

Kirdford Parish Council
Matter 1 – Procedural/legal requirements

ISSUE – Whether all Statutory and Regulatory requirements have been met?

Duty to Cooperate

Q1. 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?

KPC Response:

1. KPC has made substantive representations to the Local Plan Regulation 19 consultation regarding CDC's failure to discharge the Duty to Cooperate.
2. Planning Practice Guidance (PPG) states that authorities should make any statements of common ground (SOCG) available on their website **by the time they publish their draft plan so that communities and stakeholders have a transparent picture of how they have collaborated.**
3. Despite CDC's attempt to evidence that it has discharged the duty in its Duty to Cooperate Statement of Compliance (January 2023), this lacked substantive and up to date evidence that 'active', 'ongoing' and 'constructive' cooperation took place from the start of the preparation of the Local Plan.
4. At the time of the Regulation 19 Consultation **there were no up to date, published and agreed SOCGs with any Prescribed Bodies to support the Pre-Submission Local Plan.** There were not even draft SOCGs provided as part of CDC's DtC Statement of Compliance for consultees to review.
5. It continues to be the case at this late stage that there are still a number of outstanding SOCGs which CDC had identified in its 26th June response to the 12th June Inspectors' Letter.

Statement of Common Ground	
SC07 - Horsham District Council	Published
SC08 - Arun District Council	Awaiting comments from ADC. Publication anticipated early July.
SC09 - South Downs National Park Authority	Awaiting signing – publication anticipated before end June.
SC10 - Waverley Borough Council	Awaiting signing – publication anticipated early July.
SC11 - West Sussex County Council (transport)	Ongoing discussions on draft
SC12 - National Highways	Draft in circulation – anticipated by 31 July 2024
SC13 - Hampshire County Council	Ongoing discussions on draft

List of outstanding documents and anticipated publication dates. CDC (26th June 2024) response to Inspectors letter of 12th June 2024.

6. As far as we can ascertain from the Council’s Examination Library (03.09.2024) CDC still does not have an SOCG with:
 - Waverley Borough Council
 - Hampshire County Council (transport)
 - National Highways
7. However, we note from CDC’s latest ‘Authority’s Monitoring Report’ (2022/23¹) that CDC has sought/is pursuing SOCGs with organisations that are not mentioned in its 26th June letter to the Inspectors. These two organisations are:
 - NHS Sussex
 - Crawley Borough Council
8. This is extremely late in the day for CDC to be providing SOCGs when Government Guidance is clear that they should be published by the time of the ‘draft plan’.

Sustainability Appraisal

Q2. 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?

KPC Response:

9. KPC has set out its comments on the Sustainability Appraisal in its representations to the Regulation 19 Local Plan Consultation. These are summarised below and still stand.

¹ https://www.chichester.gov.uk/media/39387/Authorities-Monitoring-Report-2022-2023/doc/Authoritys_Monitoring_Report_2022-2023_FINAL.docx?m=1710339721013

Local Plan Areas

10. The SA states that the local plan area is “*split into two broad sub-areas*” the ‘Southern Plan Area’ and the “Northeast Plan Area’ however the Local Plan conflicts with the SA outlining three distinct sub-areas.
11. This raises serious concerns as to the accuracy and robustness of the detailed contents of the SA.

Data Sources and Inconsistencies

12. Paragraph 2.2.12 makes the statement, that the southern plan area is particularly heavily constrained setting out the international designation of Chichester Harbour and its susceptibility to water pollution. Whilst we do not disagree that the south of the District is constrained, this statement undermines the significant biodiversity constraints of the NPA including the Ebernoe Common SAC, and The Mens SAC inside Kirdford Parish. It also fails to mention the Sussex North Water Resource (WRZ) which Kirdford Parish is also located within and is clearly a key constraint. This suggests there has been a failure by CDC, the Local Plan and its evidence base to grapple with the very real constraints in the NPA

Transport and Accessibility of Kirdford

13. The SA rightly states that the “other villages” within the NPA, which includes Kirdford, are more distant than the four service villages and that they are served only by minor roads and that there is undoubtedly limited potential to travel by walking / cycling or public transport in comparison to the southern plan area and there are not settlement hubs in this area.²

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

KPC Response:

14. KPC considers that it is not sufficiently clear.

Parish Scenarios

15. KPC supports the SA’s original ‘strong argument’ that a new settlement at Crouchlands Farm is unreasonable and that it should be rejected. It is entirely unclear as to what the ‘on balance’ factors were that led the SA consultants to then conclude that Crouchlands Farm should be considered ‘reasonable’ to be

² Sustainability Appraisal (Jan 2023) para 5.2.33

taken forward as an option for further consideration³ particularly given that the application for this site was refused by CDC.

