

Examination of the North Hertfordshire Local Plan (2011-2031)

Examination hearing sessions

Statement of North Hertfordshire District Council

Matter 19 – The natural environment (Policies SP11, SP12, NE1, NE2, NE3, NE4, NE5, NE6, NE7, NE8, NE9, NE10, NE11 and NE12)

19.1 Is Policy SP11 justified, effective and consistent with national policy? Is it appropriate to embed the Water Framework Directive within the policy?

1. Yes. The policy sets the Council's strategic aims and reflects the findings of a wide range of evidence studies and other guidance including the Sustainability Appraisal (LP4), the Strategic Flood Risk Assessment Update 2016 (NE12 a-e), the Strategic Flood Risk Assessment 2008 (NHE13 a-c), Royston Sewage Treatment Works Water Cycle Study (TI9), Rye Meads Water Cycle Strategy (TI10), Rye Meads Water Cycle Strategy Review (TI11) as well as the Contaminated Land Statutory Guidance¹, the Water Framework Directive² and the Thames and Anglian River Basin Management Plans (that implement the Water Framework Directive)³.
2. SP11 (LP1, p.53 *as proposed to be amended by* LP3, p.3) will be effective as the policy has been developed in conjunction with statutory consultees, including Natural England and the Environment Agency. This has resulted in the proposed additional criteria to SP11 to work with utilities providers, East Hertfordshire District Council and relevant agencies to ensure additional wastewater treatment capacity is delivered without harm to protected European sites. This is additionally referred to in the proposed addition to the corresponding supporting text, which also makes reference to the capacity at Rye Meads Sewage Treatment Works (LP3, p.3).
3. The policy is consistent with paragraphs 97, 100 and 109 of the NPPF in relation to renewable and low carbon energy, flood risk and land contamination respectively as well as PPG.
4. The Council considers it appropriate to refer to the principles of the Water Framework Directive within part c of the policy given its statutory basis and implications for the River Basin Management Plans.
5. The Council's Matter 1 statement also addresses issues relating to the Rye Meads Wastewater Treatment Works in the context of the Habitats Directive.

¹ (DEFRA, 2012), <https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

² As set out at <http://jncc.defra.gov.uk/page-1375>

³ <https://www.gov.uk/government/collections/river-basin-management-plans-2015>

19.2 Is Policy NE1 justified, effective and consistent with national policy? In particular:

a) In criterion a. what are the “guidelines identified for built development and landscape management” referred to?

6. The policy is justified by the North Hertfordshire Landscape Study (CG16) along with a number of area specific landscape evidence base documents comprising:
- Land south of Little Wymondley : Landscape Sensitivity Study (CG2)
 - Land north of Baldock : Landscape Opportunities and Constraints Plan (CG3),
 - Land north of Baldock : Landscape Sensitivity Study (CG4)
 - Land north of Letchworth : Landscape Opportunities and Constraints Plan (CG5)
 - Land north of Letchworth : Landscape Sensitivity Study (CG6)
 - Land south west of Hitchin: Landscape Sensitivity Study Part 1 (CG7)
 - Land north of Stevenage : Landscape Sensitivity Study Part 1 (CG8)
 - Land north of Stevenage : Landscape Sensitivity Study Part 2 (CG9)
 - SNAP North - Landscape opportunity mapping (CG10)
 - Summary Landscape Assessment - North of Stevenage (CG11)
 - Summary Landscape Assessment - North East of Stevenage (CG12)
 - Summary Landscape Assessment - West of Stevenage (CG13)
 - Summary Landscape Assessment - Rush Green (CG14)
 - East of Luton Landscape Report (CG15)
7. The policy will be effective in requiring development proposals to consider the long term management and maintenance of any existing and proposed landscaping at part d. of the policy. The policy also enables a degree of flexibility by referring more generally to ‘guidelines’ within criterion a. of the policy, which will in turn ensure that these can be updated as required.
8. The policy is consistent with the requirements outlined in paragraphs 109 and 113 of the NPPF.
9. In relation to criteria a. the guidelines that are being referred to are set out in the North Hertfordshire Landscape Study. The Council recognises that this could be made clearer and so is proposing the following modification to paragraph 11.3 of the Plan (LP1, p.110):

The **guidelines referred to in part a. of the policy originate from the North Hertfordshire Landscape Study** is **which provides** an assessment of the character of the landscape within the District...

b) Does the policy, in effect, give development plan status to those guidelines? If so, is that an appropriate approach?

