



Futures Network West Midlands – FNWM

Looking to the future in an uncertain world

THE FUTURES NETWORK WEST MIDLANDS RESPONSE TO THE CONSULTATION ON THE ENVIRONMENTAL REPORT ON THE REVOCATION OF THE REGIONAL STRATEGY FOR THE WEST MIDLANDS

Futures Network West Midlands

1. This response is from the Futures Network West Midlands (FNWM) which comprises individuals from planning, academic and other professional backgrounds, who have experience and commitment to strategic and spatial planning with a particular interest in the West Midlands. This part of England has a long history of effective co-operation and collaboration on strategic and ‘wider than local’ issues.
2. FNWM’s focus is in developing a deeper understanding of the economic, social and environmental challenges facing the West Midlands, the interactions between them and the potential implications for alternative futures for people, communities and businesses in the area.
3. Nothing in our response is confidential and FNWM is happy for it to be reproduced in whole or part provided it is attributed.

Soundness of Process

1. Although the report claims that this is a voluntary assessment (P10, para 1.15), we consider the statement by Sales J in the High Court challenge by Cala Homes that “the revocation of a Regional Strategy was a modification for the purposes of

the Strategic Environmental Assessment Directive and Regulations” to be unequivocal. This assessment in our view is therefore mandatory and should conform to the highest standards. However, the process followed by the authors of the report is unsound for a number of reasons, in particular:-

2. The SEA is based on a generic national scoping report, the conclusions of which are not revealed. It is intended to apply for all RSSs, with regional specificity addressed through inclusion of regional baseline data, etc. However, this generic approach is inappropriate when considering the specific impacts of the WMRSS; it devalues the function of SEA, giving instead an overriding sense that this SEA has been undertaken as a superficial 'box-ticking exercise'. For example, it leads to irrelevant references, e.g. to coastal change (at pages 8, 48 and 50), and to unnecessary errors, e.g. the incorrect statement that there are two World Heritage Sites in the region

3. The SEA incorrectly claims (P35, para 3.32) that “The 2004 version of the Strategy was never subject to sustainability appraisal, strategic environmental assessment or an appropriate assessment under the Habitats Regulations.” The report is therefore based largely on the Sustainability Appraisals undertaken for the Phase 1 and 2 revisions of the West Midlands RSS. In fact there was a sustainability appraisal carried out on the 2004 strategy, and in our view the absence of its consideration by the authors fundamentally undermines their credibility

4. Moreover, it is stated (P16, para2.5) that "this Environmental Report does not include a specific review of the proposals developed under the Phase Two and Three revisions". While it is recognised that Phase 3 was not progressed sufficiently to provide a robust statement of intent, the Phase 2 Revision was well-advanced, reaching the stage of awaiting the Secretary of State's response to the panel report, and should therefore also have been considered in the assessment.

5. The report includes reference to each of the provisions within the SEA Regulations and supposedly addresses each one under its respective heading. However, not all provisions have been addressed with sufficient robustness to

provide an appropriate means of assessment, with particular areas potentially failing to satisfy the requirements of the Regulations (including provision of information under SEA Directive Annex 1(h), as required by Section 12(3) of The Environmental Assessment of Plans and Programmes Regulations 2004). Even taking into account a previous judgment on SEA which said that "the court should not examine the fine detail of the contents but seek to establish whether there has been substantial compliance with the information required by Schedule 2"¹, the SEA is so weak in a number of areas that as a whole it amounts to a failure to comply.

6. There is almost no mention of alternatives in the SEA (just a brief reference in Chapter 1 and Section 3.47). The Practical Guide to SEA states that: "Each alternative can be tested against the SEA objectives, with positive as well as negative effects being considered, and uncertainties about the nature and significance of effects noted". Without exploring such effects, the SEA report makes it impossible to draw any meaningful conclusions.

Methodology

1. The assessment states that it "has taken as a starting point the assessments carried out when the Strategy and its proposed revisions were being prepared". It is inconceivable that this was the case, given the conclusions it reaches. The SA of the RSS revisions concluded that there were significant beneficial effects arising from a number of the RSS policies. For example, the original Phase 2 RSS SA found there were "clear, strongly positive implications" for the Regional Sustainable Development Framework's objective for Sustainable Construction and Design that would result from the Phase 2 Revision's sustainable construction policy SR3. This policy still has no direct replacement, and so it would be detrimental to lose it, but the SEA fails to take account for that.

