

THE DRAFT VALE OF WHITE HORSE DISTRICT LOCAL PLAN 2031 IN THE CONTEXT OF STRATEGIC PLANNING:

The Oxfordshire Strategic Economic Plan, Oxfordshire SHMA and local SSHA; Science Vale Enterprise Zone; Green Belt Review and other documents

And

The Duty to Cooperate, T&CP Regulations, Strategic Environmental Assessment, and the role of Oxfordshire's LEP and Growth Board

Report prepared by George Lambrick on behalf of CPRE Oxfordshire, December 2014

INTRODUCTION

The Localism Act abolished strategic regional planning (which had abolished strategic County structure plans) but did not re-establish strategic planning for two-tier authorities, but instead established, under s.110 a Duty to Co-operate which is arguably more flexible than other forms of strategic planning, but nonetheless drawn quite widely and quite specific in the requirements and the statutory and regulatory status of those requirements and who they affect - and warrants close reading (see appendix).

When considered from the perspective of how development plans are drawn up in relation to general planning duties to ensure that development is sustainable as defined by NPPF, there are major implications in terms of how this is done (including the NPPF requirement of Local Plans to "*identify land where development would be inappropriate, for instance because of its environmental or historic significance*"; and "*contain a clear strategy for enhancing the natural, built and historic environment*"). A key part of this is what the duty means in relation to the status of documents and designations that define the need for development and other strategic and cross-boundary considerations in relation to the environmental strand of sustainable development, including the requirements of the Strategic Environmental Assessment Regulations 2004.

This is especially relevant where local government is organised on a two-tier basis in which LEPs Growth Boards and the like operating at county-wide level have in effect begun to do in a rather piecemeal fashion what would once have been covered by a County structure plan. There are various major implications for how such strategies and need assessments should – but generally are not – drawn up to ensure environmental sustainability.

To ensure that local plans do follow the NPPF advice on strategic planning in a balanced way it is essential that environmental sustainability is embedded in the strategic development objectives and evidence base, not added on later as way of fine tuning it. As indicated below, this has demonstrably NOT been done in the preparation of the Vale of White Horse Local Plan.

IMPLICATIONS OF THE LOCALISM ACT 2011 DUTY TO COOPERATE AND THE T&CP REGULATIONS 2012 FOR SEA REQUIREMENTS IN RESPECT OF DTC 'ACTIVITIES' AND 'LOCAL PLAN DOCUMENTS'

The general duties of Joint Boards under the Local Government Act to comply with all relevant legislation and regulation and the role of formally designated Local Enterprise Partnerships,

when seen together other statutory and regulatory planning requirements means that the Duty to Co-operate under s110 of the 2011 Localism Act together with regulation 5 of the T&CP Regulations 2012 have the effect of drawing a great deal of what can be defined as development 'plans' or 'programmes' into the realm of requiring the Strategic Environmental Assessment under the 2004 regulations (which in some cases may not have been previously required).

The reasoning for this in relation to some of the key criteria that need to be met for a plan or programme to require SEA under the 2004 Regulations (which transpose the SEA EU Directive into UK law) are as follows.

First, what makes the Duty to Co-operate potentially relevant to SEA is the range of 'activities' in development planning that it covers:

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) [coastal plans etc],

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

Second, with regard to the test of being "*subject to preparation or adoption by an authority at national, regional or local level*", where Joint Boards are set up under the Local Government Act 1972 and/or LEPs are designated under the Town and Country Planning (Local Planning) (England) Regulations 2012 (see below) for the purpose of developing documents that are part of the preparation of development plans, OR that 'prepare the way for', or 'support' such preparation, such documents are types that are "*subject to preparation or adoption by an authority at national, regional or local level*" - they do both fall within the kinds authority that may be required to do SEAs if other criteria are met, and both counts of purpose (preparation and adoption). It is important to note that this applies to LEPS even where they are not also Joint Boards.

the statutory Duty to Co-operate about such matters - and what preparatory documents it applies to under the Localism Act - means that they ARE also "*prepared by an authority for adoption*" because most of these documents are formally adopted as providing the evidence base, development objectives etc that underpin plan preparation.

