

Examination of Edmonton Leaside Area Action Plan – Matter 1: Legal Compliance including the Duty to Co-operate

Hearing Position Statement on behalf of Aytans MFG Co UK Limited

September 2018

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September 2018

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1. Introduction and Overview

- 1.1 This Position Statement is submitted by Aytans MFG Co UK Limited ahead of the Examination of the Proposed Submission Edmonton Leaside Area Action Plan 2018 (ELAAP). The main focus of the Statement is questions (i) to (ix) under (d): Sustainability Appraisal (SA), building on the representations submitted by Turley in April 2017.
- 1.2 Aytans MFG Co UK Limited is owned by JS and SS Aytan, who in turn are the freehold owners of two key parcels of land that lie within the eastern part of the Meridian Water area of the ELAAP. The particular interest is in the extent to which Sustainability Appraisal has informed two critical aspects of the ELAAP:
- The proposed alignment of the Causeway east-west link, as shown at ELAAP Figure 5.1, referred to in Policy EL6 and described at paragraphs 5.8.7 to 5.8.10 which seek to justify the present 'fixed' Causeway alignment; and
 - The proposed de-designation of 9.5 hectares of land (including that land owned by JS and SS Aytan), currently allocated as a Strategic Industrial Location (SIL), with reference to draft Policy EL2 'Economy and Employment in Meridian Water' and supporting text for the policy in section 5.

This Position Statement focuses principally on the former, with reliance placed on the two sets of Turley April 2017 representations to the Proposed Submission ELAAP for the latter.

Overview and Change to the ELAAP to resolve the objection

- 1.3 In overview, and alongside the April 2017 Representations prepared by Turley, the following sections demonstrate that the ELAAP is not legally compliant or based on a sound process with respect to Sustainability Appraisal.
- 1.4 Two key aspects of the ELAAP, comprising a single fixed Causeway route alignment to provide an east-west infrastructure connection and the de-designation of 9.5 hectares of land at Meridian East from SIL are simply not founded on comparative and equal testing of reasonable alternatives in the SA. Indeed, for the Causeway route, *no reasonable alternatives* have been tested in the SA. There is no scoring method, so there is no justification or transparency of approach for determining the selected preferred route.
- 1.5 The fact that delivery of the eastern part of the route requires land owned by a third party (JS and SS Aytan) for which no consideration has been given to the practicality or cost of acquiring that land in testing of options in the SA, means that it cannot be the most appropriate strategy, even had it been considered against reasonable alternatives.
- 1.6 In conclusion, there can be no basis on which it can reasonably be demonstrated the ELAAP represents the most appropriate strategy for the AAP area in terms of the overarching objective for securing regeneration and delivery of new homes and jobs –

and securing a connection through Meridian Water via the safeguarded Causeway route.

- 1.7 To rectify these deficiencies the Council must undertake and consult upon further draft ELAAP and associated SA work that presents a fresh and independent assessment of all reasonable alternatives (including each preferred option), with a clear presentation of the reasons for the selection and rejection of reasonable alternatives.

2. Matter 1(d): Sustainability Appraisal

2.1 This section responds to the Inspector's questions under 1(d) Sustainability Appraisal and specifically whether the SA is sound and compliant with the relevant guidance and legislation with regards to the assessment and selection/ rejection of reasonable alternatives.

2.2 In England, the relevant legislation and guidance with respect to Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) is as follows:

- Environmental Assessment of Plans and Programmes Regulations, 2004 ('The SEA Regulations'), implementing the requirements of the European SEA Directive 2001/42/EC;
- Section 19 of the Planning and Compulsory Purchase Act 2004 requiring a local planning authority to carry out a SA of each of the proposals in a Local Plan during its preparation; and
- Planning Practice Guidance (PPG): Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA).

2.3 In preparation of this Position Statement and earlier representations in 2017, Turley have reviewed the following documents presented below:

2.3.1 Sustainability Appraisal of the Edmonton Leaside Area Action Plan (AAP), March 2017 (reference **ELAAP-08**) ('The SA Report'); and

2.3.2 Edmonton Leaside Proposed Submission Area Action Plan (AAP). January 2017, Enfield Borough Council (**ELAAP-01**) ('the ELAAP').