¹ <http://www.ukela.org/content/page/2259/ELM-20-5-Jones-final.pdf>.

2. The SEA is unhelpful in failing to explain what system of assessment has been employed (e.g. there is no discussion of SEA objectives or of an SEA framework, and there is a lack of the commonly-employed tables of ratings to be found in many SEAs/SAs). The Practical Guide to SEA also states that "It may be impossible to predict the precise effects of a plan or programme. However, the Responsible Authority must demonstrate that consideration has been given to all of the effects in Annex I (f) of the Directive, for example by explaining any distinctions that can be made between the short, medium or long term effects in the comments column". There is a general absence in the SEA of explanation of any such distinctions. In particular, the SEA fails to recognise the potential short-term impacts that could arise in the interim period while the RSS is revoked, but before adopted Local Plans are in place.

Strategy

1. The core concern of the WMRSS was to address the continuing decentralisation of population and investment away from the Major Urban Areas within the region (see Chapter 3 of the RSS). Without effective management to reverse that trend then it is likely that there will be serious long-term environmental consequences including dereliction and under-use of infrastructure within the MUAs; a greater need for travel as new development becomes dispersed; and greater need to use greenfield, as opposed to brownfield, sites.

The RSS provided a robust framework to address this issue, leading for example to the Phase 1 Review to address the particularly serious regeneration needs of the Black Country.

2. The key purpose of the report should therefore have been to demonstrate how the challenges of regeneration and decentralisation could be met in the absence of an over-arching strategy for the region. It fails utterly to do this; instead, it makes unsubstantiated assertions that the Government's proposed changes are to be universally welcomed from an environmental protection/enhancement

perspective. The conclusions repeatedly assert without any supporting evidence that:-

- the effects of the regional policies either already are, or easily could be, brought about through current or future policy at national or local level, and that there is therefore no value in the RSS policies;
- there are obligations on local authorities to undertake their own assessments, so that environmental impacts of future policies should be assessed 'further down the line';
- Statutory provisions and overarching national policies provide a sufficient framework to ensure environmental protection.

3. There can be no serious challenge to the view that there are many issues which need to be addressed across wider areas than those within individual local planning authority boundaries. This gap might partly be addressed if strategic local authorities (unitary and county councils) were given new powers to complement their existing role in minerals and waste planning but the government does not appear to be considering such an option. Alternatively, LEPs may in due course help fill the gap, but their effectiveness is yet to be proven, exposing the West Midlands to unnecessary environmental, economic and social risks. In any event, co-operative and collective action between authorities will continue to be required.

4. The West Midlands has a long and largely successful history of mutual co-operation and we hope that this will continue. However, it would be foolish not to acknowledge the role played by both formal and informal structures at regional level in achieving this. Whilst we note inclusion in the new Act of a 'duty to co-operate', as we said in our earlier response to the consultation on the draft National Planning Policy Framework (attached herewith as Appendix 1), this duty is untested and "there will inevitably be tensions between the Coalition's localism agenda and the embodiment of local discretion in statute with the duty to co-operate. There is little or no guidance on what the duty means in practice nor is it clear what effective sanctions could be applied if local authorities and the myriad of other organisations and businesses involved in the planning process fail in this

duty” Our reservations concerning delivery of the duty are clearly shared also by the CLG Select Committee (paras 117 – 119).

5. The report leans heavily on the alleged protection offered by national policy contained in the draft National Planning Policy Framework (NPPF). At many points in the report the SEA asserts that the environmental protections provided in the RSS would not disappear with its revocation, as policy at national level would provide sufficient coverage. The arrival of the NPPF, however, will remove most guidance in established PPG/PPS. This undermines the assertion on page 6 that "...strong protections for the environment set out in national planning policy and, in many cases, provided for by national and European legislation means it is highly unlikely that there would be any significant adverse environmental effects resulting from the revocation". It is unjustifiable to conclude that protection will be 'strong', especially as major concerns in this regard have been raised by each of the government's statutory environmental bodies².

