
**Independent Examination of the Shoreham
Harbour Joint Area Action Plan**

Matters, Issues and Questions

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Inspector appointed by the Secretary of State for Housing, Communities and Local Government

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Introduction

This document lists the Matters (topics), Issues (points for consideration) and Questions that will form the basis for the Examination, including discussions during any Hearing Sessions, and supply the context for any further written statements (see Examination Guidance Note paragraphs 31-39). Matters and Issues may change as the examination progresses, although participants will be given an opportunity to comment on any new issues that arise. If sufficient information is provided on any particular matters/issues, I may decide not to pursue them further in any depth.

References to the Plan are to the Shoreham Harbour Joint Area Action Plan Publication version November 2017, which is the version that is being examined. References to the Councils are to the Adur District Council, Brighton & Hove City Council and West Sussex County Council. Together with the Shoreham Port Authority, these Councils form the Shoreham Harbour Regeneration Partnership, which has prepared the Plan. Other references used are:

NPPF - National Planning Policy Framework 2012

PPG - Planning Practice Guidance;

LP Regs – The Town and Country Planning (Local Planning)(England) Regulations 2012

ALP – Adur Local Plan 2017

B&HCP(1) – Brighton & Hove City Plan Part 1 2016

The questions below arise out of my initial reading of the Plan and the key evidential documents. I may have additional questions following further reading prior to the Hearings. If so, I will attempt to circulate them within a reasonable time of the Hearings.

All questions should be answered in writing by the Councils. Other participants may respond to issues relevant to points they have made in their earlier representations. Answers should be supported with reasons, unless exceptionally it is clear from the question that a simple yes or no answer is required. There may be some overlap between questions, in which case answers may be cross referenced as appropriate. Text that may be found in submitted evidence documents or within the Plan itself should not be repeated, but references (with page and paragraph numbers) to those documents should be provided where relevant. Responses to each Matter should be submitted as separate documents.

As per section 20(7C) of the Planning and Compulsory Purchase Act 2004, the Councils have requested that I recommend whatever Main Modifications are required to make the Plan legally compliant and sound. The need for any Main Modifications to the Plan will be explored during the course of the Examination. Although the principle of making a modification will be dealt with at the Hearing sessions, the wording may not be finalised until later.

Participants are urged to read the Examination Guidance Note, which has been circulated, and which can be downloaded from the examination website:

<https://www.adur-worthing.gov.uk/shoreham-harbour-regeneration/examination-jaap/>

Legal Issues

Matter 1a: Duty to Cooperate (DtC)

Issue: Has the DtC been met?

1. Is there evidence of a continuous process of engagement, collaboration and effective cooperation with neighbouring local authorities and other prescribed bodies, to ensure that the Plan clearly reflects identified strategic priorities, provides the land and infrastructure necessary to support current and projected future levels of development, and plans effectively for issues with cross-boundary impacts?
2. What mechanisms will be put in place to ensure that there is future cooperation in relation to cross boundary issues that may arise as development within the Plan progresses?

Matter 1b: Other Legal and Procedural Requirements

Issue: Whether the Plan meets all other relevant legislative requirements?

3. Has the Plan consultation complied with the Statement of Community Involvement and public consultation requirements in the LP Regs?
 4. Has the Plan been prepared in accordance with the published Local Development Scheme?
 5. Has engagement taken place in relation to any Neighbourhood Plans in preparation within the Plan area, to avoid duplication of non-strategic policies?
 6. Does the wording of paragraph 1.1.3 of the Plan (indicating that planning applications within the regeneration area must comply with the strategy and policies of the Plan and the relevant local plans) appropriately reflect section 38(6) of the Planning and Compulsory Purchase act 2004 and section 70(2) of the Town and Country Planning Act 1990¹?
 7. Does the scale, location and range of development proposed accord with the parameters identified within the ALP and the B&HCP(1)? Are the boundaries of the Plan area appropriate and consistent with the area identified in the ALP and the B&HCP(1)?
 8. Whilst the Plan period to 2032 would be consistent with that of the ALP, it would exceed that of the B&HCP(1) by two years? Would this have any implications for legal compliance?
 9. Are the policies of the Plan consistent with the West Sussex Minerals Plan 2003, the Waste and Minerals Plan 2013 (in relation to the area in Brighton & Hove) and the East Sussex, South Downs and Brighton & Hove
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Waste and Minerals Site Plan 2017? Are the Plan policies consistent with the emerging West Sussex Joint Minerals Local Plan? If any inconsistency or conflict exists, how has this been identified and addressed within the Plan?