16. Whilst KPC welcomes the SA's conclusion that 2,250 new homes in the NPA is unreasonable, and that a key reason for this is the 'water neutrality issue', this requires much further explanation as to why the SA considers 1,800 homes is considered reasonable⁴. Why is 2,250 an unreasonable amount of housing but 450 homes less is considered reasonable?

Water Neutrality and the Sussex North Water Resource Zone (WRZ)

17. The SA (and the Local Plan) appear to assume that the Sussex North Water Neutrality Study, and particularly Part C – Mitigation Strategy (November 2022) presents a relatively 'straightforward' solution to Water Neutrality for the WRZ which falls into 5 local authority areas. The SA fails to grasp the complexity of delivering Water Neutrality across these five areas and meet the requirements as set out by Natural England in its Endorsement of the Mitigation Strategy. The proposed solution has not been tested and therefore cannot be relied upon.
18. We question how CDC and the other authorities intend to provide more development in the WRZ and reduce or keep constant the current total water usage and effectively monitor this on an ongoing basis? Clearly the SA should be less certain about the achievability of the Strategy when determining reasonable alternatives for the North of the Plan Area.

Summary of parish scenarios for the northeast plan area (NPA)

19. Table 5.2 (Summary of the parish scenarios for the northeast plan area) sets out the total 'highest growth' scenario as 1,650, with the 'higher growth' scenario being 825 and the 'lower growth' scenario being 200. It is entirely unclear how this table relates to the SA's stated conclusion that 1,800 homes is considered reasonable across the NPA. There is no further explanation about the table.
20. Appendix V: Parish Scenarios of the SA states that "*reaching a decision on reasonable growth scenarios for the northeast plan area and, in turn, a decision on preferred approach to growth, is inherently challenging, in comparison to the southern plan area*"⁵. The reasons it provides to justify this statement is that:
 - the range of potential total growth quantum figures that warrant consideration is broad from 200 new homes to 1,800 homes which it states is the level of growth assumed in the Water Neutrality Mitigation Strategy; and

³ Sustainability Appraisal (Jan 2023) para 5.4.8

⁴ Sustainability Appraisal (Jan 2023) para 5.4.9

⁵ Sustainability Appraisal (Jan 2023) Appendix V – Parish Scenarios page 104

- there are relatively few clear cut strategic distribution factors with all four/five settlements placed in the same tier of the settlement hierarchy and the two other primary facts that apply in the southern area, namely nutrient neutrality and A27 capacity constraints, do not apply to the northeast plan area.
21. The 'reasonable alternatives' for the NPA are therefore wholly framed by two key factors: **1)** the reliance on assumptions made about development capacity in the Water Neutrality Mitigation Strategy; and **2)** the reliance on the 'settlement hierarchy'. KPC considers this to be far too simplistic and an unacceptable approach for determining the reasonable alternatives in the NPA. The 'settlement hierarchy' is itself flawed with a 'broad brush' approach to designating seventeen settlements as 'service villages' rather than taking an evidence-based and objective approach to deciding on a settlement hierarchy.
22. There are a number of 'key issues for the NPA in the SA' which require highlighting:
- Connectivity: In contrast to Loxwood and (in particular) Wisborough Green which the SA considers to be best connected to higher order settlements (Billingshurst and Horsham) it considers Kirdford (as one of the 'other villages') as being 'more distant and connected by minor roads' and suggests poor bus frequency / services. It is entirely unclear how the SA attempts to justify a range of 50-300 dwellings in Kirdford?
 - Landscape: The Landscape Capacity Study (2019) assesses 'low capacity for landscape change' for the majority of the land around Kirdford village (Areas 162, 163 and 165) apart from Area 164 to the east which is assessed as 'medium capacity for landscape change'. So Kirdford is generally unsuitable for growth in landscape terms. 1/3 of the Parish is in the National Park.
 - The wastewater treatments works (WwTW) at Loxwood appears to require upgrades as it is already operating over capacity. It is unclear how this has been taken into consideration in the SA.
 - The SA overstates Wisborough Green's environmental sensitives compared to Kirdford and it fails to highlight that The Mens SAC is within Kirdford Parish, Kirdford is in the SSSI impact zone for the Mens SAC / SSSI, is closest to the Ebernoe Common SAC / SSSI / NNR and is in close proximity to the South Downs National Park.

