

Matters, Issues & Questions:

Legal Matters – Other Legal Issues

Question 5 - 15

Other Legal Issues

5. Has the Plan been prepared in accordance with the Authorities' Local Development Schemes?

Yes. The Plan has been prepared in accordance with the Authorities' Local Development Schemes, *North Yorkshire County Council Local Development Scheme (CD41)* and *(CD06)*, which deals exclusively with minerals and waste, *City of York Local Development Scheme (CD42)* and *(CD07)*, and the *North York Moors National Park Authority Local Development Scheme (CD43)* and *(CD08)*, which both make reference to the Plan.

CD41, *CD42* and *CD43* provide the timetable up to the point where the *Publication Draft (CD17)* was consulted upon. Following consideration of the consultation responses, a number of amendments were proposed and an extra round of consultation took place on the *Addendum of Proposed Changes to the Publication Draft (CD09)*. To reflect this, the LDSs were reviewed to update the revised timetable and this is shown in *CD06*, *CD07* and *CD08*.

6. Was consultation on the MWJP carried out in compliance with the Authorities' Statements of Community Involvement?

Yes. At the outset of producing the Plan, the three authorities *Statements of Community Involvement (SCI) (SD05–SD07)* were reviewed and a *Communication Strategy (SD24)* was published which brought together the requirements of each authorities SCIs. The *Communication Strategy (SD24)* has been used as a reference point when carrying out consultations to ensure compliance with all three *SCIs (SD05, SD06 and SD07)*.

7. Is the Sustainability Appraisal (SA) adequate?

The SA is considered to be adequate with regard to meeting relevant legislative requirements, the process followed (which was in accordance with Government Planning Guidance), and the outcomes of the SA process in how it has considered the likely significant effects of the Plan with regards to environmental, economic and social impacts factors.

The *SA Report (CD25)* outlines the process followed in more detail, including the SA stages undertaken including the:

- production and consultation on a *Scoping Report (CD31)*
- production and consultation on a an Issues and Options Report

- production and consultation on a Preferred Options Report
- production and consultation on a *SA Report (CD25)*

The SA used the Sustainability Appraisal Framework which was devised during the scoping phase of the SA to assess the Plans Vision and Objectives, Plan Policies (more detail is provided in *Appendix 2 (CD26)*), as well as allocated sites and areas of search (more detail is provided in *Appendix 2 (CD26)*) and in doing so considered reasonable alternatives and policy options.

The *SA Report (CD25)* provides detail of how reasonable alternatives have been considered including for:

- High level Plan alternatives (section 5.2)
- High level policy option alternatives (section 5.4)
- Plan policy options and reasonable alternatives (section 6 and *CD26, Appendix 2*)
- Proposed allocated sites and areas of search (section 6.7 and *CD27 and CD28*).

Subsequent changes made to the Plan following the *Publication Draft (CD17)* have also been considered as part of the SA process, which have resulted in the production of the *SA of Addendum of Proposed Changes to the Publication Draft (CD10)* and the *SA of the Schedule of Further Proposed Changes to the Publication Draft (SD02)*. Consultation responses provided to SA documentation have been carefully considered and where appropriate have led to amendments to SA documents. The *Summary of responses to the Sustainability Appraisal of the Publication Draft and Addendum of Proposed Changes to the Publication Draft (CD44)* summarises the responses from consultees and the authorities on the *Publication Draft (CD17)* and the *Addendum of Proposed Changes to the Publication Draft (CD09)*.

The SA has also been underpinned by a number of supplementary documents / assessments (see more detail in section 2.4 of *CD25*) including:

- Habitats Regulation Assessment (*CD29 and SD03*)
- Strategic Flood Risk Assessment (*CD30 and CD10*)
- Historic Impact assessment (LPA/35)
- Rural Proofing (which is contained in *CD31*)
- Health Impact Assessment (LPA/34)

8. Does the Habitats Regulations Assessment (HRA) adequately set out why Appropriate Assessment is not necessary? Does the HRA identify any negative impacts that the MWJP might have, which require mitigation and, if so, has such mitigation been secured through the Plan?

The *HRA Screening Report of the Publication Draft (CD29)* clearly outlines the stepwise process required as part of a HRA in order to consider the impacts of the plan, both alone and in combination with other relevant plans and projects, on designated sites.

