

**IN THE MATTER OF THE JOINT BABERGH
AND MID SUFFOLK JOINT LOCAL PLAN**

**OPINION CONCERNING
THE SUSTAINABILITY APPRAISAL**

INTRODUCTION

1. We are instructed in this matter by Richard Brown Planning Ltd ('RBP') on behalf of Landbridge Property LLP ('Landbridge') to advise in relation to the Babergh and Mid Suffolk Joint Local Plan ('BMSJLP') and in particular to advise on the Sustainability Appraisal ('the SA') supporting the BMSJLP. RBP act on behalf of Landbridge with regard to land at Stowmarket Road, Great Blakenham ('the Site'). The Site, at Great Blakenham, is within the 'Ipswich Fringe' settlements at the top tier of the BMSJLP settlement hierarchy.
2. We are asked to consider the lawfulness of the SA in accordance with national policy, guidance, and the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 ('the 2004 Regulations' implementing European Directive 2001/42/EC) – 'the Directive') on the assessment of the effects of certain plans and programmes on the environment.
3. We have seen and had regard to the Regulation 18 (preferred options consultation representations) and Regulation 19 (pre-submission representation) submissions by RBP, the Hearing Statement previously submitted by RBP (and the accompanying review and analysis of the SA by Jam Consult Ltd (June 2021), correspondence between the examining Inspectors and the joint planning authorities ('JPA') and various background documents.
4. Most recently (10th September 2021) the JPAs produced further documents in response to matters arising in the Matter 4 Preliminary Hearing Session (H30-H32). We have also had regard to those documents.

LAW AND GUIDANCE

5. Section 19(5) of the 2004 Act requires a planning authority to carry out an appraisal of the sustainability of the proposals in each development plan document and to prepare a report of the findings of that appraisal. This is known as a Sustainability Appraisal.
6. The legal obligations in relation to a sustainability appraisal derive from the Directive, which is transposed into English law by the 2004 Regulations. At the heart of the Directive is the requirement for certain kinds of plans such as the BMSJLP to be subject to “environmental assessment” as defined in Article 2(b):

“the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9.”

7. The “environmental report” is defined in Article 2(c) as *“the part of the plan or programme documentation containing the information required by Article 5 and Annex I.”*
8. The information required to be in a sustainability appraisal is set out in Article 5 and Annex I includes:
 - a. Identification, description and evaluation of the likely significant environmental effects both of the proposed plan policies and of the “reasonable alternatives” (Article 5(1));
and
 - b. An “outline of the reasons for selecting the alternatives dealt with” (Annex I(h));
9. The draft plan and sustainability appraisal must be subject to public consultation at a time when there is an “early and effective opportunity” for the public to express their view (Article 6(2)). The sustainability appraisal and the responses to the public consultation “shall be taken into account during the preparation of the plan or programme” (Article 8).
10. The effect of Articles 6 and 8 were discussed by Weatherup J. in *Re Seaport*¹ at paragraph 49:

¹ *Re Seaport Investments Limited’s Application for Judicial Review* [2007] NIQB 62, [2008] Env LR 23

“the Environmental Report and the draft plan operate together and the consultees consider each in the light of the other. This must occur at a stage that is sufficiently ‘early’ to avoid in effect a settled outcome having been reached and to enable the responses to be capable of influencing the final form. Further this must also be ‘effective’ in that it does in the event actually influence the final form.”

11. Guidance sets out a helpful summary of the process and requirements of a sustainability appraisal²:

A sustainability appraisal is a systematic process that must be carried out during the preparation of local plans and spatial development strategies. Its role is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

This 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. Sustainability appraisal should be applied as an iterative process informing the development of the plan.

Section 19 of the Planning and Compulsory Purchase Act 2004 requires a local planning authority to carry out a sustainability appraisal of each of the proposals in a plan during its preparation. More generally, section 39 of the Act requires that the authority preparing a plan must do so “with the objective of contributing to the achievement of sustainable development”. There is a separate requirement for spatial development strategies be accompanied by a sustainability appraisal under regulation 7 of both the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 and the Combined Authorities (Spatial Development Strategy) Regulations 2018.

Sustainability appraisals incorporate the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the ‘Strategic Environmental Assessment Regulations’). Sustainability appraisal ensures that potential environmental effects are given full consideration alongside social and economic issues.

