Lewes District Local Plan Part 2:

Site Allocations and Development Management Policies Examination

Lewes District Council

Response to Inspector's Questions

Matter 2

March 2019

Matter 2 – Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA)

Inspector's Question

2.1 Is the Plan supported by the SA and HRA?

LDC Response

1.1 The Lewes Local Plan Part 2 (LPP2) is supported by SA and HRA; both processes have been iterative from the start of the plan-making process (2010) and the results are documented within a suite of reports, which stem from work informing the SA and HRA from the Lewes Local Plan Part 1(LPP1) 2010-2030. The SA 2018 (CD/004) and the HRA 2018 (CD/005) present the outcomes of these processes at the Regulation 22 submission stage of the plan-making process for the LPP2.

1.2 Earlier iterations of the documentation for both processes can be found in the following submitted documents: the SA 2017 (CD/020), the HRA 2017 (CD/021), SA Scoping Report 2013 (CD/029), Submission SA 2014 (CD/034) and the Addendum to the Core Strategy SA 2015 (CD/033)

Proposed Modifications

1.3. None.

Inspector's Question

2.2 What evidence is there that the SA has influenced the Plan and/or undertaken a full assessment of realistic alternatives?

LDC Response

2.1 The approach to appraising policy options can be found on p13 of the SA/SEA and this sets the context for how alternatives have been dealt with in the non-strategic LPP2.

2.2 Alternatives for the residential site allocations are informed by 3 key processes:

- The annual Strategic Housing Land Availability Assessments (2013 onwards)
  - *annually produced and published dataset of residential land potential that includes an assessment of suitability, availability and deliverability*

- Sites proposed (and in some cases assessed by the SA) through public consultation on the LPP1 and the LPP2 as part of plan-making process
- Call for sites (carried out by the council or as part of the preparation of a neighbourhood plan)

2.3 All alternatives with realistic prospect of delivery for residential land uses have been subject to assessment against the SA Framework and this is informed by specialist input from East Sussex County Council (ESCC) in respect of landscape, surface water flood risk and highways matters. At each consultation stage of plan-making (there have been two consultations at Regulation 18 plan-making and one Regulation 19 plan publication) the assessment of alternatives within the SA were reviewed by the statutory consultation bodies (Environment Agency, Natural England and Heritage England) and their comments at Regulation 18 have been used to refine the choice of options and policy wording of the site allocations. At Regulation 19 their comments have informed minor changes to policy wording documented in the Schedule of Minor Modifications (CD/012).

2.4 The results of the options assessment process and policy refinement is documented through chapters 9 and 10 of the SA for both the Regulation 18 and Regulation 19 public consultation documents (CD/004 and CD/020), with more detailed appraisals contained within the appendices. The Consultation Statement (CD/006) also documents key changes made to policy approaches through the plan-making and SA/SEA process since the Topic Papers in 2013.

2.5 Following the second Regulation 18 consultation (November 2017) it became clear from the responses that the LPP2 should not remain silent on

employment matters. This was due in particular to the need to consider further the 'saved' 2003 unimplemented employment allocations that contributed to the overall employment land requirement figure in Spatial Policy SP1, which at that time resulted in no residual requirement for a net increase in employment floorspace in the LPP1. There was also, in one case, a request for cross boundary cooperation to support a proposed allocation in the neighbouring emerging Brighton and Hove City Plan Part 2. This is set out further in the Employment Background Paper (CD/051).

2.6 Alternatives for allocating, or retaining allocations for, employment sites were considered through the SA in line with the context outlined above. A number of employment sites that were 'saved' 2003 unimplemented employment allocations were filtered from further assessment in the SA process for reasons given in Appendix I (p147) of the SA (CD/004) and are consequently proposed to be de-allocated through the LPP2.

2.7 Development Management policy options have been influenced through the consultation process on the SA/SEA accompanying the LPP2. Documented in Chapter 9, p81 of the SA (CD/004) is the approach taken to identifying and discounting options for development management policies. Table 40 p83-91 provides detailed reasoning for selecting the alternatives taken forward. Through the consultation with the SA/SEA statutory consultees, the policy wording for DM5, DM6, DM11, DM17, DM18 and DM24 was refined to improve the protection of biodiversity and the environment and this is documented on p99 of the SA/SEA.

