



WORTHING LOCAL PLAN 2020- 2036

WBC-E-03

**Matter I –
Legal Compliance & General Matters**

October 2021

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Matter 1 - Legal Compliance and General Matters

Issue 1: Whether the Council has complied with the Duty to Cooperate (DtC) in preparing the WLP?

Q1. Is there any substantive evidence to demonstrate that, during the preparation of the Plan, the Council failed to engage constructively, actively and on an on-going basis with relevant authorities and prescribed bodies on 'strategic matters' applicable to the WLP?

Council's Response:

The Council has engaged constructively, actively and on an on-going basis over many years with relevant authorities and prescribed bodies on 'strategic matters' applicable to the WLP. There is no evidence to the contrary and there were no significant representations received at Regulation 19 stage to challenge this conclusion.

To support the Submission of the WLP and evidence how the Duty to Co-operate tests have been met a number of documents have been published. This includes details of engagement with other Local Planning Authorities within the sub-region which has resulted in the signing of Statements of Common Ground:

- [Duty to Cooperate Statement - Worthing Local Plan - Jan 2021 \(CD/H/10\)](#)
- [Duty to Co-operate Addendum - June 2021 \(CD/H/11\)](#)
- [Duty to Co-operate Addendum - Appendix A - Formal Request to Meet Some of Worthing's Unmet Housing Needs \(CD/H/12\)](#)
- [Duty to Co-operate Addendum - Appendix B - Statements of Common Ground \(CD/H13\)](#)

More recently, the Council's response to the Inspector's initial questions Section 3 (Q.7) of [WBC-E-02 Response to IL01](#) (p.17 to 23) provided further specific evidence relating to when and how the Council engaged constructively, actively, and on an on-going basis on the matter of unmet housing need.

In addition, Section 3 (Q.8) of [WBC-E-02 Response to IL01](#) (p.24-31) sets out the engagement process with the prescribed bodies. The tables that form part of this response provide a summary of the engagement with each body and other stages of correspondence / consultation. Where appropriate, the tables also provide a brief summary of how this engagement has positively informed the preparation of the Worthing Local Plan. The summary tables provide clear evidence that, in general, key parties are supportive of the approach being taken forward by the Council in the WLP and there are no major areas of dispute / disagreement. Where appropriate, this has resulted in the signing of Statements of Common Ground - this includes a recently signed statement on Highways matters (signed by WBC, WSCC and National Highways - formerly known as Highways England).

Issue 2: Whether the Council has complied in all other respects with the legal and procedural requirements in preparing the WLP?

Sustainability Appraisal

Q2. Has the formulation of the WLP been based on a sound process of sustainability appraisal (SA), as set out in the Submission SA Report [CD/H/14] and Draft Integrated Impact Assessment (DIIA) [CD/F/8]? In particular:

i. Has the SA been prepared in accordance with The Environmental Assessment of Plans and Programmes Regulations 2004?

ii. Does the SA test the Plan against reasonable alternatives in terms of the overall strategy for growth and development, site allocations and policies?

iii. Has the SA been robustly prepared with a comparative and equal assessment of each reasonable alternative?

iv. Is the SA decision making and scoring robust, justified and transparent?

v. Has the Council provided clear reasons for not selecting reasonable alternatives?

vi. Is it clear how the SA influenced the WLP strategy, policies and proposals and how mitigation measures have been taken account of?

Council's Response:

Yes. The Sustainability Appraisal has followed the process recommended in Paragraph 013 of the Planning Practice Guidance on Strategic Environmental Assessment and Sustainability Appraisal.

i. The SA has been prepared in accordance with The Environmental Assessment of Plans and Programmes Regulations 2004. The SA follows the process set out in the Planning Practice Guidance (Reference ID: 11-033- 20150209). Schedule 2 of The Environmental Assessment of Plans and Programmes Regulations 2004 sets out the information that should be included in the Environmental Report. Table 1 of the Submission Sustainability Appraisal (SA) Report ([CD/G/4](#)).

ii. The SA does test the Plan against reasonable alternatives. The identification and testing of reasonable alternatives is primarily set out in Section 4.5 of the Draft Integrated Impact Assessment (DIIA) ([CD/G/8](#)) which accompanied the Draft Worthing Local Plan. Consideration was also given to whether any of the changes made to the Plan in preparing the Submission Draft version should be tested as reasonable alternatives and this is set out in Section 5.2 of the Submission SA Report.

