



East Cambridgeshire
District Council

East Cambridgeshire Local Plan 2016 – 2036

Matter 1 – Legal Compliance, including Duty to Co-operate

East Cambridgeshire District Council
Hearing Statement

May 2018

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

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

1. Has the Plan been prepared in accordance with the relevant Act and regulations?

Yes, the Council believes so, and it is not aware of any substantive representations suggesting otherwise.

To provide further evidence on this point (albeit these do not cover every single bit of Act and Regulation), our Regulation 22(1)(c) Statement (CD09) summaries how the Local Plan complies with the Regulations in relation to consultation, whilst our Duty to Cooperate Statement (CD15) shows how we engaged with the prescribed bodies and consulted these at various stages of Local Plan preparation.

Local Development Scheme

2. *Has the plan been prepared in accordance with the Local Development Scheme in relation to timing and content?*

In short, yes.

The content and timetable of the Local Plan has been prepared in accordance with the approved Local Development Scheme (LDS) as in force during the period of the Local Plan's preparation, and there have been no significant departures.

The East Cambridgeshire District Council LDS (MO1B) was approved by the Council on 5 October 2017 and came into immediate effect and sets out the timetable for East Cambridgeshire District Council Local Plan preparation for the period 2017 to 2018. It replaces the previous LDS dated 16th July 2015 (MO1A), which had an earlier timetable. The Local Plan is identified in the LDS and the timetable for its production is clearly set out, and the Council has broadly met its timetable.

To keep interested parties informed of progress against the timetable, the Council has, in accordance with provisions set out in the Localism Act, published a live timetable on the Monitoring and Local Development Scheme page of the East Cambridgeshire's website, updated approximately on a monthly basis, showing the state of the Council's compliance with the LDS.

3. *Over what time period does the Plan provide for East Cambridgeshire's development needs?*

As outlined in Policy LP2, for the purpose of residential development, the plan period is 2016 to 2036, whilst for the provision of employment floorspace and new jobs it has a base date of 2014 but the same end date of 2036. See also Q20.

Statement of Community Involvement

4. *Has adequate consultation been carried out in accordance with the Statement of Community Involvement and the relevant Regulations?*

Yes.

For full details, please refer to CD09, which then takes you to other core documents such as CD08 and the suite of 'PS.EVR' reports. Collectively, they confirm that (at the very least) the minimum adequate consultation has taken place.

Sustainability Appraisal

5. *Has the plan been subject to Sustainability Appraisal (SA), including a report on the published plan, which demonstrates, in a transparent manner, how the SA has influenced the evolution of the plan making process? For example, how have the identified impacts on the historic environment, at Kennett and Swaffham Prior affected the allocation of sites (KEN.M1 and SWP.H1)? Has access to community infrastructure, including to education provision, been appropriately assessed within the SA?*

For ease of responding, this has been broken down into three parts:

Has the plan been subject to Sustainability Appraisal (SA), including a report on the published plan, which demonstrates, in a transparent manner, how the SA has influenced the evolution of the plan making process?

The Local Plan for East Cambridgeshire District Council has been subject to comprehensive Sustainability Appraisal at all stages of its preparation. The process started with the Scoping Report which was subject to its required consultation (including statutory authorities) and the final version (CD10) published on our website in December 2015. The Scoping Report sets out framework for assessing proposals and policies against the criteria outlined in it.

During the preparation of the Local Plan, the Council published a draft Sustainability Appraisal report at the various consultation stages of the plan (i.e. at the Preliminary Draft, Further Draft and Proposed Submission stages).

Each of these reports were consulted upon at the same time as the Local Plan, and an opportunity was available for respondents to comment on the emerging SA report and its findings.

At each stage, preparing the SA report was an iterative process, in parallel with preparing the plan to be consulted upon. For example, in drafting the SA report, an assessment of the suitability of emerging policies could be undertaken, and (where appropriate) amending the emerging policies where it would better address SA matters. Similarly, at the appropriate stages, candidate sites were also assessed (alongside the wider site assessment evidence gathered) using the sustainability criteria. This process helped inform the most suitable sites to be put forward in the plan.

The SA work culminated in the publication, at the Proposed Submission Local Plan consultation stage, of a Sustainability Appraisal Report (CD11A) together with a Non-Technical Report (CD11B). Comprehensive information is provided in these reports on how the policies and the sites were assessed including the alternatives considered for the policies and the sites.

The Council was pleased to receive confirmation from Natural England (PS710) that:

“The Sustainability Appraisal (SA) draft report (November 2017) including the SA objectives, assessment methodology and framework generally accord with the requirements of the Planning and Compulsory Purchase Act 2004 and the Strategic Environmental Assessment Regulations. Natural England therefore considers the SA to be legally compliant.”

Notwithstanding the above endorsement, it may be necessary for the SA to be further updated, prior to its final publication, in order to accommodate any modifications which are made to the Local Plan, or to address any minor errors which are identified. Any such substantive amendments to the SA will likely be consulted upon, alongside, it is likely, consultation on any Local Plan potential modifications. This is common practice during an examination stage, though a matter for the Inspector to confirm.

However, at this stage and to use NE’s phrase, fundamentally the SA is considered to be ‘legally compliant’.

For example, how have the identified impacts on the historic environment, at Kennett and Swaffham Prior affected the allocation of sites (KEN.M1 and SWP.H1)?

Having established that the SA is legally compliant, we can now turn to matters of detail within it (and, as stated above, there is the potential for amendments to be made to it, if necessary, during the course of the examination period).

The historic environment, which is the focus of the above question, is primarily considered in the SA via SA Objective 3.1 which is *“Avoid damage to areas and sites designated for their historic interest, and protect their settings.”* Potentially, other SA objectives may have relevance to the historic environment, such as objectives 3.2 (landscape/townscape) and 3.3 (design), but for the purpose of answering the question, the focus is on objective 3.1.

To assist the assessment of policies and proposals, the decision making criteria for 3.1 is stated in the SA Report (page 10) to be *‘Will it protect or enhance sites, features of areas of historical, archaeological, or cultural interest and their settings?’*

All candidate sites were appraised against Objective 3.1 on the above basis.

Kennett site (KEN.M1): the SA Report (p157) identifies this site as having a ‘- -’ rating against Objective 3.1. As explained in table 4 on page 11, this notation is defined as *“Potentially significant adverse impact.”*

Thus, the SA is clearly flagging up a concern, in relation to the historic environment, for this site. The ‘commentary’ at the bottom of p157 reinforces this point: *“There are historic assets on site that would need to mitigate against.”*

However, the SA Report goes on to appraise Policy Kennett4, which is the detailed policy for the implementation of site KEN.M1. That policy is awarded a ‘+’ rating, which is defined on page 11 as meaning *“Policy or proposal supports this objective although it may only have a minor beneficial impact”*. The commentary notes that Policy Kennett4 *“provides requirements to mitigate against potential effects on a range of designated sites”*, which includes the designated scheduled monument.

The reason why Kennett4 is, appropriately, scored ‘positively’ is because of the explicit reference in the policy that development on the site should:

“1. Provide appropriate protection to Howe Hill Bowl Barrow Scheduled Monument in accordance with policy LP27 and national policy;”

Thus, the SA and the Local Plan have done what they are supposed to do: the SA has highlighted an issue with the historic environment, the policy wording in the plan has responded in order to mitigate the matter, and the SA acknowledges that mitigation.

Whilst here is not the place to debate the merits of whether the site should be allocated or not (on which, the impact on the historic environment, taking account of the mitigations set out, is only one of a number of factors to determine such a decision), there appears no question that a proper SA of the matter, in respect of the historic environment and site KEN.M1, has been undertaken.

Swaffham Prior site (SWP.H1): the SA Report (p207) identifies this site as having a ‘-’ rating against Objective 3.1. As explained in table 4 on page 11, this notation is defined as “Policy or proposal appears to conflict with the objective and may result in adverse impacts.”

Thus, the SA is clearly flagging up a concern, in relation to the historic environment, for this site. The ‘commentary’ at the bottom of p207 reinforces this point: *“SWP.H1 could have limited impact on the conservation area and views of the church nearby”*.

The SA Report goes on to appraise Policy Swaffham Prior5, which is the detailed policy for the implementation of site SWP.H1. It is here that an error in the SA might be apparent, because it continues to award the site a ‘-’ scoring, despite the commentary at the bottom of p207 stating “Policy Swaffham Prior5 mitigates issues arising”.

In terms of the historic environment, that commentary appears sound, because Policy Swaffham Prior5 includes the following bullet point:

“a. Have particular regard to the scale, height, design and massing of buildings, in order to preserve and where opportunities arise enhance the conservation area and the listed buildings nearby”

The above policy wording was included in the Local Plan as a direct response to the findings of the SA for this site (i.e. the ‘-’ rating). What the SA should then have done is identify a ‘+’ rating for policy Swaffham Prior5 under objective 3.1, and it should have done so because the policy makes a strong commitment to ensuring development on the site takes account of historic environment matters.

The Council apologise for this error in the SA, and proposes to rectify the scoring prior to the final SA being published.

