

Chichester Local Plan Examination – Hearing Statement

# Matter 1: Procedural/ legal requirements

Questions 1 - 11

September 2024

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# Matter 1 – Procedural/ legal requirements

This hearing statement has been produced as part of the examination of the Chichester Local Plan. It answers the Inspectors' questions 1 – 11, relating to **Matter 1: Procedural/ legal requirements**.

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## **Matter 1: Procedural/legal requirements**

### **Issue: Whether all Statutory and Regulatory requirements have been met?**

#### **Duty to Cooperate**

Q.1 Is there clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in respect of strategic matters with cross-boundary impacts considered through the preparation of the Plan?

- 1.1 Yes, the Duty to Cooperate Statement of Compliance (April 2024, SD06) sets out the strategic and cross boundary issues on which the council has engaged identifying how, when and on what issues the different duty to cooperate bodies were engaged, the outcome of this engagement on shaping the Plan and any outstanding strategic issues on which the council continues to engage.
- 1.2 Section 4 of the Statement of Compliance sets how the council has taken a constructive approach to engaging with duty to cooperate bodies during the course of preparing the Plan, for example, through the preparation of joint evidence base studies on cross-boundary issues, meetings and correspondence with adjoining local authorities, involvement in wider groupings (both general and on specific topics) and preparation of Statements of Common Ground. Appendix 1 of the Statement of Compliance provides a detailed record of engagement.
- 1.3 Section 5 of the Statement of Compliance identifies the strategic issues which have informed the duty to cooperate discussions (see list in para. 5.2) and sets out each issue in turn with the progress made as at submission of the Plan (May 2024).
- 1.4 Where appropriate, Statements of Common Ground (SC01 – SC08 and PS/SCO9) have been prepared with individual duty to cooperate bodies, which provide more detail on the engagement undertaken and the outcomes of this in terms of areas of agreement and ongoing collaborative work to resolve outstanding issues. The most up to date position with the relevant highway authorities is set out provided in the Transport Background paper and responses on Matter 4A. The council is working with these authorities to formalise this through Statements of Common Ground that will be submitted prior to the examination hearings, if possible.
- 1.5 The Housing Need Background Paper (July 2024, BP06), paras. 3.9 – 3.14 and 4.11 – 4.19 also considers and summarises the duty to cooperate position in relation to housing and unmet need from other authorities.

1.6 Overall, the council considers it has met the duty to cooperate in preparing the Local Plan.

### **Sustainability Appraisal**

Q.2 Is the Sustainability Appraisal (SA) adequate and have the legal requirements of the 2004 Act and the Town and Country Planning (Local Planning) (England) Regulations 2012 (2012 Regulations) been met?

1.7 Yes, the SA Report was published at the Regulation 19 stage, as required under the Local Planning Regulations (2012). This is SD03.01/ SD03.02. Also, interim reports were published at both of the Regulation 18 consultation stages (CN11.01 and CN06.02/03). The SA Report presents the information required under the 2004 Act and the Environmental Assessment of Plans and Programmes (SEA) Regulations (2004). Fundamentally, this means presenting an appraisal of “the plan and reasonable alternatives” and “an outline of the reasons for selecting the alternatives dealt with”. Within the SA Report:

- Part 1 presents information on reasonable alternatives (RAs), specifically: defining RAs, appraising RAs and selecting the preferred option(s).
- Part 2 presents an appraisal of the local plan as a whole (and, as part of this, gives explores specific elements of the plan as necessary).

1.8 Appendix 1 of the SA Report presents a regulatory checklist, and further information is set out within the council’s response to Inspectors letter of 22 July (CD02) Questions 1 – 3.

Q.3 Is the SA sufficiently clear as to how reasonable alternatives have been considered and compared through the various stages in plan making?

1.9 Yes, within Part 1 of the SA Report, Section 4 firstly discusses the broad scope of RAs, before Section 5 (and its associated appendices) describes a lengthy and involved process to define RAs in the form of ‘growth scenarios’. Section 6 then presents an appraisal of the growth scenarios, before Section 7 presents the council’s response to the appraisal and, as such, the council’s reasons for supporting the preferred option(s) in light of the appraisal.

1.10 It is also the case that detailed work to explore options / alternative was undertaken at each of the two Regulation 18 consultation stages, and this work fed into work to define and appraise RAs ahead of the Regulation 19 stage (along with associated consultation responses).

1.11 For further detail see the council’s response to Inspectors letter of 22 July (CD02) Questions 1 – 3.

## Habitats Regulations Assessment

Q.4 Has the Habitats Regulations Assessment (HRA) been undertaken in accordance with the Conservation of Habitats and Species Regulations 2017?