Sustainability Appraisal (SA)

10. Does the SA comply with the provisions of the *Environmental Assessment of Plans and Programmes Regulations 2004* (EA Regs) in identifying, describing and evaluating the likely significant effects on the environment of implementing the Plan, together with economic and social factors?
11. Is it clear how the SA influenced the final plan and how the Plan addresses the requirement for any mitigation measures? Has the inter-relationship of effects, including cumulative impacts, been addressed? Have the requirements for Strategic Environmental Assessment been met, including in respect of cumulative impacts?
12. Has an adequate site assessment process been undertaken? Is there adequate coverage of all reasonable alternatives and have they been similarly evaluated to the preferred option? Have outline reasons been given in the SA for selecting the alternatives dealt with and a description given of how the assessment was undertaken? Have reasons been given for rejecting alternatives?

Equality and Health Impacts

13. The Equality and Health Appraisal (CSD04-05) considers the effect of the Plan on those with relevant protected characteristics, as set out in s149 of the Equality Act 2010. In what way does the Plan seek to ensure that due regard is had to the three aims of the Equality Act in relation to those who have a relevant protected characteristic?

Habitats

14. Have the requirements for appropriate assessment under the Habitats Regulations been met, having regard to relevant national policy and guidance?
15. Does the Habitats Regulations Assessment (HRA) process followed take account of the *Wealden* judgement (Wealden V SSCLG [2017] EWHC 351Admin) and potential "in combination" air quality impacts of traffic flows on relevant designated areas?
16. The Council's response to my Initial Questions referred to the Appropriate Assessment being undertaken for the Brighton & Hove City Plan Part 2, in relation to air quality impacts on Ashdown Forest. With regard to this, are the Councils content that the Habitat Regulations Assessment screening undertaken in relation to the Plan, including that carried out as part of screening of Adur Local Plan and Brighton & Hove City Plan Part 1, is legally compliant in light of the recent CJEU judgement (Case C-323/17) in *People over Wind, Peter Sweetman v Coillte Teoranta*?

Soundness Matters

Matter 2: Climate change, energy and sustainable building (Policies SH1, SH2, CA6, CA7)

Issue: Whether the Plan would be effective in addressing the challenges of climate change, and promoting energy efficiency and the sustainable use of resources?

17. Policy SH1(3) encourages the achievement of zero-carbon development, where feasible and viable. What mechanisms are proposed to assess viability, feasibility and whether the development would achieve zero-carbon?
18. How have feasibility and viability been assessed in relation to the requirements in SH1(4), (5), (6) and (9)? What implications, if any, would these requirements have for the effective delivery of development within the Plan area, including in relation to the Councils' proposed modification MM4?
19. Having regard to the Councils' proposed modifications MM2, MM5, MM9, MM10, MM11, MM12 and MM13 how is the district heat network proposed to be delivered, including in terms of location, technology and funding? Is there a reasonable likelihood of Environmental Permit(s) being issued for the abstraction and discharge of the water required for marine source heat pumps?
20. In relation to Policy SH2(8), how will new port infrastructure proposals be expected to demonstrate that the impacts of climate change have been considered in the location, design, build and operation of the proposal?
21. Would the incorporation of a minimum standard of internal water use of no more than 110 litres per day be consistent with national policy in this regard?
22. In relation to air quality, having regard to the Councils' response to my Initial Questions, what evidence is there that the Plan would not delay compliance or contribute to any future non-compliance with the Ambient Air Quality Directive (Directive 2008/50/EC)? How does the Plan consider the potential cumulative impact of a number of smaller developments on air quality, as well as the effect of more substantial developments, and the impact of point sources of pollution? On what basis has any forecasting been made and what level of margin is required to avoid any potential new non-compliance or delay in achieving compliance in air quality?
23. The Equality and Health Appraisal identifies the potential for the Plan to have negative effects on health and well-being, in relation to air quality and noise impacts from development. Mitigation through green infrastructure and transport improvements has been identified. What

measures are proposed to ensure that the mitigation identified is undertaken in a timely manner and will be sufficient to outweigh the negative effects? Having regard to the Councils' proposed modification MM14, would the Plan be effective in ensuring that new development would be in appropriate locations and not give rise to unacceptable risks from pollution?

Matter 3: Shoreham Port, economy and employment (Policies SH2, SH3, CA1, CA2, CA3, CA5, CA6, CA7)

Issue: Whether the Plan has been positively prepared with regard for the activities and requirements of Shoreham Port and justified in respect of the quantitative and qualitative mix of floorspace and land proposed for economic development?