Notwithstanding this error, and putting aside a wider discussion about the merits of the site (on which, the impact on the historic environment, taking account of the mitigations set out, is only one of a number of factors to determine such a decision), the Council is confident that the ongoing SA preparation directly influenced plan content, as it should do so, and this is reflected in the policy wording of Swaffham Prior5.

“For example”: The Inspector’s question commence with ‘for example’ and lists two sites. It is not clear whether the Inspector has other sites in mind, in addition to the two examples listed. Notwithstanding this uncertainty, in a broad sense, the Council believes its SA preparation has followed a similar pattern to the two examples given, and the SA has appropriately considered historic environment matters, and the plan has appropriately responded (mitigated) where historic environment matters have been raised, via the SA process.

Has access to community infrastructure, including to education provision, been appropriately assessed within the SA?

Yes.

SA Objective 6.1 is “*Improve the quality, range and accessibility of services and facilities (e.g. health, transport, education, training, leisure opportunities)*”

The decision making criteria for this objective (see page 11 of the SA Report) then lists:

- *Will it improve accessibility to key local services and facilities?*
- *Will it improve accessibility by means other than the car?*
- *Will it support and improve community and public transport?*

Other SA objectives are also relevant, particularly in relation to ‘access’, such as 4.1 (which includes reducing travel) and 5.3 (open space);

Thus, the SA objectives clearly cover this point.

These objectives are then fully and appropriately used throughout the SA process, and we are not aware of any substantive suggestions that they have not been.

6. What is the relationship between the SA and the Site Assessment Evidence Report? Is the evidence which underpins the Site Assessment Evidence Report complete, with particular reference to potential flood risk matters and the Water Cycle Study? How has this information the allocation of sites?

Relationship between Sustainability Appraisal and Site Assessment

The Sustainability Appraisal and Site Assessment are separate but related processes. The Sustainability Appraisal assesses sites in the context of the sustainability objectives, whereas the site assessment applies more ‘technical’ criteria. However, without first gathering data through the site assessment process, it would not have been possible to undertake the Sustainability Appraisal. For example, for the sustainability objective to protect land resources, a key metric for this would be whether or not the site is located on high quality agricultural land, as identified by the Site Assessment Evidence Report. Therefore, generally sites which are considered suitable are more likely to be sustainable, and sites found to be not suitable are likely to be inherently unsustainable.

The Site Assessment Evidence Report mainly concentrates on the merits of individual sites (although occasionally sites are discussed in the context of others in the locality). The Sustainability Appraisal provides greater scope to assess a range of options and the cumulative effects of sites.

Completeness of Site Assessment Evidence Report

The Site Assessment Evidence Report is complete. The purpose of the Site Assessment Evidence Report is to present a clear summary of findings from a broad and extensive site assessment process.

Site Assessment was carried out to enable officers to determine the extent to which each site is likely to be suitable for development and likely to be deliverable, by gathering evidence of each site’s attributes. The methodology for assessing sites is explained in the Site Assessment Evidence

Report. Sites were assessed using a variety of data sources, including desk-based analysis, site visits and consultation with technical stakeholders. It has a clear relationship to technical studies, namely the Water Cycle Study and Strategic Flood Risk Assessment Levels 1 and 2, and also incorporates the views of members of the public gathered through public consultation.

Findings from the SFRA Level 1 were incorporated into the Site Assessment Evidence Report. Results from the Water Cycle Study and SFRA Level 2 were more difficult to quantify and incorporate concisely into the Site Assessment Evidence Report. Nonetheless these studies directly informed the allocation of sites and development of site-specific policies.

For a full picture of flood risk and water cycle matters, it is advisable to read the Site Assessment Evidence Report alongside the SFRA Level 1 & 2, the WCS (including newly published addendum) and the Sequential Test. For example, where a developer is working up a planning application, we would expect them to refer to the SFRA and WCS and not rely solely on the Site Assessment Evidence Report for flood and water cycle issues.

Allocation of sites

During the site assessment process, a broad range of assessment criteria were applied. The criteria were selected as they were considered relevant in determining site suitability, were quantifiable and data was available. The initial methodology was published for consultation, and some criteria were amended to reflect the recommendations of stakeholders.

The Site Assessment Evidence Report provides a 'score' (ranked A-E) for each assessment criterion to enable a site's attributes to be understood more clearly. It is important to note that the assessment criteria are not equal to one another, and therefore sites were not allocated based on a 'total score'. The Site Assessment Evidence Report attempts to deal with this by separating criteria into either 'major' or 'minor' categories.

Ultimately, the Council made a judgement about each site's likely suitability and deliverability based on the information gathered through site assessment and the other technical studies.

Only sites which the Council consider to be suitable and deliverable are proposed for allocation. Where there are multiple sites in a settlement, the cumulative effects of those sites are considered through the Sustainability Appraisal. For example, for certain proposed site allocations it is necessary to limit the scale and type of development (through site specific policies) to ensure development is sustainable.

7. Have all reasonable alternatives been considered in terms of policies and sites? Are there any policies where there were no reasonable alternative policy options to consider? If so, what is the justification?

Yes, all **reasonable** alternatives have been considered.

For policies, the SA Report often identifies a number of alternatives which are subsequently appraised.

For sites, the SA Report also appraises a wide number of sites, including rejected sites.

Para 5.3.2 of the SA Report explains further:

“The SA process requires assessment of all ‘reasonable alternatives.’ For some policy areas there are limited or no alternative options, such as many of the environmental policies such as protection of nature conservation sites, and historical assets – for these areas, strategy is dictated by national planning policy. The number of options has been kept manageable and has focused on those aspects where real choices have to be made.”

Where ‘limited’ alternatives exist, this is often limited to a test as to whether the policy or ‘no policy’ performs better, from an SA perspective.

In a rare number of cases, no reasonable alternatives exist. This occurs for some policies in section 7 of the plan, which are specific to a site allocation. To be clear, all reasonable alternative sites have been SA’d, but it would not be realistic to somehow create reasonable alternatives to the subsequent detailed site specific policies. Theoretically ‘alternatives’ could be created for these policies (indeed, an infinite number of alternatives could be created), but this would be a meaningless exercise, as the Council believes the only realistic and reasonable policy, in a broad sense, is the one put forward in the plan. That’s not to say the precise wording of every such policy is perfect in every way; there may be cases as the examination proceeds whereby such policy wording might need adjusting. But there is no realistic alternative to such policies which demands a unique SA to be prepared.

Habitat Regulations Assessment (HRA)

8. *Is it the Council’s intention to seek to address the recommendations of the Habitat Regulations Assessment (HRA) Methodology and Screening document which was produced to accompany the Local Plan? If not, what are the implications of not responding to, and acting upon all the recommendations set out within the HRA?*

Introductory note by the Council: This question (and related HRA questions 9-11) was published prior to the Inspector asking a wider HRA question of the Council on 10 May 2018 (Ref ED009 and the linked ED009A), and prior to the Council’s response on 16 May to that question (Ref ED010).

In short, ED010 is committing the Council to undertake further HRA work, in the form of a full Appropriate Assessment (AA), rather than relying on just a Screening Report (CD13) as submitted. As explained in ED010, that commitment is necessary due to the new EU judgement of April 2018, which over-rules a 10 year old British judgement.

The responses to questions 8-11, therefore, are on the basis that the Council will undertake the work as committed to in ED010.

CD13 will therefore be withdrawn (or superseded) by a new document, which the Council hopes to publish by mid June.

Section 5 of the submitted HRA Screening Report (Nov 2017 – Ref CD13) sets out a series of recommendations to ensure that there will be no likely significant effects, alone or in combination, resulting from the implementation of the East Cambridgeshire Local Plan. Those recommendations are separated into six ‘impact type’ and individual recommendations for each can be found at paragraphs 5.16; 5.34; 5.41; 5.55; 5.69; and 5.90-91.

Of these six, only paragraph 5.34 suggested any further action was needed. i.e. for the other five, the ‘recommendation’ is that no further action is needed.

The Council considered those recommendations, and took the view that the recommendations at para 5.34 were not 'wrong' per se, but were not strictly necessary. The Council took the view that the generic policy requirement of, for example, Policy LP30 (as well as the NPPF and national and international law) sufficiently addressed the substantive recommendations being made, and, in the interest of a succinct Local Plan, there was no need to repeat similar requirements in numerous policies. It still believes this to have been a reasonable stance. However, please see the Council's response to Q10 which predominantly accepts, if the Inspector similarly agrees it necessary to make the plan sound, to action those additional recommendations as set out in paragraph 5.34 (on the assumption that the same recommendations are included in the AA work currently underway, something which the Council presumes will be the case).

In response to the latter part of Q8, it is the Council's view that the *implications of not responding to, and acting upon all the recommendations set out within the HRA*, would be insignificant, because other legal requirements or other policy requirements in the Local Plan adequately addresses these matters. However, if further clarity is deemed necessary, for effectiveness, then more precisely and directly meeting those recommendations in the Local Plan is not objected to by the Council (as confirmed by our response to Q10).

Note: Natural England (at PS708) 'generally agrees' with recommendations at two of the six (5.41 and 5.55), 'generally agrees' with recommendations at 5.16 except for Ouse Washes (which is a matter discussed in Q9), appears content, subject to minor confirmation, in respect of a further two recommendations (5.69 and 5.90-91), which only leaves those recommendations at 5.34, against which it does make representations (which are covered by Q10).