Third, very importantly, they are "*required by legislative, regulatory or administrative provisions*" because although such documents are not themselves statutory development plans they are now required by legislation because the Duty to Co-operate says

(1) Each person... [local planning authority... or a body, or other person, that is prescribed or of a prescribed description]...

must co-operate so far as they are relevant to activities within subsection (3)

[which means]

(2) (a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and (b) to have regard to activities of a [prescribed] person...

(3) The activities within this subsection are—

- (a) the preparation of development plan documents,*
- (b) the preparation of other local development documents,*
- (c) [coastal plans etc],*
- (d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and*
- (e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.*

The activities and documents outputs listed under (3) DO come within ambit of being "required" by "legislative, regulatory or administrative provisions" - specifically because of the word 'MUST' in (1) and the word 'AND' in (3)(d) taken together with mean that when (to paraphrase) *Activities that can reasonably be considered to prepare the way for [such preparation] that are, or could be, contemplated, and Activities that support [such preparation] so far as relating to a strategic matter,* are together with the unquestionable statutory requirements to prepare development plans and other statutory development plan documents, are all brought within the statutory administrative requirements that apply to the preparation of such Plans.

Furthermore, quite apart from development plans themselves and DPDs etc., at least some of the documents that underpin plan development fall within the TCP Regulations 2012 definition of "local development documents" as follows:

5.—(1) For the purposes of section 17(7) of the [2004] Act the documents which are to be prepared as local development documents are—

- (a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—*
 - (i) the development and use of land which the local planning authority wish to encourage during any specified period;*
 - (ii) the allocation of sites for a particular type of development or use;*
 - (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and*
 - (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;*
- (b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.*

Here again, the phrase "which are to be prepared" demonstrates that all the documents referred to ARE "required by legislative, regulatory or administrative provisions."

From this it would appear that all the activities and resultant documents that come under s.110 of the Localism Act and those to be prepared as 'local development documents' by regulation 5 of the TCP Regulations 2012 are part of the framework for future development consent, and thus would include both the Strategic Environmental Plan, Strategic Housing Market Assessment, Enterprise Zone, Green Belt Review and probably much else.

Fourth, Where such documents commissioned, published and adopted by local authorities' Joint Boards and LEPs are "prepared for agriculture, forestry, fisheries, energy, industry,

transport, waste management, water management, telecommunications, tourism, town and country planning or land use," the Statutory duty to co-operate further brings them firmly within the SEA ambit (as long as this is all part the framework within which projects potentially needing EIAs are determined).

Fifth, With respect to whether such documents cover "*projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC[9],*" this relies on the definition of what is 'EIA development' in Regulation 2(1) of the 2011 EIA Regulations:

"EIA development" means development which is either—

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

There is a further requirement, tested in the European Courts that where development projects individually fall below the Schedule 2 threshold, they may nonetheless be subject to EIA if their cumulative size and effects (one of the tests for screening) are significant.

The types and scales of development covered by the SMHA, SEP and Enterprise Zone designation (and other documents) DO to different extents include individual schemes and projects that in some cases may come within Schedule 1 (compulsory) EIA development; and much more certainly would come Schedule 2 EIA development as defined by the thresholds and sensitivity criteria that define when EIA screening is required. Of particular note is the sensitivity criterion that any development in an AONB is in a sensitive area and therefore EIA Development under Schedule 2 and subject to EIA screening requirements.

Sixth, The Duty to Co-operate also appears to have a big implication in making it much clearer than previously that, through the planning hierarchy, documents such as the SHMA and SEP do "*set the framework ... for future development consent of projects listed in Annex I or II...*" At least four considerations apply here:

1 With regard to '*setting the framework,*' the term '*strategic matters*' in (3)(e), which the Duty to Co-operate makes a core part of the statutory development plan process, is defined as follows:

(4) For the purposes of subsection (3), each of the following is a "strategic matter"—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b) sustainable development or use of land in a two-tier area if the development or use—

(i) is a county matter, or

(ii) has or would have a significant impact on a county matter.

