

Appendix 6

Opinion by Hereward Phillpot, QC
December 2017

Eastleigh Local Plan

NOTE ON THE REPORT TO CABINET FOR 11 DECEMBER 2017

Introduction

1. I have been provided with a copy of the Report to the Council's Cabinet for 11 December 2017 entitled "*Eastleigh Borough Local Plan (2016-2036) Report of the Local Plan Advisor*" ("the Report"), together with the Appendices to the Report, a copy of a letter to the Council dated 4 December 2017 from Hampshire County Council ("HCC") in its capacity as highway authority, and two notes from Mr Steven Pickles of West Waddy ADP which review the Report and comment on it.
2. I have been asked by the Action Group Against Destructive Development ("ADD") to add any further comments of my own on the Report.
3. This Note follows one that I provided to the ADD dated 19 July 2017 ("the July Note"), which commented upon an earlier report to the Council's Cabinet for its meeting on 20 July 2017. A copy of the July Note is appended hereto, as there are a number of issues addressed in that document that are of continuing relevance, and I cross-refer to its contents at various points below.

The nature and purpose of the decision

4. In the July Note at [3] to [8] I commented on the nature and purpose of the decision that the Council's Cabinet was being asked to take at that stage. At [8] I concluded that:

"The impression that I was left with was that this is an attempt to seek to accelerate the decision-making ahead of the evidence base, with the clear risk that the subsequent gathering of evidence, comparison of options and consultation exercises will be seen as tainted by pre-determination and the legal requirements of soundness and compliance with the requirements of Strategic Environmental Assessment ("SEA") will not be met.

5. The same issue arises here - indeed there seems to me to be little doubt that the whole purpose of the proposed decision is to try to enable the current timetable for the Council's decision on the Pre-Submission Local Plan (see page 11 of the current Local Development Scheme at Appendix 3 to the Report) to be met notwithstanding that the evidence base has not yet reached the stage that would enable that to happen on any sound basis.
6. The background to this can be seen in the Report at [26], where it is recorded that at its meeting in July 2017 the Cabinet decided that:

"... the Council would only be in a position to make a decision on the Local Plan once all the relevant evidence was available and all the options had been fully considered".

7. It is evident both from the Report and its Appendices that this stage has not yet been reached, and is still some way off. There are a number of crucial evidential gaps, many of which would in my view be sufficient (even considered in isolation) to render the Local Plan unsound. These are considered further below, but the existence and importance of these gaps is apparent from the Report itself.
8. Notwithstanding those crucial evidential gaps, the recommended decision is that the Cabinet should make a decision now to approve the 'pre submission' Local Plan (based on a decision to choose Strategic Growth Option ("SGO") B/C over the alternative options – see the Report at [113] and the Assessment of SGOs Draft Background Paper (Appendix 9) at p. 52 [10.1]), and to give delegated authority to the Chief Executive in consultation with the Leader of the Council to:
 - a. *"finalise the wording and content of the Eastleigh Borough Local Plan 2016-2036 (including updating the maps in Appendix 2), following the completion of technical studies (subject to the results of these not significantly changing the content of the Eastleigh Borough Local Plan)"; and*

b. *“to complete and update the evidence base prior to submission provided this does not lead to a significantly different approach needing to be taken in the Local Plan.”*

9. It seems to me to be entirely clear from the material that I have seen that this is not a situation in which the democratically elected members of the Cabinet are being presented with adequate information to enable them to reach a properly informed decision, and it is only if the position changes materially that they will be asked to consider the matter again in due course. Instead, the information presented is patently inadequate to enable any properly informed decision to be made, and the nature of the proposed decision is to invite the Cabinet to press ahead and make the decision anyway, and then allow the Chief Executive to decide at a later stage if the evidence base that emerges requires that decision to be revisited.
10. The development of the necessary evidence base is therefore proposed to follow the Council’s decision. Those consultants and officers responsible for preparing and scrutinising the evidence would be acutely aware of that decision, and there would be an obvious and powerful incentive to avoid any conclusion that would necessitate having to reverse the earlier decision and hence incur further delay in the plan-making process. In my view any evidence prepared by or on behalf of the Council in such circumstances would inevitably risk being tainted by the impression of pre-determination. That is presumably one of the reasons why the NPPG on Local Plans makes clear that evidence is not to be prepared retrospectively [014].
11. In any event, the proposed approach simply cannot be squared with the requirements of lawful and sound decision-making for the reasons I summarised in the July Note at [10] to [13].
12. I am surprised to find that these fundamental issues of approach are not properly tackled in the Report. There are indications in the Appendices to the Report that the Council may have sought and obtained at least some legal advice in relation to its decision-making on the Local Plan. In the letter from Arcadian Ecology to the Council dated 27 November 2017 there is reference to a document entitled *In the matter of*

