Sussex Wildlife Trust
Rep Number: 967329

Matter 1: Legal Compliance, including Duty to Co-operate.

Issue 1: Whether the plan has been prepared in line with the relevant legal requirements and procedural matters?

Habitat Regulations Assessment (HRA)
Please reference the relevant European site when answering the following questions. To avoid repetition, any reference to the Plan should be read as either alone, or in combination, with other plans or projects.

29. Assuming that the mitigation measures set out in the HRA are required, what evidence is there that these will work?

Ashdown Forest SAC
The Sussex Wildlife Trust (SWT) is concerned that there is little certainty that the mitigation measures set out in the HRA will work. Our specific concerns are listed in our Regulation 19 response, however since the Regulation 19 consultation, we notice that Wealden District Council (WDC) have commissioned an Air Quality Technical Note – Evaluation of Impact of Wealden Mitigation Strategy (I41). This states in section 6.1 that ‘It is not currently possible to demonstrate whether any specific subset of measures will deliver the required benefits. Indeed, Section 4 of this note showed why absolute certainty is virtually never possible when predicting the effects of air quality mitigation.’

This section goes onto say that ‘Certainty that the effects of the WLP will be adequately mitigated can only, at this time, be provided by WDC’s commitment to ensuring that this is the case; which raises the question of how WDC can do this’ and further to this ‘Over the longer term (five years or more), the air quality measurements will provide a clearer picture of overall air quality trends and thus allow WDC to see whether air quality is improving and, if so, the rate of improvement.’

SWT is particularly concerned that a commitment to an offline A27 has been included in the Air Quality Mitigation Strategy section of the HRA. No evidence is produced within the HRA or other supporting documents that the creation of an off-line A27 will provide an alternative route to roads crossing the Ashdown Forest SAC and Lewes Downs SAC and therefore contribute to a reduction in nitrogen emissions. Indeed, section 5.4.8 of the Wealden Local Transport Study 2018 states that a comprehensive offline solution is not required during the plan period to enable delivery of the WLP. Additionally, the last information made available to SWT on the study commissioned by Highways England referenced in paragraph 13.10 of the WLP, indicated a delivery timeframe of an offline road as mid-2030.

SWT cannot see that any evidence has been presented to demonstrate that an offline solution is generally required or that it will reduce traffic levels in relation to the SACs. Additionally, any such scheme will clearly sit outside the lifetime of the plan and therefore should not be included in the mitigation measures or policies of the WLP.

Further to this, the Wealden Local Plan Interim Air Quality Mitigation Strategy (A36) states in section 5.2 that ‘Investigation of certain measures proposed (as identified below) will be required, including traffic modelling, to assess the effectiveness of measures and any direct and indirect implications that could arise from them’. This is an acknowledgement that part of WDC’s mitigation strategy is to assess the effectiveness of the mitigation.

Given that WDC’s own evidence suggests that there is no certainty of effectiveness of mitigation, SWT ask whether consideration has been given to the need for the provision of compensatory habitat as per Article 6(4) of the regulations? SWT feels that strategically planned and well managed off site compensatory habitat could have more impact in terms of the integrity of the SAC than the uncertain mitigation measures suggested in the HRA and listed in policy AF2.
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Ashdown Forest SPA
SWT agrees that without mitigation, the WLP is likely to have a significant effect on the SPA. Whilst we support the strategic approach to mitigation recommended in the HRA, SWT is not clear on what evidence has been supplied to demonstrate that the mitigation will be effective at avoiding impacts.

Pevensey Level SAC
SWT agrees with the HRA that effectively designed and well managed (in perpetuity) SuDS will be required to ensure that the WLP does not have an adverse effect on the SAC. However, we are concerned that the mitigation suggested does not go far enough in ensuring the site’s protection long term. In particular, SWT is concerned that the WLP and Policy SWGA7 only recommends that mitigation is on a strategic scale. There appears to be no commitment from WDC as to how this will be achieved. This is in contrast to the approach for the Ashdown Forest where strategic mitigation is not only required but is being ‘driven’ by WDC and included in policy to ensure it actually happens.

