Written Materials

Plan-making in a changing climate

Speakers: Wayne Beglan, Rob Williams

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(Registration details can be found HERE)

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Plan-making in a changing climate

Author: Wayne Beglan

Introduction

We live in a plan led system. The development plan should be the starting point for every planning application. The White Paper of August 2020 proposes radical and ambitious change to how that plan led system should function. It promises new primary and secondary legislation, with guidance to follow. The consultation closed on 29 October 2020 and the Government is assessing the responses.

The White Paper describes the challenge as *"an inefficient, opaque process"* leading to *"poor outcomes"*. It identifies as a problem the idea that even an adopted Local Plan cannot be relied upon as *"the definitive statement of how development proposals should be handled"*. The reforms seek to add substantially greater certainty to the development of land going forward. Nationally set targets for housing and approaches to a new Infrastructure Levy are proposed to assist certainty.

An overarching theme is to seek to build a streamlined system of development management, simplifying and rigidifying the consideration of development applications. The Zoning/Areas proposals are a consequence of that approach. The NPPF is held up as an interesting example of how guidance may be streamlined. The other side of that coin, is that the more detailed and often more prescriptive guidance which existed before, might be seen as better supporting a rules-based system. The quid pro quo, in terms of public involvement, is to seek greater participation in a new faster approach to the Plan Making stage. No plan should take longer than 30 months to adopt, and key milestones along the way will also have time limits attached.

The key purposes of the changes are to seek to increase further the levels of housebuilding to a national level of 300,000; and to seek a level of net improvement across developments, consistent with the thrust of Building Better Building Beautiful (2020). There has already been substantial debate about the regional implications of current and proposed approaches to assessing housing need.

The Zoning/Areas system – it's a plan Jim, but not as we know it!

The consultation proposed a new system with 3 kinds of areas, but Government is also considering a simple binary approach. The Areas are fundamental to the approach of the new system. They will, it appears, be the focus on local plan examinations of the future.

Growth areas: designated as suitable for substantial development as defined in guidance. Outline planning permission for the principle of development will be conferred by the adoption of the Local Plan.

Renewal areas: a designation for existing built up areas where smaller scale development is appropriate. Such areas will benefit from a general presumption in favour of development, the terms of which will be set out in legislation.

Protected areas: areas designated as justifying *"more stringent development controls to ensure sustainability"* This broad definition will cover the whole swathe of designations from national to local. In such areas, development proposals are expected to come forward, as now, by a planning application to be judged against the policies in the NPPF.

In Growth and Renewal areas, the web-based local plan will set out broad parameters for design (height, density, and so on). Such areas may be subdivided as appropriate.

The single "Sustainable Development" test

The proposal is that local plans should be judged against whether they *"contribute to achieving sustainable development in accordance with policy issued by the Secretary of State"*. A theme running through the consultation is that examinations have become overburdened by assessments; and a more proportionate approach to the evidence base is required. The proposed abolition of the existing Sustainability Appraisal system is consistent with such a change.

The White Paper does not elaborate further on the proposed test. It may therefore become the defining feature of this test that it requires that local plans simply *"contribute"* (i.e. play a part in the achievement of) to the result of sustainable development.

One of the recurring criticisms in consultation responses to the White Paper is the lack of detail about how of some of these key elements will work. It remains to be seen how much of the detail will find its way into primary legislation or, as is often done nowadays, whether large sections of the real substance and detail will be left to secondary legislation. For example, at the moment it is not clear how the single "Sustainable Development" test will factor in environmental limits. What weighting will be decided the national level for the large range, and the nature and extent, of constraints that LPAs may face.

The proposed stages in plan making

The consultation proposes 5 stages as its preferred approach, with public consultation at 2 of the stages. The proposals essentially seek to truncate the approach prior to submission. Consultation will take place at an initial "call for areas" stage and then upon the submission plan. The examination process will be simplified by the use of the Areas approach, restricting the supporting evidence base to what is necessary, and limiting the length of comments on the plan.

The existing requirement to review plans at least every five years will remain in place; but it appears that mechanisms will be put in place to require earlier review in cases involving plans where monitoring demonstrates that needs are not being met.

The Government's alternative proposal is a streamlined version of the existing examination process; and a process of self-assessment with the Planning Inspectorate performing an auditing function is also mooted.

