



**Sussex**  
Wildlife Trust

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Dear Mr Banks

The attached position statements are made on behalf of the Sussex Wildlife Trust in relation to the Lewes Local Plan Part 2.

The following comments are made in relation to the questions raised by the Inspector. Comments from our previous consultation responses still stand.

This statement contains responses to Matters 1, 5, 6 and 10

The Sussex Wildlife Trust wishes to participate in the hearing sessions for the all Matters listed above. We are not yet certain which members of staff will appear at each session.

Yours sincerely,

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Rep 022

**Matter 1 – Legal Requirements, Scope of the Local Plan and Duty to Co-operate**

Question 1.2 (iv): What weight if any should be given to the second version (2018) of the NPPF (The Framework), given that the plan was submitted prior to 24 January 2019?

The Sussex Wildlife Trust acknowledge that, as per Annex 1 of the revised NPPF, the soundness of the plan should be assessed against the content of the previous 2012NPPF, paragraph 213 of the 2019NPPF states that due weight should be given to policies according to their degree of consistency with the new Framework. It therefore seems appropriate to indicate where we are concerned that the plan is not in conformity with the 2019NPPF. This is primarily in relation to Matter 5.

Rep 022

**Matter 5 – Are the Plan’s provisions for the protection and enhancement of its environmental, landscape and biodiversity, open space and recreation and leisure and heritage assets in accordance with national policy?**

Question 5.2: Is Policy DM 14 for multi-functional Green infrastructure justified and in accordance with national planning policy.

SWT supported the inclusion of the Green Infrastructure policy and highlighted the need for Lewes District Council (LDC) to commit to undertake a Green Infrastructure (GI) Strategy. Producing a GI strategy would help LDC to meet the requirements of Core Policy 8 in the Lewes Local Plan Part 1 and ensure DM14 is deliverable.

Lewes District Council have an obligation to ensure the local plan takes a strategic approach to maintaining and enhancing networks of habitats and green infrastructure, as per section 114 of the 2012 NPPF and section 171 of the 2019NPPF.

In our regulation 18 and 19 responses, we highlighted concern that the council had narrowed the policy by only specifically referencing outdoor playing space. Sussex Wildlife Trust refers the Inspector to section 7.80 of Lewes Local Plan Part 1 which covers a number of types of green spaces that are included in LDC’s GI network.

In our previous consultation responses we recommend amendments to the policy to ensure the multifunctional aspects of GI are captured and it is effective at achieving positive contributions to the GI network. In our regulation 18 response we also sort specific changes to the policy wording so that it could reflect Core Policy 8. LDC has suggested that our proposed changing to wording is too vague in relation to the term ‘need.’

Below highlights the proposed changes we suggested to the policy text in our regulation 18 consultation response:

‘Development will be permitted where opportunities for the provision of additional green infrastructure have been **identified**, fully considered and ~~would~~ **will** be provided where justified by ~~need the character of the area or the need for outdoor playing space.~~ **need the character of the area or the need for outdoor playing space. The additional provision should seek to enhance the district’s existing green infrastructure network and should be multifunctional and creative in its approach.** Green infrastructure provided as part of new development should incorporate features to encourage biodiversity and retain or, where possible, enhance existing features of nature conservation value within **and adjacent to** the site. Existing ecological networks should be identified and ecological corridors should, where practical and appropriate, form an essential component of green infrastructure provision to ensure habitat connectivity.’

We suggested the term ‘need’ so that it could reflect the ‘need’ as identified in the evidence base for the allocation/application. The evidence base might be either a district Green Infrastructure Strategy (or equivalent) and/or an Ecological Impact Assessment of the site. The intention is not for the term to be vague but to deliver the ‘need’ as identified by the evidence base that informs the allocation/application, as aspired to in Core Policy 8 of the Lewes Local Plan Part 1.

In particular, Core Policy 8 states:

*‘The local planning authority will promote a connected network of multifunctional green infrastructure by protecting and enhancing the quantity, quality and accessibility of open spaces throughout the district. This will be achieved by:*

1. *Identifying in the Site Allocations and Development Management Policies DPD or SDNPA Local Plan areas where there is potential for the enhancement or restoration of existing green infrastructure and opportunities for the provision of new green space...*

We remind the Inspector of LDC's obligations to ensure the local plan takes a strategic approach to maintaining and enhancing networks of habitats and green infrastructure, as per section 114 of the 2012NPPF and section 171 of the 2019NPPF. We therefore ask what evidence base has been used to ensure a consistent approach to the identification of GI provision and enhancements within the site allocations? In particular, we note that only policy E2 specifically refers to the provision and enhancement of Green Infrastructure being delivered through the development. This appears inconsistent with the Core Policy 8.

