



Lewes District Local Plan Part 2:
Site Allocations and Development Management Policies
Examination

Lewes District Council

Response to Inspector's Questions

Matter 5

March 2019

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

Inspector’s Question

5.1 Is Policy DM33 (Heritage Assets) compliant with NPPF 133 and 134?

1. LDC Response

- 1.1 The Council considers that the NPPF, together with Planning Practice Guidance, sets out a clear framework for decision-making to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance.
- 1.2 Planning applications for development that affects heritage assets will therefore be determined in accordance with national policies for conserving and enhancing the historic environment, as set out in paras. 128-141 of the NPPF, together with the strategic priorities set out in Core Policy 11 (*Built and Historic Environment and High Quality Design*) of the Lewes District Local Plan Part 1 (CD031, page 121).
- 1.3 Nevertheless, in order for the Council to fully understand the potential impact and acceptability of development proposals, an appropriate assessment of the significance of the heritage asset, and the contribution of its setting, is essential, as explained at paras. 4.110 – 4.111 of the Submission Local Plan Part 2 (CD001). Policy DM33 therefore seeks to clearly set out the Council’s requirements in this respect, consistent with and expanding upon national policy set out in paras.128-129 of the NPPF.
- 1.4 The final paragraph of Policy DM33 also sets out how the Council will seek to ensure that new development proceeds in cases where the loss of the whole or part of a heritage asset can be justified, in accordance with para.136 of the NPPF. The wording of this section of the policy recognises that harm to or the total loss of significance of a designated heritage asset may be permitted where a development proposal meets the particular circumstances set out in paras. 133 – 134 of the NPPF.
- 1.5 Nevertheless, the Council acknowledges that it could be argued that the word ‘only’ in the first paragraph of Policy DM33 fails to have proper regard to paras.133 and 134 of the NPPF. A minor modification is therefore proposed in order to delete the word ‘only’ from Policy DM33. Other minor modifications are also proposed to the wording of Policy DM33 in response to comments submitted by Historic England (REP/0003/DM33) at the Pre-Submission Plan

(Regulation 19) stage of preparation. These other proposed modifications are set out in in Modification No.29 (CD012, pages 10-11).

1.6 Proposed Modifications

Amend the first paragraph of Policy DM33 to read:

Development affecting a heritage asset will be permitted where the proposal would make a positive contribution to conserving or enhancing the significance of the heritage asset, taking account of its character, appearance and setting

5.2 Inspector's Question

Is Policy DM14 for multi-functional Green Infrastructure justified and in accordance with national planning policy?

2. LDC Response

- 2.1 Policy DM14 seeks to ensure that multi-functional green infrastructure is delivered as an integral part of the design of new development proposals (CD001, para.4.49). It is intended to support the implementation of Core Policies 8 (*Green Infrastructure*) and 10 (*Natural Environment and Landscape Character*) of the Lewes District Local Plan Part 1 (CD031, pages 112 and 118).
- 2.2 Policy DM14 sets out some of the Council's more detailed requirements in terms of delivering criterion 3 of Core Policy 8, i.e. "Requiring development to contribute to the green infrastructure network and make provision for new green infrastructure and/or linkages to existing green infrastructure, where appropriate".
- 2.3 Policy DM14 will also contribute towards maintaining and enhancing the local biodiversity resources of the district, together with its locally distinctive landscape qualities and characteristics, thereby supporting and assisting with the implementation of criteria 1(i) and (ii) of Core Policy 10.
- 2.4 Policy DM14 received representations of support from Natural England, the Environment Agency and East Sussex County Council at the Consultation Draft Plan (Regulation 18) stage of preparation, as set out in the Regulation 22(1)(c) Consultation Statement (CD006, page 77).
- 2.6 Existing green infrastructure assets in district were identified and mapped as part of the East Sussex Green Infrastructure Study in 2014. The study also establishes the current and potential functions of these assets to help identify opportunities for measurable improvements to the green infrastructure network across the district. The baseline maps and associated report are publically available on the website of the Sussex Local Nature Partnership.
- 2.7 Opportunities for delivering new green infrastructure within new developments will normally be sought through the Council's requirements for the provision of outdoor playing space set out in Policies DM16 and DM17 (CD001, pages 84 and 85), and the design requirements set out in Policies DM25 and DM27 (CD001, pages 96 and 98).
- 2.8 Existing mechanisms to support the provision and funding of multi-functional green infrastructure in association with new development include conditions attached to planning permissions, Section 106 legal agreement and the Council's Community Infrastructure Levy.