It considers the potential impact of the Plan *Publication Draft (CD17)* (including Plan Policies and Site Allocations) on designated sites based on the information available at the that time drafting. The Report identified potential designated

sites which may be impacted using a 15km buffer zone around the Plan area and concluded that the Plan would not result in a *likely significant effect* (LSE), either alone or in combination, on any designated sites (see tables 8 and 9 (pages 21-53) in CD29 for more detail). The conclusion of no LSE, which was supported by Natural England, means that an Appropriate Assessment (AA) was not required.

The HRA Screening was also updated via an *Addendum (SD03)* to consider the *Addendum of Proposed Changes to the Publication Draft (CD09)* and the *Schedule of Further Proposed Changes (SD01)* and determined that the changes did not alter the conclusion of the HRA which determined no LSE on any designated sites.

The *Sustainability Appraisal Habitats Regulations Assessment (CD29)* did identify some uncertainty regarding the potential impacts of the Plan as summarised in Section 7. The proposed precautionary mitigation to reduce uncertainty of impact of Policies W06 (*Managing Agricultural Waste*), M12 (*Continuity of Silica Sand*), W05 (*Meeting waste management capacity requirements – Construction, Demolition and Excavation Waste*) and I01 (*Minerals and waste transport infrastructure*) on designated sites were all secured in the Plan *Publication Draft (CD17)*. Also considered was the potential impact of site MJP14 (Ripon Quarry, North Stainley, page 40, CD18) on Humber Estuary SAC could be mitigated adequately and is to be implemented in the Plan by P49.

9. Does the HRA process take account of the *Wealden* judgement (Wealden V SSCLG [2017] EWHC 351 Admin) and potential “in combination” air quality impacts of traffic flows on relevant designated areas?

The *Sustainability Appraisal Habitats Regulations Assessment (CD29)* was undertaken and published prior to the Wealden Judgment. However, the outcome of the Judgment has subsequently been reviewed with regards to the potential cumulative impacts of the Plan due to an increase in traffic.

To inform the Plan, a *Traffic Assessment (SD21 and SD22)* was undertaken to consider the individual and cumulative effects on traffic levels as a result of the Plan. Table 38 of SD21 identifies sites which were predicted to result in an increase of Light and Heavy Good Vehicle (HGV) traffic. Please note that the following sites are included in Table 38, but were subsequently discounted/withdrawn; MJP04 ((Aram Grange, Asenby), MJP35 (Ruddings Farm, Walshford) and MJP43 (Land to west of Scruton).

- When these sites were reviewed for cumulative impacts, four locations were identified where the increased traffic may act cumulatively. These locations were considered along with site specific detail included within *Traffic Assessment of Sites Appendices (SD22)*, an assessment has been made with regards to the potential impact on designated sites Catterick to Leeming Bar (MJP17) (Land to South of Catterick, page 36, CD18), MJP21 (Land at Killerby, page 36, CD18) and, MJP33 (Home Farm, Kirkby Fleetham, page 24, CD18). While the sites may result in a cumulative increase in traffic for light vehicles and HGVs, the location where these cumulative impacts occur are greater than 10km from a designated site

and therefore, no pathway for impacts to occur exists. It is considered there will be no LSE on any designated sites.

- Great Heck (MJP54) (Mill Balk Quarry, Great Heck, page 98, CD18) and WJP22 (Land on former Pollington airfield, page 125, CD18) The location where cumulative impacts as a result of traffic associated with these two sites may occur is approximately 10km away from the nearest designated sites, and therefore no pathway for impacts to any site exists. It is predicted there will be no LSE on any designated sites.
- Upper Poppleton, York (MJP52) (Field SE5356 9513, to north of Duttons Farm, Upper Poppleton, page 137, CD18) and WJP05 (Field to north of Duttons Farm, Upper Poppleton, page 144, CD18). The location where a cumulative increase in traffic is likely to occur is around the A59 which is approximately 10 km away from the nearest designated sites and therefore there is no pathway for an impact to occur. It is predicted there will be no LSE on any designated sites.
- Escrick (MJP55) (Land adjacent to former Escrick Brickworks Escrick, page 77, CD18) and WJP06 (Land adjacent to former Escrick Brickworks Escrick, page 119, CD18). The two sites result in a cumulative increase in traffic along the A19 which is approximately 3.5km away from the closest designated site (Skipworth Common SAC). Due to the distance away from the site, it is determined that there is no pathway for an impact to occur. It is predicted there will be no LSE on any designated sites.