9. *Is the Plan's strategy and distribution of development positively prepared, justified, effective, consistent with the national policy, and the recommendations of the HRA? Have the likely combined or cumulative adverse recreational impacts of the distribution of development; an increased population; and the potential impact of the loss or physical damage of supporting habitat been appropriately assessed in relation to the relevant sites of international significance? How have NE's Impact Risk Zones informed the HRA? Is it appropriate, in the interests of certainty and consistent with the Habitats Regulations, that sites be allocated within the Local Plan, which require project based HRAs, where there is the potential that these may preclude development? If so, are there any risks to the development strategy of the plan?*

For ease of responding, this question has been broken down into four parts:

Is the Plan's strategy and distribution of development positively prepared, justified, effective, consistent with the national policy, and the recommendations of the HRA?

Please see our response to Matter 2 for wider strategy and distribution questions and the Council's response. However, in respect of whether the strategy and distribution is consistent with the recommendations of the HRA, then the Council firmly believes it is so.

There is no doubt that East Cambridgeshire (and surrounding area) is blessed with a number of internationally important (and designated) habitats, and a land-use Local Plan must carefully consider and have regard to protecting such habitats.

However, there is no evidence in the submitted HRA Screening Report (or, we anticipate, in the forthcoming AA) to suggest, as a matter of principle, the overarching strategy and distribution of

development will, or could potentially, result in a significant adverse effect on such designated habitats. Natural England (NE) similarly make no such suggestion. Indeed, NE (PS652) state:

“Natural England generally finds the Local Plan to be legally compliant, positively prepared, justified, effective and consistent with national planning policy.”

However, and unsurprising as a result of the high number of habitats in the locality, it is also important that the detailed wording of the plan, and the specific allocations in the plan, similarly will result in no significant effects on the designated habitats sites. And it is this detail which the submitted HRA Screening report makes recommendations (and the forthcoming AA will similarly) and, likewise, NE’s comments are focussed upon these detail matters.

Have the likely combined or cumulative adverse recreational impacts of the distribution of development; an increased population; and the potential impact of the loss or physical damage of supporting habitat been appropriately assessed in relation to the relevant sites of international significance?

In an overarching sense, yes they have been appropriately assessed, and this is confirmed by NE (PS708):

“we generally agree with the assessment of effects of policies alone, and in-combination, described in sections 4 and 5 of the document”

However, again, there are a number of detailed matters raised by NE, and the Council responds to those detailed matters via other questions raised in Matter 1.

How have NE’s Impact Risk Zones informed the HRA?

It is firstly worth reminding ourselves what IRZs are. In NE own words¹, they are:

“The Impact Risk Zones (IRZs) are a GIS tool developed by Natural England to make a rapid initial assessment of the potential risks to SSSIs posed by development proposals. They define zones around each SSSI which reflect the particular sensitivities of the features for which it is notified and indicate the types of development proposal which could potentially have adverse impacts.”

IRZs are also primarily used for planning applications purposes, rather than plan making. And, it has to be remembered that, for example, an allocation for development which falls into an IRZ does not automatically mean any harm might arise. It is also worth highlighting that, as confirmed by the above quote, many IRZs relate to SSSIs only, not European protected habitats, and as such many IRZs are therefore not relevant to the HRA.

Nevertheless, IRZs can, where applicable, be a useful reference point for HRA related work, and accordingly they were, when useful to do so, considered as part of the submitted HRA Screening Report (and will be used for the AA work). For example, para 5.27 of the Submitted HRA Screening Report refers to the IRZ for the Breckland Farmland SSSI. However, fundamentally, the IRZs were not the main source of information for dictating the outcome and recommendations of the submitted HRA Screening Report, and the Council has never been advised (by NE or anyone else) that they should be so.

Turning to the specific *Goose and Swan Functional Land IRZ*, the Council was not previously aware of it until raised by NE in its representation, and the Council is not clear precisely when this IRZ was

¹ NE http://www.magic.gov.uk/Metadata_for_magic/SSSI%20IRZ%20User%20Guidance%20MAGIC.pdf

published. This specific IRZ is also, at the time of writing, not readily accessible to the public to view (the 'magic' website, which is the main public source of IRZs, does not readily identify this specific IRZ). As such, it is not surprising that the submitted HRA Screening Report (or the Local Plan itself) makes no reference to it, nor took account of it.

Following some exchanges with NE over April and May, NE were able to produce a map of the applicable IRZ. That map now provides clarity to the original representation made by NE, which was as follows:

“Natural England’s Impact Risk Zones (IRZs) have been recently updated to identify land which is functionally linked to the Ouse Washes Special Protection Area (SPA) and Ramsar site. These areas, identified through a British Trust for Ornithology (BTO) research project, are regularly used by Ouse Washes qualifying species, particularly swans, for foraging and roosting. Since these areas are considered to be functionally linked to the European site they require appropriate consideration under the Conservation (of Habitats and Species) Regulations 2010 (as amended). Whilst the Mepal and Sutton allocations appear to fall outside of the Goose and Swan Functional Land IRZ, Littleport allocations are located within this zone. We are aware that one of the allocations was submitted for planning permission recently and the ecological assessment confirmed no records of swans using the site and adjacent land and that it is considered nearby roads and dwellings are likely to make the site less attractive to these species. Natural England advocates a similar approach to other development allocations in and around Littleport. We therefore advise that the HRA includes a recommendation for Littleport policies to include a requirement for project-level HRA to demonstrate that proposed development will not have any adverse effect on Ouse Washes functional land in accordance with the requirements of the Habitats Regulations. The Littleport policies should be amended accordingly.”

Now we have receipt of the IRZ, a small number of allocated sites (residential and employment) fall within it, though sites which are brownfield or have formal consent have been excluded. The list of sites therefore are:

Parish	Site Ref	Site name / address	Proposed Use	Status	Greenfield / Brownfield
Ely CP	ELY.M1	Land to the north of Ely	Mixed use	Site with part extant permission + Local Plan 2015 allocation. Not the whole site has consent.	G
Littleport CP	LIT.E1	Land at Wisbech Road	Employment	Draft site allocation	Mix
Littleport CP	LIT.E2	Existing employment allocation, land west of 150 Wisbech Road	Employment	Local Plan 2015 allocation	G
Littleport CP	LIT.H5	Land west of Highfields, Littleport	Housing	Resolution to grant planning permission	G
Littleport CP	LIT.M1	Housing / employment allocation, west of Woodfen Road	Mixed use	Local Plan 2015 allocation	G
Littleport CP	LIT.M2	Land south of Grange Lane	Mixed use	Draft site allocation	G

For all these sites, the Council accepts NE advice, set out above, that “*these areas are considered to be functionally linked to the European site [therefore] they require appropriate consideration under the Conservation (of Habitats and Species) Regulations 2010 (as amended)*” and as such (and taking account of the Council’s response to Q8), each of the above sites needs identifying in the Local Plan as a site which will require HRA work to be undertaken. To do this, for each of the sites listed above, the following standard bullet point will be added to the applicable policy:

- **“Undertake a project level Habitats Regulation Assessment Screening to identify whether the land affected by the proposed development is regularly used by qualifying species (especially foraging and roosting swans) of the Ouse Washes SPA / Ramsar site and whether the proposal will have a likely significant effect. Where this identifies a likely significant effect, applicants will be required to submit sufficient information for a project level Appropriate Assessment to be undertaken by the District Council under the Habitats Regulation Assessment process to ensure there will be no adverse impacts on European sites.”**

In addition, in the supporting text to LP30, add a paragraph as follows:

“6.10.4 In addition to land specifically designated, land beyond the designated site boundary may also provide important functional habitat for qualifying bird species. This land requires appropriate consideration under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats, &c.) Regulations 2010 (as amended). Natural England’s Goose and Swan Functional Land IRZ identifies land which is functionally linked to the Ouse Washes Special Protection Area (SPA) and Ramsar site. Land within this IRZ area, identified through a British Trust for Ornithology (BTO) research project, has the potential of being regularly used by Ouse Washes qualifying species, particularly swans, for foraging and roosting. An indicative map of the area is shown on the following page. Since the IRZ area is considered to be potentially functionally linked to the European designated site, development in this area requires appropriate consideration under the Conservation (of Habitats and Species) Regulations 2010 (as amended). As such, any greenfield ‘major development’ (see glossary) within the IRZ must undertake a project-level HRA to demonstrate that proposed development will not have any adverse effect on Ouse Washes functional land in accordance with the requirements of the Habitats Regulations. Where this applies to specific allocations in this plan, a bullet point has been included to draw the need for such an HRA to the applicants (and decision maker’s) attention.”

In addition, the Council is proposing the AA should make reference to the *Goose and Swan Functional Land IRZ* in appropriate places, and likely include the following recommendation:

“5.16 The Local Plan includes a strong policy framework that will ensure new development protects designated habitats and species, and delivers a net gain in biodiversity where possible, in accordance with the NPPF. However, in relation to site allocations within the Goose and Swan Functional Land IRZ, as set out in Proposed Submission Local Plan, the Plan has, using the precautionary principle, the potential to result in significant effects on the functional land of the Ouse Washes. It is therefore recommended that the Local Plan adopts a precautionary approach and includes a requirement for applicable allocation site policies (i.e. sites within the Goose and Swan Functional Land IRZ) to include a requirement for a project-level HRA screening to demonstrate that proposed development will not have any adverse effect on Ouse Washes functional land.”

