

Wiltshire Housing Site Allocations Plan Examination in Public

Position Statement on Matter 1

**Legal Compliance, Duty to Cooperate, Sustainability
Appraisal and Consultation**

PS/M1/01

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Matter 1: Legal Compliance, Duty to cooperate, Sustainability Appraisal and Consultation

Issue 1: Whether all Statutory and Regulatory requirements have been met?

1.1 - In preparing the Plan, has the Council complied with the Duty to Cooperate required by Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended).

1. The Council has complied with the Duty to Cooperate required by Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) and has worked constructively, actively and on an ongoing basis on strategic cross boundary matters significant to the Plan with both relevant Prescribed Bodies, and neighbouring local planning authorities and county councils (referred to as neighbouring planning authorities) in maximising the effectiveness of the preparation of the Plan.
2. The Plan sits under and has been prepared in accordance with the Wiltshire Core Strategy (WCO.01)¹. The Wiltshire Core Strategy sets out the spatial strategy for Wiltshire and the quantum of development to be distributed to settlements in each tier of that spatial strategy. The principle of directing growth to the most sustainable settlements has therefore already been set, through ongoing cooperation with the Prescribed Bodies and neighbouring authorities, in the Wiltshire Core Strategy. The Plan deals in the main with non-strategic site allocations but builds on the basis of cooperation set in the Wiltshire Core Strategy and has identified a number of cross boundary strategic matters that have been addressed through the Duty to Cooperate process.
3. The evidence presented in the Statement on Duty to Cooperate June 2017 (PSCON.13)² and Appendix 9 to the Cabinet Report Addendum to the Duty to Cooperate Report May 2018 (WHSAP.25)³ demonstrates that there has been ongoing and collaborative engagement with the relevant Prescribed Bodies and neighbouring authorities to ensure that these strategic cross boundary issues have been addressed. This is as well as the ongoing formal consultation with relevant Prescribed Bodies and neighbouring authorities at the various stages of consultation.
4. The following relevant strategic issues have been identified, collaborated on and resulted in changes to the Plan, or in some cases discussions are ongoing and may be included in a statement of common ground (SoCG):
 - Ongoing work with the Environment Agency to consider flood and surface water considerations. Changes are proposed in the Schedule of Proposed Changes to reflect this. Minor comments made in response to the Focussed Consultation on the Schedule of Proposed Changes are being addressed through ongoing collaboration and will be included in a SoCG.
 - Ongoing work with the Highways England to ensure impact on the Strategic Road Network is minimised. Work is ongoing to produce a SoCG to reflect this.
 - Ongoing work to address heritage sensitivities identified for some of the proposed allocations has resulted in the production of a Heritage Impact Assessment (HIA) (WHSAP.05),⁴ proposed changes to the Plan through the Schedule of Proposed Changes to reflect the findings of the HIA and ongoing collaboration with Historic England and the promoters of the site to continue to work towards agreement on

¹ [\[WCO.01\]](#) Wiltshire Core Strategy

² [\[PSCON.13\]](#) Statement on Duty to Cooperate June 2017

³ [\[WHSAP.23\]](#) Appendix 9 to Cabinet Report Addendum to the Duty to Cooperate Report May 2018

⁴ [\[WHSAP.05\]](#) Heritage Impact Assessment LUC March 2018

the following three proposed allocations: H2.6 Southwick Court, Trowbridge H2.7 East of the Dene, Warminster and H3.3 North of Netherhampton Road, Salisbury. Work is ongoing to produce a SoCG to reflect this.

- Ongoing collaborative work between the Environment Agency, Natural England, Wessex Water, New Forest National Park and New Forest District Council to agree outcomes related to the submitted Memorandum of Understanding on phosphate neutral development in the River Avon Special Area of Conservation (HRA.03).⁵ Further work is ongoing to agree a collaborative framework for progressing work to successfully realise the objective of phosphate neutral development and this will be set out in a SoCG on phosphate neutral development.
 - Ongoing work with Natural England to develop and deliver the Trowbridge Bat Mitigation Strategy Supplementary Planning Document (BIO.45)⁶ to mitigate any impact of development on the Bradford and Bath Bats Special Area of Conservation. This draft Supplementary Planning Document is currently out for a 4 week public consultation ending on the 21st March 2019. This will be reflected in a SoCG with Natural England.
5. The Plan at paragraph 1.12 (WHSAP/01) also refers to co-operation with adjoining authorities in relation to its impact on the New Forest National Park Special Protection Area (SPA) through increased recreational pressure. However, the Habitats Regulations Assessment(HRA/01) identifies that only locations within the visitor catchment of 8km radius of the SPA could have a likely significant effect (LSE) (page 15), which relates to the Southern Wiltshire Community Area. As no allocations are made in the Plan in relation to this area (CATP/14a) there is no LSE, as confirmed on pages 27 and 36 of the HRA, and therefore recreational pressure on the SPA is not a relevant consideration for the proposals in the Plan

1.2 - Is the WHSAP compliant with the Council's Local Development Scheme in terms of its form, scope and timing?

