

Appendix 1



## **Land at Tidbury Green**

Solihull Metropolitan Borough Council  
Local Plan Review Supplementary Consultation

**Interim Sustainability Appraisal  
Supplementary Consultation  
January 2019**

Representations on behalf of  
Summix FHS Development LLP  
**March 2019**

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## Executive Summary

- ES.1 This document has been prepared by **Jam Consult Ltd** on behalf of **Summix FHS Development LLP** with regards to the land at **Tidbury Green (site 313)** and relates to the **Interim Sustainability Appraisal Supplementary Consultation (SASC)** of Solihull Metropolitan Borough Council's (SMBC) Draft Local Plan Review, January 2019.
- ES.2 Sustainability Appraisal (SA) is mandatory for new or revised Development Plan Documents (DPDs), which includes the Local Plan under section **19(5) of the Planning and Compulsory Purchase Act 2004**. When conducting a SA of DPDs an environmental assessment must also be conducted in accordance with the requirements of **European Directive 2001/42/EC** (The Strategic Environmental Assessment Directive), transposed into the UK legislation by the **Environmental Assessment of Plans and Programmes Regulations 2004, Section 12**.
- ES.3 The Council has previously consulted on the following SAs, prepared by AECOM, which were reviewed within our previous representations on the Interim SA, January 2017 (**February 2017**):
- SA Scoping Report, October 2016
  - Interim SA of the Solihull Local Plan – Scope, Issues & Options, November 2015
  - Interim Sustainability Appraisal, January 2017
- The findings within our representations remain valid and should be considered alongside these representations.
- ES.4 This report identifies the Regulations and Guidance that are applicable to the Local Plan preparation and Sustainability Appraisal (SA) process. The report draws attention to flaws identified in the SA process, in particular, the assessment of the potential housing allocations.
- ES.5 **Paragraph 1.1.7 (page 1)** of the SASC report sets out the purpose of the consultation as follows:
- “It should be noted that this interim SA Report does not constitute an ‘SA Report’ as defined by the SEA Regulations (i.e. the SA Report that should be prepared and consulted upon alongside the draft Local Plan at Regulation 19 stage of the Planning Regulations). Rather, this interim SA report documents a particular output from the SA process that has been undertaken to help influence the plan-making process. It is not a legal obligation to consult upon interim SA findings, but it is helpful to aid in decision making, as well as achieving effective and transparent consultation.”

- ES.6      **Section 4 ‘Next Steps’ (page 9)** of the report, also states:
- “4.1.4      The Council intends to undertake further work in support of the spatial strategy, including a reconsideration of spatial alternatives for housing and employment growth. These next stages of work will also need to be subject to sustainability appraisal.
- 4.1.5      It is the Council’s intention to publish a pre-submission plan for consultation in the summer of 2019. At this time, a full SA Report will be prepared which documents the entire SA process.
- 4.1.6      This Interim SA Report will be subsumed into the final SA Report...”
- ES.7      **Para 4 (page 4)** of the Draft Local Plan Supplementary Consultation confirms:
- “This is a non-statutory supplementary consultation (under regulation 18 of the plan making regulation) to that undertaken for the Draft Local Plan in December 2016, and it should be read in conjunction with that document.”
- ES.8      It is therefore clear that the Supplementary Consultation is to be considered as part of the **Regulation 18** stage and that the next iteration of the Plan and supporting SA will be part of the **Regulation 19** stage of the plan making process.
- ES.9      The Local Plan also states in **paragraph 5 (page 5)**:
- “This consultation is not seeking to:
- Revise the contribution that the Council is making towards the HMA shortfall. This will be considered through the draft submission version of the plan (the regulation 19 version of the Plan).
  - Amend the overall spatial strategy set out in the DLP.
  - Revisit the non-housing related parts of the DLP.
- ES.10      **Para 013** of the **NPPG** provides a flow chart of the SA process, which shows that the assessment of alternatives should be undertaken at **Stage B** of the process – **‘Developing and Refining Alternatives and Assessing Effects’**. Stage B also corresponds with **Regulation 18** of the Local Plan preparation. The assessment of alternatives should therefore be undertaken as part of the Regulation 18 stage not 19 as proposed.
- ES.11      Whilst it is understood that the Local Plan Supplementary Consultation has not included the issues itemised in paragraph 5 above, the approach taken is regarded as incorrect. The additional work following this consultation is likely to result in further alternatives that need to be assessed in the SA, which could have implications for the Spatial Strategy and the need for further assessment of alternatives, as well as the necessary consultation. The decision to postpone these decisions to the Regulation 19 stage is therefore considered misplaced and should be undertaken as part of a Regulation 18 consultation.

