

Environmental Assessments of Neighbourhood Plans and the Process for Obtaining a Screening Opinion

1. Introduction

1.1 This guidance note sets out and explains:

- The types of environmental assessments that may legally be required to be undertaken in relation to Neighbourhood Plans (see section 2). This includes:
 - Strategic Environmental Assessment, and
 - Habitats Regulations Assessment.
- The types of assessments that are not legally required to be carried out whilst preparing a Neighbourhood Plan, but that a group developing a Plan should be aware of (see section 3). This includes:
 - Sustainability Appraisal, and
 - Environmental Impact Assessment.
- The process of how to find out whether any environmental assessments need to be carried out on a Neighbourhood Plan. This is referred to as “screening” (see section 4).

1.2 All of these assessments arise from EU obligations. Neighbourhood Plans must not breach and must be compatible with EU obligations and a Local Planning Authority has a duty to check and determine whether a Neighbourhood Plan meets this and other legal requirements (as set out in s38A of the Planning and Compulsory Purchase Act 2004 and Schedule 4B of the 1990 Act). There are also other non-environmental EU obligations that the Neighbourhood Plan should be compatible with, for example the European Convention on Human Rights (see section 5).

1.3 There is no standard answer to the question “Will our Neighbourhood Plan need to be subject to any type of environmental assessment?” This will depend on a number of factors including:

- The sensitivity of the surrounding environment. For example, will the Neighbourhood Plan cover an area within or near to a nature conservation site of European Importance, the South Downs National Park, a Site of Special Scientific Interest or any sensitive heritage assets?
- The scale of the proposals. For instance, will the Neighbourhood Plan allocate any sites for development? In particular, will these differ significantly from the proposals set out in the Brighton & Hove Submission City Plan Part 1?
- The nature of the proposals. For instance, will the Plan propose development that requires an Environmental Impact Assessment, e.g. an industrial estate over a certain size (see Appendix 2).
- Whether the Neighbourhood Plan is likely to have any significant effects that have not already been considered by the Sustainability Appraisal of the City Plan Part 1.

- 1.4 Regardless of the type of development your Neighbourhood Plan proposes, or the area covered by your Neighbourhood Plan, it **must** go through a screening process to find out if it needs to be subject to an environmental assessment.
- 1.5 Brighton & Hove City Council is happy to provide further advice on all forms of assessment referred to in this guidance. The council does not want to make your plan preparation any more difficult than it needs to be. However, failing to screen for or assess the likely significant effects if required would lead to a delay at the examination stage as the Government has made it a formal requirement to submit either a Screening determination or a Strategic Environmental Assessment at submission stage (see paragraph (4) of the Neighbourhood Planning (General) (Amendment) Regulations 2015, or at worst a challenge in the High Court that could see the Neighbourhood Plan quashed.

2. Environmental assessments that may legally be required

Strategic Environmental Assessment

- 2.1 Strategic Environmental Assessment (SEA) is required for certain plans or programmes that are likely to have significant environmental effects and implements the requirements of the European Directive “The Assessment of the Effects of Certain Plans and Programmes on the Environment.”
- 2.2 The main objective of SEA is “*to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development.*” (The Environmental Assessment of Plans and Programmes Regulations 2004).
- 2.3 SEA involves the assessment of the environmental effects of an emerging plan on specific issues including biodiversity, fauna, flora, soil, water, air, climate, population, human health, material assets, cultural heritage and landscape. The assessment considers the positive and negative effects that the plan may have, as well as the combined, or cumulative impacts.
- 2.4 A Neighbourhood Plan may require a SEA, but this will depend on whether it is likely to result in significant environmental effects, particularly those that have not already been assessed as part of the assessment of a higher tier planning policy (i.e. the City Plan Part 1).
- 2.5 In order to find out whether an SEA needs to be undertaken, a screening process must take place, ideally at the start of the Neighbourhood Plan preparation process. This is described in more detail in Section 4.
- 2.6 In response to the DCLG Consultation on Neighbourhood Planning 2014, the Government has amended the current Neighbourhood Planning Regulations to make it a formal requirement to submit either an SEA report, or a screening determination stating why an SEA is not required, in addition to the other documents formally required at submission stage.