6. Of specific significance in the West Midlands is the need for co-operation across the boundary with Wales. At the EiP into the Phase 2 Revision of the RSS there was serious debate about an objection raised by the Welsh Assembly Government concerning the impact of the level and distribution of development on the head waters of rivers such as the Wye, rising in Wales, particularly given their SINC status. Given the divergence of the planning systems between England and Wales, it is not clear that a duty to co-operate provides sufficient opportunity for such issues to be addressed in future.

Housing and Other Key Policies

1. The report states (at page 5) that "It is clear that the revocation of regional strategies and their top-down targets will provide opportunities for securing

² Environment Agency: "We are concerned that ... some developments could be approved that have a negative impact on the natural environment"; Natural England: "We consider that there is a risk ... [of] unintended consequences of environmentally damaging development"; English Heritage: "The wording [could lead] to an unintended reduction in the level of protection for the historic environment" and "[there is a] lack of a policy to deal with proposals causing moderate or minor harm to heritage assets".

environmental benefits because their revocation would remove certain current policies which present a threat to local environments". This statement appears principally to be a reference to regional housing targets which in our view have, in the West Midlands, provided over many years an effective mechanism for balancing the level and distribution of new housing with other considerations, including support for urban renaissance and protection of, and amendments to, the Green Belt. Abandonment of an existing mechanism for managing potential conflicts will not of course remove the underlying pressures for new housing; the government's market led alternative is an untried gamble which, if it leads to an even greater fall-off in the level of house building than is already occurring as a result of uncertainty in the planning system, will impact most on the least well off sections of society.

2. Experience in the West Midlands suggests that the impact of revocation on the supply of offices and industrial land also ought to have been considered in the report. Unlike housing land, these employment generating uses are often sought after by local planning authorities and the "free for all" created by the revocation of the RSS could damage prospects for regeneration in our major urban areas. This was a subject of considerable tension at the RSS Phase 2 EiP (for example between Walsall and Cannock Councils)

3. The statement on page 5 also entirely misses the point that one of the benefits provided by the RSS was that it provided economies of scale so that local planning documents did not necessarily have to repeat regional/national policy. Removal of regional policies will therefore weaken provision in these areas unless local planning authorities put their limited resources into wasteful duplication of effort.

4. We are equally concerned about the lack of consideration in the report of the impact of revocation on other policy areas, for example transport and other infrastructure, waste, minerals, climate change, and renewable energy. All except minerals (an extraordinary omission) are identified in Table 2 of the report as "sustainability issues", with a summary of baseline conditions but they are largely ignored in Table 3, the "summary assessment of the environmental implications

of strategy policies and likely significant effects of revocation of the strategy”, and are dealt with superficially at best in the accompanying annexe.

5. In our view this is professionally incompetent. In each of these policy areas there are major challenges which require strategic co-operation. For example, for HS2 to deliver maximum environmental and economic benefit across the region, there needs to be coherent consideration of connecting infrastructure requirements, which cross many local authority and LEP boundaries. Similarly, the level and apportionment of mineral extraction in the West Midlands is an issue for the region as a whole. It remains to be seen whether the vacuum created by the revocation of the RSS and the abandonment of associated institutional support arrangements will be addressed effectively through alternative arrangements.. However, the impacts and risks are clearly issues which should have been addressed via this Assessment.

Monitoring

1. The RSS monitoring regime offered effective regional and cross-boundary reporting, which has now been dismantled. As a result there will be a risk that local planning authorities will only focus on what is happening within their own boundaries and so may be less able to see the wider picture in relation to patterns of development and the policy impacts referred to above. The effect of this is that it will create false signals and so risk driving policy in the “wrong” direction. This risk will be increased if CLG pursue its intention to abandon collection of regional statistics, as indicated in a recent consultation (and on which FNWM will respond to in due course).