- ES.12 The Council's view that the Supplementary Consultation is 'informal' also contradicts the Statement of Community Involvement, 2007 (**para 2.1.9, page 7**), which confirms that there should be formal consultation on the preferred options identified and that the comments received will help in identifying a preferred option to be pursued. This stage in the process (Stage 2) will be followed by a further formal consultation on the Preferred Option before submission to the Secretary of State. The Supplementary Consultation should therefore be a formal consultation in order to identify the preferred options to be pursued.
- ES.13 The Draft Local Plan (**page 4**) sets out the key reasons for the consultation as follows:
- Provide an update on local housing need now that national planning policy has changed through the introduction of a standard methodology.
  - Assess the 70+ additional call-for-sites submissions that have been submitted since the DLP was published.
  - Refine the site selection process for assessing which sites should be included in the plan and **reassess all sites (c320)** to ensure that the preferred sites are the most appropriate when considered against the spatial strategy, and existing/new or updated evidence.
  - Publishing concept masterplans for the principal allocations.
  - Exploring a different approach to calculating how affordable housing provision should be calculated on an individual site.
  - Setting out the role of the main settlements in the future and seeking views on the existing pressures and future requirements for infrastructure provision. **[emphasis added]**
- ES.14 **Para 1.1.4** of the SASC reiterates the need to reassess all sites as identified above:  
"A key element of the strategy is to determine appropriate site allocations for growth. To inform this decision there is **a need to appraise all reasonable site options** on a consistent basis." **[emphasis added]**
- ES.15 The review of the SASC has found that a formal SA report should have been prepared at this stage in the process to inform the Draft Local Plan and been subject to consultation. The SASC therefore does not comply with the relevant regulations and guidance in several regards:
- The SA has not considered alternatives to the local housing need as a result of the changes to guidance, national policy and the Greater Birmingham HMA Strategic Growth Study.
  - The SA has not assessed **all** reasonable site options (**SASC para 2.1.2, page 2**)  
[see Appendix D: Cabinet Report, 17/01/19]
  - The SA methodology, established through the Scoping process, remains flawed and has not been revised to take into account representations made at previous stages

- The results fail to evaluate the significance of the impacts [Schedule 1& 2 of the regulations] or provide links to the appropriate evidence base
- There is no consideration of mitigation measures or cumulative effects
- Green Belt Land is still not considered within the SA
- There has been no sequential test of the proposed site allocations, contrary to the Environment Agency's recommendation in their representations
- There is no explanation of the reasons for the selection or rejection of options or overall conclusions of the sustainability of different alternatives [Reg.12 (3) Sch.2 (8); NPPF para 35; NPPG SEA/SA 013; 017; 018]
- There is no explanation of how the SA results have informed the Local Plan, an integrated process has not been demonstrated
- The report does not show how responses to the previous consultations have been taken into account, particularly the statutory consultees and neighbouring authorities.

ES.13 The SASC does not provide an adequate appraisal of all the reasonable alternatives, in compliance with the regulations and guidance. It therefore cannot be established that the proposed strategy and preferred options are justified in accordance with the NPPF. The SA has not demonstrated that the strategy is appropriate or that it has taken into account all reasonable alternatives, based on proportionate evidence.

ES.14 The separate Site Assessments report, issued as part of this consultation provides some additional information on how the sites have been selected but also does not comply with the SA regulations and guidance. In particular, the reasons given for the selection and rejection of sites are not provided and the results of the SA are not explained. It is therefore not known how the SA has influenced the decisions made.

ES.15 In addition, the site assessment process has shown in **Appendix D to the Cabinet Report, January 2019** that a total of 75 sites were not considered in the SA. Of the sites 'not considered in the SA' 15 are identified as 'green' (identified for allocation) and 9 as 'amber' where the impact is regarded as 'less harmful' than the sites in the 'red' category, which have been rejected. The failure to assess all the sites in the SA shows a failure to consider all reasonable alternatives in a consistent manner as well as a lack of a transparent approach to decision making. Furthermore, 11 of the proposed allocations fall under Category 3 of the SHELAA, which have significant constraints and are classed as 'not currently developable' (**DLPSC: Site Assessments, page 8, footnote 13**).

