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Chichester Local Plan Examination statement

Matter 9: The Environment
Policies 40/42/43/45/46/47/48/49/52

September 2014

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Matter 9: The Environment Policies 40/42/43/45/46/47/48/49/52

This statement has been produced as part of the examination of the Chichester Local Plan. It answers the Inspector's questions relating to matter 9.

Any queries about the report should be sent to the programme officer:

Address: Mr. C. Banks
21 Glendale Close
Horsham
West Sussex
RH12 4GR

Telephone: 01403 253148 or 07817322750

Email: bankssolutionsuk@gmail.com

Website: <http://www.chichester.gov.uk/article/24683/Local-Plan-Examination-Library>

1. The Government's Housing Standards Review and the Ministerial Statement on the Building Regulations (13 March 2014) make it clear that in future energy standards will be set through national building regulations. In this context is it appropriate to set requirements in Policy 40 for Code for Sustainable Homes levels 4 and 5, together with BREEAM level "very good" mean?

1.1. Yes, the Chichester Local Plan: Key Policies 2014-2029 (CD-01) has been prepared within the context of national policy and the Council considers that the policy is in general conformity with the National Planning Policy Framework (CD-62), specifically paragraph 95.

1.2. The policy within the Plan was drafted during the Government Housing Standards Review. For this reason it was considered appropriate to add the text "or equivalent replacement national minimum standards, which ever are higher".

1.3. The Planning and Energy Act 2008¹ allows local planning authorities to require new developments to include "higher standard of energy efficiency than required by the Building regulations". These regulations will remain in place until the Zero Carbon Homes standard has become law and is implemented.

1.4. The Sustainable Energy Association recently informed Chief Planning Officers (17 July 2014) that local planning authorities still had powers to specify energy efficiency standards following clarification in a statement from the Rt Hon Oliver Letwin MP, Minister for Government Policy (Appendix 9A).

2. Does the 2008 Strategic Flood Risk Assessment represent a robust and up to date basis for identifying the SDLs and their boundaries and directing development to the parishes?

2.1. Yes, the Chichester Local Plan: Key Policies 2014-2029 (CD-01) has been prepared within the context of national policy and the Council considers that the Plan is in general conformity with the National Planning Policy Framework (CD-62) specifically paragraph 100.

2.2. The Sequential Test for Potential Strategic Locations in Chichester District (CD-74) assessed the strategic development locations against evidence in the Strategic Flood Risk Assessment (CD-80a-g), the Environment Agency

¹ [Planning and Energy Act 2008](#)

Flood Map for Planning (Sea and Rivers) (CD-39) and Environment Agency Risk of Flooding from Surface Water (CD-40).

2.3. The Environment Agency was consulted on the Sequential Test for Potential Strategic Locations in Chichester District (CD-74) to ensure it was robust and based on up to date evidence. The document was amended to reflect its comments.

2.4. The Council acknowledges that some of the data contained within the Strategic Flood Risk Assessment (CD-80a-g) is out of date or has been superseded and where this is the case, the Council has relied on the more recent evidence from the Environment Agency.

2.5. Paragraph 19.11 of the Chichester Local Plan: Key Policies 2014-2029 (CD-01) acknowledges that data will have been superseded and an update will be undertaken in 2015 to take account of the modeling work being carried out by the Environment Agency with regard to Medmerry Realignment Compensatory Habitat.

2.6. Both the Settlement Capacity Profiles (CD-75) and Strategic Housing Land Availability Assessment (CD-16) identified areas and sites within parishes that are in Flood Zones 2 and 3 and both helped inform Policy 5 of the Local Plan: Key Policies 2014-2029 (CD-01).

2.7. Paragraph 3.30 of the Strategic Housing Land Availability Assessment (CD-16) shows that the Council has taken account of physical constraints such as flooding when assessing the potential developable area of sites.

2.8. For clarification additional modifications **M142** and **M143** are proposed to demonstrate that the policy is based on robust and up to date evidence².

3. Should Policy 42 be expanded to include Water management, expand on the requirement for SUDS and include reference to the South East River Basin Management Plan?

3.1. The Chichester Local Plan: Key Policies 2014-2029 (CD-01) has been prepared within the context of national policy and the Council considers that the policy is in general conformity with the National Planning Policy Framework (CD-62) specifically paragraph 17 bullet points 6 and 9, and paragraphs 99 and 100.