6. The Plan has been prepared in accordance with the Council's Local Development Scheme (LDS) (December 2016) (LDS.01)⁷ in terms of form and scope. In line with the steps set out in the Wiltshire Statement of Community Involvement (SCI.01)⁸ the LDS sets out the stages of plan development and the Plan is in line with these steps.
7. Timing wise the LDS states that the Plan will be adopted in quarter 4 2018 but the council is currently reviewing the LDS to reflect the amended timetable for the Plan available on the Wiltshire Council website which anticipates adoption being in quarter 3 2019.
8. The timetable for the Plan is being reviewed due to the further focussed consultation carried out in Autumn 2018 and Winter 2018/2019. The decision to carry out a further focussed consultation on the 'Schedule of Proposed Changes' to the Plan, along with the revised Sustainability Appraisal, update to the Habitat Regulations Assessment Addendum and associated evidence documents was made following receipt of procedural letter from the Inspector (EXAM.07)⁹, this consultation ran from 27th September to 9th December 2018. Following the close of that consultation it was

⁵ [\[HRA.03\]](#) Memorandum of Understanding (MoU) – River Avon Special Area of Conservation Phosphate Neutral Development

⁶ [\[BIO.45\]](#) Trowbridge Bat Mitigation Strategy SPD Draft for Consultation February 2019

⁷ [\[LDS.01\]](#) Wiltshire Council Local Development Scheme

⁸ [\[SCI.01\]](#) Wiltshire Statement of Community Involvement

⁹ [\[EXAM.07\]](#) Inspector letter to Wiltshire Council August 2018

identified that due to a technical error some consultees on the council's database were not directly written to about the focussed consultation. To correct this the council wrote to those consultees offering a further 6-week consultation from 11th December to the 22nd January 2019. Consequently the reviewed timetable in the LDS will now reflect the additional consultation.

1.3 - Has consultation on the Plan been carried out in accordance with the Council's adopted Statement of Community Involvement (SCI) and the minimum consultation requirements in the Regulations?

9. The Plan has been produced in compliance with the Wiltshire Statement of Community Involvement (SCI)¹⁰ and the Town and Country Planning (Local Planning) (England) Regulations 2012.
10. Diagram 2 of the SCI sets out the process of community involvement in development plan document preparation. In line with the Town and Country Planning (Local Planning) (England) Regulations 2012 Regulation 18, appropriate specific consultation bodies, general consultation bodies, members of the public and persons carrying out businesses in Wiltshire were notified of the subject of the Wiltshire Housing Site Allocations Plan and were invited to make representations about what the plan should contain. Those representations on the scope of the Plan were taken into account and reported on (PSCON.14B)¹¹. This preparation stage of plan making also involved various informal stages of consultation which are reported on in the Statement of Early Community Involvement and the related reports (PSCON.14A, C, D, E and F)¹².
11. The second stage sets out is publication of the draft Plan and in line with The Town and Country Planning (Local Planning) (England) Regulations 2012 Regulation 19 and 20 the council published the draft Plan for a ten week period of public consultation from the 4th July to the 22nd September 2017.
12. In line with Stage 3 of the SCI Submission to the Secretary of State and Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the council submitted the draft Plan to the Secretary of State on the 31st January 2018. This was accompanied by a statement setting out who had been consulted, how the consultation had been carried out and the main issues arising from the consultation. This report can be found in the Regulation 22 (1) (c) Report from July 2018 and accompanying appendices, which include a schedule of representations (WHSAP.09)¹³. The submission draft Plan was also accompanied by the evidence

¹⁰ [\[SCI.01\]](#) Wiltshire Council Statement of Community Involvement

¹¹ [\[PSCON.14B\]](#) Consultation Statement Regulation 18 Consultation Report 24th March - 5th May 2014

¹² [\[PSCON.14A\]](#) Consultation Statement of Early Community Engagement Consultation Statement and associated reports as follows:

[\[PSCON.14C\]](#) Report on the Informal Consultation on Settlement Boundaries 2014;

