

Examination of Chichester Local Plan

2021-2039

Statement on behalf of

Landlink Estates Limited

MATTER 5 - Other Policies

Policy NE,NE2,NE3,NE4 & NE14

Questions 108,109,110,111,
112,113,114,115,116,117,118,119,120,121,137,138

September 2024



LANDLINK
ESTATES

JACKSON PLANNING 

Matter 5: Other Policies

Policy NE1- Standalone Renewable Energy

Q108 – The policy title is Standalone renewable energy. Is it sufficiently clear and consistent with national policy set out in the NPPF?

- 1.1 The position of Landlink Estates is that the policy is not consistent with national policy both in its title and its content. The MMs are discussed below, but these do not address the key issues as the supporting text rather than the policy wording has been altered.
- 1.2 The requirement under [Section 19\(1A\) of the Planning and Compulsory Purchase Act 2004](#) which requires local planning authorities to include in their Local Plans “*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.*”
- 1.3 This issue is dealt with substantively in the statement in response to Matter 1 but relates also to this policy consideration. The plan does not meet its regulatory duty to comply with the Climate Change Act. Given the first objective in the Local Plan is to achieve Net Zero by 2050, and this is the only policy that might help deliver it this is ineffective and not consistent with the NPPF.
- 1.4 In discharging the duty from Section 19 (set out above at paragraph 1.2) the Council must comply “*with the objectives and provisions of the Climate Change Act 2008*”
- 1.5 Local development plans should be able to demonstrate how policy aligns with the Climate Change Act, which commits the UK to reducing emissions to net zero by 2050. This, in turn, calls for an understanding of both the baseline carbon dioxide emissions and the effect of planning policies on reducing emissions in relation to renewable energy projects.
- 1.6 Plans must be in line with the required 80% carbon reduction by 2035 and net zero by 2050. Policies for Carbon reduction requirements have twin statutory anchors in both planning law and in relation to the Climate Act whose carbon budgets are adopted as secondary legislation. The plan must reference the relevant carbon budget for the plan period and demonstrate the plan has the means to deliver new development in line with this a plan. The 2021 update to the NPPF significantly expanded the requirements for plan-making at Paragraph

11a). Aligning growth and infrastructure are now a requirement as part of the pattern of sustainable development. Mitigation and Adaptation of Climate Change are now key components of plan making. This requirement remains in the 2023 NPPF update.

- 1.7 The Policy should be called 'Climate Change Mitigation' or 'Achieving Net Zero' to be consistent with the objectives of the Climate Change Act, the PCPA 2004 and the NPPF.

Q109 – is the first sentence of the policy clearly worded, and would it be effective?

- 1.8 The policy wording is not clear and is not effective. The policy does not reflect the required carbon impact of the policy and what level of renewable energy is required to deliver net zero by 2050 and the necessary quantum of development to support this in the life of the plan. The policy is negatively worded and fails to reflect the legal requirements of PCPA 2004, Climate Change Act 2008. A suggested alternative positive policy wording is set out in Landlink's representations.

Q110 – is the requirement for all development proposals to be accompanied by a landscape assessment, proportionate and effective?

- 1.9 The policy as worded could relate to renewable energy at any scale. This could for example be for a domestic <5kw free standing solar array in a large garden. Whilst considered under this policy, it would not be proportionate to produce a landscape assessment for a development of that scale.

Q111 – Are the suggested MMs necessary for soundness?

- 1.10 The MMs are not sufficient to make the policy sound.
- 1.11 The MMs do not go far enough para 4.1 the bold text of the policy itself must set out that the policy supports the increase in supply of renewable, low carbon energy and heat. The latter two types of development are not included in the policy.
- 1.12 The reference to the Council's Emergency Action Plan is totally inappropriate as it only runs to 2025, is out of date and incorrect. The policy must refer to the revised 2024 National Energy Policy Statements and Statutory Duties in PCPA 2004 and Climate Change Act 2008.

- 1.13 The MM changes on views that impact on SDNP and Chichester Harbour National Landscape are appropriate. Given BNG is now mandatory the reference to this is a duplication.

Remedies for Policy NE1

- 1.14 Alternative policy wording is set out in my client's full representations at Regulation 19 stage.
- 1.15 The policy must be revised, and the last line must be removed as it is ultra vires. The case of Wright, R (on the application of Wright) v Resilient Energy Severndale Ltd & Anor - [2019] UKSC 53 confirmed that the promised community fund donation was not a material planning consideration, and the Council had acted and lawfully in taking that into account.

Policy NE2- Natural Landscapes

Q112 – Is footnote 17 necessary for effectiveness? It is a matter more properly dealt with in the explanatory text.

- 1.16 This be would better in the explanatory text.

Q113 – Is criterion five, and the final paragraph of the policy necessary and justified given that those matters are covered by other Plan policies?

- 1.17 No. This criterion is a repeat. The MMs suggest removal of this criterion.

Q114 – Are the suggested MMs necessary for soundness?