2.9 The Council is confident that Policy DM14 provides an appropriate framework for seeking to ensure the provision of green infrastructure as part of new development proposals. It is consistent with the economic, social and environmental roles of the planning system and the Government's core land-use planning principles, as set out in the NPPF at paragraphs 7 and 17 respectively.

2.10 Furthermore, Policy DM14 supports national planning policy priorities in terms of promoting healthy communities (NPPF, Para.70), meeting the challenges of climate change (NPPF, Para.99), recognising the wider benefits of ecosystem services (NPPF Para. 109) and conserving and enhancing the natural environment (NPPF, Para.114). The Council therefore believes that Policy DM14 is sound with a realistic prospect that it will assist in the delivery of an effective plan.

2.11 Proposed Modifications

None

Inspector's 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, sufficient to meet the requirements of national policy?

3. LDC Response

- 3.1 The primary purpose of the development management policies contained in the Submission Local Plan Part 2 is to support the implementation of the Local Plan Part 1 (CD0031) by setting out more detailed criteria against which planning applications for the development and use of land and buildings will be assessed. The strategic policies of the Local Plan Part 1 and national planning policies in the NPPF are not repeated in the Local Plan Part 2, which only includes the additional policies necessary to provide a proper basis for development management decisions within the plan area.
- 3.2 The Council is confident that the proposed Local Plan Part 2 policies seeking to conserve and enhance the area's natural/heritage assets will provide the necessary direction to ensure that new development helps to deliver the spatial vision and objectives of the Local Plan Part 1 and achieves the principles of sustainable development set out in the NPPF. We believe that these policies will be effective in support and supplementing Core Policies 9 (*Air Quality*), 10 (*Natural Environment and Landscape Character*) and 11 (*Built and Historic Environment and High Quality Design*) of the Local Plan Part 1 and will meet the requirements of paras.109 – 114, 120-126, and 165 - 168 of the NPPF.
- 3.3 In preparing the Local Plan Part 2, the Council has followed Government advice that local plans should be as focused and concise as possible and concentrate on the critical issues facing the area. We believe that the proposed policies provide the level of detail necessary to ensure that all the relevant local issues have been properly addressed and, taken together with the strategic planning policies in the Local Plan Part 1 and national planning policies in the NPPF, will provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.
- 3.4 In terms of the requirements for ecological impact assessments, the Council acknowledges that planning decisions should be based on up-to-date information about the natural environment, in accordance with para.165 of the NPPF. However, we also recognise that information requirements for planning applications should be proportionate to the nature and scale of development proposals and be relevant, necessary and material to the application in question, in accordance with para.193 of the NPPF.
- 3.5 Accordingly, an ecological impact assessment is required for the development of all the residential site allocations in the Local Plan Part 2 and the employment site allocation at East Quay, Newhaven Port (Policy E1, as

proposed to be modified by M24 in the Schedule of Minor Modifications – CD012, page 9), in order to ensure that criteria (ii) of Core Policy 10 (*Natural Environment and Landscape Character*) is met (CD031, page 118). For all other development proposals, the Council's requirement for up-to-date information about biodiversity is explained at paras.4.82 – 4.83 of the Submission Document (CD001/page 94).

3.6 Proposed Modifications

None.

Inspector's Question

5.4 Does Policy DM25 (Design) ensure sufficient protection for the living conditions (amenities) for both occupiers of existing development and occupiers of proposed new development?

