

NOW PLANNING with RAPLEYS, acting for landowners east and south of East Cowes

STATEMENT: MATTER 1

Issue 5: Sustainability Appraisal

Q 1.21: Does the Integrated Sustainability Appraisal (ISA July 2024, Document EA2) adequately and reasonably assess the likely effects of the policies and proposals of the Plan against sustainability objectives?

1. The ISA does not comply with the Strategic Environmental Regulations (the SEAR), despite being oft-quoted in the ISA (as is the PPG). Reg. 12(2) of the SEAR provides that
“(2) The report [SA] 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.”
2. Therefore, the need to consider the objectives of the plan are central to the exercise.
3. The requirement is not merely to assess generic alternatives to the draft plan/programme (such as not adopting a plan/programme at all) but to assess the reasonable alternatives to the specific policies contained in it. See for example:
 - i. ***City & District Council of St Albans v. SSCLG*** [2010] J.P.L. 10, especially at [21], where the failure to subject policies within the East of England Plan relating to greenfield urban extensions to Hemel Hempstead, Welwyn Garden City and Hatfield to SEA of reasonable alternatives was held to be unlawful;
 - ii. In ***Save Historic Newmarket***, Collins J quashed the housing policies in the Forest Heath Core Strategy on the basis that there had not been SEA of the reasonable alternatives to the allocation of a particular site for residential development;
 - iii. ***Heard***, where Ouseley J held that the Broadland Joint Core Strategy was unlawful because the reasonable alternatives to a proposed urban extension north-east of Norwich had not been assessed in accordance with the SEA Directive and the plan was therefore unlawful;
 - iv. ***R (Buckinghamshire County Council & Others) v. Secretary of State for Transport*** [2013] EWHC 481 (Admin) (part of the HS2 litigation) where Ouseley J held that, had the SEA Directive applied to the Government’s January 2012 White Paper setting out its decisions and next steps in relation to the HS2 railway, the accompanying appraisal of sustainability would not have met the requirements of the Directive due to the failure to consider reasonable alternatives to the “Y” network” [165] and the provision of spurs to and from Heathrow Airport [169]. This aspect of Ouseley J’s judgment was upheld by the Court of Appeal at [2013] P.T.S.R. 1194 and was not the subject of the further appeal to the Supreme Court [2014] 1 W.L.R. 324;

NOW PLANNING with RAPLEYS, acting for landowners east and south of East Cowes

- v. In **Ashdown Forest**, the Wealden District Core Strategy Local Plan was quashed by the Court of Appeal in part in respect of the policy introduced at a late stage to limit development within certain distances of the Ashdown Forest SPA and SAC and which had not been the subject of assessment including reasonable alternatives.
4. Art 5(1) of the SEA Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives. Accordingly, as noted in the Commission Guidance at [5.12] the likely significant environmental effects of both the plan and of the reasonable alternatives must be “identified, described, and evaluated in a comparable way” and “the information referred to in Annex I should thus be provided for the alternatives chosen.
5. Accordingly, the ISA does not adequately and reasonably assess the likely effects of the policies and proposals of the IPS against the sustainability objectives set by the ISA. There are three primary reasons (see also the responses to Qs 1.22 and 1.23 below):
 - i. The ISA (Document EA2) does not assess the IPS against the patently reasonable alternative of meeting the island’s objectively assessed housing need (the OAN calculated using the Standard Method). As a consequence, the starting point for the comparative exercise that the Strategic Environmental Assessment Regulations (the SEARs) require is missing – i.e., a reasonable alternative that would meet the OAN versus the IPS strategy of providing for just 64% of the need, with a stated emphasis on the delivery in particular of affordable housing and on brownfield sites to avoid developing greenfield land.¹ The ISA explains that the option of meeting the OAN is not reasonable because of the “overwhelming opposition” to the proposal to do so in the 2018 Reg 18 consultation draft of the IPS together with the Council’s AMR work which suggested that the island had intrinsic, implying insuperable, problems with housing delivery (EA2, page 46, Table 4.1).
 - ii. The only “reasonable options” for the spatial strategy – i.e., the strategy for locating the sites needed to meet the island’s need for housing and other land – that the ISA assesses are the options listed and described in Table 4.2 and pgs 62-67. Option 1 retains the Core Strategy settlement hierarchy and, like SP1 of the Core Strategy, accepts the principle of growth outside but immediately adjacent to existing settlement boundaries. Option 2, described as the “preferred approach” (seemingly preferred in advance of the ISA assessment), also keeps the existing settlement strategy, but removes the Core Strategy’s in-principle acceptability of development immediately adjacent to settlement boundaries. Option 3 is for growth in and adjacent to settlements and beyond them on land “not previously considered” and Option 4 is “creating new communities (new garden settlements)”. Options 3 and 4 together were, broadly, the means of meeting the OAN in the 2018 consultation draft of the IPS. ISA para 4.5.2

