

Strategic Environmental Assessment

REPORT BY DIRECTOR OF ENVIRONMENT AND COUNTY SECRETARY AND SOLICITOR

REPORT TO CABINET MEMBER – ENVIRONMENT

DATE REPORT WILL BE CONSIDERED:

PROPOSED DATE OF DECISION:

Wards Affected

1. County wide

Purpose

2. To consider the recommendation that a Strategic Environmental Assessment (SEA) of the Unitary Development Plan (UDP), as required by the Environmental Assessment of Plans and Programmes Regulations 2004, is not considered to be feasible under Part 2, s.6(2)(a) and that the public is informed of this decision under the requirements of Part 2, s.6(2)(b) of these Regulations.

Key Decision

3. This is not a key decision.

Recommendation

4. That the County Secretary and Solicitor be authorised to inform the public of the decision that an SEA of the UDP is not feasible.

Reasons

5. To ensure that the Council is shown to have noted, considered and duly acted upon the legislative requirements as set out below.

Considerations

6. The European Directive on the assessment of the effects of certain plans and programmes on the environment 2001/42/EC (the 'SEA Directive') was implemented in the UK by the Environmental Assessment of Plans and Programmes Regulations 2004 (hereinafter referred to as the 'Regulations'). The Regulations apply, inter alia, to plans and programmes whose formal preparation began before 21st July 2004 and which have not been adopted by 21st July 2006.
7. Although the UDP is now in its latter stages of preparation and has already gone through a Public Inquiry, it is unlikely that it will be formally adopted until after 21st

July 2006 and as such comes under the remit of this part of the Regulations. However, Regulation 6(2)(b) provides an exemption for a 'responsible authority' (in this case the Herefordshire Council) preparing a plan, to decide that in all the circumstances it would not be feasible to carry out an SEA report on the plan. As this is a derogation from the obligations of the SEA Directive, such decisions are open to both domestic judicial review and infraction proceedings brought by the European Commission. Therefore, it is likely that the question of feasibility will be an issue considered by the courts on a case-by-case basis and interpreted very strictly.

8. The objectives of the SEA Directive are; to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of the plan or programme, with a view to promoting sustainable development.
9. An SEA report on the UDP would effectively require revisiting need the beginning of the UDP process and comprise:
 - All relevant information identifying, describing and evaluating the likely significant environmental effects of implementing the UDP and reasonable alternatives, taking into account the objectives and the geographical scope of the Plan.
 - Consultation on the SEA report with authorities/bodies with relevant responsibilities (including the Countryside Agency, English Heritage, English Nature and the Environment Agency) and the public. Appropriate time frames would need to be set, allowing sufficient time for consultations, including the expression of opinion.
 - Taking into account the SEA report and the results of the consultation when making decisions on the UDP's content.
 - Providing information to the relevant authorities and the public as to when the UDP is adopted and showing how the results of the SEA assessment have been taken into account during its preparation.

Sustainability Appraisals and SEA's – Similarities and Differences

10. As part of the UDP's preparation three sustainability appraisals (SA's) have been prepared at relevant stages in the policy-making procedure. The first was produced in 1999 and considered the UDP development options, the second assessed the sustainability of the Deposit Draft UDP (2002) and the third assessed the Revised Deposit Draft (2004). These SA's have been assessments of Plan policies and proposals, which apply social and economic sustainability criteria as well as environmental ones and have considered the integration and reconciliation of these different criteria. A further SA will be carried out on the UDP once any final modifications are made as a consequence of recommendations contained in the forthcoming Inspectors Report. Like the previous SA's already carried out, this will be a public document.
11. In addition to the three aforementioned SA's of different elements of the UDP process, a Best Practicable Environmental Option (BPEO) assessment was carried out jointly with Worcestershire County Council (due to the municipal solid waste joint contractual arrangements). The assessment was carried out by consultants and covers various options for the future management of the three major controlled waste streams. The BPEO report was produced in 2003 and its results form a basis for the UDP's waste policies.
12. SA's can be carried out fairly quickly and involve a broad, though still valuable, analysis of policies. An SA allows assumptions to be made about the sustainability

impact of individual policies and indicates where policy adjustments need to be made.

13. SEA's were developed as a way of identifying and dealing with the environmental impacts of plans, policies and programmes. They are the formalised, systematic and comprehensive process of evaluating environmental impacts and their alternatives, including the preparation of a written report on the findings of the evaluation and using the findings in publicly accountable decision-making.
14. Although there are clear overlaps between SA's and SEA's, the latter requires a more rigorous approach at *all* key stages of a plan's preparation and review. An SEA is about the *unplanned* consequences of possible optional policies that may be adopted. It requires a much more detailed and quantitative assessment than is needed for an SA.
15. The Planning and Compulsory Purchase Act 2004 pursues the SA theme and contains a requirement for SA's to be carried out as part of the Local Development Framework (LDF) preparation. Despite the title of these reports (SA's), it is clear from subsequently issued ODPM guidance that such SA's are intended to meet the SEA Regulations requirements as part of a combined social, economic and environmental sustainability assessment.
16. In considering whether an SEA of the UDP is a feasible undertaking, the following points are pertinent:
 - Whether there is a real impediment to carrying out an SEA and it would not merely be inconvenient or unhelpful to do so.
 - The implications for the objectives of the SEA Directive or the Regulations.
 - Whether as at the 21st July 2004 the UDP had reached such an advanced stage that there are compelling reasons why an SEA should not be carried out, or it would be unreasonable to do so taking into account:
 - the statutory steps still to be taken before adoption and the expectation that people may have that the Plan will proceed to adoption.
 - the expense and disruption of having to go back to the beginning of the Plan preparation process, and
 - the extent to which an SEA at this stage is likely to add value or achieve its objectives.
 - Whether the Council is at a stage with the UDP when a meaningful SEA can be carried out.
17. Assessment of Feasibility of Undertaking an SEA of the UDP