2 The Duty not only very substantially curtails the freedom of a local authority setting its own local plan to do something else, but s.112 of the 2011 Act makes compliance with the Duty applies a test of whether or not a Plan is 'sound.' For a development to be deemed 'sound' the Duty to Co-operate must have been fulfilled properly. There is some leeway in how an Examiner judges this, and the Duty to Co-operate is specifically stated as not being a Duty to Agree, but nonetheless the general thrusts and purpose of the Duty is to co-operate in meeting 'objectively' assessed needs, not to adopt some other basis of judging what quantum of

development is sustainable. This test of soundness means that ALL provisions of the Duty must have been met, making the content has not been applied adequately to the satisfaction of the Independent Examiner (s)he must conclude that the Plan being examined is unsound and give reasons (see also National Planning Practice Guidance on this).

3 The combination of the requirements of the Duty to Cooperate in terms of bringing all preparatory documents within the scope of what is statutorily required for Local Plans makes all such documents - and certainly those relating to '*strategic matters*' - part of the Town and Country Planning Framework for development projects in so far as they are used to determine the scale of development and spatial allocation are made and how national planning policy will be transposed into the local context.

4 In addition, Local Plans and other LDF documents are far from being the only part of the framework when it comes to decision-making for development projects in their area that come within the ambit of it is NOT just that set the framework for decision making, BOTH because

a) No Local Plan 'sets the framework' for the scale, type and broad geographical location of development across sectoral EIA Regulations or across District boundaries.

b) The SMHA does 'sets the framework' for the scale, type and broad geographical location of housing development across District boundaries and has significant implications for why other non-TCP development is needed

c) The SEP in particular - but also other documents relating to infrastructure needs - does set the principal strategic framework in which the need for projects definitely or potentially requiring EIA under non-TCP EIA Regulations is set. No other plan covers the balancing of the scale of development needed under other EIA regulatory regimes:

- Local Plans cannot set the Framework for decision-making for non-T&CP development
- County transport, waste minerals and other strategic plans operate at a different decision-making level and (in part) come under different regulatory regimes and do not

and H) but have cumulative, secondary and interactive effects with the T&CP projects (most obviously housing and industrial/commercial development creating the need for major transport improvements). When planning applications or highways proposals etc are to be determined, the decision-making 'framework' for judging planning balance must - statutorily - take account of national policy, statutory environmental protection, other relevant plans (eg county transport, minerals and waste plans and adopted statements of development need, etc) at a higher level, and cumulative effects with other plans and programmes defined in other strategic documents - all of which the Duty to Co-operate effectively puts on a statutory footing.

OTHER KEY ISSUES:

Duty to Co-operate: Who must cooperate and what does this entail?

The definition of 'prescribed persons' to whom the Duty to Co-operate applies comes in The Town and Country Planning (Local Planning) (England) Regulations 2012 - where relevant - is: "*(a) the Environment Agency; (b) the Historic Buildings and Monuments Commission for England (known as English Heritage); (c) Natural England; (d) the Mayor of London; (e) the Civil Aviation Authority; (f) the Homes and Communities Agency; (g) each Primary Care Trust established under section 18 of the National Health Service Act 2006 or continued in existence by virtue of that section; (h) the Office of Rail Regulation(c); (i) Transport for London; (j) each*

Integrated Transport Authority(e); (k) each highway authority within the meaning of section 1 of the Highways Act 1980 (including the Secretary of State, where the Secretary of State is the highways authority); (l) the Marine Management Organisation", and also referring to subsection (9), "each local enterprise partnership" which is defined as "a body, designated by the Secretary of State, which is established for the purpose of creating or improving the conditions for economic growth in an area".

It is important to note that as pertinent to the activity in question, the requirement is that ALL relevant local authorities AND all these other bodies "*must ... in maximising the effectiveness with which activities within subsection (3) are undertaken,*" - in other words this is a mutually shared obligation - and in my view a big ask! But what is even more important is what this entails: "*a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and (b) to have regard to activities of a [prescribed] person*" goes way beyond mere consultation: it requires a constructive pro-active effort to reconcile competing economic, social and environmental objectives including giving substantial weight to key statutory and policy based environmental protection objectives.