Kirdford Village

23. The SA contains errors regarding the committed housing in Kirdford as set out in our representations. The SA states that the existing committed growth at Kirdford "amounts to a significant level of growth for a small village". The Pre Submission Local Plan's proposal of an additional 50 dwellings in Kirdford, on top of existing

commitments, would result in an increase of 46% housing growth in an unsustainable and isolated location of the District, constrained by water neutrality.

24. Kirdford 'Southern Option': The SA states, for potential growth options in Kirdford *"the first port of call is land to the south of the village, namely adjacent sites HKD001a and HKD0001b"*. Why should the SA consider this to be the 'first port of call'? What justification is there for stating this and using such subjective language? This is particularly the case given that:
- Substantial biodiversity value and lies directly in the path of the bat corridor used to transit between the Mens SAC and Ebernoe Common.
 - The SA appears to unduly give weight to this option due to there being a planning application for 70 dwellings across the two sites and it states this is a reasonable option to test as it states that it relates well to the village. KPC disagrees with this. KPC has submitted extensive representations to the planning application (appended to KPC's Regulation 19 representations) and these points still stand in relation to considering this area in the Local Plan. The application was submitted in 2021 and still undetermined despite clear reasons for its refusal.
25. Kirdford 'Northern Options': The SA considers the sites to the north of Kirdford as unsuitable, and they should be removed from consideration in the SA and Local Plan for these reasons.
26. It states that this area is a "sequentially less preferable' direction for growth. The reasons given for this is are 1) less well connected to the village and road network; 2) high density of woodland, mature hedgerows and PRoWs; 3) committed site HKD0002 is nearby; 4) access is key issue – it seems likely that sites would require access from one another (HKD0007 requires access from HKD0009 via a small stream / surface water flood channel); and 5) the lack of any field boundary between HKD0009 and / or HKD0011.
27. There is no need to test these as reasonable options as the reasons provided should render the sites unsuitable and undeliverable.
28. Kirdford 'Eastern Option': The SA states that the Landscape Capacity Study notably identifies *"land to the east of the village as having relatively high landscape capacity; however, in addition to the land in question not having been made available, there would be a concern regarding long term development creep east across a flat and relatively featureless landscape"*. As already pointed out the land to the east was assessed as having medium capacity for change in the Study which is not 'high capacity'. However, KPC agrees that the eastern option is not a reasonable option.

Kirdford Reasonable Alternatives

29. With the above points in mind, KPC is perplexed by the SA's selection of reasonable alternatives. This is particularly the case as the previous draft Local Plan indicated 0 additional new homes for Kirdford.

Scenario 1 – 50 homes, assumed likely to involve a southern focus.

Scenario 2 – 150 homes, assumed to involve up to 70 homes to the south plus limited growth to the north (presumably to include HKD0009).

Scenario 3 – 300 homes, assumed to involve up to 70 homes to the south plus up to 250 homes to the north.

30. The only scenario that is ruled out is the 'lowest growth scenario (i.e. growth at committed sites only)'. Its only justification for ruling this scenario out is that there is a clear argument for growth over-and-above commitments, given A) the strategic context (1,800 home target figure for the north east plan area) and B) significant capacity at sites found to have capacity through the HELAA. It is the SA's role to assess options rather than simply reinforce what the draft Local Plan states. CDC has sought to fulfil an artificial housing capacity / target of 1,800 dwellings rather than approaching this important SA exercise with an open mind.

31. The SA recommends that the Kirdford Neighbourhood Plan is delegated the responsibility of allocating sites under Scenarios 1 and 2 and that the Local Plan allocates the sites if Scenario 3 were selected. The SA should not be determining locations for growth if the allocations are to be determined through the NDP which will be accompanied by its own SA (and other evidence base) and full public engagement process.

Detailed Site Assessments

32. The site assessments in the SA are extremely basic. There is no narrative provided for each site and there is no weight given to the scoring.

33. KPC note an error for the Kirdford HELAA sites regarding the assessment of the 'primary school' which is set out in its representations.