- ES.16 The assessment of the Fulford Hall Farm site (site 313) at Tidbury Green within the Site Assessments report is also considered flawed in respect of the overall level of priority attached to the site (level 9 rather than 6 identified by the evidence) and more specifically the judgments made in relation to Green Belt and Landscape sensitivity **(see main representations by Framptons/LDA)**
- ES.17 As set out in our previous representations, the Interim SA cannot be considered fit for purpose. Coupled with the inadequacies of the Supplementary Consultation, significant amendments to the SA are needed in order to demonstrate a robust process has been followed and to consider the Local Plan sound.
- ES.18 The SASC fails to rectify errors identified in the Interim SA 2017 or consider all reasonable alternatives as required in Stage B of the SA at Regulation 18 of the Local Plan. It is therefore considered premature for the Council to move to Regulation 19 of the Local Plan process before the significant errors are corrected. Failure to do so will result in a Sustainability Appraisal, which is not legally compliant and a plan which is unsound, making the Local Plan very vulnerable to legal challenge.
- ES.19 The most appropriate way to resolve the inadequacies identified in the SA to date, would be to undertake further work before carrying out an additional Regulation 18 consultation, as recommended in the **NPPG (para 04)**.

## 1.0 Introduction

1.1 This document has been prepared by **Jam Consult Ltd** on behalf of **Summix FHS Development LLP** with regards to the land at **Tidbury Green (site 313)** and relates to the **Interim Sustainability Appraisal Supplementary Consultation (SASC)** of Solihull Metropolitan Borough Council's (SMBC) Draft Local Plan Review, January 2019.

1.2 The Council has previously consulted on the following SAs, which were reviewed within our previous representations on the Interim SA, January 2017 (**February 2017**):

- SA Scoping Report, October 2016
- Interim SA of the Solihull Local Plan – Scope, Issues & Options, November 2015
- Interim Sustainability Appraisal, January 2017

The findings within our representations remain valid and should be considered alongside these representations.

1.3 Sustainability Appraisal (SA) is mandatory for new or revised Development Plan Documents (DPDs), which includes the Local Plan under section **19(5) of the Planning and Compulsory Purchase Act 2004**. The appraisal should include an assessment of the economic, social and environmental sustainability of the plan.

1.4 When conducting a SA of DPDs an environmental assessment must also be conducted in accordance with the requirements of **European Directive 2001/42/EC** (The Strategic Environmental Assessment Directive), transposed into the UK legislation by the **Environmental Assessment of Plans and Programmes Regulations 2004, Section 12**.

1.5 Sustainability Appraisals should be carried out in accordance with Government Guidance 'National Planning Practice Guidance' and the 'National Planning Policy Framework, 2012 (updated 2018)'. Sustainability Appraisal, as defined under the Planning and Compulsory Purchase Act, fully incorporates the requirements of the SEA directive.



- 1.6 Other documents and guidance that should be referred to include:
- EC Guidance on the SEA Directive – Implementation of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment, September 2003
  - The Planning Inspectorate - Local Development Frameworks: Examining Development Plan Documents – Learning from Experience, September 2009
  - Local Development Frameworks: Examining Development Plan Documents – Soundness Guidance, Planning Inspectorate, August 2009 and update February 2010
  - Principles of Plan Making, Chapter 6 The Role of Sustainability Appraisal, PAS April 2013.
  - RTPi Practice Advice Note, January 2018.

## 2.0 The Purpose of the Draft Local Plan Consultation

2.1.1 The Supplementary Consultation to the Draft Local Plan includes the following documents:

- Draft Local Plan Supplementary Consultation
- Draft Local Plan Supplementary Consultation: Site Assessments
- Draft Local Plan Supplementary Consultation: Site Assessments Key Plan
- Draft Local Plan Supplementary Consultation: Amber Sites
- Draft Local Plan Supplementary Consultation: Draft Concept Masterplans
- Draft Local Plan Supplementary Consultation: Interim SA

2.1.2 **Para 4 (page 4)** of the Draft Local Plan Supplementary Consultation confirms:

“This is a non-statutory supplementary consultation (under regulation 18 of the plan making regulation) to that undertaken for the Draft Local Plan in December 2016, and it should be read in conjunction with that document.”

