

Generating Reasonable Alternatives: Lessons from UK Spatial Planning Practice

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Abstract

The ‘alternatives generation’ SEA decision-making step has come under considerable scrutiny in relation to UK spatial planning practice recently as a result of two High Court Judgements. This paper presents evidence of the difficulties typically encountered by UK plan-makers / SEA practitioners, before then moving on to a consideration of underlying problems. It is suggested that underlying problems relate primarily to the challenge of gathering evidence to use as the basis for generating ‘reasonable’ alternatives. However, this is not the only reason that has been given for minimal or absent consideration of alternatives.

Finally, this paper presents a conceptual basis for moving forward. It is suggested that it is helpful to think of there being two aspects to ‘reasonableness’. Firstly, there is a need to consider *alternatives for a reasonable range of plan issues*. Secondly, *for any given issue there is a need to consider a range of alternatives that is reasonable*. This second aspect of reasonableness has perhaps received less attention, despite being of central importance to effective SEA that supports sustainable development.

Alternatives generation and UK spatial planning

The environmental assessment academic literature has not tended to focus on the topic of generating alternatives. Rather, preoccupied with decision-making theory, the focus has been on the way in which proposed approaches and alternatives are *assessed* (as well as, to a lesser degree, decisions relating to the identification of key issues, indicators etc at the scoping stage). However, the more applied literature relating to UK spatial planning / SEA *has* discussed the ‘alternatives generation’ decision-making step at length, not least because the topic has been the focus of recent legal judgements:

- In 2008, the UK High Court remitted policies within the East of England plan relating to accommodating a broad spatial approach to growth within part of the region because they had been adopted without reasonable alternatives having been subjected to appraisal; and
- In 2011, the UK High Court ruled that part of the Forest Heath District Core Strategy must be quashed because the Environmental Report published for consultation alongside the draft plan failed to present ‘*an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option*’ in relation to an urban extension to the district’s main town.

These High Court rulings have led to a flurry of activity amongst UK plan-makers and SEA practitioners wishing to ensure reasonable alternatives are identified and assessed in such a way that enables a

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production of an SEA Directive compliant Environmental Report. However, it is important to point out that there are many instances of guidance going back several years that have sought to emphasise the centrality of alternatives generation and appraisal to sound plan-making. For example, the UK Planning Inspectorate (2007) declared that *'At examination, Local Planning Authorities (LPAs) will need to show a clear trail of alternatives generation, appraisal, selection or rejection and the role that Sustainability Appraisal (SA)⁴ and community engagement have played in this process.'*

UK plan-makers have always found SEA Directive driven alternatives generation a challenge. This is evidenced not only by the successful legal challenges to adopted plans, but also by the reports of Planning Inspectors that have presided over the examination of plans prior to adoption. For example, one Core Strategy⁵ Inspector's Report identified that:

'the alternatives put forward do not appear to reflect a reasonable, relevant and proper range of spatial alternatives... the alternatives did not address the essential, strategic choices to be made as to the direction of the spatial strategy and do not appear to be specific to [the Local Planning Authority]... [and] the alternative wording did not present the alternatives clearly, [with] the difference between each option... opaque, lost in what at times were very minor wording differences, with unclear nuances of approach.'

General, albeit muted, concern was also raised in a UK Government (2008) report that acknowledged that: *'While SAs should evaluate alternative strategies, in some of the case studies this has been severely hampered by the lack of detail about alternatives.'* Perhaps more tellingly, reflecting on a particular case-study planning process, the same study highlighted the problem that *'the preferred alternatives did not derive their momentum and content from the consultation on issues and alternatives.'* Similarly, reflecting on practice across Local Planning Authorities (LPAs), the Planning Inspectorate (2007) expressed concern that LPAs are focusing too quickly on the detail at the expense of the bigger picture and missing the opportunity to consider more wide-ranging spatial alternatives: *'It is clear that a number of LPAs are having difficulty in getting the strategy clear first before moving on to thinking about the detail of the policies needed to put the strategy into effect.'*

At the other extreme, in response to concerns over legal challenge, some LPAs have generated alternatives for every conceivable issue, probably to the detriment of efficient and accessible plan-making. As part of a UK Government (2010) research study, interviewees variously described alternatives as tending to be 'forced', 'retrofitted', 'bogus', and 'manufactured rather than meaningful'. One interviewee commented, with regards to the typical approach to SEA at the time, that practitioners: *'Need a more intelligent approach than the 'Goldilocks' approach... People choose the middle one all the time.'*

Underlying problems

In terms of the underlying causes of difficulties experienced by plan-makers when generating reasonable and meaningful alternatives, it is perhaps firstly important to point out that some may be of the view that alternatives should have no place in plan-making. Broad (2006) stated a concern that: *'The [SEA]*

⁴ Sustainability Appraisal is the term given to SEA of spatial plans in the UK. SAs must follow the process prescribed by the SEA Directive, but are encouraged to start from a blank sheet rather than focus on environmental issues.

⁵ Core Strategies are the key spatial plans developed by Local Planning Authorities (LPAs) to guide change within their area.

