

Mrs Sue O'Hare
Parish Clerk
Hertford Heath Parish Council
PO Box 399
Hertford
SG13 9LA

Date: 20 September 2021
Your ref:
Our ref: NESBITP\308894-000004
Direct: +44 113 200 4149
Email: peternesbit@eversheds-sutherland.com

By e-mail: clerk@hertfordheath.org.uk

Dear Mrs O'Hare

Hertford Heath Neighbourhood Plan

We have recently been provided with a link to the Strategic Environmental Assessment ("SEA") Report relating to the draft Hertford Heath Neighbourhood Plan.

Firstly, it is disappointing that this was not provided directly when this and other documentation has been specifically requested in writing by way of our letter dated 21 June 2021 and e-mails of 7 September 2021 and 10 September 2021.

Furthermore, the Parish Council failed to provide information concerning the scope of the SEA that was requested in our letter of 21 June 2021 as well as part of a formal Freedom of Information request issued on 13 July 2021.

The SEA now received makes reference to this scoping material, including a scoping report issued to Historic England on 28 April 2021. This plainly should have been provided in response to our request and has still not been made available. This must be addressed immediately so that our client and its team have a fair opportunity to consider the assessment.

With regard to the SEA report itself, this will be subject to detailed professional review and further comment in due course. Nevertheless, our initial review has already identified some very concerning omissions in the assessment which we must bring to the Parish Council's attention.

1. Alternative Sites

1.1 The authors of the report will be aware that the Environmental Assessment of Plans and Programmes Regulations 2004 (the "SEA Regulations") require that:

"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."

1.2 The report engages with this requirement to some degree by identifying two alternatives: Land off London Road; and Land to the West of London Road opposite Haileybury Road. However, these were not the only sites to be considered in this process. Other sites included in the Council's Strategic Land Availability Assessment

lds_002\9109707\2\smithkb

Eversheds Sutherland (International) LLP is a limited liability partnership, registered in England and Wales (number OC304065), registered office One Wood Street, London EC2V 7WS. Authorised and regulated by the Solicitors Regulation Authority. A list of the members' names and their professional qualifications is available for inspection at the above office.

Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

of March 2017 ("SLAA") should also properly be considered as alternatives and these must be addressed in the SEA report. It is surprising indeed that such alternatives were omitted, since the Parish Council is understood to have taken advice on this very point from Locality, who advised that if sites were assessed within the Council's SLAA as developable and deliverable, there would need to be justification for why it is not included in the Neighbourhood Plan. In this instance, one such example is the Land at Amwell Place Farm site (SLAA Ref: 25/002). The SEA report is therefore legally deficient in failing to identify the reasonable alternatives.

2. **Scope of the SEA**

- 2.1 Whilst the Parish Council has not provided us with the requested scoping material, it would appear that a very narrow scope of SEA has been prepared and agreed with Historic England. It is argued that this is justified on the basis of a screening report, but it has already been demonstrated that this makes incorrect judgements on the likelihood of significant environmental effects. Other than heritage matters, there is very limited or no consideration of the scope of the SEA so far as it relates to the other topics identified in Schedule 2 of the SEA Regulations. We are not aware that there has been any engagement with other consultees on the wider scope, nor advice taken from the District Council, who we understand recommended that all aspects of Schedule 2 were properly considered. Screening is not the same as scoping and this failure to engage with the SEA Regulations means that the resulting SEA report is legally flawed.

3. **Mitigation of Significant Effects**

- 3.1 The SEA report clearly identifies the prospect of significant effects on heritage assets resulting from the development of the Haileybury site. Whilst potential mitigation measures are suggested, they are not clearly identified in the Neighbourhood Plan nor the SEA report. The reader has no real way of judging whether they can possibly be effective and what the cost will be to the overall number of housing units that can actually be delivered on the site.
- 3.2 The guidance in the National Planning Policy Framework ("NPPF") is that any harm to such assets should require clear and convincing justification. Furthermore, Historic England's advice on the site allocation process states that:

"Local plans must be prepared with the objective of contributing to the achievement of sustainable development (NPPF, paragraph 151). As such, significant adverse impacts on the three dimensions of sustainable development (including heritage and therefore environmental impacts) should be avoided in the first instance. Only where adverse impacts are unavoidable should mitigation or compensation measures be considered (NPPF paragraph 152)."

- 3.3 In this instance, avoidance of these impacts is possible by selecting an alternative site. Noting that there are such unconstrained sites, the SEA report then fails to properly address, in broader environmental and sustainability terms, why they were not selected for development. It seeks to justify this approach by reference to the site selection process and previous neighbourhood plan consultations, which do not amount to evidence based objective assessment. In fact, this previous work was itself flawed, for a number of reasons, but most notably:

- i. **Lack of rigour in the scoring matrix** – Our client's Regulation 14 response outlined in detail why the approach to scoring the alternative sites was contrived and failed completely to reflect established sustainability criteria or indeed the objectives of the plan itself. An excerpt from this objection is set out below:

"38. ... There was no published information as to how each of the scores were arrived at:

- The highest score was a site for 2 houses behind Hertford Heath Motors for 2 dwellings on a 0.08 ha site - that scored 2.53
- **The second highest site was the Bellway site with an area of 5.46ha which was scored 2.21 notwithstanding no reference was made to the community facilities being offered apart from the village car park**
- **The third highest score was part of what now is Haileybury with a site area of 1.98ha which scored 2.16**
- **The fourth highest was behind the above Haileybury site with an area of 1.2 ha which scored 1.84**
- The lowest site was Land opposite 39 - 48 Mount Pleasant which was for 3 houses which scored 1.58

39. After the exhibition, there was no further engagement with the promoters of the Bellway site but the Steering Group combined the two Haileybury sites and for no apparent reason, except that the public had indicated a preference for either of the two smaller sites at Haileybury, but not the combined site, the enlarged site was then given a combined score of 2.42 which is strange as each of the smaller sites lower than the Bellway site.