Because the SMHA, SEP and Science Vale EZ designation and documents that flow from these come within the definition of subsection (3) activities (whether or not they are also technically "*local development documents*") AND because the LEP as well as the local authorities who commissioned them are relevant 'persons', all these activities/documents should have demonstrated full pro-active co-operation with other bodies in consideration of environmental protection legislation and policy. They should have acted collaboratively and sought advice from other persons (such as Natural England, Environment Agency English Heritage etc) in the co-operative manner defined to find ways of assessing the environmental capacity of the area to absorb development while also proactively seeking to achieve the last two "Crucial" objectives of plan making listed in NPPF para 157 to:

- *identify land where development would be inappropriate, for instance because of its environmental or historic significance; and*
- *contain a clear strategy for enhancing the natural, built and historic environment, and supporting Nature Improvement Areas where they have been identified.*

The activities and documents that fall within the Duty to Co-operate s110(3) strongly suggests that the Duty to Cooperate was NOT fully and rigorously applied, but it is not entirely possible to substantiate this as they do not themselves contain a detailed account of how the Duty was applied, and the statutory obligation to report how this was done in the Annual monitoring report has not been fulfilled (or not published) – see below.

Monitoring the Duty to Co-operate and Consultation

Annual Monitoring

There is a specific statutory requirement, as explained in National Planning Practice Guidance, that:

"local planning authorities must give details of what action they have taken under the duty to cooperate to their communities in their Authority Monitoring Reports (Town and Country Planning (Local Planning) (England) Regulations 2012, regulation 34(6) (<http://www.legislation.gov.uk/ukksi/2012/767/regulation/34/made>). This should include actions to both secure the effective cooperation of others and respond constructively to requests

for cooperation. It should also highlight the outcomes of cooperation. This should be done at least once a year and information should be published on the local planning authority's website and made available for inspection at their offices."

The Vale of White Horse District Council's planning website provides a link to its annual monitoring report (<http://www.whitehorsedc.gov.uk/services-and-advice/planning-and-building/planning-policy/supporting-documents>) stating

"Annual Monitoring Report - Local planning authorities are required to produce Annual Monitoring Reports which give an update on the progress that is being made towards Local Development Framework production. You can download the latest report here (433.2 KB)"

The pdf document (433.2KB) that this link makes available to view and download (as at 14.30 16th December 2014) is

"Annual Monitoring Report 2010-2011 Your Vale - Your Future December 2011"

Perhaps not surprisingly given its date and the year being reported, the words Duty and co-operate do not appear. A search of the Council's website for "annual monitoring report" returned 98 'hits', NONE of which was a more recent Annual Monitoring Report under Regulation 34(6).

It is thus clear that the Council has NOT met with this statutory requirement – even in terms of procedure, let alone content.

VoWH Consultation Statement accompanying the Draft Local Plan

(http://www.whitehorsedc.gov.uk/sites/default/files/14_10_24_VoWH%20Local%20Plan%20Part%201%20Consultation%20Statement_FIN....pdf)

The Consultation Statement accompanying the Draft Plan consultation does not explain how the Duty to Co-operate was applied to ALL the relevant 'Activities' defined in s.110 of the Localism Act and Regulation 5 of the T&CP Regulations 2012. Specifically

- It does not show that the duty was fully and properly carried out for all the key strategic documents and designations that set the strategic framework of economic development.
- It does not demonstrate that it has conformed with National Planning Policy Guidance that *"The duty requires active and sustained engagement. Local planning authorities and other public bodies must work together constructively from the outset of plan preparation to maximise the effectiveness of strategic planning policies. **It is unlikely that this could be satisfied by consultation alone.** Local planning authorities that cannot demonstrate that they have complied with the duty will fail the independent examination process".* Added emphasis. This especially applies to statutory duties for environmental protection and the last two bullet points of NPPF para 157.

Nor does this Statement accurately report all the issues raised in connection with the public consultation on the *Local Plan 2031 Pt 1 Strategic Sites & Policies Housing Delivery Update*. Specifically, it does not even refer to, let alone summarise or analyse objections that presented arguments to suggest that the document was **unsound**.