the emerging Eastleigh Borough Local Plan and in the matter of ecological issues and proposed link road dated 21 November 2017, which appears from its title to be advice from counsel. The letter also refers to an intention that there should be a discussion with the Council's counsel on 28 November 2017. However, the Report does not seek to summarise the advice received, or whether the approach to decision-making recommended in the Report is consistent with that advice or not.

13. The only indication given in the Report as to why the Cabinet is now being asked to adopt an approach to its decision-making on the Local Plan that is inconsistent with that taken in July 2017 is that in November the Secretary of State for Communities and Local Government ("SSCLG") wrote to the Council advising of the risk of Government intervening if the Council does not deliver a Local Plan in a timely fashion.
14. It would plainly not be appropriate or necessary for the Council to fail to satisfy the requirements of lawful and sound decision-making in order to address this risk – and (unsurprisingly) the SSCLG has given no indication to that effect. However, it is hard to escape the conclusion that timetabling pressures are driving the Council's officers to adopt an approach that would fail to satisfy those requirements.
15. Ultimately I consider that the proposed approach is likely to be self-defeating. The delay that would be caused by an Inspector's finding that the Local Plan is unsound (or a successful legal challenge at the end of the process) would seem likely to be of an order of magnitude greater than any delay associated with ensuring that the evidence base is adequate to enable the Council's decision-making to be properly informed.
16. The Report does not inform members of the relative extent of the delay that would be involved depending on which course of action is adopted. Indeed the Cabinet is simply not presented with the option of maintaining the stance it adopted in July 2017 and allowing the evidence base to precede its decision in the usual way.

17. In that context I find it very surprising that the section of the Report entitled ‘Risk Assessment’ at [124] does not offer the Cabinet any advice as to the risks associated with proceeding to make the proposed decision without an adequate evidence base, including the likely delay and additional financial expenditure involved if, as seems to me to be likely, this highly risky approach is unsuccessful.

Approach

18. The correct approach is briefly summarised in the July Note at [10] to [13] and is not repeated here. In addition to those principles, and the additional points identified in Mr Pickles’ notes, it is also important in this case to have in mind the strict requirements of the Habitats Directive for the purposes of decision-making in the Local Plan context. A useful summary of the relevant legal principles can be found in the Judgment in **Wealden DC v. SSCLG** [2017] Env. L.R. 31 at [44]:

“44 The following legal principles apply to the application of art.6(3) of the Habitats Directive and reg.102 of the Habitats Regulations :

*i) the consideration of whether there are likely significant effects is a “trigger” for an appropriate assessment: **R. (Champion) v North Norfolk DC** [2015] 1 W.L.R. 3710 at [41]; **Ashdown Forest Economic Development LLP v Wealden District Council & Anor** [2015] EWCA Civ 681 (Admin) at [12]; **R. (Mynydd y Gwynt) v Secretary of State for Business Energy and Industrial Strategy** [2016] EWHC 2581 (Admin) at [20];*

*ii) where there is a risk of significant adverse effects to a protected site, there should be an appropriate assessment; and such a risk exists “if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned”; and “in case of doubt as to the absence of significant effects such an assessment must be carried out”: the [2004] E.C.R. I-7405 at [44]; **R. (Hart District Council) v SSCLG** [2008] 2 P. & C.R. 16 at [78]; **Mynydd y Gwynt at paragraph [sic];***