Habitats Regulations Assessment

- 2.7 There is a network of protected sites across Europe, which includes Special Areas of Conservation (SACs), Special Protected Areas (SPAs) and RAMSAR sites. These sites are designated for their flora, fauna or birds under the Habitats Directive or the Birds Directive. They are collectively known as the Natura 2000 sites.
- 2.8 All plans and projects, which may have a significant effect on a designated European site, are required to undertake a Habitats Regulations Assessment (HRA). This assesses their effect on the flora and fauna that are listed as the reason for the designation. Neighbourhood Plans may only proceed to examination where there are no likely significant environmental effects on these sites.
- 2.9 Within Brighton & Hove there is one European Site, Castle Hill. This is designated as Special Area of Conservation (SACs). Their nearest other European Site is Lewes Downs, within Lewes District Council's administrative area and is 6km (in a straight line) from Brighton & Hove administrative boundary.
- 2.10 A Neighbourhood Plan may require HRA, but this will depend on its content and particularly its location, although the impacts of development can often occur well beyond its boundaries, e.g. recreational disturbance.
- 2.11 In order to find out whether an HRA needs to be undertaken, an initial screening process will take place ideally at the start of the neighbourhood planning process. This is explained in more detail in Section 4.
- 2.12 It is important to note that if an HRA is required, this automatically triggers the need to carry out an SEA.

3. Environmental Assessments which are not legally required at Neighbourhood Plan preparation stage

Sustainability Appraisal

- 3.1 Sustainability Appraisal (SA) is required for Development Plan Documents (DPD), such as a Local Plan. It is a process which aims to promote sustainable development by assessing the extent to which an emerging plan will help to achieve environmental, economic and social objectives. Sustainability Appraisal of a DPD often incorporates a Strategic Environmental Assessment.
- 3.2 Sustainability Appraisal is **not** legally required for Neighbourhood Plans. This is because a Neighbourhood Plan is not a Development Plan Document (DPD), as defined by the Planning and Compulsory Purchase Act 2004. Neighbourhood Plans have their own designation: they are a neighbourhood development plan produced by qualifying bodies under the 2004 Act. Even when a Neighbourhood Plan is "made" by a local authority following a successful referendum, and it becomes part of the development plan for the city, it does not change its designation into a Development Plan Document.

- 3.3 It is important to note that a Neighbourhood Plan is required to contribute towards the achievement of sustainable development and Sustainability Appraisal can be a useful tool for doing this. On this basis there could be a need for some sort of sustainability statement. A Sustainability Appraisal of the Submission City Plan has been undertaken, and a reference to this may form the basis of a sustainability statement.
- 3.4 If SEA is required, then it may be useful to incorporate the requirements of SA, which in addition to an assessment of environmental impacts, would also include an assessment of social and economic impacts.

Environmental Impact Assessment

- 3.5 Environmental Impact Assessment (EIA) is **not** required at neighbourhood plan preparation stage, however **may be** required at planning application stage, for certain proposals that are likely to have a significant effect on the environment.
- 3.6 The EIA regulations define two schedules of developments.
- Schedule 1 projects, e.g. oil refineries, power stations, or asbestos operations, must always be subject to EIA. A Neighbourhood Plan cannot incorporate these types of development, as these are classes of “excluded development” as set out in the Localism Act.
 - Schedule 2 projects, e.g. an urban development project (including house-building) over a certain size. EIA only needs to be carried out on a Schedule 2 project if the development is likely to have a significant environmental effect. A Neighbourhood Plan can include proposals listed in Schedule 2.
- 3.7 The formal requirement for EIA applies at planning application stage. However, if the Neighbourhood Plan identifies a site for a Schedule 2 development, and it is likely to result in significant effects, then this itself will trigger the requirement for a SEA. The Neighbourhood Plan may also want to state that this type of development may be subject to an EIA.
- 3.8 An extract from Schedule 2 of the EIA regulations is set out in Appendix 2. For further information on types of projects classified under Schedule 2 see the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. It should be noted the Government intends to amend these Regulations in 2015 to bring into effect the new thresholds for certain types of projects, including industrial estate and urban development projects, both of which could be included in a Neighbourhood Plan.