Given the volume of development proposed in the WLP with the potential to adversely affect the SAC, WDC should be taking a much more proactive approach to ensuring strategic mitigation is delivered.
Matter 2: Vision and Objectives and Local Plan Growth

Issue 1: Whether the Spatial Vision for Wealden is justified, effective, consistent with national policy and positively prepared?

31. Are the key local plan objectives which have been identified relevant; justified; and consistent with National Policy?

As stated in the Regulation 19 response, the Sussex Wildlife Trust (SWT) feels there is a bias towards unsustainable road infrastructure throughout the WLP, rather than support for sustainable transport as per part 4 of the 2012NPPF and in particular, the statements in paragraphs 29 and 35 in relation to transport systems being balanced in favour of sustainable transport modes and developments giving priority to pedestrian and cycle movements.

Therefore, SWT does not believe that the Vision or Spatial Objective 9 are consistent with National Policy as the balance is not in favour of sustainable transport modes. The first paragraph of the vision should be amended to refer to ‘transport improvements’ not purely roads.

Spatial Objective 9 commits to ‘a new route for the A27’ i.e. a new road for private motorised vehicles. This commitment is further solidified through the inclusion in the WLP of policy SWGA4 which states that a comprehensive offline solution between Lewes and Polegate is strongly supported as an integral and critical component of the long term development strategy for the SWGA as well as long term mitigation to reduce traffic levels in relation to Ashdown Forest SAC and Lewes Downs SAC.

Section 5.4.8 of the Wealden Local Transport Study 2018 states that a comprehensive offline solution is not required during the plan period to enable delivery of the WLP. Additionally, the last information made available to SWT on the study commissioned by Highways England referenced in paragraph 13.10 of the WLP, indicated a delivery timeframe of an offline road as mid-2030.

A plan should be deliverable over its period in order to be effective and should be the most appropriate strategy, based on proportionate evidence, to be justified. SWT cannot see that any evidence has been presented to demonstrate that an offline solution is generally required or that it will reduce traffic levels in relation to the SACs. Additionally, any such scheme will clearly sit outside the lifetime of the plan and therefore should not be included in spatial objective 9 or policy SWGA4.

The second paragraph of SO9 should be deleted.

SWT strongly supports the inclusion of Spatial Objective 7, however we are concerned that it is too weak in regards to the commitment to net gains in biodiversity. Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by providing net gains in biodiversity 'where possible'. However, this requirement has been greatly strengthened in the revised version 2019 (paragraph 170).

SWT acknowledges that, as per Annex 1 of the revised NPPF, the soundness of the plan should be assessed against the content of the previous 2012NPPF, however paragraph 213 of the 2019NPPF states that due weight should be given to policies according to their degree of consistency with the new Framework. It should also be noted that planning applications will be assessed against the revised NPPF, therefore it seems appropriate to indicate where we are concerned that the plan is not in conformity with the 2019NPPF.

We therefore feel that SO7 should be strengthened to commit to the delivery of net gains to biodiversity rather than just seeking gains:

‘and will deliver seek a net gain of biodiversity through the plan with regards to these features.’
Issue 2: Does the significance attributed to air quality considerations present a positive framework which is consistent with national policy, justified and effective, and will contribute to the achievement of sustainable development within the District?

38. Is criterion a) of Policy AF1, clear what development will fall within its remit and how developers should satisfy its requirements? Is the policy internally consistent in how the Lewes Downs SAC and the Ashdown Forest SAC are treated? What evidence is there that the harm would ensue without mitigation, and that the mitigation measures set out within Policy AF2 would be effective and directly relate to the proposed development?

SWT’s comments relate to the last point of question 38 – what evidence is there that the mitigation measures set out within Policy AF2 would be effective.

Whilst SWT agrees that a strategic approach to mitigation of impacts is always preferable to piecemeal mitigation decided at the application stage, there must be certainty that the strategic mitigation proposed will result in no significant effect on the integrity of the designated site.

As noted in our written representation for Matter 1, question 29, WDC’s own evidence (documents I41 and A36) state that there is no certainty in the effectiveness of Policy AF2. In particular, many of the measures relate to monitoring and investigating rather than mitigation. Additionally the commitment to an offline A27 is completely inappropriate given that this sits outside the lifetime of the plan and no evidence is provided as to how this infrastructure would benefit or harm the protected sites.