¹ We have been unable to locate the ISA for the 2021 Reg 18 draft IPS and thus are not able to establish why that ISA dismissed (against the ISA objectives) the “meet the OAN option” that was promoted in the 2018 Reg draft IPS.

NOW PLANNING with RAPPLEYS, acting for landowners east and south of East Cowes

explains that options 1 and 2 are similarly scored by the assessment, save for the impact on “culture” criterion, on which option 2 was judged to perform better. The reason: prohibiting development on the boundaries of settlements would protect the “identity” of settlements by reducing “encroachment” and preventing “settlement coalescence”.

- iii. The reasons given by the ISA for the “preferred option” (i.e., the ISA reasons, as opposed to the statement in Table 4.2 re “overwhelming opposition” that the 2018 draft IPS attracted) to allocating sufficient land to meet the OAN) unreasonably fail to have adequate regard to the following:
 - a) the fact that the island’s housing market is dominated by SME housebuilders (Document HO1) who are disproportionately affected by the added costs of brownfield development *and* the inefficiencies inherent in the development of small sites (due to the absence of scale economies of any kind), together with the added costs of planning uncertainties associated with windfall sites (which would also have to be within settlements); and
 - b) HO18 (Housing evidence Paper C), which seeks to justify the IPS’s undersupply of housing, makes claims which are not substantiated by the evidence provided in HO1, ED6 and EC1. In none of these is there anything to show that the undersupply of housing will be anything other than deleterious to the island’s social wellbeing and economy: the labour market is unlikely to grow to any major extent – with few if any gains in the local supply of skilled maritime and construction workers; very limited aspirational housing will continue to be a deterrent to retaining and attracting working age skilled labour (noting the statements at pgs 2.37 and 6.19 of the IPS); and the focus on small brownfield sites within settlement boundaries (retaining almost wholly the tight, pre-2012-defined, settlement boundaries) will remain disproportionately costly for the island’s predominant housebuilding market (SMEs whose profitability is already compromised relative to the major housebuilders. As the ISA limited itself to the narrow spatial strategies it considered, the ISA assessment was already skewed in favour of the “preferred strategy”).
 - c) As a consequence, the ISA does not assess the social, economic and environmental consequences the IPS’s proposal to supply just 64% of the OAN against a reasonable alternative that could well perform better on all three measures were, for example, the Council to act on the advice given by Three Dragons in September 2020, just short of four years before the Reg 19 IPS was published (Document HO 1, Appendix A, particularly actions 7, 8, 11, 15, 17 and 30).

NOW PLANNING with RAPPLEYS, acting for landowners east and south of East Cowes

Q 1.22 Does the ISA test the preferred policy approach against reasonable alternatives, including options for the housing and employment requirements (the spatial strategy (how and where growth is distributed over the plan period) and the reasonable options for housing and employment site allocations?

