



**Cabinet Member  
Wiltshire Council  
c/o Yamina Rhouati**

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Our reference NPB/PGM\_PROPERTY/O14754303.1/NPB

Your reference

**15 June 2012**

Dear Member

**ITEM 7 - SUBMISSION OF THE WILTSHIRE CORE STRATEGY**

**SUSTAINABILITY APPRAISAL AND STRATEGIC ENVIRONMENTAL IMPACT –**

**SOUNDNESS**

We act on behalf of Chippenham 2020 LLP regarding their detailed submissions on the Pre-Submission Draft Core Strategy. This letter relates to the officer report to Cabinet dated 19<sup>th</sup> June 2012 ("the Report") and the legal soundness of the Core Strategy.

Considerable concern emanates from the Council's identification of a less sustainable southern urban extension to Chippenham when a robust procedure, credible evidence base and option testing can, and indeed should, lead to restoring land to the East of Chippenham to its previous (2009) preferred option status.

The consultation objection submitted by Chippenham 2020 LLP in April of this year runs to 30 pages and has detailed appendices from Employment, Transport, Sustainability, Flood Risk, Viability and Housing supply experts. It contains a proper analysis of material issues and highlights the large volume of flaws within the Council's work.

The officer report to committee dated 19<sup>th</sup> June 2012 is leading you astray, especially in its advice on the "soundness" of the plan. The plan as presented and proposed for change, is not legally sound. Paragraphs 14 and 15 of the Report refers to representations that have been made on the Draft Sustainability Appraisal and refers to "further work" necessary in light of the representations received. Alarming however it goes on to state that Sustainability Appraisal will be "*completed for Submission*" but will not lead to any change in the Draft Core Strategy.

Paragraph 2.7.4 of Appendix 1 to the Report purports to summarise the representations on Core Policy 10, the Chippenham Community Policy Area. This includes, for example, the views of the Chippenham Vision Board and the Chamber of Commerce who can be expected to have a local independent understanding of the appropriate community strategy for the town. Both groups have vocally supported the re-instatement of the East Chippenham site, but the officer commentary and the inadequate summary of the concerns is simply that;

*"new evidence has not been presented to suggest the strategic sites proposed for Chippenham should be amended or that based on the evidence available any one site or number of sites offer better alternatives to the three strategic sites proposed in the Core Strategy".*

**This statement by officers is misleading and incorrect.**

Chippenham 2020 LLP have submitted clear, robust and compelling evidence which clearly demonstrates that the preferred South West Strategic Site may be capable of playing small a role in the employment land supply, but it is obviously not the most sustainable way of accommodating town centre led employment, nor indeed a sustainable urban extension for housing. There is simply no engagement with this evidence in the officer summary.

Officers simply state that there is;

*“concern over the Chippenham Transport Strategy and the lack of evidence to inform the proposals for Chippenham. Developers promoting sites have provided their own transport modelling evidence”.*

It goes on to assert that it would not be appropriate to delay site selection until such time as there is more detailed transport modelling available.

*“New evidence has not been provided at this stage to suggest that strategic sites should be amended”*

**This statement is, again, misleading and incorrect.**

Chippenham 2020 LLP have provided expert transport evidence which clearly demonstrates that not only is the Council's transport evidence base underpinning the site selection process wholly inadequate, but there is also clear evidence to show that the strategic site selection should be amended.

**The Council has not conducted the public identification, consultation and evaluation of reasonable alternatives for the expansion of Chippenham in the manner the law requires.**

In the context of the Council's Transport Assessment, the land to the east of Chippenham has been belatedly *“option tested”* as a reduced site for 800 dwellings. However, this *“option testing”* is, itself, entirely flawed. For example, it considers the transport implications of development to the east on an entirely erroneous and unequal assumption, namely that there will not be a complete eastern distributor road linking to the A4. The reason for such an arbitrary and obtuse assumption are unfathomable and do not reflect good practice.