24. How will the Plan relate to the Shoreham Port Masterplan 2016? Are there any consistencies or conflicts between the two documents? If so, how would they be addressed? Having regard to the Councils' proposed modification MM13, briefly explain how the Plan would enable potential implications for the safety of navigation arising from development proposals to be addressed?
25. What is the current status of the emerging West Sussex Joint Minerals Plan? Would the Plan adequately safeguard minerals wharves within the Plan area?
26. Would the total area of employment land proposed to be allocated reflect the requirement for the area identified in the ALP and the B&HCLP(1)? Are the boundaries of the proposed employment areas justified?
27. Does the Plan reflect a clear understanding of business needs within the area and the likely changes in the market? Will the land and floorspace proposed be sufficient, suitable and available to meet the identified existing and future needs for all foreseeable types of economic activity over the plan period? How will the Plan policies provide sufficient flexibility to respond to future changes? How would any shortfall be addressed?
28. What methodology has been used for site selection and are the criteria clear, robust and justified?
29. The Plan identifies a need for the protection of certain employment sites, in Policies CA2(5) and CA3(5). How is it proposed to secure this protection, having regard to changes of use potentially permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015?

30. What mechanisms are proposed to secure training and job opportunities for local residents through development proposals? If the use of planning obligations is envisaged, are the Councils satisfied that these would meet the requirements of regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010?

Matter 4: Housing and community (Policies SH2, CA2, CA3, CA7)

Issue: Whether the Plan has been positively prepared in respect of the scale and mix of housing to meet the identified needs of different groups in the community over the plan period?

Need and Demand

31. Having regard to the policies of the ALP and B&HCP(1), does the Plan adequately address the needs for all types of housing and the needs of different groups in the specific local community of the Plan area, in accordance with NPPF paragraphs 50 and 159?
32. Does the Plan make sufficient provision for inclusive design and accessible environments in accordance with NPPF paragraphs 57, 58, 61 and 69?

Supply

33. Does the Plan identify a supply of available, suitable and deliverable land sufficient to meet the housing requirement identified in the ALP and B&HCP(1) for the harbour area over the plan period? Are the identified and allocated sites either deliverable (years 1-5) or developable (years 6-10 and beyond)? What methodology was used for site selection and are the criteria clear, robust and justified? How has the housing capacity of individual sites been calculated?
34. How will the Plan contribute to the delivery of a 5 year supply of housing land within the Councils' administrative areas on adoption and throughout the lifetime of the Plan?
35. What has been the extent of housing delivery since the start of the plan period? Are the rates of planned housing development within the Plan area realistic and achievable in the context of previous rates of development and economic circumstances? Should the Plan include a housing trajectory setting out anticipated delivery across the plan period? How would any shortfall in delivery be addressed?

**Matter 5: Sustainable travel, flood risk and sustainable drainage
(Policies SH5, SH6, SH7, CA1)**

Issue: Whether the Plan positively and effectively addresses identified transport and flood risk constraints?

36. Would the mitigation measures identified in the Shoreham Harbour Transport Strategy 2016 adequately address the travel demands and additional traffic generated by the Plan proposals? What evidence exists to support this?
37. How is the Shoreham Adur Tidal Walls Scheme likely to affect flood risk considerations within the Plan area? What is the status of the *Brighton Marina to River Adur Coastal Strategy Study* and the *Rivers Arun to Adur Flood and Erosion Management Strategy 2010*? What influence, if any, would these documents have in the consideration of development proposals?
38. The *Shoreham Harbour Flood Risk Management Guide Supplementary Planning Document* sets out the approach to the management of flood risk within the Plan area. How did the consideration of flood risk influence the distribution of development and inform the site allocation process? To be effective, should Policy SH6 explicitly address the issue of change of use of land or buildings?
39. Would the Councils' proposed modification MM6 be effective in ensuring that development proposals will be required to take into account the most up-to-date assessment of flood risk and the management and mitigation required?
40. Does the Plan clearly identify responsibility for the provision and maintenance of flood risk mitigation measures considered necessary for new development? What effect will these measures have on the viability and delivery of development? How will their effect on the design of new buildings influence other considerations, such as the visual impact of development?
41. Would the requirements for sustainable drainage set out in parts 13 and 14 of Policy SH6 be adequate, feasible and viable for different types and locations of development? If so, what evidence is there to support this conclusion?

Matter 6: Natural environment, biodiversity, green infrastructure, recreation and leisure (Policies SH7, SH8, CA2, CA4, CA5, CA6, CA7)

Issue: Whether the policies of the Plan would support the positive management of environmental assets and natural resources, make appropriate provision for green infrastructure and open space, and enable the effective delivery of appropriate recreation and leisure development?