As demonstrated above, we do not believe that policy DM14 is currently consistent with national policy or the Lewes Local Plan Part 1. We again ask for the following amendments to ensure the policy is effective in delivering green infrastructure network enhancements as required in both the 2012 and 2019 NPPF:

'Development will be permitted where opportunities for the provision of additional green infrastructure have been **identified**, fully considered and ~~would~~**will** be provided where justified by ~~need the character of the area or the need for outdoor playing space~~ **need**. **The additional provision should seek to enhance the district's existing green infrastructure network and should be multifunctional and creative in its approach.** Green infrastructure provided as part of new development should incorporate features to encourage biodiversity and retain or, where possible, enhance existing features of nature conservation value within **and adjacent to** the site. Existing ecological networks should be identified and ecological corridors should, where practical and appropriate, form an essential component of green infrastructure provision to ensure habitat connectivity.'

Please note that we also seek clarity on the proposed submission version of LLPP2. In section 4.45 it refers to the Lewes Local Plan Part One Core Policy 8 (Green Infrastructure) However in section 4.48 the document refers to Core Policy 11 (Green Infrastructure) in Lewes Local Plan Part One. We wish to highlight the need for the modification to ensure the correct policy references.

Question 5.3: Overall, are the policies dealing with the protection and enhancement of the plan area's natural /heritage assets, including the requirement for ecological impact assessments, sufficiently to meet the requirements of the national policy?

Sussex Wildlife Trust responses to the regulation 18 and 19 consultation on LLPP2 highlighted our concern about the need for a number of policies to recognise the importance of being informed by up to date ecological information as per 165 of the 2012NPPF and for development to result in measurable net gains as per 109 of the 2012NPPF and 170 of the 2019NPPF. In our regulation 19 response we did recognise the importance of ensuring that the Local Plan Part 2 is not unduly repetitive, but we remain concerned that the policies fail to convey the importance of decisions being informed by up to date ecological information.

Additionally, SWT is concerned that the policy wording in relation to ecological impact assessment within the site allocation policies are not sound. In particular, the 2019NPPF is clear in paragraph 170 that planning policies and decisions should minimise impacts on and provide net gains for biodiversity. There is no longer the caveat of 'where possible' indicating that all development should achieve net gains. Whilst the caveat of 'where possible' is not included in BH01, it is found in NH01, BA01, BA02, BA03, CH01, CH02 RG01 and GT01.

Similarly, a principle of planning, which should contribute to achieving net gains, is the mitigation hierarchy of first avoiding harm, then mitigating for any residual harm, before as a last resort, considering compensation (2012NPPF paragraph 118 and 2019NPPF paragraph 175). It is not acceptable permit through policy wording mitigation, before avoidance as currently found in the policies above along with BH01.

We therefore ask for the following amendments to the criteria within these policies in order to make them consistent with national policy:

*'...An ecological impact assessment is undertaken and appropriate measures identified and implemented accordingly to ~~mitigate~~ **avoid** potential adverse impacts on biodiversity. **Where adverse impacts are unavoidable, appropriate mitigation and compensation measures must be employed, commensurate to the importance, the legal protection or other status of the species or habitat.** Development allows for the protection of biodiversity and enhancement ~~where possible~~; and...'*

Question 5.5: Does Policy DM24 (Protection of biodiversity and Geodiversity) compliant with section 15 of the Framework?

The policy as it stands, fails to be as progressive and ambitious as it could be in its interpretation of chapter 15 within 2019NPPF.

Sussex Wildlife Trust remain concerned that this policy still fails to consider LDC's responsibility to the district's wider biodiversity assets. This is because neither Core Policy 10 in the Lewes Local Plan Part 1 or this pre-submission policy specifically stipulate the need for decisions to be based on up to date ecological information.