12. Guidance explains the following important features of sustainability appraisal:

² NPPG ID: 11-001-20190722

- a. Sustainability appraisal is required in the preparation of a Plan – it is integral to the preparation and development of a local plan; it is not an exercise that can be carried out *ex post facto* to rationalize choices made without regard to a rigorous sustainability appraisal process. That would not be “*early and effective*” as required by Article 6(2);
- b. The sustainability appraisal should only focus on what is needed to assess the likely significant effects of the Local Plan. It should focus on the environmental, economic and social impacts that are likely to be significant. It does not need to be done in any more detail, or using more resources, than is considered to be appropriate for the content and level of detail in the Local Plan;
- c. Plan-makers should assess the policies in a draft Plan, and the reasonable alternatives as the plan evolves, to identify the likely significant effects of the available options (or reasonable alternatives);
- d. A sustainability appraisal must identify, describe and evaluate the likely significant effects on the environment of implementing the Plan policies and of the reasonable alternatives taking into account the objectives and geographical scope of the Plan;

13. Paragraph 18 of the Guidance addresses what is required of a sustainability appraisal in the treatment of ‘reasonable alternatives’ and how they should be assessed:

The sustainability appraisal needs to consider and compare all reasonable alternatives as the plan evolves, including the preferred approach, and assess these against the baseline environmental, economic and social characteristics of the area and the likely situation if the plan were not to be adopted. In doing so it is important to:

- *outline the reasons the alternatives were selected, and identify, describe and evaluate their likely significant effects on environmental, economic and social factors using the evidence base (employing the same level of detail for each alternative option). Criteria for determining the likely significance of effects on the environment are set out in schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004;*
- *as part of this, identify any likely significant adverse effects and measures envisaged to prevent, reduce and, as fully as possible, offset them;*
- *provide conclusions on the reasons the rejected options are not being taken forward and the reasons for selecting the preferred approach in light of the alternatives.*

Any assumptions used in assessing the significance of the effects of the plan will need to be documented. Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in the plan. They need to be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made.

The development and appraisal of proposals in plans needs to be an iterative process, with the proposals being revised to take account of the appraisal findings³.

14. Reasonable alternatives are not to be addressed as an afterthought but are to be subject to equal examination as the preferred option⁴.

THE BMSJLP

15. The spatial strategy of the BMSJLP seeks to deliver (per SP01) a minimum of c.8,000 net additional dwellings within the Babergh district and c.11,000 net additional dwellings within the Mid Suffolk district over the plan period.

16. In the JPAs' submissions of 10th September 2021, a modified form of policy SP03 was disclosed as "Council text suggestions to Inspectors" (document H07) which proposes deletion of the proposed text at SP03(1) and SP03(4) and to amend that at SP03(2) and (3). SP03(2) and (3) identify that Ipswich Fringe settlements, Market Towns/Urban Areas and Core Villages⁵ will act as the focus for development:

"2. A settlement hierarchy has been created and is set out in Table 2 and Table 3. Ipswich Fringe settlements, Market Towns/Urban Areas and Core Villages will act as a focus for development, which will be delivered through site allocations in the Plan and/ or in Neighbourhood Plans, and windfall development in accordance with the relevant policies.

3. Settlement boundaries have been created as defined on the Policies Map ~~in order~~ to demonstrate the extent of land which is required to meet the development needs of the Plan. ~~New allocations are included within the defined settlement boundaries.~~ The principle of development is established within settlement boundaries, subject to the other policies in the Plan. Outside of the defined boundaries, ~~in isolated locations~~ development will only be permitted in ~~exceptional~~ circumstances specified in national policy."