[\[PSCON.14D\]](#) Consultation Statement Report on the Informal Consultation on Site Assessment Methodology;

[\[PSCON.14E\]](#) Consultation Statement Report on Informal Consultation Approach to Large Villages 2015;

[\[PSCON.14F\]](#) Consultation Statement Report on Landowner Deliverability Consultation 2015

¹³ [\[WHSAP.09\]](#) Consultation Statement Regulation 22 (1) (c) Submission version July 2018 and appendices:

[\[WHSAP.10\]](#) Consultation Statement Regulation 22 (1) (c) Appendices A-L Submission version July 2018

[\[WHSAP.11\]](#) Consultation Statement Regulation 22 (1) (c) Appendices M-P

[\[WHSAP.12\]](#) Consultation Statement Regulation 22 (1) (c) Appendix Q

base and a Schedule of Proposed Changes to the Plan that had arisen following publication of the draft plan. The council notified the relevant general and specific consultation bodies along with those who had requested to be notified of submission of the draft Plan.

13. Following submission of the draft Plan and receipt of a procedural letter from the Inspector¹⁴ a further period of focussed consultation was held on the Schedule of Proposed Changes to the Plan and associated evidence documents. Following the close of that consultation it was identified that due to a technical error some consultees on the council's database were not directly written to about the focussed consultation. To correct this council wrote to those consultees offering a further 6 week consultation. These consultations have been reported on in the Report on Focussed Consultation (EXAM/08.)¹⁵ and the Addendum to the Report on the Focussed Consultation (EXAM/10)¹⁶ and associated appendices.

1.4 - Has the Sustainability Appraisal (SA) been prepared having regard to the requirements of the Strategic Environmental Assessment Directive and Regulations and guidance in the PPG? Is it clear how the SA influenced the final plan and dealt with mitigation measures, and has it sufficiently evaluated reasonable alternatives?

14. The Sustainability Appraisal (SA) meets all the requirements of the EU Directive 2001/42/EC (SEA Directive) and the Environmental Assessment of Plans and Programmes Regulations 2004: Statutory Instrument 2004/1633 (SEA Regulations). This has been achieved through the consideration of potential environmental effects (as required by SEA) alongside social and economic issues. A summary of how the SA Report has regard to the SEA Directive is summarised in Table 1.1 of the SA Report (SA/01/A.a).¹⁷
15. With regards to Planning Practice Guidance (PPG) - Paragraph: 016 Reference ID: 12-016-20140306 states that the SA should incorporate a Strategic Environmental Assessment and Paragraph: 009 Reference ID: 11-009-20140306 states that the sustainability appraisal should focus on the environmental, economic and social impacts that are likely to be significant. The SA Report (SA/01/A.a) incorporates SEA and through the SA scoping exercise (SA/02)¹⁸, the establishment of key issues using a review of baseline information has enabled the process to be consistent with the focus and level of detail set out in Planning Practice Guidance, taking into account the focus on significant issues only.
16. The way in which the SA has influenced the plan is explained in the methodology in Chapter 2 of the SA Report (SA/01/A.a), which clearly explains the stages of decision-making taken by the Council and those stages where the SA has input into and influenced the Plan development.
17. In general, only site options that were identified in the SA Report (SA/01/A.a) as 'more sustainable' (as set out in Chapter 7) were chosen for further consideration in the Plan by the Council. However, some individual sites that performed less well against the SA Objectives i.e. the 'less sustainable' sites, were also taken forward due to other considerations of the Council. The reason for this is stated in the SA

¹⁴ [\[EXAM.07\]](#) Inspector letter to Wiltshire Council August 2018

¹⁵ [\[EXAM.08.\]](#) Report on WC Focussed Consultation Nov 18 and [\[EXAM/08\]](#) Appendix J Schedule of duly made SoPC reps

¹⁶ [\[EXAM.10\]](#) Addendum to WC Report on Focussed Consultation Jan 19 and [\[EXAM/10\]](#) Schedule of duly made reps Jan 19

¹⁷ [\[SA/01.A.a\]](#) SA Report Revised September 2018

¹⁸ [\[SA.02\]](#) WHSAP and CSAP Sa SEA Scoping Report

Report (SA/01/A.a) and the sites taken forward in the Plan are identified in Table 8-1.