2. The importance of failing to base policy on evidence is already apparent in the report. It is stated at 3.1 that "from the data available it is considered unlikely that the overall state of the environment in the West Midlands has changed significantly since publication of the Strategy". This is too blunt an assessment, as it fails to appreciate the noticeable shift in development patterns that has taken place as a result of the strategy, in particular through 'urban renaissance'. Indeed,

the summary of baseline data under 'Pollution' on p29 does seem to recognise that the strategy was succeeding in some of its stated aims: "The baseline review identified some positive trends around transport patterns, most importantly that an increasing proportion of houses were being constructed in existing urban areas and that distance travelled and commuting distances had remained relatively stable in recent years".

3. There have also been changes in specific environmental sectors. The last WMRA Annual Monitoring Report, for example, shows that between 2004 and 2009 there were marked changes in the number of listed buildings/ancient monuments at risk; the amount of derelict land in the region; the percentage of SSSIs in favourable/recovering condition, etc. Whether the 'overall' state of the environment has changed 'significantly' is a matter for debate, but this should at least be informed by considering the changes.

Conclusions

1. It is not the purpose of this consultation response to argue a case for the retention of the West Midlands RSS; the decision to abolish RSSs has been made in Parliament, and we accept that. However, we do consider that the abolition of this statutory tier in the plan-making process requires a credible Strategic Environmental Assessment in accordance with the relevant European Directive. The consultation report fails woefully to meet acceptable standards and should therefore be re-worked comprehensively.

2. The underlying issue is not, however, the quality of process but concern that the vacuum created by revocation of the RSS will have significant negative impacts on the environment, economy and communities of the West Midlands, unless appropriate mechanisms are put in place to prevent that. Some of those impacts fall outside the scope of an SEA, but without effective resolution of the RSS core concern, to address the continuing decentralisation of population and investment away from the Major Urban Areas, it is likely that there will be serious long-term environmental consequences. These include dereliction and under-use

of infrastructure within the MUAs; a greater need for travel as new development becomes dispersed; and greater need to use greenfield, as opposed to brownfield, sites.

3. The report in its present form does not demonstrate how the challenges of regeneration and decentralisation could be met in the absence of an over-arching strategy for the region. Instead, it is predicated on unsubstantiated assertions that through a combination of the NPPF, which still in draft, local policy and an ill-specified duty to co-operate there will be an adequate framework to ensure environmental protection. We do not believe this to be the case.

4. The report needs to be revised to draw out, at the very least, the risks caused by failure to replace RSS with much more effective mechanisms for co-operation across local authority boundaries than are currently planned.

Contacts on behalf of Futures Network West Midlands

David Thew

WMFN Co-ordinator

dthew@blueyonder.co.uk

34 Trehern Close,

Knowle,

Solihull, B93 9HA.

01564-779009

or

John Deegan

jledeegan@btinternet.com

01789-721768

APPENDIX 1

DRAFT NATIONAL PLANNING POLICY FRAMEWORK: CONSULTATION RESPONSE BY THE FUTURES NETWORK WEST MIDLANDS.

Futures Network West Midlands

1. This response to the national consultation is from the Futures Network West Midlands (FNWM) which comprises individuals, from planning, academic and other professional backgrounds, who have experience and commitment to strategic and spatial planning with a particular interest in the West Midlands. This part of England has a long history of effective co-operation and collaboration on strategic and 'wider than local' issues.
2. FNWM's focus is in developing a deeper understanding of the economic, social and environmental challenges facing the West Midlands, the interactions between them and the potential implications for alternative futures for people, communities and businesses in the area.
3. Nothing in our response is confidential and FNWM is happy for it to be reproduced in whole or part provided it is attributed.
4. FNWM have chosen not to respond to the specific questions in the Consultation Document, but have limited our comments to those parts of the Draft National Planning Policy Framework (NPPF) which most impinge on our sphere of interest.
5. Our comments are indexed to the relevant paragraphs in the NPPF or the page number and heading in the Impact Assessment (IA).

IA. Page 11- Policy Objectives.

6. We broadly support the 3 objectives which the Coalition has set for the review of the planning system, but believe that:

(i) The reduction in guidance from over 1000 to just 58 pages is too draconian with the result that, in some cases, particularly in relation to sustainable development, strategic planning and the duty to co-operate, the consequence is a lack of clarity which is likely to lead to differences of interpretation and legal challenges.