SEA and the Science Vale Enterprise Zone

- The UK "Plan for Growth" 2011 states that one of the ambitions and measurable bench marks is *"To make the UK one of the best places in Europe to start, finance and grow a business"* and

that one of the key means to achieve this is: *"radical changes to the planning system to support job creation by introducing a powerful presumption in favour of sustainable development; opening up more land for development, while retaining existing controls on greenbelt land; introducing new land auctions starting with public sector land; consulting on the liberalisation of use classes; and ensuring all planning applications and appeals will be processed in 12 months and major infrastructure projects will be fast-tracked"*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31584/2011budget_growth.pdf

Further government advice (<http://enterprisezones.communities.gov.uk/about-enterprise-zones/>) states that Enterprise Zones offer *"Simplified local authority planning, for example, through Local Development Orders that grant automatic planning permission for certain development (such as new industrial buildings or changing how existing buildings are used) within specified areas"*.

The UK Enterprise Zone application for Oxford Science Vale Access transport plan (<https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/roadsandtransport/transportpoliciesandplans/localtransportplan/application-formns.pdf>) clearly stated (p4) that *"The scheme sits across the Vale of White Horse & South Oxfordshire Districts and some elements are within the North Wessex Downs AONB."*

The list of partnership bodies (under the requirement to list *"Details of the partnership bodies (if any) you plan to work with in the design and delivery of the proposed package of measures. This should include a description of the role and responsibilities of the partnership bodies such as Civil Society Organisations, Private Sector bodies and Transport Operators, with confirmatory evidence of their willingness to participate in delivering the bid proposals"*) does NOT include any biodiversity, heritage or landscape bodies, and in particular makes no mention of the N Wessex Downs AONB.

The application process also requires that details be given of the economic business and financial case and also the management case, which includes coverage of what relevant statutory powers and procedures are relevant and the roles and responsibilities (which should include relevant statutory duties) of the Governance arrangements. Thus the requirements of sustainable development, SEA and EIA regulations, the Duty to Co-operate under the 2011 Localism Act and duties under s85 of the Crow Act and s40 of the NERC Act are all relevant. These do not seem to have been covered in the setting up of the Science Vale EZ.

On 18 July 2012 The Vale of White Horse adopted a protocol to fast-track planning applications falling within the Science Vale EZ. The protocol itself does not appear to have been published, but the Officer's briefing to Councillors and the minutes of the meeting make no mention of the AONB, SEA Regulations or Regulation 28 of the 2011 EIA Regulations for the meeting application makes no reference to SEA or EIA nor the implications of the Duty to Co-operate, nor statutory duties imposed by s85 of the CROW Act

Under this protocol the Vale of White Horse has granted consent to at least two large developments (P14/V0236/EZ, P13/V2140/EZ) judged to harm the North Wessex Downs AONB without having screened them for EIA. In both cases reference was made to the need for a master plan of the area in order to manage cumulative effects, which has not been done. The proposed Science Vale Area Action Plan is only now being prepared and is not due to be adopted until June 2017, Area Action Plan or other DPD been adopted or even proposed to

ensure that development within the Science Vale EZ is sustainable and compatible with the s85 duty imposed on both public bodies and individual officials under the CROW Act.

CROW Act and NERC Act general duties

A further effect of the Duty to Co-operate is that I think the general statutory duty of authorities and public officials to have regard to the purposes of AONBs under s.85 the CROW Act and the almost identical duties towards biodiversity under s.40 of the NERC Act means that these duties apply to

- a) the designation of the Science Area EZ by the Secretary of State
- b) the designation of LEPs by the Secretary of State
- b) the establishment of LEPs and Joint Board by local authorities
- c) the membership of LEPs and Joint Boards
- d) the commissioning, publication, consultation and adoption of ALL preparatory documents for which the LEP and/or Joint Board is responsible.

By virtue of the generality of the duties under s85 of the CROW Act and s.40 of the NERC Act, the list of 'persons' to whom the Duty to Co-operate should apply may in effect be extended to all relevant public bodies and officials involved in the process so far as the AONBs and biodiversity are concerned - and at the very least formally constituted AONB Partnerships or Conservation Boards (the latter not least by virtue of s87 which includes their duty towards sustainable development and co-operation).