10. The guidelines do not in the Council’s view have Development Plan status as they are intended to provide more broad principles and do not apply to all sites. They also stem from the North Hertfordshire Landscape Study, which is an evidence based study used

to inform rather than prescribe policy. For consistency with other similar policies of the plan and effectiveness it is proposed to modify criterion a to read:

“Respect the sensitivities of the relevant landscape character area and ~~accord with~~ **have regard to** the guidelines identified for built development and landscape management;”

19.3 Is Policy NE2 justified, effective and consistent with national policy?

11. Yes. The policy is justified by the general requirements of the NPPF in relation to green infrastructure, having specific regard to particular assets within North Hertfordshire (LP1, paragraph 11.7, p.111), as informed by the North Hertfordshire District Green Infrastructure Plan (HE15). It will be effective as it requires both a plan for long term maintenance and management at part c., as well as mitigation measures where needed at part d. of the policy. These would be secured via planning conditions or obligations. The policy is consistent with national policy, namely paragraphs 99 and 114 of the NPPF.

19.4 Is Policy NE3 justified, effective and consistent with national policy? In particular:

a) Does the policy, in effect, give development plan status to the Chilterns AONB Management Plan? If so, is that an appropriate approach?

12. Yes. The policy is justified by the Chilterns AONB Management Plan as well as the Chilterns Building Design Guide and technical notes.

13. It will be effective as it has been developed with the input of the Chilterns Conservation Board. Further to this, part d. of the policy requires practical and financial contributions towards management plan delivery and part f. requires avoidance of adverse impacts or mitigation measures. The policy has been developed as a standard policy with other local authorities whose areas include the Chilterns AONB and this enables greater consistency and therefore effectiveness.

14. The policy is consistent with paragraph 115 of the NPPF that refers to Areas of Outstanding Natural Beauty.

15. It is not the intention of the policy to give Development Plan status to the Chilterns AONB Management Plan. While the management plan is a statutory document, as defined by the Countryside and Rights of Way Act 2000, and was adopted by the Council in January 2015. a minor change to the wording of criterion d of policy NE3 is proposed to ensure that appropriate consideration of the management plan is given.

d ~~“Meets the aims of~~ **Has regard to** the statutory Chilterns AONB Management Plan, making practical and financial contributions towards management plan delivery as appropriate.”

b) Does the policy, in effect, give development plan status to the Chilterns Building Design Guide and technical notes? If so, is that an appropriate approach?

16. No. It is not the intention of the policy to assign Development Plan status to the Chilterns Building Design Guide. This guide will be a material consideration in the determination of relevant applications. For consistency with other similar policies of the plan and effectiveness it is proposed to modify criterion e to read:

~~Complies with~~ **Has regard to** the Chilterns Building Design Guide...

19.5 Is Policy NE4 justified, effective and consistent with national policy?

17. Yes. The policy is justified on the basis of the findings of the North Hertfordshire Open Space Review and Standards (OSC4), the North Hertfordshire Playing Pitch Strategy Assessment Report (OSC1) and A Green Space Management Strategy for North Hertfordshire (ORD2).

18. These documents set out the levels of provision of different types of open space as well as the quality and accessibility of these spaces.

19. The policy is effective in making provision for mitigation measures and financial contributions where requirements are met at part b. of the policy. This is also referred to in the Schedule of Proposed Additional Modifications (LP3, p.5) in relation to paragraph 11.33, p. 116 of the Submission Local Plan, to enable adequate flexibility when considering development proposals.

20. The policy is consistent with the NPPF as the evidence base fulfils the provisions made in paragraphs 73 and 74 of the NPPF.

21. The Regulation 22 Consultation Statement (LP6, p.33) reports the recommendation that the policy should be amended to ensure that the criteria accord with the NPPF and provide a framework for assessing proposals for outdoor sports facilities in practice. The Council considers that Policy NE4 is consistent with the NPPF and that Policy NE5 provides a clear policy direction in terms of assessing proposals for outdoor sports facilities. The Council therefore does not propose any further modifications in this regard.

