

**Bath and North East Somerset Council Response to
Inspector's Initial Matters, Issues and Questions
(EXAM 4)**

Matter 1 Procedural/legal requirements

06 June 2022

(Questions 1 – 11)

**Bath & North East
Somerset Council**

Improving People's Lives

Response to Inspector's Initial Questions Letter (EXAM 4)

06 June 2022

Please note: Where the Council is proposing modifications to policies or reasoned justifications in the submitted plan these are detailed in the responses as follows:

- **Additional and new text** proposed in **Bold**, **Red** and underlined
 - ~~Deleted text~~ proposed in **Red** and ~~strike through~~
- (Submitted LPPU changes are shown in **Bold**, underlined and ~~strike through~~ all in **black** text)

Matter 1: Procedural/legal requirements

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

Duty to Cooperate

Q.1 Is there clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in respect of strategic matters with cross-boundary impacts considered through the preparation of the Plan?

B&NES Response:

- 1.1 The Council considers there is clear evidence that it has engaged with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in a manner that is proportionate with the purpose and scope of the LPPU and the resultant very limited strategic matters with cross-boundary impacts.
- 1.2 In the Duty to Co-operate Statement ([CDS-030](#)) and its response to the Inspector's Initial Questions ([EXAM1](#)) the Council sets out evidence of this engagement (see documents [EXAM 1A](#), response to Questions 7-10, and [EXAM1B](#), Appendices 2 - 8). To briefly summarise, engagement with neighbouring authorities and the West of England Combined Authority was undertaken throughout preparation of the LPPU from before and on the publication of the LPPU commencement document through to submission of the LPPU for examination. The cross-boundary matters discussed and agreed outcomes are primarily set out in Statements of Common Ground (SoCG) with adjoining authorities as necessary and relevant - see Core Documents [CDS-031](#) (with Wiltshire Council), [CDS-032](#) (with South Gloucestershire Council), [CDS-033](#) (with Mendip District Council) and [CDS-034](#) (with Somerset County Council). The Council also engaged with other prescribed bodies as necessary at key stages. Engagement primarily took the form of officer meetings and formal consultation at each preparatory stage.
- 1.3 The engagement undertaken was proportionate to the purpose and scope of the LPPU and confirmed that the only strategic cross boundary matter addressed by the LPPU relates to the implications of Policy CP3 in respect of renewable energy (see also response to Q2 below).

Q.2 What are the specific outcomes of the Duty to Cooperate?

B&NES Response:

- 2.1 The outcome of much of the engagement under the Duty to Co-operate (DtC) is confirmation of the very limited extent of strategic matters with cross-boundary impacts that are addressed by the LPPU. Only one strategic cross-boundary matter is identified, relating to Policy CP3 (Renewable Energy) and the potential impact on the landscape in Mendip of renewable energy proposals. The specific outcome of the DtC in this respect is an agreement by B&NES and Mendip District Council to continue working together on potential cross-boundary implications of renewable energy proposals and in particular landscape sensitivity evidence.
- 2.2 It should also be noted that the Council is and will continue to engage constructively, actively and on an on-going basis with neighbouring authorities and prescribed bodies in the preparation of the West of England Combined Authority Spatial Development Strategy and the new B&NES Local Plan 2022-2042. Through the preparation of these plans the more significant cross boundary strategic matters, including the approach to meeting wider and longer-term housing and economic development needs, will be engaged upon and agreed outcomes secured.

Sustainability Appraisal

Q.3 Is the Sustainability Appraisal (SA) adequate?