In identifying reasonable alternatives consideration was given to the advice contained in the Planning Practice Guidance which explains that reasonable alternatives should be realistic options that are sufficiently distinct to highlight the different sustainability implications of each so that meaningful comparisons can be made (Reference ID: 11-018-20140306). In addition, consideration was given to the requirement set out in paragraph 35d of the National Planning Policy Framework (NPPF) for Local Plans to be consistent with national policy, and the RTPI Practice Advice Note: Strategic Environment Assessment (RTPI, 2018) which

explains that:

Alternatives are not needed for every plan issue. A 'policy versus no policy' comparison of alternatives is necessary only where 'no policy' is under active consideration by the planning team. Where only one alternative is reasonable, then looking at other alternatives is not 'reasonable'. (page 12)

iii. Where reasonable alternatives have been identified a comparative and equal assessment of each alternative has been undertaken using the SA Framework.

iv. The SA decision making and scoring is robust, justified and transparent. The scoring criteria as set out in Section 4.3 of the DIIA and 5.3 of the Submission SA Report has been consistently used. Alongside this the justification for each score given has been included to ensure the process and decision making is transparent. As explained in Section 5.3 of the Submission SA Report consideration was given to Schedule 1 of the Regulations which sets criteria for determining the likely significance of effects on the environment.

v. For each alternative tested reasons have been provided for the scores given as well as an overall conclusion. In addition commentary has been provided to provide clear reasons why each option has been selected including the reasons for not selecting reasonable alternatives. This is set out in the DIIA Section 4.5 Table 10 and Appendix D2 ([CD/G/9](#)).

vi. The Council considers it is clear how the SA has influenced the WLP strategy, policies and proposals and how mitigation measures have been taken account of. Tables 9 and 10 in Section 6 of the SA Report details the mitigation identified through the appraisals to maximise positive and minimise negative effects along with where it has been incorporated within the Local Plan.

<p>Q3. In its response to my Initial Letter, the Council acknowledged that the Worthing Leisure Centre (site AOC4) had not been subject to individual SA. If this assessment had been carried out prior to submission, would this have made any difference to the strategy?</p>

Council's Response:

Whilst Worthing Leisure Centre (site AOC4) had not been subject to an individual SA as part of the sites appraisal it should be noted that the intention of the sites criteria was to highlight the potential merits and constraints associated with a site, it was not used to determine suitability of sites.

Whilst Worthing Leisure Centre was not tested through the site appraisals, the site was tested both in terms of the identification of reasonable alternatives and as part of the overall appraisal of the Draft Local Plan. This is detailed in Appendix D3 of the Draft Integrated Impact Assessment - Technical Appendices - Oct 2018 ([CD/G/9](#)).

However, the reason Worthing Leisure Centre was not taken forward into the Submission Draft Local Plan was due to a lack of certainty around deliverability. This is detailed in Table 6 (page 40) of the Submission Sustainability Appraisal (SA) Report ([CD/G/4](#)). Therefore, the inclusion of Worthing Leisure Centre within the sites appraisal (regardless of the stage at which this was undertaken) would not have made any difference to whether the site was included as an allocation or the overall strategy of the Local Plan.

Habitat Regulations Assessment (HRA)

Q4. Have the Habitat Regulations Assessment (HRA) [CD/F/8] and the HRA addendum submitted in response to my Initial Letter [CD/H/26] been carried out in accordance with the Conservation of Habitats and Species Regulations 2010 (as amended) and Habitats Directive? Is there any substantive evidence to indicate that the conclusions of the assessments are incorrect?

Council's Response:

The Habitat Regulations Assessment Screening that accompanies the Local Plan was published in Appendix E of the Draft Integrated Impact Assessment - Technical Appendices - Oct 2018 ([CD/G/9](#)) and referenced in the Submission Sustainability Appraisal (SA) Report ([CD/G/4](#)).

