



PLANNING ADVISORY SERVICE
PLAN-MAKING CASE LAW UPDATE
MAIN ISSUE 3: SUSTAINABILITY APPRAISAL

November 2014



About this document

This document forms part of a series of 4 documents providing updates on case law in the plan-making sphere, accompanied by the relevant Official Transcripts. The documents are summaries only and are no substitute for seeking qualified internal or external advice, in what remains a highly complex, fast-moving and litigious area.

In summarising the cases, we do not rehearse the facts at any length. These are complex in every case and there is no better description than the text of the judgments. However we have provide lengthy citations from the ratio of the decisions to encourage consideration of the particular way in which the High Court and the Court of Appeal interprets policy. All references to the [National Planning Policy Framework \(NPPF\)](#) are in the format, NPPF x (with x being the paragraph number).

This paper was prepared by No 5 Chambers on behalf of PAS.

Italics and emphasis are our own.

Introduction

1. Strategic Environmental Assessment gives rise to two principal issues:
 - The correct identification of reasonable alternatives

2. The principal cases which stand out in the landscape in the last five years have been:
 - [Save Historic Newmarket Ltd v Forest Heath DC](#) [2011] EWHC 606 (Admin) (25 March 2011)
 - [Heard v Broadland DC](#) [2012] EWHC 344 (Admin) (24 February 2012)
 - [Cogent Land LLP v Rochford DC](#) [2012] EWHC 2542 (Admin); (21 September 2012)
 - [Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government](#) [2014] EWHC 406 (Admin) (21 February 2014)

3. SEA/SA issues have arisen in a number of section 113 challenges, namely: *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin) (11 January 2013); *No Adastral New Town Ltd v Suffolk Coastal DC* [2014] EWHC 223 (Admin) (QBD (Admin)) (7 February 2014); *Performance Retail Ltd Partnership v Eastbourne BC* [2014] EWHC 102 (Admin) (QBD) (18 February 2014); *Zurich Assurance Ltd v Winchester City Council* [2014] 578 (Admin) (18 March 2014); *Grand Union Investments Ltd v Dacorum BC* [2014] EWHC 1894

(Admin) (12 June 2014) and *R(Chalfont St Peter Parish Council) v Chiltern DC* [2013] EWHC 1877 (Admin) (22 August 2013) and [2014] EWCA Civ 1393 (28 October 2013).

Statutory Framework

4. The Strategic Environmental Assessment Directive (Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment) was transposed into domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 ("The SEA Regulations"). The text of the Directive and the Regulations are the fundamental starting point.

SEA: Qualifying Plans

5. Article 3(1) provides that:

"An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects."

6. Article 4(1) and (3) provide:

"the environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3)."

7. Articles 3 and 4 are transposed through Regulation 5 (and the Interpretation Regulation 2(1)):

"5(1) Subject to paragraphs (5) and (6) and regulation 7, where—

(a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and

(b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3),

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) The description is a plan or programme which—

(a) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and

(b) sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC."

8. In practice, all Local Plans will qualify for SEA.
9. The extent to which lower level supplementary plan documents and neighbourhood plans qualify for SEA is outwith the scope of this paper. In short, it has been established by the Court of Justice of the European Union (CJEU) that:

"The fact that the adoption of a plan/programme is not compulsory does mean that SEA is not required for "plans and programmes whose adoption is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of [the SEA Directive]" (C567/10 Inter Environnement Bruxelles ASBL v Région de Bruxelles Capitale [2010] ECR I5611).

10. On the basis of that authority, it has been established that SEA can be a requirement for Supplementary Planning Documents (SPDs) (*R (West Kensington Estates Tenants & Residents' Association) v Hammersmith and Fulham LBC* [2013] EWHC 2834).

SEA: Environmental Reports

11. The central question concerns the proper content of an environmental report, notably the question of whether it has taken into account reasonable alternatives.
12. Article 5 provides:

"1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex 1.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

13. Annex 1 provides:

"(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;

...

(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."

14. Regulation 8(2) and (3)(a) provide that a plan cannot be adopted without taking account of the environmental report for the plan.
15. Regulation 12 ("Preparation of Environmental Reports") further provides for the contents of the Environmental report:

"(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.*

(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.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making.."