B&NES Response:

- 3.1 Table 1 page 3 of the draft SA ([CD-SD005](#)) signposts the required contents of the environmental report and their relevant sections within the SA report. It shows compliance with legislation and directs to where in the Report the requirements are met.
- 3.2 As this is a partial update to the existing Plan, and not a new Plan, the scope of the changes is confined to those areas that can be addressed without changing the spatial priorities; the spatial strategy; or the strategic housing and job growth requirements set out in the Core Strategy & Placemaking Plan. Therefore, the SA framework established through the Core Strategy and Placemaking Plan was used to guide the preparation of the LPPU. However, to ensure the SA Framework is up to date and effective to inform the LPPU, the SA objectives were slightly amended taking into account the latest information including the review of the policies/strategies, baseline information and key issues through the SA Scoping Report. The SA Scoping Report was drafted and consulted with statutory consultees and revised responding to the comments and advice received from the consultees. The recommendations and how the SA framework was revised are set out in the Updated Appendix H of the draft SA Report ([CD-SD007](#)).
- 3.3 The Sustainability Appraisal has adequately and appropriately assessed the likely environmental, social and economic effects of the Plan through the process in

conformity with the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”)(and the SEA Directive). The draft SA report ([CD-SD005](#)) demonstrates how the plan has addressed relevant economic, social and environmental objectives.

3.4 Therefore, it is the Council’s view the SA undertaken meets legal requirements and is adequate for the content and level of detail in the LPPU.

Q.4 Has the SA been undertaken on the basis of a consistent methodology and is the assessment robust?

B&NES Response:

- 4.1 As set out above the SA Framework used for the LPPU was first established to inform the Core Strategy, then updated for the Placemaking Plan. The LPPU is a partial update of these Plans, therefore applying the same Framework enabled consideration of the likely environmental, social and economic effects of the Plan in a consistent manner.
- 4.2 Section 3 of the draft SA Report ([CD-SD005](#)) sets out the methodology applied through the process of preparing the LPPU. The methodology was designed both to meet the requirements of the SEA Regulations and to follow good practice. The framework and methodology applied to the LPPU was originally developed to inform the adopted Core Strategy and Placemaking Plan which themselves were considered sound in using that framework, and therefore the framework is considered to be robust.
- 4.3 SA has been undertaken throughout by B&NES Council officers. However, the Council received support from LUC/Atkins as a ‘critical friend’ in appraising draft policies and preparing the draft SA report prior to the Regulation 19 consultation.
- 4.4 The appraisal of options and policies has been undertaken against the SA Objectives and ‘appraisal questions’ contained within the SA framework, with a focus on identifying the significance of effects using available information and evidence.
- 4.5 In appraising each policy and site allocation, a professional judgement was made as to its likely effect on the baseline in relation to achieving each of the objectives in the SA framework guided by appraisal questions. A scoring system was used to summarise the appraisal findings at each stage, indicating whether each policy or site allocation was expected to have a positive or negative effect against each objective in the SA framework and which of those effects were expected to be significant. Some mitigation measures were suggested where negative effects are identified. The SA framework and related scoring system provided a clear and consistent basis for the appraisal at each stage.
- 4.6 Section 6 of the draft SA report (Appendix C: Full Appraisals) ([CD-SD005](#)) sets out the key options considered through the LPPU Options document, Section 7 sets out key results of draft Policies (Appendix D: Full Appraisals) and Section 8 sets out

cumulative SA effects identified for the Local Plan (Core Strategy, Placemaking Plan and LPPU) (Appendix F: Full Appraisals).

4.7 Therefore, it is the Council's view that the SA has been undertaken on the basis of a consistent methodology and the assessment is robust.

Q.5 Did the Council, through an iterative SA process, take into account reasonable alternatives and has sufficient reasoning been given for the rejection of alternatives?