It is therefore considered that the cumulative impacts of the Plan as a result of increased traffic have been considered as part of the HRA. Further detail of this is provided in *Habitats Regulation Assessment Addendum February 2018 (LPA/38)*. When considering the *source-pathway-receptor* model, no pathway for impacts exists and therefore no LSE is determined. As there is no pathway for impacts to occur, the potential impacts from increased traffic has not been considered in combination with other plans and projects. This is distinct from the Wealden case where a pathway for an impact to a designated site did exist but was below a screening threshold when considered alone.

10. Overall, have the requirements of the Conservation of Habitats and Species Regulations 2017 been met?

Yes, it is considered that the requirements of the 2017 Regulations (LPA/07) have been met. The *HRA of the Publication Draft (CD29)* was considered under the *Conservation of Habitats and Species Regulations 2010 (as amended) (LPA/08)*; the 2017 Regulations (LPA/07) didn't come in to force until 30 November 2017. The *Addendum to the Habitat Regulations (SD03)* which considered the *Addendum of Proposed Changes to the Publication Draft (CD09)* and *Schedule of Further Proposed Changes to the Publication Draft (SD02)* was also produced prior to the implementation of the 2017 Regulations (LPA/07).

However, the 2017 Regulations (LPA/07) which were introduced to consolidate previous amendments have been checked for consistency with the 2010 Regulations (LPA/08). Upon review, it is considered that the requirements of the *Conservation of Habitats and Species Regulations 2017 (LPA/07)* been met by the HRA undertaken.

11. Is the Plan as a whole in compliance with Section 19(1A) of the *Planning and Compulsory Purchase Act 2004* (as amended), which requires development plan documents to include policies designed to secure that the development and use of land in a local planning authority's area contribute to the mitigation of, and adaptation to, climate change?

Yes. The Plan as a whole is in compliance with Section 19(1A) of the *Planning and Compulsory Purchase Act 2004* (as amended) (LPA/09). This is supported by the SA.

The SA process has been used to assess and inform the development of the Plan. The SA Framework, initially consulted upon at the *SA Scoping Stage* (*Sustainability Appraisal Scoping report FPC05*), has been used to consider a range of options and reasonable alternatives to the Plan, Plan Policies and allocations.

The Sustainability Framework was used to inform how options were assessed by asking questions of each option or alternative through use of the SA objectives and sub objectives. The Framework includes a number of objectives which have been used to appraise the sustainability of the Plan including those which directly relate to climate change mitigation (SA Objective 6 – *Reduce causes of climate change*) and climate change adaptation (SA Objective 7 – *Respond and adapt to the effects of climate change*).

The Framework was used to consider the sustainability of the Plan, including how it mitigates and adapts to climate change. The aspects of the Plan which have been appraised include:

- High level Plan alternatives including Plan Objectives (CD25, section 5.2)
- High level policy option alternatives (CD25, section 5.4)
- Plan policy and alternative options (CD25 Section 6 and CD26, Appendix 2)
- Proposed allocated sites and areas of search (CD25 Section 6.7 and CD27 and CD28).

Specifically, Section 6 of CD25 summaries how the Plan's policy options have been considered as part of the SA process, including the outcomes of the SA for each policy, what options have been considered and how the SA have influenced the policy making process.

12. Which policies in the MWJP are designed to secure a contribution from development and use of land in the Plan area to the mitigation of, and adaptation to, climate change and, in brief, how do they do this?

The Government believes that carbon capture and storage has potential to be an important technology in climate change mitigation and this is supported by *Policy M19: Carbon and gas storage* in paragraph 5.160 (page 98 in the *Publication Draft* (CD17)). The policy permits the use of carbon capture and storage where certain criteria detailed in the policy are met.

Policy D07: Biodiversity and geodiversity, paragraph 9.49 (page 173 in CD17) includes mitigating the effects of climate change as identified in paragraph 9.53, encouraging opportunities to be sought to deliver longer term enhancement of biodiversity and geodiversity, including through contributing to the development of enhanced ecological networks to improve reliance and help to mitigate the effects of climate change.