*iii) “appropriate” is not a technical term but means that the assessment should be appropriate to satisfy the responsible authority that the project will not *714 adversely affect the integrity of the site concerned, to a “high standard of*

investigation”; and this issue is a matter of judgment for the authority: **Champion** , at [41]; **Mynydd y Gwynt** , at [20];

iv) in respect of the second stage the competent authority must be certain that the plan or project in question will not adversely affect the integrity of their site concerned: **Waddenzee** at [56]–[57]. There should be “no reasonable scientific doubt” remaining as to the absence of such effects (at [59]); **Sweetman and others v An Bord Pleanála** (Case C-258/11) [2014] P.T.S.R. 1092 at [45]–[49];

v) this involves a “strict” precautionary approach: **Smyth v Secretary of State for Communities and Local Government** [2015] EWCA Civ 174 at [61];

vi) the appropriate assessment “cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned”: **Sweetman** at [44];

vii) a third party alleging that there was a risk that cannot be excluded on the basis of objective information must produce credible evidence that there was a real as opposed to hypothetical risk that must have been considered: **Boggis v Natural England** [2009] EWCA Civ 1061 at [37];

viii) a decision-maker discharging its duties under the Habitats Directive and the Habitats Regulations should give the views of a statutory consultee considerable weight (**Ashdown Forest Economic Development LLP v SSCLG, Wealden District Council** [2014] EWHC 406 (Admin) at [110]). However, that advice is not binding and it does not have to be given such weight if cogent reasons can be given for departing from it: see **R. (Akester) v DEFRA** [2010] EWHC 232 (Admin) at [112]; **Wealden DC v SSCLG** [2016] EWHC 247 (Admin) at [91] and [95]; **DLA Delivery v Lewes District Council** [2015] EWHC 2311 at [32]; **Mynydd y Gwynt** at [20].

Shortcomings in the evidence base

19. My comments below are intended to supplement what is said by Mr Pickles in his notes. There are some inevitable overlaps between the two, but I have sought to keep any repetition of points to a minimum.

20. To a certain extent the primary shortcomings in the evidence base are apparent from what is said in the Report itself, although I consider that in a number of important

respects the Report does not fully reflect the extent to which the evidence base will need to develop in order for it to provide an adequate basis for sound decision-making.

Duty to co-operate

21. So far as I am aware, there is no evidence provided that the relevant duty to co-operate authorities will be willing and able to deliver the SGO link road (part of which would be located outside the Council's administrative area) within the time frame required in order to make the proposed SGO acceptable. The letter from HCC dated 4 December 2017 indicates that whilst the Council has begun to engage with the relevant highway authority, this process of engagement is at a relatively early stage.
22. The Duty to Co-operate Statement is not yet available, even in draft. The Report deals with the Duty to Co-operate very briefly at [32] and simply refers in a general way to "*ongoing positive dialogue*". The implications for the delivery of the proposed link road are not addressed in the Report.

Transport and accessibility

23. The Report explains that the traffic modelling work needed to "*inform the Local Plan*" will not be complete until spring 2018. However, in order to "*provide indicative results*" on a partial basis (i.e. looking at SGO Option B/C only) to facilitate the attempt at accelerated decision-making, an interim model was commissioned [59].
24. It is said that the interim study "*incorporates improvements to the highway network which have been identified at an outline, conceptual level as likely mitigations*" [60] and that with these (and the proposed link road) in place the impacts should be acceptable [63]. However:

- a. The Transport Technical Note (Appendix 11) (“the TTN”) explains at [1.2.2] that the South Hampshire Sub-Regional Traffic Model (“SRTM”) “*identified a number of significant/severe traffic congestion impacts*” associated with the preferred SGO option. The Transport Assessment required in order to identify interventions to address these issues and then feed into a further model run has not been undertaken and is not available to inform the Cabinet’s decision. However, the TTN continues at [1.2.3] and [1.3.1] by making the revealing statements that:

“In the meantime, EBC had commissioned SYSTRA to run an “interim” Do Something SRTM to support the full Council in making a final decision on the north Bishopstoke/north-east Fair Oak SGO strategy in December 2017. ...

The aim of the Interim Do Something (DS) modelling work is to provide indicative results focussed on traffic/highway capacity impacts only to support the decision-making by the Council in December 2017, demonstrating that the SGO option can be accommodated acceptably on the highway network.”

In other words, the purpose of the interim work appears not to enable an informed decision to be made between options, but rather to provide favourable evidence about one option only to enable the Council to make “*a final decision*” in its favour at a point in time when the full assessment is not ready.

- b. There are a host of other issues which emerge from the TTN:
- i. The interim model run includes not only “*further strategic enhancements proposed by other agencies and judged as likely to be delivered*”, but also “*an initial proposal for a new scheme to enhance M3 Junction 12 which will be required to accommodate traffic flows from the Northern Link Road*”. The feasibility/deliverability of such a

scheme, and the views of Highways England and any other affected parties in relation to it, are not addressed in the TTN or elsewhere.