³ NPPG ID: 11-018-20140306

⁴ *Heard v Broadland District Council* [2012] EWHC 344 (Admin)

⁵ Tiers 1, 2 and 3 of the five-tier settlement hierarchy at Tables 2 and 3 of the BMSJLP

17. The spatial distribution of housing is addressed at SP04 which seeks to deliver c.9,600 dwellings in the Babergh district and c.12,700 dwellings in the Mid Suffolk district over the plan period⁶:

| Classification | Total Homes (SP04) | % |
|------------------------------|---------------------------|-------------|
| (1) Ipswich Fringe | 3,700 ⁷ | 16.59% |
| (2) Market Towns/Urban Areas | 7,200 ⁸ | 32.29% |
| (3) Core Villages | 7,500 ⁹ | 33.63% |
| (4) Hinterland Villages | 2,200 ¹⁰ | 9.87% |
| (5) Hamlet Villages | 700 ¹¹ | 3.14% |
| Windfalls | 1,000 ¹² | 4.48% |
| TOTAL | 22,300 | 100% |

18. What the figures provided in the proposed amended form of SP04¹³ shows, is that only 17% of the BMSJLP's housing delivery is distributed to tier 1 (Ipswich Fringe) *cf.* 79% of housing delivery which will be located at tiers 2 to 5 (inclusive) and some 66% of BMSJLP's housing delivery at tiers 2 and 3 alone (Market Towns/Urban Areas and Core Villages)¹⁴. Considering the position in Mid Suffolk alone, the figure is 14% for the Ipswich Fringe.

SUSTAINABILITY APPRAISAL REVIEW

19. RBP have previously submitted a Hearing Statement concerning various aspects of the BMSJLP. Pertinent here are the matters raised in relation to Matter 1a (legal compliance) and points arising from the review of the SA by Jam Consult Ltd (June 2021 – 'Jam June review') appended to RBP's Hearing Statement.
20. Subsequent to that, and the adjournment of the hearing session for Matter 1a, the JPAs produced further documentation relating to both the Site and the wider BMSJLP. Those further

⁶ *Cf.* housing delivery figures at SP01 of c.8,000 and c.11,000 respectively

⁷ SP04 as proposed at 10th September 2021 – Babergh 2,000, Mid Suffolk 1,700

⁸ SP04 as proposed at 10th September 2021 – Babergh 3,200, Mid Suffolk 4,000

⁹ SP04 as proposed at 10th September 2021 – Babergh 2,700, Mid Suffolk 4,800

¹⁰ SP04 as proposed at 10th September 2021 – Babergh 900, Mid Suffolk 1,300

¹¹ SP04 as proposed at 10th September 2021 – Babergh 300, Mid Suffolk 400

¹² SP04 as proposed at 10th September 2021 – Babergh 500, Mid Suffolk 500

¹³ Per the JPAs' 10th September 2021 'suggestions to Inspectors' document H07

¹⁴ The remaining 4% is allocated to 'windfalls' per SP04

documents have been reviewed by Jam Consult Ltd in the September 2021 Hearing Statement. A number of points of concern regarding the SA were raised in the Jam June review, which remain. We consider each of those matters below.

HOUSING NEED

21. The SA appears to have considered only the impacts of delivery of 10,165 dwellings (being the figure derived from the application of the Standard Method) that translates into the housing figure given at policy SP01(3)¹⁵.
22. Representations on the BMSJLP identified the application of the 20% buffer – and the BMSJLP recognises this at paragraph 06.07, resulting in a figure at policy SP04 of 12,700¹⁶ (presumably 10,165 plus 20% and then with the 500 ‘windfall’ figure added and then rounded to 12,700).
23. However the SA has not assessed the impacts of delivery of any amount of housing beyond 10,165. It is unclear why the SA fails to assess the impact of any housing figure other than the 10,165 figure, especially in the context of the JPAs’ acceptance that a 20% buffer is required. The consequential impacts of an additional 20% housing delivery remain wholly unassessed by the SA; in addition, the performance of any given option against any other housing figure (including the 12,700 now accepted by the JPA) is unknown since – as will be seen below – the spatial strategy options (nine original and one preferred ‘hybrid’ option) appear not to have been considered in the context of housing delivery of 12,700 dwellings. The matter does not end there; however, it being apparent that no other hybrid option has been considered or analysed beyond the JPAs’ preferred option, it is further entirely unknown as to whether there exists one or more other hybrid options that are:
 - (a) realistic alternatives for delivery of 12,700 dwellings; or
 - (b) how they might perform against the JPAs’ preferred option.

The SA’s failure in this regard remains wholly unexplained.

