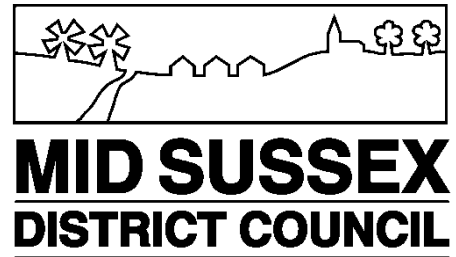


**Mid Sussex
District Council**



Site Allocations DPD

MSDC-02b: Matter 2 - Sustainability Appraisal (SA) and Habitats Regulations Assessment (HRA)

14th May 2021

Matter 2 - Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA)

2.1 Sustainability Appraisal and Habitats Regulations Assessment

Is the Plan supported by the SA and HRA?

MSDC Response

- 1.1. Both Sustainability Appraisal (incorporating Strategic Environmental Assessment) [SUS1] and Habitats Regulations Assessment [HRA1] have been carried out for the Sites DPD in accordance with the relevant legislation and best practice. Topic Paper 3: Introduction to the Site Allocations DPD sets out a summary of the Sustainability Appraisal and Habitats Regulations Assessment processes [TP3].
- 1.2. The Sites DPD has been positively prepared alongside the Sustainability Appraisal and Habitats Regulations Assessment processes to ensure the Sites DPD delivers sustainable development and protects European nature conservation sites. Undertaking both Sustainability Appraisal and Habitats Regulations Assessment means that the Sites DPD is also consistent with national policy.

Sustainability Appraisal

- 1.3. Table 1 shows the Sustainability Appraisal reports undertaken for each stage of the Sites DPD. The Sites DPD is a daughter document to the District Plan, with the aim of meeting the residual housing and employment needs. The District Plan was accompanied by a Sustainability Appraisal itself which appraised reasonable alternatives for the housing requirement and strategy. As the overall requirement and strategy were established within the District Plan, it is not the role of the Sites DPD Sustainability Appraisal to re-assess alternative approaches as they are not within scope (see response to Q1.2 [MSDC-02a]).
- 1.4. Therefore, the Sustainability Appraisal focuses on the reasonable alternative options to meet the strategy and residual requirements set out within the District Plan, i.e. those areas within scope of the Sites DPD.

| Reference | Report | Date | Purpose |
|-----------|-------------------------------------|----------------|--|
| SUS1 | Regulation 19 Main Report | July 2020 | Accompanying the Regulation 19 Sites DPD, this report included amendments required as a result of consultation on the previous version. |
| SUS2 | Regulation 19 Non-Technical Summary | July 2020 | |
| SUS3 | Regulation 18 Main Report | September 2019 | Accompanying the Regulation 18 Sites DPD, this report assessed the reasonable alternative development, site and policy options against the Sustainability Framework and helped inform the proposed site selection. |
| SUS4 | Regulation 18 Non-Technical Summary | September 2019 | |

| | | | |
|------|----------------|----------|--|
| SUS5 | Scoping Report | May 2019 | Sets out the baseline and Sustainability Framework (objectives and indicators), subject to consultation. |
|------|----------------|----------|--|

Table 1: Sustainability Appraisals

Regulation 19 Sustainability Appraisal Conclusions

- 1.5. The Sustainability Appraisal concludes that the majority of the site options chosen for allocation impact positively on the social and economic objectives. Where a negative sustainability impact has been identified, it is to be mitigated through site specific policies, or in some cases, is indicative of an inevitable conflict between allocating land for housing and protecting the environment [SUS1, paragraphs 5.7-5.9].
- 1.6. In particular, positive impacts are expected to arise for the sustainability objectives related to housing and employment. This is because the Sites DPD is proposing to meet the residual need for both of these in full, with a sufficient buffer to improve the flexibility and robustness of supply. Therefore, these objectives should be met by the collection of sites chosen for allocation.
- 1.7. The sites chosen in themselves represent the most sustainable reasonable alternatives. The process for arriving at the preferred sites, and rejecting others, is set out in response to Q2.2.