- 1.18 **CM053.** This change helps to explain the duty under the TCP DMPO 2015, but this is only at decision making. This is a statutory duty for all decisions that breach the threshold. It is therefore inappropriate to remove the word 'significant' at **CM055** without replacing it with the same criterion >20ha BMV. Given the predominance of BMV across the Chichester Plain this would be an unworkable change to the policy and is not proportionate to the impacts, and complying with the first sentence in criterion 4 would require an unnecessary sequential test for all proposals on greenfield sites. The policy as proposed to be modified is now inconsistent with paragraph 4.8.
- 1.19 **CM057** – this does not define what a 'large-scale' proposal is. This whole paragraph is an administrative preference of the Council and has no place in planning policy. This is dealt with by the local validation list and other guidance.

- 1.20 CM058-** the whole paragraph repeats policies elsewhere in the plan and is a duplication. The whole paragraph should be deleted following the sensible deletion of criterion 5 in MM **CM056**.

Policy NE3 – Landscape Gaps between Settlements

Q.115 -Policy NE3 seeks to protect gaps between settlements are not identified through this plan, and instead are intended to be identified in a site allocations DPD or neighbourhood plans. Is Policy NE3 consistent with national policy, justified, clearly written, and unambiguous, so it is evident how decision-makers should react to development proposals, and would it be effective?

- 1.21 The issue with a policy that does not indicate where the gaps would be located is that there needs to be an examination of reasonable alternatives so that the plan reflects the sustainability objectives. This has not been undertaken in this case.
- 1.22 The proposed landscape gaps may contain important sites for the delivery of renewable energy to allow the Council to reach its binding net zero targets. The obvious development that may be contained in such settlement gaps are solar farms. As the Council have not identified any provision in the plan for renewable energy production there has been no testing in the SA of the impacts of gap designations in preventing development of critical climate adaptation development.
- 1.23 The policy should be removed from the plan as it has not been assessed in terms of reasonable alternatives in the sustainability appraisal and has therefore not met the requirements of The Environmental Assessment of Plans and Programmes Regulations 2004 -Regulation 12(2) b.
- 1.24 If the Inspectors decide the policy does not need SA testing the policy is also problematic. This policy will create confusion for the decision maker as the two criteria a) and b) refer to gaps that are not designated and identifies perceived and actual coalescence of settlements that are also not identified.
- 1.25 The conflicts with potential land use capacity for renewable energy schemes required to meet net zero has not been considered. The important point about capacity and alternative scenario testing needs to be considered as a regulatory requirement of an SA.

Q.116 - Are the suggested MMs necessary for soundness?

- 1.26 In our view the policy is not sound as it is not considered in the SA. The MM does not make the policy sound.

Policy NE4- Strategic Wildlife Corridors**Q.117 – Is the extent of protection propose to be afforded to strategic wildlife corridor is consistent with National policy is set out in the NPPF?**

- 1.27 It is notable that the Strategic Wildlife Corridors Background Paper was produced in June 2024, despite representations this paper has not considered agricultural impacts of the proposed wildlife corridor land use designation. Whereas it has considered conflict with the HDA designation. The proposed wildlife corridor is a specific land use designation that needs testing at a granular level as it identifies individual field parcels in the accompanying policies map.
- 1.28 NPPF174b) Requires policies to recognise, amongst other things the economic and other benefits of BMV agricultural land. None of the wildlife corridor land use allocation background work has considered BMV.
- 1.29 The policy has not considered the role of critical infrastructure in designating large swathes of land with this proposed land use restriction. Key infrastructure for example flood and drainage features, sub stations, reservoirs, battery energy storage systems, solar arrays and wind turbines are all development types that may impact to some extent on the connectivity of the wildlife corridor. These necessary critical infrastructure elements should be set out as acceptable exceptions to this policy. None of these types of development would always be able to extend and enhance the proposed corridors.
- 1.30 The proposed wildlife corridors are inconsistent with NPPF as it imposes an unacceptable barrier to otherwise acceptable development inconsistent with national policy and imposes a sequential test that does meet NPPF 158 a) and b).
- 1.31 This is particularly important in relation to renewable energy where there is no requirement for applicants to demonstrate the overall need for renewable low carbon energy 158a) and LPAs are directed to approve the application if its impacts are (or can be made) acceptable. Imposing a sequential test is therefore wholly inconsistent with the NPPF, particularly where the LPA have not identified suitable sites or areas for renewable energy.

1.32 The wildlife corridor is particularly problematic in the southern portion of the Pagham to Westhampnett WC adjacent to the District Boundary where it has been allocated on land that does not contain features but is intensely farmed for arable crops. This is wrongly located and should align to features outside the District Boundary related to the Pagham Rife. It appears this has been allocated for convenience, because there is no cross-boundary work on this topic. The wildlife corridor therefore is allocated on land in intensive farming as the linking ecological features are outside the LPAs jurisdiction.

1.33 NPPF175 requires that LPAs should:

“take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries”

Question 118 - Is the proposed sequential test consistent with national policy, and is it justified?

1.34 No, there is no justification for sequential testing. This is particularly the case with regard to critical infrastructure and renewable energy proposals as set out above.