2.1.2 The Draft Local Plan (**page 4**) sets out the key reasons for the consultation as follows:

- Provide an update on local housing need now that national planning policy has changed through the introduction of a standard methodology.
- Assess the 70+ additional call-for-sites submissions that have been submitted since the DLP was published.
- Refine the site selection process for assessing which sites should be included in the plan and **reassess all sites (c320)** to ensure that the preferred sites are the most appropriate when considered against the spatial strategy, and existing/new or updated evidence.
- Publishing concept masterplans for the principal allocations.
- Exploring a different approach to calculating how affordable housing provision should be calculated on an individual site.
- Setting out the role of the main settlements in the future and seeking views on the existing pressures and future requirements for infrastructure provision. **[emphasis added]**

- 2.1.3 The Local Plan also states in **paragraph 5 (page 5)**:  
“This consultation is not seeking to:
- Revise the contribution that the Council is making towards the HMA shortfall. This will be considered through the draft submission version of the plan (the regulation 19 version of the Plan).
  - Amend the overall spatial strategy set out in the DLP.
  - Revisit the non-housing related parts of the DLP.
- 2.1.3 It is therefore clear that the Supplementary Consultation is to be considered as part of the **Regulation 18** stage and that the next iteration of the Plan and supporting SA will be part of the **Regulation 19** stage of the plan making process.
- 2.1.4 Whilst it is understood that the Local Plan Supplementary Consultation has not included the issues itemised in paragraph 5 above, the approach taken is regarded as incorrect. The SASC has not considered alternatives to the local housing need as a result of the changes to guidance, national policy or the Greater Birmingham HMA Strategic Growth Study.
- 2.1.5 The additional work following this consultation is likely to result in new alternatives that need to be assessed in the SA, which could have implications for the Spatial Strategy and the need for further assessment, as well as the necessary consultation. The decision to postpone these decisions to the Regulation 19 stage is therefore considered misplaced and should be undertaken as part of a Regulation 18 consultation.
- 2.1.6 The Council’s view that the Supplementary Consultation is ‘informal’ also contradicts the Statement of Community Involvement, 2007 (**para 2.1.9, page 7**), which confirms that there will be formal consultation on the preferred options identified and that the comments received will help in identifying a preferred option to be pursued. This stage in the process (Stage 2) will be followed by a further formal consultation on the Preferred Option before submission to the Secretary of State. The Supplementary Consultation should therefore be a formal consultation in order to identify the preferred options to be pursued.

## 3.0 Interim SA Supplementary Consultation

### 3.1 Purpose of the Consultation

3.1.1 **Paragraph 1.1.7 (page 1)** of the SASC report sets out the purpose of the SA consultation as follows:

“It should be noted that this interim SA Report does not constitute an ‘SA Report’ as defined by the SEA Regulations (i.e. the SA Report that should be prepared and consulted upon alongside the draft Local Plan at Regulation 19 stage of the Planning Regulations). Rather, this interim SA report documents a particular output from the SA process that has been undertaken to help influence the plan-making process. It is not a legal obligation to consult upon interim SA findings, but it is helpful to aid in decision making, as well as achieving effective and transparent consultation.”

3.1.2 **Para 1.1.4** of the SASC reiterates the need to reassess all sites as identified in the Draft Local Plan SC:

“A key element of the strategy is to determine appropriate site allocations for growth. To inform this decision there is **a need to appraise all reasonable site options** on a consistent basis.” **[emphasis added]**

3.1.3 **Section 4 ‘Next Steps’ (page 9)** of the report, also states:

4.1.4 The Council intends to undertake further work in support of the spatial strategy, including a reconsideration of spatial alternatives for housing and employment growth. These next stages of work will also need to be subject to sustainability appraisal.

4.1.5 It is the Council’s intention to publish a pre-submission plan for consultation in the summer of 2019. At this time, a full SA Report will be prepared which documents the entire SA process.

4.1.6 This Interim SA Report will be subsumed into the final SA Report...”

3.1.4 **Para 013** of the **NPPG** provides a flow chart of the SA process, which shows that the assessment of alternatives should be undertaken at **Stage B** of the process – **‘Developing and Refining Alternatives and Assessing Effects’**. Stage B also corresponds with **Regulation 18** of the Local Plan preparation. The assessment of alternatives should therefore be undertaken as part of the Regulation 18 stage not 19 as proposed.