B&NES Response:

- 5.1 Section 5 of the draft SA report ([CD-SD005](#)) describes the steps followed at each stage of plan-making to develop and refine reasonable alternatives and assess their effects. The SA iteratively influenced the plan by describing and evaluating the likely significant effects on the environment of the plan and reasonable alternatives to inform the Council's decision making.
- 5.2 Section 6 of the draft SA Report (Table 10) sets out key results of reasonable options considered and how this informed the preparation the draft LPPU and other reasons for selection and discounting the option to be taken forward in the draft LPPU (Reg19).
- 5.3 The Inspector's Initial Questions (Question 11) ([EXAM1](#)) asked the reasons why alternative sites to those proposed to be allocated were assessed as being either not reasonable alternatives, or found to be reasonable alternatives, but found unacceptable. The Council's response is included in [EXAM 1A](#). In summary, the approach to identifying sites for allocation to replenish the housing supply is set out in 'The Purpose and Scope of the LPPU' Topic Paper ([CD-SD025](#)) (section 4) and the Sustainability Appraisal ([CD-SD005](#)) (section 2). Information in the HELAA was used to help 'filter out' the sites not considered to be reasonable alternatives as (1) they were considered unsuitable; (2) they did not accord with the Core Strategy spatial priorities or (3) based on the Plan's spatial strategy and using the locational sequential approach, sufficient sites were identified to meet the housing supply shortfall and therefore, other promoted sites further down the locational sequence did not need to be considered. EXAM 1A at [Appendix 10](#) sets out the results of this process.
- 5.4 It is Council's view that reasonable alternatives were assessed and sufficient reasoning for the rejection of alternatives were given through the iterative SA process undertaken.

Habitats Regulations Assessment

Q.6 Has the Habitats Regulations Assessment (HRA) been undertaken in accordance with the Conservation of Habitats and Species Regulations 2017, and have potential combination effects in regard to sites in neighbouring areas been assessed adequately?

B&NES Response:

- 6.1 The Habitats Regulation Assessment (HRA) has been undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 and potential combination effects in regard to sites in neighbouring areas has been assessed.
- 6.2 During the preparation of the HRA, there was consultation with Natural England and discussion on issues and no concerns were raised by Natural England in relation to the HRA either not according with the Conservation of Habitats and Species Regulations 2017 or the assessment of in-combination effects.
- 6.3 The HRA of the B&NES LPPU (Submission version) dated December 2021 [CD-SD009](#) included under Appendix C an in-combination assessment of other plans and projects. Matters raised during consultation on the Reg 19 Draft LPPU were also addressed within [CD-SD009](#) and this included in-combination assessment of the effects of policies and allocations in the LPPU and the Wiltshire Housing Sites Allocation DPD (2020).
- 6.4 An Addendum ([CD-SD065](#)) dated May 2022 to the Statement of Common Ground between B&NES Council and Wiltshire Council, August 2021 ([CD-SD031](#)) confirms that amendments proposed to the HRA and incorporated within the HRA Addendum, submission version ([CD-SD009](#)) have been discussed with and are supported by Wiltshire Council. The May 2022 Statement of Common Ground is core document [CD-SD0065](#).
- 6.5 The HRA Addendum published in December 2021 ([CD-SD009](#)) outlines the required updates to the HRA of the Regulation 19 Publication Draft LPPU that are recommended for inclusion in the final HRA document that will be prepared for the adopted LPPU.
- 6.6 In the HRA of the Regulation 19 Draft LPPU mitigation recommendations in respect of three policies are included in Section 2. In line with these recommendations some amendments are now proposed to Policy SB18 (Royal United Hospital), SB22 (Locksbrook Creative Industry Hub) and Policy RE1 (Employment uses in the Countryside). These proposed amendments are outlined in the table below.

<u>HRA mitigation recommendations</u>	<u>Amendments proposed</u> *Newly proposed amendments are shown in red.
For SB18RUH –a protective clause to prevent harmful lighting is required. A	Add new text Add below to clause 5.