- 1.12 The Habitats Regulations Assessment (HRA) (SD04) has been undertaken in compliance with the Conservation of Habitats and Species Regulations 2017 (as amended), as well as relevant case law. This includes breaking down the assessment process into an initial Test of Likely Significant Effects and a subsequent Appropriate Assessment, reserving consideration of mitigation to the Appropriate Assessment stage in line with the People Over Wind and Sweetman v Coillte Teoranta (European Court of Justice case C-323/17), considering the impacts of the plan in combination with that of other plans and projects, and consulting Natural England on the assessment.
- 1.13 Chapter 1 of the HRA introduces the concept of HRA and sets out the legislative basis. Chapter 2 of the HRA provides the methodology for both stages of HRA undertaken (Likely Significant Effects and Appropriate Assessment) and quotes relevant case law such as the People over Wind case. Section 3 then sets out the relevant impact pathways on European sites. Chapter 4 and Appendix A sets out HRA Stage 1 (Likely Significant Effects) while Chapters 5 to 13 sets out HRA Stage 2 (Appropriate Assessment) including qualifying features and conservation objectives of the European sites and explicit consideration of the Chichester Local Plan in combination with other plans and projects. Chapter 14 provides recommendations. A separate Addendum to the air quality modelling in the Local Plan HRA has been produced and submitted into the Examination (SD11).
- 1.14 Q.5 Natural England disagree with the HRA's conclusion that adverse effects on the integrity of the Mens SAC can be ruled out through the impact pathway of increased ammonia. What, if any measures would be sufficiently certain to be used as mitigation in this regard?
- 1.15 The council and its consultants concluded that the most appropriate approach to dealing with the forecast increase in ammonia concentrations is to introduce a programme of measures to encourage a further shift from petrol cars and vans to ultra-low emission vehicles (ULEVs) over the period to 2039, beyond that modelled to arise purely from implementation of national policies. This would include measures such as:
- 1) Measures to incentivise ownership of ULEVs
  - 2) Active Travel initiatives
  - 3) Improving bus and rail connections
  - 4) Awareness Raising Campaigns
  - 5) Seeking to maximise electric vehicle charging infrastructure

## 6) Travel Plans

- 1.16 These are covered in more detail in a draft joint mitigation strategy prepared for Horsham and Chichester District Councils and now published as the Horsham and Chichester Local Plan Outline Air Quality Mitigation Strategy (AECOM - August 2024) (PS/CC23). The local area already has a greater proportion of electric vehicles than the average fleet. This suggests that local existing and future car and van owners would be more responsive to a package of such measures than the average motorist.
- 1.17 It is not possible to mathematically predict how much future ammonia concentrations would be reduced by such measures, since it would be dependent on uptake. However, it is possible to identify what further percentage conversion of petrol cars and vans to ULEVs would be required in order to reduce the 'in combination' ammonia impact to 1% of the critical level and then use Automated Number Plate Recognition (ANPR) to track the shift in the vehicle fleet (and in particular the degree of electrification) towards the necessary additional shift to electric vehicles. Since the impact is not forecast to occur until late in the plan period (2034-2035 according to further work undertaken for Horsham District Council and referenced in the joint mitigation strategy), this could be used as a performance target in future Local Plan reviews to confirm whether the measures were on target to achieve their objective and, if not, either introduce further measures, or potentially consider controlling delivery of development/occupation in the Local Plan areas.
- 1.18 That would enable the mitigation strategy to be compliant with the Conservation of Habitats and Species Regulations 2017, because it would ensure that if the shift from petrol/diesel cars and vans to electric vehicles was not on track, future Local Plan reviews (which must by law occur every five years) would enable either additional measures to be implemented, or development to be amended, such that the performance targets would be met by 2039. This is a similar approach to that being undertaken to address ammonia at Epping Forest SAC arising from traffic growth associated with the Epping Forest Local Plan (while the Epping Forest Local Plan HRA also discusses implementation of a Clean Air Zone, modelling for that Local Plan HRA identified this would only address NOx and nitrogen deposition and not materially address ammonia).
- 1.19 A draft joint mitigation strategy (PS/CC23) has now been completed and provided to the Inspectors with this response for consideration as part of the examination alongside the Local Plan. This is based on the air quality modelling undertaken for the Horsham Local Plan, as that Local Plan is forecast to be responsible for the majority of traffic growth (approximately 50%) on the A272 to 2040.

Q.6 What implications, if any, would any such mitigation measures have for the Plan?

1.20 Following a meeting held on 12 September between the two authorities and Natural England a statement has been received from Natural England (email dated 13 September 2024) (OD03) that states:

1.21 'Natural England's position on the proposed 'soft measures' to mitigate the increase in ammonia concentrations from the Local Plans remains unchanged. However, we note that evidence provided (Horsham and Chichester Local Plans – Outline Air Quality Mitigation Strategy - September 2024 and the Horsham District Local Plan HRA Air Quality Addendum – September 2024) identifies that the housing delivery trajectory will not breach the 1% of critical level for ammonia threshold (for The Mens SAC) until later in the plan period. We are also aware that, should the NPPF be revised imminently as expected, then the plan will go into review. Should this occur, we acknowledge that there would be little risk to ammonia impacts to The Mens SAC on that basis as we are committed to working with the HDC and CDC to secure robust mitigation proposals prior to the threshold being breached.'

1.22 The Horsham District Local Plan HRA Air Quality Addendum – September 2024 is available in the Examination Library as PS/RCC03.