19.6 Is Policy NE5 justified, effective and consistent with national policy? In particular:

a) should what constitutes 'relevant development proposals' be included in the policy itself?

22. Yes. The policy is justified on the basis of the findings of the North Hertfordshire Open Space Review and Standards (OSC4), the North Hertfordshire Playing Pitch Strategy Assessment Report (OSC1) and A Green Space Management Strategy for North Hertfordshire (ORD2).
23. The policy will be effective in not only requiring on-site provision where appropriate, but enabling flexibility for financial contributions. There is also a requirement at part d. of the policy for development proposals to be accompanied by a long term maintenance and management plan, which will ensure that the policy is effective.
24. The policy is consistent with national policy as it sets out a criteria based policy in line with paragraph 113 of the NPPF. It also sets out a requirement to contribute to net gains in accordance with paragraph 109 of the NPPF.
25. Including the definition of relevant development proposals within the supporting text rather than the policy itself is seen as appropriate as this allows for flexibility for thresholds to change over the lifetime of the plan to reflect new evidence, changes in national policy or the Council's approach(es) to the adoption and / or management of new green spaces or other relevant circumstances.

b) What is the justification for the thresholds of 'relevant development proposals' set out in paragraph 11.21? Are these thresholds appropriate?

26. The thresholds have been established to ensure that larger schemes contribute towards open space provision. Schemes of this size are more capable of contributing towards meaningful, manageable and, where appropriate, adoptable open space provision (or contributions thereto). In the case of developer contributions, the current regulations restrict pooling to a maximum of five sites. Seeking contributions from all sites results in small 'pots' of funding for which it can be difficult to identify substantive improvements.
27. By way of example, application of the standards and assumed occupancy levels in OSC4 (p.37-38) to a scheme of 200 homes (i.e. the lowest point at which the threshold is triggered) leads to requirements for approximately:
- 0.67ha to 1ha of multifunctional space
 - 0.2 to 0.3 sites for children and young people's provision
 - 0.5ha to 0.8ha of outdoor sport; and
 - 0.08ha to 0.13ha of allotments (approximately 3 to 5 plots)⁴

⁴ Bottom end of range based on wholly flatted 1- and 2-bed scheme. Top end of range based upon 200 unit scheme meeting the 60% larger / 40% smaller unit mix specific in paragraph 8.20 of LP1.

28. Notwithstanding this point, the third bullet point of paragraph 11.21 (LP1, p.115) does acknowledge that there may be exceptions to these required thresholds, which allows deficiencies to be addressed, and to enable flexibility when considering individual development proposals.
29. OSC4 further recognises (paragraphs 15.40 to 15.41) that incidental landscaping to ensure good design, Sustainable Urban Drainage Systems or other green infrastructure may still be required under other policies of the plan. The thresholds should therefore not be read as meaning any developments of a lower order would be devoid of open spaces.
30. The Council's viability assessment includes implicit consideration of open space standards. It includes (TI2, paragraph 2.3.1, p.23) a fixed level of planning obligations equivalent to £100/m² for site-specific and off-site requirements where applicable. The assessment of the strategic sites is additionally conducted on a 'surplus' basis where the residual value above the fixed land cost is the amount available for s106 site mitigation or planning obligations (paragraph 2.4.4, p.26).

19.7 Is Policy NE6 justified, effective and consistent with national policy? In particular, does it make distinctions between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status, as paragraph 113 of the National Planning Policy Framework indicates?