Is it appropriate, in the interests of certainty and consistent with the Habitats Regulations, that sites be allocated within the Local Plan, which require project based HRAs where there is the potential that these may preclude development? If so, are there any risks to the development strategy of the plan?

It is entirely reasonable, and common practice, for sites to be allocated in a Local Plan which require project based HRAs at the planning application stage. The current adopted 2015 Local Plan has a number of such examples (eg ELY1; FRD5; FRD6; LIT1; and LIT2), and other Local Plans do similarly so (eg see Peterborough Core Strategy, 2009, Policy CS7²).

The reason why it is acceptable to do so is two-fold:

- First, the purpose of a Local Plan is to be 'strategic'. It cannot possibly undertake the full assessment which would come at the planning application stage (for a host of matters, not just habitat related). What needs to be done, when preparing a Local Plan, is the undertaking of sufficient, proportionate evidence gathering to be reasonably certain that a development scheme is likely to be able to come forward on a particular site, within the framework set by the policy.
- Second, it is accepted that a site should not be allocated for development in a Local Plan if there is no reasonable prospect of it being delivered (eg if it would highly unlikely 'pass' a project level HRA). However, if the conclusion is reached that there is a reasonable prospect of a site being delivered (taking account of any policy requirements placed on that site), then it is not unreasonable for a policy to require a detailed piece of work to be undertaken at the planning application stage, to ensure the detailed delivery of a site would not cause harm. This can include the requirement for a project level HRA (in the same way a planning application would often require a detailed assessment of highway, landscaping, heritage or a host of other matters).

Thus, theoretically, any site which is allocated with a policy requirement for a project level HRA might, as a result of that project level HRA, have development precluded, but that is not the anticipated outcome of the project level HRA. The purpose and outcome of the project level HRA is to ensure, for example, the detailed layout, scale and compensator measures (such as on site open space) are appropriately provided.

If, in the unlikely event, a project level HRA results in an allocated site being prevented from coming forward (in whole or substantial part), then this would be a matter for a plan review to consider. But this is no different to a detailed site specific study done at a planning application stage for matters relating to, for example, the highway network, archaeology or a previously unrecorded protected species on site.

Overall, therefore, applying a requirement to undertake project level HRAs for some of the allocations in the Plan results in a theoretical risk to the delivery of the strategy of the plan, but that risk is minimal, reasonable to accept and is manageable.

Natural England clearly shares the sentiments of the Council's response to this question; indeed, it specifically support policies where such a requirement is included, and it seeks similar wording for a few other allocated sites.

Please see the SoCG agreed between ECDC and NE, which is consistent with the responses set out to this question.

² <https://www.peterborough.gov.uk/council/planning-and-development/planning-policies/local-development-plan/>

10. Is there sufficient evidence to support the conclusion, that there is unlikely to be additional recreational use of Devil's Dyke, Ouse Washes, Wicken Fen and Chippenham Fen, as a result of new developments, and therefore, there would not be consequential significant adverse effects. If there is not, and taking the precautionary approach, what would be the appropriate mechanism to mitigate the impacts of the proposed development within the 8 km zones of influence of accessible European sites and throughout the wider district?

The submitted HRA Screening Report (CD13) carefully considers the matter of potential recreational pressure on designated habitats, as will the forthcoming AA report. As para 5.17 of CD13 states:

“Recreational use of a N2K site has the potential to disturb sensitive species, cause damage of habitats through trampling and cause eutrophication as a result of dog fouling”

(Note: 'N2K' is shorthand used throughout the HRA for applicable designated sites).

However, as para 5.18 then states (with examples of how thereafter given):

“recreational use can be managed and not cause a significant problem”,

The submitted HRA Screening Report (CD13), at para 5.19 to 5.34, then undertakes a more detailed analysis of recreational pressure, including the proposed mitigation measures, and reaches a conclusion (after 5.34) that:

“It can reasonably be concluded, after taking into account the above mitigation measures and consideration of other plans, that there will be no likely significant effects, alone or in combination, resulting from recreational pressure through the implementation of the East Cambridgeshire Local Plan.”

NE has subsequently made representations on this conclusion, as part of its formal representations:

“Natural England disagrees with this [i.e. the conclusion at 5.34] given the information presented within Table 13: this indicates a significant number of additional dwellings (and individuals, using the 2.8 occupancy per dwelling multiplier) within the assumed 8km zones of influence (Zol) of accessible European sites.”

NE goes on to state:

“No specific mitigation measures are identified, such as financial contributions, to address impacts from development within these Zol alone. Whilst we welcome the use of Zol to predict impacts these should be evidence based, particularly to inform assessment under the Habitats Regulations. In the absence of such evidence currently, and applying the precautionary approach advocated under the Habitats Regulations, it would seem reasonable to include a requirement for all residential development within the district to implement / provide a contribution towards implementation of appropriate projects in the Cambridgeshire Green Infrastructure Strategy 2011 (or any revision to this document). This will ensure that the impacts of recreational pressure associated with proposed development, including any residual effects, are adequately addressed in accordance with the Habitats Regulations.”

The Council disputes NE's position at the representations stage, for reasons set out below, but please see the more recent SoCG on these matters.

First, to claim ‘no specific mitigation measures are identified’ is not correct – para 5.32-5.33 of the submitted HRA Screening Report, which is specifically entitled ‘Mitigation measures in the plan’, sets out clear and specific mitigation measures which the plan proposes.

Second, on top of the mitigation measures set out in the Plan (and identified in the submitted HRA Screening Report), NE consider it ‘reasonable’ for ‘all residential development’ (i.e. 1+ dwelling it is assumed) to ‘implement / provide a contribution towards implementation of appropriate projects in the Cambridgeshire Green Infrastructure Strategy 2011’. Taken literally, NE’s request is not appropriate (and therefore not ‘reasonable’), because the Council could not lawfully introduce some form of ‘roof tax’ via the developer contribution system, whereby every dwelling (as NE suggest) has to financially pay into a fund, which was subsequently used to help deliver the GI Strategy. To attempt to introduce such a roof tax would be contrary to CIL Regulations 123(3) which limits pooling to five contributions to the same infrastructure type or project. Even if the projects in the GI Strategy were broken down and individually used (thereby increasing the number of pooled contributions from 5 overall, to 5 for each project), there is some doubt this may be lawful and meet wider CIL regulations and, more importantly, even if lawful, the 5 contribution restriction would soon quickly be reached for every East Cambridgeshire based project in the GI strategy in any event.

Third, it is not at all clear that, even if a financial contribution from all dwellings was lawful, spending such funds on projects listed in the GI Strategy would have the desired ‘mitigating’ effect in any event. The ‘target projects’ (listed at page 4 of Appendix 15 of the GI Strategy) are focussed around the three main settlements of Ely, Littleport and Soham. As such, it is not clear how a dwelling in Swaffham Prior (near to Devils Dyke) financially contributing to a GI Strategy project several miles away would have the desired effect of reducing recreational pressure on Devils Dyke.

Thus, taking only NE’s representations into account (but not the subsequent SoCG), we were left with a situation which was broadly this: NE believed the Plan had the potential of a significant adverse effect on designated sites, arising from increased recreational pressure, citing insufficient mitigations measures. The Council disagreed, in principle, and found NE’s recommended additional mitigation measures, as set out in its representations, to be inappropriate and unlawful.

To move things forward, however, the Council agrees to the following **four actions**:

First, as suggested by the submitted HRA Screening Report recommendation at para 5.34, **Burwell1** should recognise Devil’s Dyke as a SSSI and a designated N2K site. This is not considered strictly necessary to make the plan ‘sound’ and, in the Council’s view, is merely an ‘additional (minor) modification’.

Second, partly reflecting the suggestion by the submitted HRA Screening Report recommendation at para 5.34, Policy **Isleham4** could, due to the scale of this allocation, be slightly adjusted in relation to considering the effects of increased recreational pressure on N2K sites. More specifically, Policy Isleham4 could be amended so the first bullet reads:

“ a. An area of approximately 1.0 - 1.5 ha to be gifted to the Parish Council for the purpose of recreational facilities (such as new football pitch(es)), located adjacent to the existing recreational facilities. **Subject to the outcome of a satisfactory project level Habitats Regulation Assessment, as prepared by the applicant, other** ~~Other~~ open space policy requirements are relaxed, except for on-site provision of toddler play areas and informal green spaces/landscaping, unless it is deemed necessary to provide additional open space to mitigate any adverse effects on any designated national or international site;”

Third, partly reflecting a suggestion by the submitted HRA Screening Report recommendation at para 5.34, the Policy wording for **Littleport6** be strengthened in relation to open space provision, green infrastructure and a 'net gain' in biodiversity. More specifically:

- "f. The requirement for 'Informal Open Space' (as set out by LP21) should be met predominantly in the southern portion of the site, including a new Country Park **of a scale and quality to attract residents from the whole of Littleport**, thereby creating a significant area of **strategic scale** landscaping and open space;
- g. A significant net biodiversity gain, together with a well connected Green Infrastructure Network **(i.e. internal connections, as well as connections to the wider network)**;"

The Council does not see it appropriate to stipulate in Policy Littleport6 a precise % land take at this stage (i.e. not the 40% as mentioned in the submitted HRA Screening Report), because this should be a matter determined at the planning application stage.