4. Screening Processes

- 4.1 Two separate screening exercises will need to be undertaken to ensure the requirements of both the SEA Directive and the HRA Directive are met. However, only one set of information will be required in order for the council to provide both screening opinions.
- 4.2 It should be noted that the Submission City Plan Part 1 has already been subject to a Sustainability Appraisal (incorporating the requirements of Strategic

Environmental Assessment) and Habitats Regulation Assessment, (Screening Stage), also known as an “Appropriate Assessment”.

- 4.3 In some circumstances the findings of these existing assessments may be sufficient to cover the effects of a Neighbourhood Plan, and a judgement on this will form part of the screening exercise. This will depend on the content and detail contained within the Neighbourhood Plan and how it differs from that contained within the Submission City Plan Part 1.

SEA Screening

- 4.4 Brighton & Hove City Council has a duty to ensure that emerging Neighbourhood Plans are screened to determine whether they are a likely to result in significant environmental effects. In order for the council to provide a screening opinion, some information about the content of the Plan will need to be provided by the neighbourhood group:
- What are the broad aspirations of the Neighbourhood Plan. E.g. the type and amount of development it will include.
 - Do any of the elements of the Neighbourhood Plan trigger the need for an Environmental Impact Assessment?
 - Will it propose a higher level of development than that already identified in the City Plan Part 1?
 - Will it include any land allocations for development which are not included in the City Plan Part 1?
 - What are the key physical environmental issues currently affecting the neighbourhood? Are there issues such as flooding, contaminated land, sewage treatment, pollution, and if so how will these be addressed?
 - What are the key social issues and how does the plan seek to address these?
 - Are any of the proposals likely to affect a sensitive area, such as the South Downs National Park, a Site of Special Scientific Interest, a European site or a local heritage asset;
 - Whether implementation of the policies in the Neighbourhood Plan might lead to major new development in the future. For example, a new road, which could lead to further future development;
 - Whether cumulatively the impact of policies and proposals when assessed together may give rise to a significant effect, for example, several small housing developments may cumulatively have an effect on a nearby rare habitat.
- 4.5 The Environmental Assessment of Plans and Programmes Regulations sets out the criteria for determining the significance of effects on the environment, which will form the main part of the screening assessment. These are set out in Appendix 1.
- 4.6 Once the Screening Assessment has been carried out, the council must consult the Environment Agency, Natural England and English Heritage on the initial findings before any formal response can be provided. The South Downs National Park Authority may also be consulted on the Screening Assessment, depending on the area and location of the Neighbourhood Plan.
- 4.7 If the initial screening opinion suggests that an SEA is not required, screening may also be undertaken at a later stage of the Neighbourhood Plan’s development, to

ensure that there have not been any significant changes that would result in the requirement to carry out an SEA.

- 4.8 If the screening concludes that an SEA is required, the qualifying body must ensure an environmental assessment is carried out and that it fully meets the requirements and stages as set out in the Environmental Assessment of Plans and Programmes Regulations. The Town and Country Planning Act states that a Local Planning Authority has a duty to advise and assist in ways considered appropriate to facilitate the making of proposals for Neighbourhood Plans, as well as having a duty to check that a submitted plan meets the basic conditions and legal requirements.
- 4.9 If an environmental assessment is required, it is recommended that you contact the Local Planning Authority to discuss the best way to progress this work. A brief outline of the stages of SEA can be found in Appendix 3.
- 4.10 As described under section 2.6 the Government has amended the Neighbourhood Planning Regulations to make it a formal requirement to submit either an SEA report, or a determination stating why an SEA is not required, in addition to the other documents formally required at submission stage.