16. Annex 1 is transposed through Schedule 2 ("Information for Environmental Reports").

Policy Framework

17. The EC Guidance on the Implementation of Directive 2001/42 and A Practical Guide to the SEA Directive, ODPM – Appendix 9. These documents are now somewhat dated. To a large extent, the ODPM guidance merely incorporates the EC Guidance, and Appendix 9 (cited by BDW) is the "Quality Assurance Checklist", and is more advisory than a clearly defined set of requirements.
18. Finally, the National Planning Policy Framework (para.167) upholds the principles of "proportionality" and "relevance": "Assessments should be proportionate, and should not repeat policy assessment that has already been undertaken." However the NPPF is no substitute for close analysis of the case law which underpins it.

Case Law

19. The cases demonstrate collectively that the fundamental starting point is the text of the SEA Directive itself. The Directive makes clear that its obligations are to be applied with pragmatism and flexibility, without imposing excessive strictures on strategic-level decision-making. It is not, in the well-known phrase from the EIA context, intended to become "an obstacle course".
20. It is important to set *Save Historic Newmarket* and *Heard*, the sole examples of successful challenges on SEA grounds, in their proper context as cases with fairly extreme circumstances, a point emphasised in *Cogent Land* and *Ashdown Forest* (which in our view is arguably the leading current authority amongst the 2014 authorities).

21. In *Save Historic Newmarket* the High Court quashed parts of the Forest Heath Core Strategy, where there was a very marked lack of coverage and assessment of reasonable alternatives and increases to housing provision, and a complete failure in terms of explanation as to why the nominated alternatives had been rejected.

"40. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive and so relief must be given to the claimants."

22. In *Heard*, Ouseley J was concerned with an imbalanced assessment, where the alternatives received merely notional treatment. The judge held at [71]:

"the aim of the directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. I do not see that such an equal appraisal has been accorded to the alternatives referred to in the SA of September 2009. If that is because only one option had been selected, it rather highlights the need for and absence here of reasons for the selection of no alternatives as reasonable. Of course, an SA does not have to have a preferred option; it can emerge as the conclusion of the SEA process in which a number of options are considered, with an outline of the reasons for their selection being provided. But that is not the process adopted here"

23. In *Cogent Land*, the defendant council had submitted its Core Strategy for examination on January 2010, and hearings followed up

to February 2011. The judgment in *Save Historic Newmarket* was delivered on 25 March 2011, the High Court. The council then requested suspension to carry out a review, and in July 2011 published an Addendum. The Inspector then approved the Core Strategy in December 2011. The claimant was a developer disappointed with the nature of the allocations who argued there had been a breach of the Directive on various grounds, including initially that inadequate reasons had been given for the selection of the alternatives, but also that the Addendum did not meet the requirements of the SEA Directive/EAPP Regulations in failing to address the questions of alternatives, and in any case, because it was not as a matter of law capable of curing the defects in the earlier stages of the process.

24. In response, Singh J dismissed the challenge, noting that the Addendum did address the earlier defects. The core of his reasoning on updated SAs is set out at paragraphs 124 onwards:

" 124. I accept Bellway's submission that the claimant's primary argument seeks to extend the principles in Forest Heath and Heard beyond their proper limit. Those were both cases where the Court was satisfied that no adequate assessment of alternatives had been produced prior to adoption of the plans in those cases. Although they comment (understandably) on the desirability of producing an Environmental Report in tandem with the draft plan, as does Seaport, neither is authority for the proposition that alleged defects in an Environmental Report cannot be cured by a later document.

125 I also consider, in agreement with the submissions by both the defendant and Bellway, that the claimant's approach would lead to absurdity, because a defect in the development plan process could never be cured. The absurdity of the claimant's position is illustrated by considering what would now happen if the present application were to succeed, with the result that Policies H1, H2 and H3 were to be quashed. In those circumstances, if the claimant is correct, it is difficult to see how the defendant could ever proceed with a Core Strategy which preferred West Rochford over East. Even if the defendant were to turn the clock back four years to the Preferred Options stage, and support a new Preferred Options Draft with an SA which was in similar form to the Addendum,

the claimant would, if its main submission is correct, contend that this was simply a continuation of the alleged "ex post facto rationalisation" of a choice which the defendant had already made. Yet if that choice is on its merits the correct one or the best one, it must be possible for the planning authority to justify it, albeit by reference to a document which comes at a later stage of the process. Accordingly, I reject the claimant's Ground 4 and conclude that the Addendum was capable, as a matter of law, of curing any defects in the earlier stages of the process."