Fourth, and going beyond the final recommendation at para 5.34 of the submitted HRA Screening Report which referred only to Soham, include a modification to Policy LP21 (Open Space, Sport and Recreational Facilities), Part B (Major Development Proposals), so that Part B reads as follows:

"Subject to any limitations set by legislation, for some major development proposals, and especially any such proposal within an assumed 8km zone of influence of Devil's Dyke SAC and Breckland SPA (see indicative Diagram on page x), it may be necessary to provide open space, outdoor sport and recreational facilities in excess of Part A requirements, with those instances being where it is identified that such additional provision is needed to mitigate the effects of increased recreational pressure on nationally or internationally designated biodiversity sites. This 'in excess', which would need to be agreed with the Council (potentially in consultation with Natural England), could be on-site, off-site and/or include a financial contribution to the delivery of a project as set out in the Cambridgeshire Green Infrastructure Strategy (2011 or successor document)."

The reason why only Devil's Dyke and Breckland are listed above (rather than all designated sites) is because the Site Improvement Plan for Breckland lists public access and recreational pressure as a threat, and (whilst not specifically mentioned in its Site Improvement Plan) Natural England has stated that recreational pressure is an issue for the Devil's Dyke site. All other designated sites do not list public access and recreational pressure as a vulnerability. Confirmation of these details are identified in the submitted HRA Screening Report (CD13) at paras 5.20-5.25. Therefore, it would be unreasonable to seek an 'excess' contribution from a development site within 8km of a site which is not recognised as having a recreational pressure problem. It is also worth noting that, for example, at Ouse Washes and Wicken Fen, visitors are actively managed (with Wicken Fen in particular actively encouraging visitors, and has, for example, recently substantially expanded its car park to facilitate further visitors).

The Council believes that, taken as a whole, and subject to the outcome of the forthcoming AA, the mitigation measures already included in the Local Plan (as identified in the submitted HRA Screening Report (CD13) from paragraph 5.32) combined with the above actions is sufficient to support a conclusion that there is unlikely to be additional recreational use of Devil's Dyke, Ouse Washes, Wicken Fen and Chippenham Fen, as a result of new developments, and, therefore, there would not be consequential significant adverse effects

Please see the SoCG agreed between ECDC and NE, which is consistent with the responses set out to this question.

11. Is there evidence to demonstrate the level and distribution of growth proposed would not have an adverse impact on the aquifers linked to any of the Natura 2000 sites? Does the potential reduction of water quality, identified by NE within its representations, impact on the recommendations of the HRA?

By way of introduction, NE's representation (PS708 - in part) referred to in this question states as follows:

“Section 5.60 of the report identifies that Anglian Water’s Water Resources Management Plan (WRMP) was subject to HRA and this concluded that the preferred schemes (for delivery of water services to meet development needs) in the Ely, Newmarket and Cheveley Water Resource Zones (WRZs) (which supply most of East Cambridgeshire) would not result in adverse effects on the integrity of European sites. The report states that this implies that there should be no requirement for adverse levels of water abstraction from any of the aquifers connected to N2K sites. Clarification that this is the case, for the level of growth being proposed through the Local Plan, should be provided. We would welcome confirmation from EA and/or water companies, through the HRA, on this matter.”

Further, it states:

“We are pleased that the East Cambridgeshire Water Cycle Study was updated in October 2017 to inform the Further Draft Local Plan. We note that this has confirmed that, with mitigation through policy requirements for relevant development to deliver / contribute to necessary sewage treatment works upgrades, water quality effects would not be a constraint to growth at any of the Water Recycling Centres (WRCs) assessed. Whilst this approach poses a potential risk to the deliverability of those sites, Natural England considers that these policy safeguards are sufficient to demonstrate no adverse effect to European sites through deterioration in water quality.”

These statements by NE, taken alone, would indicate the answer to the question is positive – that there would not be an adverse impact and there is no impact on the recommendations of the HRA.

However, our understanding of the question asked is that it is more complex than simply referring to NEs representations.

The question, as we understand it, also relates to:

- First, the clarification sought by NE in the first paragraph quoted above
- Second, the representations made by the Environment Agency (PS857) and its concerns over the quality of the Water Cycle Study (WCS).

Taking each in turn:

Clarification sought by NE:

This part of NEs representation is, as we interpret it and in simple terms, checking whether new development would result in adverse levels of water abstraction from any of the aquifers connected to designated sites.

The submitted HRA Screening Report states (para 5.56) *“Development within East Cambridgeshire will increase demand for water. Increased water abstraction for new development has the potential to impact on aquifers...”*

Para 5.60 then states:

“5.60 Water companies have a statutory duty to establish how planned development in their area can be serviced. Anglian Water’s 2015 WRMP demonstrates the pressures on water resources throughout the Anglian Water supply area. The area is divided into 19 Water Resource Zones (WRZs) of which East Cambridgeshire is mainly supplied from three; The Ely, Newmarket and Cheveley. The WRMP aims to set out the company’s 25-year strategy for maintaining the balance between supply and demand in a region at risk from population growth, climate change and growing environment needs. Both Ely and Cheveley WRZs were forecast a deficit in supply for the WRMP period to 2040. The WRMP sets out preferred schemes in each WRZ to maintain the supply demand balance. The WRMP was subject to HRA during its preparation. The HRA concluded that the preferred schemes in the Ely, Newmarket and Cheveley WRZs would not result in adverse effects on the integrity of European Sites. This implies that there should be no requirement for adverse levels of water abstraction from any of the aquifers connected to N2K sites.”

Confirmation was sought from EA and AW (1 May 2018). EA and AW responses are provided at Appendix 1. These confirms that, for example, even for the emerging WRMP (2019) (which takes account of the growth proposed in the submitted Local Plan), there continues to be no likelihood of any significant adverse effect (subject to mitigation). (*Please note: the HRA work for the WRMP 2019 was a full AA, and hence does not fall foul of the EU ruling on taking into account mitigation.*)

We believe this provides the Inspector with the ‘clarification’ as suggested by NE.

Representations made by the Environment Agency (PS857) and its concerns over the quality of the Water Cycle Study (WCS):

In essence, this is about whether EAs concerns are well founded, and if so would that mean NEs conclusions, as quoted above, still be NEs conclusions? i.e. would NE have made the same representations if it had known about EAs concerns over the WCS?

To put it another way,

- will there be any decline in water quality (a concern highlighted by EA)?
- if so, will this have any impact on European sites?
- if so, how this should be addressed within the HRA / the Local Plan?

EA representation PS587 states (in part):

“The two main issues we have identified at this stage are:

- *the WCS identifies that the full quantum of growth identified for Littleport cannot be accommodated in the local WRC without causing a deterioration in local river quality. The evidence base therefore clearly suggests that implementing the Plan as it stands is predicted to lead to a breach of the Water Framework Directive. This is not acceptable.*
- *similarly, the WCS demonstrates that at Burwell, environmental capacity is considered to be a constraint to growth.*

No further assessments have been carried out to identify measures or actions that might resolve these issues. The respective Policies for Places in the Plan do not identify these constraints and as a consequence do not offer any mitigating actions that might prevent a breach of environmental legislation. Despite some excellent statements and Policies to protect and enhance the local environment, the WCS (key evidence base to support the Local Plan) does not adequately demonstrate that those Policies can be delivered in a

number of locations. Worse still, the WCS actually demonstrates that in some locations the Policies cannot be adhered to and delivering the Plan will likely lead to a breach of environmental legislation.”

The EA representations are therefore concerned primarily with the Water Framework Directive (WFD), rather than the Habitats Directive. Nonetheless, there is the potential for these two strands to interlink. For example, if the WFD is breached, due to worsening water quality, then potentially a ‘significant adverse effect’ on a designated site may also arise, which is a HRA matter. This might occur if, for example, the deteriorating water course is linked in some way to the designated habitat site.

To answer the Inspector’s question, therefore, we must first look at addressing the concerns expressed in PS708.

In our letter to the Inspector on 18 March (ED003) the Council stated (in part):

In respect of the Environment Agency (EA) representations, we have commenced engagement with the EA in respect of determining more precisely what its concerns are, and what may need addressing. We were a little surprised by the EA’s representations, because (contrary to their representations) engagement did continue during 2017 with the organisation, beyond February 2017. A number of staff changes / availability at EA has perhaps confused matters.

Nevertheless, we have also engaged with our consultants, in order to determine how best to address the concerns of the EA. That said, it should be noted that the method of the Water Cycle Study (WCS) was agreed with EA, and it is a method used successfully elsewhere.

Overall, our preliminary view is that some additional work will likely be needed in respect of the WCS (particular in relation to clarifying the situation in Littleport and Burwell), but this will not be so extensive or fundamental as to delay matters or require significant suggested amendments to the Local Plan as submitted. Our initial view is that it is more a matter of clarifying the WCS, perhaps via an ‘addendum’ to the WCS.