Context of sustainability

Where documents are prepared to guide future development, the Duty to Co-operate means that they automatically come under requirements to plan for sustainable development. This seems evident in Government guidance on the role of LEPs (and probably their formal designation by the Secretary of State) and the general obligation on Joint Boards established under the Local Government to have regard to all legislative requirements.

National Planning Policy Guidance on plan preparation says

Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals.

and

Paragraphs 14 and 15 of the National Planning Policy Framework indicates that Local Plans should be based upon and reflect the presumption in favour of sustainable development. This should be done by identifying and providing for objectively assessed needs and by indicating how the presumption will be applied locally. planning legislation.

And in relation to evidence base:

Appropriate and proportionate evidence is essential for producing a sound Local Plan, and paragraph 158 onwards of the National Planning Policy Framework sets out the types of evidence that may be required. This is not a prescriptive list; the evidence should be focused tightly on supporting and justifying the particular policies in the Local

Plan. Evidence of cooperation and considering different options for meeting development needs will be key for this process.

The evidence needs to inform what is in the plan and shape its development rather than being collected retrospectively. It should also be kept up-to-date. For example when approaching submission, if key studies are already reliant on data that is a few years old, they should be updated to reflect the most recent information available (and, if necessary, the plan adjusted in the light of this information and the comments received at the publication stage).

Local planning authorities should publish documents that form part of the evidence base as they are completed, rather than waiting until options are published or a Local Plan is published for representations. This will help local communities and other interests consider the issues and engage with the authority at an early stage in developing the Local Plan. It will also help communities bringing forward neighbourhood plans, who may be able to use this evidence to inform the development of their own plans.

On this basis the NPPF is highly relevant to how the SMHA, SEP, Science Vale EZ designation and protocols and other documents have been developed in relation to:

- - ALL strands of the fundamental NPPF definition of sustainable development, not just economic or social development (para 7)
- - ALL the "Core Planning Principles" defined NPPF para 17
- - ALL the different sections on "Delivering sustainable development" and the balances to be struck between economic, social and environmental strands covered in sections 1 to (paragraphs 18 to 149)
- - ALL aspects of how the framework for such delivery is set by the "Plan-making" section of NPPF (paras 150-85), to ensure that "Decision-taking" (paras 186-207) is soundly based and well-balanced.

Much of this is summarised in NPPF paragraph 157:

Crucially, Local Plans should:

- *plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;*
- *be drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date;*
- *be based on co-operation with neighbouring authorities, public, voluntary and private sector organisations;*
- *indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map;*
- *allocate sites to promote development and flexible use of land, bringing forward new land where necessary, and provide detail on form, scale, access and quantum of development where appropriate;*
- *identify areas where it may be necessary to limit freedom to change the uses of buildings, and support such restrictions with a clear explanation;*
- *identify land where development would be inappropriate, for instance because of its environmental or historic significance; and*
- *contain a clear strategy for enhancing the natural, built and historic environment, and supporting Nature Improvement Areas where they have been identified.*

With regard to environmental protection, the last two points in particular link into specific matters that the NPPF says must be given special weight, most of which are underpinned by separate **statutory duties** which can only be fulfilled properly by:

- NOT prejudicing or impeding proper discharge of local authorities' statutory duties to have special regard to preserving heritage under the LB and CA Act and the 'great weight' that NPPF accords to this and other nationally designated heritage; and
- NOT prejudicing or impeding proper discharge of the statutory duty under s85 of the CROW Act on all public bodies and individual officials to have regard to the purposes of AONBs and great weight that the NPPF requires to be given to such considerations for AONBs and 'substantial weight' to be given to avoiding harm to Green Belt areas
- NOT prejudicing or impeding proper discharge of the statutory duty under s40 of the NERC Act on all public bodies and individual officials to have regard to conserving and enhancing biodiversity 'great weight' being given to AONBs, Green Belt, Heritage and ecological designations

Looking at the summary of the SEP - which does allude to environmental considerations - there is not a total absence of co-operation on sustainability, but the membership of the LEP and Growth Board do not bode well. The Growth Board is especially instructive:

Establishment and Activities of the LEP and Growth Board

The Oxford LEP

There appears to be no readily available published document that sets out the constitution of the LEP. The county council website link to the bid to establish the LEP – which is given as <https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/business/economicdevelopment/LEPbid.pdf>

Made two references to the environment:

33 The very strength of the Oxfordshire City-Region economy and the quality of its environment creates both a complacency that future prosperity can be taken for granted and a tension between those pushing for economic growth and those concerned about its impact on the environment.