25. In *Shadwell Estates*, the High Court (Mr Justice Beatson) held:

"71 Before turning to the three grounds upon which the TAAP is challenged, I make two observations about the process and one about the role of the court. The procedure at an independent examination in public is less formal than at a traditional planning inquiry. It generally proceeds on the basis of written documents being presented, and discussion between the parties and the Inspector based upon those documents: Persimmon Homes (North East) Ltd v Blyth Valley BC [2008] EWHC 1258 (Admin) at [49] Collins J. While formal evidence can be given where the Inspector decides that is essential, this would be so only rarely.

72 Secondly, a decision-maker should give the views of statutory consultees, in this context the "appropriate nature conservation bodies", "great" or "considerable" weight. A departure from those views requires "cogent and compelling reasons": see R(Hart DC) v Secretary of State for Communities and Local Government [2008] EWHC 1204 (Admin) at [49] per Sullivan J, and R(Akester) v Department for the Environment, Food and Rural Affairs [2010] EWHC 232 (Admin) at [112] per Owen J. See also R(Jones) v Mansfield DC [2003] EWCA Civ. 1408 per Dyson LJ at [54].

73 As to the role of the Court, review of the adequacy of environmental appraisals, assessments, and impact statements, is on conventional Wednesbury grounds: see R v Rochdale NBC, ex p Milne [2001] Env. L.R. 22 at [106] per Sullivan J (Environmental Assessment); R (Bedford & Clare) v Islington LBC [2002] EWHC 2044 (Admin) at [199] and [203]

per Ouseley J (Environmental Statement); R (Jones) v Mansfield DC [2003] EWCA Civ. 1408 at [14] – [18] (Environmental Impact Assessment), and Bowen-West v Secretary of State for Communities and Local Government [2012] EWCA Civ 321 , at [39] per Laws LJ (Environmental Impact Assessment and Environmental Statement).

74 What does review of environmental documents on conventional Wednesbury grounds mean in practice? The judgments of Ouseley J in the Bedford & Clare case, of Sullivan J (as he then was) in R (Blewett) v. Derbyshire CC [2003] EWHC 2775 (Admin) and of Weatherup J in the Northern Irish case Seaport of Investments Ltd, Re Application for Judicial Review [2007] NIQB 62 illustrate the general approach of the court.

75 Ouseley J (at [203]) distinguished deficiencies resulting from the omission of a topic or because it has been inadequately dealt with which may have force on the planning merits and deficiencies which show that there has been an error of law or mean that the document cannot reasonably be regarded as (in that case) an Environmental Statement. Only the latter can found a statutory application to quash.

76 In the Blewett case Sullivan J stated that:

"41 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."

77 He also (see [68]) deprecated the tendency of "claimants opposed to the grant of planning permission to focus upon deficiencies in environmental statements, as revealed by the consultation process prescribed by the Regulations, and to contend that because the document did not contain all the information required by [the Regulations] it was therefore not an environmental statement and the local planning authority had no power to grant planning permission" He considered this to be misconceived unless, in language similar to that of Ouseley J, "the deficiencies are so serious that the document cannot be described as, in substance, an environmental statement for the purposes of the Regulations". Sullivan J's approach was approved by Lord Hoffmann in R (Edwards) v. Environment Agency [2008] UKHL 22 at [38] and [61].

78 In Seaport Investments Ltd, Re Application for Judicial Review [2007] NIQB 62 Weatherup J stated (at [26]) that "the responsible authority must be accorded a substantial discretionary area of judgment in relation to compliance with the required information for environmental reports". He also stated that the Court will not examine the fine detail of the contents of such a report but will seek to establish whether there has been substantial compliance with the information required. He went on to consider whether the specified matters have been addressed "rather than considering the quality of the address".