Policy D09: Water Environment paragraph 9.69 (page 179) states that proposals should, where necessary or practicable, include measures to contribute to flood alleviation and other climate change mitigation and adaptation measures. *Policy D10: Reclamation and afteruse* paragraph 9.84 (page 183) states that proposals which require restoration and afteruse elements should take account of potential impacts from climate change factors.

Policy D11: Sustainable design, construction and operation of development paragraph 9.97 (page 187) promotes, particularly through part 1) i)–viii) the incorporation in development of measures to help contribute to the mitigation of and adaptation to climate change.

Other strategic locational policies in the Plan also, by directly or indirectly helping to minimise the need for transport, contribute to the delivery of national climate change objectives. Such policies include *M03 Overall distribution of sand and gravel provision* and *M07 Meeting concreting sand and gravel requirements*, which serve to support availability of sand and gravel resources in relatively close proximity to markets, *M17 Other spatial and locational criteria applying to hydrocarbon development* which supports use of alternatives to road transport in the context of hydrocarbon development and *W10 Overall locational principles for provision of waste capacity* and *W11 Waste site identification principles* relating to locational and site identification principles for waste development.

The SA was also used to appraise the policies and their alternative options using an SA Framework which includes SA Objectives 6 page 4 (Reduce the causes of climate change) and 7 page 4 (Respond and adapt to the effects of climate change). The SA Framework (CD26, Appendix 1) and a summary of the appraisal of the policies can be found in Section 6 (page 94) of *Publication Draft Sustainability Appraisal Report (CD25)*.

13. Does the MWJP comply with section 40 of the *Natural Environment and Rural Communities Act 2006* with respect to the duty to conserve biodiversity?

The duty to conserve biodiversity has been taken into account throughout the preparation of the Plan and so complies with section 40 of the *Natural Environment and Rural Communities Act 2006 (LPA/10)*. Biodiversity forms part of the Vision and the Objectives and in terms of Policy is integral to *Policy D07 Biodiversity & geodiversity*. The implications for and opportunities regarding biodiversity have been considered in the identification and allocation of sites for future minerals and waste development and areas of search for minerals extraction. Furthermore, where the issue has been raised in connection with individual sites, including through consultation responses at the various stages in the preparation of the Plan, these have been identified as key sensitivities and

development requirements where applicable to ensure that these matters of principle are brought to the attention of potential developers.

14. Does the MWJP comply with Regulation 8(4) and (5) of the *Town and Country Planning (Local Planning) (England) Regulations 2012* relating to consistency with the adopted development plan and identification of superseded policies? Very briefly state the purpose of the MWJP and its relationship with the development plan overall?

The Plan complies with Regulation 8(4) and 5 of the *Town and Country Planning (Local Planning) (England) Regulations 2012 (LPA/11)* the policies in the Plan are consistent with the adopted development Plans. *Publication Draft Appendix 4 – Saved Policies replaced by the minerals and waste Plan (CD21)* identifies the adopted development plans for each of the three authorities and provides a table showing the relevant current or 'saved' policies together with the policies in the Plan which will replace them. The table shows that all the existing minerals and waste policies in the three local authority areas will be replaced by new policies in the Plan. The Plan therefore complies with the regulations.

The main purpose of the Plan is to provide guidance to developers, local communities and other interested parties on where and when minerals and waste development may be expected in the period up to 2030 and how development will be managed to reduce any adverse impacts and maximise any benefits.

The Plan forms part of the Development Plan for the three authority areas. The City of York Council has no adopted Development Plan, but is currently preparing a Local Plan that will contain high level policies on minerals and waste and will provide part of the strategic context for the Plan. The North York Moors National Park Authority adopted its *Core Strategy and Development Policies (OEB12)* in 2008 and the minerals and waste policies in that plan will be replaced by the Plan. Finally, the North Yorkshire County Council Minerals Local Plan (LPA39) and Waste Local Plan (LPA40) were adopted in 1997 and 2006 respectively and the 'saved' policies from these plans will be replaced by the Plan.

15. Does the MWJP comply with all relevant legal requirements, including those in the 2004 Act (as amended) and the 2012 Regulations?

Yes, the Plan complies with all relevant legal requirements including those in the *2004 Planning and Compulsory Act (as amended) (LPA/09)* and *The Town and Country Planning (Local Planning) (England) Regulations 2012 (LPA/11)*, as detailed in the *Legal Compliance Checklist (LPA02)*.

Prepared by;

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