

**Rother Development and Site Allocations Local Plan
Examination**

Matter 1: Legal and procedural requirements

Statement by Rother District Council

17 April 2019

Please note all references to documents listed in this statement can be found
in the DaSA Examination Documents List at:
www.rother.gov.uk/dasa/examination

Introduction

1. This statement presents the Council's evidence in relation to the key issue raised by the Inspector concerning legal and procedural requirements, namely:

Whether the Plan meets the legal process and requirements?

2. In responding to this key issue, attention is given to the specific questions raised by the Inspector.

Q: Has the Council submitted robust evidence to demonstrate that it has met the duty to cooperate? Are there any outstanding strategic matters?

3. The scope of matters covered by the duty and details of the cooperation can be found within the respective Consultation Statements¹.
4. The "strategic policies" for Rother District have already been determined by the Local Plan Core Strategy, adopted in September 2014. It sets the overall scale and distribution of development, with specific housing and business floorspace targets for each town and housing targets for individual villages. As well as an 'overall spatial strategy', there are area strategies for Bexhill, Hastings Fringes, Rye and Rye Harbour, Battle and the Rural Areas.
5. Therefore, insofar as the DaSA has been prepared to be in general conformity with the Core Strategy and the key strategic issues were addressed through the preparation of that Plan, then this limits the potential for cross-boundary issues. Notwithstanding this, there are policy areas within the scope of the DaSA that impact on the strategic matters.
6. Part A of the DaSA, which contains 'development policies' on a range of topics includes some policies that have been treated as "strategic". These are:
 - a) Affordable housing thresholds
 - b) Rural exception sites policy
 - c) Strategic gaps
7. There are also elements of other policies that have cross-boundary relevance:
 - a) the Biodiversity policy, and its supporting Habitat Regulations Assessment
 - b) the Sustainable Drainage policy in respect of the Pevensey levels hydrological catchment

¹ References C5 and C14

8. In addition to the policy approach for the Combe Valley Countryside Park, the proposed site allocations within or close to the built-up area of Hastings have been treated as potentially having cross-boundary implications.
9. Having regard to the scope of the DaSA, it is concluded that the main areas of policy development to be considered in relation to meeting the duty to cooperate relate to:
 - a) Policies relating to the management of access and recreation pressures on the Dungeness Complex of Natura 2000 wildlife sites
 - b) Consideration of relevant Natura 2000 sites
 - c) Policies relating to the High Weald Area of Outstanding Natural Beauty
 - d) Policies for areas and sites close to the urban edge of Hastings
 - e) Consideration of strategic infrastructure, notably transport
 - f) Approach to wider sustainability issues
10. The respective Consultation Statements² demonstrate the extent of consultation and co-operation that the Council has undertaken with other planning authorities and public bodies in preparing its DaSA Local Plan. It shows that close working between adjoining local planning authorities, and with other public bodies, especially the statutory environmental bodies, is well established.
11. It is highlighted that the DaSA constitutes “part 2” of the Council’s Local Plan, with the principal strategic policies already set out in the adopted ‘Core Strategy’, which was itself subject to examination in relation to the duty to cooperate
12. It is concluded that the Council has fulfilled its duty to cooperate on matters of strategic importance and has gone further in liaising with the relevant bodies on matters of common interest. Officers have been constructive in engaging with other councils and prescribed bodies, as appropriate for the nature of the DaSA Local Plan. It is not considered that there are outstanding strategic matters.

Q: Has the plan been prepared in accordance with the Local Development Scheme? How does the proposed substitution of policies DHG1, DHG2 and DEC3 relate to the Local Development Scheme?

13. Yes. The DaSA has been prepared in accordance with the Local Development Scheme (LDS) (May 2018)³. Section 3 of the LDS sets out the programme for production of the relevant documents, with submission of the Plan to the Planning Inspectorate set out as January 2019. That timescale was met.