Habitats Regulations Assessment

- 1.8. District Plan Policy DP4: Housing established a housing requirement of 876dpa until 2023/24, thereafter an average of 1,090dpa until 2030/31, “subject to there being no further harm to the integrity of European Habitat Sites in Ashdown Forest”. The full housing requirement of 16,390, of which a residual of 1,280 is subject to the allocations within the Sites DPD, is therefore contingent on the findings of the Habitats Regulations Assessment.
- 1.9. Table 2 shows the Habitats Regulations Assessment reports undertaken for each stage of the Sites DPD. In addition, the potential effects of development on Ashdown Forest were assessed during the Habitats Regulations Assessment (HRA) process for the Mid Sussex District Plan [HRA5]. The screening process undertaken in late 2007 and early 2008 identified likely significant effects on the Ashdown Forest SPA and SAC as a result of recreational disturbance and atmospheric pollution respectively. The District Plan HRA [HRA5] advises that measures are required to mitigate any potential recreational disturbance impact and District Plan Policy DP17 implements these recommendations. Natural England supports this policy.

| Reference | Report | Date | Conclusion |
|-----------|-------------------------------------|----------------|--|
| HRA1 | Regulation 19 Main Report | March 2020 | Accompanying the Regulation 19 Sites DPD, this report updates the Regulation 18 report and uses evidence-based justifications to rule out adverse effects on the integrity of the Ashdown Forest SPA and SAC relating to air quality and recreation impacts. |
| HRA2 | Regulation 19 Non-Technical Summary | March 2020 | |
| HRA3 | Regulation 18 Main Report | September 2019 | Accompanying the Regulation 18 Sites DPD, this report uses evidence-based |

| | | | |
|------|---|-------------------|---|
| HRA4 | Regulation 18 Non-Technical Summary | September 2019 | justifications to rule out adverse effects in relation to the key impact pathways. |
|------|---|-------------------|---|

Table 2: Habitats Regulations Assessments

Regulation 19 Habitats Regulations Assessment Conclusions

1.10. The HRA for the Regulation 19 Sites DPD [HRA1] concludes that the Sites DPD does not present any potential risks to European sites, that are not considered capable of being mitigated for. Adverse effects on the integrity of the Ashdown Forest SPA and SAC relating to air quality and recreation impacts can be ruled out. This means that the Sites DPD is a justified and effective plan.

Air Quality

1.11. Section 4 of the Habitats Regulations Assessment [HRA1] draws together a number of factors to enable a conclusion of no adverse effect on site integrity for the Ashdown Forest SAC in relation to traffic emissions derived from growth proposed within the Site Allocations DPD:

- The predicted traffic emissions and resultant air quality changes do not notably deviate from the trajectory of improved air quality. The marginal retardation seen in the air quality modelling results is not deemed to represent an adverse effect in site integrity when compared with the predicted 2031 baseline, including consideration of the combined effect of growth from Mid Sussex and other neighbouring areas.
- Recent case law from the Netherlands (C-293/17 and C-294/17) has highlighted that expected benefits from factors on which the HRA conclusion relies must be certain. Where there is a lack of evidence and the predictions are merely predictions, they cannot be relied upon. There is confidence in the scientific evidence used to predict an improving emissions trajectory and certainty in its realisation over the plan period.
- Other wider measures relating to the site are Natural England's work with landowners to explore the impacts of positive land management measures in contributing to site restoration and increasing site resilience into the longer term. Natural England will prepare a SNAP for Ashdown Forest. Whilst these measures are not yet quantified in terms of their likely contribution towards site restoration, their progression adds to the confidence in the range of measures as a whole that enables a conclusion of no adverse effects.
- The air quality related HRA work being undertaken by neighbouring local planning authorities uses similar modelling to assess the impact of growth on Ashdown Forest SAC, concluding that adverse effects on site integrity can be ruled out, including when the combined effect of neighbouring growth is considered (and these include the Wealden Local Plan, which has now been withdrawn).
- The inclusion of a level of growth as set out in the now withdrawn Wealden Local Plan means the results over estimate the in-combination effects of growth, given that Wealden has no current plan that could be considered 'in-combination'. Once Wealden District Council is in a position to progress their Local Plan, this will need to be subject to HRA and the assessment then will need to consider the in-combination effects of growth in neighbouring authorities.

