SEA for local and neighbourhood plans in England

Mark Fessey
Principal Consultant, AECOM
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This presentation

- Introduction
- Background to SEA for Local Plans and Neighbourhood Plans
- The plan-making / SEA process - **challenges** created by plan-making legislation
- Learning lessons and ‘demystifying’ the process
Introduction

- Over the past 11 years, AECOM has supported almost 100 local authorities through direct commissions, plus we are the leading providers of support to neighbourhood groups.

- Local Plan-making in England is challenging, given engaged, knowledgeable and often well funded plan objectors.

- Our experience is that plan-makers do not view SEA positively, and are not confident in their ability to discharge requirements.

- Often a concern that a failure to meet SEA requirements will result in the plan ‘falling at the last hurdle’ (Examination) or being legally challenged post adoption.
Background to SEA for Local Plans

- Through legislation (2004) Local Plans require **Sustainability Appraisal (SA)**, with guidance clarifying that SA should meet the requirements of the SEA Directive.
  - “All references to SA must be taken to include the requirements of the SEA Directive.”
  - “An SA which meets the requirements of the SEA Directive should be an integral part of the plan preparation process.”
- **The SA process = the SEA process.** SA is simply SEA undertaken with no starting assumptions re. a substantive focus on environmental issues.
- The SEA / SA process is understood from the Regulations (which transpose the Directive almost verbatim), and also guidance.
Background to SEA for Local Plans

- SEA practice must also account for precedents set by Planning Inspectors and legal judgements.

“The evaluation of reasonable alternative options is a fundamental part of plan making. It is necessary for soundness, and a Plan can only be justified when it has been formulated on such a basis. On the whole it is the SA process which performs this function.”

PINS, 2014

“If the methodology for choosing the best locations for new development is soundly based, then it follows that the Council’s decisions on which sites to allocate should also be sound”

PINS, 2014

“Consulting about a proposal does inevitably involve inviting and considering views about possible alternatives.”

Supreme court, 2015

“As to the substance of the work to be done by a local planning authority in identifying reasonable alternatives for environmental assessment, the necessary choices to be made are deeply enmeshed with issues of planning judgment, use of limited resources and the maintenance of a balance between the objective of putting a plan in place with reasonable speed… and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined. The effect of this is that the planning authority has a substantial area of discretion as to the extent of the inquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail…”

High Court, 2014
Background to SEA for Neighbourhood Plans

- There is not an automatic requirement for SEA.
- So, there is a need to ‘screen’ all NPs
  - “Alongside the Neighbourhood Plan, ‘qualifying bodies’ must submit to the Local Authority either: an environmental report; or where it has been that the plan proposal is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), a statement of reasons for the determination.”
The required SEA process

- The SEA process can be understood from reading three articles, and closely examining Annex 1.

  Article 5: The Environmental Report
  Article 6: Consultations
  Article 8: Decision making
  Annex 1: Information to include in the Env Report
The required SEA process (as interpreted)

- Essentially, SEA involves influencing plan-making in two ways:
  1. Alternatives assessment… informs preparation of the draft plan; and
  2. Assessment of the draft plan… and consultation on the draft plan / Env Report… informs plan finalisation.
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  1. Alternatives assessment… informs preparation of the draft plan; and
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- Additional steps / iterations can be appropriate; however, this is not a requirement.

- Similarly, it can be appropriate to publish information on issues/options/alternatives in order to inform draft plan preparation.
The required SEA process (as interpreted)

Env Report must answer four questions –

1) What's the scope of the SEA?
2) What has plan-making / SEA involved up to this point?
   • Including re. assessment of alternatives
3) What are the SEA findings at this stage?
   • i.e. in relation to the draft plan
4) What happens next?
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Annex 1
The report must include...
(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan and the way those objectives and any environmental considerations have been taken into account during its preparation;
(f) the likely significant effects on the environment, including on issues such as…
(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan;
(h) an outline of the reasons for selecting the alternatives dealt with and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information