² References C5 and C14

³ Reference SB4

14. The LDS has been published on the Council's website during the entire production of the DaSA Local Plan and updated accordingly, as necessary, to ensure that the timetable for production of the Local Plan is up to date.
15. Policies DHG1 and DHG2 of the DaSA intend to supersede Policies LHN2 and LHN3 of the Core Strategy. This has been taken as an opportunity to modify these Core Strategy Policies to reflect more recent information through national policy.
16. In respect of affordable housing, the LDS advises that the Council proposes to review the current Affordable Housing SPD to be consistent with, and provide detailed guidance to support, the Core Strategy policies on local housing needs subject to any amendments contained within the forthcoming DaSA⁴. The proposed public engagement period was advised to be March/April 2019 with a target adoption date of July 2019 (however, the LDS states that these dates are provisional and subject to the outcome of the DaSA Local Plan process).
17. In respect of Policy DEC3, the Core Strategy⁵ sets out at Paragraph 16.23 that a full review of the use of existing business sites will be undertaken as part of the site allocations process. Subsequently, an Employment Sites Review Background Paper (November 2016)⁶ was produced to assess employment sites that have been allocated, are permissioned, are vacant or are existing sites. While not explicitly referred to in the LDS, there was an expectation that this review would be undertaken and as such, supports the relevant DaSA policies.

Q: Has the plan been prepared in compliance with the Statement of Community Involvement?

18. The Statement of Community Involvement⁷ (SCI) was adopted by the Council on 18 December 2018. This latest version updates and supersedes the previous SCI which was adopted on 15 December 2015⁸. The changes within the 2018 version take account of the provisions in the Neighbourhood Planning Act 2017 which requires the SCI to cover policies for giving advice or assistance on proposals for the making or modification of neighbourhood plans. It also includes information on the introduction of new ways of granting planning permission set out in the Town and Country Planning (Permission in Principle) Order 2017 (as amended) and the Town and Country Planning (Brownfield Land Register) Regulations 2017, and the associated public consultation processes. In addition, it provides up to date information on public speaking procedures and how the public can get involved during Planning Committee meetings. There were no substantive changes in relation to the consultation processes relating to plan-making.

⁴ Reference SB4, paragraph 2.13

⁵ Reference SA4

⁶ Employment Sites Review Background Paper (Reference SF1)

⁷ Statement of Community Involvement (2018) (Reference SB3)

⁸ Statement of Community Involvement (2015) (Reference SB2)

19. It is considered that consultation has been undertaken in accordance with that Statement and any legislative requirements. The SCI is included in the list of supporting documents⁹.

Q: Has the plan been prepared on a sound process of Sustainability Appraisal?

20. The DaSA, as the second part of the Local Plan, carries forward the spatial strategies, strategic objectives and core policies set out in the Core Strategy, which was subject to its own Sustainability Appraisal (SA). It follows that the SA of the DaSA has not re-appraised the strategic direction of the Core Strategy, but has assessed reasonable alternatives in relation to both the thrust of options for topic policies and specific sites for development.
21. The scope of the SA is defined in the Scoping Report¹⁰, which builds on and elaborates upon earlier SA Scoping information published to inform the Core Strategy. It was prepared in consultation with the strategic environmental bodies – Natural England, the Environment Agency and Historic England - and was subject to two rounds of public consultation in November 2014 and February 2015 prior to final publication in August 2016.
22. Following this, the DaSA Options and Preferred Options stage was subject to SA. The SA report¹¹ appraises the optional broad policy directions in relation to each of the topics identified for policy coverage in the DaSA, as well as the emerging draft policies where these were identified. It also appraised all the reasonable alternatives for sites that had been identified, either through the Strategic Housing Land Availability Assessment (SHLAA) process, as submissions from landowners or developers, or through site surveys by planning officers. This SA was subject to public consultation together with the Options and Preferred Options DaSA (Reference SA5) in December 2016 – February 2017. Comments received have been summarised and responded to in the Proposed Submission Consultation Statement¹².
23. Finally, the proposed submission DaSA has also been subject to SA. This report (Reference C6) updates earlier assessments where there have been material changes in circumstances and undertakes assessments of policies in their latest form. It was published alongside the DaSA as part of the formal Representation Period on the submission DaSA in October – December 2018. Comments received have been summarised and responded to in the Council's Initial Responses to Representations¹³.

