

SCREENING OPINION ON THE ARMTHORPE NEIGHBOURHOOD PLAN ISSUED BY THE LOCAL PLANNING AUTHORITY, DONCASTER METROPOLITAN BOROUGH COUNCIL

The Armthorpe Neighbourhood Plan will need to be subject to a further screening assessment in the light of recent legal cases and changes to government guidance. This assessment is set out below.

Previous screening opinion

The council provided an initial screening opinion which concluded that the NP would not require an SA/SEA at an early stage of the process as the impacts are no greater than that proposed in the Core Strategy and therefore have been assessed through its SA/SEA (www.armthorpeparishcouncil.co.uk/Core/Armthorpe-PC/UserFiles/Files/ScreeningOpinionJan14.pdf). However, circumstances have changed since the council's initial screening opinion such that it would be prudent to undertake a specific SA/SEA to ensure a more sustainable plan and reduce risk of challenge. These changes include;

1. The government has further clarified the relationship between neighbourhood plans and the SA/SEA regulations. Whilst not a legal requirement, neighbourhood plan may give rise to "*significant environmental effects which fall within the scope of the Environmental Assessment of Plans and Programmes Regulations 2004*" and therefore "*require a strategic environmental assessment*" (see paragraph 28 of the government's Planning Practice Guidance, which was revised on 6th March 2014)¹. This applies to schedule 1 of the regulations (see appendix 1 of this note).
2. The recent legal challenge (Barratt Homes and Wainhomes Developments against the decision by Cheshire West and Chester Borough Council) serves to highlight the importance of ensuring that neighbourhood plans have been undertaken in accordance with the SEA regulations (see www.tattenhallpc.co.uk/wp-content/uploads/2013/07/Draft-Neighbourhood-Plan-SA-Report-inc-Appendices.pdf²).
3. A neighbourhood plan has recently been found unsound at the examination stage on the basis of non-compliance with relevant EU/SEA obligations (see www.midsussex.gov.uk/media/Slaugham_Hearing_Notes).
4. Development allocations (e.g. housing sites) are located within close proximity to nature conservation sites (e.g. Sandall Beat Park and local wildlife sites and the "nightjar buffer zone" (in the case of employment sites) which may give rise to significant effects both within Armthorpe and the wider area which require mitigation.

¹ Under articles 3 (3) and (4) of the SEA Directive and regulation 5 of the SEA Regulations, the following plans will require an SEA, if the council determines they will have significant adverse effects.

- A plan that determines the use of a small area at local level;
- A minor modification to an existing plan;
- Any plan or programme which sets the framework for future development consent of projects (whether or not they require EIA).

² Appeal case no: CO/15278/2013 (9th May 2014)

In the light of these developments, the Armthorpe Neighbourhood Plan could potentially be open to legal challenge from developers who are proposing sites which are not allocated or identified in the plan and/or third parties on the basis that has failed to undertake an SEA/SEA as required under the SEA regulations³.

Paragraph 8 (1) (a) (2) of Schedule 4B to the Town and Country Planning Act 1990 (inserted in the Localism Act 2011) sets out the basic conditions that a draft neighbourhood plan must meet.

1. Complies with national policy and guidance from the secretary of state
2. Contributes to sustainable development.
3. General conformity with the strategic policy of the development plan for the area or any part of that area (i.e. Core Strategy)
4. Does not breach or is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC.

Failure to comply with EU obligations will result in the neighbourhood plan being found unsound.

Although the draft plan has been subject to consultation, it is still at a draft stage and there is still scope to carry out an SA/SEA of the plan before it is submitted to undergo independent examination. The parish council is still in the process of developing the vision and objectives of the plan. However, we now have a clearer picture of what they want the plan to deliver and, based on that, it is clear that an SA/SEA will now be required.

The council is legally required to determine whether the neighbourhood plan will give rise to significant environmental effects in line with SEA Directive of 2001/42/EC. Before the screening opinion has been determined, the council will need to consult with the three statutory bodies (English Heritage, Environment Agency and Natural England).

The council can also request a further screening opinion before the neighbourhood plan has been submitted to undergo an independent examination. The independent examiner is required to test whether the plan meets the basic conditions and other relevant legal requirements.

In doing so, the council must decide whether the draft NP complies with the Environmental Assessment of Plans and Programmes Regulations 2004:

- when the draft neighbourhood plan is submitted (in terms of ensuring it complies with have the procedural steps been complied with and all required documents provided);
- when it takes the decision on whether the neighbourhood plan should proceed to referendum; and
- when it takes the decision on whether or not to make the neighbourhood plan (which brings it into legal force).

Paragraph 39 of the council's guidance note (Economic, Social and Environmental Assessment of Neighbourhood Plans) states that: "*To find out if a Neighbourhood Plan requires an SEA, a screening opinion should be sought from the Local Authority. This will enable us to consider whether the policies and proposals you have developed*

warrant a formal assessment process. *It is not necessary to wait until a draft plan is produced as all that is required for us to undertake a screening opinion is the following information.*

- *How might the plan affect the environment, community or economy;*
- *Does the plan propose a higher level of development than is already identified in Doncaster Council planning policies?*
- *Does the plan include any land allocations for development which are not included within Doncaster council's planning policies?*
- *Are any of the proposals are likely to affect a "sensitive area", for example a Site of Special Scientific Interest?*
- *Will the implementation of policies in the plan lead to major new development in the future (for example if you are proposing a new road, that new road might lead to new housing development in the future?)*
- *Will there be cumulative impact of the policies and proposals when assessed together may give rise to a likely significant environmental effect (for example several relatively small housing proposals may cumulatively have a significant effect on a nearby rare wildlife habitat or species)?*

The SEA Directive does not require the council to duplicate assessments already carried out, or assessments that will be carried out, in relation to other plans and programmes in a "hierarchy" (see Article 5 (2)). In this case, the draft plan supports higher tier policies set out in the Core Strategy and does not propose a higher level of development than is already included in the adopted plan. However, it identifies a range of land allocations (including new urban extension sites) and designations which are not identified in the adopted Core Strategy or Joint Waste Plan.

