

Silverton Parish Neighbourhood Plan 2013-2033

Further Comments of the Independent Examiner

Prepared by
JOHN SLATER BA(Hons), DMS, MRTPI
John Slater Planning Ltd
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Introductory Remarks

1. On 28th April 2023 I issued my Initial Comments document on the Silverton Neighbourhood Plan. I am grateful for the responses of both the Parish Council and Mid Devon District Council (MDDC).

Strategic Environmental Assessment- Scoping

2. Based on the responses which I received, I have identified that there is one fundamental procedural point, that has implications for compliance with one of the basic conditions, specifically dealing with the issue of compatibility with EU obligations and legislation. My concern relates to whether the requirements of The Environmental Assessment of Plans and Programmes Regulations 2004 – the SEA Regulations, which embody the requirements of EU Directive 2001/42/EC, have been complied with. Despite the UK's decision to leave the EU, this directive and its associated regulations still apply and have implications for neighbourhood planning. I have noted that the Parish Council's Basic Condition Statement is not helpful on the issue of demonstrating compliance with EU obligations, as it does not address the issue as the section only deals with human rights issues and the need or otherwise for a Habitats Assessment.
3. In 2018, Mid Devon District Council issued a screening assessment, after consulting with the three statutory consultees bodies, namely the Environment Agency, Natural England and Historic England, which concluded that a Strategic Environmental Assessment would be required.
4. In March 2019, the consultancy AECOM published, on behalf of Silverton Parish Council, a Scoping Report. That report was published with the stated intention that consultation would take place with the nationally designated consultees. Whilst the Scoping Report sets out, in paragraph 11.6, that the report had been released to the three statutory bodies, it is unclear whether any comments were actually sought, as the consultation period in the document displayed on the Parish Council's website, does not set out dates -it is left blank but highlighted. I have not seen the consultation responses published.
5. **Can the Parish Council confirm whether the consultation on the Scoping Report happened, and over what period and whether any responses were received from the three consultation bodies and provide me with those responses.**

Strategic Environmental Assessment – Consultation on Environmental Report

6. I now turn to the actual Environmental Report which delivers the Strategic Environmental Assessment. The version I have been provided with, is dated September 2022. That states in paragraph 1.8: -

"The SEA Regulations require that a report is published for a consultation alongside the draft report that "identifies, describes and evaluate the likely significant effects

Commented [OK1]: Can we add a paragraph now to the BCS so that it complies, or is it too late?

Commented [OK2]: AECOM did send the report to three statutory consultees for consultation from 1st April 2019 to 6th May 2019. I only have an email dated 1st April from AECOM to prove it but I can forward it to you if you wish. The responses are on page 54 of the report, though Historic England's is summarised. However, I can send you the full Historic England response if you would like.

of implementing the plan and reasonable alternatives” This report must then be taken into account alongside consultation responses when finalizing the plan”

7. This statement is essentially summarizing the requirements which are set out in Regulation 13 of The Environmental Assessment of Plans and Programmes Regulations 2004. In view of its importance, I sent this out in full: -

“(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.

(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall—

(a) send a copy of those documents to each consultation body;

(b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive (“the public consultees”);

(c) inform the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained; and

(d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent.

(3) The period referred to in paragraph (2)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

(4) The responsible authority shall keep a copy of the relevant documents available at its principal office for inspection by the public at all reasonable times and free of charge.

(5) Nothing in paragraph (2)(c) shall require the responsible authority to provide copies free of charge; but where a charge is made, it shall be of a reasonable amount.”

8. I would like to stress the important points, that the consultation on the Environment Report should take place as soon as reasonably practical, after the responsible authority has the report and it should consult the three statutory consultees bodies, as well as bringing the report to the attention of “persons who are affected or likely to be affected by the ~~accepts~~ assessment and adoption of the plan”. The Regulations define the “responsible body” as the authority by which or on whose behalf the plan is being prepared i.e. Silverton Parish Council and “where at any particular time that authority ceases to be responsible, or solely responsible for taking steps in relation to the plan, the person who, at the time, is responsible (solely or jointly) with the authority for taking those steps”. I consider that upon Regulation 15 Submission, that responsibility passes to MDDC.
9. My attention has been drawn to an AECOM Environmental Report, dated July 2020, which is subtitled “Environmental Report to accompany the Regulation 14 Consultation”. However, I have found no evidence in the Consultation Statement that the Regulation 14 consultation referred to that document or that the public and

Commented [OK3]: We did have a hard copy out for people to review at Consultation Reg 14 and at Saturday mini markets. Hard copies of plan at SEA report were available to be borrowed by anyone in or out of the parish during the consultation period.

Commented [OK4]: Consultation statement with Reg 16 Consultation, Examiner and 2nd Reg 16, when it happens, will be updated.

consultees were invited to read and comment on that document. **Can I ask the Parish Council to confirm whether that document was included in the material available for consultation, which is a requirement of Regulation 13 of the SEA Regulations.**

Commented [OK5]: It was available at Consultation 14 for people to read and comment upon, but there were no comments. We did not particularly point it out. There was a hard copy for people to look at and borrow if they wished.