31. Yes. It is justified given the number and status of designated biodiversity sites in the District, the data for which is regularly supplied and updated from the Hertfordshire Environmental Records Centre. It is also justified on the basis of the Planning for biodiversity and the natural environment in Hertfordshire: guiding principles (ORD3) and the Sustainability Appraisal (LP4), in ensuring adequate processes are followed and mitigation measures put in place where needed.
32. The policy will be effective given the on-going involvement from Natural England and the Hertfordshire and Middlesex Wildlife Trust in developing the policy. There is also an objective requirement at parts b. and d. of the policy for development proposals to be accompanied by an ecological survey and a long term management plan, which will ensure effectiveness. This addresses responses raised as set out in the Regulation 22 Consultation Statement (LP6, p.33).
33. Policy NE6, as written in LP1, is consistent with paragraph 113 of the NPPF in setting out the hierarchy of designations. It should be noted that the Schedule of Proposed Additional Modifications (LP3, p. 6) suggests that this hierarchy be moved to Policy SP12 to ensure it is enshrined in the Council's strategic policies.
34. The policy also sets out the mitigation hierarchy in accordance with paragraph 118 of the NPPF, and paragraphs 11.41-11.45 of the policy provide further detail on the hierarchy of sites within North Hertfordshire. The policy will be interpreted and applied on a case-by-case basis having regard to the status of any affected site(s).

19.8 Is Policy NE7 justified, effective and consistent with national policy?

35. Yes. The policy is justified in terms of the Sustainability Appraisal (LP4), the Strategic Flood Risk Assessment Update 2016 (NE12 a-e) and the Strategic Flood Risk Assessment 2008 (NHE13 a-c).
36. The policy will be effective as it establishes a clear criteria-based approach to reducing flood risk. Its effectiveness will be further increased by the proposed additional text within Policy NE7 (LP3, p.7). These were informed by advice provided by the Environment Agency and the Bedfordshire & River Ivel Internal Drainage Board (IDB) at Proposed Submission consultation stage.
37. The inclusion of the above additional modifications, will additionally bolster conformity with national policy, namely paragraphs 100 and 101 of the NPPF. The policy is also consistent with PPG in relation to climate change as part a. of the policy requires the application of the sequential and exception tests.
38. The Environment Agency have confirmed (MOU5) that, subject to the changes detailed in LP3, policy NE7 provides a sound basis for the protection and enhancement of the environment over the plan period.

19.9 Is Policy NE8 justified, effective and consistent with national policy? In particular:

a) Is the aim of criteria a. to secure the most sustainable drainage solution that is technically feasible and/or viable?

39. The policy is justified in terms of the findings of the Sustainability Appraisal (LP4), the Strategic Flood Risk Assessment Update 2016 (NE12 a-e) and the Strategic Flood Risk Assessment 2008 (NHE13 a-c).
40. The policy will be effective as it applies the Sustainable Drainage Hierarchy as required by PPG, which allows for the consideration of different methods of SuDS. It also requires working in conjunction with the Lead Local Flood Authority, the Environment Agency and the Internal Drainage Boards (subject to amendment proposed in LP3, p.7).
41. The policy is consistent with paragraphs 103 of the NPPF, and the proposed inclusion of Internal Drainage Boards (see above) will ensure greater consistency with paragraph 100 of the NPPF and PPG.
42. A proposed modification to NE8(a) seeks to secure the most appropriate sustainable drainage solution (LP3, p.7). Whilst this may be the most appropriate due to technical or viability considerations, this is not limited to these considerations only. For example, as set out in PPG, particular types of sustainable drainage systems may not be practicable in all locations.

43. PPG also outlines that the decision on whether a sustainable drainage system would be inappropriate is a matter of judgement for the local planning authority with advice from the relevant flood risk management bodies (principally the lead local flood authority), including on what sort of sustainable drainage system they would consider reasonably practicable.

b) Will permission only be granted where developers have consulted with the Lead Local Flood Authority at the earliest opportunity? If so, is that reasonable?

44. PPG states that where surface water or other local flood risks are likely to significantly affect a proposed development site, early discussions between the planning authority and the developer will help to identify the flood risk issues that the authority would expect to see addressed in the planning application and accompanying site-specific flood risk assessment. In the Council's view addressing such issues would require involvement from the lead local flood authority at an early stage.

45. However, including this within policy effectively requires all applicants to engage pre-application advice. This is a discretionary activity in preparing planning applications and it is accepted that including a firm stipulation in policy would be unreasonable. It is proposed that the broad thrust of this advice is retained but moved from the policy to the supporting text. This leads to:

- The **deletion** of criterion d from Policy NE8; and
- The addition of a new sentence at the end of Paragraph 11.59 (LP1, p.121) to read **“Developers should consult with the Lead Local Flood Authority and / or the Internal Drainage Board at the earliest possible opportunity, to ensure SuDS are incorporated at the design stage.”**

19.10 Is Policy NE9 justified, effective and consistent with national policy? In particular:

a) What is the justification for a minimum 9 metre wide undeveloped buffer zone from all designated main rivers?

