

SITE ALLOCATIONS DEVELOPMENT PLAN DOCUMENT

REPORT OF: Judy Holmes, Deputy Chief Executive
Contact Officer: Sally Blomfield – Assistant Director, Planning and Sustainable Economy
Email: Sally.Blomfield@midsussex.gov.uk Tel: 01444 477435
Wards Affected: All
Key Decision: Yes
Report to: Council
10 August 2022

Purpose of Report

1. The purpose of this report is to request that the Council reaffirm its decision, taken at the Council meeting on 29 June 2022, to adopt the Site Allocations Development Plan Document (Sites DPD) expressly in the light of their consideration of all the Sustainability Appraisal (SA) work undertaken to support the Sites DPD, and the consultation responses thereto. We are not seeking to readopt the Sites DPD.

Summary

2. The Inspector's Report on the Examination of the Sites DPD was received on 30 May 2022. The Inspector's Report concluded that the Sites DPD, when incorporating Main Modifications suggested by the Inspector, is legally compliant, sound and capable of adoption.
3. At the meeting on 29 June 2022 the Council resolved to adopt the Sites DPD. The full Report to that meeting is attached as Appendix A.
4. On 18 July 2022 the Council received a Letter before Claim from Cllr Robert Eggleston (see Appendix B), in his personal capacity and as a member of South of Folders Lane Action Group (SOFLAG) challenging the Council's decision on the basis that there was an error of law in that Members were not expressly directed to consider the final SA and consultation responses to it. The Claim has been made notwithstanding that:
 - the Regulation 19 SA was considered by the Full Council in June 2020, when it was resolved to publish the draft Sites DPD and the SA for consultation, and submit the DPD to the Secretary of State for examination;
 - the Regulation 19 SA was subsequently updated to reflect the Main Modifications recommended by the Inspector, and although the SA Addendum was consulted upon, there were no further comments received;
 - the Regulation 19 SA, the consultation responses to it and the SA Addendum were available on the Council's website at all times prior to the meeting;
 - an electronic link to the evidence base, including these documents, was made in the Council Report;
 - the SA was expressly referred to in the Recommendations to the Council;
 - the SA documentation was highlighted in the section of the Report which set out 'Sustainability Implications' of the matter before the Council (Paragraph 48); and

- the Inspector's full Report (which was appended to the Council Report in full) expressly dealt with the SA;
 - the Inspector's conclusions, that the SA meets all legal requirements, were set out in the Council Report (Paragraph 20); and
 - the Final SA as published in accordance with the Council's decision on 29 June 2022 simply combined the Reg 19 SA with the SA Addendum, with no other substantive change to the content of either.
5. Although Leading Counsel (acting on behalf of the Council) considers it clear that Members were being asked to adopt the Sites DPD in the light of the SA and the consultation responses, as recommended by the Inspector, and that they were either familiar with or had access to all the relevant documents, he has advised that, in order to avoid unnecessary expense to the taxpayers and to expedite procedures should the matter be taken further by the Claimant, the Council be directed to read all the documents and in particular the SA and, in the light of the final SA and consultation responses, requested to reaffirm its decision to adopt the Plan.

Recommendation

6. Council is recommended to reaffirm the decision to adopt the Site Allocations Development Plan Document (the Sites DPD) taken on 29 June 2022 expressly in the light of the Sustainability Appraisal work (including consultation responses) undertaken to support the preparation of the Sites DPD.

Background

7. The Council commenced preparation of Site Allocations Development Plan Document (the Sites DPD) in 2018.
8. Following consideration of the Sites DPD by the Scrutiny Committee for Housing and Planning at its meeting on 11 September 2019, the Council agreed to approve the Regulation 18 draft of the Sites DPD for public consultation and agreed to the publication of the Sustainability Appraisal (SA) also for public consultation at its meeting 25 September 2019. The report to Council explained the role of the SA and how it had informed decisions related to the strategy and selection of sites. The appendices to both Reports contained a non-technical summary of the SA, and the full SA Report was listed as a background paper.
9. Following consideration of the Sites DPD by the Scrutiny Committee for Housing and Planning at its meeting on 11th March 2020, the Council approved the submission of the Regulation 19 draft Sites DPD and supporting documentation (which included the SA) for consultation, and subsequent submission to the Secretary of State for examination at its meeting on 22 July 2020. Again, a non-technical summary of the SA was appended to the Report, and the main SA Report was listed as a background paper.
10. The Consultation responses to Regulation 19 Draft and supporting documentation were published in full on the Council's webpages. A summary of the consultation responses to the supporting documentation was also published on the Council's webpages and is attached as Appendix C for completeness.
11. The Sites DPD, along with all associated supporting material, was submitted to the Secretary of State on 16 December 2020 for examination.