A number of consultees have pointed out the need for significantly enhanced resource to be provided to LPAs if they are to develop successful Local Plans in accordance with the new proposals. Correctly identifying Growth areas will require large upfront investments in time and resourcing not just from LPAs but from developers as well. In the absence of sufficient

resourcing, commentators have noted that LPAs are likely to be cautious about designating Growth areas in particular.

Another recurring criticism, inherent in the desire to move towards a three Area system, is the lack of sub-areas or further specificity about designations and what they will mean locally in spatial planning terms. Renewal areas in particular have been criticised as too simplistic bearing in mind the very wide range of potential situations they will be required to address.

What will, or should, become of the Duty to Co-operate?

Recently an increasing number of local planning authorities have been experiencing difficulty in getting their local plans adopted due to duty to co-operate ("DTC") failures. Recent examples include Sevenoaks, Wealden, and St Albans (for a second time). Historically it has caused difficulties (whether or not ultimately overcome) for many other authorities. Because local plans can no longer consider "omission sites" directly, those promoting omission sites will often be tactically incentivised to derail a plan by seeking to demonstrate DTC failures with a view either to seeking inclusion of their site in a future variant of the local plan or submitting a planning application or appeal free of policies in the emerging plan running contrary to their proposed development. Failure on the DTC leads to very substantial delays in adopting plans, something the Government considers a key failure in the existing system.

The issue arises because, unlike other kinds of defects or deficiencies in local plans which can be cured by updating analysis or making main modifications to the plan as required by an inspector; the DTC issue is binary: It is pass or fail. Failure by an inch is as good (or as bad) as failure by a mile. Failure means withdrawing the plan and starting again; and, accordingly, much more often than not, a vacuum in local plan provision which runs entirely contrary to the central theme of our domestic planning process. It therefore represents a good target for omission site objectors. It is worth observing that it is often those areas where emerging plans are most contentious, and therefore where the need for an adopted up to date local plan is at its highest, where DTC arguments come to the fore. It is also, partly by nature, a nebulous duty. That is because the circumstances requiring co-operation can vary infinitely. One policy response to such a problem can often be to test it by reference to the judgments of the primary decision maker, rather than superimposing later judgments formed on the basis of information that may not have been available to that decision maker, or which simply have reasonably been viewed differently by that body.

Compliance with the DTC is currently tested as at the date of submission of the plan, so there is no prospect of later steps during the examination process ensuring compliance as the law stands; another policy response might be to allow examining inspectors to defer assessment for further steps to be taken *within* the examination process. But at present, added to these issues, whether an authority has complied is a matter of planning judgment for the individual inspectors, whose views may vary across a reasonable spectrum. Such decisions are, therefore, very difficult to challenge in the High Court as the cases on DTC show. There is little of a "rules based" approach to current DtC decision making.

In changes now a few years old the Government has tried to make compliance easier by relaxing the DTC guidance in the PPG. Yet still multiple authorities fail, often highly aggrieved at what they consider to be mistaken judgments of the examining inspector. In the absence of

abolished regional plans, no-one could doubt the importance of requiring authorities to co-operate on issues of cross boundary strategic significance such as meeting housing need, providing sufficient infrastructure, and promoting the most appropriate spatial strategies. The increasing number of joint plans under consideration is testament to that.

It is therefore potentially highly significant that the White Paper proposes, in unambiguous terms, not the modification but the abolition of the Duty to Co-operate. The single test of "sustainable development" which is proposed, may need to embrace issues which are currently canvassed under the topic of DTC. Government has evidently (provisionally) decided that a binary test is not the best way of achieving necessary co-operation. The consultation simply states that further consideration will be given to how strategic cross boundary issues can be adequately planned for. The proposals imply that further consideration is also being given to criteria which might apply for authorities who wish to develop proposals jointly due to strategic co-operation.

Local Plans will be required to meet needs arising for a minimum period of 10 years. It is clearly envisaged that adoption of nationally set binding requirements, which have already sought to take into account constraints, will lead to greater land release through the plan making process.