- The highways improvements added into the model are likely to bring positive benefits and are an integral part of the plan. The modelling results for the growth scenarios have allowed us to test the in-combination effects of growth across multiple districts, explicitly testing the difference between Scenario C and Scenario A. The modelling results are such that the breaches of 1% of the critical loads are so low or so focussed on the edge of the roads/kerb-side that, having regard for the wider context, they are considered to be a minor retardation low enough to be ruled out from adverse effects, having regard for the beneficial influence of the other factors listed above and reference to relevant evidence, case law and expert opinion.

1.12. These conclusions are drawn with consideration of the beneficial influence of a number of factors set out within the appropriate assessment, and with reference to relevant evidence, case law and expert opinion, including advice sought from Natural England.

Recreation

1.13. The strategic approach to recreation impacts has been developed with available evidence and is supported by Natural England as the statutory nature conservation body. The collection of SAMM contributions is within adopted planning policy in the District Plan and is working well. The SAMM aspects of the strategy will continue to be implemented, giving certainty in the function of this part of the strategy. New SANG options are proposed, including the allocation of a strategic SANG as part of site allocation SA20: Land south and west of Imberhorne Upper School, East Grinstead, and are considered to present a viable option for additional SANG capacity to meet the growth provided for by the site allocations. The SANG is secured in policy wording in the Sites DPD (SA20) [HRA1].

Regulation 19 representations

1.14. Natural England is the statutory consultee for the appropriate assessment stage of the HRA. In its Regulation 19 representation, Natural England confirmed it concurs with the conclusions of the HRA having considered the assessment and the proposed mitigation measures, provided that the required mitigation measures are appropriately secured in any future planning permissions given [Representation ID number 710].

2.2 Realistic Alternatives

What evidence is there that the SA has influenced the Plan and/or undertaken a full assessment of realistic alternatives?

MSDC Response

2.1. Each formal stage of the Sites DPD has been accompanied by Sustainability Appraisal (incorporating Strategic Environmental Assessment).

2.2. The following documents are relevant:

- Sustainability Appraisal – Scoping Report [SUS5]
- Sustainability Appraisal – Regulation 18 [SUS3]
- Sustainability Appraisal – Regulation 19 [SUS1]

2.3. The Scoping Report contains baseline information (section 3), identifies sustainability Issues and Problems (section 4) and sets the Sustainability Framework comprising 16 objectives and their associated indicators (section 5). These cover the three over-

arching sustainability objectives in the NPPF – Economic, Social and Environmental (NPPF para 8). The Scoping Report was consulted upon in May 2019, the Regulation 18 SA contains details of the responses to consultation and how these were taken into account [SUS3, Appendix 3].

- 2.4. Planning Practice Guidance (ID: 11-018-20140306) states that all reasonable alternatives should be considered as the plan evolves; assessing each against the baseline economic, social and environmental characteristics. The assessment, documented in SUS1 and SUS3, appraises each reasonable alternative against the 16 objectives within the Sustainability Framework, any adverse impacts including cross-boundary, suggests mitigation measures, and concludes the reasons for selecting and rejecting options in light of alternatives.
- 2.5. The adopted District Plan was similarly accompanied by Sustainability Appraisal [SUS6] which the Inspector concluded was adequate and met the relevant legal requirements and soundness tests. As the District Plan sets the strategy and policies for delivering it, reasonable alternatives were assessed during District Plan preparation. This included alternative options for the housing requirement, spatial strategy and housing distribution (e.g. policies DP4: Housing and DP6: Settlement Hierarchy).
- 2.6. As noted in the Council's response to Matter 1 (Q1.2), the scope of the Sites DPD is limited to four aims (to meet residual housing and employment needs, allocation of a Science and Technology Park, and additional policies needed to support these allocations). Matters such as overall housing requirement, residual requirement and spatial strategy for housing were established during production of the District Plan and reviewing these is not within the scope of the Sites DPD. The Sustainability Appraisal [SUS1, paragraph 6.13) explains that, due to the limited scope of the Sites DPD, it was not necessary to identify and appraisal reasonable alternatives for these matters.
- 2.7. However, the Sustainability Appraisal accompanying the Sites DPD has influenced the matters that are within scope. The following were appraised, which had a significant influence on the content of the Sites DPD:
 - Site Selection: Individual Housing Site Assessments and Combinations
 - Reasonable alternatives related to over-supply
 - Strategy for meeting Employment Need
 - Broad Spatial Options for Employment Need
 - Individual Employment Site Assessments
 - Reasonable alternatives for each policy SA34 – SA38