² [Schedule of Proposed Additional Modifications to the Pre-submission Local Plan](#): Page 13

3.2. The Council acknowledges that Policy 42 seeks to address wider water quality issues and water management within the District rather than dealing specifically with flood risk. The National Planning Policy Framework (CD-62) and Planning Practice Guidance (CD-72) provides detailed guidance and information on flood risk and delivering development and the policy in the Plan tries to seek a balance between existing national policy and addressing other issues relating to flood risk and water management.

3.3. The Plan area includes sensitive groundwater areas and some special surface water environments and whilst the specific concerns around Chichester City have been covered elsewhere in the Plan, it does not consider the wider area in as much detail.

3.4. The Council has an obligation to support the delivery of the objectives of the Water Framework Directive and as such have regard to the South East River Basin Management Plan (CD-79), this is also reflected in the National Planning Policy Framework (CD-62), paragraph 165. Therefore the policy needs to make specific reference the South East River Basin Management Plan (CD-79) and ensure that the design and location of new development protects and enhances water quality as set out in the penultimate paragraph of this policy.

3.5. Although paragraph 19.12 of the Chichester Local Plan: Key Policies Pre-submission (CD-01) seeks to address the issue of surface water run-off, the Plan should address the requirements for SuDS to protect groundwater quality with the potential to enhance existing or create new green infrastructure across the Plan area. Highlighting the multifunctional benefits add further detail that can be used in conjunction with Policy 52 Green Infrastructure in the Plan.

3.6. For clarification main modifications **M139** and **M141**, and additional modifications **M138**, **M140**, **M142**, **M143** and **M144** are proposed to address these issues³⁴.

4. Policy 43: Are the criteria sufficiently robust to protect the Chichester Harbour AONB? Are references to the Management Plan robust?

4.1. Yes, the Chichester Local Plan: Key Policies 2014-2029 (CD-01) has been prepared within the context of national policy and the Council considers that the Plan is in general conformity with the National Planning Policy Framework

³ [Schedule of Proposed Main Modifications to the Pre-submission Local Plan](#): Pages 19 and 20

⁴ [Schedule of Proposed Additional Modifications to the Pre-submission Local Plan](#): Page 13

(CD-62) specifically paragraphs 17 Core Planning Principles on conserving and enhancing the natural environment, 115 and 116.

- 4.2. The Council is continuing the approach from previous local plans that has sought to provide stringent protection for the particularly special and nationally important quality of the landscape in the AONB. The Council believes that the criteria in the policy strike an appropriate balance between the need to protect the landscape and allow for limited development within the designated area, recognising this is where people live and there is employment largely related to agriculture, marine industries and tourism.
- 4.3. The Council recognises the value that the Chichester Harbour AONB Management Plan 2014-2019 (CD-27) has to the planning process, however, as this is a document produced by Chichester Harbour Conservancy and could be liable to change, it is not considered appropriate that development should have to meet all of the requirements of this plan.
- 4.4. This view is reinforced by the legislative requirement that development should be in accordance with the policies of the development plan unless material considerations indicate otherwise. However, it is appropriate that the requirements of the Chichester Harbour AONB Management Plan 2014-2019 (CD-27) should be considered through the process of determining planning applications. The Chichester Harbour AONB Design Guidelines (CD-25) have been adopted as a material consideration in the assessment of relevant development proposals to help demonstrate consideration of the impact of development on the AONB.

5. Policy 45: Is criterion 2 too restrictive?

- 5.1. No, given the mainly rural and agricultural nature of the District the Council requires proposals to be complementary to farm operations. This is due to the number of rural farm buildings which have been converted to residential development where the occupiers have objected to the day to day operations of the farm in the immediate vicinity. This approach is in keeping with the National Planning Policy Framework (CD- 62) paragraph 58 bullet 1
“...planning policies and decisions should aim to ensure that developments: will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development...”

6. Policy 46: Are the criteria consistent with the NPPF?

- 6.1. Yes, the Council considers that the criteria of Policy 46 in the Chichester Local Plan: Key Policies Pre-Submission (CD-01) are broadly consistent with the National Planning Policy Framework (CD-62), specifically paragraphs 28,

55 and section 12 which relates to 'conserving and enhancing the historic environment'.