18. Chapter 8 of the SA Report (SA/01/A.a) sets out the recommendations (including mitigation measures) of the SA for the Plan policies, and how these recommendations have been taken on board by the Plan are clearly set out in Table 11.1.
19. The SA has evaluated alternatives in relation to site allocations. It has also reviewed and contributed to the refinement of Plan policy wording.
20. Reasonable site allocation alternatives for consideration in the SA were identified through an initial sifting of sites undertaken by the Council through the application of a comprehensive Site Selection Process Methodology (Topic Paper 2) (TOP/02)¹⁹. Sites rejected at any of the Council stages were not considered 'reasonable alternatives'. This included rejection of:
 - Potential housing sites at Stage 1 of the Site Selection Process (TOP/02) in areas of search which did not have an outstanding indicative housing requirement, and therefore did not progress to Stage 2 of the Site Selection Process.
 - Potential sites removed through Stage 2a of the Site Selection Process (TOP/02) where housing sites were not contiguous with the built-up area of a settlement and where there were significant strategic constraints to development.
 - Potential sites removed through Stage 2b of the Site Selection Process (TOP/02) within rural settlements that were removed as local needs for housing had already been met.
21. Site options that were not excluded through Stages 1, 2a and 2b were considered reasonable alternatives and were assessed against the SA Framework and reported in the SA Report.
22. The Sustainability Appraisal considers all the alternative sites and all plan policies at the same level of detail, against a standard methodology. The methodology sets out a 7-point assessment scale (major adverse to major beneficial). Generic assessment criteria for each of these scales, per SA objective, has then been developed for the assessment of the sites and for the assessment of plan policies.
23. Each site remaining after the Council sifting of Stages 1, 2a and 2b was assessed against each of the objectives, using the generic assessment criteria. The details of each individual site are provided in Annex I of the SA Report (SA/01/A.1 – SA/01/A.12²⁰). The SA assessment was fully informed by clearly identified constraints to development at each site.
24. Amendments to the sites from the pre-submission consultation and Schedule of changes was also subject to SA. This included amendments to sites and the consideration of new sites. The implications of these changes for the SA were initially reviewed and reported within the SA Report Annex II. In order to undertake post-submission consultation, these changes were then addressed within the second issue of the SA Report post-submission consultation version (September 2018).
25. An SA was also undertaken of the draft Plan policy proposals to identify any

¹⁹ [\[TOP.02\]](#) Topic Paper 2 Site Selection Process Methodology

²⁰ [\[SA.01.A.1- SA.01.A.12\]](#) SA Report Annexes for each area

refinements needed to ensure the Plan delivers the most sustainability benefits and appropriate mitigation, using the decision-making framework in Table 6-1 of the SA Report. By definition, the Plan policies propose site allocations and therefore the alternative sites were assessed in the process identified above. Alternative wording to a Plan policy and supporting text, where considered necessary to meet or improve performance against SA objectives, was identified through the SA process, and recorded in Chapter 8 of the SA Report (together with the Council's response to the recommendation).

1.5 – Have the Habitat Regulations Assessment (HRA) and relevant addenda been carried out in accordance with the appropriate Regulations?

26. A Habitats Regulations Assessment (HRA) of the Wiltshire Housing Site Allocations DPD has been carried out by Wiltshire Council in accordance with the provisions of Regulation 105 of the Habitats Regulations²¹. The work undertaken to fulfil the statutory obligations can be found in the following HRA documents:

- Habitat Regulations Assessment – Pre-Submission draft Plan June 2017 (HRA/01)²².
- Addendum to the Assessment under the Habitat Regulations pre-submission draft plan May 2018 (HRA/02)²³.
- Addendum to the HRA May 2018 Factual update September 2018 (HRA/02a)²⁴.

27. All aspects of the Plan which could have an impact on a European site regardless of whether mitigation measures were available, were screened into appropriate assessment. In this way the HRA is consistent with the ruling from the Court of Justice of the European Union, Case C 323/17 “People Over Wind” v Coillte Teoranta.²⁵

28. In response to the recommendations of the HRA, the Council has proposed amendments to the Plan and also developed mitigation plans to avoid and mitigate any potentially significant effects in order to be able to conclude that it would not adversely affect the integrity of any individual European designations or the Natura 2000 network as a whole. This work includes:

- The development of the Draft Trowbridge Bat Mitigation Strategy Supplementary Planning Document (BIO.45)²⁶, which sets out an approach for mitigation to avoid significant adverse impacts on the Bath and Bradford on Avon Bats Special Area of Conservation. This draft supplementary planning document is currently undergoing a 4 week public consultation.
- Collaborative work on a Memorandum of Understanding for the River Avon Special Area of Conservation (HRA.03)²⁷. This is an agreement between the relevant bodies that sets out the approach to be followed to ensure that all development will be phosphate neutral and thereby enable the Council to conclude that the DPD will not lead to adverse effects on the integrity of the River Avon Special Area of Conservation. Since the MoU was signed in March