34 As a result, the Oxfordshire City-Region has not been seen to be sufficiently welcoming to business and has failed either to nurture its existing businesses or to promote itself to new investors. These tensions are often played out in the arena of the planning system that is seen by many in business as a barrier and by others as failing to protect the environment.

And

38 Other sectors, including retail, creative and cultural industries, tourism and the visitor economy, the military and the voluntary, community & faith sectors will continue to be important. It is this variety, coupled with the heritage offer (including Blenheim Palace – a world heritage site - and the concentration of historic buildings in Oxford) and the quality of the environment that makes Oxfordshire such an attractive place to live and work.

No reference was made to 'landscape,' 'wildlife', 'biodiversity' or 'habitats'. The concept of sustainable development is referred to in terms of removing barriers to economic development, not pursuing a true balance of economic, social and environmental objectives:

45 Through the Partnership we will ensure that the planning system is an enabler of sustainable economic development, not a barrier to it.

The only "Environmental support" for the bid was given as Best Foot Forward, part of an international consultancy company Antithesis Group (<http://antithesisgroup.com/antithesis-acquires-european-firm-best-foot-forward-in-breakthrough-deal/>)

"Best Foot Forward support clients in future-proofing businesses and brands – helping to deliver ambitious sustainability strategies that reach all the way from supply chain to consumer brand."

and another specialist commercial consultancy, HR Wallingford Group (<http://www.hrwallingford.com/about/overview>)

"We deliver practical solutions to the complex water-related challenges faced by our international clients. With a 65 year track record of achievement, our unique mix of know-how, assets and facilities includes state of the art physical modelling laboratories, a full range of numerical modelling tools and, above all, enthusiastic people with world-renowned skills and expertise."

There is no reference to any organisations or any objectives concerned with environmental protection, conservation, enhancement to balance the drive for economic growth that the bid represents.

The membership of the LEP includes local authorities, but there is no clear statement of how they bring their environmental protection duties to bear, and the minutes of over 40 meetings give no indication that such matters are ever discussed, let alone any pro-active cooperation with statutory and non statutory bodies under the Duty to Co-operate and more general obligations towards sustainable development.

The Growth Board

The position with the Growth Board just as bad. Its **draft** terms of reference dated September 2014 make NO reference to 'sustainable' 'sustainability' 'environment' or 'environmental' - it only mentions advising on and supporting 'Strategic Planning' with no reference as to what aspects of strategic planning this covers. But reference to the rest of the draft Terms of Reference it is exclusively economic development (as the name of the Board implies).

The Growth Board has not met since July 2014 and it has therefore NOT discussed, finalised agreed or adopted its Terms of Reference, or reviewed its compliance with the Local Government Act and other statutory duties on public bodies and public officials.

Given its statutory role within the strategic planning and delivery process and other legal duties, it is again highly questionable as to whether it is properly constituted, and even if it were legally, it remains very questionable as to whether it has complied with all the requirements of the Duty to Co-operate in respect of the environmental strand of sustainability.

APPENDICES: Extracts from 2011 Localism Act, T&CP Planning regulations and Government Guidance on Enterprise Zones

LOCALISM ACT 2011

s110 Duty to co-operate in relation to planning of sustainable development

(1) In Part 2 of the Planning and Compulsory Purchase Act 2004 (local development) after section 33 insert—

“33A Duty to co-operate in relation to planning of sustainable development

- (1) Each person who is—
 - (a) a local planning authority,
 - (b) a county council in England that is not a local planning authority, or
 - (c) a body, or other person, that is prescribed or of a prescribed description,must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.
- (2) In particular, the duty imposed on a person by subsection (1) requires the person—
 - (a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and
 - (b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).
- (3) The activities within this subsection are—
 - (a) the preparation of development plan documents,
 - (b) the preparation of other local development documents,
 - (c) the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,
 - (d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and
 - (e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.
- (4) For the purposes of subsection (3), each of the following is a “strategic matter”—
 - (a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and
 - (b) sustainable development or use of land in a two-tier area if the development or use—
 - (i) is a county matter, or
 - (ii) has or would have a significant impact on a county matter.
- (5) In subsection (4)—