42. Briefly explain how the potential effects of the Plan's policies and proposals on protected species have been assessed.
43. Would the Councils' proposed modification MM7 enable the Plan to make appropriate reference to compensatory actions, where adverse impacts on biodiversity cannot be avoided or mitigated, including in relation to compensatory habitat? How are the Councils seeking to resolve constraints in identifying appropriate compensatory habitat?
44. To be effective, having regard to the Councils' proposed modifications MIN61 and MIN68, is it necessary for Policy CA4(2) to refer to the delivery of proposed enhancements to vegetated shingle and further habitat creation at Portslade and Southwick beaches, and for Policy SH7(4) to specify an approach for the assessment of the biodiversity impacts of development proposals?
45. Policy SH8(1) requires development proposals to provide high quality multifunctional public open space or green infrastructure on site. Would the delivery of this requirement for all development proposals be reasonably achievable?
46. Would Policy CA6(4) adequately address the potential opportunities for redevelopment of existing leisure and recreation uses within the Plan area? Would Councils' proposed modifications MIN30 and MIN78 ensure consistency with national policy, in relation to the provision of recreational and leisure facilities and services to meet the identified needs of both new and existing communities?
47. Policy CA5(3) refers to complimentary waterside facilities. Does the Plan provide a clear explanation of what type of facilities these are expected to be?

Matter 7: Place making and design quality, character areas and site allocations (Policies SH9, SH4, SH8, CA1-7)

Issue: Whether the Plan will be effective in enabling the regeneration of the Harbour and neighbouring communities, with high quality development, for the benefit of existing and future residents, businesses, port-users and visitors?

48. Would the Councils' proposed modifications MM8 and MIN71 ensure that all character areas are appropriately identified and priorities expressed within the plan? Does the Plan clearly identify what will and will not be permitted and where, with a clear indication of how a decision maker should react to a proposal? Do the policies of the Plan provide sufficient detail on form, scale, access and quantum of development in each character area? (NPPF p157)
49. Would Policy CA7 be effective in managing the scale and height of development within the Western Harbour Arm character area?
50. Are the location and significance of heritage assets appropriately identified within the Plan? How would the Plan assist prospective developers and decision makers in assessing the impact of proposals on the setting and significance of heritage assets?
51. Is the mix of development uses proposed appropriate and deliverable? Do the policies of the Plan provide sufficient flexibility in the mix of development proposed, to support delivery, respond to changing circumstances and address issues of viability?
52. Policy SH9(4) requires contribution for public art, where appropriate. What criteria would be used to assess whether this would be appropriate? What mechanism is proposed to secure this requirement? If it is intended to use planning obligations, are the Councils confident that this would meet the relevant tests for obligations under Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010?
53. Policy SH9(5) refers to standards for amenity space. How have these standards been defined? Has appropriate account been taken of the need for effective delivery of development?

Matter 8: Infrastructure, viability and delivery (Policies SH10, SH1, SH4, SH5, SH6, SH7, SH8, CA1, CA2, CA4, CA5, CA7)

Issue: Whether the policies of the Plan would be effective in enabling the provision of infrastructure necessary to support the level and type of growth proposed?

54. How is the Partnership proactively seeking ways to reduce the viability gaps identified within the *Shoreham Harbour Joint Area Action Plan Whole Plan Viability and Deliverability Study 2018* (SED10-01)? What mechanisms are being developed to deliver investment priorities and unlock stalled sites? What is the likelihood that the funding gap will be met through identified sources? What progress has been made towards land assembly and release of development sites?
55. How have issues of viability been taken into account, including likely cumulative impacts of requirements, to ensure that there is a reasonable prospect that the sites identified will come forward for development during the lifetime of the plan? Will the proposals provide competitive returns to a willing landowner and developer sufficient to enable development to be delivered?
56. How has the need for site specific requirements been assessed, including the need for green infrastructure, environmental mitigation or compensation? Have they been identified as necessary to make a particular development acceptable in planning terms? Having regard to the Councils' proposed modifications, does Policy SH10(3) clearly identify the potential requirement for agreements with utility providers?
57. Has the scale of contribution required been clearly identified, so that a future developer will understand the extent and type of contribution expected? How is the issue of pooled contributions proposed to be addressed, in relation to Regulation 123 of the Community Infrastructure Levy Regulations 2010?
58. Are the infrastructure requirements needed to support the proposed development of the Plan area clearly set out within the Infrastructure Delivery Plans for the ALP and B&HCP(1)? Are the timescales for delivery, costs and funding sources for each scheme confirmed, to enable the delivery of the proposed development, for at least the first five years of the plan?

Matter 9: Monitoring and review

Issue: Whether the Plan provides an effective approach to monitoring and review?

59. Is the approach to monitoring clear and sufficiently detailed? Are suitable arrangements in place for reviews at appropriate times?

60. Does the Plan provide flexibility? What contingency arrangements and alternative strategies have been considered if development identified in the Plan does not proceed, or the rate of development anticipated is not met, including in relation to the provision of infrastructure?

61. Is there a need to identify a reserve of potential future development sites, should the proposed allocated sites in the Plan not come forward for development as anticipated?