1. For the reasons cited in response to Q1.21, our view is that the ISA does not.
2. That is particularly evident, with respect to discounting all options for housing on undeveloped land adjacent to East Cowes that that has no NPPF footnote 7 protections (and only Grade 1 and 2 agricultural land) housing adjacent to the East Cowes settlement boundary to the east and south. Although the land to the east includes a non-designated heritage asset (the Springhill Estate), it would be demonstrably possible for development to avoid harm to the very limited “design” elements of the Estate and to the setting of the Osborne National Landscape much further to the east (which washes over the Norris Castle Estate). Although the land to the south is in the proposed settlement gap, the ISA explores no alternatives to amending the boundary of this very extensive gap.
3. All of this is in the context of the proposal to deliver just 64% of the island’s housing need, a housing market dominated by SME housebuilders and a focus on small, infill and brownfield sites with their added costs and risks – and adjacent to East Cowes which is a key access point to the island from the mainland and a major centre of its valuable, competitive and potentially growing maritime engineering sector and the location of major employment allocations.
4. The Council’s most recent “call for sites” moreover was in February 2022 (now three years ago) – and the Council evidently has not acted on the advice set out in September 2020 in Appendix A to Document HO1 (Three Dragons). The advice, in recognition both the dominance on the island of SME housebuilders, the very limited appeal of the island to major housebuilders and the low rates of housing delivery against the need, stresses the need proactively to engage with local landowners and the local housebuilder community (actions 7 and 8) as well as to assess and work to resolve viability issues in-house (actions 9 and 15 – most beneficially at plan-making stage when considering strategic options for the IPS).
5. We also take the view, given even the date of the Viability Assessments (Documents GS11 and GS12) and in light of the Covid impact and the February 2022 invasion of Ukraine, that the Viability Assessments are not up-to-date and therefore provide a questionable basis for the ISA assessment of site options.

Q 1.23 Ultimately, does the ISA report demonstrate that the submitted plan is justified, in that it would comprise an appropriate strategy, having assessed reasonable alternatives.

6. For the reasons set out in response to Qs 1.21-1.22, we consider the submitted plan not to be justified. More importantly still and with regard to the authorities of the courts we have cited, we judge the IPS accordingly not to be lawful.
7. The Core Strategy policy SP1 accepts the principle of the development of land adjoining the boundary of the primary settlement and key economic centre of East Cowes – but (amongst

NOW PLANNING with RAPLEYS, acting for landowners east and south of East Cowes

other of the ISA's flaws) this option is shut down by the IPS's spatial strategy (having not even assessed the reasonable option of meeting the island's full OAN).

8. We note in particular that the ISA (EA2) for the submission IPS does not assess a "reasonable alternative" that would meet the full SM-calculated measure of housing need. HO18, quite simply, avoids the intended rigour of the SEAR, and provides no evidence for its claims in particular that at least more affordable housing would be delivered (because overall there would be more housing delivered on the island) and that there would be enough labour market to justify the employment site allocations (and when more is known about the opportunities, also the benefits of the Solent Freeport).
9. Finally, we also note that although we could locate (with effort) the ISA for the 2018 version of the Reg 18 draft of the IPS, we could not locate the ISA for the second of the Reg 18 draft plans. The first Reg 18 draft did meet the islands (then) SM-calculated housing need, but did not meet the SM need in the second of the Reg 18 drafts. Absent being able to see a copy of the ISA for the second of the drafts we could not then SM calculation of housing need – obviously judged that the alternative of doing so was preferred, on the basis of the assessment against the ISA objectives, to any other alternative. We could not locate the ISA for the second Reg 18 IPS.
10. Accordingly, for the reasons set out here in response to Matter 1, we do not consider the ISA for the submission version of IPS to comply with the Strategic Environmental Assessment Regulations (the SEAR). Indeed, it is our view that its flaws make the ISA, and therefore the IPS itself, unlawful.