4. LDC Response

- 4.1 As stated in the supporting text (CD001, para.4.86.), Policy DM25 should be read in conjunction with Core Policy 11 (*Built and Historic Environment and High Quality Design*) of the Lewes District Local Plan Part 1, which sets out the Council's strategic approach to securing high quality design in all new development (CD031, page 121).
- 4.2 Criterion (viii) of Core Policy 11 seeks to ensure a satisfactory environment for the future occupiers of new housing developments in terms of the provision of adequate daylight, sunlight, privacy, private outdoor space and/or communal amenity areas, whilst Criterion 7 of Policy DM25 sets out more detailed criteria to ensure that that new development does not have an unacceptable adverse impact on the amenities of occupiers of existing properties, in terms of privacy, outlook, daylight, sunlight, noise, odour, light intrusion or activity levels.
- 4.3 Other Local Plan policies which seek to protect the amenities of the occupiers of both existing development and proposed new development include Core Policy 8 (*Air Quality*) of the Local Plan Part 1 (CD031, page 114), and Policies DM20 (*Pollution Management*), DM21 (*Land Contamination*) and DM23 (*Noise*) of the Submission Local Plan Part 2 (CD001, pages 88 and 91).
- 4.4 It is acknowledged that local planning authorities have the option of adopting the nationally described space standard for new homes across all tenures. The Council's 'Affordable Housing' SPD, adopted in July 2018, uses this standard as a guideline for the internal space to be provided within new affordable housing (CD065, pages 22 -23). This is justified by the high occupancy levels in affordable housing and the higher proportion of disabled persons it accommodates.
- 4.5 However, occupiers in the private market sector have a greater freedom to choose a property which meets their needs and so the size of individual rooms is less critical. There is no evidence to demonstrate that the internal space of private sector new-build dwellings is particularly small within the Local Plan area, or that it is resulting in poor living conditions for the occupiers. Consequently, the Council does not consider that adopting the nationally described space standard across all tenures can be justified at this time.

4.6 In conclusion, the Council is confident that Policies DM25 and Core Policy 11, together with other relevant policies, provide a positive and flexible framework for decision-making that will ensure satisfactory living conditions for the occupiers of both existing development and proposed new development in accordance with the Government's core land-use planning principles (NPPF, para.17).

4.7 Proposed Modifications

None

Inspector's Question

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

5. LDC Response

- 5.1 Policy DM24 supports Core Policy 10 (Natural Environment and Landscape Character) by setting out how the Council will seek to protect and enhance sites of biodiversity and geodiversity in a manner commensurate with their statutory status, in accordance with national planning policy as set out in the 2012 NPPF (para.113). The policy was amended subsequent to the publication of the Consultation Draft Local Plan Part 2 (CD018) by the inclusion of the words "at this site" and "a Marine Conservation Zone" in paragraph 3 to take account of comments submitted by Natural England, as set out in the Summary of Consultation (CD022, page 41).
- 5.2 The planning policies in the Local Plan Part 2 are intended to provide the necessary direction to ensure that new development helps to achieve the spatial vision and objectives set out in the Local Plan Part 1. It is not necessary to repeat the strategic priorities for conserving and enhancing the natural environment set out in Core Policy 10 of the Local Plan Part 1 or national planning policies set out in the NPPF, although the policies must be consistent with them.
- 5.3 The NPPF was revised in July 2018 and updated in February 2019. The Council is confident that Policy DM25 is consistent with section 15 of the revised NPPF, which replaces paras.109-125 of the 2012 NPPF. The Government continues to expect that planning policies will protect sites of biodiversity and or geological value in a manner commensurate with their statutory status or identified quality in the development plan and that plans will distinguish between the hierarchy of international, national and locally designated sites (Revised NPPF, paras.170-171).
- 5.4 It is acknowledged that Natural England, in its response to the Pre-Submission Local Plan Part 2, now seeks further changes to the wording of Policy DM25 to strengthen its provisions in line with the revised NPPF (CD010 REP/021/DM24). Whilst re-iterating national planning policy should not normally be necessary, the Council proposes the modifications set out below to meet some of Natural England's concerns.

Proposed Modifications

- 5.5 Amend the third paragraph of Policy DM25 to read:

Development that would be likely to adversely affect a Site of Special Scientific Interest (SSSI), National Nature Reserve (NNR), or a Marine Conservation Zone (MCZ), either individually or in combination with other developments, will only be permitted where the benefits of the development, at this site, in the location proposed clearly outweigh the

damage to the nationally recognised special interest of the designated site and any adverse impacts on the wider network of SSSIs.