Directive results in the need to consider alternatives and therefore [SEA] requires reducing what would normally involve a complex dialogue, often involving many subtly different approaches, to a small number of discrete alternatives – all for the sake of these alternatives being appraised in an [SEA].’ Similarly, Desmond (2007) discussing the role of alternatives in SEA, stated that: ‘such approaches are seen as inconsistent with the realities of policy, plan and programme decision-making by many commentators (e.g. Weston, 2000; Benson, 2003; Bond, 2003), who argue that rational decision-making.... is unrealistic in its assumptions of objective rationality.’

This view is relatively extreme and probably not widely held. Desmond (2007) is correct to point out that the consideration of alternatives (i.e. whilst rejecting others from the appraisal as ‘unreasonable’) can be considered to some extent a ‘rational’ approach. However, it is unlikely that any of the authors listed would suggest that the consideration of alternatives per se is an *overly* rational approach that hinders good environmental assessment practice. There is a need to be pragmatic, recognising that strategic issues are inherently complex, but that it is possible to define and appraise alternative solutions to problems.

Another often cited reason given for minimal or absent consideration of alternatives is that none exist. Broad (2006) suggested that: *‘Supplementary Planning Documents (SPDs) are an example of the meaninglessness of generating alternatives for SA as often the only alternative option that can be appraised is the no-plan-option... [which] is pointless as the decision has already been taken to adopt the SPD.’* Similarly, Jackson and Illsey (2007) quote one regional planner who believed his task to be futile, observing that *‘we solemnly appraise everything that is under the regions’ control...but the big decisions are being taken by central government...’*

The argument that ‘no alternatives exist’ does not stack-up. A strategic plan will, by definition, involve making strategic choices, and where a choice exists then so to must at least one alternative approach. If alternatives have a significant bearing on the environment, then they can be usefully subjected to SEA. Given the nature of SPDs (which often focus on quite specific, design related issues) it may be the case that alternatives do not have a significant bearing on the environment, in which case they should not be subject to SEA⁶, but it is incorrect to suggest that no alternatives exist. In relation to the concern voiced by the regional planner quoted by Jackson and Illsey (2007), UK Government (2008) helpfully clarifies that *‘In some areas there may appear in the first instance to be few choices about overall strategy, because of the parameters placed by regional or national policy, but there is always a local context and local choices to be made which will lead to alternatives.’*

Most often, it is likely to be the case that the underlying problem of alternatives generation is one of evidence-base. Research for UK Government (2008) indicates that the need to examine alternatives through SEA is causing some planning authorities to question assumptions about the type of evidence they gather. This is a good thing (and is discussed further later). However, the authors conclude that *‘Beginning with the idea that evidence provides a means of generating alternatives **and** will be needed to test alternatives remains the exception in the way that the assembly of evidence is thought out’* [our emphasis].

⁶ Indeed, the possibility of screening out SPDs from requiring SEA was brought in by the 2008 Planning Act.

The evidence-burden perhaps increased following the publication of Planning Policy Statement (PPS) 12 (UK Government, 2008b), which placed considerable emphasis on the deliverability: *'Local authorities should undertake timely, effective and conclusive discussion with key stakeholders on what option(s) for a core strategy are deliverable... There is no point in proceeding with alternatives for the [plan] which cannot be delivered as a result of failure to obtain the agreement of key delivery agencies.'* This message resonated widely, as evidenced by a UK Government research study (2010), which found examples of LPAs that had made a steady decision to only appraise those alternatives for which there was evidence of deliverability.

Finally, it is worth speculating whether a procedural change to the UK spatial plan-making process, implemented through the 2008 Planning Act, may to some degree have contributed to difficulties encountered, and potentially even the failings of LPAs to give adequate consideration to alternatives. As a result of the act there is now only a statutory requirement to consult on plans once - on the final draft plan - where as previously there was also a requirement to consult on an earlier draft. The risk is that the plan-makers will be more likely to 'jump' straight to preparation of a final draft plan without giving due consideration to alternatives. At the time of making this change, this risk was recognised by Government (2008), who stated that the changes would be *'monitored carefully... to ensure that, in streamlining the regulatory process, the discipline of examining alternatives and explaining choices that is important to plan making is not lost.'*

Moving forward: A conceptual basis

It is possibly helpful to think of there being two aspects to 'reasonableness'. Firstly, there is a need to consider alternatives for a reasonable range of plan issues. It is this aspect of reasonableness that has been the focus of debate within the High Court. Secondly, for any given issue there is a need to consider a range of alternatives that is reasonable. This aspect of reasonableness has not been tested through the Courts, but is of central importance to effective SEA that supports sustainable development.

Generating alternatives for a reasonable range of issues

In the UK, guidance has been provided to suggest what might be reasonable for particular plan-making contexts. For example, for 'Core Strategies' the Planning Inspectorate (2007) advised LPAs that:

"Alternatives need to encompass the full range of reasonable spatial alternatives. Meaningful alternatives should be developed on such matters as the broad location and balance of development across the authority area, the management of the housing supply, the balance between employment and housing and the delivery of affordable housing... There may also be strategic or other issues that may reasonably involve alternatives, particularly those matters that involve quantifiable housing targets and thresholds, or open space standards".