(ii) Whilst handing power to communities is a laudable objective, it is essential that communities have the time, energy and skills to take advantage of their roles and responsibilities in the new system. However much the process is simplified and made more accessible, many of the issues to be addressed remain very complex with many differing viewpoints, aspirations and policy objectives to be considered and evaluated. It is also equally important that local authorities understand the consequences of this devolution and are able to work with communities in a positive and constructive manner.

(iii) In making the system more user-friendly and accessible for the public, it is essential that access and influence are equal and fair and not biased in favour of particular groups or interests at the expense of others who may be less able to interact with the process.

7. FNWM believes that the Framework needs further elaboration to address these concerns or the understandable drive for simplicity and clarity will simply turn into confusion with significant risks to the delivery of key policies.

NPPF Paragraphs 9 – 18. Delivering Sustainable Development.

8. FNWM supports a presumption in favour of sustainable development. In particular we completely agree with the key point in Paragraph 11 that the 3 components of sustainable development - planning for prosperity, people and places - **“should be pursued in an integrated way, looking for solutions which deliver multiple goals.”** We believe that this phrase is one of the most important in the whole document and should be given much more prominence. This might also go some way to addressing some of the criticism of the Framework that it is little more than a developer’s charter.

9. Inherent in establishing a presumption in favour of sustainable development is that the converse must also be true – **a presumption against unsustainable development.** Whilst FNWM acknowledges the Coalition’s desire for the NPPF to be as positive and proactive as possible, it would increase the clarity of the Framework, if the presumption against unsustainable development where it does not combine all 3 elements in an integrated way and does not deliver multiple benefits (i.e. economic, social and environmental), was also clearly spelt out. Indeed the ‘presumption in favour’ ought to be dependent upon the ‘presumption against’ also being true.

10. FNWM welcomes the attempt in paragraph 10 to take the somewhat obtuse Bruntland definition and apply it specifically to the planning process through the concepts of planning for prosperity, planning for people and planning for place. We note however that Ministers have decided that ‘a legal definition of sustainable development is not necessarily required for planning to play an effective role in helping to promote and secure sustainable development.’ However it seems to us that as the presumption in favour of sustainable development is such a corner stone of national policy it cries out for an unequivocal definition of what constitutes sustainable development. This needs to acknowledge the cumulative impacts of individual developments and address both local circumstances in relation to neighbourhoods and communities, including the interdependence of our urban and rural economies, as well as the

wider sub regional and national issues such as globalisation and climate change. . An agreed definition is essential to provide a consistent guide for decision makers whether they are the Secretary of State, Planning Inspectors, Local Authorities, Neighbourhood or Communities. It is too important to be left to the vagaries of localism.

11. It is our experience in the West Midlands that effective, co-ordinated and consistent action across all 3 elements of sustainability and across extended areas is required to reverse the unsustainable trend of dispersal of activities and investment away from our major urban areas. This is essential if a more sustainable development pattern focussed on the renaissance of these areas is to be achieved, utilising existing infrastructure and services in the most efficient and economical way.

NPPF Paragraphs 44-47 Planning Strategically Across Local Boundaries.

12. FNWM notes with considerable disappointment that there will be nothing of a formal nature between the overarching National Planning Policy Framework and Local Plans produced for individual local authority areas. It is our strong contention that, just as Neighbourhood Plans require a local context set out in the Local Plan, a Local Plan needs a wider context within which the strategic priorities for the area can be assessed and evaluated.

13. It is also disappointing that there is no specific reference to the spatial dimension of planning which is fundamental to achieving good outcomes and improved wellbeing through the process. It has never been more important to ensure that all the aspects which contribute to sustainable communities (e.g. transport, climate change, low carbon, infrastructure, economic growth, social cohesion etc) are tackled in an integrated and holistic way. Without this broader perspective FNWM fears that competition between Local Authorities and LEPs will lead to increased polarisation and greater inequalities between places and communities.