## 3.2 SA Process

The **NPPG [001]** is clear on the purpose of the SA process:

“This process is an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the **proposals in the plan are the most appropriate given the reasonable alternatives. It can be used to test the evidence underpinning the plan** and help to demonstrate how the tests of soundness have been met. Sustainability appraisal should be applied as an iterative process informing the development of the Local Plan.”  
**[emphasis added]**

### SA Methodology

- 3.2.1 Jam’s representations submitted on the Interim SA, January 2017 (February 2017) identified flaws in the SA and Site Assessment Frameworks used to assess the impacts of the policies and proposals. The SASC states that the methodology was established through the Scoping process and is the same methodology used in the Interim SA, 2017. The assessment therefore remains flawed and has not been revised to take into account representations made at previous stages.
- 3.2.2 As a consequence, the SA has failed to suitably identify, describe and evaluate the likely significant impacts using the evidence base in accordance with Schedule 1 and 2 of the Regulations. Key evidence has not been used in the assessment, for example, the impact of development upon the Green Belt is still not discussed.
- 3.2.3 Furthermore, the SASC provides no explanation of the which sites have been selected or rejected; the reasons for the selection of the preferred allocations and rejection of the other sites; or any overall conclusion on the sustainability performance of the different alternatives. [Reg.12 (3) Sch.2 (8); NPPF para 35; NPPG SEA/SA 013; 017; 018]
- 3.2.4 **Paragraph 18** of the NPPG sets out how the SA should assess alternatives and identify likely significant effects, including:
- “The sustainability appraisal should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in light of the alternatives. **It should provide conclusions on the overall sustainability of the different alternatives, including those selected as the preferred approach in the Local Plan.** Any assumptions used in assessing the significance of effects of the Local Plan should be documented.” **NPPG Para 18 [emphasis added]**

- 3.2.5 The SA has failed to explain the selection and rejection of the alternative sites as set out above including:
- The sites which have been identified as the preferred options
  - The sites which have been rejected
  - The reasons for the selection and rejection of sites and overall conclusions on the sustainability of the different alternatives
  - How the results of the SA have influenced the development of the Local Plan.
- 3.2.6 The SA does not meet the requirements of **Schedule 1** of the Environmental Assessment of Plans and Programmes regulations 2004 or **Paragraph 35** of the NPPF or provide a coherent explanation of the assessment results. The approach to decision making is not effective or transparent, which paragraph 1.1.7 of the SASC states is the purpose of the consultation.
- 3.2.7 The assessment of the alternatives for the purposes of the regulations is totally inadequate and fails to show how the SA process has informed the development of the Local Plan or show an integrated approach. The SASC does not provide an adequate appraisal of all the reasonable alternatives, in compliance with the regulations and guidance. It therefore cannot be established that the proposed strategy is justified in accordance with the NPPF, as the SA has not demonstrated that the strategy is appropriate or that it has taken into account all reasonable alternatives, based on proportionate evidence.

### Consultation

- 3.2.8 The SASC only mentions the previous consultations briefly with regard to the need to assess sites individually, rather than in clusters. There is no discussion of the consultation responses from the statutory consultees; neighbouring authorities or other representors.
- 3.2.9 The Draft Local Plan Summary of Representations Report, July 2017 showed that there were 187 objectors to the Spatial Strategy, compared to 61 in support. The main reason for objection concerned the issue of housing need and the shortfall in relation to the housing need for Birmingham. The omission of the responses of the previous consultations and an explanation of how they have been taken into consideration has significant implications when considering the proposed site allocations and their appraisal.

- 3.2.10 The Council proposes to review the issue of housing need at the Regulation 19 stage of the Local Plan preparation. The review will need to establish the level of housing growth required before the number of site allocations can be determined accurately. The review of the housing need is likely to result in alternative options to the proposed provision set out in the Draft Local Plan SC and the preferred site allocations to accommodate that need. Such options may also result in alterations to the Spatial Strategy, for example, as a result of an increase in Green Belt land that needs to be released. All reasonable alternatives will need to be assessed in the SA, which should be carried out as part of the Regulation 18 Local Plan Consultation and Stage B of the SA.
- 3.2.11 A review of the responses has also shown that the Environment Agency raised specific issues with regard to the need to undertake a Sequential Test of all the sites put forward for allocation, including any climate change allowances identified in the Strategic Flood Risk Assessment. As the Environment Agency states in its response, March 2017:
- “It is important to note that areas in Flood Zone 1 could be located in Flood Zone 2 or 3 under the climate change scenario.”
- Such an assessment has not been found in the Council’s evidence base, even though 5 of the allocated sites and a total of 17 sites include areas of Flood Risk Zones 2 and 3.