²¹ The Conservation of Habitats and Species Regulations 2017

²² [\[HRA.01\]](#) Habitats Regulations Assessment Pre-submission draft plan June 2017

²³ [\[HRA.02\]](#) Addendum to the Assessment under the Habitat Regulations pre-submission draft plan May 2018

²⁴ [\[HRA.02a\]](#) Addendum to the HRA May 2018 Factual update September 2018

²⁵ European Court of Justice (ECJ) ruling on the treatment of mitigation for development (People Over Wind and Sweetman v Coillte Teoranta) (Case C-323/17)

²⁶ [\[BIO.45\]](#) Trowbridge Bat Mitigation Strategy SPD Draft for Consultation February 2019

²⁷ [\[HRA.03\]](#) Memorandum of Understanding (MoU) – River Avon Special Area of Conservation Phosphate Neutral Development

2018, an Interim Delivery Plan has been prepared which identifies the measures that will be undertaken to secure phosphate neutrality.

- An update to the HRA and Mitigation Strategy for Salisbury Plain SPA (HRA.04)²⁸ which takes account of the latest visitor survey results and stone curlew monitoring results, and confirms that current mitigation measures are adequate to ensure no adverse effects on the Salisbury Plain SPA.

29. It has been demonstrated through this ongoing and collaborative work and subject to the mitigation in paragraph 3 that the Wiltshire Housing Site Allocations Plan will not have an adverse effect on the integrity of the Natura 2000 network either alone, or in combination with other plans and projects.

1.6 – Are the policies of the Plan designed to secure that the development and use of land contribute to the mitigation of, and adaptation to, climate change in accordance with Section 19(1A) of the Act?

30. The Plan is in accordance with duty to ensure that development plan documents (taken as a whole) contribute to the mitigation of, and adaptation to, climate change, as set out in Section 19 of the 2004 Planning and Compulsory Purchase Act, as amended by the 2008 Planning Act. The Plan is to be read in conjunction with the adopted policies of the Wiltshire Core Strategy²⁹ which includes policies setting out the requirements for development relating to climate change adaptation and mitigation. As ‘addressing climate change’ is a cross-cutting objective of the Wiltshire Core Strategy (Strategic Objective 2) there are a number of policies that are relevant, including but not limited to Core Policy 41, 50, 52, 67 and 68.

31. The site selection process of the WHSAP included Sustainability Assessment (incorporating Strategic Environmental Assessment Regulations requirements) which concluded a ‘minor adverse’ impact on climate change objectives. The assessment identified that all allocations are likely to result in adverse impacts and all allocations have the ability to incorporate mitigation measures to ensure that the development and use of land contributes to the mitigation and adaptation to climate change. The location of the allocations has been influenced by the iterative assessment process and any sites within Flood Zones 2 and 3 or known to have unacceptable impacts on flood risk were excluded from the process. In addition, the Environment Agency commented through the Pre-Submission consultation that a buffer should be applied to Flood Zones to take account of climate change. These comments were taken into consideration and changes proposed to the Plan (EXAM.01.01 PC33 and PC34)³⁰ to ensure that it is clear that Flood Risk Assessments must incorporate an assessment of the predicted effects of climate change and where possible development proposals must incorporate natural flood management and buffer strips. The policies of the Wiltshire Core Strategy coupled with the planning application process will ensure that development proposals at the allocated sites to incorporate the appropriate adaptation and mitigation measures.

1.7 – Has the preparation of the WHSAP complied with the Planning and Compulsory Purchase Act 2004 Part 2 and the Town and Country Planning (Local Plan) (England) Regulations 2012 in all other respects?

32. The preparation of the Plan has complied with Planning and Compulsory Purchase Act 2004 Part 2 and the Town and Country Planning (Local Plan) (England)

²⁸ [\[HRA.04\]](#) Wiltshire Council 2012 HRA and Mitigation Strategy for Salisbury Plain SPA in Relation to Recreational Pressure from Development

²⁹ [\[WCO.01\]](#) Wiltshire Core Strategy

³⁰ [\[EXAM.01.01\]](#) Schedule of Proposed Changes Sept 2018 Main Report

Regulations 2012 as set out in the Local Plan Legal Compliance Statement (July 2018 submission version) (WHSAP/27). Therefore the Council considers it has discharged its plan making requirements in accordance with all relevant legislation.