Site Selection: Individual Housing Site Assessments and Combinations

- 2.8. As summarised in Topic Paper 3: Introduction to the Site Allocations DPD [TP3, section 6] the Site Selection Process follows a 4-stage approach:
 1. Call for Sites and SHELAA [SSP5 / SSP6]
 2. High Level Assessment (Site Selection Paper 1: SSP1)
 3. Detailed Assessment (Site Selection Paper 2, 3 and 4)
 4. Detailed Evidence Testing (including SA and HRA)
- 2.9. The conclusions within the SA are therefore a fundamental stage in the overall site selection process. The process commenced with approximately 250 sites at Stage 1; the aim of the process was to accept/reject sites at each stage until a pool of 'reasonable alternative' sites could be assessed within the SA at Stage 4, with the results

determining the sites to be proposed for allocation. A total of **47** reasonable alternative site options were appraised at Regulation 18 stage [SUS3, Appendix 4] with **51** at Regulation 19 stage [SUS1, Appendix 4] as a result of additional sites meeting the criteria to be a 'reasonable alternative' following Reg18 consultation. The whole process is described in the SA itself (SUS1, paragraphs 6.18 – 6.30) and explains that sites rejected at Stages 1 – 3 of the Site Selection process are not considered 'reasonable alternatives' for the purposes of SA and were therefore rejected.

- 2.10. Each of the Reasonable Alternative sites were appraised against the objectives and indicators within the Sustainability Framework in accordance with the methodology set out in the Scoping Report and subsequent Regulation 18 and 19 SAs. A justification for how each site performs (using a range - - to ++) against each of the 16 SA objectives is provided, as well as an overall conclusion.
- 2.11. The findings of the site assessments are documented in the main report [SUS1, para 6.39 – 6.40 and Table 15]. The sites were assessed not only on their individual performance against the SA objectives, but as to their compliance with the District Plan strategy established in policies DP4 and DP6. The Conclusion for each site falls into one of three categories:
- **Performs Well:** These sites perform well individually, and relative to other sites within the same settlement. These sites, collectively, are therefore assessed as being compliant with the District Plan strategy.
 - **Performs Poorly:** These sites don't perform well against the sustainability objectives. There are a number of negative impacts that, it is concluded, would not be outweighed by positive impacts. These sites also don't perform well relative to other sites within the same settlement – i.e. there are more sustainable sites within the same settlement that would meet the residual housing requirement before these sites are required. These sites are therefore rejected at this stage; however, they may need to be considered again in the future should circumstances change (e.g. increased housing requirement within the settlement, change in strategy, or withdrawal of other sites from the process).
 - **Marginal:** These sites perform well individually (positives generally outweigh negatives); however, they are not necessarily the most sustainable sites within the settlement. The residual housing requirement can be met sufficiently by 'Sites That Perform Well'
- 2.12. The Sustainability Appraisal concludes that 20 sites, with a yield of **1,424**, perform well. This is above the residual housing requirement of **1,280**. The residual housing requirement could therefore be met with sites that perform well, with an over-supply of **144** dwellings. This collection of sites is referred to in the SA as the 'constant' sites.

Reasonable Alternatives related to Over-Supply

- 2.13. Whilst the residual housing supply could be met with sites that 'perform well', this would only provide a small over-supply of 144 dwellings which may not provide sufficient flexibility and resilience.
- 2.14. In considering how to provide additional supply, it was concluded in the SA that the 'Marginal' sites would be the most sustainable source (as opposed to sites that had performed poorly). Table 17 [SUS1, page 57] sets out a summary of the performance of these marginal sites. Given the principles of DP4/DP6 are to allocate sites at the highest settlement category possible (i.e. Category 1), the SA concluded that any over-supply should be found in these locations as opposed to settlements lower down the hierarchy.

