

West Berkshire Local Plan Review 2022-2039 (LPR) Examination

West Berkshire Council response to IN14 Action Point AP1

Sustainability Appraisal

AP1. Council to set out the requirements in the Environmental Assessment of Plans and Programmes Regulations 2004 (“SEA Regulations”) relating to consultation bodies and public consultees being invited to express their opinion on the relevant documents (ie the sustainability appraisal report); explain whether / how this was complied with when the report was published alongside the Plan for consultation in January 2023; and what specific actions will be required when consulting on further versions of the sustainability appraisal report before the end of the examination in order to ensure legal compliance. The Council may wish to liaise with Simon Pike in preparing its response to this action point.

Council response

1. As suggested by the Inspector, the Council has liaised with Mr Simon Pike and has responded to him directly in relation to further concerns. In particular, Mr Pike refers to Regulations 13 and 8 of the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”) and to the Sustainability Assessment (“the SA”).
2. The Council has received legal advice and responds as follows to address Action Point 1 and the consultation requirements of the SEA Regulations.

The requirements of the SEA Regulations relating to consultation bodies and public consultees being invited to express their opinion on the relevant documents (ie the sustainability appraisal report)

3. Regulation 13 provides Consultation procedures and is set out in full below:

13.— Consultation procedures

(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.

(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall—

(a) send a copy of those documents to each consultation body;

(b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive (“the public consultees”);

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(c) inform the public consultees of—

(i) the address of the website at which the relevant documents may be viewed and downloaded free of charge; (ii) the fact that a copy of the relevant documents may be obtained by email from the responsible authority;

- (iii) the fact that a copy of the relevant documents may be obtained by post from the responsible authority, provided that it is reasonably practicable for the authority to provide a copy by post;
- (iv) the address, email address and telephone number for the purpose of requesting a copy of the relevant documents either by email or by post;
- (v) whether a charge will be made for copies of the relevant documents provided by post and the amount of any charge; and
- (vi) the telephone number which can be used to contact the responsible authority for enquiries in relation to the relevant documents;

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- (d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent.
- (3) The period referred to in paragraph (2)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

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- (4) The responsible authority shall—
 - (a) publish the relevant documents on a public website at which the relevant documents may be viewed and downloaded free of charge;
 - (b) provide a copy of the relevant documents by email to any person who requests a copy, as soon as reasonably practicable after receipt of that person's request;
 - (c) provide one copy of the relevant documents by post to any person who requests a copy, as soon as reasonably practicable after receipt of that person's request, unless it is not reasonably practicable to provide a copy by post for reasons connected to the effects of coronavirus, including restrictions on movement; and
 - (d) make available a telephone number for the public to make enquiries in relation to the relevant documents.] ²

- (5) Nothing in paragraph [(4)(c)] ³ shall require the responsible authority to provide copies [of the relevant documents by post] ⁴ free of charge; but where a charge is made, it shall be of a reasonable amount.

4. In relation to interpretation, there are some defined terms in Regulations 2 and 4 as follows (insofar as relevant):

“consultation body” has the meaning given by regulation 4;
“public website” means a website accessible to the public where the public can view and download information placed upon it;

4.— Consultation bodies

- (1) Subject to paragraph (5), in relation to every plan or programme to which these Regulations apply, each of the following bodies shall be a consultation body—
 - (a) the Countryside Agency;
 - (b) the Historic Buildings and Monuments Commission for England (English Heritage);
 - (c) English Nature; and
 - (d) the Environment Agency,
 but where paragraph (2), (3) or (4) ¹ applies, the functions of those bodies under these Regulations shall be exercisable only in relation to so much of the plan or programme as relates to England.

5. Further, in relation to interpretation, from ***Regina (Friends of the Earth Ltd and another) v Secretary of State for Transport*** [64]:

“The public referred to in [article 6(4)]” is a cross-reference to the rules made by each member state for defining the public affected, or likely to be affected by, or having an interest in the decision-making on the plan. Regulation 13(2) of the SEA Regulations leaves this to be determined as a matter of judgment by the plan-making authority.