2.4 We also draw upon the Turley Representations submitted in April 2017 which highlighted the following concerns with the SA:

2.4.1 a failure to issue a revised scoping report in light of significant material changes to the baseline situation within the AAP area and specifically the consent of the Energy Resource Facility (ERF) at the Edmonton Eco Park in February 2017; and

2.4.2 a failure of the SA report to recognise the Outline Planning Permission (OPP) for 46,451 sqm (GIA) of light industrial (B1c), and/or general industrial (B2) and/or storage and distribution (B8) floorspace, at the Stonehill Estate (part of the Harbet Road Industrial Estate within the ELAAP area) as a reasonable alternative.

2.5 Since the submission of the April 2017 Representations there have been two further significant changes. Firstly, Enfield Council has acquired a large proportion of the land (approximately 13.5 hectares) on the east side of the Meridian Water area. Secondly, JS and SS Aytan have secured full planning permission for the development of an

industrial unit on each of the Triangle and Silvermere sites (references 17/02151/FUL and 17/02152/FUL) at Meridian East, which demonstrates the deliverability of parcels within the OPP referenced above. Where necessary, the concerns presented in the April 2017 Representations will be referenced below.

- 2.6 With respect to the concerns presented in this Position Statement, we consider it helpful to present specific extracts of the Planning Practice Guidance¹ with respect to SEA and specifically the selection and rejection of reasonable alternatives:

*“The sustainability appraisal needs to **compare all reasonable alternatives including the preferred approach** and assess these against the baseline environmental, economic and social characteristics of the area and the likely situation if the Local Plan were not to be adopted.*

*The sustainability appraisal should **predict and evaluate the effects of the preferred approach and reasonable alternatives** and should clearly identify the significant positive and negative effects of each alternative.*

The sustainability appraisal should identify, describe and evaluate the likely significant effects on environmental, economic and social factors using the evidence base.

*The sustainability appraisal must **consider all reasonable alternatives** and assess them in the same level of detail as the option the plan-maker proposes to take forward in the Local Plan (the preferred approach).*

*Reasonable alternatives are the different realistic options considered by the plan-maker in developing the policies in its plan. They must be sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made. **The alternatives must be realistic and deliverable.***

*The sustainability appraisal should outline the reasons the alternatives were selected, the reasons the rejected options were not taken forward and **the reasons for selecting the preferred approach in light of the alternatives**. It should provide conclusions on the overall sustainability of the different alternatives, including those selected as the preferred approach in the Local Plan. Any assumptions used in assessing the significance of effects of the Local Plan should be documented”. (Emphasis added)*

(d)(i) Question - Is the Plan legally compliant with respect to Sustainability Appraisal?

- 2.7 There are a number of concerns with regards to the soundness of the SA and its compliance with The SEA Regulations which are:

¹ <https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal>. 018 Reference ID: 11-018-20140306

- 2.7.1 a failure to issue a revised scoping report in light of significant material changes to the baseline situation within the AAP area. Including, the consent of the Energy Resource Facility (ERF) at the Edmonton Eco Park in February 2017 and the granting of OPP at the Stonehill Estate; and
- 2.7.2 The selection, appraisal and reporting of reasonable alternatives to deliver the Causeway route and housing and employment quantum as selected in the submitted ELAAP.
- 2.8 With regards to the changes in the baseline situation and scope of the SA, our 2017 Representations stated that the failure of the SA to recognise the OPP was unsound as its existence would lead to a greater proportion of SIL being developed which, in turn would challenge the Plan's ability to deliver the circa 10,000 dwellings being proposed at Meridian Water.
- 2.9 With regards to whether Plan is legally compliant however, it is the opinion of JS and SS Aytan that the SA Report is in breach of the SEA Regulations with regards to the selection, appraisal and reporting of reasonable alternatives for draft policy EL6: The Causeway.
- 2.10 Article 5(1) of the SEA Directive requires that "*reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated*".
- 2.11 Furthermore, The SEA Regulations² clearly state the requirements of the SA Report which must accompany the adopted Local Plan should clearly present the reasons for *the selection of the alternatives dealt with...*
- 2.12 Paragraphs 4.12-4.32 of the Turley April 2017 Representations and submissions for Matter 6 present a number of concerns with regards to the identification and assessment of reasonable alternatives to the current Causeway route as presented within draft Policy EL6 of the ELAAP. These can be summarised as follows:
- 2.12.1 The fixed Causeway route proposed is different to that proposed and consulted upon within the superseded Meridian Water Masterplan and Central Leaside Area and Action Plan (CLAAP);
- 2.12.2 In February 2017, the '*Edmonton Leaside Area Action Plan 'Spatial Framework'*', produced by Karakusevic Carson Architects (KCA) was published as an evidence base document to support the draft ELAAP and presented one option for the Causeway route. This was not subject to SA;
- 2.12.3 Elements of Segment 3 of the Causeway route run over buildings and land which the Council do not own and would need to purchase; therefore making the deliverability of this section highly uncertain; and
- 2.12.4 The Council have presented technical evidence supporting alignments of Segment 3 and 4 of the Causeway route. These have been discounted as a