## Cumulative Impacts and Mitigation Measures

- 3.2.12 **Schedule 1 and 2** of the Regulations specify that the likely significant effects on the environment, including: short, medium and long-term effects; permanent and temporary effects; positive and negative effects; and secondary, cumulative and synergistic effects need to be assessed.
- 3.2.13 The SASC has failed to provide any consideration of the cumulative or synergistic effects of implementing the plan. It is therefore not known whether certain combinations of sites will result in greater adverse effects than others.
- 3.2.14 **Schedule 2 (7)** of the regulations sets out the information, which should be included within the SA report, including the requirements for mitigation measures. “The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.”
- 3.2.15 The NPPG also makes it clear that **Stage B** of the SA process should include the consideration of mitigation measures:
- “Stage B: Developing and Refining Alternatives & Assessing Effects**
1. Test the Local Plan Objectives against the Sustainability Appraisal Framework
  2. Develop the Local Plan Options including Reasonable Alternatives
  3. Evaluate the likely effects of the Local Plan and Alternatives
  - 4. Consider ways of mitigating adverse effects and maximising beneficial effects**
  5. Propose measures to monitor the significant effects of implementing the Local Plan” **[NPPG 013 – emphasis added]**
- Stage B** should also involve considering ways of mitigating any adverse effects, maximising beneficial effects and ways of monitoring likely significant effects.” **[NPPG 017]**
- 3.2.16 The SASC states at **para 3.1.3, page 3**:
- “It should be remembered though that these scores **do not take account of detailed mitigation** that could be implemented, rather they present the ‘raw data’ for each site to allow for a fair and consistent comparison. **[emphasis added]**”

3.2.17 The **RTPI Practice Advice Note, 2018**, identifies mitigation measures as a key purpose of SEA/SA. The advice note also provides specific guidance on the application of mitigation measures:

“Generally site assessment deals with the merits of the existing site, rather than with specific proposals for the site or with different uses of the site. However shortcomings of a site, e.g. a substantial distance from a health centre, may be able to be mitigated through, say, the provision of a new health facility. ‘Mitigation off’ v. ‘mitigation on’ assessment could deal with the problem of larger sites looking more problematic than smaller sites because many services will be further away from them. The ‘mitigation off’ assessment would consider a development’s potential effects based on location alone, and the ‘mitigation on’ assessment would also consider the mitigation offered by other plan policies or site planning conditions.” **Page 15**

3.2.18 The SASC has failed to consider mitigation measures at all and therefore does not comply with the regulations and guidance. The information used for the selection of the allocations can therefore not be relied upon and does not provide an accurate or robust assessment, which is linked to the evidence available.



## 4.0 Site Assessments

- 4.1.1 The Supplementary Consultation on the Draft Local Plan includes a separate report of the Site Assessments. The report lacks detail and should have been used to inform the SASC rather than the other way around.
- 4.1.2 The report sets out a two-step process, however only the results of the second step are provided in the report, showing a lack of transparency in the results. **Appendix D of the Cabinet Report, January 2019** shows the results of Step 1, but this is not referred to in the report or included within the Council's evidence base.
- 4.1.3 Appendix D shows that 75 of the sites have not been assessed in the SA, despite the references within the Draft Local Plan SC and SASC that the purpose of the consultation is to assess **all** the site options. Of the sites 'not considered in the SA' 15 are identified as 'green' (identified for allocation) and 9 as 'amber' where the impact is regarded as 'less harmful' than the sites in the 'red' category, which have been rejected. The failure to assess all the sites in the SA shows a failure to consider all reasonable alternatives in a consistent manner as well as a lack of a transparent approach to decision making.
- 4.1.4 The Step 2 site assessments provide more detail on the constraints for each site, however, the information is regarded as inadequate. For example, only the quantum of effects from the SA is provided with no explanation of what the significant impacts are or whether such impacts can be mitigated. As the SA has been carried out without mitigation it is likely that some of the impacts can be suitably mitigated.
- 4.1.5 11 of the allocated sites also fall into **Category 3** in the **SHELAA** which have significant constraints and are classed as not developable:  
"Paragraph 3.78 describes the category bands used in the SHELAA. Category 1 perform well against suitability, availability and achievability assessments and are therefore affected by the fewest constraints, these are considered deliverable sites. Category 2 sites have a limited level of constraints and are classed as deliverable. **Category 3 sites are classed as 'not currently developable' and have more significant constraints.**" (footnote 13, page 8)
- 4.1.6 The assessment of the Fulford Hall Farm site (site 313) at Tidbury Green within the Site Assessments report is also considered flawed in respect of the overall level of priority attached to the site (level 9 rather than 6 identified by the evidence) and more specifically the judgments made in relation to Green Belt and Landscape sensitivity (see main representations by Framptons/LDA)