40. Similarly, the plan's choice is based on the residents' net support for the two smaller sites at Haileybury, but the enlarged site has never been the subject of a consultation with all villagers, until this Regulation 14 consultation and they never have been consulted on the principle of a mixed-use allocation delivering community benefits at the Bellway site."

- ii. **Misleading public consultation** – Our client's Regulation 14 Response also identified outrageous manipulation of the public responses to the various options. Put simply, the plan's choice is based on the residents' net support for the two smaller sites at Haileybury, but the enlarged site has never been the subject of a consultation with all villagers, until the Regulation 14 consultation. Local people have never been consulted on the principle of a mixed-use allocation delivering community benefits on the London Road site, despite this being one of the main objectives of the plan. Furthermore, members of the public are blissfully unaware that the Haileybury site may not be capable of providing the required housing numbers, once necessary heritage mitigation is applied, meaning that this housing will have to be delivered on other sites not subject to any consultation, for instance Land at Amwell Place Farm.

3.4 Put simply, reference back to a flawed site selection process does not help with the failure to assess reasonable alternatives now that SEA has been triggered.

4. **Failure to have regard to master-planning**

4.1 The SEA report appears not to have had regard to any master-planning for the Haileybury site. As part of our client's Regulation 14 response, a heritage review prepared by Pegasus was submitted. This identified, amongst other heritage concerns that:

"...it is clear that the change in character of the site from open fields to suburban residential development will remove an element of the setting which makes a positive contribution to the significance of the asset. The development of the site will bring suburban residential development in close proximity to

Rose Cottage and diminish the sense of isolation that this asset was always intended to have. This will diminish the historic interest of the asset.

3.6 The masterplan also shows how the three listed buildings, which all are connected through association with Haileybury College would no longer be appreciated as single dwellings with an historic connection, but rather all be part of a larger, homogenous development with no distinction between the assets and no appreciation of their links.

3.7 In addition, the proposed access into the proposed site is shown cutting through the garden of Rose Cottage to the east of the property. This, along with the proposed residential development to the east of the access road would remove some of the last areas of open space and garden area historically associated with Rose Cottage.

...

4.5 It is considered that the adoption of policy HH-H-3 is, at the very least, premature and that this allocation has been put forward without any real consideration of the potential for harm to the significance of designated heritage assets to be caused by the development."

- 4.2 Whilst the authors of the SEA may say that it is premature to undertake such assessment, this ignores the fact that such work is critical to a proper understanding of capacity and whether the plan meets the objective to accommodate the required housing. It is also fundamental to the site selection process itself, since ability to accommodate the required housing is part of the scoring system and also dictates whether more than one site is needed. This work may not support the previous decision made in terms of site selection, but that is no reason to gloss over what is a critical constraint for the proposed allocation.

5. Failure to assess Windfall Sites

- 5.1 Noting that the Neighbourhood Plan identifies the need for windfall sites, it is surprising indeed that these sites are not also considered in the SEA report. Reference is made on several occasions to the significance of the Ermine Street Roman Road, yet the report fails, for instance, to address the impacts that windfall sites will have on the asset. It is another indication that the author has focused entirely on a single alternative, failing to meet the requirements of Regulation 12(2)(b) of the SEA Regulations.

Whilst we fully intend to provide further comments on the SEA report informed by a technical review, it is clear from even an initial review that it is entirely deficient and fails to meet the requirements of the SEA Regulations. In this instance, the problem is compounded by the issues identified with the site selection and consultation process. For these reasons we must now insist that the Parish Council requests that AECOM abandon the current report and is instructed to undertake a full SEA, which is appropriately scoped. To proceed on the basis of the current report would be unfair, misleading to the public and unlawful.

It is important that the Parish Council now take advice on these matters and its next steps. It should not be pressured into voting to proceed with the plan in its current form, when it is clear that a legally deficient process has been followed. The decision to proceed with the neighbourhood plan on the basis of a legally deficient process is a legally challengeable decision. Whilst our client does not wish to take such a step, it will do so if this is the only way that a fair process can be achieved.

Our client wishes to express its regret that this correspondence has become necessary. We have repeatedly attempted to engage with the Parish Council to obtain information on the SEA process and indeed to discuss appropriate procedures and steps to ensure that the SEA and plan process is fair to the public and legally compliant. So far there has been no meaningful

response, but our client wishes to again extend the offer to work in a more constructive way. For the avoidance of doubt, that does not mean the allocation of its site, but rather an opportunity for the public to be properly informed of the significant effects of the alternatives and to be given a fair opportunity to respond.

As it would appear that the Steering Group may seek a swift decision on the next stage of the process, we must insist that the Parish Council respond swiftly to this correspondence, and by no later than Friday 24 September 2021.

Should you consider that a meeting would be helpful, then our clients will make themselves available.

Yours sincerely

Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP

cc Mrs Suzanne Fogden, Chair of Hertford Heath Parish Council
George Pavey, East Herts District Council
Nick Chisholm-Batten, AECOM
Jacqui Salt, Natural England
Historic England