- 6.2. The purpose of Policy 46 in the Local Plan: Key Policies Pre-Submission (CD-01) is to encourage alterations, change of use and/or the reuse of buildings in the countryside while reducing the impact of the change on the landscape or character of the area.
- 6.3. Criterion 1 requires buildings to be structurally sound; if significant alterations are required the development could be considered to be new build rather than conversion. Paragraph 55 of the National Planning Policy Framework (CD-62) refers to avoiding isolated homes in the countryside unless there are special circumstances for example where the development would re-use or disused buildings.
- 6.4. Given the content of paragraph 28 of the National Planning Policy Framework (CD-62), and the difficulty of assimilating new buildings in the landscape, the Council's first preference is that existing buildings in the countryside are reused for purposes with an economic benefit. Due to the relative land values for business and residential uses, without criterion 2 it is unlikely that any business uses would be obtained.
- 6.5. Given the mainly rural and agricultural nature of the District, the Council through criterion 3 requires proposals to be complementary to farm operations. This is due to the number of rural farm buildings which have been converted to residential development where the occupiers have objected to the day to day operations of the farm in the immediate vicinity. This approach is in keeping with the National Planning Policy Framework (CD- 62) paragraph 58 bullet 1 "...planning policies and decisions should aim to ensure that developments: will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development..."
- 6.6. Criterion 4 relates to the design of the building and ensuring it is in keeping with its surrounds. Paragraph 55 of the National Planning Policy Framework (CD-62) refers to the design of the building significantly enhancing its immediate setting and is sensitive to the defining characteristics of the local area. While paragraph 59 refers to design codes and refers to "overall scale, density, massing, height, landscape, layout, materials..." which is reflected in criterion 4.
- 6.7. If a building is not suitable for employment uses, the Council though criterion 5 encourages residential as well as tourist accommodation, in buildings which would involve the re-use of a traditional building of archaeological or historical merit. As a mainly rural district it is important that disused or redundant

buildings are reused, it is also essential that the building should be capable of conversion, alteration etc. and not in effect be a new building in the countryside which may be considered to be unsustainable and have an adverse impact on the countryside or landscape.

6.8. Criterion 6 refers to not damaging the fabric or character of a traditional building or heritage asset. Paragraph 55 of the National Planning Policy Framework (CD-62) is relevant to both criterion 5 and 6. It refers to avoiding new isolated homes in the countryside unless there are special circumstances such as where the development would re-use a redundant or disused building, lead to an enhancement to the immediate setting, and where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets.

7. Policy 47: Heritage - Does policy provide sufficient detail to be consistent with the NPPF and provide appropriate guidance for planning applications?

7.1. Policy 47 of the Chichester Local Plan: Key Policies Pre-Submission (CD-01) is consistent with the National Planning Policy Framework (NPPF) (CD-62) and provides appropriate planning guidance as the policy makes it clear that proposals should conserve and enhance the special interest and settings of heritage assets. The policy then lists those heritage assets to provide clarity.

7.2. The evidence base of Policy 47 refers to the up-to-date evidence about the historic environment in the Local Plan area, in compliance with paragraph 169 of the NPPF. The evidence base has informed the policy and the supporting text in paragraphs 19.34 to 19.46, and includes the Chichester Local Buildings List (CD-28a and CD-28b), Conservation Area Character Appraisals (CD-32) and the Historic Environment Record (CD-46).

7.3. Policy 47 is a strategic delivery policy, intended for use in determining planning applications. Should it be considered necessary, the Council could produce a Supplementary Planning Document to provide further guidance, although this would require a modification.

8. Policy 48 - Is the policy justified and is criterion 4 consistent with other parts of the Plan where urban extensions are planned?

8.1. Yes, the Chichester Local Plan: Key Policies 2014-2029 (CD-01) has been prepared within the context of national policy and the Council considers that the policy is in general conformity with the National Planning Policy

Framework (CD-62) specifically paragraphs 109, 110, 113, 114 2nd bullet point and 156 5th bullet point.