24. In addition there appears to us to be a further defect in the SA’s assessment of the impacts of the housing figure it *does* consider. As the Jam June review sets out, the SA assessment matrix (at SA page 227) appears to show that the only impact identified of constructing 10,165

¹⁵ The figure given for Babergh district is 7,904 (SP01(2))

¹⁶ As of the JPAs’ 10th September 2021 proposed revisions; SP04 originally identified a figure of 12,616

dwelling over the proposed plan period relates to SAO 4 Housing. Self-evidently building 10,165 (or more) houses will have a considerable impact in relation to housing provision. It is also however evident, as Jam Consult note, that it cannot be correct to say that no other significant impacts arise from the construction of 10,000+ houses in relation to any of the other sustainability assessment objectives.

25. It appears unclear to us as to why the impact of housing is assessed solely against the 'housing' objective and none of the other remaining 15 sustainability objectives; the reasons for the rejection of other sustainability objectives, and for rejecting other housing figures, including the higher housing delivery figure featuring in the BMSJLP. Given the BMSJLP's use of a housing figure of 12,700 for Mid Suffolk (and the prior raising of the '20% buffer' point by consultees) it seems to us that at the point of the SA there was an obvious reasonable alternative housing figure that ought to have been considered; there may well be others. Consequently it is difficult to us to assess whether the BMSJLP represents an appropriate strategy taking account of the reasonable alternatives and being based on proportionate evidence.

SPATIAL STRATEGY OPTIONS

26. The Jam June review raised concern with the treatment and consideration of spatial strategy options in the SA. Nine options were subjected to review and analysis in the SA (at Chapter 5), the SA concluding that "*The preferred spatial strategy is likely to be a combination of two or more of the spatial strategy options listed above*"¹⁷. The progression of a 'hybrid' option appears to be that adopted by the JPAs in the BMSJLP. As is noted in the Jam June review (2.2 onwards) there appears to be no information in the SA as to what combination of options is progressed as the preferred option, nor any consideration of different combinations against each other (or the 'baseline' nine options). No explanation is given as to what elements of which option(s) have been combined, or why these elements were selected (or others rejected) or how the preferred combination performs against any other combination of elements. The preferred option, whatever it is, appears not to have been explained, tested or examined in the same manner as the nine 'baseline' options.

27. As is noted in the Jam June review (2.2.4) there is no further explanation as to the above which is given in the JPAs' topic paper on spatial housing approach (document H04); moreover, there appears to be nothing further in the JPAs' documents of 10th September 2021 addressing the matter either. There is a very serious information deficit in this respect.

¹⁷ SA paragraph 5.19

28. The Jam June review expresses concern that it is unclear what the preferred option is, or how it performs against the nine ‘baseline’ options, or how it might perform against alternatively composed ‘hybrid’ options, or why any of the elements (or combinations) were selected or rejected, in conflict with paragraph 18 of the Guidance.
29. We agree with those concerns, noting that none of these are addressed or alleviated by material later produced or published by the JPAs. It does not appear to us that the SA properly considers *all* reasonable alternatives (as is required) nor does it outline what the reasonable alternatives substantively are (whether the ‘preferred option’ or any other hybrid) nor the reasons why alternatives were selected or why alternatives were rejected. It appears that the SA has proceeded on an assumption that there is only one ‘hybrid’ option (which it does not detail, justify, or test in the same manner as the original nine options) and to have assumed that there are no other realistic alternatives. There appears no evidence (whether in the SA or elsewhere) to controvert that position.
30. The SA asserts that “*In overall terms, a spatial strategy that focuses development on the Market Towns and Urban Areas, also being the major employment locations, is likely to prove the most sustainable across the full range of SA Objectives*”¹⁸ but does not appear to explain, nor relate back to evidence, how this conclusion is reached or maintained in light of the BMSJLP’s spatial strategy at SP03(2) that the Ipswich Fringe (tier 1) alongside the Market Towns/Urban Areas (tier 2) and Core Villages (tier 3) will act as a focus for development, particularly where the spatial distribution at SP04 seeks to deliver only 17% of the JPAs housing at Ipswich Fringe settlements, whilst seeking to deliver 66% at tier 2 and tier 3 combined.
31. The spatial distribution of housing (per SP04) for tier 1 (Ipswich Fringe) at c.17% is the same as to the spatial distribution for tier 4 (10%) tier 5 (3%) and windfalls (4%) combined. Tiers 2 and 3 (individually) sit clearly above tier 1 in terms of spatial distribution, and tiers 2 and 3 *together* sit above *all other tiers combined* (1, 4 and 5) even if one adds windfalls to the tier 1/4/5 figures. Indeed tier 3 alone (at 34%) matches the combined proposed delivery at tiers 1, 4, 5, and windfalls combined (34%). This continues through into the material published by the JPAs on 10th September 2021, which (as the review within the Hearing Statement identifies) does not explain why an average of 245 dwellings per settlement is given for the Mid Suffolk

