

Chigwell Neighbourhood Plan 2018 - 2033

Initial Comments of the Independent Examiner

Prepared by

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25th July 2018

1. As you will be aware I have been appointed to carry out the examination of this Neighbourhood Plan. I have carried out an initial assessment of the Plan and all the accompanying documents and there are matters which may fundamentally affect my consideration of whether the plan meets the legislative requirements, particularly relating to the European obligations. This is a matter that is covered by Schedule 4B 8 (2) f of Town and Country Planning Act 1990, as inserted by Schedule 10 of the Localism Act 2011.
2. These are some fundamental issues that I do need to clarify, before proceeding further with the examination. I have had particular regard to the conclusions set out in paragraphs 3.7 to 3.19 of the HRA Screening Report, prepared in February 2018 by Environmental Gain Ltd on behalf of the Parish Council. That report predated the European Court judgement, dated 11th April 2018, in the case People Over Wind and Peter Sweetman v Coillte Teoranta. To quote from the final ruling that in order to determine “**whether it is necessary to carry out, subsequently, an appropriate assessment of the implications for a site concerned, of a plan or project, it is not appropriate at the screening stage to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site**”. The conclusion of the Parish Council’s assessment is that there is a potential that the plan’s proposals could have an impact on the Epping Forest SAC, but these effects will be mitigated by either the neighbourhood plan policies or policies in the Local Plan. I have to say that the Sweetman judgement is currently affecting progress on a number of neighbourhood plans, as well as local plans. I have to take this ruling into consideration as it is clearly now a material consideration, in my assessment of compliance with basic conditions.
3. There are a number of other issues relating to the screening issue which I also need to explore. One of these is how justified are the report’s conclusions which rely upon mitigation measures which are dependent upon the policies enshrined in a draft and emerging local plan, which has yet to be tested at public examination with the possibility that those provisions may well change as a result of the Local Plans Inspector’s considerations of outstanding objections and as a result of the examination hearings.
4. In this matter I have paid particular regard to the representations made by Natural England at the Regulation 16 stage wherein they say that they have already expressed concerns regarding the appropriateness of this process and its implications for the examination of this neighbourhood plan. They also question some of the assumptions made in the Environmental Gain documentation. A number of other Regulation 16 representations have also flagged this issue up.

5. I also wish to explore how the plan has addressed the issue of the consideration of *reasonable alternatives* in respect of the selection of the Rolls Park proposal, in the SEA.
6. I have therefore determined that the best way for me to come to a conclusion on these issues, which may have procedural implications for the examination of this plan as currently submitted, is to convene an exploratory meeting. This will allow me to explore these issues with the LPA and the Parish Council in order to allow me to come to a conclusion on this matter. To quote from the document NPIERS – Guidance to Service Users and Examiners, “an exploratory meeting enables an independent examiner to convene a discussion with identified participants about concerns with the plan. This is useful where the issues to be explored may not fall within the very specific legal reasons for convening a public hearing.”
7. I have yet to make my site visit to the plan area, therefore in an effort to minimise costs, I am proposing to make a single visit to the area to familiarise myself with the locality and the specific sites and then on the following morning to hold the exploratory meeting. Such a meeting will be open to the public, but I anticipate only inviting the Parish Council and the local planning authority. Once this note has been distributed and published on the website, I will seek to confirm a date and arrangements for the meeting and I will issue an agenda.
8. Depending upon the outcome of the exploratory meeting, I still reserve the right to call for a hearing to examine more fully other policy aspects of the plan. However, I do need to differentiate between the policy and procedural matters, regarding compliance with European legislation which goes to the heart of the examination, in view of the requirements of Schedule 2 of the Neighbourhood Plan (General) Regulations 2012, that “a neighbourhood plan cannot be made, if the likelihood of significant effects on any European Site, either alone (or in combination with other plans and projects) cannot be ruled out”.

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