“county matter” has the meaning given by paragraph 1 of Schedule 1 to the principal Act (ignoring sub-paragraph 1(1)(i)), “planning area” means—

 - (a) the area of—

- (i) a district council (including a metropolitan district council),
- (ii) a London borough council, or
- (iii) a county council in England for an area for which there is no district council, but only so far as that area is neither in a National Park nor in the Broads,

- (b) a National Park,
- (c) the Broads,
- (d) the English inshore region, or
- (e) the English offshore region,

And "two-tier area" means an area—

- (a) for which there is a county council and a district council, but
- (b) which is not in a National Park.

(6) The engagement required of a person by subsection (2)(a) includes, in particular—

- (a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and
- (b) if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.

(7) A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.

(8) A person, or description of persons, may be prescribed for the purposes of subsection (1)(c) only if the person, or persons of that description, exercise functions for the purposes of an enactment.

(9) A person is within this subsection if the person is a body, or other person, that is prescribed or of a prescribed description.

(10) In this section—

"the English inshore region" and "the English offshore region" have the same meaning as in the Marine and Coastal Access Act 2009, and "land" includes the waters within those regions and the bed and subsoil of those waters."

(2) In section 16 of the Planning and Compulsory Purchase Act 2004 (applying Part 2 for purposes of a county council's minerals and waste development scheme) after subsection (4) insert—

"(5) Also, subsection (3)(b) does not apply to section 33A(1)(a) and (b)."

(3) In section 20(5) of the Planning and Compulsory Purchase Act 2004 (development plan documents: purpose of independent examination) after paragraph (b) insert

"; and (c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation."

T&CP REGULATIONS 2012

local development documents

- 5.—(1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are—
- (a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—
 - (i) the development and use of land which the local planning authority wish to encourage during any specified period;
 - (ii) the allocation of sites for a particular type of development or use;
 - (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and
 - (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;
 - (b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.
- (2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are—
- (a) any document which—
 - (i) relates only to part of the area of the local planning authority;
 - (ii) identifies that area as an area of significant change or special conservation; and
 - (iii) contains the local planning authority's policies in relation to the area; and
 - (b) any other document which includes a site allocation policy.
- (3) In section 17 (local development documents)—
- (a) omit subsections (1) and (2);
 - (b) in subsection (3) for "The local development documents" substitute "The local planning authority's local development documents";
 - (c) in subsection (4) for the words before "in relation to development which is a county matter" substitute "Where a county council is required to prepare a minerals and waste development scheme in respect of an area, the council's local development documents must (taken as a whole) set out the council's policies (however expressed) for that area";
 - (d) in subsection (7), before paragraph (a) insert—

"(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;"

GOVERNMENT STATEMENT ON ENTERPRISE ZONES

Established in 2012, Enterprise Zones are at the heart of the government's long term economic plan, supporting businesses to grow. Since their start in April 2012 they have laid down the foundations for success, attracting over 430 businesses, securing over £2 billion pounds of private sector investment, building world class business facilities and transport links and creating over 12,500 jobs. Momentum is now building across the programme and many zones are poised for substantial development in the coming months and years.

Enterprise Zones are establishing themselves as the driving force of local economies as they unlock key development sites, consolidate infrastructure, attract business and create jobs.

All business rates growth generated by the Enterprise Zone is kept by the relevant local enterprise partnership and local authorities in the areas for 25 years to reinvest in local economic growth. For the Local Enterprise Partnerships with Enterprise Zones, this represents the government's most significant commitment to long-term economic growth.

In addition, the Government is committed to working actively with Enterprise Zones to help to unblock any barriers to delivery, such as Department for Transport support on transport infrastructure, Defra support on addressing environmental issues and UKTI advice on marketing Zones to international investors.