12. Throughout the examination, the Inspector explored the potential for Main Modifications to resolve any soundness issues identified. The Inspector set out 22 Main Modifications which he felt were required to ensure the Sites DPD could be found 'sound'. The Main Modifications were subject to an SA process. The only substantive changes to the SA between 22 July 2020 and 29 June 2022 related to the proposed Main Modifications to the Sites DPD. The SA Addendum is appended to this Report at Appendix D.
13. The Main Modifications and the SA Addendum were subject to consultation between November 2021 and January 2022. Although c.300 responses were received to the Main Modifications there were no responses to the SA Addendum.
14. The Sites DPD and accompanying evidence base, the Main Modifications, the SA Addendum and consultation responses were all considered by the Inspector in the course of his examination of the plan. The Inspector submitted his report to the Council on 30 May 2022. The Inspector's Report was attached in full to the Council Report of 29 June 2022 (which is appended in full to this report at Appendix A).
15. The Inspector concluded that, with the recommended Main Modifications, the Sites DPD satisfies the requirements referred to in Section 20(5)(a) of the Planning and Compulsory Purchase Act 2004 and is sound and capable of adoption.
16. At its meeting on 29 June 2022 the Council was asked to consider a report on the adoption of the Sites DPD (attached as Appendix A) and, following consideration of the report, Members resolved to:
 - (i) Adopt the Site Allocations DPD;
 - (ii) Publish the Site Allocations DPD, Sustainability Appraisal Report and the Adoption Statement;
 - (iii) Give delegated authority to the Divisional Unit Leader for Planning and Economy, to make typographical and minor factual corrections to the documentation as necessary before publication.
17. Following the Council resolution, the relevant documents were made available in accordance with Regulations 26 and 35 which included publishing them on the Council webpages. This included the SA Report (noting the Regulation 19 and Main Modifications Addendum versions of the SA were already published on this page). The Final SA (which amalgamates the Reg 19 SA with the SA Addendum) can be found attached at Appendix E.

Issues

18. The Letter before Claim states that the decision to adopt the Sites DPD was:
 - (i) In breach of the obligation at Regulation 8(2) Environmental Assessment of Plans and Programmes Regulations (SI 2004/1633), the Council adopted the DPD without taking account of the environmental report [i.e. the SA] prepared under those regulations or the opinions expressed in response to that report.
 - (ii) The report to the Council on 29 June 2022 did not append a copy of environmental report or consultation responses received in connection with the July 2020 version of the report or the addendum report dated November 2021, nor did it contain a summary of its contents or the consultation responses which had been received.

- (iii) The report did not list the environmental report and consultation responses expressly as “background papers”. The report simply explained that the “full evidence base, examination library and examination documents” were available via a link on p.23 of the Council Report. At the time of the meeting, that link (www.midsussex.gov.uk/SitesDPD) did not go through to a webpage including the final environmental report and consultation responses. The final environmental report was only uploaded to that page on 7 July 2022.
19. The Letter before Claim goes onto state that “members are not to be taken to have considered a background document unless they are expressly told to read it”.
20. The Letter before Claim suggests that the most appropriate remedy to the Court “would be an order quashing the decision of the Council to adopt the DPD on 29 June 2022 and an order remitting the DPD to Full Council to reconsider the question of adoption, ensuring that the necessary information prescribed at Regulation 8(3) of the 2004 Regulations was before members”.
21. The Council’s QC confirms that should this matter proceed to Court and should the Court conclude that there was an error of law, the Court would have a range of remedies available to it. The same issue arose in ***Flaxby Park Ltd v. Harrogate Borough Council* [2020] EWHC 3204 (Admin)**, where Holgate J ordered that, since there had been no error up to and including the conclusion of the examination process, it would not be appropriate to quash the plan (which would require the Council to go back to the beginning of the process) but instead that the whole of the Plan should be remitted to the Council for it to consider the SEA/SA material (including the consultation responses). In short, the order he made was limited to requiring the Council to correct the error which he had identified.
22. In the circumstances, officers have considered how best to remedy the situation. Clearly, it is in everyone’s interests that we arrive at a solution as quickly as possible, and in a way which does not involve unnecessary expense. Therefore, given the approach taken by Holgate J in the Flaxby case, Officers are bringing the issue back to Council in order that the Council can reaffirm its decision to adopt the Sites DPD having been directed expressly to look at the SA material (including consultation responses).
23. The Letter before Claim suggests that, because the Council has already decided to adopt the Sites DPD, it has no power to revisit that question unless and until a Court has formally ordered it to do so. However, the present recommendation is not that the Council should adopt the Sites DPD, but that it should reaffirm its decision to do so, in the light of the SA material and the consultation responses. If the recommendation is accepted, it would address the substance of the concern identified by Councillor Eggleston in the Letter before Claim. If, despite this, a claim is still brought (and should the Court find there was some error in the decision of 29 June 2022) a decision in accordance with the recommendation would provide a clear basis for the Council to argue that there would be nothing to be gained by the Court ordering the matter to be remitted for reconsideration.