46. Yes. The broad principles and aims of Policy NE9 are justified, effective and consistent with national policy. It is justified by the Sustainability Appraisal (LP4) and the Environment Agency standing advice. The policy will be effective as it establishes clear thresholds for buffer zones and reflects the Environment Agency standing advice.

47. The policy is consistent with national policy as PPG in relation to climate change states that flexibility should be built in to allow future adaptation if it is needed, such as setting back new development from rivers so that it does not make it harder to improve flood defences in future.

48. However, following further advice, the Council wishes to propose a modification to the buffer zone in criterion (a) from designated main rivers from 9m to 8m. This brings it in line with Environment Agency standard advice and the approach proposed or adopted in a number of nearby Local Plans.

b) What is the justification for a minimum 5 metre wide undeveloped buffer zone for ordinary watercourses? What are 'ordinary watercourses'?

49. An ordinary watercourse is defined as a watercourse which does not form part of a main river. A watercourse includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers and passages through which water flows, but may not hold water all the time⁵.

50. Hertfordshire County Council is the authority which deals with applications for ordinary watercourse land drainage consent in Hertfordshire, except for the area of the district covered by the Bedfordshire and Ivel Internal Drainage Board (IDB).

51. Although there are no prescribed buffer zones for all ordinary watercourses, the IDB's byelaws require maintenance of a minimum 7m wide buffer zone.

52. The supporting text to NE9 (LP1, p.122) sets out a range of reasons why, in general terms, it is desirable to maintain clearance from ordinary watercourses. In line with other policies of the plan, watercourses (and their proposed buffer zones) also provide an opportunity to maintain or enhance green infrastructure corridors, particularly where they lie within sites proposed for development. A minimum 5m clearance for all watercourses is therefore considered appropriate.

19.11 Is Policy NE10 justified, effective and consistent with national policy?

53. Yes. It is justified on the basis of the statutory requirements of the Water Framework Directive, the Thames and Anglian River Basin Management Plans (that implement the Water Framework Directive), the Sustainability Appraisal (LP4), the Strategic Flood Risk Assessment Update 2016 (NE12 a-e) and the Strategic Flood Risk Assessment 2008 (NHE13 a-c), Royston Sewage Treatment Works Water Cycle Study (TI9), Rye Meads Water Cycle Strategy (TI10) and the Rye Meads Water Cycle Strategy Review.

54. The policy will be effective as part d. of the policy requires mechanisms for delivering any necessary new or improved water quality as stipulated in Policy SP7 Infrastructure Requirements and Developer Contributions. Modifications have been proposed responding to comments made by statutory consultees (LP3, pp.7-8).

⁵ <https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/water/ordinary-watercourses/ordinary-watercourse-consent.aspx>

55. The policy demonstrates consistency with national policy given that PPG states that local planning authorities can use planning conditions and/or obligations to secure mitigation and compensatory measures where the relevant tests are met.
56. Various agreements with Anglian Water (MOU2), Thames Water (MOU6), The Environment Agency (MOU5) and East Hertfordshire District Council (MOU1 as now superceded by ED13) set out that, with the inclusion of the proposed changes, this policy is considered sound.
57. The Council's Matter 1 statement also addresses issues relating to the Rye Meads Wastewater Treatment Works in the context of the Habitats Directive.

19.12 Is Policy NE11 justified, effective and consistent with national policy? In particular:

- a) Does the policy relate to development affected by contaminated land?**
b) In criterion b., is it the contamination that should be remediated?