- ii. The new interventions in the highway network on which the interim model run depends may or may not be feasible or deliverable. The TTN does not assess this. At [2.4.4] and [2.5.5] it explains that some of the changes are “*at a conceptual/pre-feasibility level only*” (emphasis added) and that the designs are “*the horizontal layout only, with no further consideration given to any other elements of feasibility (land ownership, levels, buried services).*”
- iii. The TTN reports significant and/or severe increases at a number of junctions. As [6.1.3] and [6.1.4] explain:

“The local interventions tested as part of the Interim Do Something have alleviated the problems experienced at these locations within the Do Minimum A2.a scenario. However, in some cases, the impact has moved to other locations, such as the Allbrook Hill Relief Road junction with Allbrook Way.

The following locations have been identified as suffering from a severe impact when compared to DMA2.a:

- *A335 Allbrook Way/Relief Road Roundabout*
- *Windhover roundabout*
- *A27 Swaythling Road/High Street/Chalk Hill Junction*
- *Winchester Road/Otterbourne Hill Roundabout*
- *M3 J12/A335 Western Roundabout*
- *A3024 Burlesdon Rd/B3033 Botley Road Junction*
- *Botley A334/A3051 Roundabout*
- *B3342 Tollbar Way/Maunsell Way Roundabout”.*

- iv. There is no assessment of a phased implementation of the SGO, to enable a judgment to be made about the acceptability or otherwise of enabling some of the development to proceed before the link road and/or other interventions are complete.
- c. No consideration at all is given to the acceptability or otherwise of the proposed SGO if one or more of these measures cannot be implemented. As the July Note explained by reference to the NPPG on Local Plans, where the delivery of crucial infrastructure is uncertain then the plan should address the consequences of this, including possible contingency arrangements and alternative strategies [16].
- d. The interim modelling only looked at one of the options, and the Report itself states that *“the full transport modelling is still to be completed and this will enable the relative benefits of each option to be fully assessed”* (emphasis added).
- e. In my view it is unreasonable in the **Wednesbury** sense to ask the Council’s Cabinet to make a decision to prefer one SGO option over another when it has only been given information about the transport impacts of one of the options in play, and does not have the information needed to understand and assess their relative merits. That would be the case even if the information on the (pre-selected preferred) option was adequate, but that in my opinion is not the case here.

25. The difficulties that all of this presents for the proposed approach to decision-making recommended in the Report appear to me to be insurmountable. That conclusion is only underlined by what is said in the letter from HCC to the Council dated 4 December 2017, namely that in the view of the highway authority:

“In the context of the transport technical work and evidence seen to date it is our view that there is insufficient evidence to conclude

a proper transport assessment, and therefore to finalise spatial development option decisions in transport terms, at this stage.”

Air Quality

26. Until the final traffic modelling is available, it is not at all clear to me how the Council can properly consider the impact of the Local Plan (and the relative impacts of the SGO options) on air quality in its administrative area.

27. The Report at [74] states that the Plan *“will also be subject to a SA before its final form is agreed”* and it is said that this will enable the cumulative/in combination effects to be assessed, but that only serves to underline the point that no SA is available now to inform the crucial choice the Cabinet is being invited to make.

Bio-diversity

28. The Report makes clear that the Cabinet is being invited to endorse the Local Plan, and as part of that decision is invited to choose between the options for the SGO, at a time when it does not have sufficient information to understand the implications of its decision in terms of compliance or otherwise with the Habitats Regulations.

29. The December 2017 Assessment of SGOs Draft Background Paper (Appendix 9) states at [8.2] that:

“The evidence required to inform the Council’s preferred Local Plan/SGO and the necessary associated mitigation measures, namely a full habitat regulations assessment of that preferred approach, is emerging and being discussed with statutory agencies. This will enable the Council to fully consider whether the preferred Local Plan/SGO can be appropriately delivered before the Plan is finalised. ...” (emphasis added).

30. At [76] the Report states that it will be the *“final HRA”* that will *“ensure that the nature of any adverse effects are fully understood, to ascertain whether such effects can be mitigated and to ensure that the Local Plan is supported and informed by a*

robust and appropriate assessment". That assessment is not available to the Cabinet, and yet it is being asked to endorse the Local Plan and to decide between options for the SGO. The assessment and evidence will need to come after the decision.