We note LDC's response to our regulation 18 comments on this matter on page 42 of the Summary of Consultation on the Consultation Draft Document (30 November 2017 – 25 January 2018):

*'A policy requirement for all development proposals to submit information on biodiversity is considered to be unduly onerous and unlikely to be justified for the majority of planning applications. It would therefore fail to have regard to the NPPF and no amendment is proposed to Draft Policy DM24 in this respect.'*

In response to this, SWT would highlight that we recognised the need for a proportionate response to applications, but section 165 of the 2012NPPF states planning policies and decisions should be based on up-to-date information about the natural environment and other characteristics of the area.

Both the 2012 and 2019 NPPFs are clear that achieving sustainable development means pursuing opportunities to secure economic, social and environmental net gains in an interdependent way. SWT does not agree that requiring that ecological information is submitted with planning application is onerous as the type of evidence required can be commensurate to the scale and location of the development and the likely impact on biodiversity. Indeed many other adopted local plans include this requirement, for example in policy NE3 of the East Herts District Plan and Policy SD9 of the emerging South Downs National Park Local Plan.

By incorporating wording into policy DM24 that stipulates the need for up-to-date environmental information and net gains this will enable LDC at development management stage to swiftly assess applications to ensure they are fulfilling their requirements to deliver net gains to biodiversity as per paragraph 109 of the 2012NPPF and paragraph 170 of the 2019NPPF.

We also refer back to comments made throughout the Summary of Consultation on the Consultation Draft Document (30 November 2017 – 25 January 2018) where LDC have resisted modifications to earlier policies that sought to seek policy wording to include the submission of ecological assessments. LDC reasoning was that they wish to create concise plan that should avoid undue repetition or duplication by using generic policies to set out principles that may be common to different types of development. We understand this view point and therefore seek the modifications to draft policy DM24 to enable the plan to ensure it is consistent with national policy and deliver the responsibilities consistently and effectively. As it stands we do not believe this policy is sound.

Therefore, SWT seeks the following addition to ensure that the DM24 is consistent with national policy:

***'All development proposals must provide adequate up-to-date information about the biodiversity which may be affected and any avoidance, mitigation and compensation measures required to ensure measurable net gains to biodiversity are delivered.'***

*Development which would be likely to adversely affect a designated Ramsar site, designated or candidate Special Area of Conservation (SAC) or a classified or potential Special Protection Area (SPA) will only be permitted where adverse likely significant effects can be avoided and/or mitigated against...'*

Question 5.8: Does the plan satisfactorily address the issue of climate change?

Chapter 14 of the 2019NPPF set out measures/steps that Local Planning Authorities need to address to ensure they are taking a proactive approach to mitigating and adapting to climate change, for example 149 and 150(a). Biodiversity assets and Green Infrastructure will need to play an important role in adapting to climate change. We therefore note that neither DM 14: Multi-functional green infrastructure nor DM24: Protection of Biodiversity and Geodiversity specifically reference the need for these resources to address climate change resilience and therefore question the long term integration of such measures through the local plan.

**Matter 6 - Are the policies to manage and promote the Local Economy and Employment Area and Allocations sound?**

Question 6.2: Regarding policy E1, for land at East Quay, Newhaven: (i) The site is located within and adjacent to Tide Mills shingle beach/distinctive wildlife area, and close to the South Downs National Park. In addition to its sensitivity in terms of its biodiversity and landscape, the site is also part of an area which is used for recreational and leisure purposes and functions as a tourism/visitor attraction. (ii) Given this background,

(c) is the policy supported by the SA and HRA?

**SWT understands from the Draft Hearings Programme (ID-4) that Matter 6 and Matter 10.2 will be discussed together. Therefore our position statement for these two matters should be read together.**

Appendix J of the Sustainability Appraisal (SA) - Assessment of the Employment Site Allocation Options – demonstrates that Option C – Land at East Quay, Newhaven Port is the least sustainable option considered with negative impacts for objectives 7, 8 and 9. Therefore we do not believe that the policy is supported by the SA.

In addition to this, SWT does not consider that the ratings and explanation in Table 67 go far enough in accurately reflect the likely impacts of allocating this site. For example, objective 8 biodiversity comes out as 'likely negative / uncertain effect' with the explanation stating 'The site is within an SNCI. Therefore development on the site could have impact biodiversity'. This seems to be a very high level and uniformed assessment given the knowledge that the allocation will be for employment floor space and that the part of the LWS being allocated is the area containing vegetated shingle.