HRA Screening

- 4.11 Brighton & Hove City Council is the competent authority under the Conservation of Habitats and Species Regulations 2010 and needs to ensure that Neighbourhood Plans have been assessed through the Habitats Regulations process.
- 4.12 A basic initial screening will be undertaken after a Neighbourhood Area has been designated to assess whether it is likely a HRA will be required. This initial screening will mainly be assessing the proximity of any European site to the Neighbourhood Area which could be affected by the proposals within the Neighbourhood Plan. The initial screening will also compare the similarities and differences between the types and amounts of development the Neighbourhood Plan is planning for if available, and those set out in the City Plan Part 1,
- 4.13 The information provided for the SEA screening, as listed in the SEA Screening section above, will also be used to carry out the initial HRA screening.
- 4.14 As described under 4.2, a full HRA Screening was carried out on the emerging City Plan Part 1 which concluded that the City Plan was unlikely to result in any significant environmental effects on any of the local European sites and that no development would take place on land within 2km of the city's European Site. This meant that the next stage (Scoping and Full Appropriate Assessment/HRA) of the Habitats Regulations did not need to be carried out on the City Plan Part 1.
- 4.15 It is considered very unlikely that a Neighbourhood Plan will have any effects on the local European sites that are more significant than those resulting from implementation of the City Plan Part 1. However, the initial screening provides a formal opportunity to assess this and this will form part of the evidence base for your Neighbourhood Plan.

- 4.16 Through continual engagement, the Local Development team will work with you to help ensure that any proposed developments or policies within the Neighbourhood Plan will not lead to any significant environmental effects upon a European Site.

5. Other EU obligations

- 5.1 Paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) sets out the matters that must be considered by the examiner of a Neighbourhood Plan. This includes (under sub-paragraph 6) whether the Neighbourhood Plan is compatible with the Human Rights Act 1998. The Human Rights Act transposes the European Convention of Human Rights into UK law. All Neighbourhood Plans must be compatible with this law and should include a statement to show how it complies with the Act at submission stage.

6. Further information and contacts

- 6.1 Statutory Instruments:
All found at www.legislation.gov.uk:
[Environmental Assessment of Plans and Programmes Regulations 2004](#)
[Conservation of Habitats \(Habitats Regulations Assessment\) Regulations 1994](#)
[Town & Country Planning \(Environmental Impact Assessment\) Regulations 2011](#)
[Neighbourhood Planning \(General\) Regulations 2012](#)
[Neighbourhood Planning \(General\) \(Amendment\) Regulations 2015](#)
- 6.2 Practice Guide to SEA available at:
<https://www.gov.uk/government/publications/strategic-environmental-assessment-directive-guidance>
DIY SA for Neighbourhood Plans: <http://www.levett-therivel.co.uk/DIYSA.pdf>
- 6.3 National Planning Practice Guidance:
<http://planningguidance.planningportal.gov.uk>
- 6.4 Contacts**
Brighton & Hove City Council Planning Policy Team:
ldf@brighton-hove.gov.uk

Appendix 1 Screening for Strategic Environmental Assessment

Criteria for determining the likelihood of significant environmental effects for Strategic Environmental Assessment

These criteria are taken from Schedule 1 of the SEA Regulations and must be taken into account when making a determination under Regulation 9 of the SEA Regulations, e.g. providing a Screening Opinion.

The Characteristics of the Plan or Programme, having regard to:

- (a) the degree to which the plan sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- (b) the degree to which the plan or programme influences other plans including those in a hierarchy;
- (c) the relevance of the plan for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d) environmental problems relevant to the plan;
- (e) the relevance of the plan for the implementation of community legislation on the environment (plans linked to waste or water protection)

The Characteristics of the Effects and of the area likely to be effected, having regard to:

- (f) What are the probability, duration, frequency and reversibility of the effects of the plan?
- (g) What is the cumulative nature of the effects of the plan?
- (h) What is the trans-boundary nature of the effects of the plan?
- (i) Are there any risks to human health or the environment (e.g. due to accidents)?
- (j) What is the magnitude and spatial extent of the effects (i.e. geographical area and size of population likely to be affected) of the plan?
- (k) Is the value and vulnerability of the area to which the plan or programme relates likely to be affected by the plan due to:
 - Special natural characteristics or cultural heritage,
 - Exceeded environmental quality standards or limit values, or
 - Intensive Land use?
- (l) Will the plan have an effect on areas or landscapes, which have a recognised national, community or international protection status?