⁹ Statement of Community Involvement (2018) (Reference SB3) and Statement of Community Involvement (2015) (Reference SB2)

¹⁰ DaSA Sustainability Appraisal Scoping Report, August 2016 (Reference PS12)

¹¹ Reference SA6

¹² Reference C14, Pages 13-22

¹³ Reference RDC-DaSA-004, Pages 136-142

24. The SA was carried out by Rother District Council Planning Officers. The SA of the Proposed Submission DaSA was supported with advice from a specialist SA consultant at AECOM.
25. In conclusion, the Council has correctly followed the SA process, in a manner proportionate and appropriate to the DaSA. The SEA Directive Requirements are collectively met by the 'Proposed Submission DaSA SA', by the Initial SA and by the SA Scoping Report.

Q: Are the likely effects of the Plan adequately and accurately assessed in the Habitats Regulations Assessment?

26. Yes. The DaSA and Neighbourhood Plans have been subject to a technically robust Habitats Regulation Assessment (HRA), the final report¹⁴ being produced by specialist consultant AECOM. This HRA built upon the strategic work undertaken for the HRA of the Core Strategy.
27. The Core Strategy was subject to an HRA, focussed on the overall quantum and broad distribution of growth, addressing its strategic effect across the District 'in combination' with growth in other authority areas over the same time period. As the purpose of the DaSA is to give effect to the Core Strategy, these strategic issues were not reinvestigated through the DaSA HRA. A key outcome of the Core Strategy HRA work was a need for the preparation of a Sustainable Access and Recreation Management Strategy (SARMS) for the Dungeness Complex. This has now been prepared for the two Councils, in liaison with Natural England, and a draft Strategy has been consulted upon¹⁵.
28. The DaSA HRA¹⁶ examines each site allocation in order to determine whether it would present any potential for site-specific impacts that could not have been identified during the strategic HRA. For completeness, it also assesses topic policies (notwithstanding that they have also been prepared in conformity with the Core Strategy). It considers whether any allocations/policies have the potential to have a likely significant effect upon any Natura 2000 or European designated site (Special Areas of Conservation (SAC), Special Protection Areas and Ramsar sites), either in isolation or in combination with other plans and projects. Where likely significant effects could not be dismissed the HRA involved an appropriate assessment (AA) to ascertain potential for adverse effects on integrity of European sites and to determine whether site-specific mitigation measures are required.

¹⁴ Reference SG2

¹⁵ Reference SG3

¹⁶ Reference SG2

29. The initial screening for likely significant effects, as shown in Table 3¹⁷, which considers each allocated site, its proximity to designated sites and its proposed use; and Table 4¹⁸, which considers each topic policy, found that the majority of allocation sites will have no significant effect on the designated sites due to their distance separation and absence of impact pathways. However, it was found that for a number of sites around the Pevensy Levels SAC/Ramsar site and Dungeness, Romney Marsh and Rye Bay SPA/Ramsar site, there was the potential for surface water quality and disturbance issues to arise in the absence of mitigation, and these warranted further investigation. It was found necessary to further consider only one topic policy (DHG2: Rural Exception Sites). Additionally, at Chapter 4, the HRA considers several issues that have arisen since the Core Strategy HRA, including the proposal to extend the Dungeness, Romney Marsh and Rye Bay SPA up to 10km into the coastal waters, and the comments of Wealden District Council with respect to the potential effect of growth on the Pevensy Levels SAC and Ramsar site, the Ashdown Forest SAC/SPA and the Lewes Downs SAC, concluding that no likely significant effect would arise from the DaSA.
30. Where the initial screening determined that a conclusion of ‘no likely significant effect’ could not be drawn, appropriate assessment was carried out to analyse the potential for an effect in more detail, with a view to concluding whether there would actually be an adverse effect on integrity of a European site. The HRA has taken account of the effect of the “People Over Wind” European judgement¹⁹.
31. The AA is shown in Table 5²⁰. This concluded that for all of the sites/ policies, the policy framework provided by the DaSA will ensure no adverse effects would occur on the integrity of the SAC/Ramsar sites. Since these measures would address effects from development on each site alone they would also ensure that they did not contribute to any effect ‘in combination’.
32. In terms of process, a HRA Screening Opinion was agreed with Natural England ahead of the preparation of the Options and Preferred Options DaSA²¹. A further screening was undertaken for the Proposed Submission DaSA, which took account of up-to-date information. This was also agreed with Natural England²² and led to the full assessment, including appropriate assessments.