Habitats Regulations Assessment

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

KPC Response:

34. In relation to **Policy H3 (Non-Strategic Parish Housing Requirements 2021 – 2039)** which includes 50 dwellings at Kirdford, it states that there are "potentially likely significant effects" and that "there is the potential this development may have impacts on European sites".

35. The HRA explains that in due course allocations will be made through the respective North of the Plan Area neighbourhood plans or a subsequent Site Allocation DPD. It explains that the entirety of all three parishes lies within the 12km zone and much lies within the 6.5km zone. Therefore, it states the allocations could impact upon the supporting habitat of bats associated with **Ebernoe Common SAC**. The same applies to any windfall development that could feasibly occur within the northern part of the plan area.
36. KPC challenges the conclusions of the HRA that the draft Local Plan policies and future neighbourhood plan policies are the appropriate way to ensure protection of the conservation of the SAC. This Local Plan is the strategic planning document where the key decisions are being made including the proposals for considerable development in the North of the Plan Area. It appears that the HRA is attempting to leave the difficult decisions and issues for the Neighbourhood Plan rather than properly assessing the impacts and whether mitigation measures can accommodate the 50 dwelling housing figure for Kirdford.
37. In relation to the **Appropriate Assessment (Atmospheric Pollution)** KPC considers it is an unjustified assumption by the HRA that a reduction in deposition rates will occur in Chichester as a result of the implementation of the Local Plan which it claims is due to 'active travel and public transport promoted within the Local Plan reducing the number of vehicular passes along the A283'. As the Council's own evidence demonstrates in the Sustainability Appraisal (prepared by the same consultants as the HRA) there is very limited potential by travel by walking / cycling or public transport in the North of the Plan Area.
38. In respect of **Policy NE17 (Water Neutrality)** the Screening Assessment concludes that there will be "No likely significant effects". However, there are concerns that are raised by KPC with this finding. The Arun Valley SPA, SAC, and Ramsar sites lies within the Sussex North Water Resource Zone which is served by supplies from groundwater abstraction at Pulborough. NE have advised that there is a significant threat to the Arun Valley SPA, SAC and Ramsar site arising from the groundwater abstraction, and that water neutrality is one way to ensure that no further adverse effect is produced, and for sufficient water to be available to the region. This matter is addressed in considerably more detail in KPC's representations.

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?

KPC Response:

39. Natural England (6th June 2024 letter to CDC) considers *“the current proposals do not demonstrate a sufficient level of certainty or efficacy”*.
40. Natural England also states that *“The Mens SAC has a ‘Restore’ Conservation Objective and therefore an increase in ammonia may retard the site meeting objective and needs to be considered as part of the assessment.”*
41. It concludes that in terms of a potential solution that: *“a quantifiable solution via mitigating agricultural impacts should be explored further as a means of allowing the Plan to proceed. Natural England will support your authority to explore these solutions to ensure that the Plan can be found sound”*.
42. It appears that mitigating agricultural impacts need to be explored further to allow the plan to proceed. However, KPC is not aware of how / if these potential solutions are being explored and what CDC is proposing to address this.
43. The Mens SAC lies almost in entirety within Kirdford Parish. The majority of the SAC is in contact with the A272 (the main west-east road in the area) and in some places the SAC straddles both sides of the A272. The HRA assesses the atmospheric pollution as minimal air pollution is described as one of the key environmental conditions that support the features of the European interest having been identified. There is no assessment of the recreational impacts likely to arise from the planned development. KPC therefore considers that there has been a critical oversight in the preparation of the HRA because ‘low recreational pressure (because management is minimum intervention and bridleway by horse riding is a recurring threat) is specifically identified as a ‘key environmental condition’⁶.

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

KPC Response:

44. CDC’s proposed measures have not been published as far as KPC is aware, so it is not possible to comment on this at this stage.

⁶ HRA Para 8.8.

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?

KPC Response:

45. This is a question for CDC to answer.

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?

KPC Response:

46. Section 19 (1A) states that *“Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change”*. For the reasons set out above including Water Neutrality, Atmospheric Pollution and attempting to allocate housing in poorly accessible locations of the District, the Plan does not contribute to the mitigation of, and adaptation to, climate change.

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?

KPC Response:

47. Regulation 8(5) states that: *“Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.”* The Local Plan fails to do this as it simply lists ‘saved’ and ‘deleted’ policies.