26. In *Ashdown Forest*, the claimants sought to extend similar arguments to those pursued in *Save Historic Newmarket* and *Heard*, to an extent that was considered inapplicable and impermissible by the court. A fuller excerpt is helpful:

"90 I turn, then, to Mr Elvin's two criticisms of what was done by WDC. As to the substance of the work to be done by a local planning authority under Article 5 in identifying reasonable alternatives for environmental assessment, the necessary choices to be made are deeply enmeshed with issues of planning judgment, use of limited resources and the maintenance of a balance between the objective of putting a

plan in place with reasonable speed (particularly a plan such as the Core Strategy, which has an important function to fulfil in helping to ensure that planning to meet social needs is balanced in a coherent strategic way against competing environmental interests) and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined. The effect of this is that the planning authority has a substantial area of discretion as to the extent of the inquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail.

91 These points are similarly relevant to interpretation of the SEA Directive and the standard of investigation it imposes as under ordinary domestic administrative law: see, e.g., the review of the authorities by Beatson J (as he then was) in *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), [71]-[78]. The Directive is of a procedural nature (recital (9)) and the procedures which it requires involve consultation with authorities with relevant environmental responsibilities and the public, with a view to them being able to contribute to the assessment of alternatives (recitals (15) and (17); Articles 5 and 6). The relevant aspect of the obligation in Article 5 is to identify and then evaluate "reasonable alternatives" to the plan in question. Under the scheme of the Directive and Environmental Assessment Regulations it is the plan-making authority which is the primary decision-maker in relation to identifying what is to be regarded as a reasonable alternative (and see *Heard v Broadland BC* at [71] per Ouseley J: part of the purpose of the process under the Directive is to test whether a preferred option should end up as preferred "after a fair and public analysis of what the authority regards as reasonable alternatives"). In respect of that decision, the authority has a wide power of evaluative assessment, with the court exercising a limited review function.

92 This interpretation is reinforced by the scope for involvement of the public and the environmental authorities in commenting on the proposed plan and to make counter-proposals to inform the final decision by the plan-making authority. The Directive contemplates that the plan-making authority's choices may be open to debate in the course of

public consultation and capable of improvement or modification in the light of information and representations presented during that consultation, and accordingly recognises that the choices made by the plan-making authority in choosing a plan and in selecting alternatives for evaluation at the Article 5 stage involve evaluative and discretionary judgments by that authority which may be further informed by public debate at a later stage.

93 The interpretation is also supported by the limited nature of the information which the plan making authority is obliged to provide to explain the selection of the "reasonable alternatives" which are selected for examination. It is only "an outline of the reasons" for selecting those alternatives which has to be provided (paragraph (h) of Annex I ; language which is similar to that used in paragraph (a), "an outline of the contents, main objectives of the plan or programme [etc]"), directed to equipping the public to participate in debate about the plan proposed, not a fully reasoned decision of a kind which might be appropriate for a more intrusive review approach or exercise of an appellate function on the part of the court.

94 As Mr Pereira submitted, paragraph (h) of Annex I (replicated in Schedule 2 to the Environmental Assessment Regulations) is to be contrasted with the language in the text of the equivalent paragraph of the draft of the SEA Directive which was originally proposed for adoption. The corresponding paragraph in the draft Directive (paragraph (f)) referred to "any alternative ways of achieving the objectives of the plan or programme which have been considered during its preparation (such as alternative types of development or alternative locations for development) and the reasons for not adopting these alternatives". This was a more demanding standard in relation to the level of reasons which would be required to be given at the Article 5 stage which the legislator chose to reject in favour of an obligation to provide only "an outline of the reasons" for selecting the alternatives to be subjected to full comparative appraisal.

95 The European Commission has issued guidance in relation to the SEA Directive : Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and

Programmes on the Environment . Paragraph 5.6 emphasises the importance of review of alternatives under Article 5 : "The studying of alternatives is an important element of the assessment and the Directive calls for a more comprehensive review of them than does the EIA Directive ." Paragraphs 5.11 to 5.14 and 5.28 deal with the assessment of alternatives, as follows:

"Alternatives

5.11 The obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

5.12 In requiring the likely significant environmental effects of reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the draft plan or programme and for the alternatives [footnote: Compare Article 5(3) and Annex IV of the EIA Directive which require the developer to provide an outline of the main alternatives studied and an indication of the main reasons for his choice taking into account the environmental effects]. *The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in Article 5(2) concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen. This includes for example the information for Annex I (b) on the likely evolution of the current state of the environment without the*

implementation of the alternative. That evolution could be another one than that related to the plan or programme in cases when it concerns different areas or aspects.