However, in the interim the Government continues to exhort LPAs to continue with their plan making. Similarly, inspectors are encouraged to take a positive, pragmatic and proportionate approach through the examination process. The DTC will continue to apply in those circumstances, absent any transitional changes. Examinations into such plans could continue for a significant period into the future. In those circumstances Government could introduce transitional changes to remove the most damaging results of a failure to meet the DTC. Examining inspectors have proved themselves flexible and inventive in providing main modifications to resolve a host of issues in plan making. Where they consider spatial strategies are not sound, or adequate provision is not being made, then further sustainability appraisals and evidence studies to make up those gaps (or to explain why that cannot soundly be done) can be produced within the examination process. There is no reason in principle or logic why inspectors should not now be given a measure of control over how the DTC should be complied with in cases where they have identified failures. In substance, when plans fail for DTC reasons, the relevant authority will normally be required to conduct further DTC work to overcome the identified failures in any event.

The question, therefore, is whether that can better take place within the examination process or not (either by suspension or by specially arranged hearing sessions with DTC partners around the examination table). Such a judgment could be made by an inspector taking into account the wishes of the authority. If the DTC has been missed by an inch, an inspector may wish to adopt that approach, as may the authority. If it has been missed by a mile, then either the inspector or the authority may decide it is better for the authority to regroup and start again. In either event, such a power is likely to lead to far more plans being adopted within the reasonable timeframes the Government wishes to see. The primary legislation should be amended accordingly.

Strategic Environmental Assessment: Where are we now, and where might we be heading?

Author: Rob Williams

INTRODUCTION

1. As we approach the 20th anniversary of Strategic Environmental Assessments ("SEA") in Europe[1] it is an opportune moment to take stock: to ask ourselves how the SEA process is operating in the UK; whether it is meeting its objectives; and if not, how it can be improved.
2. A review of the operation, and utility of the SEA process is also timely given that in less than two months' time the transition period which followed the UK's departure from the European Union will end, with the prospect of divergence from European law. In relation to SEA this is a very real prospect, with the Government having already announced their intention to launch a consultation on changing the approach to environmental assessment in the planning system.[2]
3. The purpose of this paper is not to provide a comprehensive review of the current SEA process, nor provide concrete recommendations for the way forward. Its objectives are more modest: to summarise the headline features of, and main principles underlying, the current system; to outline some of the most frequent criticisms levelled at the process; and to consider the potential for reform, making one simple recommendation.
4. It is hoped that the paper, together with our discussions during the webinar on 6th November 2020, will help stimulate debate amongst those with practical experience of the SEA process ahead of the upcoming consultation.

THE CURRENT SYSTEM

Objectives of SEA

[1] Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ("SEA Directive") came into force in 2001, and was transposed into domestic law by The Environmental Assessment of Plans and Programmes Regulations 2004 ("SEA Regulations")

[2] Speech by George Eustice, Environment Secretary 20th July 2020 https://www.gov.uk/government/speeches/george-eustice-speech-on-environmental-recovery-20-july-2020

5. Since the mid-1980s the environmental effects of major projects have been required to be assessed prior to development consent being granted.[3] However, the environmental impact assessment of projects often takes place at a stage when the framework for those projects has already been established, and the potential for alternative options is limited.
6. SEA filled this perceived lacuna in environmental assessment of development planning, by requiring the framework for decision-taking itself to be subject to environmental assessment.
7. The central tenets of the SEA process are two-fold. First, to ensure that environmental considerations are integrated into the preparation and adoption of plans, by requiring the environmental impacts of a plan's implementation to be assessed (or, in the language of the Directive and Regulations, "identified, described and evaluated"). Second, to ensure that reasonable alternatives to the preferred strategy have been fully considered as part of the plan-making process, by requiring their environmental impacts to be similarly assessed.

Relationship to plan-making

8. The SEA Directive makes clear that the SEA process is procedural in nature.[4] As the High Court has recently reiterated, the assessment is designed to *inform* decision-making, not *dictate* it:

> *"By contrast* [to the Habitats Directive] *the requirements of the SEA Directive for the content of an environmental report and for the assessment process which follows are entirely procedural in nature… The outputs from that exercise are simply taken into account in the final decision-making on the adoption of a plan, but the SEA Directive does not mandate that those outputs determine the outcome of that process."*[5]

9. However, the SEA process – and particularly the environmental report which is at the heart of that process (although not exhaustive of it) – is intended to be central to the evolution of a plan, as well as testing its soundness during examination. This much is envisaged by national guidance, which explains in relation to sustainability appraisals ("SA")[6] that:

[3] Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ("EIA Directive")
[4] Recitals 5 and 9 of SEA Directive
[5] *Spurrier v The Secretary of State for Transport* [2019] EWHC 1070 at [322]
[6] Sustainability Appraisals, which are required to be prepared by section 19 of the Planning and Compulsory Purchase Act 2004, ordinarily incorporate the requirements of SEA, but also consider social and economic issues.