10. Accordingly, if that SEA consultation was not undertaken by the Parish Council as part of its Pre – Submission, Regulation 14 consultation, it therefore appears to me that it is the Regulation 16 consultation that would be the next opportunity to specifically invite comments and contributions in respect of the SEA as part of that public consultation.
 11. Unfortunately, it transpires that the Regulation 16 consultation which was conducted by MDDC, posted the earlier SEA Scoping Report on its website. Whilst the Parish Council had properly submitted the SEA to the local planning authority, it was not one of the submission documents that was publicised by the District Council and the consultees accordingly did not have the opportunity to or were not invited to comment on the AECOM Environmental Report. **Can MDDC confirm that was the case.**
 12. I am therefore not in a position at this moment to be able to confirm that the basic condition relating to the EU obligations have been properly satisfied.
 13. However, there does appear to be a solution to overcome this potential omission. The District Council could repeat the Regulation 16 consultation but this time to include the September 2022 AECOM Environmental Report as one of the submission documents. I appreciate that the report was available on the Parish Council website but I do not feel that is sufficient to meet the requirements of Regulation 13 of the SEA Regulations which includes a specific invitation to submit comments.
 14. In carry out a second Regulation 16 consultation, it would be helpful for MDDC to clarify that any comments which were submitted as part of the first Regulation 16 consultation, will still be taken into the account and it is not necessary for consultees to resubmit any previously submitted comments. It should clarify that the reason for the re-consultation is to offer all consultees the opportunity to comment on the Environment Report. I consider that six weeks consultation should be sufficient. I would prefer specifically asked that Historic England, Natural England and the Environment Agency are notified, as they are specifically named under the SEA Regulations. I have to say that I am particularly anxious to receive Historic England's comments on the most recent AECOM consultation on the impact of the Glebe housing allocation on heritage issues.
- Need for a Public Hearing**
15. In my Initial Comments document, I indicated that once I received both the responses, I would be able to give an indication whether a public hearing would be required. Beyond the issues regarding potential lack of consultation on the Environmental Report, I can give advance notice that I have come to the conclusion that a public hearing **will be** required to enable me to explore in greater detail particular aspects of the plan, to assist my examination.

16. Once the arrangements for the Regulation 16 re-consultation have been put in place, I will be asking the District Council to liaise with the Parish Council regarding identifying a suitable date and venue, hopefully in Silverton, for the hearing to be held. I anticipate that a one-day hearing should be sufficient.

17. I can advise that the issues that I will be wanting to cover during the hearing will include: –

- The allocation of the Glebe Housing Site and whether the benefits accruing from the public access to land will outweigh any harm to the setting of the Church and the Conservation Area.
- What criteria was used to decide whether sites should be included within the settlement boundary, and the issue of consistency with Local Plan strategic policy of Policy HS01 and Policy HS05 which appears to support exception housing which could be unrelated to the village.
- What basis were decisions taken to identify areas as LGS (local green spaces) compared to the protection of other areas of green space.

18. The purpose of raising this issue now is to give early indication of my intentions for taking this examination forward and to allow discussions to take place between the planning officers and the neighbourhood plan team, as to where and when the hearing can be arranged and I will then produce a further public notice confirming those arrangements once they are agreed between myself, the Parish Council and MDDC. This Notice of Public Hearing notice will set out how the public session will be conducted, outlining the questions I wish to see addressed and the parties I wish to invite. However the hearing can only happen once the issue of the SEA consultation has been satisfactory resolved.

Commented [OK6]: We have always understood that exception sites for 'The purpose of a rural exception site is to address local housing need and sustain rural communities' and are small developments outside the village which are affordable houses for parishioners only. However, the local authority rules seem to have a different cast on this and in the past have put families, who are nothing to do with the parish, in if they come higher up the priority list. This is what we are trying to avoid in future.

Commented [OK7]: The only basis was that we did not want to lose any more green space within the village boundaries, either in Ellerhayes or Silverton. The green spaces are not owned jointly, but different areas have different owners, namely the Parish Council, MDDC and Devon County Council, so we wanted to protect them all. There are two spaces, The Little Rec owned by a Charity, and the Stew Pond owned privately. Neither wanted their land to be in the NP. However, we have included the Little Rec as a space of merit. Could we also do so with the Stew Pond at this late stage?

Concluding Remarks

19. I am sending this note to Silverton Parish Council, as well as Mid Devon District Council. I would ask that the two respective parties work together to address the points raised in this note in terms of the SEA consultation and send it to me, hopefully with a proposal for carrying out a Reg 16 re-consultation, by 5pm on 17th July 2023. Once that has been completed, we will have a better idea when the public hearing can be arranged.
20. I would also request that copies of this note and the response are placed on the Neighbourhood Plan's and also Mid Devon District Council's website.

John Slater BA (Hons), DMS, MRTPI, FRGS.

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