¹⁷ Pages 21-28

¹⁸ Pages 31-36

¹⁹ HRA (reference SG2), paragraph 2.13

²⁰ HRA (reference SG2), pages 39-46

²¹ HRA Initial Screening Report for DaSA and Neighbourhood Plans (August 2016), Letter from Natural England dated 8 August 2016.

²² Email correspondence between Natural England and AECOM dated 13/9/18

33. Natural England confirmed in its formal representation to the DaSA at Regulation 19 stage²³ that it generally concurs with the conclusions drawn in the HRA final report, with the exception of the conclusion for Policy RHA1 where it advised that further surface water protection measures would be necessary. This comment is addressed in the Council's Initial Responses to Representations²⁴ which proposes an additional policy criterion and supporting text.
34. Since publication of the final HRA report, further discussion has taken place with Natural England about Policy CAT1 and the potential effects on the Pevensey Levels SAC. This is detailed further under Matter 7 and reconfirms the site's development is unlikely to have any adverse effect on the integrity of the Pevensey Levels SAC.

Q: Have all the procedural requirements for publicity been met?

35. The Rother District Development and Site Allocations (DaSA) Local Plan meets all the procedural requirements for publicity as set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. The Council's Consultation Statements²⁵ sets out in detail the procedures followed at Regulation 18 and Regulation 19 stages.
36. The respective consultation processes were undertaken in line with Statement of Community Involvement (SCI)²⁶.
37. At each stage of the preparation of the DaSA Local Plan, material has been published on the Council's website and the online consultation portal, paper copies were made available at the Council's main office (Town Hall) as well as the Council's Community Help-Points in Battle²⁷ and Rye. The publicity of the availability of this material (the Statement of Representation procedure) was also advertised in the local paper – the Observer (Bexhill, Battle, Rye and Hastings & St Leonards editions), as well as being published on the website. Further details can be found in the respective Consultation Statements²⁸.
38. All specific and general consultation bodies were notified either via email or letter of the specific consultation opportunities. In addition, those who have previously contacted the Planning Strategy department stating that they wished to be notified were also contacted via email or letter. Each consultation opportunity was advertised on the rolling banner on the front page of the Council's website for the duration of the consultation.

²³ Natural England representation on Proposed Submission DaSA Local Plan dated 7/12/18 (representation no. 24550)

²⁴ Reference RDC-DaSA-004, Pages 124-125.

²⁵ References C5 and C14

²⁶ References SB2 and SB3

²⁷ Except during the Regulation 19 period for representations where the Battle Community Help-Point was closed and the documents were made available at Battle Library.

²⁸ References C5 and C14

39. In addition, the Council produces a weekly notification email to households across the district (known as 'My Alerts'), this was used to notify all those registered for the service of the respective consultations. Further details can be found in the respective Consultation Statement's²⁹
40. The DaSA Local Plan Sustainability Appraisal (SA) Scoping Report has been refined over time in consultation with the statutory bodies - Environment Agency, Historic England and Natural England. The Sustainability Appraisal has been prepared to accompany each stage of plan preparation and consultation. Further details are set out in the respective Consultation Statements³⁰.
41. In respect of Habitats Regulations Assessment (HRA), whilst the Core Strategy was subject to a HRA, it was considered necessary to undertake a further HRA for the DaSA Local Plan. A Scoping Report was agreed with Natural England ahead of the preparation of the options and Preferred Options DaSA. A further Scoping was undertaken for the Proposed Submission DaSA, which took account of up-to-date information. This was also agreed with Natural England and led to a full assessment, including appropriate assessments. A draft final HRA report was also discussed with Natural England and duly "signed off". Further details are set out in the respective Consultation Statements³¹.
42. The DaSA was submitted to the Secretary of State for Examination on 18th January 2019, with formal Notice of Submission published on the Council's website and the relevant documents also made available.

