



# Oundle Town Council

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Friday 22<sup>nd</sup> November 2019

Dear Mr Parmiter.

Please find here Oundle Town Council's consideration of the 'legal' arguments presented on behalf of Persimmon and Gladman. In reading this response we would ask you to take into account that we are a volunteer group and that some of our technical or procedural terminology may not be as eloquent as our Learned Friends.

The contention is that

- a. the amendments made to the plan after the Regulation 14 consultation process were material amendments which changed the nature of the plan and that this required the Town Council to carry out a further Regulation 14 consultation and consult statutory consultees.

And

- b. the sustainability appraisal process was legally flawed and the conclusions reached were not based on the evidence before the Town Council and in some cases the conclusions reached were directly contrary to the objective evidence before the council.

In relation to 'a' above - Consultation

It is said that in amending its plan following the Regulation 14 public consultation and not then repeating the Reg 14 consultation process the Town Council circumvented the legal requirements as to consultation and undermined the statutory purpose of the consultation statement and failed to adhere to the Neighbourhood Plan PPG.

The PPG states that:

"a qualifying body should be inclusive and open in the preparation of its neighbourhood plan and ensure that the wider community

Is kept fully advised of what is being proposed

Is able to make their views known throughout the process

Has opportunities to be actively involved in shaping the emerging neighbourhood plan

Is made aware of how their views have informed the draft neighbourhood plan"

In Appendix 1 you will find evidence of the public engagement in this Neighbourhood Plan process. There is no legislative requirement to have a further Reg 14 consultation on a plan varied as a result of a Reg 14 consultation. This is recognised in the opinion which states at para 54 "if a plan is altered between Reg 14 and Reg 16 then there is no requirement to reconsult". It is reasonable to assume that if the legislature had wanted there to be further public consultation under Reg 14 of a

plan "materially altered" as a result of a Reg 14 consultation it would have provided for this and defined "materially altered". The Town Council did not circumvent the legal requirements for consultation but, rather, followed them and as a result of getting the town actively involved in the shaping of the plan revised the plan to better reflect the wishes of the wider community on the sites to be allocated for residential development. It is contended at para 58 of the opinion that the Town Council have submitted "an unconsulted upon neighbourhood plan for examination" and that

this is "unlawful" but the proposed plan was consulted upon and modified to reflect that consultation which, it can be assumed, was the purpose of the legislative requirements.

It is accepted that the relevant PPG states at para 49 that: "the document that is consulted upon at the pre submission stage should contain only the preferred approach". At the time that the draft plan was submitted for consultation under Reg 14 it did represent the preferred approach of the Town Council. In the light of the representations received in response to the consultation it reviewed its analysis of all of the sites allocated for residential development in the original draft plan and in the light of that review and taking into account the views expressed by the wider community it revised the plan in relation to the allocation of sites for residential development. This properly reflects the way that consultation was intended to work.

At para 64 of the opinion it is suggested that the consultation statement submitted to the LPA under the Reg 16 process was flawed because it entirely related to the responses and issues raised with the Reg 14 draft plan. This, however, is all that the consultation statement was required to show as its purpose is to evidence that the required consultation had taken place (which it had) and it assists with showing how (if at all) a plan might have been revised in response to the required consultation

#### In Relation to 'b' above - Sustainability Assessments

It is accepted – as stated at para 31 of the opinion relied upon by Gladman and Persimmon – that under the planning policy guidance a neighbourhood plan should be supported by sufficient *and proportionate* evidence which shows how the neighbourhood plan guides development to sustainable solutions. Oundle Town Council contends that its plan is supported by such sufficient and proportionate evidence (the emphasis being upon the word proportionate). It is further accepted that there is no legal requirement for a neighbourhood plan to have a sustainability appraisal prior to it being found likely to have significant effects on the environment. As the opinion states preparing a sustainability appraisal incorporating the requirements of a SEA is *useful* to help demonstrate that the plan is capable of delivering sustainable development – it is not mandatory. The opinion goes on to say that the PPG also makes it clear that the material produced as part of the sustainability appraisal of a Local Plan *may* also be relevant to the neighbourhood plan and where it is relevant it is a material consideration that must be taken into account.

In the case of Oundle's neighbourhood plan this predates the district council's draft replacement local plan and the local plan sustainability appraisal associated with it which could not, therefore, have been taken into account in the preparation of the neighbourhood plan. Even if it could have been taken into account this SA is seriously flawed and it would not have been appropriate to take it into account.

The PPG provides that where it is determined that a neighbourhood plan is likely to have significant effects on the environment and that an SEA is required work on it should start at the earliest opportunity. The corollary of this is that if it is determined that a neighbourhood plan is

not likely to have significant effects on the environment an SEA would not be required. The advice OTC received from its original/initial consultants was that its neighbourhood plan would not have a significant effect on the environment and therefore an SEA was not required. Subsequent discussions with ENC concluded that an SEA and HRA for the Oundle Neighbourhood Plan could be carried out by ENC as part of the Local Plan process. This agreement was later changed, resulting in OTC and ENC preparing separate reports.

It is asserted in para 37 that the case of R (Stonegate) v Horsham DC is on all fours with the circumstances of the Oundle neighbourhood plan. This is not accepted. In that case “the requirement under the Directive that the alternatives are to be assessed in a comparable manner and on an accurate basis was simply not met... not only was the conclusion wrong it was irrational given the absence of an evidence base”. Oundle’s neighbourhood plan exhaustively and objectively and correctly assessed all the options in a comparable manner with a proper evidence base and its conclusions were wholly rational.