14. FNWM completely agrees that Local Plans must be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects for the area (paragraph 27). It is our experience in the West Midlands that this evidence base often needs to cover a very wide area to ensure that all the ramifications can be taken into account in formulating appropriate responses to change and planning positively for them.

15. Migration patterns, housing market areas identified through Strategic Housing Market Assessments, jobs markets and travel to work areas, retail catchment areas, transport networks, mineral and waste locations, infrastructure and energy networks, water supply and biodiversity and green infrastructure are all likely to extend well beyond individual or even adjacent local authority boundaries. In order to understand properly the underlying trends and the inter-actions and issues associated with them, there is often a need to undertake analysis on a wide geographical area. This also needs to be undertaken on a collective basis if there is to be a mutual ownership and trust in the evidence base by all the authorities and interests involved.

16. In turn, it is then essential that local authorities, working with LEPs , other organisations and private sector businesses such as the energy companies, are in a position to develop co-ordinated and complementary policy responses to the evidence base (i.e. on such matters as those noted above). A clear example within the West Midlands is the strategy to achieve a renaissance of our major urban areas (Birmingham, the Black Country, Coventry and North Staffordshire) through an integrated approach to growth and regeneration. This requires co-ordinated and collaborative policies to stem the unsustainable tide of outward migration of people, jobs and investment both by positive and proactive policies within the conurbations and by appropriate policies to achieve complementary rural renaissance in surrounding areas sometimes many miles away. It is likely that the abolition of the national priority for 'brownfield first' will make it much harder to achieve the regeneration and renaissance of our major urban areas. FNWM believes that one of the keys to sustainable development must be to realise

growth potential in all areas whilst not drawing investment away from those areas in greatest need.

17. FNWM is concerned that the policies in this section of the Framework seem to be predicated on co-operation between immediately adjacent areas but are too weak to ensure that the technical and governance arrangements to achieve the level of co-ordination required will be effective.

18. Co-ordinating the activities of different public and private bodies to achieve a greater whole than the sum of the parts has long been the holy grail of public administration. This was important enough in the good times, but in an age of severe restraint in both public and private finances, it is even more important to co-ordinate policy and programmes so that every investment contributes to delivering the greatest overall impact.

19. FNWM notes that much is expected of the “duty to co-operate on planning issues that cross administrative boundaries, particularly those which relate to strategic priorities....” FNWM believes that there will inevitably be tensions between the Coalition’s localism agenda and the embodiment of local discretion in statute with the duty to co-operate. There is little or no guidance on what the duty means in practice nor is it clear what effective sanctions could be applied if local authorities and the myriad of other organisations and businesses involved in the planning process fail in this duty..

20. To be effective, co-operation and collaboration needs to be:

- Based on a shared and agreed evidence base at an appropriate geographical level.
- Geared to the achievement of common goals and outcomes.
- Continuous and ongoing.
- Able to make explicit choices in a collective way
- Holistic - incorporating all relevant players and interests, including business and the third sector.

- Able to broker agreements between parties where there is a need to balance local and 'wider than local' interests.
- Based on effective governance arrangements including mechanisms to seek appropriately balanced and sustainable solutions and resolve disputes.

21. It seems that the only sanction against a lack of co-ordination or where only lip service has been paid to co-operation is when a Local Plan has been submitted for Examination where this will be one of the tests of soundness. Such a sanction is much too late in the process. As the early adoption of Local Plans is one of the core objectives of the NPPF, a sanction only applied at the Examination stage will result in frustration and delay. **The FNWM therefore believes that the “duty to co-operate” needs to be substantially strengthened, preferably in the Localism Bill or by much clearer guidance in the NPPF as to how it will work, be monitored and be policed.**

Conclusion

22. FNWM welcomes the Coalition's bold attempt to distil 100s of pages of guidance into a succinct statement of national planning policy which avoids repetition and contradiction and sets out the Government's objectives and aspirations for the planning system. We do believe, however, that in a number of the most crucial parts of the Framework the desire for brevity has been at the expense of clarity. The test of the new framework will be if it can deliver the housing, jobs and infrastructure required to meet the country's needs in a genuinely sustainable way. Our concern is that the framework could be a change for the different rather than the better.