

“It should be noted that this appraisal does not take into account the provisions of the associated site allocation policies contained in Chapter 7 of the Pre-Submission Local Plan nor the mitigation provided by the other proposed Local Plan policies. This is to ensure that all sites are considered equally (the site specific policies within Chapter 7 are considered separately in Section 5.6).”

(ii) As above, mitigation measures were considered in detail for both its preferred and alternative spatial strategies.

(iii) So the allegation that Hammonds Farm was treated differently from the preferred options is simply wrong.

29. §5.14: the allegation is that the Council’s preferred options were “pre-determined”. However:

(i) The evidence on how the SA process has fed into the emerging plans is extensive and detailed. Several of the key references are set out above.

(ii) The way in which the plan has evolved following the various rounds of consultation has been exhaustively explained in the subsequent SAs and feedback reports.

(iii) The assessment of whether “further examination” was required of Hammonds Farm was a matter for the Council’s evaluative judgment and broad discretion: see the cases above. So even if this allegation were correct, which it is not, it has no bearing on the legality of the SA process.

30. §5.16-19: the allegation is that Hammonds Farm should have been scored more favourably. However:
(i) As we explain above, the assessments of individual sites, and the extent to which e.g. one alternative scores higher than another when measured against the plan’s objectives does not raise any issue of law which goes to the legal adequacy of the SA.

(ii) Those matters raise broad questions of evaluative judgment for the Council.

(iii) The alternative assessment of the Hammonds Farm site put forward in the appendices to its submissions has no bearing on the legality of the SA process. As we have explained, disagreement on the merits of the assessment of particular sites is irrelevant to an assessment of the SA’s legality.

31. §5.21: this repeats the points on mitigation measures which have been addressed above at §21, §22, and §27. In short:

(i) As above, the regulatory requirement\(^{37}\) is for the SA to include assessment of “the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan”.

(ii) That is separate from the requirement to give outline reasons addressing alternatives.\(^{38}\)

(iii) In any event, the approach to mitigation measures was clear and consistent. Sites were treated equally. And mitigation measures in relation to the preferred and alternative spatial strategies were addressed in detail.

Appendix G tables

32. Finally, we have reviewed the 7.11.18 email of the Council which confirms that the spreadsheet in Appendix G of the Pre-Submission SA was incomplete because it includes only 98 of the 132

\(^{37}\) §7 of Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.

\(^{38}\) §8 of Schedule 2 to the Environmental Assessment of Plans and Programmes Regulations 2004.
sites which were considered and subject to SA at the pre-submission stage. The email confirms that:

“to be clear, all sites have been subject to the detailed SA, and the likely significant effects identified, described and evaluated with the findings of the SA of all 132 sites against the 25 tailored appraisal criteria presented in pages G9 to G34 of Appendix G of the Pre-Submission Local Plan SA Report.”

33. The updated spreadsheet is available on the Council’s website.

34. As we have explained above, “Strategic Environmental Assessment” is not a single document, it is a process.\(^39\) It is a feature of that process that addendum documents can cure defects in earlier stages of the process.\(^40\) In any event, technical errors of this kind which do not cause substantial prejudice or prevent parties from enjoying the rights conferred by the SEA directive do not invalidate the SA process.\(^41\)

35. So in our view the Council was right to note in its email that the omissions do not “undermine the SA process or its compliance with the SEA Regulations”.

Conclusions

36. For those reasons, the allegations in Hammonds Farm’s representations are not well founded. The Council’s SA process has complied with the relevant legal requirements. Mere disagreement on the merits of the Council’s assessment of alternative sites has no bearing on the legality of the SAs.

37. Those instructing us should not hesitate to contact us in Chambers with any questions arising out of this advice.

\(^{39}\) *Cogent Land LLP v Rochford DC* [2013] 1 P. & C.R. 2 at §112.

\(^{40}\) *Cogent Land LLP v Rochford DC* [2013] 1 P. & C.R. 2 at §127.