2.15. Four ‘marginal’ sites were considered as candidates to assist with over-supply. These were:

- 3 sites at Folders Lane. As two sites share a boundary and the third is adjacent to a site under construction it was proposed to consider these three collectively. In total these would yield **340** dwellings.
- A fourth site, Haywards Heath Golf Course, was also considered at **630** dwellings.

2.16. Therefore, three options for potential over-supply were considered:

| Option | Sites | Total Supply | Additional Supply (above residual) |
|----------|---|--------------|------------------------------------|
| A | 20 ‘Constant Sites’ | 1,424 | +144 |
| B | 20 ‘Constant Sites’ + Folders Lane, Burgess Hill (x3 sites) | 1,764 | +484 |
| C | 20 ‘Constant Sites’ + Haywards Heath Golf Course | 2,054 | +774 |

Table 3: SA – Reasonable Alternative Over-Supply Options

2.17. The SA therefore considered these options and concluded (paragraph 6.52) that Option B was the preferred approach.

2.18. The Regulation 18 draft Sites DPD was approved for consultation by Council at its meeting on 25th September 2019. The report [P5, paragraphs 20 – 28] identify the significant role the Sustainability Appraisal plays in the site selection process. The report also summarised the options above and recommended Option B as the preferred approach (paragraph 29 - 30). This reasonable alternative was agreed by Council.

2.19. Therefore, the assessment of individual sites, leading to the assessment of sites ‘in combination’ and the options for over-supply have had a fundamental influence on the content of the Sites DPD.

Employment

2.20. Section 7 of the SA [SUS1] describes the approach to selecting Employment sites for allocation, in order to meet the 10-15ha residual employment need.

2.21. The first consideration (7.5 – 7.10) was the approach to meeting the residual. Three options were appraised:

- **Option A:** Allocate sufficient ‘new’ employment sites to meet the 10-15ha
- **Option B:** Meet the need in part through allocating ‘new’ sites and relying on ‘windfall’ from expansion/redevelopment/intensification of existing sites to meet the remainder
- **Option C:** ‘Do Nothing’ i.e. solely rely on the Science and Technology Park to meet any remaining need (as well as contributing to wider regional need).

2.22. The SA concluded that option ‘A’ was the most sustainable approach given the other alternatives. The Sites DPD therefore proposes to allocate 7 employment sites to meet residual need and does not rely on windfall or the Science and Technology Park to meet any remaining need.

- 2.23. The second consideration (para 7.11 – 7.17) related to broad spatial options for distribution of employment sites. The District Plan did not contain a spatial distribution for employment, and the distribution within DP6: Settlement Hierarchy could not be followed as there was not sufficient spread of sites submitted for assessment (within SSP4) to be consistent with this strategy. Three spatial distribution options were appraised:
- **Option A:** Small extensions at Bolney Grange
 - **Option B:** Large sites in the vicinity of the A2300, Burgess Hill
 - **Option C:** ‘Other’ smaller sites spread across the district.
- 2.24. The SA concluded no significant difference between options A and C, however rejected option B due to their in-combination impacts with the Science and Technology Park broad location and existing employment allocations in the vicinity. In particular, Option C provides for a distribution of employment growth across the district (including rural areas) therefore providing sustainable access to jobs close to existing communities and planned housing growth.
- 2.25. All employment sites were assessed individually for their performance against the 16 sustainability objectives. Those performing well, and consistent with options A/C above, were proposed for allocation (policies SA2 – SA8). The Sustainability Appraisal therefore significantly influenced the strategy and sites to be taken forward for allocation.
- 2.26. Paragraphs 7.18 – 7.22 consider the two site options for the Science and Technology Park. The appraisal concludes that option A “Land to the north of the A2300” is the most sustainable site as it performs more positively against the objectives than the alternative – it was assessed as having a lower impact on flood risk and biodiversity as well as demonstrable mitigation against potential negative transport impacts. The land to the north of the A2300 is also significantly better connected to existing communities (e.g. Burgess Hill and the Northern Arc) allowing more opportunities for sustainable transport. This site is proposed for allocation (policy SA9).