Para. 66 of the opinion refers to “the issues that arose out of the SA being produced after the Reg 14 consultation when it should have been produced before or with the Reg 14 consultation” but this ignores the fact that this is not a mandatory requirement. The paragraph goes on to say that “the SA assumes that the Plan would go through a further Reg 14 consultation. This, however, was not the case – the references to the SA Report being consulted on with the public and the statutory consultees are references to the Reg 16 process and not Reg 14 and the documentation was in the public domain at that point.

Para 69 is incorrect. The final revisions to the sustainability assessment and the present version of the plan were consulted upon through the Reg 16 process. It is not the case, as alleged, that the final version of the neighbourhood plan did not reflect the evidence before OTC nor that the conclusions reached were in some cases directly contrary to the evidence. The appropriate and required evidence was before the council and it was perfectly entitled to reach the conclusions that it did in framing the final version of the plan.

Para 70 the neighbourhood plan was prepared prior to the draft replacement local plan. The “evidence” and the analysis of it used by ENC in the development of its draft plan is, in any event, seriously flawed and could not properly form the basis of any neighbourhood plan. Although it is claimed that the district council’s work was a “robust, methodical and criteria based process” the town council also employed a robust, methodical and criteria based process and reached different but preferable conclusions to those used in the draft local plan.

Para 70 Again refers to an unapproved document. The ENC Local Plan, which is fundamentally flawed. Taking the points raised here:-

- Highways – the issues raised in the SA have to be assessed in a preference order, ie which site is better; a site on an ‘A’ road with buses each half hour in both directions, or a site accessed via 1 km on narrow road with parked cars for most of its length?
- Flooding – again an issue of site preferences, a site with declared surface water flooding problems, or a site without?
- Noise – a site next to a very noisy truck road, where the developer declares the need for sealed windows, or a site adjacent to the countryside?

A graphic illustration is given in appendix 2 of the kind of comparative assessment that was carried out in selecting the ONP sites.

We will not repeat the constant references to an untested Local Plan, however, we attach in appendix 3 our view on a robust, methodical and criteria based scoring of the Local Plan SA, using

its author's criteria. This supports the ONP site selection even more positively than our own SA appraisal. When the Local Plan is scored correctly it will select the same sites as the ONP.

[Note. The Local Plan site assessments were first published in November 2018. This document was discredited due to major errors, eg The Herne Road site was discounted because "The whole site includes the school and playing field...". The process was then rerun with a new consultant (DLP) report was published in July 2019. This again has major errors, eg Herne Road this time discounted because "...no response was received from the landowner/promoter when approached" (by DLP). ENC had all of the landowners plans.

The Local Plan site assessment process will have to be run again. Appendix 3 is our view on how it will be remarked for the four sites.]

71 RNOTP it does not "allocate" the Cotterstock Road site. It refers to it as a "possible" site, which "could come forward" after 2021, "following review". Given RNOTP's chequered and unsupported history (recently referred to in ENC's own Planning Management Committee meeting of November 13th 2019), this seems in effect a suggestion at the very best, one which the movement of Oundle Primary School to Cotterstock Road has ruined. Once again the task is one of balance, a site accessed from a 60mph road with a blind bend and recognised visibility problems, or, one on a quiet none through road. Using the author's own argument, this Cotterstock Road site is scored a -3 for "Access Infrastructure", in the unapproved ENC Local Plan site assessment, due to the issues mentioned above.

It is not accepted that the decision not to continue with the allocation of the site was solely based on public feedback but it is plainly wrong to require consultation and then refuse to take into account as one of the factors to be considered what the response to consultation indicated.

Para 72 Flood Zone. There are no sites planning to develop in Flood Zone 2 or 3. Bordering a flood zone 3 does not prohibit development on that site.

Para 73 Our advice from ENC is that the plan is fully compliant:-

- "Finally, on behalf of ENC this letter represents the Council's formal view that the draft Oundle Neighbourhood Plan, as submitted and covering the remainder of the current Local Plan period to 2031, complies with all of the relevant statutory requirements." <sup>[L]</sup><sub>[SEP]</sub> Mike Burton 9<sup>th</sup> July 2019

Further, since both Gladman and Persimmon were given and took the opportunity to comment, they cannot argue that they were not given the opportunity to comment. Since the revised plan, that has responded to comment, does not allocate any new sites, and the sites with increased capacity have been subjected to SA at the revised capacity, there cannot be anything contrary to basic conditions.

Para 74 It is not accepted that OTC did not apply a consistent methodology in assessing the sites to Reg 14 or in reassessing them after Reg 14. It is not accepted that the changes made after Reg 14 were not evidence based nor that an incorrect procedure was followed. It is not accepted that the evidence demonstrated that any alternative sites, which were ultimately not allocated for development, were preferable to any of those that were ultimately allocated.

Para 75 It is not accepted that sites were allocated based upon land being transferred to the council. The community benefit, however, which could potentially be derived from a site is a legitimate consideration. It could not make a site assessed as being unacceptable acceptable but it could be the difference between sites that were broadly equally acceptable. It is not accepted that

there is no quantifiable evidence that a new cricket facility, allotments, cemetery extension land or “festival” field/public open space were required. In any event all are clearly more desirable than a residential development site offering no public benefit.

Para 76 It is not accepted that the neighbourhood plan and SA are not fit for purpose.

OTC does not believe the plan or the process which created it were flawed as alleged or at all. The objections raised must be seen in the light of the vested interests of the developers who are aggrieved that the plan does not allocate their sites for residential development.

With our best wishes

Tony Robinson

Mayor of Oundle Town Council, and Neighbourhood Plan Working Group Member