> *"[the] 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 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."*

Core Legal Principles

10. In the almost two-decades since the SEA Directive came into force, the courts have regularly been faced with legal challenges to plans based on alleged inadequacies in the SEA process, and in particular the SA report itself.
11. The following core legal principles – which are by no means exhaustive – can be derived from those cases:

(1) The SEA process is procedural in nature. It informs decision-making, rather than dictating outcomes.

12. See above.

(2) 'Reasonable alternatives' are not all possible alternatives, and the selection of alternatives necessarily imports an evaluative judgement.

13. An environmental report is required identify, describe and evaluate the likely significant effects on the environment of implementing a plan, and reasonable alternatives: Article 5(1) and Regulation 12(2).
14. The reasonable alternatives are to be identified *"taking into account the objectives and the geographical scope of the plan or programme"*: Article 5(1) and Regulation 12(2).
15. It is for the plan-making body to identify the reasonable alternatives. This was confirmed in *R (Friends of the Earth) v Welsh Ministers* [2015] EWHC 776 (Admin) by Hickinbottom J, who gave the following guidance on the subject:

> *" iv) "Reasonable alternatives" does not include all possible alternatives: the use of the word "reasonable" clearly and necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.*
>
> *v) Article 5(1) refers to "reasonable alternatives taking into account the objectives… of the plan or programme…" (emphasis added). "Reasonableness" in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an "alternative" to the preferred plan, is not a "reasonable alternative". An option which will, or sensibly may, achieve the objectives is a "reasonable alternative". ….*
>
> *vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on*

conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does not have to be included in the SEA Report or process." (at [88])

(3) A draft plan, and its reasonable alternatives, must be examined in a comparable way.

16. Although there is no express stipulation in the Directive or Regulations that alternatives are to be appraised in a comparable manner to the preferred option, the Courts have interpreted the Directive as requiring as much: see, for e.g *Heard v Broadland District Council* [2012] EWHC 344 (Admin) at [71]; *Friends of the Earth* at [91].
17. This is consistent with the EU Commission guidance on SEA on the subject[7].

(4) A plan-making authority has an obligation in its environment report to give outline reasons for selecting: (i) the alternatives "dealt with" in the SEA process and (ii) its preferred option over the reasonable alternatives.

18. The requirement of an environmental report to give outline reasons for selecting the reasonable alternatives is found expressly with the SEA Directive[8] and Regulations[9]. By contrast in neither the Directive or Regulations is there such an express requirement for an environmental report to give reasons for selecting the preferred option[10]. However, domestic courts, adopting a 'teleological interpretation', have concluded that such reasoning is required in environmental reports: *Heard v Broadland District Council* at [69]; *Friends of the Earth* at [88(xii)]

(5) The level of information required to be included in the environmental report varies according to the context of the plan in question.

19. Regulation 12(3) of the SEA Regulations (which transposes Article 5(2)) states as follows:

> *"The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–*
>
> *(a) current knowledge and methods of assessment;*
> *(b) the contents and level of detail in the plan or programme;*
> *(c) the stage of the plan or programme in the decision-making process; and*
> *(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."*

20. Schedule 2 (which transposes Annex I) sets out the information which should be included in environmental reports.

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[7] https://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf at §5.12
[8] Annex I(h)
[9] Schedule 2, para 8.
[10] There is a requirement is to provide such reasons in the post-adoption information: Article 9(1)(c) of the SEA Directive, Regulation 16(4)(e) of SEA Regulations

21. The Court in *Spurrier* noted that:

> *"The information which is required to be included in an "environmental report", whether by article 5(1) itself or by that provision in conjunction with Annex I, is qualified by article 5(2) and (3) in a number of respects. First, the obligation is only to include information that "may reasonably be required", which connotes the making of a judgment by the plan-making authority. Second, that judgment may have regard to a number of matters, including current knowledge and assessment methods."* (at [391])

22. The guidance published EU Commission provides further explanation of the 'qualifications' as to the level of information required by the SEA Directive. Of particular relevance is the following:

> *"The reference to 'contents and level of detail in the plan or programme' is a recognition that, in the environmental report for a broad-brush plan or programme, very detailed information and analysis may not be necessary, (for example, a plan or programme at the top of a hierarchy which descends from the general to the particular); whereas much more detail would be expected for a plan or programme that itself contained a higher level of detail."* (at §5.16)