Interpretation of Annex 1
The report must include…
An outline of the reasons for selecting the alternatives dealt with (i.e. an explanation of the reasonableness of the approach)
The likely significant effects associated with alternatives, including on issues such as…
… and an outline of the reasons for selecting the preferred approach in light of the alternatives considered / a description of how environmental objectives and considerations are reflected in the draft plan.
The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects of implementing the plan

i.e. answer - What has Plan-making / SA involved up to this point?
i.e. answer - What are the appraisal findings at this current stage?
SEA/SA guidance for Local and Neighbourhood Plans

SEA for Neighbourhood Plans

Stage C: Developing and refining alternatives and assessing effects
1. Test the neighbourhood plan objectives against the strategic environmental assessment framework
2. Develop the neighbourhood plan options including reasonable alternatives
3. Evaluate the likely effects of the neighbourhood 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 neighbourhood plan

Stage D: Prepare the Environmental Report

Stage E: Publish and consult the consultation bodies and the public on the environmental report

SA for Local Plans

Stage B: Developing and refining alternatives and 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

Stage C: Prepare the sustainability appraisal report

Stage D: Seek representations on the sustainability appraisal report from consultation bodies and the public

Stage E: Consult on Local Plan in preparation (regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012). Consultation may be undertaken more than once if the Local Planning Authority considers necessary.

Stage F: Submit draft Local Plan and supporting documents for independent examination

Stage G: Outcome of examination
Consider implications for SA/SEA compliance

Local Plan Adopted
SEA guidance for Neighbourhood Plans

- The Neighbourhood Planning Regulations are sensible.
- They enable a ‘classic’ plan-making process along the lines of:
  1. **Consider** issues and options;
  2. **Consult** on a draft plan
  3. **Finalise** the plan, giving consideration to alternatives shown to have merit.
- Therefore, the Guidance on SEA for neighbourhood plans is… OK
  - (without wishing to get into the details)
SA guidance for Local Plans

- The Local Planning Regulations are not sensible, and therefore neither is the SA Guidance.
- There is no requirement to hold a true draft plan consultation.
- So, what is SEA’s role in ensuring ‘early, timely and effective opportunities for public participation, when all options are open’ in line with SEA / Aarhus requirements?
- More generally, how exactly should SEA feed-in and influence plan-making?

There is actually no requirement to consult at Reg 18. It is a “broad requirement to… take what steps are necessary.”
There is a need to demystify what should be a logical and easily understood process (1)

- SEA requirements should be understood as supporting a ‘classic’ plan-making process that essentially involves 1) Work to prepare a draft plan; 2) Consultation on a draft plan; and then 3) Finalisation of the plan.

- Specifically, the role of SEA is as follows:
  - At (1) there is systematic consideration of ‘reasonable alternatives’
  - At (2) an Environmental Report is published alongside the draft plan that provides certain information with a view to informing consultation and plan finalisation.

- This is what the Directive requires, and with a referendum on the horizon advocates of SEA cannot risk accusations of gold plating the Directive.

- However, plan-makers (and others involved in plan-making) will understand that it can be appropriate (i.e. necessary for soundness) to build in additional iterative steps.
  - We’re not trying to ‘make life easier for consultants’ or encourage a ‘race to the bottom’!
There is a need to demystify what should be a logical and easily understood process (2)

- Greater consistency around terminology and approach to reporting across plan-making contexts would also help (a lot) -

  - Be clear that SEA is a **process** and the required **output** is the Environmental Report, and as such do not refer to -

    • ‘SEA of [insert name of consultation document]’; or
    • ‘[insert number] of SEAs’ having been prepared for a plan

  - Label any output published prior to the draft plan consultation an ‘Interim’ Environmental Report.

  - Whatever the stage in the process, the report should be structured so as to clearly answer four questions:

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THANK YOU

Mark.fessey@aecom.com