The purpose of the report was to provide an initial screening stage assessment as to whether there might be any aspects of the emerging Worthing Local Plan that would have the potential to cause a likely significant effect on internationally important wildlife sites either in isolation or in combination with other plans and projects, and to establish whether a full Habitat Regulations Assessment is required of the Worthing Local Plan.

The assessment followed a clear process based on the precautionary principle as required by the Regulations. Natural England as the relevant Statutory Nature Conservation Body (SNCB) was consulted. The HRA screening statement found there to be no significant adverse effects on any of the identified European sites arising from the Draft Worthing Local Plan.

For completeness, given the time passed, an HRA Screening 2021 Addendum ([CD/H/26](#)) was prepared following consultation with Natural England. Their response dated 19 January 2021 confirmed that 'Natural England concurs with the finding of your authority insofar that the proposed Worthing Local Plan is unlikely to have any likely significant effects on the identified European sites alone or in-combination with other plans or projects.' The Addendum concludes that there have been no changes since the 2018 screening assessment that would alter the conclusions found.

Therefore, the Council confirms that the HRA Screening has been carried out in accordance with the Conservation of Habitats and Species Regulations 2010 (as amended) and Habitats Directive and that there is no substantive evidence to indicate the conclusions of the Report were incorrect or fundamentally flawed.

Local Development Scheme (LDS)

Q5. Is the WLP compliant with the Council's Local Development Scheme (LDS) in terms of its form, scope and timing?

Council's Response:

The Local Plan has been produced in accordance with the Local Development Scheme (LDS).

The approved version of the LDS ([CD/W/8](#)), published in January 2021, covers the period 2021-2023. The key focus for Worthing in this period is the progression, and adoption, of a new Local Plan. The timeline indicated that the WLP would be Submitted for Examination between April and June 2021 - the Plan was submitted in June 2021.

It is acknowledged that the LDS has been updated several times during the preparation of the Local Plan. The updates have been made to adjust the timeline and, in this regard it should be noted that the impact of the Covid-19 pandemic resulted in a significant delay, particularly at a time when most of the Planning Policy team were deployed to other departments.

To reflect any adjustments in the timeline for the WLP the Council has updated the LDS and / or added an update to the website and communicated this to interested parties.

Public Consultation and Statement of Community Involvement (SCI)

<p>Q6. Is there any substantive evidence to demonstrate that the public consultation carried out during the plan-making process failed to comply with the Council's Statement of Community Involvement or other legal requirements?</p>

Council's Response:

No. The Council considers that public consultation on the plan-making process complied with the Joint Statement of Community Involvement (2019) ([CD/G/20](#)), the former [Joint Statement of Community Involvement](#) (December 2012), the NPPF and the PPG, and the requirements of the 2004 Act and 2012 Local Planning Regulations.

In recognition of the Covid-19 Pandemic and Government changes to national regulations, an Interim Addendum ([CD/G/21](#)) was first published in January 2021 setting out temporary consultation methods / changes in accordance with guidance published by MHCLG. This is a 'live' document and is kept under review with a revised version being published in August 2021.

The Council at its discretion considered it appropriate to extend the standard period for consultation to ensure as many interested parties as possible get an opportunity to comment. The Worthing Local Plan Regulation 19 Publication stage was extended to eight weeks (from 6 weeks).

Following Regulation 19 consultation, the Council published its 'Consultation Statement' (June 2021) ([CD/G/32](#)) which provides an audit trail of the consultation. This clarifies that there were no substantive objections received relating to the consultation process and compliance with the SCI. Paragraph 5.3 states:

"...whilst lessons can always be learned for future work of a similar nature, it is considered that the consultation was a success despite being a wholly online consultation during a national lockdown. The extension of the statutory six week consultation period to eight weeks was certainly beneficial."

Further information is also set out in section 14 of Route Mapper Part 4 (May 2021) ([CD/H/22](#)) (refer to page 15).

Q7. Was the Plan shaped by early, proportionate and effective engagement with communities, local organisations, businesses, infrastructure providers and operators and statutory consultees?