Subsequent to the above update, additional work was commissioned from our consultants (the scope and methodology of which was agreed with the EA). In light of EA’s comments, the aim of this WCS Addendum report is to principally assess the impacts of proposed growth on water quality at Littleport and Burwell WRCs.

The Council has received the WCS Addendum Report, but is currently awaiting final comments and agreement from EA before publishing it. EA were consulted on the scope and methodology of the WCS Addendum project, and discussions with EA on the findings are indicating that the report is likely to adequately address EA’s concerns regarding water quality. We anticipate publishing the report by 1 June 2018. Nevertheless, and provided the report is not unexpectedly fundamentally amended because of a currently unraised concern of EA, the following headline conclusions are drawn from the WCS Addendum Report:

For Burwell WRC, the Addendum report predicts deterioration in ammonia greater than 10% as a result of planned growth. However this can be addressed through treatment within Technologically Achievable Limits and does not result in WFD class deterioration. GES/GEP (Good Ecological Status/Potential) can be met for ammonia and Biological Oxygen Demand (BOD) determinands. For phosphates proposed growth should not prevent the waterbody from meeting GES/GEP in the future, if mid-good class upstream is achieved.

For Littleport WRC, the WCS addendum concludes that all residential growth proposed within the Local Plan period can be accommodated at the works. The impacts on water quality from employment growth will vary depending on the specific use classes and the associated job density. As such employment growth must be carefully managed. The additional 600 homes at LIT.M2 (i.e. the 600 homes proposed beyond the plan period, and not required to meet the housing requirements of the plan period) and certain employment growth scenarios can also be accommodated with the inclusion of mitigation measures, for example waste water transfer to the Ely (Old) WRC. This possible mitigation option has also been assessed and the WCS Addendum concludes that there is capacity to accommodate already planned growth at Ely, plus additional growth at Littleport, both at the WRCs and within the water environment. The WCS Addendum demonstrates there will be no WFD class deterioration or deterioration greater than 10% in any determinand. GES/GEP can be met for both ammonia and BOD determinands, and for phosphate where mid-good class upstream is achieved.

As such, the Council does not believe there will be any breach of water quality arising from the implementation of this Plan (when taking account of the wide variety of safeguards and legislation that applies), and accordingly the conclusion of the submitted HRA Screening Report (which will in all likelihood be repeated or evidence strengthened in the replacement Appropriate Assessment), in respect of water quality, remains robust.

However, as a precautionary measure, the following two modifications are suggested as an extra safeguard:

For Policy Littleport6 (Site LIT.M2), add an additional bullet point as follows:

- **Evidence must be submitted to demonstrate that waste water can be appropriately dealt with, in accordance with due legislation and policy requirements, and that such measures to appropriately deal with waste water are viable and deliverable when taking into account the need to provide other necessary infrastructure (including affordable housing). If suitable, viable and deliverable mitigation measures are not available for the full 1,200 dwellings envisaged on this site, then the scale of development on this site may be limited to a point between 600-1,200 dwellings, that point being where viable and deliverable measures can be provided.**

For Policy Littleport7 (site LIT.E1), add an additional bullet point as follows:

- **Evidence must be submitted to demonstrate that waste water can be appropriately dealt with, in accordance with due legislation and policy requirements, and that such measures to appropriately deal with waste water are viable and deliverable when taking into account the need to provide other necessary infrastructure. If suitable, viable and deliverable mitigation measures are not available, then the type and scale of development on this site may be limited to those employment uses which have a lower demand for water/waste water than other types of employment uses.**

We have very recently approached EA with the above two suggested modifications. Subject to consideration of the WCS Addendum report, EA has initially suggested the proposed modifications appear logical. However, the above two suggestions should be considered provisional, and subject to comments received from the EA.

As a final comment for Q11, all matters raised in the above response will be taken into account in the forthcoming AA, which NE (and other parties) will have an opportunity to review.

Climate Change

12. Whether the overarching strategy of the Local Plan is designed to secure the development and use of land which contributes to the mitigation of, and adaptation to, climate change consistent with S19 (1A) of the Planning and Compulsory Purchase Act 2004?

The Council considers the Local Plan to be consistent with section 19 (1A) of the Planning and Compulsory Purchase Act 2004, which requires local planning authorities to address climate change in preparing Development Plan Documents:

“Development Plan Documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation, and adaptation to, climate change”³.

The Local Plan addresses climate change through its Vision, Objectives, Spatial Strategy and a number of Development Management policies. It has taken into account the requirements of the NPPF and accompanying Planning Practice Guidance in relation to climate change, and has been rigorously tested against climate change objectives through a process of Sustainability Appraisal (SA) (see CD10, CD11A and CD11B).

Strategic Objectives and the Vision: The Objectives for the Plan specifically seek to ensure that the future growth of East Cambridgeshire contributes to the mitigation and adaptation to climate change. There are 3 relevant Objectives: reduce emissions of greenhouse gasses and other pollutants, minimise waste production and support the recycling of waste products and; limit or reduce vulnerability to the effects of climate change (including flooding).

The Plan’s Vision (see last paragraph) recognises the challenges presented by climate change and seeks to embrace these, with new development being located and designed to minimise resource and energy use and reduce the risk of flooding.

Spatial Strategy: Section 3 of the Plan sets out the overall spatial strategy for meeting East Cambridgeshire’s needs to 2036.

Policies LP2: Level and Distribution of Growth and LP3: The Settlement Hierarchy and the Countryside, seek to focus the majority of new residential development in the main settlements of Ely, Littleport and Soham, and the large villages, which have the best access to and range of employment, services and facilities, thus reducing the need to travel by car and providing access to sustainable travel options, including walking and cycling. The SA identifies that this approach is likely to result in minor positive and significant positive effects in relation to the climate change SA objectives (4.1, 4.2 and 4.3).

Site Allocations: When assessing potential site allocations for residential development, the Council has taken full account of flood risk (see Site Assessment Evidence Report (PE13)). Sites where more than 50% of the site area fell within flood zone 3a or 3b were assessed as having a high risk of environmental harm. The Sequential Test (PE19) ensured flood risk was taken into account in the selection of the preferred site allocations.

Development Management Policies: A number of the Development Management policies in the Plan seek to contribute to the mitigation and/or adaptation of climate change.

³ <https://www.legislation.gov.uk/ukpga/2004/5/section/19>

Chapter 5 of the Plan seeks to ensure that appropriate infrastructure is provided to support new development.

Policy LP17: Creating a Sustainable, Efficient and Resilient Transport Network, requires development proposals to take opportunities to reduce the need to travel, prioritise sustainable travel modes, seek to improve sustainable transport links into market towns from the rural area and, be resilient to the effects of climate change. Policy LP20: Delivering Green Infrastructure, Trees and Woodland places emphasis on the need to maintain, improve and expand the Green Infrastructure network and tree and woodland cover, recognising the range of benefits that they provide to climate change adaptation, including storm water attenuation and shade.

Chapter 6 of the Plan sets out key policies which promote design responses to the challenges of climate change.

Policy LP22: Achieving Design Excellence requires proposals to be adaptable over their planned lifespan, to make effective and efficient use of land and buildings and to incorporate facilities for electric plug-in and other ultra-low emission vehicles. LP23: Water Efficiency responds to a key issue of the Plan; that East Cambridgeshire is in an area of water stress, and as such, development must include water efficiency measures to minimise impact on the water environment. LP24: Renewable and Low Carbon Energy Development sets out the council's expectations in relation to the energy hierarchy, with the council's preference being reducing demand through the design and location of development. Policy LP25: Managing Water Resources and Flood Risk sets out how the council will ensure that new development does not increase the risk of flooding to other areas, that the development will be safe from flooding during its lifetime and measures to protect the water environment. Policy LP30 addresses the importance of maintaining an ecological network of designated sites, habitats and wildlife corridors, necessary to prevent fragmentation and loss of connectivity so that species can adapt to climate change.

Sustainability Appraisal and the Evidence Base: The Plan has been subject to SA, incorporating the requirements of the Strategic Environmental Assessment, throughout its development. Policies and site allocation reasonable alternatives were tested against the SA Framework, which specifically includes objectives on mitigating and adapting to climate change (see SA objectives 4.1 to 4.3). At each stage of the Local Plan, the findings of the SA have played an integral part in refining options and policy wording for both sites and policies.

The Plan is also supported by evidence that considers climate change related issues, specifically the Water Cycle Study (PE17) and the Strategic Flood Risk Assessment (PE18).

Duty to Co-operate

13. Notwithstanding that no prescribed body has made any representation, either during or outside of a formal consultation stage, which states that they have a specific concern under the Duty to Co-operate, has the Plan been prepared in accordance with the Duty to Co-operate? Specifically, has the Council discharged its duty to maximise the effectiveness of the plan- making process in relation to strategic matters, including development and infrastructure requirements, flooding and other cross- boundary issues and strategic priorities, including those of the Greater Cambridgeshire Greater Peterborough Local Enterprise Partnership (LEP) and Natural Cambridgeshire (LNP), as well as other prescribed bodies such as Highways England (HE), the Environment Agency (EA), Historic England (Hist E) and Natural England (NE)?