² <http://www.legislation.gov.uk/ukxi/2004/1633/contents/made>. Schedule 2 (8)

result of investigations undertaken as part of the grant of planning permissions for employment development on the Silvermere and Triangle sites in May 2018. This evidence confirms that the land (also in third party ownership) allocated for Segment 4 of the Causeway can be developed for industrial uses and should not be seen as the only alignment for the Causeway route.

- 2.13 Based on the concerns above it is clear that the deliverability and viability of the proposed Causeway route is highly uncertain, yet it is the only *reasonable alternative* suggested by the ELAAP and appraised within the SA Report.

Inspector's Initial Observations

- 2.14 It is noted that in the Inspector's Initial Observations (as set out in the letter to Enfield Council dated 24 May 2018) (ref.**EXD-03**), only *"a single route is defined for the east-west link referred to as the Causeway"*. It is then asked *"With this in mind, what factors have determined the selection of alternative options for the SA? Is the Council assured that the SA has been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative?"* In addition, *"Taking into account the findings of the SA, how has the SA process informed the selection, refinement and publication of proposals in the AAP?"*

- 2.15 In the response letter prepared by Mr James Gummery of Enfield Council dated 11 June 2018 (ref.**EXD-04**) it is stated that:

"The Causeway route has been developed to respond to the regeneration requirements of the site. The route set out in the ELAAP responds most effectively to the requirements of the new development and restrictions of the site. In particular the route must be centrally located within the development if it is to provide the attributes of good transport access for all parts of Meridian Water. Other routes do not meet the needs as effectively in terms of traffic movement, pedestrian accessibility, and response to site constraints such as the Thames Water tunnel. A further assessment of other routes through the SA process was therefore seen as unnecessary".

"The SA should assess reasonable alternatives - rather than all possible alternatives - and given the reasons set out above, the Council is satisfied that the SA has achieved this for plan-making purposes".

- 2.16 With regards to other possible *reasonable alternatives*, the Meridian Water Masterplan document which was consulted upon in 2013 identified three possible Causeway alignments. However it would appear that only the preferred option was subject to SA with no comparison at the same level of detail with the rejected options³.
- 2.17 The *'Edmonton Leaside Area Action Plan 'Spatial Framework'* published in February, 2017 suggested a new route for the Causeway which was different to that published in previous documents.

³ Meridian Water Masterplan. Sustainability Appraisal Main Report, Page 83

- 2.18 On this basis, it would appear that at least four different routes for the Causeway have been proposed and subject to public consultation. None support the preferred alternative within draft ELAAP Policy EL6 and illustrated at Figure 5.1.
- 2.19 Given the above it is clear that the SA is in breach of The SEA Regulations and PPG guidance for failing to present or assess to the same level of detail any reasonable alternatives in addition to the preferred alternative for the alignment of the Causeway route.
- 2.20 Given the number of alternative routes consulted upon (and not doubt viewed at the time as reasonable) in previous documents, it is clear that reasonable alternatives do exist which should have been tested. This is contrary to the Council's statement dated 11 June 2018 (ref.EXD-04) that there is in effect only one reasonable alternative.

(d)(ii) Question – Is the plan based on a sound process of sustainability appraisal?

- 2.21 No, the SA accompanying the ELAAP fails in many respects, such as regarding consideration of reasonable alternatives (as demonstrated in the responses to the other Inspector's questions). It also fails to take account of the OPP referenced in Paragraph 2.4.2 and the DCO application at the Edmonton Eco-park. As a result it does not satisfy the regulations with respect to presenting the characteristics of the plan area. The DCO may alter the environmental characteristics with regards to issues such as landscape and visual, air quality and noise which, in combination with the proposed development within the ELAAP may result in significant environmental effects.

