

Strategic Environmental Assessment – Are we heading for meltdown?

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The High Court Ruling¹ on the Regional Spatial Strategy for the East of England highlighted deficiencies in the assessment process specifically around the failure to consider alternatives. Sean Nicholson argues that there are lessons for lower tier plans throughout the UK.

The East of England Plan fell foul of Article 5.1 of Directive 2001/42/EC (known as the Strategic Environmental Assessment Directive) and Regulation 12 (2)(b) of the Environmental Assessment of Plans and Programmes Regulations 2004. Any reasonable alternatives to growth at Hemel Hempstead, Welwyn Garden City, Hatfield and Harlow should have been identified and assessed, but were not.

The ruling has significant implications for lower tier plans throughout the UK. For brevity this article focuses on lower tier plans in England.

PPS12 puts the consideration of reasonable alternatives at the heart of the test of soundness, but how can a Core Strategy or Allocations DPD be prepared without falling foul of a similar ruling? It seems to me that one way to avoid this will be to ensure a clear link between the spatial strategy that is adopted and the locations that are identified for growth. Only locations for growth that are critical to the delivery of the strategy should be included in the Core Strategy.

Initial work should focus on alternative sites that could deliver the preferred strategy and alternative spatial strategies alongside the critical sites associated with their delivery. Ensuring that these alternative spatial strategies are assessed and that the strategic locations for growth associated with them are also assessed should help reduce the risk of a successful challenge by someone with a site left out in the cold.

It's also important to appreciate that the Directive makes no distinction between the assessment requirements for the drafted plan and for the alternatives. One implication of this is that the initial assessment of options needs to be undertaken to the same level of detail for all options, it can't be done as an afterthought.

¹ **City and District Council of St Albans v Secretary of State for Communities and Local Government Hertfordshire County Council v Secretary of State for Communities and Local Government CO/5844/2008, CO/5911/2008**



Alternatives can include different locations for development but also different uses (or mix of uses) on a site. Alternative scenario development is another way of exploring alternatives and their effects. The proviso with alternative scenarios, as with all options, is that they have to be consistent with higher tier policy (the Regional Spatial Strategy in England).

Sieving sites, using information from the Strategic Housing Land Availability Assessment and other elements of the evidence base for the Plan, will be an important way of reducing the number of sites that need to be fully assessed. There needs to be a clear audit trail on this process.

It is also important that all optioneering is done through the plan making process. We don't want a situation where the assessment of a myriad of options is done as a stand-alone exercise in an attempt to cover all bases. Generating options as part of the SA process (in isolation of the plan being assessed) would also create confusion as to the status of the options assessed and whether or not representations should be made in response to them.

Late changes to DPDs should also be avoided. Such changes add the risk that alternatives to those introduced are potentially missed and not assessed, leaving the plan open to challenge down the line.

Tiering of assessments will also be needed. A Core Strategy might set out key locations for growth, with an Allocations DPD providing more detail on sites to be allocated in other settlements. In such cases it can be argued that the assessment for the Allocations DPD should also consider sites that are a reasonable alternative to those it proposes to allocate. Again it will be acceptable to sieve sites, rather than just assess them to be on the safe side.

The East of England Plan decision highlights the need for vigilance. PPS12 emphasises the consideration of reasonable alternatives as part of the test of soundness but the decision raises the stakes. Anyone promoting a site that feels it is a reasonable alternative can point to Article 5.1, the Regulations and this decision.

What can WSP do?

WSP Environment and Energy has a dedicated SEA/SA team that works with local authorities and other organisations throughout the UK. We also help the development industry understand the SEA/SA process.

For more information on what we can do please contact:

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