58. These questions are answered together.
59. The policy is justified in terms of the findings of the Sustainability Appraisal (LP4), the Contaminated Land Statutory Guidance (DEFRA, 2012) and the Water Framework Directive.
60. The policy will be effective as sets out a clear criteria based policy, requiring a contaminated land study/ contaminated land risk assessment and remediation where necessary. The policy is consistent with national policy, namely paragraph 109 of the NPPF.
61. Modifications have been proposed (LP3, pp.8-9) to address issues raised during Proposed Submission consultation. Further alterations are proposed in response to the Inspector's specific questions for effectiveness:

Planning permission for development affecting **or affected by** contaminated land will be granted where:

- a. ...
- b. Appropriate mechanisms are in place to investigate, and where necessary remediate the **contamination to remove the risks, or reduce the risk to an acceptable level**; and
- c. ...

19.13 Is Policy NE12 justified, effective and consistent with national policy?

62. Policy NE12 is justified. It is a positive expression of support for proposals for renewable and low carbon energy projects. The national Planning Practice Guidance

outlines the rationale for the role of planning in supporting such development as three-fold:

- i. improving the security of energy supplies;
- ii. reducing greenhouse gas emissions to slow down climate change;
and
- iii. stimulating investment in new jobs and businesses
(Reference ID: 5-001-20140306).

63. The Plan could omit support for renewable and low carbon energy projects, and instead rely on national policy. However, national policy itself requires Local Plans to maximise renewable and low carbon energy development (NPPF, Para 97). National policy requirements are discussed further below.
64. The policy will be effective as it provides a clear statement of support in principle for renewable and low carbon energy projects, subject to clear criteria.
65. One of the 12 core planning principles which the NPPF (para. 17) states should underpin plan-making and decision-making is: “support the transition to a low carbon future in a changing climate... and encourage the use of renewable resources (for example, by the development of renewable energy)”. There is also a general requirement on local planning authorities to adopt proactive strategies to mitigate and adapt to climate change (para. 94).
66. The NPPF states (para. 97) that local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources.
67. The requirement for a positive strategy to promote energy from renewable and low carbon sources is made explicit (para. 97) but the NPPF goes even further, in requiring policies to be designed so as to maximise renewable and low carbon energy development (para. 97).
68. However, the NPPF also makes it clear that this should be achieved whilst also ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts (para. 97). Such potential adverse impacts are captured by the criteria within the policy.

19.14 Policy NE12 supports renewable and low-carbon energy projects, including wind energy developments. However, a Written Ministerial Statement was published on 18 June 2015. This makes it clear that planning permission should only be granted for wind energy developments if:

a) the site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and

b) following consultation, it can be demonstrated that the planning impacts identified by affected communities have been fully addressed and therefore the proposal has their backing.

The PPG has been updated to reflect this.

At present, it appears that Policy NE12 is not consistent with the most recent expression of Government planning policy for onshore wind development. How does the Council intend to rectify this issue?

69. As outlined in our response to question 19.13, the policy responds to the requirement within the NPPF for local planning authorities to maximise renewable and low carbon energy development, whilst ensuring that potential adverse impacts are addressed.

70. The policy is not technology-specific and, as such, encompasses a very wide range of development types, as indicated in the NPPF's definition of renewable and low carbon energy: "includes energy for heating and cooling as well as generating electricity. Renewable energy covers those energy flows that occur naturally and repeatedly in the environment – from the wind, the fall of water, the movement of the oceans, from the sun and also from biomass and deep geothermal heat. Low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels)" (Annex 2: Glossary).

71. Many of these technologies are subject to specific national policy and/or guidance. The PPG includes particular planning considerations for hydropower, active solar technology, solar farms and wind turbines (Paragraph: 010 Reference ID: 5-010-20140306). These considerations, which include the national policy requirements for onshore wind which are referred to in Matter 19.14, are not re-stated within the Local Plan in order to avoid duplication, but would clearly be material for any such planning applications in North Hertfordshire.

72. For the avoidance of doubt, and to reflect the Written Ministerial Statements relating to onshore wind developments and large-scale ground-mounted solar photovoltaic farms, which have subsequently been reflected in PPG, modifications are proposed to the supporting text. It is proposed to add the following text to the end of para. 11.77:

"...help reduce the demand for energy in the first place. The Council is mindful that an appropriate balance must be maintained between the benefits of renewable energy and other constraints and considerations in accordance with national Planning Practice Guidance (PPG)."