The full Regulations can be found as follows:

http://www.legislation.gov.uk/uksi/2004/1633/pdfs/uksi_20041633_en.pdf

Appendix 2 Environmental Impact Assessment

Schedule 2 developments that might need Environmental Impact Assessment

- This extract is intended to give an indication of the types of development that might need EIA and could be included within a Neighbourhood Plan.
- This sample is not exhaustive and further information can be found in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011
http://www.legislation.gov.uk/ukxi/2011/1824/pdfs/ukxi_20111824_en.pdf
- It should be noted that these regulations are due to be replaced in 2015 to bring into effect changes to thresholds for certain types of projects.

Description of development	Applicable thresholds and criteria (2011 regulations)	Applicable thresholds and criteria (forthcoming 2015 regulations)
3. Energy Industry		
(i) Installations for the harnessing of wind power for energy production (wind farms)	(i) the development involves the installation of more than 2 turbines; or (ii) the hub height of any turbine or height of any other structure exceeds 15 metres	No change – as 2011 regulations.
10. Infrastructure projects		
(a) industrial estate development projects; (b) urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiples cinemas;	For both (a) and (b): The area of the development exceeds 0.5 hectares.	(a) The area of development exceeds 5 hectares. (b) For the development of dwelling houses (including up to 1ha of non residential development) the area of development exceeds 5ha. A screening threshold of 150 residential units will also apply. (b) For the development of non residential development, the area of development exceeds 1ha.

Appendix 3 Stages of Strategic Environmental Assessment

Stage A – Scoping Stage including initial consultation

- This stage is carried out at the same time as evidence and local information is gathered to help identify issues to be addressed by the Neighbourhood Plan, and whilst the vision and objectives for the Neighbourhood Plan are being developed.
- This stage sets the SEA context and objectives, establishes the local baseline information, and decides on the scope of the SEA.
- This stage involves the production of a Scoping Report, which must be subject to consultation including with the three statutory environmental bodies (Natural England, English Heritage and the Environment Agency) in accordance with Regulation 12 (5) of the SEA Regulations.

Stage B – Developing and refining objectives, options, policies and sites

- This stage is carried out as the objectives, options, policies and sites for the Neighbourhood Plan are developed and refined.
- This stage involves the assessment of the objectives, options, policies and sites contained within the Neighbourhood Plan, as well as alternative options, including the “no Neighbourhood Plan option” and any other reasonable alternatives, with an aim of identifying the environmental effects and choosing the most sustainable option.
- This stage also involves identifying mitigation to reduce adverse effects, and ways of maximising beneficial effects.
- Measures to monitor the likely effects should also be proposed at this stage.

Stage C – Production of Environmental Report

- This stage essentially involves bringing together all the information from Stages A and B into a report, ensuring that all the requirements of Regulation 12 (and Schedule 2) of the SEA Regulations are met.

Stage D – Consultation on Environmental Report

- The Environmental Report should be published for consultation alongside the Neighbourhood Plan, in accordance with Regulation 13 of the SEA Directive.

Stage E – Post-adoption Report and Monitoring Stages

- This stage comes into place once the Neighbourhood Plan is adopted.
- This stage involves production of a statement that summarises the main stages of SEA and how the results of the SEA findings and consultation have been taken into account.
- The statement also finalises the monitoring arrangements, which are put in place to ensure the predicted significant environmental effects are measured and reported on a regular basis.