SWT cannot see how the development of this site in the terms set out by the LPP2 will not result in a known significant negative impact through the loss of a proportion of the LWS to hardstanding and the loss of vegetated shingle which cannot be created elsewhere within the LWS (as demonstrated by the offsite compensation required as part of permission for the expansion of the East Quay).

(iv) What are the arguments which tip the sustainable balance in favour of employment development rather than keeping the site undeveloped to protect its wildlife and recreation, leisure potential, tourism/visitor attraction and its potential harmful impact on the setting of the National Park?

SWT do not believe that the arguments tip the sustainable balance in favour of employment development as set out in our position statement for Matter 10. In particular, paragraph 8 of the 2019NPPF states that the three overarching objectives of the planning system (economic, social and environmental) need to be pursued in mutually supportive ways in order to secure net gains across each of them (paragraph 7 of 2012NPPF). Pursuing policy E1 will result in the degradation of internationally important habitat, loss of a locally designated site and restriction of the local community's enjoyment of this special location. SWT cannot see how this site can be developed in a sustainable way as per the NPPF.

(v) Based on the outcome of the arguments in (iv) above, is there a sustainable case for reducing the extent of the proposed employment land, to secure an 'appropriate' balance between conserving the biodiversity of the site, its landscape character, the setting of the National Park and the recreation and employment use?

As set out in our position statement for Matter 10. The route of the Port Access Road will achieve a clear development boundary which will allow a good balance between the three overarching objectives of the planning system.

## Matter 10 – Site Allocations in the Plan

### Question 10.1 Are the Residential Site Allocations acceptable in terms of (a) environmental/heritage impact?

The Sussex Wildlife Trust believe the allocation of strategic areas for development and delivery policies should always be informed by evidence of the functioning of ecological networks at a landscape scale and underpinned by up-to-date, site specific data as per paragraphs 114 and 165 of the 2012NPPF and 31 and 174 of the 2019NPPF. We are still concerned that LDC has not taken this aspect of the NPPF into full consideration.

In particular there appears to be little information of how the site allocations relate to the district's ecological and green infrastructure networks or what the current biodiversity value of the sites are. Therefore it is difficult to determine the environmental impact at this stage, in answer to point (a) of the inspectors above question.

If the allocations go forward, any impacts must be assessed at the application stage, therefore we support the inclusion of a requirement related to biodiversity impacts found in most of the Residential Site Allocation policies. However as stated in our Regulation 19 response, this requirement is not consistent across allocations and is not compliant with national policy.

#### **Policies NH01, BA01, BA02, BA03, CH01, RG01, BH01 and GT01**

2019NPPF is clear in paragraph 170 that planning policies and decisions should minimise impacts on and provide net gains for biodiversity. There is no longer the caveat of 'where possible' indicating that all development should achieve net gains. We do note that policy BH01 already does not contain the caveat.

Additionally, a principle of planning, which should contribute to achieving net gains, is the mitigation hierarchy of first avoiding harm, then mitigating for any residual harm, before, as a last resort, considering compensation (2012NPPF paragraph 118 and 2019NPPF paragraph 175). It is not acceptable permit through policy wording mitigation, before avoidance.

We therefore recommend the following amendments to the criteria in order to make the policies listed above consistent with national policy:

'...An ecological impact assessment is undertaken and appropriate measures identified and implemented accordingly to ~~mitigate~~ **avoid** potential adverse impacts on biodiversity. **Where adverse impacts are unavoidable, appropriate mitigation and compensation measures must be employed, commensurate to the importance, the legal protection or other status of the species or habitat.** Development allows for the protection of biodiversity and enhancement ~~where possible~~; and...'

Please see our Regulation 19 response for specific wording for CH02 which differs slightly to the above.

#### **Policy BH01 – Land at the Nuggets, Valebridge Road**

SWT would like the policy wording for this allocation strengthened so that the requirement for at least a 15 metre buffer between the development and the ancient woodland is in the policy rather than the supporting text. We note that policy CH01 does include a minimum figure for the buffer and we believe this is consistent with the national policy on irreplaceable habitats.