31. The significance of this shortcoming is underlined by the fact that it is not possible at present to conclude that there would be no likely significant effect for Habitats Regulations purposes, and thus an appropriate assessment will be required (Report [102]).
32. At [108] the Report notes that the HRA will assess "whether these potential effects can be mitigated appropriately" (emphasis added). If the development proposed by the Local Plan would result in an adverse effect on the River Itchen SAC, which cannot be mitigated appropriately, it would be necessary to demonstrate that there were no alternatives and that IROPI exist. The Report is silent on these issues, but it seems unlikely that the Council would be able to achieve this.
33. In summary, as matters stand it is simply too early to say whether the potential effects on the SAC are capable of being overcome with appropriate mitigation and there is no consideration of the consequences if they are not. That is important, because elsewhere the Report appears to imply that the HRA will simply provide evidence as to what mitigation measures are required (see [110]). The same flaw is to be found in the Assessment of SGO Draft Background Paper (Appendix 9) at [8.13] and [8.23].
34. The feasibility and deliverability of any necessary mitigation has not been assessed. I note, for example, that the Draft Strategic Conservation Plan for Southern Damselfly (Appendix 14) makes the following point:

"It is important to clarify that this report represents a summary of the habitat enhancement and creation opportunities identified, but does not provided [sic] detailed plans on their delivery. In addition, it is emphasised that the majority of these options have not been discussed with the landowners, angling clubs or other

relevant stakeholders, and the options should only be considered to represent a strategic plan for potential opportunities, and should not be considered as a programme of agreed works or projects. Furthermore, even if and when this has been secured, a number of opportunities will require detailed hydrological and topographical studies to be conducted to confirm their feasibility and assess their potential impacts on existing important habitat for southern damselfly.”

35. A decision to choose a particular SGO based on the likely deliverability and effectiveness of such mitigation measures would therefore not be one supported by the existing evidence base.

36. Other notable gaps in the evidence base on biodiversity include:

a. The Jonathan Cox Note dated 27 November 2017 (Appendix 15) dealing with air quality impacts on damselfly explains that it is based on historical traffic modelling carried out in 2016 and consequent pollution modelling by AECOM which is no longer up to date. The Note explains that as a result *“further work is required to relate this to the specific effects of the current recommended Local Plan.”* As far as I can see no such further work has been undertaken.

b. The Note also refers to AECOM’s air quality assessment using the EA 2007 guidance, but there is no indication of whether in this case there has been an adequate assessment of cumulative impact in that respect. As I have noted above, the Report implies any such assessment would have to follow as part of the Sustainability Appraisal in due course. This is an issue that has led to other local planning authorities falling into legal error (see **Wealden DC v. SSCLG** [2017] Env. L.R. 31).

37. The Report suggests the HRA will be available to *“inform the Local Plan when it is signed off for Regulation 19 consultation”* [103], but it is quite clearly needed before any rational and sound decision can be made on the options for the SGOs (see the July Note at [10] and [11]).

Viability and deliverability

38. The relevance and importance of viability and deliverability was addressed in the July Note at [14] to [16]. I emphasise the word 'and', because both are required to be demonstrated in order for a Local Plan to be found sound.
39. Whilst they are related issues, viability alone does not ensure deliverability. Where (as here in the case of the proposed link road) delivery of infrastructure is dependent on overcoming other obstacles such as land ownership, the need for cross-boundary working with other authorities, impacts on important species and habitats, and the need to deliver additional measures to overcome constraints at the Allbrook Rail Bridge (see the July Note at [23]), it is necessary to go further than simply assessing financial viability in order to reach a rational and sound conclusion that an option is both viable and deliverable.
40. In this respect it is notable that the Assessment of SGOs Draft Background Paper (Appendix 9) identifies the need to realign the vertical alignment of the Allbrook Rail Bridge at [11.38]-[11.39] but gives no consideration whatsoever to whether or not this is judged to be deliverable and if so on the basis of what evidence and on what timescale.
41. The Report includes a short section on financial viability, but the assessment of the likely impact of these other obstacles on delivery (and the timing of delivery) is cursory at best.
42. So far as financial viability itself is concerned, the available evidence seems to me to be very limited and far from robust. In my view it does not provide anything approaching a satisfactory evidence base for sound decision-taking.
43. A key omission is any consideration of the implications of phasing the development. The Assessment of SGOs Draft Background Paper at Appendix 9 explains that phases

of the SGO development will need to make *“timely provision for transport, community, environmental and other necessary infrastructure and measures”* [11.71]. Reference is made to the need for an Infrastructure Delivery Plan (“IDP”) to be in place, and it is said to be *“crucial that each phase of the development contribute to or delivers components of the strategic infrastructure”* [11.76]. At [11.82] it continues:

“No development will be permitted until the link road (or at least phases 1-3) has full planning permission; and there is at least a strong likelihood that the full road will be delivered (e.g. in terms of land ownership and financial viability). Phases of development will not be occupied until phases of the link road are completed, as determined by the IDP”.

44. In my view that necessitates a proper understanding and assessment of the viability and deliverability implications of such phasing (including the effect of a prohibition on occupation pending completion of phases of the link road), and a proper assessment of the transport and highway implications of the phased approach. Neither appears to have been undertaken.

45. Further and in any event, the Viability Study (“VS”) undertaken by Dixon Searle on behalf of the Council is not sufficiently robust to support the proposed decision. Even leaving aside the absence of any consideration of the implications of phasing, the authors of the VS are quite frank about its limitations:

a. It is entitled *“Viability Study, Emerging findings – High-level review of Strategic Growth Option (SGO)”* (emphasis added).

b. At [5] it is explained that the authors are confident that their *“completed assessment report produced in due course [i.e. not this document] ... will provide the necessary information to inform and support the Council’s development of updated planning policies for inclusion within the new plan.”*

The authors of the report seem to me to be careful not to say that the VS itself provides a sufficiently robust assessment for this purpose.

- c. The VS is described variously as “*early stage (preliminary work only)*” [6], and “*very high-level initial scoping work ... not based on any firm proposals ...*” [7]. This is because “*there is no firm or detailed information on which to base our appraisals*” [2.1.14]. Indeed, it is emphasised that

“... there is much work for EBC and its partners to consider on potential development timing and phasing. All in all, a very wide range of matters remain to be considered and worked up to take this beyond, effectively, the current broad concept type stage”.

- d. As a consequence “*the current assumptions and related emerging findings are necessarily subject to considerable further review and settling down ...*” [8]. Furthermore:

“At this stage, however, we cannot overstate how much the figures are prone to move around – how sensitive they are to varying inputs.” [3.1.5]

- e. In light of these statements by the authors of the VS, it is hard to see how any significant reliance can be placed on its findings, which its authors say are “*unavoidably put forward with some caution, given the very high level nature and level of uncertainty/assumption making involved with most of this*” [3.1.10].

- f. I do not consider that the VS could properly be said to provide an adequate let alone a robust evidence base on which the Cabinet can safely be invited to make the decision envisaged by the Report. The NPPF requires “*careful attention*” to be paid to viability and costs in plan-making [173]. The VS does not provide the evidence that would enable that requirement to be satisfied.

46. The Assessment of SGOs Draft Background Paper at Appendix 9 also appears to make assumptions about the probable availability of public funding and other

'kickstart funding' without offering any specifics or evidence (see [11.57], [11.60], [11.66] and [11.68]).

Conclusions

47. In my opinion the Council's Cabinet is being asked to make a very important decision at a stage in the plan-making process where it is plain that insufficient evidence exists for a properly informed decision to be made.

48. As in the Report to the Council's Cabinet for 20 July 2017, I consider that the approach being taken in the Report to the relationship between evidence, assessment and decision-making at this stage is not consistent with what is needed to demonstrate that the Local Plan is sound, or the requirements of SEA.

49. The only reason for adopting this approach would appear to be in response to the letter received from the SSCLG in November (otherwise I consider it is inexplicable). Any such rationale would be misconceived. The SSCLG's letter neither suggests nor endorses an approach to decision-making that falls short of that which is needed to satisfy the requirements of soundness, or any legal requirements. That is unsurprising, because the likely outcome of any such approach would be to cause much more significant delay to the plan-making process.

**Francis Taylor Building
Inner Temple
London EC4Y 7BY**

**HEREWARD PHILLPOT QC
8 December 2017**