Given that WDC’s own evidence suggests that there is no certainty of effectiveness of mitigation, SWT ask whether consideration has been given to the need for the provision of compensatory habitat as per Article 6(4) of the regulations? SWT feels that strategically planned and well managed off site compensatory habitat could have more impact in terms of the integrity of the SAC than the uncertain mitigation measures suggested in policy AF2.

Issue 3: Are policies EA1- EA3 positively prepared, consistent with national policy and justified?

42. Are policies EA1 – EA3 predicated on robust evidence in terms of impacts and proposed mitigation?

Policy EA2 – Ashdown Forest Special Protection Area

Whilst SWT supports the inclusion of a policy on the Ashdown Forest SPA and a strategic approach to mitigation. We are not clear on what evidence has been supplied to demonstrate that the mitigation will be effective at avoiding impacts as required by the Habitat Regulations.

Paragraph 8.13 of the WLP states that the aim of SANG is to ensure visitor rates do not increase as a result of new development. However none of the Indicators for policy EA2 relate to whether there is an increase in visitors to the SPA or a decline in the conservation status due to increased disturbance. There should be a commitment to monitoring and regular review of the effectiveness of the avoidance/mitigation schemes in policy EA2 in partnership with relevant bodies such as Natural England. The conclusion of no significant effect cannot be relied upon if for example, the SANG provision is not successful at diverting visitor pressure away from the SPA.

45. Are the policies consistent with national policy?

Policy EA1 – Biodiversity

SWT strongly supports the inclusion of a strategic biodiversity policy within the WLP. However, the first line of policy should be more positive in its approach, clearly setting out the requirement to deliver measurable
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net gains rather than no net loss. Both the NPPF and the Defra 25 year Plan seek to embed an environmental net gain principle for development. However, given that this plan is primarily assessed against the NPPF 2012, if WDC is not minded to make this amendment then it should clearly state that development proposals must not result in a net loss rather than the current statement of should not.

SWT recognises that the requirement for net gains to biodiversity is highlighted in part d of the policy. However we are unsure why this requirement is restricted to development ‘identified in the plan’, it should be for all development as per paragraph 109 of the 2012NPPF and 170 of the 2019NPPF.

Whilst we also support the requirement for regard to be given to Local Wildlife Sites (LWS), SWT does not feel this wording is effective given the requirements of paragraphs 117 of the 2012NPPF and 174 of the 2019 NPPF.

It is not clear to SWT in what situations it would be ‘necessary’ to allow the loss of existing wildlife corridors and stepping stones. We recommend that the wording is amended that loss should be avoided and only as a last resort compensated for as per the mitigation hierarchy.

Additionally, the protection of ancient woodland needs to be strengthened to acknowledge that damage and deterioration to ancient woodland is not acceptable as per the Natural England standing advice.

We therefore recommend the following policy modifications:

‘Development proposals should not must result in a net loss of measurable net gain to biodiversity. Development and will be required to contribute to the enhancement of existing biodiversity, and should create and manage new habitats where appropriate. New development will be supported which retains and /or enhances significant features of biodiversity and nature conservation on development sites. Regard must be had to priority habitat and species to contribute to national and local biodiversity targets including the development of a Nature Recovery Network. New development will also be supported where a positive contribution to biodiversity is made through the creation of green spaces, and linkages between habitats to create local and regional ecological networks and enhance green corridors....

... National or Regional Designations
b) Where development is anticipated to have a direct or indirect adverse impact on national sites or regional sites or features for biodiversity, development will be refused unless it can be demonstrated that:

i. There is no alternative suitable location for the development;

ii. The benefits of development directly outweigh both the impacts it is likely to have on the features of the site that make it a SSSI/NNR and any impact on the national network of SSSIs; and

iii. That appropriate mitigation and compensation measures are agreed to facilitate the survival of the identified species, keep disturbance to a minimum and provide adequate alternative habitats to ensure no a net loss gain of biodiversity.

c) Development that will lead to the loss or damage to of Ancient Woodland will not be supported, and where relevant the provision of at least a 15 metre buffer between development and the Ancient Woodland should be provided, unless an alternative buffer area can be justified taking into account the objective of no loss of irreplaceable habitat;

d) Development that will lead to the loss or damage to a Locally Designated Site such as a Local Wildlife Site will not be supported.