**The treatment of Chippenham 2020 LLPs consultation objection within the Report is not only evidentially perverse; it also raises a more fundamental concern over the soundness of the legal process of site evaluation and selection.**

It is wholly unacceptable to accept that further work on the Sustainability Appraisal is required, but to simultaneously predict that no change to the Core Strategy will result This cannot be a genuine exercise.

It is also wholly unacceptable to accept that further traffic modelling is required, but to press on regardless with detailed appraisal work for existing options only, in complete ignorance of the further modelling results. This is particularly so when the Sustainability Appraisal Report states at paragraph 5.12.29;

*“Transport impact is arguably the key issue with all options being considered”*

Chippenham 2020 LLP have repeatedly objected to the 2009 and 2011 site selection process and noted the absence of legally compliant site selection and consultation process. There has been a fundamental failure to consult the public on a reduced housing number development option to the east (other than Rawlings Farm) which has never been corrected.

**This error has serious legal consequences for soundness**, as most recently expressed in a letter to the Senior Planning Policy Officer dated 21<sup>st</sup> May 2012.

For the avoidance of doubt regulation 12(2) of the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”) requires that the Core Strategy and in particular the sustainability appraisal shall:-

*“identify 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 geographical scope of the plan or programme.”*

**Wiltshire Council has not complied with legislative requirement. The failure to do so renders the Sustainability Appraisal flawed.**

In *Save Historic Newmarket Ltd v Forest Heath DC, SSCLG [2011] EWHC 606 (Admin)* a successful application was made to quash the Forest Heath District Council Core Strategy “*to the extent that the court considers appropriate*”. The case was an attack on a policy for the urban extension of Newmarket for approximately 1200 dwellings as part of mixed use development. The main challenge was that there was a failure of the SEA to contain all that it should have contained. The judgement stated;

***“the authority responsible for the adoption of the plan or programme as well as the authorities and public consulted must be presented an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option”.***

The Judge records the material increase in numbers from 500 to 1000 to 1200 (para 35) but noted that there was no explanation of the increase or why there were no realistic alternatives for that increase being accommodated by the already identified spatial strategy within the SEA – this was a flaw requiring relief.

In *Heard v Broadland District Council [2012] EWHC 344 (Admin) [ 24/2/12 Ouseley J ]* a legal challenge was made to a Joint Core Strategy. It was alleged that the SEA did not comply with two requirements:

- (i) the Core Strategy failed to explain which reasonable alternatives to urban growth in the North East Growth Triangle they had selected to examine and why; and
- (ii) a failure to examine the reasonable alternatives in the same depth as the preferred option.

The Judge upheld the challenge as there was not any reason for selection of alternative sites at any stage, nor was there any discussion in the SA of why preferred options came to be chosen, there was no analysis on a comparable basis of preferred options and selected reasonable alternatives. The judgement states the SEA regulations require;

***“an equal examination of the alternatives which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives.”***

Chippenham 2020 LLP consider that the Report fails to report their objections accurately and the response to “concerns” is completely without any meaningful engagement as a matter of evidence or law. Chippenham 2020 LLP conclude in their evidentially supported objection that:

- (i) the option considered to delete the housing allocation to the south of Chippenham and replace it with an allocation of about 800 houses to the east, in conjunction with support for the town centre, has not been presented to the public or the Council with an accurate picture of what reasonable alternatives there are to developing the housing allocation; and

(ii) there has not been a fair, public and equal examination of the reasonable alternatives.

Chippenham 2020 LLP strongly suggest that the opportunity should now be taken by Members to insist on the plan-making process being returned to officers so they may properly consider the strategic sites for Chippenham in a legally sound manner prior to submitting the document.

**A relatively short delay now may well avoid a potentially longer delay upon or following examination.**

A copy of this letter will be sent to the Planning Inspectorate as legal issues of soundness are raised.

Yours faithfully,



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