Q: Does the Plan as a whole include policies designed to ensure that the development and use of land within the district contributes to the mitigation of, and adaptation of, climate change in accordance with the regulations³²?

43. Rother District Council's Development Plan includes policies designed to ensure that the development and use of land contribute to the mitigation of and adaptation to climate change. The DaSA Local Plan contains a number of development policies which relate to the mitigation of and adaptation to climate change as set out below:
 - a) DRM1: Water Efficiency
 - b) DRM2: Renewable Energy Developments
 - c) DRM3: Energy Requirements
 - d) DEN4: Biodiversity and Green Space
 - e) DEN5: Sustainable Drainage

²⁹ Reference C5 (page 4) and C14 (page 9)

³⁰ References C5 and C14

³¹ References C5 and C14

³² 1 Section 19(A) of the Planning and Compulsory Purchase Act (as amended)

f) DEN7: Environmental Pollution

44. The site allocations in the DaSA also require development to consider (where relevant) factors such as water efficiency, greening of environment, retention of trees, planting, green infrastructure, green corridors, improved access arrangements (including provision of other transport choices) and provision of electric charging points.
45. The DaSA policies contribute toward tackling climate change in conjunction with those set out in the Core Strategy. In the Core Strategy, the vision for Rother in 2028³³ included a strong commitment to a more sustainable, low carbon future and adapting to climate change. Carbon reduction and adaptation to climate change is cited as a main issue³⁴ and one of the strategic objectives³⁵ identified is to mitigate and adapt to climate change impacts, including ensuring that natural resources are used efficiently. The following policies of the Core Strategy play a role in reducing greenhouse gases, encourage sustainable development and mitigate the effects of climate change:
- a) Policy OSS3: Location of development (specifically part (v) of the policy)
 - b) Policy SRM1: Towards a low carbon future
 - c) Policy SRM2: Water Supply and Wastewater Management
 - d) Policy EN3: Design Quality (specifically part (h) of the policy)
 - e) Policy EN5: Biodiversity and Green Space
 - f) Policy EN6: Flood Risk Management
 - g) Policy EN7: Flood Risk and Development
 - h) Policy TR2: Integrated Transport
 - i) Policy TR3: Access and New Development
46. The Council also has background papers³⁶ which address climate change and provide the evidence base for the requirements set out in the policy.

³³ Core Strategy, page 23 (Reference SA4)

³⁴ Core Strategy, page 17 (Reference SA4)

³⁵ Core Strategy, page 25 - Sustainable Resource Management (Reference SA4)

³⁶ Green Infrastructure Background Paper (Reference SG4) and addendum (SG5), Water Efficiency Background Paper (Reference SC1) Renewable and Low Carbon Energy Background Paper (Reference SC2).

47. The Sustainability Appraisal (SA)³⁷ of the DaSA has assessed options for topic policies and specific sites for development, having regard to a number of objectives, some of which relate to climate change. Topic policies and sites considered were scored against SA objectives including whether development would encourage prudent use of natural resources, reduce pollution levels, reduce greenhouse gases, minimise flooding and manage allow for waste management. The distribution of development within the DaSA is in line with the spatial strategy set out in the Core Strategy and matters such as sustainability, in terms of distance from and access to services and amenities and access to other transport choices other than the private car have been considered. The site allocations are therefore considered to be in locations which are or can be made sustainable.
48. In conclusion, Rother District Council's Development Plan includes policies designed to ensure that the development and use of land contribute to the mitigation of and adaptation to climate change and the Council is satisfied that this will provide a sound and effective framework to help contribute to addressing the impacts of climate change.

³⁷ DaSA Local Plan Sustainability Appraisal (SA) Vol 01 (reference C6), 02 (reference C7) and 03 (reference C8)