Council's Response:

Yes. All key issues and strategic matters were identified at an early stage in liaison with partner organisations. The consideration of these issues has helped to inform the updating of the Council's evidence base and the spatial strategy / policies that have been incorporated within the Plan. Importantly, the Council has not tackled this in isolation and the 'Issues and Options' consultation (2016) was used to set out what were considered to be the strategic matters. An opportunity was provided for all key stakeholders to comment on these matters or make alternative suggestions. Interested parties were also given the opportunity to comment on potential development sites.

Close co-operation and engagement with neighbouring authorities and key stakeholders has been going on throughout the preparation of the Local Plan. This has been reported within the Duty To Co-operate Statement ([CD/H/10](#), [CD/H/11](#), [CD/H/12](#), & [CD/H/13](#)) and various committee reports to Council. It is clear how this work has influenced the outcomes reached within the Local Plan and other related work undertaken across the sub-region.

Elected Members have considered all key / strategic issues and these have been set out within reports to various committees. Refer to Section 5 (p.2) and Appendix 1 of Route Mapper Part 3 (May 2021) ([CD/H/21](#)).

Section 11 & 13 (p.4-6) of Route Mapper Part 3 (May 2021) ([CD/H/21](#)) sets out information on engagement with statutory consultees.

With regards to infrastructure providers, it is recommended that the following sources are consulted:

- Refer to section 9 & 10 of Route Mapper Part 4 (May 2021) ([CD/H/22](#)) (See pages 10 - 12).
- Section 3 (Q.8) of [WBC-E-02 Response to IL01](#) (p.24-31) sets out the engagement process with public bodies, some of which are infrastructure providers. A number of these bodies had an input into the Infrastructure Delivery Plan to underpin and support policies, particularly in terms of infrastructure needed to support the level of new development.

Public Sector Equality Duty

Q8. In what way does the WLP seek to ensure that due regard has been had to the three aims expressed in s149 of the Equality Act 2010 in relation to those who have a relevant protected characteristic?

Council's Response:

The plan seeks to ensure that due regard is given to the Public Sector Equality Duty (PSED)

by following a formal process of Equality Impact Assessment.

An Integrated Impact Assessment ([CD/F/7](#), [CD/F/8](#) & [CD/F/9](#)) has been undertaken to appraise and inform the Local Plan. This fulfils the requirements to undertake a Sustainability Appraisal, Equalities Impact Assessment, and also incorporates a Health Impact Assessment.

Climate Change

Q9. Does the WLP, taken as a whole, include policies designed to ensure that the development and use of land in Worthing contributes to the mitigation of, and adaptation to, climate change in accordance with Section 19(1A) of the Planning and Compulsory Purchase Act 2004 (as amended)?

Council's Response:

Yes. Refer to Section 87 (p.27) of Route Mapper Part 2 (May 2021) ([CD/H/20](#)) which provides a list of strategic and non-strategic policies that relate to climate change adaptation and mitigation.

It is also recommended that Section 88 (p. 27-28) is referred to as this section provides detail of those policies that relate to future resilience of communities and infrastructure to climate change impacts.

Issue 3 – General Matters

Monitoring

Q10. To be effective, should the WLP incorporate the Monitoring Framework, as currently set out in Topic Paper 3 [CD/H/18]?

Council's Response:

Please refer to section 14 (Q.29) of [WBC-E-02 Response to IL01](#) (p.87-88).

Strategic Policies

Q11. Does the WLP clearly identify which policies in the Plan are strategic as required by paragraph 21 of the NPPF? In responding to this question, the Council are invited to suggest a modification to the Plan, as suggested in their response to my Initial Letter (paragraph 6.8).

Council's Response:

The Council's commentary relating to 'strategic policies' is set out in the response to Q.15

(Paras 6.1-6.8) of [WBC-E-02 Response to IL01](#) (p.46-47). As confirmed in paragraph 6.8, and in line with this request, the Council is happy to put forward the following modification. This amendment will help to ensure that WLP is effective and is consistent with national policy.

Amend paragraph 1.27 as follows:

.....read as a whole. **Strategic level policies are set out in Chapters 2 and 3 and these are followed by site allocations (Chapter 4) and Development Management policies (Chapter 5).** Taken together, the policies,.....

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