5.3 Amend the fourth paragraph of Policy DM25 to read:

Development which would result in loss or damage to a site of biodiversity or geological value of regional or local importance including Local Nature Reserves (LNR), Wildlife Trust Reserves, Local Wildlife Sites, ~~irreplaceable habitats~~ and habitats and species of principal importance for biodiversity will only be permitted where the benefits of the development clearly outweigh the damage to the conservation interest of the site and any loss can be mitigated to achieve a net gain in biodiversity/geodiversity

5.4 Insert a new penultimate paragraph into Policy DM25 to read:

Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland or veteran trees) will be refused, unless there are wholly exceptional circumstances and a suitable compensation strategy exists.

Inspector's Question

5.6 Is Policy DM23 (Noise) justified and in accordance with national policy?

6. LDC Response

6.1 Noise exposure can impact upon quality of life and give rise to adverse health effects. Noise is therefore a material planning consideration when new developments may create additional noise or when new developments would be sensitive to the prevailing acoustic environment. During the preparation of the Local Plan Part 2, concern over the lack of a local planning policy to address this issue was raised by both planning and environmental health officers at the Council.

6.2 Accordingly, Policy DM23 is intended to provide an appropriate framework for decision-making where an adverse effect from noise exposure is occurring or is likely to occur. It supports and seeks to implement criterion (viii) of Core Policy 11 (*Built and Historic Environment and High Quality Design*) of the Lewes District Local Plan Part 1 in terms of securing a good standard of amenity for both existing and future occupants of development (CD031, page 121).

6.3 Policy DM23 is supported by the 'Planning Noise Advice Document: Sussex' (CD066), which has been used successfully by all the East and West Sussex planning authorities and Brighton & Hove City Council since its adoption in July 2015. This document aims to offer clear and consistent guidance to applicants on:

- the level of information that will be required to be submitted with planning applications for noise sensitive developments or noise generating developments
- existing standards that should be referred to when undertaking noise impact assessments
- the issues that need to be considered and addressed prior to submitting a planning application.

6.4 The Council is confident that Policy DM23 is consistent with the NPPF in terms of conserving the natural and local environment, securing a good standard of amenity for all existing and future occupants of land and buildings, and seeking to prevent both new and existing development from being adversely affected by unacceptable levels of noise pollution (NPPF paras.17, 109 and 123).

6.5 Proposed Modifications

None

Inspector's Question

5.7 Is coastal erosion an issue within the plan area, and if so, should it be addressed by a policy?

7. LDC Response

7.1 The majority of the coastline within the plan area is defended against erosion, except for a small section of undeveloped cliff top at Telscombe and the undeveloped cliff top between Newhaven and Peacehaven. The high-level policies for coastal defence management along the district's coastline are set out in the 'Beachy Head to Selsey Bill (South Downs) Shoreline Management Plan First Review (May 2006), as explained in the Lewes District Local Plan Part 1 (CD031, page 123, para.7.114).

7.2 The spatial strategy of the Local Plan Part 1 was informed by the Shoreline Management Plan and Core Policy 12 (*Flood Risk, Coastal Erosion, Sustainable Drainage and Slope Stability*) sets out the Council's approach to reducing the risk from flooding and coastal change over the plan period (CD031, page 124). There have been no changes to the relevant coastal defence management policies of the Shoreline Management Plan First Review since the adoption of the local plan Part 1 in May 2016.

7.3 The option of identifying a 'Coastal Change Management Area' in accordance with para.107 of the NPPF was included in Local Plan Part 2 Issues and Options Topic Paper 5: Development Management Policies (CD028, page 13, para.149). Only two respondents to the consultation supported this option, both arguing that the Shoreline Management Plan is out of date, as set out in the Summary of Consultation (CD030, page 34).

7.4 As part of its representation on the Consultation Draft Local Plan Part 2, Peacehaven Town Council submitted comments in relation to coastal erosion issues at Telscombe Cliffs, as set out in the Summary of Consultation (CD022, page 52)

7.5 It is acknowledged that the Shoreline Management Plan Review is now over ten years old, although as noted above the relevant policies for the coastline within the Local Plan Part 2 area remain unchanged. The District Council, in partnership with Brighton & Hove City Council, has therefore commissioned consultants to prepare a 'Coastal Management Implementation Plan' to provide a detailed understanding of how the coastline between Brighton Marina and Newhaven is changing due to the actions of the sea.

