

Shoreham Harbour Joint Area Action Plan

Examination Hearings

19 September 2018 – 10:00

Agenda – Day 1 AM

Please note:

- All participants are encouraged to familiarise themselves with the hearing statements (and any additional evidence) produced by the Councils and other parties in respect of the matters addressed at this session. These are available on the examination website.
- Most references to questions refer to those posed by the Inspector in the schedule of Matters, Issues and Questions (already circulated)
- The hearing will run until around 13:00, with a mid-morning break.

Inspector's opening

Councils' opening statement

Matter 1A: Duty to Cooperate

Issue: Has the Duty to Cooperate 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?
 - The Councils' response to the MIQ outlines the work of the Regeneration Partnership (RP). How have the waste and minerals planning authorities been involved in the plan making process?
 - What is the current stage of preparation of the Green Infrastructure Strategy and the Shoreham Heat Network?
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?
 - What is the relationship of the Delivery Subgroup with the other subgroups, including those, such as Transport, where a responsibility for delivery has been identified?

3. Any other questions on this matter.

Matter 1B: Legal and procedural requirements

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

1. Has the Plan consultation complied with the Statement of Community Involvement and public consultation requirements in the LP Regs?
2. Has the Plan been prepared in accordance with the published Local Development Scheme?
 - Has the Adur LDS 2018-2020 been approved and has the Plan been prepared in accordance with the revised LDS, including its timetable?
 - What is the status of the Brighton & Hove LDS addendum note (LPD02/10)?
3. Has engagement taken place in relation to any Neighbourhood Plans in preparation within the Plan area, to avoid duplication of non-strategic policies?
4. 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 1990 ?
 - The Councils' response makes reference to the NPPF 2018. Similar wording is also contained within NPPF 2012 in this respect. The Councils' proposed MM (PH/MM1) is noted.
5. 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)?
 - The Councils' response to the MIQ indicates that the quantum of development proposed in the Plan matches the minimum specified in local plan policies for residential development and employment generating floorspace. Would this provide sufficient flexibility over the Plan period?
6. 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?

7. 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 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?
- The Councils' response confirms that the adoption of the West Sussex Joint Minerals Local Plan in July 2018 will require minor factual alterations to the Plan to be made. Have these proposed alterations been identified? Are the Councils content that these changes would represent proposed Additional Modifications, rather than Main Modifications?

Sustainability Appraisal (SA)

8. 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?
9. 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?
- The Councils' Matters Statement 1B Appendix B, submitted in response to the MIQ, provided further detail on relevant options and policies considered during the wider plan preparation process. Having regard to *Calverton PC v Nottingham CC* [2015] EWHC 1078 (Admin), are the Councils satisfied that the November 2017 SA (CSD04/01) and May 2018 SA (CSD04/01) meet the requirements for the treatment of alternatives in SA reports?
 - In particular, does the SA consider reasonable alternatives, report on those alternatives and give reasons for their rejection?
 - Does Part 2 of the SA adequately describe what alternatives were examined at earlier stages of the plan making process, so that it can be readily ascertained what options were considered without any paper chase being required, and satisfactorily summarise the reasons for rejecting earlier options?
 - Were the alternatives subject to the same level of analysis as the preferred options?
10. 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?

- Is the site selection process clear and robust? Is it clear why particular sites are included within the proposed allocations and why others were rejected?
- Does the SA demonstrate a clear evaluation process of the likely significant effects of individual policies, including where detailed wording has evolved from earlier stages of the plan making process?

Equality and Health Impacts

11. 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

12. Have the requirements for appropriate assessment under the Habitats Regulations been met, having regard to relevant national policy and guidance?
13. 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?
- The additional material submitted in response to the MIQ on this question largely relates to the area of the Plan within Brighton & Hove Council area. What assessment has been done for the area of the Plan within Adur District Council?
14. 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?

15. Any other questions on this matter

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?

1. 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?
 - The Councils' response to the MIQ indicates the intention, as set out in the LDS, for Adur District Council to produce a Renewable Energy SPD to clarify and amplify development plan requirements, address matters such as low and zero carbon technologies, and provide guidance on the submission of an energy statement with development proposals. Is it intended that the SPD would address the Council's approach to the assessment of viability and feasibility?
 - How would the online Sustainability Checklist used by Brighton & Hove Council address these issues?

2. 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?
 - Having regard to proposed modification MM5, MM12 and MM13, will Policy SH1 provide sufficient clarity on the area within which new development will be required to connect to district heating networks, where they exist, or make provision for future connection?
 - Is it clear, from the Plan, whether the requirements specified in paragraphs 3.1.19-3.1.20 only apply to developments within this identified area?
 - The Councils' response to the MIQ clarifies the required scope of heat network viability assessments. How are these viability assessment requirements intended to be shared with potential future developers within the area?
 - How have implications for viability been assessed of requiring new commercial buildings to meet the BREEAM 'excellent standard' for internal water use, across the Plan area?

3. 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?

- Paragraph 19.7 of the Councils' response to the MIQ refers to Policy SC7. How does this Policy relate to Policy SH1?
 - Reference is made, within the MIQ response, to the potential use of the Old Customs House as a location for abstraction and heat pumps. Would such a use comply with the proposed policies of the Plan?
4. 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?
5. 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?
- As this requirement is included in the adopted local plans for both Councils, why is its inclusion in the Plan considered necessary?
6. 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?
- Having regard to the existing policies of the adopted local plans and local guidance, to ensure the effectiveness of Policy SH7 (13-15), would it be necessary for Policy SH7 to include a requirement for an air quality impact assessment to be submitted with development proposals?
7. 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?
- The Councils' response to the MIQ identifies the use of planning conditions and obligations to ensure that development adequately

addresses such issues. How has the impact of this on the viability of development proposals been assessed?

8. Any other questions on this matter