Biodiversity on Sites
e) Development identified within this Plan must achieve a net gain in biodiversity and where possible any biodiversity corridors and stepping stones should be protected, retained and where appropriate suitably buffered,
enhanced, restored and strengthened to enhance and protect the green network and improve their wildlife corridor, connectivity and ecological functions. Where the loss of existing wildlife corridors and stepping stones should be avoided. Where this is not possible mitigated and as a last resort are necessary to facilitate development...like for like compensatory measures will be required to protect and enhance the network to help ensure a measurable net gain in biodiversity...

Policy EA3 – Green Infrastructure
SWT strongly supports the inclusion of a strategic Green Infrastructure (GI) policy given the clear priority in paragraph 114 of the 2012 NPPF.

SWT recognises that there is a great deal of important information presented as supporting evidence with the WLP. However, we are not clear if this has all been systematically and consistently translated into policy.

We note that the evidence base for the WLP includes a GI Study and that the recommendations section of this study (Section 6) highlight clear priorities for translation into policies. Section 6.2.5 suggests that an overarching GI policy should be supported by GI policies for the main growth areas.

We note the main strategic GI policy, but see that the main growth areas are not supported by specific GI policies. The approach of the plan appears to be to integrate some GI wording into allocation policies for these growth areas. As a result we are concern that the plan does not appear to convey a clear and joined up approach to GI delivery as required by NPPF (2012) section 114.

The GI Study is clear that it acts as a baseline for the production of a GI Strategy with section 6.4.3 stating that the focus of the GI strategy should be to provide a long-term and overarching strategic framework for guiding action in areas of clearly identified need, where investment in high quality, sustainable and multifunctional GI network can deliver the greatest benefit for people and the natural environment.

The GI Study concludes in section 6.4.6 that to ensure that GI is implemented effectively, the relevant findings and recommendations of the GI Strategy should be embedded in spatial planning and development management through inclusion of appropriate GI policies and standards in the Local Plan.

We do note that WDC have made a commitment to the production of a GI Strategy Supplementary Planning Document in paragraph 8.2 of the WLP. To our knowledge this strategy has yet to be produced, therefore the plan may not be adopting an effective approach to delivering GI. We stress the importance of the SPD to ensure that the policy and plan are effective at delivering the requirements of 2012 NPPF. We see the need for WDC to adopt an ambitious timetable for its production and adoption. Given our concerns over the effectiveness of the policy SWT feel that there would be more impetus for WDC to produce the SPD if it was committed to in the policy. We therefore recommend the following amendments:

‘Green Infrastructure should be considered at the beginning of the development process. Development will be expected to protect, improve and enhance existing green infrastructure...

...Proposals will be supported where all of the following can be provide to secure positive GI outcomes:

a) Development is designed to respond to the location of existing green infrastructure and support and improve its function and benefits;

b) Development protects and improves the green infrastructure network through the provision or and enhancement of functional links or corridors between different green infrastructure assets or components; and

c) Development provides new green infrastructure, and/or introduces multi-functional use of existing green spaces or and links /corridors where opportunities are identified; and
d) Development includes details of ongoing management and maintenance of Green Infrastructure Assets in perpetuity.

Development proposals will not be permitted where they will result in the loss of existing green infrastructure assets/components...

...Where the scale of development would be too small to accommodate the on-site provision of green infrastructure provision including mitigation, the Council will seek development contributions to deliver towards strategic green infrastructure provision, either towards the improvement of existing green spaces or towards the provision of new green infrastructure elsewhere.

Where compensation is required for the loss of existing green infrastructure then the provision of new or enhanced green infrastructure as required by the scale of the development will be in addition to the requirement for compensation.

Where appropriate, the Council will seek development contributions for the future management and maintenance of green infrastructure.

The Council commits to producing a Green Infrastructure Supplementary Planning Document to better inform enhancements to the green infrastructure network.