¹⁸ SA paragraph 5.31

Ipswich Fringe (tier 1) cf. the average of 1,322 for Market Towns (tier 2) and 433 in the Core Villages (tier 3)¹⁹.

32. There is seemingly a contradiction between the intended spatial strategy as expressed in the BMSJLP and the spatial distribution in the BMSJLP. This might be capable of being understood if the reason(s) for selecting the ‘preferred option’ (or even what the preferred option was, or the rejected other ‘hybrid options’ were) and how the preferred option performed when analysed in the same manner as the nine original options (or if other hybrid options had been so analysed). The SA gives no assistance in any of these matters, and as a result in understanding the seeming conflict between the expressed spatial strategy and distribution.
33. In our view these failings in the SA are such that the SA fails to meet the requirements of a sustainability appraisal and lacks credibility and reliability as a result. As set out above, the SA fails to explain what elements were selected to comprise the hybrid ‘preferred option’ (or why rejected elements were rejected). The preferred option is not subjected to the same scrutiny as the nine original options, and neither is any alternative hybrid option considered (let alone tested in any way). The SA does not, as a result, consider all reasonable alternatives. As noted above, reasonable alternatives are not to be addressed as an afterthought but are to be subject to equal examination as the preferred option. In our view it is now too late for remedial work to be undertaken in relation to this matter, and the seeming conflict between the spatial strategy and distribution remains unexplained and unresolved.
34. As is noted in the September 2021 Hearing Statement, while document H31 (paragraph 1.03) sets out the approach taken by the JPAs, it fails to set out in sufficient details the rationale for the approach, or the options considered²⁰. No addendum to the SA appears to have been prepared in relation to matters pertaining to how all reasonable alternatives were identified or considered, or as to the preferred option.
35. As a consequence, it remains unclear as to whether the preferred option constitutes ‘an appropriate strategy’ as is required by NPPF 35 and the BMSJLP therefore cannot be found to be sound.

¹⁹ September 2021 Hearing Statement at 1.9

²⁰ September 2021 Hearing Statement ES.11 and ES.12; also 1.3 to 1.6

SITE SELECTIONS

36. The SA asserts that all potential sites were assessed in order to discern which were ‘reasonable sites.’ Sites meeting suitability, availability and achievability tests were considered ‘reasonable’ for the purposes of the SA (SA 6.2 and 6.6).

37. As is summarised in the Jam June review in respect of the Site:

“The Site was submitted as a potential site to the Council in 2019. Representations were made regarding the site in response to the Regulation 18 and Regulation 19 versions of the Local Plan and SA ((see Appendices to Hearing Statement)). Furthermore, an email was received from the Council on 7 December 2020, requesting further information regarding the viability and deliverability of the site, to which a response was sent and further information supplied within the representations (see Representations 2020).”²¹

38. The Site was (for reasons which remain unexplained) not included or appraised as a potential site in the SHELAA 2020 and, consequently, was not considered within the SA.

39. To date, despite repeated and express requests for the same, the SHELAA 2019 is not publicly available and does not feature in the BMSJLP evidence base.

40. It is wholly unclear, given that the Site was notified to the JPAs on numerous occasions, why the Site is not mentioned (at all) let alone considered as a reasonable alternative in the SA. The SA is therefore incorrect in its assertion that “*all site options and policies have been re-appraised in this SA*” (SA appendix A Table A.2). This situation perpetuated beyond December 2020 when the JPAs requested further information on the viability and deliverability of sites (Jam June review 2.3.10). RBP provided further information in response, yet despite this the SA and the BMSJLP remained wholly silent on whether the Site had even been considered, let alone what any analysis by the JPA showed (or what their conclusions were).

41. In addition, the SA does not show how consultation responses have been taken into account. As the Jam June review identifies (2.3.5) some 2019 consultation responses are appended to the SA, but not all.