<p>similar approach for that included in the Development Requirements for Sion Hill is recommended</p>	<p><u>Protect and enhance existing landscape infrastructure and habitats within the site, including trees, hedgerows, grassland habitats, planting and landscaped garden areas. Protect all habitats from increased light spill.</u></p>
<p>For SB22 – a protective clause to retain riverside habitat and to control light spill is recommended. A similar approach to Bath Western Riverside could be used</p>	<p><u>New clause to be added</u> <u>Retain and enhance green infrastructure and habitats along the riverside edge, providing a biodiversity led approach towards the treatment of this area. This buffer could be used for informal public open space but must retain a habitat function, a light shielding function, and improved access to the river for maintenance purposes. Built form must respond appropriately to this habitat buffer</u></p>
<p>For RE1 recommend adding “where not habitat functionally linked to a European site “after “previously developed land”</p>	<p>POLICY RE1: EMPLOYMENT USES IN THE COUNTRYSIDE</p> <p>Proposals for employment uses in the countryside outside the scope of Core Strategy Policies RA1 and RA2 will be permitted providing they are consistent with all other relevant policies, and involves:</p> <p>i)replacement of existing buildings; ii)the limited expansion, intensification or redevelopment of existing premises <u>or previously developed land where not habitat functionally linked to a European site</u>; and iii)they would not lead to dispersal of activity that prejudices town and village vitality and viability</p>

Local Development Scheme

Q.7 Is the Plan compliant with the Council's Local Development Scheme in terms of its form, scope and timing?

B&NES Response:

- 7.1 The Local Plan Partial Update is referenced in the Local Development Scheme (LDS) ([CD-SD041](#)). The table on page 20 sets out the summary of the form, scope and timing of the LPPU and paragraph 2.4 sets out in greater detail the scope of the LPPU. The Local Development Scheme was made available publicly, published on the Council's website and kept up to date.
- 7.2 The Council considers that the LPPU prepared and submitted for Examination is compliant with the LDS.

Community Involvement

Q.8 Has the Council complied with the requirements of section 19(3) of the 2004 Act with regard to conducting consultation in accordance with the Statement of Community Involvement?

B&NES Response:

- 8.1 Section 19(3) of the 2004 Act requires that authorities must comply with their statement of community involvement when preparing local development documents. The consultation process undertaken throughout the preparation of the LPPU is set out in documents [CD-SD010](#) Reg 22 Consultation Statement and [CD-SD028](#) Consultation Statement (Reg 19).
- 8.2 The Council considers that the preparation of the LPPU complies with the Neighbourhood Planning Protocol (Statement of Community Involvement) ([CD-SD022](#)).

Climate Change

Q.9 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?

B&NES Response:

- 9.1 One of the specific purposes of the LPPU is to help ensure the Development Plan better addresses the Council's climate emergency declared in 2019.
- 9.2 The Plan includes many policies that are 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. All new development is subject to energy and carbon reduction targets, addressing the mitigation of climate change.

9.3 The following policies contribute directly to secure the objectives of the Section 19(1A) of the Act and work directly towards reaching a net zero system in B&NES by 2030, which aligns with the national target of net zero by 2050.

- Police CP1 – Retrofitting existing buildings
- Policy CP3 – Renewable Energy
- SCR1 – On-site Renewable Energy Requirement
- SCR2 – Roof-mounted/Building-integrated Scale Solar PV
- SCR3 – Ground-mounted Solar Arrays
- SCR4 – Community Renewable Energy Schemes
- SCR5 – Water Efficiency
- Policies SCR6 (residential) and SCR7 (non-residential) – Sustainable Construction
- Policy SCR8 – Embodied Carbon
- Policy CP4 – District Heating
- Policy SCR9 – Electric Vehicle Charging
- Policy NE2 – Conserving and Enhancing the Landscape And Landscape Character
- Policy NE3 – Sites Species and Habitats
- Policy NE3a – Biodiversity Net Gain
- Policy NE5 – Ecological Networks and Nature Recovery
- Policy NE6 – Trees and Woodland Conservation
- Policy CP7 – Green Infrastructure (GI)
- Policy NE1 – Development and GI
- Policy D8 – Lighting
- Policy ST1 – ST7 – Transport policies in general

9.5 The SA Framework ([CD-SD005](#)) includes specific objectives responding to the objectives of Section 19(1A) of the Act as set out below.