(6) There is no requirement that an environmental report contain "full information" about the environmental impact of a plan

23. The SEA Directive and Regulations expressly recognise that environmental reports may not be able to include "full information" about the environmental impact of a plan.
24. In particular, the requirement to provide the information set out in Schedule 2 as "may reasonably be required" is qualified by *inter alia* "current knowledge and assessment". Where there are difficulties in obtaining the required information, this must be set out in the environmental report: Schedule 2, para 8.
25. In *Cogent Land LLP v Rochford District Council v Bellway Homes Ltd* [2012] EWHC 2542 (Admin) the Court accepted that:

> *"an analogy can be drawn with the process of Environmental Impact Assessment where it is settled that it is an:*
>
> > *"unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain 'the full information' about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an*

environmental statement as defined by the Regulations … but they are likely to be few and far between."" (at [126)])

(7) The SEA can involve an iterative process, which includes the reconsideration of reasonable alternatives at a number of stages.

26. This much was confirmed in the *Friends of the Earth* case in which Hickinbottom J explained as follows:

> *"In respect of a complex plan, after SEA consultation, it is likely that the authority will need to reassess, not only whether the preferred option is still preferred as best meeting the objectives, but whether any options that were reasonable alternatives have ceased to be such and (more importantly in practice) whether any option previously regarded as not meeting the objectives might be regarded as doing so now. That may be especially important where the process is iterative, i.e. a process whereby options are reduced in number following repeated appraisals of increased rigour. As time passes, a review of the objectives might also be necessary, which also might result in a reassessment of the "reasonable alternatives". But, once an option is discarded as not being a reasonable alternative, the authority does not have to consider it further, unless there is a material change in circumstances such as those I have described."* (at [88(vii))])

(8) Many of the decisions about what to include, and not include, in the environmental report involve matters of judgement for the plan-making authority, rather than hard-edged questions of law.

27. This was underlined in *Spurrier* where, having undertaken an extensive review of the relevant case-law, the Court gave the following guidance about legal challenges based on inadequacies in the SEA process:

> *"434. Where an authority fails to give any consideration at all to a matter which it is explicitly required by the SEA Directive to address, such as whether there are reasonable alternatives to the proposed policy, the court may conclude that there has been non-compliance with the Directive. Otherwise, decisions on the inclusion or non-inclusion in the environmental report of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the plan-making authority. Where a legal challenge relates to issues of this kind, there is an analogy with judicial review of compliance with a decision-maker's obligation to take reasonable steps to obtain information relevant to his decision, or of his omission to take into account a consideration which is legally relevant but one which he is not required (e.g. by legislation) to take into account (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at page 1065B; CREEDNZ Inc v Governor-General [1981] NZLR 172 ; In re Findlay [1985] AC 318 page 334; R (Hurst) v HM Coroner for Northern District London [2007] UKHL 13; [2007] AC 189 at [57]). The established principle is that the decision-maker's*

judgment in such circumstances can only be challenged on the grounds of irrationality" (emphasis added)

28. The Court of Appeal upheld this analysis in *R (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214 [126]-[144].

(9) Deficiencies in the SEA process are capable of being cured later in the process

29. It is now firmly established that deficiencies in the SEA process, including in the environmental report, are as a matter of law capable of being 'cured' at a later stage in the plan-making process, at least up to the point of adoption of a plan: *Cogent Land Llp v Rochford District Council* [2012] EWHC 2542 (Admin); *No Adastral New Town Ltd. v Suffolk Coastal District Council* [2015] EWCA Civ 88.

CRITICISMS OF THE CURRENT SEA PROCESS & POTENTIAL FOR REFORM

30. While admittedly anecdotal, in the experience of this author the most frequent (and sometimes contradictory) criticisms made of the SEA process, at least in the context of Local Plan preparation and examination, are as follows:

(1) The process is time-consuming, expensive and, ultimately, disproportionate – in most plan examinations the SA (and its various iterations) will constitute one of the most significant elements of the evidence base. The SA is often a lengthy, detailed document with many technical appendices. Where the SA draws together the outputs of a range of evidence, and forms the centre of the evidence-base, a document of such detail and cost may be justifiable. Where, however, the SA does little to inform plan-making, or to allow testing of a plan's soundness, the process is unsurprisingly criticised for being disproportionate.