## 5.0 Conclusions

The **National Planning Practice Guidance** on SEA/SA is clear in **Paragraph 001**:

“A sustainability appraisal is a systematic process that must be carried out during the preparation of a Local Plan. Its role is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

This process is an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the proposals in the plan are the most appropriate given the reasonable alternatives. It can be used to test the evidence underpinning the plan and help to demonstrate how the tests of soundness have been met. Sustainability appraisal should be applied as an iterative process informing the development of the Local Plan.”

5.1 Under section **19(5) of the Planning and Compulsory Purchase Act 2004**, Sustainability Appraisal (SA) is mandatory for new or revised Development Plan Documents (DPDs), which includes the Local Plan. When conducting a SA of DPDs an environmental assessment must also be conducted in accordance with the requirements of **European Directive 2001/42/EC** (The Strategic Environmental Assessment Directive), transposed into the UK legislation by the **Environmental Assessment of Plans and Programmes Regulations 2004, Section 12**.

5.2 **Paragraph 1.1.7 (page 1)** of the SASC report, prepared by AECOM, sets out the purpose of the consultation and notes that this Interim SA report does not constitute an ‘SA Report’ as defined by the SEA Regulations.

5.3 **Section 4 ‘Next Steps’ (page 9)** of the SASC report, also states:

“4.1.4 The Council intends to undertake further work in support of the spatial strategy, including a reconsideration of spatial alternatives for housing and employment growth. These next stages of work will also need to be subject to sustainability appraisal.

4.1.5 It is the Council’s intention to publish a pre-submission plan for consultation in the summer of 2019. At this time, a full SA Report will be prepared which documents the entire SA process.

4.1.6 This Interim SA Report will be subsumed into the final SA Report...”

- 5.5 **Para 4 (page 4)** of the Draft Local Plan Supplementary Consultation confirms:  
“This is a non-statutory supplementary consultation (under regulation 18 of the plan making regulation) to that undertaken for the Draft Local Plan in December 2016, and it should be read in conjunction with that document.”
- 5.6 It is therefore clear that the Supplementary Consultation is to be considered as part of the **Regulation 18** stage and that the next iteration of the Plan and supporting SA will be part of the **Regulation 19** stage of the plan making process.
- 5.7 The Local Plan also states in **paragraph 5 (page 5)**:  
“This consultation is not seeking to:
- Revise the contribution that the Council is making towards the HMA shortfall. This will be considered through the draft submission version of the plan (the regulation 19 version of the Plan).
  - Amend the overall spatial strategy set out in the DLP.
  - Revisit the non-housing related parts of the DLP.
- 5.8 **Para 013** of the **NPPG** provides a flow chart of the SA process, which shows that the assessment of alternatives should be undertaken at **Stage B** of the process – **‘Developing and Refining Alternatives and Assessing Effects’**. Stage B also corresponds with **Regulation 18** of the Local Plan preparation. The assessment of alternatives should therefore be undertaken as part of the Regulation 18 stage not 19 as proposed.
- 5.9 Whilst it is understood that the Local Plan Supplementary Consultation has not included the issues itemised in paragraph 5 above, the approach taken is regarded as incorrect. The additional work following this consultation is likely to result in further alternatives that need to be assessed in the SA, which could have implications for the Spatial Strategy and the need for further assessment of alternatives, as well as the necessary consultation. The decision to postpone these decisions to the Regulation 19 stage is therefore considered misplaced and should be undertaken as part of a Regulation 18 consultation.
- 5.10 The Council’s view that the Supplementary Consultation is ‘informal’ also contradicts the Statement of Community Involvement, 2007 (**para 2.1.9, page 7**), which confirms that there should be formal consultation on the preferred options identified and that the comments received will help in identifying a preferred option to be pursued. This stage in the process (Stage 2) will be followed by a further formal consultation on the Preferred Option before submission to the Secretary of State. The supplementary consultation should therefore be a formal consultation to identify the preferred options to be pursued.