²¹ Jam June review at 2.3.2

42. The SA therefore appears to have failed to consider all reasonable alternatives in terms of its consideration of sites. Despite being repeatedly told of the Site and from an early stage, the JPAs singularly failed to have any regard to it whatsoever until recently. The SA gives no explanation of how the Site has been treated, or why.

SITE SELECTIONS POST 10th SEPTEMBER 2021

43. The analysis of the JPAs' 10th September 2021 documentation within the Jam Sep review at 1.7 to 1.13 and 2.3 to 2.8 succinctly identifies the problems arising from the JPAs documents of 10th September 2021. For the reasons identified there, it appears to us that the SA still does not appear to have considered all reasonable alternatives, nor does it give sufficient explanation of the analysis of sites, or why sites have been selected or rejected.
44. Although analysis of the Site specifically is not a matter falling within Matter 1a, it does raise concerns which are pertinent to understanding the SA. As noted in the September 2021 Hearing Statement (at 2.1) the JPAs' new site assessments appear not to have been included within the information published by the JPAs on 10th September 2021.
45. This raises concerns as to the approach adopted by the JPAs. For example, per the review in the September 2021 Hearing Statement at 2.11:

“The assessment includes Great Blakenham sites SS0864 Land North of Gipping Road and SS00952 Land South of Gipping Road, which have been identified as ‘not currently developable’ [Ref AO3 - SA Report 2020 - Appendix G] it is therefore not known why these sites have been included within the assessment. The Gipping Road sites have also not been included within the SHELAA 2020 [EH06] or the SHELAA Addendum 2021 [H32].”

46. Similarly, the JPAs' errors in (for example):
- a. Identifying there being no housing yield for SS1295A (the larger site) – cf. RBP's Regulation 18 representations identifying a yield of between 150-200 dwellings (Hearing Statement at 2.12);

- b. The identification of SS0864 (land north of Gipping Road) as the best performing site for Great Blakenham despite it being ‘not developable’ (2.19)²²;
 - c. The division of Great Blakenham from Great Blakenham (Old Bell House) and listing of the settlements separately, despite giving population statistics for each which are identical (indicative of them being treated as a collective whole) but allocating Great Blakenham (tier 1) 8 homes²³ and Great Blakenham (Old Bell House) zero homes (1.11 to 1.13).
47. The position remains therefore one where the decisions made in analysis, selection, and rejection of sites remains unexplained, unclear, and contradictory. Self-evidently reasonable alternatives were not considered as part of the SA and have only latterly been considered. Moreover, the analysis and selection (or rejection) of sites remains obscure, given the identified errors in housing yields, consideration of sites which are not developable (and identifying a ‘not developable’ site as the best performing site) and the seeming division of Great Blakenham despite attribution of identical population statistics. The defects of the SA are, in our view, far from remedied by anything supplied by the JPAs subsequently, noting that there is no addendum to the SA addressing any of the above.

SUSTAINABILITY APPRAISAL METHODOLOGY

48. As is noted in both the Jam June review and the September 2021 Hearing Statement review there are a number of concerns regarding the methodology of the SA and subsequent analysis.
49. The Jam June review highlights that the SA methodology set out in the Scoping Report March 2020, Appendix B is different to the methodology set out in the SA Report 2020, Appendix C – Table C.1 Residential Site Assessment Criteria and Assumptions, which added significance scoring criteria for each sustainability objective, with no explanation proffered (Jam June review 2.1.1). The use of a scoring system (which is itself then averaged) with criteria that are inconsistent, overly complex and inappropriate is also criticised (Jam June review 2.1.2 to 2.1.4) as is the failure of the SA to offer any rationale as to why:

²² Note the assessment by the JPA also of land south of Gipping Road (SS00952) – also identified as ‘not currently developable’ (September 2021 Hearing Statement 2.11)

²³ On a site considered in the SHELAA 2020

“In some instances, the sites that are allocated perform more strongly against the SA Objectives when each SA Objective is given equal weight. In other instances, the sites that are not allocated appear to perform more strongly against the SA Objectives than the sites that have been allocated.”²⁴