Reasonable Alternatives for Other Policies

- 2.27. The Sustainability Appraisal also includes individual assessments for the 5 additional policies SA34 – SA38 [SUS1, section 8). Each policy is appraised against a reasonable alternative – this is either an alternative approach, or a ‘Do Nothing’ scenario. In each case, the option ‘to have a policy’ is preferred and led to the inclusion of these policies within the Sites DPD.
- 2.28. Overall, the Council is confident that the Sustainability Appraisal has been prepared in full accordance with the relevant legislation, guidance and best practice. It is important to note that the limited scope of the Sites DPD, and its role as a ‘daughter’ plan to the District Plan mean that some elements of a strategic nature (e.g. housing requirement and overall spatial strategy) were not re-assessed as it would not be appropriate to do so – these elements fall out of scope of the Sites DPD and are therefore not reasonable alternatives. These will be re-assessed during production of the District Plan Review.

2.3 SA - Mitigation

Do any adverse effects identified in the SA require significant mitigation, and how does the Plan address these issues? Has appropriate account been taken of the recent People Over

Wind & Sweetman v. Coillte Teoranta (C-323/17) Judgment in the ECJ (often referred to as the Sweetman 2 Judgment)?

MSDC Response

- 3.1. No adverse effects are identified in the SA that require **significant** mitigation, although mitigation is suggested where negative impacts may arise. Each appraisal within the SA [SUS1] contains a section related to “Recommendations and Mitigation Measures”. This documents the potential negative impacts associated with the preferred option and how these negative impacts can be mitigated. The first principle has been to select the option with no or the fewest negative impacts on the sustainability objectives.
- 3.2. Most preferred options chosen do not contain any significant negative impacts (“- -“) against any of the objectives. However, where negative impacts cannot be avoided mitigation is sought through policy to minimise impacts – for example, policy requiring additional evidence (landscape, transport or impact on heritage) to be provided at application stage. The impacts predicted within the SA have therefore directly informed the mitigation required which has then been translated into policy wording within the Sites DPD.

‘People Over Wind & Sweetman’ judgment

- 3.3. The Council has taken account of the ‘People Over Wind & Sweetman’ judgment in the Habitats Regulations Assessment (HRA) for the Sites DPD [HRA1]. The Sustainability Appraisal [SUS1] cross-references to the HRA for matters relating to Ashdown Forest.
- 3.4. In summary, the ‘People Over Wind & Sweetman’ judgment (2018) means that mitigation cannot now be considered at the HRA screening stage, rather it has to be assessed at the HRA appropriate assessment stage. For Mid Sussex, this applies to the Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) mitigation required under District Plan Policy DP17: Ashdown Forest SPA and SAC for new residential development within the 7km zone of influence necessary to reduce the impact of recreational disturbance on the Ashdown Forest SPA. The SANG and SAMM mitigation approach set out in Policy DP17 aligns with the strategic solution for recreational disturbance on the Ashdown Forest SPA. This strategic solution ensures the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Ashdown Forest SPA arising from new residential development.
- 3.5. The HRA for the Sites DPD [HRA1] follows the principles established in case law including the ‘People Over Wind & Sweetman’ judgment. The HRA refers to the ‘People Over Wind & Sweetman’ judgment:

‘An additional recent European Court of Justice Judgment in 2018 (Case C-323/17) clarified that the need to carefully explain actions taken at each HRA stage, particularly at the screening for likely significant effects stage. The Judgment is a timely reminder of the need for clear distinction between the stages of HRA, and good practice in recognising the function of each. The screening for likely significant effects stage should function as a screening or checking stage, to determine whether further assessment is required. Assessing the nature and extent of potential impacts on European site interest features, and the robustness of mitigation options, should be done at the appropriate assessment stage.’ (paragraph 2.9)

- 3.6. The HRA undertakes a screening for likely significant effects on the Ashdown Forest SPA and SAC, and then undertakes an appropriate assessment for air quality impacts and recreation pressure impacts.
- 3.7. The HRA for the Sites DPD [HRA1] confirms the principle of the approach to Ashdown Forest and concludes that the strategic cross-boundary solution supported by Natural England [Representation ID number 710] and as set out in the District Plan through Policy DP17 remains appropriate and the mitigation continues to be suitable for the proposed site allocations. This mitigation includes a strategic SANG as part of Policy SA20.