Yes it has.

Please see CD15 for full details.

14. How has the Council engaged with all its neighbours and the County Council in considering and identifying matters of strategic importance in the preparation of the plan? What is the significance and practical implication of the Cambridgeshire and Peterborough Devolution Deal (PE33) in relation to matters of strategic significance to the submitted Local Plan, including housing and transport matters?

For the first part of this question, see CD15, CD9, PE02 and PE03, for instance.

Overall, the Council is confident it has engaged with all its neighbours and the County Council in considering and identifying matters of strategic importance in the preparation of the plan.

For the second part of the question, the significance and practical implication of the Cambridgeshire and Peterborough Devolution Deal (PE33) is of relevance to the preparation of the Plan.

It is worth reminding ourselves who 'signed' the deal. It was signed at Full Council level of all applicable districts, plus the LEP and, crucially, Government itself. The deal was also extensively consulted upon before signing.

The deal subsequently resulted in the legislation to create the Combined Authority.

That said, the vast majority of the contents of PE33 are not relevant, as it covers a wide range of matters of no relevance to the preparation of the Local Plan.

Turning to what is relevant, the deal makes broad statements such as (emphasis added):

"[the CA will use] powers and infrastructure resources devolved from central government, alongside public and private investment, to substantially increase housing delivery" (para 14)

This is common theme in the deal – i.e. delivering homes and infrastructure quicker than has been the case in the past. There is nothing in the deal, for currently being prepared Local Plans, to increase housing targets, for example.

However, the deal does make strong commitments (see 22e) to:

“Work with Community Land Trusts to deliver new schemes recognising the benefits these schemes bring to the community”

This has no direct implication on the Local Plan, other than reinforcing what the Local Plan already proposes in policy LP5.

Most important is the commitment in the deal at 22(d), where it refers to:

“...a new Community Land Trust Scheme in East Cambridgeshire (Kennett 500 – 1,000 new homes)”

The significance and practical implications of this statement (or ‘weight’ to be attached to it), is discussed in evidence document PS.EVR.KEN. The Council considers considerable weight should be applied.

From para 25 of the deal, ambitions relating to strategic transport are raised. This includes para 33 which states:

“The Combined Authority recognises the significance of Ely Southern Bypass, the A14/A142 junction and upgrades to the A10, and the potential to unlock commercial and housing growth in East Cambridgeshire and beyond.”

This is obviously just a broad statement of intent, but, since the Deal was agreed, it is evident that the CA has followed through on this statement with a series of studies and proposals being investigated relating to strategic transport, as evidenced in PE28 (Evidence Report on Strategic Transport).

Overall, the Council firmly believes the Deal to be of significance in preparing the plan, and its intentions set out are positive to help the delivery of homes and infrastructure. However, from a direct practical perspective, it is the reference to the Kennett scheme which is of most relevance (a matter further discussed under Matter 2).

15. How has the Council demonstrated active and sustained engagement consistent with the Duty to Co-operate following the agreement in 2013 of the formal Memorandum of Co-operation: Supporting the Spatial Response and the Strategic Spatial Priorities Addressing the Duty to Co-operate across Cambridgeshire and Peterborough 2014? Do the strategic matters identified remain relevant; do the means of co-operation remain appropriate; and is the approach taken consistent with National Policy as a means of addressing the strategic issues facing East Cambridgeshire, and the wider region, within the plan period? Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraph 179 of the Framework, and is the premise that East Cambridgeshire’s development needs cannot be wholly met within its boundaries justified by evidence?

For ease of responding, this is broken down into two questions:

How has the Council demonstrated active and sustained engagement consistent with the Duty to Co-operate following the agreement in 2013 of the formal Memorandum of Co-operation: Supporting the Spatial Response and the Strategic Spatial Priorities Addressing the Duty to Co-operate across Cambridgeshire and Peterborough 2014? Do the strategic

matters identified remain relevant; do the means of co-operation remain appropriate; and is the approach taken consistent with National Policy as a means of addressing the strategic issues facing East Cambridgeshire, and the wider region, within the plan period?

CD15 gives an overview to demonstrate the Council has sustained engagement in respect of the MoC.

Appendix 2 sets out specific letters to DtC bodies at the Preliminary Draft and Further Draft stages (including to the signatures of the MoC). Note, in both cases, it explicitly refers to the 1,500 transfer to Peterborough.

No objections or substantive issues have been raised by any such body in respect of the MoC or the 1,500 transfer to Peterborough at any of those two consultation stages.

Nevertheless, in responding to other (non DTC bodies) representations received, confirmation that the transfer to Peterborough remained a sound objective was confirmed in a statement by the three main affected bodies – see PE04 – which was consulted upon with all the MoC partners before it was finalised. No MoC body objected to its continued operation.

It should be noted that there is only so far an authority can go to demonstrate compliance with the DtC. If a council repeatedly asks DtC bodies, in simple terms, ‘do you have any concerns with x’ and no body raises any such concerns, it would not be sensible or proportionate to persistently actively engage on a topic which everyone is in agreement with.

Moving forward, the MoC will, in time, and for future rounds of plan making, be highly likely replaced by a ‘spatial plan’ for the Combined Authority (whether that be non-statutory, as is now, or statutory). But, for the time being, and for plans across Cambridgeshire-Peterborough being prepared now, the MoC remains a sound, up to date and agreed statement, and is consistent with national policy (as confirmed by the previous Local Plan Inspector), against which it is right that the East Cambridgeshire Local Plan confirms to.

Indeed, to NOT conform to it, would likely lead to a substantial concerns under the DtC.

Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraph 179 of the Framework, and is the premise that East Cambridgeshire’s development needs cannot be wholly met within its boundaries justified by evidence?

Para 179 states:

179. Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans. Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework. As part of this process, they should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.

The Council, and its submitted Local Plan, is entirely in conformity with this paragraph, as the following illustrates:

“should work collaboratively”

– see PE02, PE03, PE04, PE05, PE33, by way of example.

“clearly reflected in individual Local Plans”

- all Cambridgeshire and Peterborough Local Plans, adopted or emerging since the MoC, are entirely consistent with the MoC.

“Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas”

– the full development requirements are met, and the rationale for some limited redistribution agreed by two Local Plan Inspectors already⁴

For the transfer of housing requirement to Peterborough to be classed as ‘unsound’ in this emerging Local Plan, the Inspector will have to conclude that the following applies:

- (a) That the two previous Local Plan Inspectors were wrong to state that the transfer does broadly accord with general sustainable development principles and were wrong to state that the transfer is reasonable and consistent with the NPPF.
- (b) That compelling evidence does exist to take a different view from the two previous Inspectors. (If it does exist, the Council is not aware of it.)
- (c) That the full need is not being met, as a consequence of the arrangement. (This is clearly not the case – the Inspectors accepted that Peterborough was taking the redistributed housing in its adopted plan, and the recently submitted Peterborough Local Plan continues to explicitly take that redistributed growth.)

A further consequence of the Inspector rejecting the continued redistribution of growth, if that was to be the conclusion of the Inspector, would be that the Inspector was also determining that the submitted Peterborough Local Plan was unsound, because such a plan relies on receiving the redistributed growth.

Finally, by way of reminder, no DtC body has objected to the redistribution, and the Combined Authority’s representation (PS678) explicitly “welcomes and supports the proposed East Cambridgeshire Local Plan as an important and timely contributor to the county’s forthcoming growth needs”.

It is respectfully requested that it is not appropriate, as part of this examination, to attempt to undermine past Inspector decisions when, since such decisions:

- national policy has not changed;
- no evidence exist to suggest the approach should change;

⁴ ECDC Local Plan Inspector report, 2015:

27...*In functional terms, I have seen no evidence that providing an element of the Cambridge HMA’s needs within Peterborough would conflict with the Framework’s sustainable development objectives. Indeed, given Peterborough’s accessibility, infrastructure availability and range of service provision, this arrangement would broadly accord with general sustainable development principles.*

28...*In view of the close relationship between the Cambridge and Peterborough HMAs, the intended provision of 2,500 dwellings across the HMA boundary does not therefore appear either unreasonable or inconsistent with the overall policy thrust of the Framework.*

- no objections from DtC bodies has been received;
- a supporting representation from the Combined Authority has been received; and
- other adopted and emerging plans in the area are consistent with the arrangement (and would be undermined by the East Cambridgeshire Local Plan unilaterally withdrawing from the arrangement).

16. *Is the evidence accompanying the Plan which relates to matters of cross boundary and strategic matters, including housing and transport matters, proportionate; sufficiently up-to-date, and have the final versions of all reports been provided?*

In short, yes, to all those questions.

For housing, see question 15 and elsewhere.

For transport, see PE28.

However, in respect of PE28 and particularly in relation to representations received by the County Council, it was decided prudent to supplement PE28 with a further and more detailed analysis of the impact of the proposals in the Local Plan, and especially, as is suggested by the County Council, whether or not the Local Plan has a 'more dispersed' pattern of growth, and if it does, what implications are there.