Question 119 – What is meant by “in close proximity” and in this regard with the policy be effective?

1.35 This is ill defined and problematic, as the term has no limits. The corridor is very widely drawn in some areas, in particular on this Representor’s land. To suggest that additional buffer land beyond the corridor is also restricted is unacceptable, especially where there are no or very few ecological features. This is not proportionate to the policy aims.

Question 120- Are the boundaries of the proposed strategic wildlife corridor is justified?

1.36 The SA at appendix A has screened out any consideration of impacts from this policy as follows: “This is a development management policy. These policies do not have linking impact pathways. In addition, this policy provides protection to the natural environment from degrading ecological value, function, integrity and connectivity, although it does not afford European sites specific protection. This policy can be screened out.”.

- 1.37 The NPPG¹ confirms the Sustainability Appraisal plays an important part in demonstrating that the local plan reflects sustainability objectives and has considered reasonable alternatives. Given the conflict over HDA, BMV and the ability to deliver critical infrastructure this wide land use policy should have been tested as part of the SA.
- 1.38 The boundaries in relation to this Representor's land are inappropriate. This is the southern section of the Westhampnett to Pagham corridor. They include large areas of land which falls within BMV. There has been no direct consultation with the land holders on how this affects their current land uses. Some of this corridor is active Grade 1 agricultural land producing significant high value salad crops.
- 1.39 Landlink Estates (this representor) with their renewable energy joint venture partner have a live planning application 24/01859/FUL for a 30+MW solar farm in the south of the district, having been offered a viable grid connection. If the draft wildlife corridor on the site as shown in the revised policy map NE4b is confirmed with the policy as submitted, it would render the proposal unacceptable and require unjustified sequential testing of alternatives and potentially force the use of higher-grade agricultural land as a direct consequence. This is because the adjacent fields to the proposed solar array are on Grade 1 land and are not within the Wildlife Corridor designation. These consequences are not an acceptable solution to this policy and are not tested in the SA.

Q121 - Are the suggested MMs necessary for soundness?

- 1.40 The Council have already indicated in MM CM064 that they will omit the sequential test. This is supported; however, this does not go far enough as the policy is too restrictive, it does not support sustainable development and therefore does not comply with the NPPF.

Policy NE14 – Integrated Coastal Zone Management for the Manhood Peninsula

Question 137 – criterion 2 of Policy NE 14 sets out a general objective of proposals and initiatives for the coastline and coastal communities as set out in a number of strategies and plans which are not part of the development plan for the area.

¹ NPPG Paragraph: 037 Reference ID: 61-037-20190315Revision date: 15 03 2019

Consequently, is the policy effective and consistent with national policy?

- 1.41 The policy has general objectives only and no specific policy direction, this is set out in Criterion 2 which delegates the detail to other strategies and also in Criterion 7 which supports climate change resilience and adaptation with no details of what this means in practice. It is also inappropriate to not include the Manhood Peninsula Partnership- ICZM 2021 in this list as it is the most up to date locational specific evidence base for the area.
- 1.42 The policy cannot be effective with such vague statements. As set out in the Regulation 19 representations the issues raised by the ICZM 2021 including potential retreat and constructing replacement properties inland need consideration now as part of climate adaptation.
- 1.43 The ICZM 2021 considers the previous policy for the Manhood Peninsula and remarks: *"It reflects the views expressed 10 years ago well, but it is not thought sufficiently robust in the face of accelerating climate change and its consequences"*.
- 1.44 The SA when assessing Policy NE14 describes it as a 'development management policy' with no linking impact pathways and screens out the policy. This is not a sound and evidenced based approach to the strategic planning of the Manhood Peninsula considering the necessary climate change adaptation. The linked pathways and impacts of flooding issues with the existing settlement areas cannot be dismissed in this way.
- 1.45 ICZM 2021 the Council need to plan positively for climate change. *"Existing coastal flood defences will not be sustainable indefinitely to sea level rise and there is insufficient flexibility in current planning policies to help the local community determine a socially, economically and environmentally favourable way forward to enable the peninsula to thrive for as long as possible as it transitions and adjusts to climate related changes"*.
- 1.46 Simply replicating the inadequate policy that is nearly 10 years' old is not positively planning for climate change.
- 1.47 The SA identified the vulnerability of the B2145, and as noted in the policy the Council need to carry out further work for the long-term planning in respect of climate adaptation. The Council chose to remove the strategic site at Selsey from the plan (an otherwise entirely acceptable site, and even tested in SFRA as late as December 2022) rather than address the problem. The consequence of this strategic

issue has land use implications and policy requirements in relation to climate adaptation that have not been addressed in the plan, making it unsound.

- 1.48 The Council needs to decide whether the strategic site at Selsey is an acceptable part of the development strategy or there is a requirement to fix the longer-term flood issues of the B2145 in the plan, or plan for coastal retreat to deal with the sustainable solution for the settlement of Selsey in the face of accelerating climate change. Given the Council know now there is land use problem they must address it.

Q138 - Are the suggested MMs necessary for soundness?

- 1.49 The MMs do not go far enough to make the policy sound.