(2) The assessments are overly complicated, unwieldy and, consequently inaccessible – the level of detail included in SAs often gives rise to the criticism – especially from members of the public – that the assessments are not easily accessible. However, the level of detail included in the assessments is, perhaps, not surprising, given the requirements *inter alia* (a) to assess not just environmental, but also social and economic impacts; and (b) to assess reasonable alternatives, and to the same level of detail as the preferred strategy.

(3) The assessments are not sufficiently robust, being based on broad-brush assumptions and judgments which are made on insufficient evidence – Given the strategic level at which the assessments are being made, it is unsurprising that assessments are sometimes made on the basis of broad-brush assumptions, and involve the exercise of judgement often without the level of supporting

evidence which would be available at the project stage. Nonetheless, the lack of a specific evidence base often gives rise to criticism from objectors (e.g Historic England's recent objections to plans on the basis of a lack of Heritage Impact Asssessments).

(4) The process is treated as a 'tick box' exercise, which does not inform plan-making – this is often a criticism made by objectors to the plan, who complain that the plan-making authority have either undertaken an assessment in a manner which unfairly supports their favoured strategy and/or have not allowed the outcome of the SA to influence their 'pre-determined' preferred strategy;

(5) The process is treated as straightjacket, with the best performing alternative in the SA automatically being treated as "the most appropriate strategy" – plan-making authorities, objectors - and occasionally even examining inspectors - sometimes lose sight of the fact that the SA is intended to inform decision making, not dictate it.

(6) It provides an obstacle-course for plan-making authorities, and provides fodder for lawyers – as recent case-law has confirmed the bar for challenging the adoption of a plan on the basis of a legally inadequate SA is a high-one. Moreover, it is settled law that any deficiencies can be remedied prior to adoption. Nevertheless, we have all attended examinations where the 'legality' of the SA is debated at length, with counsel opinions flying left, right and centre. Certainly, the government appear to think that lawyers are too heavily involved in the process, with the Environment Secretary talking of a culture *"where there are frankly too many lawyers and not enough scientists"*[11]

FUTURE REFORMS

31. Not all of these criticisms are valid. And certainly not all of these criticisms apply equally to all sustainability appraisals. Nonetheless, there appears to be a widely held view that the current system for assessing the environmental impacts of plans is ripe for reform.

32. While we have yet to see the consultation on the reform of environmental assessment which the Government indicted would be published this autumn, the Environment Secretary has spoken of the "*negative consequences [of] attempting to legislate for these matters at a supranational level"* and has specially indicated a desire to *"chart a new course"* at the end of the transition period.

[11] See fn2

33. That process may ultimately result in a quite different environment assessment process to that currently in place.
34. Whether a radical overhaul is necessary or not, in my view the system of environmental assessment would benefit significantly from a relatively straightforward reform: the adoption of a common standard for sustainability appraisals equivalent, for example, to the Guidelines for Landscape and Visual Impact Assessments published by the Landscape Institute.
35. While each plan is necessarily different in terms of its geographical scope, objectives, and level of detail, such that each SA has to be tailored to the specific circumstances, authoritative guidance as to the *standard* approach to be adopted would help immeasurably.
36. Guidance could be provided on the appropriate content of SAs. So, by way of example, the guidance could address whether alternatives to every policy of a plan has to be assessed, or whether it is sufficient to assess alternatives to the plan's strategy; whether, and if so when, a Heritage Impact Assessment is necessary at the plan-making stage (a particular concern of Heritage England at the moment, and a regular debate at examinations); and whether SAs should seek to provide an overall conclusion on which is the "most sustainable" option, or simply assess the impacts of the preferred scheme and reasonable alternatives against a range of independent sustainability objectives.
37. More prosaically, but no less importantly, the guidance could set out the appropriate structure and format of the SA so that such documents become readily navigable, at least to those who work with them regularly.
38. Of course, the standard would need to allow for flexibility, such that the guidance could not be overly prescriptive. Moreover, as guidance, it could be departed from where appropriate - although the SA should be expected to explain when and why the assessment has departed from the standard.

CONCLUSION

39. It appears likely that the current system of environmental assessment of plans will be subject to an overhaul in the not too distant future. Whether this change occurs or not it is this practitioners' view that guidance establishing a standard approach would improve the system significantly.

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