- *Objective 8: Conserve, enhance and restore the condition and extent of Biodiversity in the district and geodiversity (taking account of climate change)*
- *Objective 9: Reduce land, water, air, light, noise pollution*
- *Objective 10: Reduce vulnerability to, and manage flood risk (taking account of climate change)*
- *Objective 12: Encourage careful, efficient use of natural resources including energy and encourage sustainable construction and promote waste management accordance with the waste hierarchy (Reduce, Reuse and Recycle)*

9.6 All policies including site allocations were tested against these objectives throughout the process to identify the effects and to avoid significant effects as well as facilitate better outcomes. Please see the summary table on page 66 of the SA report ([CD-SD005](#)).

9.7 For new site allocations, the risk based sequential approach was taken to facilitate new development away from areas at higher flood risk and the sequential test report

sets out the analysis ([CD-SD035](#)). It concludes that *'all LPPU new allocations and revised allocations would pass the sequential test.'*

9.8 Therefore, the Council consider that the policies are 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.

Equalities

Q.10 In what way does the plan seek to ensure that due regard is had to the three aims expressed in s149 of the Equality Act 2010 in relation to those who have a relevant protected characteristic?

B&NES Response:

10.1 The Public Sector Equality Duty requires public authorities in carrying out their functions to have due regard to the need to achieve the objectives set out under s149 of the Equality Act to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 An Equality Impact Assessment (EqIA) ([CD-SD029](#)) has been undertaken and updated as the LPPU progressed to support and ensure compliance with the objectives as set out under s149 of the Equality Act 2010. Opportunities were identified to consider equality considerations within the LPPU and these are addressed in the submitted Plan. For example:

- Propose to update Policy H7: Housing Accessibility Standards in line with the most up to date evidence base to provide suitable housing that meets the needs of different groups in the community including disabled people, older people and families with young children.
- Proposed transport policy amendments include updating policy to support inclusive design access for all. Text to transport policies proposes updates to include the principles of inclusive design to support the creation of better places that people can live and spend time in, supporting health and well-being and signposts national guidance supporting access for all.

Superseded policies

Q.11 Is Appendix 1 of the Plan clear in identifying the policies of the existing development plan which would be superseded by the Plan consistent with Regulation 8(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012? What is meant by obsolete in 'New Table 9'?

B&NES Response:

- 11.1 Appendix 1 (pages 229 – 235 of the submitted Plan [CD-SD001](#)) clearly identifies/lists those Core Strategy and Placemaking Plan policies that will be replaced by a new policy (or policies); those Core Strategy & Placemaking Plan policies that will be superseded by the updated version of the same policy; and those Core Strategy/Placemaking Plan policies that will be obsolete i.e. which will no longer be in force or apply upon adoption of the LPPU. In some instances, the title of superseded Core Strategy/Placemaking Plan policies will change and this is clearly indicated in Appendix 1.
- 11.2 The adopted Placemaking Plan (2017)([CD-SD021](#)) Table 2 (page 5) also lists five policies from B&NES Local Plan policies (2007) that were saved alongside the adopted Placemaking Plan policies. In summary, Site V3 Paulton Printing Factory is partly developed and the LPPU Policy SSV22 replaces this with more area specific development requirements. Site K2, NR2 and V8 are already completed and therefore they are considered obsolete (deleted) and no longer need to be saved. B&NES Local Plan Policy GDS.1 was the overarching policy for all site allocations and is considered obsolete and no longer needed.
- 11.3 New Table 9 in Appendix 1 shows Policy SSV2 allocation for South Road Car Park no longer to be allocated for retail led mixed-use development and obsolete (and there is no replacement designation/policy relating to this site).
- 11.4 Therefore, it is Council's view that Appendix 1 of the Plan (the LPPU) is clear in identifying the policies of the existing development plan which would be superseded by the Plan consistent with Regulation 8(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012. New Table 9 and Table 11 show obsolete policies that will no longer apply or be part of the Development Plan once the LPPU is adopted.