Independent guidance on carrying out a sustainability appraisal of a neighbourhood plan (see www.levett-therivel.co.uk/DIYSA.pdf) advises that:

*"There is no harm in carrying out an SA where it is not legally required, but you can be legally challenged for not carrying out an SA where one is required. So **in case of doubt**, carry out the SA. You may want to do this anyway, simply because SA helps to make sure that your neighbourhood plan is as well thought-out and as sustainable as possible."*

Likelihood of significant effects

Because of their proximity to sensitive areas (e.g. nightjar habitat, ancient woodland, historic hedgerows and mature trees) the proposed site allocations within the draft Armthorpe Neighbourhood Plan are likely to give rise to significant effects which have not previously been considered and assessed within the sustainability appraisal of the Core Strategy (as identified in schedule 1 of the SEA regulations in appendix 1). Development on these sites will result in the loss of open countryside and agricultural land within close proximity to local wildlife sites and open spaces.

Sandall Beat Wood, a site of special scientific interest, is located within close proximity to existing schools and housing to the immediate west of the parish. Shaw Wood, a local wildlife site, lies to the west of the proposed housing site (land west of Hatfield Lane).

Long Plantation, a prominent thin strip of ancient woodland, lies to the north of the proposed housing sites (land west of Hatfield Lane and West Moor Link Road) just beyond the link road. There are some important views across the housing sites from

northern edge of the existing settlement, as shown on the landscape character and capacity assessment.

Part of the employment allocation (West Moor Park Employment Park Extension) lies within a local wildlife site (New Close Wood). The nightjar foraging area (as shown on the biodiversity map) extends into the parish of Armthorpe within close proximity to the proposed employment allocations.

As such, new development within the boundary of the parish has the potential to have a cumulative impact over the wider area which is vulnerable to change, including the green wedge.

The content of the plan and the size of the geographical area it covers suggest that there is a strong likelihood of significant environmental effects arising from its implementation which require mitigation. The plan also provides a clear framework to guide the future consent of development projects within the parish of Armthorpe.

Next steps

The parish council will need to undertake an SA of the draft NP (including site proposals and policies) and consult on it in line with the requirements of the revised Statement of Community Involvement. This report does not need to repeat the scoping stage (in its entirety) as the objectives, decision making criteria and targets of the SA have already been established. The overarching scoping report will act as a guide to inform the SA of the NP. While it is not necessary to repeat this stage, any additional relevant information which relates to the baseline situation in the area (including the likely evolution of the area without the plan) and other relevant plans and programmes at the local level which are not listed in the scoping report should be included within the SEA/SA report. The SA should be done independently of the parish council in line with best practice.

Some useful tips on how to prepare an SA/SEA are provided below.

- The SA/SEA will only address "new" issues arising from the NP.
- The SA will not be required to address matters already covered in the SA/SEA of the Core Strategy (e.g. spatial growth options) and other development plan documents.
- The SA/SEA process should be proportionate to the scale and nature of the NP. *"It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the neighbourhood plan"* (see paragraph 30 of the Planning Practice Guidance).

SA is an iterative process. In the Tattenhall case, the judge agreed with the inspector that the SA had clearly demonstrated how it has informed the NP process at each stage. *"Together, the SA and SR provide a thorough, detailed consideration of the neighbourhood plan's sustainability credentials. Their content is thorough and comprehensive and find it clearly demonstrates how the SA in particular has supported the plan-making process, by testing its proposals in the light of a clearly defined methodology. The overall approach to assessing the neighbourhood plan's environmental, social and economic effects meet the legal requirements of the EU's SEA Directive"*.

The purpose of the report is to describe, assess and evaluate the likely significant effects of the neighbourhood plan including reasonable alternatives, taking into account the objectives and geographical scope of the neighbourhood plan. The report must clearly show how these requirements have been met. The SA should ensure that any

significant adverse effects are identified as early as possible and identify measures to address them.

The report must include a non-technical summary of the information within the main report.

The parish council will need to consult the three statutory consultation bodies and other parties who are likely to be affected or have an interest in the decisions involved in making of the neighbourhood plan. Further details on consultation procedures are set out in regulation 13 of the Environmental Assessment of Plans and Programmes Regulations 2004.

Appendix

Schedule 1: Criteria for determining the likely significance of effects on the environment

1. The characteristics of plans and programmes, having regard, in particular, to—

- (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
- (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d) environmental problems relevant to the plan or programme; and
- (e) the relevance of the plan or programme for the implementation of community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—

- (a) the probability, duration, frequency and reversibility of the effects;
- (b) the cumulative nature of the effects;
- (c) the transboundary nature of the effects;
- (d) the risks to human health or the environment (for example, due to accidents);
- (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
- (f) the value and vulnerability of the area likely to be affected due to—
 - (i) special natural characteristics or cultural heritage;
 - (ii) exceeded environmental quality standards or limit values; or
 - (iii) intensive land-use; and
 - (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.