(d)(iii) Question - Has the Sustainability Appraisal been undertaken at each stage of the Plan's preparation to clearly justify the Council's policy choices?

- 2.22 No. It is acknowledged that the ELAAP is supported by The SA Report and, notwithstanding its failure to comply with The SEA Regulations, does constitute a SA Report. However testing of reasonable alternative alignment options for the Causeway is not included in or supported by SA.

(d)(iv) Question - How has the Sustainability Appraisal process informed the selection, refinement and publication of proposals in the Plan?

- 2.23 There is evidently no clear audit trail of information within The SA Report with regards to the development of reasonable alternatives to draft Policy EL6 and Figure 5.1, despite the previous consultation of different route options in documents which have preceded the ELAAP.

(d)(vi) Question - Does it test reasonable alternatives? Has the Sustainability Appraisal been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative?

- 2.24 No, the SA does not correctly identify, assess or report the selection/ rejection of the reasonable alternatives to deliver the policies within the ELAAP and specifically Policy EL6: The Causeway, Figure 5.1 and explanatory text.

- 2.25 Paragraph 2.6 of this Position Statement presents the requirements of a *reasonable alternative* in accordance with the PPG. Of particular note is the requirement for a reasonable alternative to be both realistic and deliverable.
- 2.26 Turley have submitted a Position Statement for Matter 6 and have noted a number of concerns with regards to the deliverability of the preferred Causeway route⁴; the most significant of which is the fact that the Council do not have control over land at the Silvermere and Triangle industrial sites. Delivery of this section of the Causeway cannot be guaranteed.
- 2.27 Furthermore, the owners of the Triangle and Silvermere sites (JS and SS Aytan) have secured two full planning permissions as recently as May 2018 which enables the beneficial redevelopment of these sites on which they wish to relocate and expand their business. The Causeway route in its current proposed location would therefore be highly detrimental to JS and SS Aytan and would cause significant disruption to an area identified as SIL.
- 2.28 The current Causeway Route cannot be considered 'realistic and deliverable' and therefore fails the test as a *reasonable alternative*. It breaches the SEA Regulations for failing to include the reasons for the rejection of previously consulted (reasonable alternatives) route options.

(d)(vii) Question - Is the Sustainability Appraisal decision making and scoring robust, justified and transparent?

- 2.29 No. With regards to the development of draft Policy EL6, there is no scoring. The decision making within The SA Report is neither robust, justified or transparent given the complete lack of assessment and reporting of the selection and rejection of reasonable alternatives.
- 2.30 Section 10 of the SA contains an appraisal of the Policies within the APP. However this is carried out on a SA topic basis and not against each individual policy. This approach makes it extremely difficult for the reader to identify the sustainability performance of each draft policy.

(d)(viii) Question - Does it represent the most appropriate strategy in the circumstances?

- 2.31 No, the current proposed Causeway route cannot be considered the most appropriate strategy. It cannot be robustly demonstrated as either deliverable or realistic.

(d)(ix) Question - Does the final report set out the reasons for rejecting earlier options?

- 2.32 No. The SA Report does not present the reasons for the rejection of earlier options for the Causeway route.

⁴ Turley Planning Position Statement for Matter 6: Paragraphs 2.2 -2.16

3. Change to the ELAAP/Sustainability Appraisal to resolve objections

- 3.1 Case law has demonstrated that, if undertaken correctly, it is possible to rectify deficiencies in the SA process with work undertaken after the production of the final SA report.
- 3.2 The following actions are needed as a minimum to rectify the deficiencies identified:
 - 3.2.1 Produce and consult upon a revised ELAAP that clearly shows the Causeway route that avoids the Triangle and Silvermere sites as 'indicative' and to be tested further, or presents a number of reasonable alternatives for the alignment;
 - 3.2.2 Publish an SA at the same time as the ELAAP which assesses all reasonable alternatives to the same level of detail; and
 - 3.2.3 Then review all consultation responses and identify a preferred Causeway route which is published for consultation together with a supporting SA which assesses all reasonable alternatives including the preferred option to the same level of detail.

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