50. As the Jam June review observes, it remains unclear why each SA Objective should be given equal weight in an appraisal which covers broad and complex issues, and which should involve the exercise of professional judgement, or why sites that are not allocated appear to perform more strongly than sites which are.
51. Jam also raise that the SA fails to include the significance criteria as set out in Schedule 1(2) and 2(6) of the 2004 Regulations including short, medium and long-term effects, permanent and temporary effects, secondary, cumulative and synergistic effects (Jam June review 2.1.6).
52. These failures, in our view, not only fundamentally undermine the credibility and reliability of the SA as a document (and as a consequence the soundness of the BMSJLP) but, as failures to include the matters at Schedule 1(2) and 2(6) of the 2004 Regulations
53. Subsequent documents of the JPA do not aid or remedy the situation as regards method; if anything they appear to aggravate matters. For example, the assessment of walking distances to key services/facilities, which Jam note appears to have been devised by LUC without reference to any existing guidance or standards and which are often more stringent than current guidelines (September 2021 Hearing Statement review 2.14). We agree with the observations in that review that:

“2.22 The SA of the sites for Great Blakenham provides no conclusion on which sites should be selected or rejected including an outline of the reasons the allocated site was selected, the reasons the rejected options were not taken forward and the reasons for selecting the preferred approach in the light of the alternatives, including conclusions on their overall sustainability.

2.23 Mitigation has not been considered for the majority of impacts, showing an inconsistent approach and a lack of compliance with the regulations and guidance. The SA fails to demonstrate a transparent, robust assessment.”

54. It also seems that, notwithstanding the JPAs late consideration, the Site does not appear in either the SHELAA 2020 (EH06) or the SHELAA Addendum 2021 (H32) and consequently it is still not known whether the Site is selected or rejected as a proposed allocation. This is perhaps

²⁴ SA paragraph 6.119

unsurprising given the JPAs' letter of 24th June 2021 (G03) which invites the Inspectors to make the decision as to whether the Site should be allocated. It seems eminently clear that the methods applied in the SA and underpinning site selection are inadequate and lack both credibility and reliability. Even at this stage of the BMSJLP it is unclear how the Site has been assessed, or even whether it is accepted or rejected as a proposed allocation.

CONCLUSIONS

55. For the reasons set out above we are of the view that the SA fails to meet the requirements of Guidance, the 2004 Regulations and the Directive, and consequently the BMSJLP cannot be said to be an appropriate strategy for the purposes of NPPF 35.
56. The SA fails to consider reasonable alternatives in numerous regards. It does not consider the actual housing delivery number progressed in the BMSJLP (seemingly dismissing without substantive reason any figure other than the standard method's 'unbuffered' figure alone). It fails to consider any 'hybrid' option other than the JPAs' preferred option (and does not either explain why that preferred option is preferred, or what elements were selected/rejected to produce that preferred option). It fails to consider all reasonable alternatives in potential site allocations, and where sites *are* considered, the criteria are unclear and seemingly generated without reference to existing standards or guidance. It results in non-allocated sites performing better than allocated sites (including a 'not developable' site in Great Blakenham being identified as the highest performing site). The JPAs' failure to consider the Site at all until recently (despite being repeatedly told of it) remains unexplained and having latterly considered it the JPAs' stance appears to be to present an analysis to the Inspectors and invite their determination as to whether it should be allocated or rejected.
57. The SA fails to consider the impacts of that quantity of housing against any sustainability objective other than 'housing' and fails to explain why sustainability objectives are given equal weight. It fails to explain the omission of significance criteria as set out in Schedule 1(2) and 2(6) of the 2004 Regulations, or the continuing absence of the SHELAA 2019 in the evidence base or in any consideration within the SA.
58. The defects in the SA identified by Jam Consult Ltd appear not to be capable of remedy by subsequent work; the BMSJLP, its spatial strategy and its spatial distribution would not then

be informed by the SA or by consideration of the impacts of reasonable alternatives. It would almost certainly be tantamount to (if not in fact) retrofitting of work to the BMSJLP.

59. The SA as a document does not comply with the requirements of the Guidance, the Regulations, or the Directive. Consequently, it appears to us that the BMSJLP cannot properly be found to be sound on the basis of the information presently available.

**SCOTT STEMP
THEA OSMUND-SMITH**

28th September 2021

**No5 Chambers
BIRMINGHAM – LONDON – BRISTOL – LEICESTER**