¹ These paras relate to Northern Ireland, Scotland and Wales

6. Regulation 8 relates to Restriction on adoption or submission of plans, programmes and modifications and provides as follows:

8.— Restriction on adoption or submission of plans, programmes and modifications

- (1) A plan, programme or modification in respect of which a determination under regulation 9(1) is required shall not be adopted or submitted to the legislative procedure for the purpose of its adoption—
- (a) where an environmental assessment is required in consequence of the determination or of a direction under regulation 10(3), before the requirements of paragraph (3) below have been met;
 - (b) in any other case, before the determination has been made under regulation 9(1).
- (2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before—
- (a) if it is a plan or programme co-financed by the [European Union]¹, the environmental assessment has been carried out as mentioned in regulation 7;
 - (b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.
- (3) The requirements of this paragraph are that account shall be taken of—
- (a) the environmental report for the plan or programme;
 - (b) opinions expressed in response to the invitation referred to in regulation 13(2)(d);
 - (c) opinions expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and (d) the outcome of any consultations under regulation 14(4).

7. Regulation 5 (insofar as it is relevant) provides as follows:

5.— Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004

- (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 Directive 2011/92/EU² of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment]¹.
- (3) The description is a plan or programme which, in view of the likely effect on sites, has been determined to require an assessment pursuant to [any law that implemented]³ Article 6 or 7 of the Habitats Directive.
- (4) Subject to paragraph (5) and regulation 7, where—
- (a) the first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in paragraph (2) or (3), is on or after 21st July 2004;
 - (b) the plan or programme sets the framework for future development consent of projects; and
 - (c) the plan or programme is the subject of a determination under regulation 9(1) or a direction under regulation 10(3) that it is likely to have significant environmental effects,
- 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.
- (5) Nothing in paragraph (1) or (4) requires the carrying out of an environmental assessment for—
- (a) a plan or programme the sole purpose of which is to serve national defence or civil emergency;
 - (b) a financial or budget plan or programme; or
 - (c) a plan or programme co-financed under—
- (i) the 2000–2006 programming period for Council Regulation (EC) No. 1260/1999; or
 - (ii) the 2000–2006 or 2000–2007 programming period for Council Regulation (EC) No. 1257/1999.
- (6) An environmental assessment need not be carried out—
- (a) for a plan or programme of the description set out in paragraph (2) or (3) which determines the use of a small area at local level; or
 - (b) for a minor modification to a plan or programme of the description set out in either of those paragraphs,

unless it has been determined under regulation 9(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction under regulation 10(3).

8. Regulation 9 is referred to in Regulation 8 and provides as follows:

9.— Determinations of the responsible authority

(1) The responsible authority shall determine whether or not a plan, programme or modification of a description referred to in—

(a) paragraph (4)(a) and (b) of regulation 5;

(b) paragraph (6)(a) of that regulation; or

(c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1) the responsible authority shall—

(a) take into account the criteria specified in Schedule 1 to these Regulations; and

(b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.

Compliance with the SEA Regulations in relation to consultation on the SA in January 2023

9. The Council complied with Regulations 13 and 8 as follows:

Regulation 18 February 2018 – Scoping of the SA/SEA published alongside the LPR for consultation.

10. The SA/SEA Scoping report was published alongside the Reg 18 Scoping document for consultation in February 2018. A letter setting out the details of the consultations (Reg 18 and the SA/SEA Scoping) were sent to all those on the Council's Local Plan consultation database in line with the Council's Statement of Community Involvement ("the SCI"). This included the Consultation bodies as defined for SA/SEA.

11. A copy of the letter is included in Appendix 1, annex A of the Consultation Statement ([CD4b](#)). This set out the background to the SA/SEA and invited comments on it over a six week period from 12th February to 26th March. The letter set out where the documents could be found on the Council's website and informed consultees that the documents were available in hard copy at the Council's Market Street Offices. Responses were invited using the Council's Local Plan Consultation Portal, by email or by post and included a link to the consultation portal, the Planning Policy Team's email address, the postal address and telephone number.