<u>Proposed Modifications</u>

2.8. None.

Inspector's Question

2.3 Do any adverse effects identified in the SA require significant mitigation and how does the plan address these issues? Has appropriate account been taken of the recent Sweetman 2 Judgement in the European Court of Justice (ECJ)? Is there still a need for Appropriate Assessment?

LDC Response

3.1 There are no significant adverse effects identified in the SA (CD/004) that require significant mitigation. The minor adverse effects identified in the options and policy appraisal process of SA/SEA have led to the provision of additional criteria in the policy or amended policy wording, often provided by the statutory consultee, to ensure development does not result in negative impacts.

3.2 The relevance of the Sweetman 2 Judgement for the LPP2 is for the practical application of Policy DM24, which references the LPP1 Core Policy CP10, which requires mitigation for recreation impacts on the Ashdown Forest SPA and uses strategic mitigation measures to achieve this.

3.3 The LPP2 is not proposing any allocations for residential development within or abutting the 7km zone of influence around the Ashdown Forest SPA. Allocations within the 7km zone can be found within the 'made' Newick Neighbourhood Plan and in respect of these allocations the SA/SEA correctly identifies the potential for significant adverse effects and that mitigation is required.

3.4 Since the Sweetman Judgement the Council has been applying the strategic mitigation measures at the Appropriate Assessment stage of the Habitat Regulations Assessment (HRA), rather than through the earlier screening of likely significant effects stage (i.e. rather than simply applying CP 10 mitigation through a S106 without further consideration of the potential impacts on the conservation objectives of the Ashdown Forest SPA). This is primarily being achieved through individual Appropriate Assessment (AA) per relevant planning application, using a pro-forma that we have devised specifically for this issue and which has been reviewed and agreed by Natural England as fit for purpose. Natural England has then provided a consultation response to inform the AA and applicability of the mitigation measures. The HRA 2018 (CD/005) for the LPP2 and the Neighbourhood Plans addresses the Sweetman Judgement on p49 and essentially provides a high level Appropriate Assessment for the LPP2 that concludes:

> "*Policy DM24 requires specific protection for Ashdown Forest SAC/SPA by requiring all net new housing within 7km of the SAC/SPA to contribute to mitigation (management and monitoring of SANG). The*

SANG on which this development relies has already been delivered. As such it is possible to conclude that there will be no adverse effects on the integrity of any European sites due to growth in Local Plan Part 2, either alone or in combination with other plans and projects."

3.5 Through the Regulation 19 consultation Natural England highlighted to the Council that the LPP2 had not been updated at paragraph 1.19 to reflect the 2018 HRA and the consequences of the Sweetman Judgement, although the HRA had adequately done so. The Council has addressed this through a proposed minor modification (CD/012 MO3 and MO4) to reflect the appropriate wording, which should now be applied to the issue i.e. that with the application of the strategic mitigation measures at the Appropriate Assessment stage a conclusion of 'no adverse effects on the integrity of the Ashdown Forest SAC' can be reached, rather than a conclusion of no likely significant effects at the screening stage being made.

Proposed Modifications

None.

Inspector's Question

2.4 Regarding 2.3 above, does the HRA satisfy the requirements of the relevant legislation in relation to any impacts on Ashdown Forest SAC?

LDC Response

4.1 The HRA 2018 (CD/005) provides a full, robust and legally compliant assessment of 'in-combination' air quality impacts on the Ashdown Forest SAC (detailed in Appendix D) and concludes no adverse effect on the integrity of the Ashdown Forest SAC for the LPP1 and the LPP2, either alone or in combination with other plans and programmes. Appendix E of the HRA 2018 provides a robust rebuttal of earlier criticism of the HRA 2017 (CD/021) by Wealden District Council at the Regulation 18 consultation stage. Consultation with Natural England (NE) demonstrates that NE supports the conclusion of no adverse effect on integrity and agrees that this outcome is predicted without the need for mitigation. The approach to the assessment of air quality impacts used in the HRA 2018 has been refined by, and is widely supported by, the members of the Ashdown Forest Working Group as evidenced in the Ashdown Forest Statement of Common Ground (CD/008).

Proposed Modifications

4.2. None