

Birmingham Development Plan Examination.

Matter E. Turley response to Exam 59- BCC response to Inspector's Matter E Queries.

1. Turley and RPS have submitted representations stating that the Sustainability Appraisal (incorporating the requirements of the SEA Directive) developed in support of the Birmingham Development Plan is **unsound** and not legally compliant with the SEA Directive.
2. The basis of this is the failure of the final SA report to meet the requirements of Article 5(1), Annex 1(h) of the SEA Directive – *assessment of alternatives*.
3. Birmingham City Council have issued a response to this submission (Exam 59- BCC response to Inspector's Matter E Queries) which is based on two key points;
 - a. That the justification for rejecting Area A and B is contained within the Green Belt Options Assessment 2013 (PG1) and which is referenced in the Site Allocations SA, September 2013 (SUB5) and the SA report of the Pre-submission BDP October 2013 (HTY17).
 - b. That Para 15 of the Forest Heath case [2011] EWHC 606 notes *that a report may rely upon 'earlier material so long as it is identifiable in that report and that there is no need to repeat large amounts of data...*
4. Para 2.10 of Exam 59 states that.....*the fact that BCC does not consider that Option B should be reconsidered at this stage and has not regurgitated the reasons for this judgement or amended its SA does not render the SA unlawful. These matters were all clear and properly referenced in the SA reports supporting the Pre-Submission consultations at pp.A15-A20 of SUB5 with the main reasons for not pursuing Area B are set out at p.75 of PG1 (Green Belt options assessment).*
5. Turley respond to these points as follows;
 - a. Article 5(1), Annex 1(h) of the SEA directive is clear in that the environmental report shall present *an outline of the reasons for selecting the alternatives dealt with....*
 - b. If Para 15 of the Forest heath decision is quoted in full then it also states that *the final (SA) report may rely on earlier material but must bring it together so that it is identifiable in that report. It cannot be assumed that all those potentially affected would have read all or indeed any previous reports (in the context of this claim previous environmental assessments).*
 - c. Para 17 also states that.... *However that does not mean that when the draft plan finally decided upon by the authority and the accompanying environmental assessment are put out to consultation before the necessary examination is held there cannot have been during the iterative process a prior ruling out of alternatives. But this is subject to the*

proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid.

- d. Para 40 of the Forest Heath Judgement is also useful;

In my (Mr Justice Collins) judgment, Mr Elvin is correct to submit that the final (SA) report accompanying the proposed Core Strategy to be put to the inspector was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive and so relief must be given to the claimants.

- e. We disagree with the council's statement that the reasons for rejecting Area A and B from the plan and the SA process are contained within the Green Belt Options Assessment (PG1). It is not the function of the Green Belt Options Assessment to assess the sustainability performance of the proposed site allocations and thereby discard any alternatives. It is the role of the Green Belt Options Assessment to identify whether land is performing its role as Green Belt and whether it can be removed from this designation. In this regard, representations have also been made to BCC highlighting a number of fundamental deficiencies in the Green Belt Options Assessment which challenge its conclusion that Area A and B should remain within the Green Belt.

It is the function of the SA to assess the sustainability performance of the plan and proposed site allocations which can be supported by various technical assessments such as a Green Belt Options assessment.

The legal responsibility of meeting the requirements of Article 5(1), Annex 1(h) of the SEA Directive lies with the final SA report which may reference other documents but which must clearly set out or summarise the reasons for discarding the alternatives from a sustainability perspective.

- f. Based on point (e) above, there remains no clear explanation or summary text in the Site Allocations SA (SUB5) or the Submission SA (SUB3) as to why Areas A or B were not taken forward in the BDP.
- g. We therefore maintain our view that the SA (incorporating the requirements of the SEA Directive) does not meet the legal requirements of Article 5(1), Annex 1(h) of the SEA Directive-*assessment of alternatives*.