

WATERSTOCK: REPRESENTATIONS SUBMITTED BY GREYSTOKE LAND

Introduction

1. These representations are submitted for and on behalf of Greystoke Land.
2. These representations are made in response to South Oxford District Council's Regulation 19 consultation seeking the views of members of the public in to, amongst other things, the choices and preferences selected and made by the Council for the location of strategic housing development within the administrative area and within the time horizon of the emerging local plan.
3. It may be noted at the outset that the numerical provision which the Council seeks to meet is heavily inflated by the Duty to Cooperate in which SODC has agreed to meet part of the unmet needs of the City of Oxford and, self-evidently, those needs are best or better met in close proximity to Oxford as distinct from remote locations in the countryside poorly connected to Oxford by existing transportation infrastructure and which may then create car borne commuter settlements.
4. Furthermore, the central function of the local plan is to deliver housing. Deliverability is at the centre of the Government's housing strategy and is a prerequisite of presenting a plan to the Secretary of State to be endorsed as "sound". A site which is not deliverable, or has serious questions over its deliverability, is plainly inferior to a site which is unequivocally deliverable.
5. These headline points provide the key basis for the presentation of the Waterstock site as superior to the alternatives presently being proposed by the Council; especially Harrington and Chalgrove. The planning context is advanced by Dijksman Planning for and on behalf of Greystoke Land and these representations must be read as a single entity.

Legal Context

6. The principal function of this note is to provide the Council with an indication of the basis for contending that they are under a mandatory obligation to consider these representations and the manner by which they must be considered.
7. The Local Planning (England) Regulations 2012 ('the 2012 Regs') provide that:

- (i) A local planning authority which is preparing a local plan for submission must notify (a) such of the specific consultation bodies as it considers may have an interest in the subject of the proposed local plan, (b) such of the general consultation bodies as it considers appropriate and (c) such residents or other persons carrying out business in the local planning authority's area from which it considers it appropriate to invite representations of the subject of the local plan which it proposes to prepare and must take into account any representations which they make (r.18(1)-(3));
 - (ii) Any other person may also make representations to a local planning authority about a local plan which it proposes to submit to the Secretary of State (r.20(1)).
8. Such consultation must be carried out consistently with the principles set out in *R v Brent LBC ex p Gunning* (1985) 84 LGR 168 (aka "the Sedley criteria"):
- "Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third . . . that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."*
9. The Sedley criteria have been approved by higher courts on numerous occasions, including the Supreme Court in *R (Moseley) v Haringey LBC* [2014] 1 WLR 3947 where Lord Wilson JSC observed at 3957 (para.25) "it hard to see how any of his four suggested requirements could be rejected or indeed improved".
10. The Council must then explain to the Secretary of State how and in what manner it has taken representations into account when the plan is submitted for independent examination (r.22(1)(c) 2012 Regs).
11. Further and separately to these duties, the Council must also carry out an appraisal of the sustainability of the proposals in the local plan and prepare a report setting out its findings (s.19(5) Planning and Compulsory Purchase Act 2004 – 'PCPA 2004').
12. The report must be sent to the Secretary of State when the draft plan is submitted for independent examination (r.22(1)(a) 2012 Regs).
13. The content of the report must (amongst other things) "identify, describe and evaluate the likely significant effects on the environment of– (a) implementing the plan [...]; and (b) reasonable alternatives taking into account the objectives and the geographical

scope of the plan [...]” (r.12(2) of the Environmental Assessment of Plans and Programmes Regulations 2004 – ‘the SEA Regs’).¹

14. The courts have interpreted this as requiring an “equal examination of the alternatives which it is reasonable to select for examination alongside whatever may be the preferred option” (*Ashdown Forest Development LLP v SSCLG* [2016] PTSR 78 (CA) citing *Heard v Broadland District Council* [2012] Env LR 461 (HC)).
15. A “reasonable alternative” is one which “will, or sensibly may, achieve the objectives [of the plan]” (*R (Friends of the Earth) v Welsh Ministers* [2015] EWHC 776 (Admin) per Hickinbottom J, as he then was, at para.88(v)).
16. The actions of the Council in discharging these mandatory obligations are all justiciable under general public law principles.
17. Therefore, in summary:
 - (a) The Council must “conscientiously” consider Greystoke’s representations as to why the Waterstock site should be included in the local plan and must explain how they were taken into account in the statement it is required to send to the Secretary of State pursuant to r.22(1)(c) of the 2012 Regs;
 - (b) If it does not accept them, the Council must consider whether it is nevertheless a “reasonable alternative” (i.e. one which could, in principle, achieve the local plan’s objectives, even if the Council considers it to be inferior to the preferred options);
 - (c) If so, the Council must carry out an “equal evaluation” of the likely significant environmental effects alongside those of its preferred options in the sustainability appraisal report it is required to submit to the Secretary of State pursuant to r.22(1)(a) of the 2012 Regs.

Action invited

18. As is made clear in the associated representations, the Council is invited to replace one or more of the presently proposed strategic allocations with the land at Waterstock which may then be brought forward as a deliverable strategic housing allocation which meets the needs of Oxford in a sustainable manner.

¹ See also Article 5(1) of Council Directive 2001/42/EC (‘the SEA Directive’).

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