7.6 This Coastal Management Implementation Plan will eventually act as a route map setting out what defence works should be undertaken, and at what time, in order to assist the Council with its future management of this stretch of coastline. However, this document is at an early stage of consideration by both Councils and no decision has yet been taken about how or if its recommendations should be progressed.

7.7 In the light of the current situation, the Council therefore considers it more appropriate that the implications of coastal change in the plan area and the policy measures necessary to tackle them are addressed through the review of the Local Plan, which is programmed to commence in 2020. In the meantime, the Council is confident that the risk from coastal change can be effectively addressed through the application of Core Policy 12 and national policy set out in the NPPF.

7.8 Proposed Modifications

None

Inspector's Question

5.8 Does the Plan satisfactorily address the issue of climate change?

8. LDC Response

- 8.1 A district that is responsive to the challenges of climate change is one of the key elements of the overall spatial vision set out in the Lewes District Local Plan Part 1 (CD031, page 33). The strategic objectives which support that vision include seeking to reduce both the causes of climate change and the district's vulnerability to the impacts of climate change (CD0031, page 39). These objectives will be delivered through both the spatial strategy of the local plan and the application of its policies.
- 8.2 The Council has applied a sequential, risk-based approach to the location of development growth, taking into account the current and predicted future impacts of climate change, which is reflected in the adopted spatial strategy for the district. The need to mitigate and adapt to climate change is also addressed by many of the policies of the Local Plan Part 1, including:
- Core Policy 8: *Green Infrastructure*
 - Core Policy 9: *Air Quality*
 - Core Policy 10: *Natural Environment and Landscape Character* (criterion 4)
 - Core Policy 11: *Built and Historic Environment and High Quality Design* (criterion iii)
 - Core Policy 12: *Flood Risk, Coastal Erosion, Sustainable Drainage and Slope Stability*
 - Core Policy 13: *Sustainable Travel*
 - Core Policy 14: *Renewable and Low Carbon Energy and Sustainable Use of Resources*
- 8.3 Policies DM14 (*Multi-functional Green Infrastructure*), DM22 (*Water Resources and Water Quality*), DM24 (*Protection of Biodiversity and Geodiversity*), DM27 (*Landscape Design*), DM35 (*Footpath, Cycle and Bridleway Network*), DM36 (*Station Parking*) and DM37 (Former Lewes to Uckfield railway line) of the Submission Local Plan Part 2 are also intended to play a role in reducing greenhouse emissions and providing resilience to the impacts of climate change (CD001, pages 83, 90, 95, 99, 108 and 109).
- 8.4 The option of providing additional development management policies to address renewable and low carbon energy was included in the Local Plan Part 2 Issues and Options Topic Paper 5: Development Management Policies (CD028, page 14). Only one respondent commented on this option, setting out a list of additional infrastructure needed to mitigate for the effects of climate change, as set out in the Summary of Consultation document (CD030, page 35). In view of the wealth of national planning guidance and best practice publications on renewable and low carbon energy infrastructure, the Council do not consider that additional local planning policies to further address this issue can be justified at this time.

- 8.5 The Council has been positive and pro-active in terms of ensuring the effective implementation of local planning policies that seek to address the challenge of climate change. A Renewable Energy & Energy Efficiency Supplementary Planning Document was adopted in 2006 (CD067), technical guidance to encourage the provision of electric vehicle charging points in all new development was published in November 2018 (CD068), and a Renewable Energy Scheme Guidance and Validation Checklist will be published in April 2019 to assist in the delivery of Core Policy 11 (*Renewable and Low Carbon Energy and Sustainable Use of Resources*).
- 8.6 In conclusion, the Council is confident that the spatial strategy and policies set out in the Local Plan Parts 1 and 2, supported by the publication of technical planning guidance to assist developers and applicants, will provide a sound and effective framework to help contribute to a reduction in both the causes of climate change and the district's vulnerability to the impacts of climate change.
- 8.7 Proposed Modifications
- None