That supplementary report has been prepared, and is submitted alongside this Statement. Subject to the Inspector's agreement, the Council would like to add the document to the primary evidence base, label it PE28a, sitting alongside PE28.

That Supplementary Report concludes that the impact of the proposals set out in the submitted Local Plan are negligible on the strategic transport network, with the possible exception of Kennett. For Kennett, site specific evidence will be available prior to the Hearing sessions, the supplementary report notes, and this is anticipated to confirm that a strategic site at Kennett has available and deliverable solutions to mitigate any impact on the strategic highway network. For the district as a whole, the supplementary report notes, in support of its conclusion, that the overall 'net gain' in housing is so small (just 122 once Kennett removed), and that localised 'net gains' and 'net losses' are so small and mostly cancel each other out in a geographically linked location.

Appendix 1

From: Mugova, Elizabeth [mailto: [REDACTED]]
Sent: 09 May 2018 13:32
To: Richard Kay < [REDACTED] >
Subject: RE: East Cambs Local Plan - Inspector q11

Richard

Thanks for your email.

Anglian Water Services abstractions were assessed in the Habitats Directive Review of Consents (HD RoC) at full licensed rates. There is no likelihood that licensed quantities will be increased, so the conclusions of HD RoC still stand. Abstraction effects on Chippenham Fen SSSI which is part of Fenland SAC and a Ramsar site are mitigated by our Lodes Granta groundwater support scheme, the effectiveness of which was studied in detail for the fen as part of the review.

I hope this helps.

Kind regards
Elizabeth

Elizabeth Mugova
Sustainable Places
East Anglia Area (West)

From: Patience Stewart
Sent: 01 May 2018 14:16
To: Richard Kay <>; [REDACTED]@environment-agency.gov.uk' [REDACTED]
[REDACTED]; 'Mugova, Elizabeth' < [REDACTED] >
Subject: RE: East Cambs Local Plan - Inspector q11

Hi Richard,

As you may be aware Anglian Water is currently consulting on a Draft Water Resource Management Plan (WRMP) to replace the current approved WRMP. This is based in part upon the scale of growth identified in the emerging East Cambridgeshire Local Plan.

A new Habitats Regulation Assessment and Appropriate Assessment (where required) has been produced to support the preparation of the Draft WRMP.

Further details of relating to the Draft WRMP 2018 and associated technical documents including the HRA and Appropriate Assessment are available to view at the following address:

<http://www.anglianwater.co.uk/about-us/draft-water-resources-management-plan-2019.aspx>

The conclusions for Cheveley, Ely and Newmarket WRZs set out in these reports are as follows:

WRZ name	Principal Planning Solution	Extended (future proofed scenario)	Adaptive planning scenario
Cheveley	No likely significant effects on European sites	No likely significant effects on European sites	No likely significant effects on European sites
Ely	No likely significant effects on European sites	No likely significant effects on European sites	No likely significant effects on European sites
Newmarket	Potential likely effects on European site – appropriate assessment required	Potential likely effects on European site – appropriate assessment required	Potential likely effects on European site – appropriate assessment required

In the case of Newmarket WRZ it is considered that given the impacts on Fenland SAC and Chippenham Fen Ramsar site are expected to temporary as these will occur during construction only. The Appropriate Assessment report refers to appropriate mitigation to be incorporated into the design (page 53 of the Appropriate Assessment report).

In effect there is expected to be no significant adverse impacts on the integrity of the European sites, if the suggested mitigation measures are implemented (page 56 of the Appropriate Assessment report).

I hope this helps to answer Natural England’s query – should you require any further information please let me know.

Regards,
Stewart Patience
 Spatial Planning Manager



**EAST CAMBRIDGESHIRE
DISTRICT COUNCIL**

THE GRANGE, NUTHOLT LANE,
ELY, CAMBRIDGESHIRE CB7 4EE

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DX41001 ELY Fax: (01353) 665240
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By email

*This matter is being dealt with by: Richard Kay,
Strategic Planning Manager*

Telephone: 01353 616263
E-mail: richard.kay@eastcambs.gov.uk
My Ref: PDLP/Consult&Engagement
Your ref

Date: 12 February 2016

Dear Sir / Madam

RE: East Cambridgeshire Local Plan Preliminary Draft and Duty to Cooperate

I am writing to inform you that East Cambridgeshire District Council (ECDC) is consulting on a new East Cambridgeshire Local Plan. This is an important document as it will determine what East Cambridgeshire will look like in the future and how it will become an even better place to live work and visit.

Consultation on the Local Plan will take place between **12 February and 24 March 2016**. Full details are available on our website at: <http://www.eastcambs.gov.uk/local-development-framework/local-plan-review> where you can read and comment on the plan and view all supporting documents (from 12 February onwards) including the Sustainability Appraisal.

I am writing to you not only to invite your comments on the Preliminary Draft version of the Local Plan, but also to seek your views under the Duty to Corporate requirements section 33A of the Planning Compulsory Purchase Act (2011).

The Objectively Assessed Need (OAN) for East Cambridgeshire has been determined through the preparation of a report by the Research Unit at Cambridgeshire County Council, which is available on our website. The report suggests that the OAN figure for East Cambridgeshire is 14,300 dwellings per year between 2014 and 2036, albeit the Local Plan is planning for 12,800, reflecting the 2013 'memorandum of cooperation' between various local authorities to reduce the East Cambridgeshire housing requirement by 1,500 dwellings.

More widely, in our opinion, there is nothing in the emerging plan that amounts to a "strategic matter" as defined in section 33A and as a result, there is no requirement for any joint plan preparation or associated activities.

We would be grateful if you would confirm that you agree to the above position or, if not, to let us know, with your reasoning, why a joint approach or joint plan would be appropriate, or that the redistribution of 1,500 homes should no longer occur. If no reply is received by 11.59pm on 24 March 2016 then it will be assumed that you have no objections.

Comments on the Local Plan can be made:

- online at: <http://eastcambs-consult.objective.co.uk>
- by emailing the Consultation Response Form (Form A) to: planningpolicy@eastcambs.gov.uk
- or by post to the above address.

As part of the consultation process we are also requesting:

- New Sites for future development
- Any amendments to development envelopes or
- Any sites to be considered as a Local Green Space.

Any preferred sites or boundary changes, or Local Green Spaces will be consulted on at the further draft stage in the summer.

Full details are available on our website at <http://www.eastcambs.gov.uk/local-development-framework/local-plan-review>.

The deadline for comments is 11.59pm on 24 March 2016. If no reply is received by this deadline then it will be assumed that you have no objections.

Yours faithfully

Richard Kay
Strategic Planning Manager
East Cambridgeshire District Council



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

THE GRANGE, NUTHOLT LANE,
ELY, CAMBRIDGESHIRE CB7 4EE

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By email

*This matter is being dealt with by: Richard Kay,
Strategic Planning Manager*

Telephone: 01353 616263

E-mail: richard.kay@eastcambs.gov.uk

My Ref:

Your ref

Date: 12 January 2017

Dear Sir / Madam

RE: East Cambridgeshire Local Plan Further Draft and Duty to Cooperate

I am writing to inform you that East Cambridgeshire District Council (ECDC) is consulting for a second time on an emerging new East Cambridgeshire Local Plan. This is an important document as it will determine what East Cambridgeshire will look like in the future and how it will become an even better place to live work and visit.

Consultation on the Further Draft Local Plan will take place between **12 January to 22 February 2017**. Full details are available on our website at: <http://www.eastcambs.gov.uk/local-development-framework/local-plan-review> where you can read and comment on the plan and view all supporting documents (from 12 January onwards) including the Sustainability Appraisal.

I am writing to you not only to invite your comments on the Further Draft version of the Local Plan, but also to seek your views under the Duty to Cooperate requirements section 33A of the Planning Compulsory Purchase Act (2011).

The Objectively Assessed Need (OAN) for East Cambridgeshire has been determined through the preparation of a further report (dated October 2016) by the Research Unit at Cambridgeshire County Council, which is available on our website. The report suggests that the OAN figure for East Cambridgeshire is 12,900 dwellings between 2014 and 2036, albeit the Local Plan is planning for 11,400, reflecting the 2013 'memorandum of cooperation' between various local authorities to reduce the East Cambridgeshire housing requirement by 1,500 dwellings.

More widely, in our opinion, there is nothing in the emerging plan that amounts to a "strategic matter" as defined in section 33A and as a result, there is no requirement for any joint plan preparation or associated activities.

We would be grateful if you would confirm that you agree to the above position or, if not, to let us know, with your reasoning, why a joint approach or joint plan would be appropriate, or that the redistribution of 1,500 homes should no longer occur. If no reply is received by 11.59pm on 22 February 2017 then it will be assumed that you have no objections.

Comments on the Local Plan can be made:

- online at: <http://eastcambs-consult.objective.co.uk>
- by emailing the Consultation Response Form (Form F) to: planningpolicy@eastcambs.gov.uk
- or by post to the above address.

Full details are available on our website at <http://www.eastcambs.gov.uk/local-development-framework/local-plan-review>.

The deadline for comments is 11.59pm on 22 February 2017. If no reply is received by this deadline then it will be assumed that you have no objections.

Yours faithfully

Richard Kay
Strategic Planning Manager
East Cambridgeshire District Council