5.13 The text of the Directive does not say what is meant by a reasonable alternative to a plan or programme. The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. The text does not specify whether alternative plans or programmes are meant, or different alternatives within a plan or programme. In practice, different alternatives within a plan will usually be assessed (e.g. different means of waste disposal within a waste management plan, or different ways of developing an area within a land use plan). An alternative can thus be a different way of fulfilling the objectives of the plan or programme. For land use plans, or town and country planning plans, obvious alternatives are different uses of areas designated for specific activities or purposes, and alternative areas for such activities. For plans or programmes covering long time frames, especially those covering the very distant future, alternative scenario development is a way of exploring alternatives and their effects. As an example, the Regional Development Plans for the county of Stockholm have for a long time been elaborated on such a scenario model.

5.14 The alternatives chosen should be realistic. Part of the reason for studying alternatives is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1 . A deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also

fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I (h)”

“(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.

5.28 Information on the selection of alternatives is essential to understand why certain alternatives were assessed and their relation to the draft plan or programme. A description of the methods used in the assessment is helpful when judging the quality of information, the findings and the degree to which they can be relied upon. An account of the difficulties met will also clarify this aspect. When appropriate, it would be helpful to include how those difficulties were overcome.”

*96 It is open to the plan-making authority, in the course of an iterative process of examination of possible alternatives, “to reject alternatives at an early stage of the process and, provided there is no change of circumstances, to decide that it is unnecessary to revisit them”; “But this is subject to the important proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid if there has been any change in the proposals in the draft plan or any other material change of circumstances and that the consultees are able, whether by reference to the part of the earlier assessment giving the reasons or by summary of those reasons or, if necessary, by repeating them, to know from the assessment accompanying the draft plan what those reasons are”: *Save Historic Newmarket Ltd v Forest Heath District Council* , [16]-[17]. It may be that a series of stages of examination leads to a preferred option for which alone a full strategic assessment is done, and in that case outline reasons for the selection of the alternatives dealt with at the various stages and for not pursuing particular alternatives to the preferred option are required to be given: *Heard v Broadland**

DC, [66]-[71]. As Ouseley J put it in *Heard*, in this sort of case "The failure to give reasons for the selection of the preferred option is in reality a failure to give reasons why no other alternatives were selected for assessment or comparable assessment at that stage" ([70]).

97 A plan-making authority has an obligation under the SEA Directive to conduct an equal examination of alternatives which it regards as reasonable alternatives to its preferred option (interpreting the Directive in a purposive way, as indicated by the Commission in its guidance: see *Heard v Broadland DC* at [71]). The court will be alert to scrutinise its choices regarding reasonable alternatives to ensure that it is not seeking to avoid that obligation by saying that there are no reasonable alternatives or by improperly limiting the range of such alternatives which is identified. However, the Directive does not require the authority to embark on an artificial exercise of selecting as putative "reasonable alternatives," for full strategic assessment alongside its preferred option, alternatives which can clearly be seen, at an earlier stage of the iterative process in the course of working up a strategic plan and for good planning reasons, as not in reality being viable candidates for adoption.

98 In my judgment, that is the position in the present case, by contrast with the position in *Heard v Broadland DC*. In *Heard*, the plan-making authority failed to explain in outline its reasons for the selection of the alternatives dealt with at the various stages, and failed to explain why ultimately only the preferred option was chosen to go forward for full assessment (see [66] and [70]-[71]). In this case, however, WDC has made rational and lawful choices in narrowing down a field of six options, initially to three (Scenarios A, B and C), and then in choosing only to take Scenario C forward for full detailed strategic assessment. It has explained its reasons for doing so at each stage in some detail in, respectively, chapter 6 and chapter 8 of the Sustainability Appraisal."

27. Very similar principles were employed by the High Court in *Zurich v Winchester*, [124]-[137] and *Grand Union Investments* [81]-[96]. *No Adastral New Town Ltd* [118]-[129] contains a lengthy exploration of

the stages of the SEA process. However *Ashdown Forest* remains the most comprehensive source to date.

28. The short point is that provided a LPA instructs professional consultants or officers with sufficient expertise, carries out SEA at all stages, including where necessary an update that is properly consulted upon, even the most sophisticated challenger will struggle to persuade a court to quash the plan on the basis of alleged errors of law in its composition. The picture is significantly more complicated at lower levels of plan-making.

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November 2014