Further insight comes from the recent UK High Court Judgements. In particular, we learn that, where a plan seeks to determine a broad spatial approach to growth, this is a key objective for which alternatives must be considered. However, the Judgements do not shed light on the degree to which it is necessary to consider alternatives for other plan objectives. There is probably a need to consider alternatives for most plan objectives (of which there will be many for spatial plans, which seek to integrate wide ranging sectoral

interests), but some leeway probably exists. It is certainly the case that a default position of generating alternatives for every detailed plan-making issue can easily become overkill. The default position of plan-makers should always be to assume that reasonableness, in the sense of the issues for which alternatives should be generated, is plan context dependent, i.e. related to the key issues to be addressed.

It follows that alternatives considered as part of the development of a less strategic plan should differ to those considered as part of a more strategic plan. To give a UK specific example, Area Action Plans are prepared by LPAs with the aim of implementing Core Strategy policy for areas of particular change or challenge; for these less strategic plans, it may well be the case that an objective is not to determine a broad spatial approach (as this has already been determined through the Core Strategy). Rather, the plan will focus on more specific issues of masterplanning, design, and delivery; and, hence, it is for these issues that alternatives should be generated and appraised.

It is also important to consider that, where a plan-making process is long and involves a number of iterative steps, then it may be appropriate to consider different 'levels' of alternative at each step, recognising that decision-making at each plan-making step will seek to address differing issues. Research for UK Government (2007) stated that *'To maximise influence at the early stages it is essential that the [SEA] considers issues at the strategic scale. It should not be limited to suggesting minor wording changes and mitigation measures.'* Giving careful consideration to the nature of alternatives generated might be considered in-line with the ANSEA approach to SEA, with its focus on *'the decision making process as the departure point [for SEA]'* (Nitz and Brown, 2007).

Generating reasonable alternatives for a given objective / issue

As stated by Stinchcombe and Gibson (2001):

"The consideration of alternatives is imperative since all serious interpretations of sustainability represent a critique of current trends and recognise the need for more or less significant shifts away from business-as-usual"

From this statement we see that aspirational alternatives may help to question first assumptions and consider long-term sustainability implications, such as those related to climate change. This discussion clearly has implications for the question of whether or not there is benefit to considering alternatives that are of questionable deliverability (or, potentially, even 'hypothetical'). It is important to consider that debating aspirational alternatives is an important end in itself. As stated by Cowell (2004):

"The very existence of a planning system, at the point where abstract development trends and government policies are translated into concrete land use changes has made it an important arena for the clash of divergent interpretations of sustainability: sometimes leading to minor procedural adjustments; occasionally pointing towards a more radical re-framing of policy. To search for the impacts of planning in simple input-output terms neglects the value of planning as a visible and relatively democratic arena for debating social purpose: for assessing and debating the consequences of the development alternatives we face. Planning has thus contributed in modest ways to the wider deliberation of policy; not simply where it has delivered neat solutions to environment-development conflicts but where it has helped focus attention on claims of environmental integrity, social justice and quality of life that ought to lie at the heart of sustainable development."

Government also recognises the importance of avoiding complacency, embracing divergent interpretations and questioning would be self evident truths, with UK Government (2008) highlighting that:

*'Being able to answer 'what if' questions is essential to an **inquisitive form of plan making** concerned [with making] the best choices, and [demonstrating] that this is being done. The need to examine alternatives and the formal requirement to carry out a sustainability appraisal are causing some planning authorities to **question first assumptions** about the type of evidence they gather. Climate change is one possible issue that is likely to make planning authorities think more in terms of what the consequences would be of possible directions of change. As a consequence local authorities will need to look at what type of evidence is needed for this purpose, as well as looking at longer timescales'* [our emphasis].

Prior to this, UK As stated by UK Government (2006) had emphasised that:

*'It is important that the opportunity of using SA to help consider alternatives is not missed and that the sustainability appraisal process is not seen as a tick box exercise which is required to pass a 'soundness' hurdle... There is a real challenge for authorities to grasp the opportunity offered by sustainability appraisal as a process which will **challenge thinking** and assist with decision making. There is a need for a **positive attitude** and a **willingness to engage** with the process....'* [our emphasis].

It should still be the case that planning authorities are encouraged to use SEA as a vehicle for being creative, testing end of spectrum ideas and pushing back up the decision making chain. At the same time, there is also clearly a need to promote pragmatism given that alternatives assessment can become time and resource intensive.

Conclusions

Assessment of a reasonable range of alternatives is the quintessence of effective SEA, as has been recognised by enlightened practitioners and plan-makers in the UK for some time. On top of this, the issue has been brought to the fore recently in the UK by High Court Judgements. Discussions currently abound as to a definition of 'reasonable' alternatives. However, such discussions are unlikely to reach any helpful conclusion. Quite simply, there is a need to bear in mind the need to consider alternatives for the key objectives / issues that are the focus of decision-making, and that reflect the duty of SA to challenge conventional thinking.

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