Flow diagram to show SEA stages and Neighbourhood Plan Preparation

Strategic environmental assessment process

Neighbourhood plan preparation

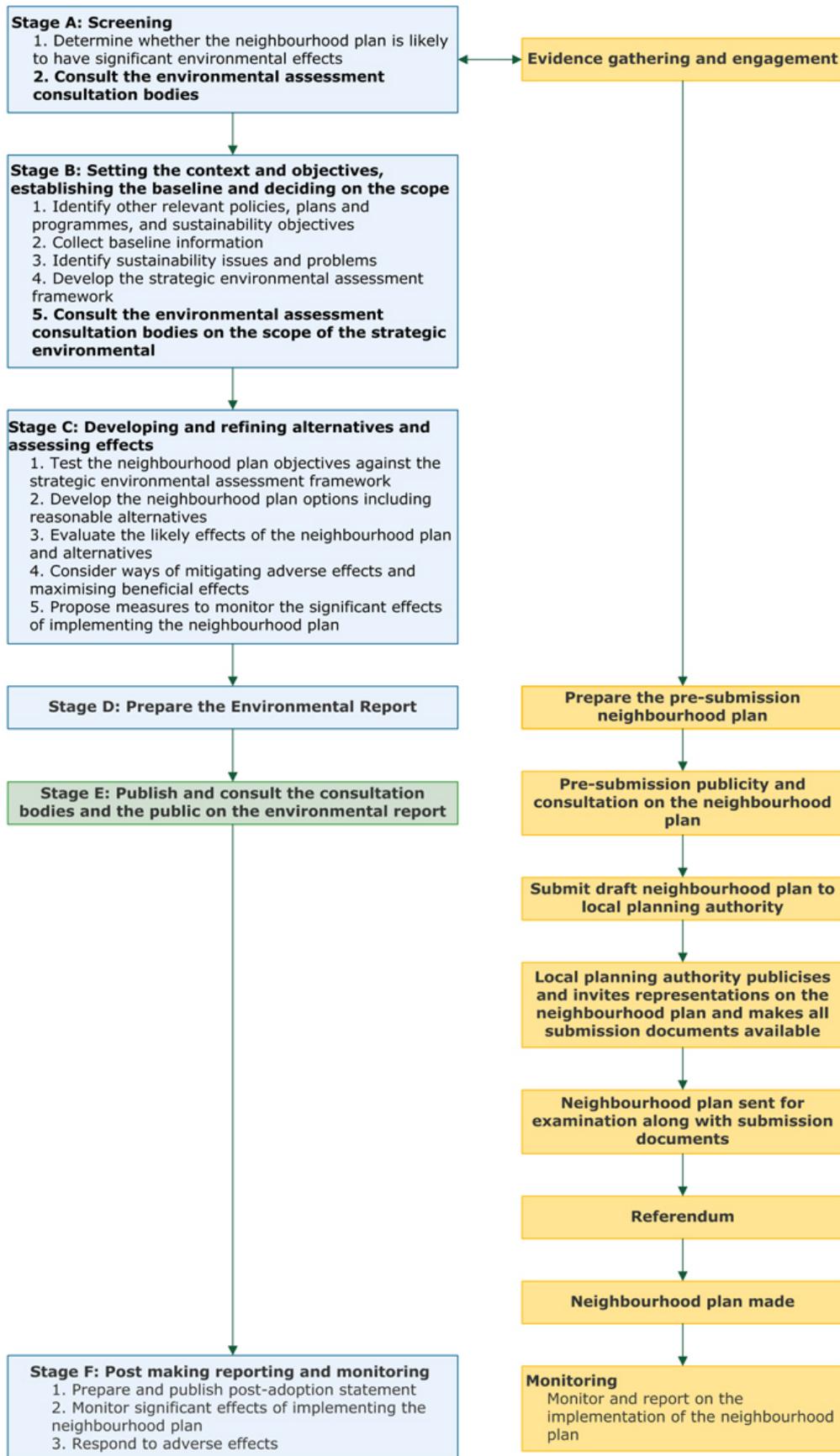


Image taken from: <http://planningguidance.planningportal.gov.uk/blog/guidance/strategic-environmental-assessment-and-sustainability-appraisal/sustainability-appraisal-requirements-for-neighbourhood-plans/>