5.11 The review of the SASC has found that a formal SA report should have been prepared at this stage in the process to inform the Draft Local Plan and been subject to consultation. The SASSC therefore does not comply with the relevant regulations and guidance in several regards:

- The SA has not considered alternatives to the local housing need as a result of the changes to guidance, national policy and the Greater Birmingham HMA Strategic Growth Study
- The SA has not assessed **all** reasonable site options (**SASC para 2.1.2, page 2**) [see Appendix D: Cabinet Report, 17/01/19]
- The SA methodology, established through the Scoping process, remains flawed and has not been revised to take into account representations made at previous stages
- The results fail to evaluate the significance of the impacts [Schedule 1& 2 of the regulations] or provide links to the appropriate evidence base
- There is no consideration of mitigation measures or cumulative effects
- Green Belt Land is still not considered within the SA
- There has been no sequential test of the proposed site allocations, contrary to the Environment Agency's recommendation in their representations
- There is no explanation of the reasons for the selection or rejection of options or overall conclusions of the sustainability of different alternatives [Reg.12 (3) Sch.2 (8); NPPF para 35; NPPG SEA/SA 013; 017; 018]
- There is no explanation of how the SA results have informed the Local Plan, an integrated process has not been demonstrated
- The report does not show how responses to the previous consultations have been taken into account, particularly the statutory consultees and neighbouring authorities.

5.12 The SASC does not provide an adequate appraisal of all the reasonable alternatives, in compliance with the regulations and guidance. It therefore cannot be established that the proposed strategy and preferred options are justified in accordance with the NPPF. The SA has not demonstrated that the strategy is appropriate or that it has taken into account all reasonable alternatives, based on proportionate evidence.

- 5.13 The separate Site Assessments report, issued as part of this consultation provides some additional information on how the sites have been selected but also does not comply with the SA regulations and guidance. In particular, the reasons given for the selection and rejection of sites are not provided and the results of the SA are not explained. It is therefore not known how the SA has influenced the decisions made.
- 5.14 In addition, the site assessment process has shown in **Appendix D** to the **Cabinet Report, January 2019** that a total of 75 sites were not considered in the SA. Of the sites 'not considered in the SA' 15 are identified as 'green' (identified for allocation) and 9 as 'amber' where the impact is regarded as 'less harmful' than the sites in the 'red' category, which have been rejected. The failure to assess all the sites in the SA shows a failure to consider all reasonable alternatives in a consistent manner as well as a lack of a transparent approach to decision making. Furthermore, 11 of the proposed allocations fall under Category 3 of the SHELAA, which have significant constraints and are classed as 'not currently developable' (**DLPSC: Site Assessments, page 8, footnote 13**).
- 5.15 The assessment of the Fulford Hall Farm site (site 313) at Tidbury Green within the Site Assessments report is also considered flawed in respect of the overall level of priority attached to the site (level 9 rather than 6 identified by the evidence) and more specifically the judgments made in relation to Green Belt and Landscape sensitivity (**see main representations by Framptons/LDA**)
- 5.16 As set out in our previous representations, the Interim SA cannot be considered fit for purpose. Coupled with the inadequacies of the Supplementary Consultation, significant amendments to the SA are needed in order to demonstrate a robust process has been followed and to consider the Local Plan sound.
- 5.17 The SASC fails to rectify errors identified in the Interim SA 2017 or consider all reasonable alternatives as required in Stage B of the SA at Regulation 18 of the Local Plan. It is therefore considered premature for the Council to move to Regulation 19 of the Local Plan process before the significant errors are corrected. Failure to do so will result in a Sustainability Appraisal, which is not legally compliant and a plan which is unsound, making the Local Plan very vulnerable to legal challenge.
- 5.18 The most appropriate way to resolve the inadequacies identified in the SA to date, would be to undertake further work before carrying out an additional Regulation 18 consultation, as recommended in the **NPPG (para 04)**.



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