Question 10.2: Are the Employment Site Allocations acceptable in terms of (a) environmental impact including whether the loss of land currently in local wildlife sites (LWS) is acceptable;

- Policy E1 Land at East Quay, Newhaven Port

**SWT understands from the Draft Hearings Programme (ID-4) that Matter 6 and Matter 10.2 will be discussed together. Therefore our position statement for these two matters should be read together.**

Policy E1 is not acceptable in terms of environmental impact. SWT notes that LDC has proposed two Minor Modifications in relation to this policy - **M23** and **M24**, but neither of these address the issue that the development of this area will result in the destruction and degradation of a Local Wildlife Site containing internationally important habitat.

As stated in our Regulation 19 response (REP/022/E1), LDC provide no rationale for why the allocation of a Local Wildlife Site is justified or how the benefits of development of this site will outweigh the significant harm.

It appears that no ecological surveys were undertaken during the development of the plan in order to inform allocations, however there is significant evidence of the biodiversity value of Tide Mills LWS available via the Sussex Biodiversity Record Centre and the EclA submitted with the planning application for the areas to the west of E1. This designated site contains both priority habitat and species and has already been degraded by previous LDC and East Sussex County Council planning decisions.

It should also be noted that whilst policy E1 may appear to effect only a small proportion of the LWS, this is the area of the LWS that contains vegetated shingle, an extremely rare habitat which has already been reduced in extent through previous permissions. The rest of the LWS, whilst still highly valuable, is made up of other habitat types. There must be consideration of the specific impacts of the policy rather than a more general consideration of the appropriateness of losing part of a larger LWS. Given this, it is clear to SWT that allocating this area for development is contrary to paragraphs 110, 114 and 117 of the 2012NPPF and 170, 171 and 174 of the 2019NPPF.

SWT accepts that the LWS area to the west of policy area E1 has been lost through the expansion of the East Quay permitted in 2016. An additional area that is allocated to the Port Access Road (PAR) will also be lost and given that East Sussex County Council consider that they have planning permission for this, SWT do not see why this area has not also been removed from the policy area.

SWT notes that since the Regulation 19 consultation, LDC have produced an Employment Sites Background Paper (CD051). It states in 7.21 that part of the policy E1 allocation is within the Enterprise Zone, but it should be made clear that this is the area that already has planning permission. The remaining area to the east and the south of the PAR route is still extremely valuable in terms of biodiversity, landscape and public access and should be allocated as countryside and fall outside the development boundary for Newhaven.

It is stated in paragraph 3.5 of the LPP2 that policy E1 is carrying forward saved policy NH20 'with appropriate amendments to bring it up to date'. Since 2003 there have been significant changes in Newhaven Port and in national policy and SWT do not consider that LDC have taken this into account. In particular, NH20 was part of an overarching policy to regenerate the port, however paragraph 3.13 states that the East Quay development, permitted in 2016, is anticipated to allow the port to remain competitive. Similarly, paragraph 3.3 of the plan states that there is no requirement for additional employment space within the district.

Core Policy 10 states that '*the natural environment of the district, including landscape assets, biodiversity, geodiversity, priority habitats and species and statutory and locally designated sites, will be conserved and enhanced by...* ii. *Ensuring that new development will not harm nature conservation interest, unless the benefits of development at that location clearly outweigh the harm caused...*'

No evidence has been provided to suggest why 'development at that location clearly outweighs the harm caused'. Since 2003, there has been a significant shift in what is deemed acceptable in terms of the impacts of development on biodiversity and in particular the requirement for net gain. SWT ask that this policy is deleted. Or if LDC would like a policy to cover the area for the PAR, then the policy area covered by E1 should be significantly reduced to exclude any of the LWS to the east or south of the PAR route.

If the policy were to remain, then SWT objects to the wording of **M24**. Again LDC have ignored national policy which states that the first step in conserving and enhancing biodiversity through the planning system is to avoid impacts. If impacts cannot be fully avoided, then any residual impacts should be mitigated or as a last resort compensated for. There must be more emphasis on avoiding impacts through choice of location and good design. If the Inspector does not find policy E1 unsound, then we ask that M24 is amended:

'...An ecological impact assessment is undertaken and appropriate measures identified and implemented accordingly to ~~mitigate~~ **avoid** potential adverse impacts on biodiversity. **Where adverse impacts are unavoidable, appropriate mitigation and compensation measures must be employed, commensurate to the importance, the legal protection or other status of the species or habitat to ensure measurable net gains to biodiversity are delivered...**'