12. The consultation complied with all relevant requirements in Regulation 13.

Regulation 18 December 2020 – Interim SA/SEA report published alongside the emerging Local Plan Review ("the LPR") for consultation.

13. An interim SA/SEA report was published alongside the Reg 18 emerging LPR consultation. A letter setting out the details of the consultation was sent to all those on the Council's Local Plan consultation database in line with the Council's SCI.

14. A copy of the letter is included in Appendix 1, annex F of the Consultation Statement ([CD4b](#)). The letter set out the details of the Reg 18 consultation and invited comments on it over an eight week period from 11th December to 5th February 2021. The letter set out where the documents could be found on the Council's website and informed consultees that the documents were available in hard copy at the Council's Market Street Offices. Responses were invited using the Council's Local Plan Consultation Portal, by email or by post and included a link to the Council's Local Plan Consultation Portal and the Consultation page on the Council's website, the Planning Policy email and postal addresses as well as a phone number for the team.
15. The Council's consultation page of the website included more details of the LPR Consultation as well as details of the SA/SEA. Comments were also invited on the interim SA/SEA.
16. The consultation complied with all relevant requirements in Regulation 13.

Regulation 19 January 2023 – SA/SEA Environmental Report published alongside the LPR for consultation.

17. The SA/SEA Environmental Report was published alongside the Reg 19 Proposed Submission LPR for consultation. A letter, setting out the details of the consultation, was sent to all those on the Council's Local Plan consultation database in line with the Council's SCI.
18. A copy of the letter, and the accompanying Representation Procedures, are included in Appendix 2, Annex L of the Consultation Statement ([CD4c](#)). The letter set out the details of the consultation and invited comments on the Reg 19 Proposed Submission LPR over a six week period from 20th January to 3rd March 2023.
19. The letter set out the details of the LPR and included reference to the Sustainability Appraisal and Consultation Statement as supporting documents to the LPR.
20. The letter set out where the Proposed Submission LPR documents and evidence base could be viewed, online on the Council's website and on the Local Plan Consultation Portal, as well as in hard copy at the Council's Market Street Offices. Responses were invited using the Council's Local Plan Consultation Portal, by email or by post and included a link to the Council's Local Plan Consultation Portal and the Consultation page on the Council's website, the Planning Policy email and postal addresses. A phone number for the team was set out in the header for the letter.
21. The letter was accompanied by a Statement of Representations Procedure, which set out further details on the consultation, and guidance note for making representations.
22. The Consultation Page on the Council's website also set out the details of the consultation setting out the Proposed Submission LPR as well as the supporting 'Submission Documents' which accompany the LPR, including the SA/SEA Environmental Report.

23. The Council produced a representation form, which was available to download on the Council's website. This set out all the information required for a representation to be accepted, and included space to note down which part of the Plan, or documentation comments were being made on.

24. The consultation complied with all relevant requirements in Regulation 13.

Conclusions on consultation affected

25. There are no breaches of Regulations 13 or 8 of the SEA Regulations.
Furthermore, Simon Pike managed to submit consultation responses as follows:

- a. Reg 18 Emerging Draft
 - i. On behalf of Councillors from West Thatcham Wards – 5 Feb 2021.
 - ii. As an individual - 5 Feb 2021
- b. Reg 19 Proposed Submission
 - i. As an individual - 3 March 2023

Specific actions required when consulting on further versions of the SA before the end of the Examination in order to ensure legal compliance

26. The Council has taken the steps *it considers appropriate* (in accordance with the Regulations) to bring to the attention of interested persons the SA consultation.

27. However, in order to avoid further complaints from Simon Pike, the Council will consider future letters regarding consultation on further versions of the SA referring explicitly to the SA/SEA.