8.2. Paragraph 19.47 of the Plan acknowledges there will be development on the edges of towns and villages and policies 15, 16, 17 and 18 of the Chichester Local Plan: Key Policies 2014-2029 (CD-01) were drafted using an extensive evidence base to ensure the most appropriate sites were allocated. The development of sites around Chichester and at Southbourne will inevitably reduce the perception of gaps between settlements but the Council believes that it should be possible to mitigate the impact through careful and detailed masterplanning. In particular the design and layout of a site and its landscaping will be important to maintain the individual identity of settlements and this is particularly relevant for the Westhampnett and West of Chichester sites.

8.3. Paragraphs 3.8-3.9 of A Balanced Approach to Housing Provision (CD-09) underpin the aim of criterion 4 acknowledging the characteristic of the area being a network of small to medium sized towns and villages which retain the feeling that the countryside is never far away. It further states that the settlement pattern is predominantly rural with significant gaps in the urban development in the east/west corridor providing settlements with a separate identity. The Council believes that the level of development proposed in the plan will enable that settlement pattern to be maintained.

8.4. For clarification main modification **M157** is proposed to make the criterion more flexible⁵.

9. Is Policy 49: Is criterion 2 clear in requiring avoidance and mitigation? SPAs. Should a threshold be included for net increase in residential?

9.1. For clarification **M158** makes it clear that criterion 2 requires development to either avoid or mitigate harm⁶.

9.2. With regard to Special Protection Areas, Policy 50 of the Chichester Local Plan: Key Policies 2014-2029 (CD-01) addresses the requirement for all net increases in residential development to incorporate appropriate avoidance/mitigation measures. This is based on robust evidence from the Solent Recreational Disturbance and Mitigation Project (CD-77a-d) and advice from Natural England⁷.

⁵ [Schedule of Proposed Main Modifications to the Pre-submission Local Plan](#): Page 21

⁶ [Schedule of Proposed Main Modifications to the Pre-submission Local Plan](#): Page 21

⁷ [Letter from Natural England dated 31 May 2013](#)

9.3. Criterion 3 of the Interim Policy Statement on Development and Disturbance of Birds in Special Protection Area and Identified Compensatory Habitats⁸ provides further clarification of the approach of the authorities in the Solent area with criterion 4 explaining that a financial contribution has been agreed in consultation with Natural England.

9.4. As explained in criterion 5, very large scale development outside of the 5.6km zone of influence will be considered on a case by case basis and may be subject to an appropriate assessment.

10. Policy 52: Is the Plan justified and effective in requiring development to address any deficits in local green infrastructure provision?

10.1. No, in responding to representations from Nexus Planning Ltd on behalf of Commercial Estates Group made at the pre-submission stage the Council acknowledges that it was not justified in making such a requirement of development and has proposed main modification **M166** which amends the 1st paragraph of Policy 52 to delete the words “address any deficits in local green infrastructure provision”⁹.

11. Discussion on this appendix (Appendix 1 Green Infrastructure) should take place if concerns have not been addressed by Statements of Common Ground.

11.1. The final bullet point in paragraph 1.22 of the introduction to the Chichester Local Plan: Key Policies Pre-Submission (CD-01) makes it clear that the appendices contain further background to the Local Plan. The introductory paragraphs to Appendix 1 – Green Infrastructure also indicate that the contents of the appendix provide recommendations for how the overall strategy might be delivered. Paragraphs A.17 and A.39 make it clear that the maps show the desired connectivity and that they are not finalised.

11.2. At the time the appendices were first drafted there was a lack of more general information about the site specific characteristics of the strategic development locations and their surroundings. The Green Infrastructure appendix was prepared with the intention of providing guidance as to issues and approaches that should be considered through the development of masterplans and planning applications.

11.3. The content of Appendix 1 – Green Infrastructure has to a certain extent been superseded through the production of concept statements. These are

⁸ [Interim Policy Statement on Development and Disturbance of Birds in Special Protection Areas and Identified Compensatory Habitats](#)

⁹ [Schedule of Proposed Main Modifications to the Pre-submission Local Plan](#): Page 23

intended to provide the guidance and parameters for the masterplans to be prepared by the site promoters and that will need to accompany planning applications, in accordance with policy 7 of the Chichester Local Plan: Key Policies 2014-2029 (CD-01).