1.23 Joint meetings between the two authorities and Natural England remain ongoing. More detailed comments from Natural England in relation to the draft joint mitigation strategy (PS/CC23) are anticipated later in October 2024. At that stage the council will update the Inspectors and consider whether or not there may be any potential implications for the Local Plan. At this stage it is envisaged mitigation measures will be able to be put in place to underpin the proposals in the Local Plan.

### **Local Development Scheme**

Q.7 Is the Plan compliant with the Council's Local Development Scheme (LDS) in terms of its form, scope and timing?

1.24 Yes, the Local Development Scheme 2024 – 2027 (revised July 2024, PS/CD03a) (LDS) was updated on 16 July 2024 (approved at Full Council). This replaced the LDS at the time of submission (Local Development Scheme 2024 – 2027, March 2024, CD03). The Local Plan complies with the form and scope set out in the document, as it sets the overall strategy for the whole plan area (outside the South Downs National Park) and includes both strategic and



development management policies. It will provide the policy context for neighbourhood plans and other community-led planning documents.

- 1.25 In response to timing, the LDS sets out Submission of the Local Plan on 3 May 2024, which took place and examination hearings in summer/autumn 2024, in line with the hearings scheduled for October/ November 2024. The LDS anticipates adoption Spring 2025, which is dependant on progression of the Local Plan through the examination process.
- 1.26 The LDS also includes two further development plan documents, the Southbourne Allocation DPD and the Site Allocation DPD. The council has proactively progressed the Southbourne Allocation DPD in line with the timescales in the LDS. This has involved commissioning expert consultants Tibbalds to produce the DPD, which has involved sophisticated site assessment and high level masterplanning. There has also been constructive engagement with key landowners/site promoters and the parish council. The Reg. 18 consultation version of the emerging Southbourne Allocation DPD has been produced and will be presented to Cabinet and Council on 30th September and 1st of October respectively.
- 1.27 The Site Allocation DPD will allocate land for any residual development needs identified but not allocated within the Local Plan, including if neighbourhood plans do not progress sufficiently to allocate sites in areas with a strategic or non-strategic parish number. The timetable is for consultation on a Site Allocation DPD in Autumn 2025 but is subject to adoption of the Local Plan.

## **Community Involvement**

Q.8 Has the Council complied with the requirements of section 19(3) of the 2004 Act with regard to conducting consultation in accordance with the Statement of Community Involvement?

- 1.28 Yes, the council's Statement of Community Involvement (SCI) (January 2024, CD06) sets out, in Chapter 2, how the council will produce and consult on planning policy documents, including engagement commitments, who we involve and the consultation undertaken at each stage of the process. The Statement of Consultation (Regulation 22 (c)), (April 2024, SD05) explains how the council has undertaken consultation and stakeholder involvement to produce the Local Plan in accordance with the SCI. It explains how on-going consultation and engagement from Issues and Options consultation (see CN09 – CN13) and the Preferred Approach consultation (see CN04 – CN08) shaped the Proposed Submission version of the Local Plan which was subject to Regulation 19 consultation.

## **Climate Change**



Q.9 Are the policies of the Plan designed to secure that the development and use of land contribute to the mitigation of, and adaptation to, climate change in accordance with Section 19(1A) of the 2004 Act?

1.29 The Climate Change Background Paper May 2024 (Document BP01, page 4) recognises the council's statutory obligations including the requirement under section 19(1a) of the Planning and Compulsory Purchase Act 2004 that local plans (taken as a whole) should include policies designed to secure that development and use of land in the local planning authority's area contribute to the mitigation and adaptation of climate change. Section 7 of the Background Paper (pages 10-15) sets out how the council addresses climate change throughout the Local Plan and in particular, details those policies that include climate change adaptation and mitigation criteria.

### **Equalities**

Q.10 In what way does the Plan seek to ensure that due regard is had to the three aims expressed in s149 of the Equality Act 2010 in relation to those who have a relevant protected characteristic?

1.30 The Plan has been accompanied by an Equalities Impact Assessment (EqIA) at each stage of preparation (Regulation 19 Local Plan EqIA, (January 2023, SD07), Preferred Approach EqIA, (December 2018, CN07), and Issues and Options EqIA, (June 2017, CN12)). The conclusions set out in para. 3.17 of the Regulation 19 EqIA provide a summary assessment of the implications of the Plan for each of the protected characteristic groups, which concluded that there would be no negative impacts from the Plan on protected characteristics. A full policy assessment is provided at Appendix 1 of the Regulation 19 EqIA.

### **Superseded Policies**

Q.11 Is the Plan clear in identifying the policies of the existing development plan which would be superseded by the Plan consistent with Regulation 8(5) of the 2012 Regulations?

1.31 Yes, Appendix H of the Plan sets out the list of saved and deleted policies from both the Local Plan 2014 -2029 (July 2015, CD01) and the Site Allocation DPD 2014 – 2029 (January 2019, CD05). This clearly identifies that the Plan will replace all of the policies in the Chichester Local Plan: Key Policies 2014 – 2029 and that the policies and allocations in the Site Allocation DPD 2014 – 2029 are saved for continued use, as set out in the table in Appendix H.