Importance and Status of the Sites DPD

24. The purpose of the Sites DPD is to demonstrate that Mid Sussex can meet its housing and employment needs in full (as required by the District Plan) and to secure the five-year housing land supply to avoid speculative, unplanned development. It allows the Council to set policy criteria and mitigation and provides developers, infrastructure providers, and the community certainty about future growth. The Sites DPD achieves these aims.
25. The adopted Sites DPD enables the Council to demonstrate it is meeting its current housing requirement in full. In the absence of an adopted Plan the five-year housing land supply position would be at risk and would lead to speculative, unplanned development across the whole District.
26. Notwithstanding whether the Claimant issues proceedings the Council can and will still continue to give significant weight to the Policies of the Sites DPD in the determination of planning applications, in accordance with the advice in para 48 of the NPPF.

Policy Context

27. The preparation and adoption of the Site Allocations DPD is important in that it ensures that development is properly planned through a democratic, open and transparent process; that local housing and employment needs will be met over the Plan period; that the best environmental outcomes are secured; that all necessary infrastructure required to support development is secured.
28. The adoption of the Sites DPD therefore aligns with the Council's priorities for Sustainable Economic Growth **and** Strong and Resilient Communities.

Other Options Considered

29. There are no reasonable alternative Options to the approach put forward in the recommendation to this report.

Financial Implications

30. There are significant cost implications for the Council if a Claim is progressed through to the High Court. In order to avoid unnecessary additional expense to the taxpayers purse, and in view of the legal decision in Flaxby, it is clear that the best approach is for the Council is to reaffirm its adoption of the Sites DPD in the light of the SA work undertaken to support the Plan.

Risk Management Implications

31. The approach set out in this Report seeks to mitigate any risks to the adoption of the Sites DPD if the Claimant seeks to issue proceedings.

Equality and Customer Service Implications

32. An Equality Impact Assessment was prepared and published at all stages alongside the Sites DPD, to ensure opportunities to promote equality and/or barriers to service are considered and addressed. This position has not changed.

Other Material Implications

33. There are no other material considerations.

Sustainability Implications

34. The sustainability implications of the Sites DPD were tested at each stage of Plan making. The Inspector in his Report stated that “*no adverse effects are identified in the SA that cannot be effectively mitigated*” (Paragraph 28).

Appendices

Appendix A: Council Report on the Adoption of the Site Allocations DPD dated 29 June 2022

Appendix B: Letter before Claim

Appendix C: Regulation 22 (1) (c) Statement of Consultation Appendix 10 Summary of Responses (Reg 19) – Evidence Base and Policies Map (December 2020)

Appendix D: The SA Addendum

Appendix E: The Final SA (which amalgamates the Reg 19 SA with the SA Addendum)

Background Papers

Members’ attention is specifically drawn to the full set of consultation responses submitted to the Regulation 19 Consultation, including to the SA, which can be found here:

<https://www.midsussex.gov.uk/planning-building/development-plan-documents/site-allocations-dpd-evidence-library>

https://www.midsussex.gov.uk/media/5842/sustainability-appraisal_redacted.pdf

(Please note that the Summary of these Responses to the Evidence base, including to the SA, is attached as Appendix C to this Report)

Members’ attention is also drawn specifically to the responses received to the Main Modifications which can be found here:

<https://www.midsussex.gov.uk/planning-building/development-plan-documents/site-allocations-dpd-examination/#topic-main-modification-responses>

The adopted Policies Map and proposed changes as a result of the Sites DPD are available online at:

<https://www.midsussex.gov.uk/planning-building/policies-maps/>

The full evidence base, examination library and examination documents are available online at www.midsussex.gov.uk/SitesDPD