In applying the above considerations to the Herefordshire UDP, the following comments arise:

(a) The preparation of the UDP has been a lengthy process and is now nearing completion. At 21st July 2004, consultation on the Revised Deposit UDP had already concluded. An SEA assessment should be undertaken as an integral part of the plan-making procedure. To carry out an SEA on the UDP in accordance with the SEA Regulations would, essentially, mean beginning the UDP process again. The Council has neither the resources in terms of manpower, nor other budget provision to do this.

(b) To undertake a 'retrospective' SEA at this late stage in the UDP's preparation, using information gathered as part of the SA's already carried out, would not be compliant with the Regulations in the following ways:

(i) the significant effects of 'reasonable alternatives' must be identified, described and evaluated in an SEA. The SA produced in 1999 into the UDP development options could be said to have covered this, however, these alternative forms of land use development were essentially in respect of housing and employment proposals, rather than covering all topic areas that may have significant effects.

(ii) the data contained in existing SA's of the UDP is not sufficiently detailed or quantitative to meet the Regulations. It does not involve the depth of analysis or assessment alternatives required. It is unlikely that it would be possible to collect the necessary information in order to carry out a compliant SEA.

(iii) an SEA requires the evaluation of the current state of the environment and the likely evolution thereof without implementation of the plan. Baseline data collection and analysis is therefore needed to allow the UDP's effects to be adequately predicted. This would cover a vast array of subject matters: biodiversity, flora and fauna, population and human health, water, soil, climatic factors, material assets, cultural heritage, landscape, social inclusiveness and economic development. Such data would be time consuming to collect and difficult to find in some instances, again requiring additional resource input which is not available at this time.

(iv) also, it is not clear whether such information would constitute 'baseline' data if collected when the UDP is nearly complete. It would be very difficult, if not impossible, to collect this retrospectively. In addition, since some UDP policies have carried weight for some time now when planning applications are determined, their implementation could already be having environmental, social or economic impacts.

(v) the results of an SEA must be shown to have been taken into account during the UDP's preparation procedure. This could not be demonstrated if a retrospective SEA were to be undertaken.

(vi) taking into account the issues raised in points (i) to (v) above, it is likely that a retrospective SEA of the UDP would be a document lacking in quality data and with a poor depth of analysis, therefore it would realistically add little or no value to the plan-making process.

(c) In planning terms, there would be serious consequences if the Council did not follow the UDP process through to adoption at this stage. It would mean that there would be no up to date development plan framework in place for some time to come. It would result in delays to the start of the transition to the new planning system and the production of the Local Development Framework. Also, there has already been a certain amount of reliance placed on the policies and proposals of the emerging Plan and there is a reasonable expectation on the part of interested parties and the public that it will be adopted shortly with only minor modifications. There may be a consequential loss of reputation for the Council if UDP adoption were not to take place as currently anticipated.

(d) The preparation of the UDP has been undertaken against the background of a series of assessments of the Plan's impact on the environment and a range of other sustainability issues under the SA and BPEO processes. Furthermore, the Inspector has been given the opportunity to consider the SA's undertaken at the Public Inquiry (February – June 2005). These SA's have covered many of the issues which would also need to be assessed as part of an SEA. In addition, the UDP as a whole has

been produced against a background of sustainability and this topic is threaded into each policy area including; the Plan's strategy and vision, strategic policy S1, which encapsulates the general sustainability considerations to be applied to the development strategy and to the subsequent policies for determining planning applications, and the sustainable development options. Again the Public Inquiry provided the Inspector with the opportunity to consider the levels of sustainability applied through various parts of the UDP, as this topic area raised a number of objections. Therefore, the steps taken by the Council to date already secure substantial compliance with the spirit and objectives of the SEA Directive (as set out in para. 4 above).

18. The decision to state that an SEA of the UDP is not feasible does carry with it some risks. There is the possibility of legal challenge through judicial review by an interested party. Conversely, however, a decision to attempt to carry out an SEA would not only be logistically impossible, but would also be unlikely to comply with the Regulations and therefore also risk the possibility of legal challenge.
19. Taking in to account all the aforementioned considerations, it is concluded that at this stage it is not practical or feasible to undertake an SEA on the UDP. There is a real impediment to starting the Plan process again and an SEA carried out now would not be fully compliant with the Regulations and, as such, would not add any real value to the Plan.

Alternative Options

20. To carry out a retrospective SEA of the Unitary Development Plan.

Risk Management

21. The risk of the Council being open to legal challenges for not carrying out an SEA in accordance with the Directive and the Regulations exists – as it would if a retrospective SEA were to be carried out (see above text).

Consultees

22. None.

Background Papers

23. The European Directive on the assessment of the effects of certain plans and programmes on the environment 2001/42/EC (the 'SEA Directive').
24. The Environmental Assessment of Plans and Programmes Regulations 2004.

Further information on the subject of this report is available from David Nicholson, Forward Planning Manager on 01432 261952