- 11.4. Paragraph 19.66 of the Local Plan refers to a more detailed strategy being produced as a Supplementary Planning Document. The Council will need to review the necessity of producing an SPD, depending on the progress that has been made with the detailed masterplanning of the strategic development locations, planning applications and/or the Tangmere Neighbourhood Plan.
- 11.5. Following stakeholder involvement in their production, Chichester District Council has approved concept statements for the Westhampnett/NE Chichester and West of Chichester strategic development locations. Tangmere Parish Council will include the content of a concept statement for the Tangmere Strategic Development Location through the development of its neighbourhood plan.
- 11.6. The appendices to the Chichester Local Plan: Key Policies 2014-2029 (CD-01) are not intended to constitute policy nor have the status of the 'Development Plan' when the Local Plan is adopted.

Chichester Local Plan Examination: Matters & Issues

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Matter 9

Appendix 9A – Page 1 Briefing for Planning Authorities: Retention of Energy in
Buildings Powers in Planning Law - July 2014



Briefing for Planning Authorities:

Retention of Energy in Buildings Powers in Planning Law

July 2014

We are issuing this briefing note to Planning Authorities following some uncertainty as to whether the enabling powers will remain in force to set planning conditions to require exemplar energy efficiency standards and / or minimum levels of on-site low carbon or renewable energy production. These powers remain in force and will continue to do so, following a clear statement in Parliament by the Rt Hon Oliver Letwin MP, Minister for Government Policy.

We have become aware that the passage of the Deregulation Bill through the House of Commons created some doubt as to the future legality of such policies included in Local Plans. However, all doubt has now been removed by Oliver Letwin's clarification, and we would encourage Planning Authorities to continue to use these powers (and for those that have not done so yet to do so at the earliest opportunity).

More energy efficient buildings and the servicing of their energy needs with low carbon and renewable sources of on-site energy production makes buildings cost less to run and enhances the competitiveness of local economies for those planning authorities that adopt these policies (our understanding is that around 200 do presently).

Background

Many planning authorities in England have included in their Local Plans ambitious requirements for new developments to source a percentage of their future energy needs from on-site low carbon or renewable sources, and / or require standards of energy efficiency that go beyond the minimum requirements of the relevant Building Regulations. These forward-thinking Planning Authorities have driven up standards for energy efficient buildings, reduced fuel bills for consumers, the public sector and businesses, enhanced the competitiveness of local economies, and helped to build the supply chain towards zero carbon homes in 2016 and zero carbon non-domestic buildings in 2019.

Planning & Energy Act 2008

The ability of Planning Authorities to adopt these policies is derived from the Planning and Energy Act 2008. In brief, the powers that the Act confers are in three separate parts allowing them to specify the following in their local plans as a condition of granting planning permission:

- Minimum contribution to the building's energy needs from on-site renewables.
- Minimum contribution to the building's energy needs from low carbon energy sources.
- Higher standards of energy efficiency than required by the Building Regulations.

Proposed repeal of the Planning & Energy Act

The Department for Communities and Local Government's (CLG) [Housing Standards Review](#)¹⁰ consultation in August 2013 included proposals for the possibility of repealing the Planning & Energy Act. If seen through to implementation, this would have meant that existing Local Plans that utilise these powers would have to be re-written. This would have the effect of lowering the standards of new build in that Planning Authority's area that, in some cases, have existed for many years – a considerable retrograde step. Following considerable pressure from a Coalition of trade associations and NGOs, the Government subsequently decided to leave the entire Act in place APART from the energy efficiency provisions which were set to be repealed through an amendment to the Deregulation Bill moved by Cabinet Minister Tom Brake MP.

Powers retained

Although the energy efficiency provisions will eventually be repealed, the [Government has now confirmed](#)¹¹ that it will not enact this provision until the Zero Carbon Homes (ZCH) standard has become law and is implemented. In effect it has undertaken that Planning Authorities can continue to apply exemplar standards, until National requirements become more ambitious.

We would therefore strongly encourage those Planning Authorities that are making use of these powers for energy efficiency and low carbon / renewable energy production on-site to continue to do so and for those that have not done so yet to adopt these powers at the earliest opportunity.

Further information

If you require more information please contact Anna Livesey
anna.livesey@sustainableenergyassociation.com

¹⁰ <https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient/supporting-pages/technical-housing-standards-review>

¹¹ <http://www.theyworkforyou.com/debates/?id=2014-06-23b.152.2>