Chesterfield Local Plan Examination

Chesterfield Borough Council Response to
Inspectors’ Matters, Issues and Questions

16th September 2019

Matter 1 - Legal Compliance and General Plan-making
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Issue 1: Plan Making

1.1 Has preparation of the plan complied with the Local Development Scheme, Statement of Community Involvement and the requirements of the 2012 Local Planning Regulations?

Yes, please see the Soundness (KSD13) and Legal Compliance Checklists (KSD12).

1.2 Is the submitted Plan sufficiently clear on which development plan policies (2013 Core Strategy and 2006 Replacement Local Plan) would be superseded on adoption of the submitted Plan? [Regulation 8(5) of the 2012 Local Plan Regulations requires that superseded policies must be identified]. Could document KSD9 be included as an appendix to the plan as a main modification?

The Plan is not sufficiently clear but the Council wishes to modify the Plan by including KSD9 as an appendix as suggested by the Inspectors.

1.3 For soundness, should the Plan include a key diagram (NPPF paragraph 23)?

The Plan should include a key diagram and the Council will prepare one and submit this as a main modification.

1.4 Does Policy SS8, as part of the strategic role of the Local Plan, provide a sound approach for supporting ‘made’ neighbourhood plans containing non-strategic policies? (noting NPPF paragraphs 28-30 and PPG on ‘Neighbourhood Planning’ - including paragraph 41-065-20140306 on the basic conditions for neighbourhood plans). Is there a clear identification of those strategic policies in the submitted Plan against which Neighbourhood Plans would be required to be in general conformity with?

There are no made or proposed neighbourhood plans at present. However, the Council is prepared to review Policy SS8 to look at how it might identify strategic policies, as suggested by the Inspectors.

1.5 How have issues of equality been addressed in the Local Plan?

Equalities Issues have been addressed in the Local Plan, for further information please Equalities Impact Assessment (KSD3).

Issue 2: Duty to Co-operate
1.6 Has the Council engaged constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan’s preparation, as required by the Duty to Co-operate?

The Council can confirm it has and is engaging constructively, actively and on an ongoing basis with all relevant organisations on strategic matters of relevance to the plan’s preparation, as required by the Duty to Co-operate. There have been no objections from Duty to Co-Operate (DtC) organisations on the grounds of DtC. For further information see the Duty to Co-Operate Statement (KSD5) and Statements of Common Ground.

1.7 What mechanisms have been established between authorities on cross-boundary strategic matters? Are the outcomes reflected in signed statements of common ground that demonstrate effective and on-going joint working, as per NPPF paragraph 27 and PPG paragraphs 61-009-20190315 to 61-017-20190315?

The mechanisms for Co-Operation on cross boundary strategic matters are set out in the Duty to Co-Operate Statement.

1.8 Are there any strategic cross-boundary implications arising from the strategy of planned growth in the eastern villages (Policy LP1) and at Markham Vale (Policy SS4) on infrastructure in neighbouring authorities and proximate M1 junctions? Has there been progress on a statement of common ground with Bolsover District Council (referenced at paragraph 4.49 of DtC Statement)? Is this an additional statement to that provided at appendix 9 of the DtC Statement? With regards to the duty to co-operate is the strategy of growth in the eastern part of the Borough (including Markham Vale) positively prepared, justified and contributing to effective cross-boundary outcomes?

Growth in the eastern villages and Markham Vale is acknowledged as a strategic cross boundary issue within the HMA SoCG1. There will be implications on infrastructure in neighbouring authorities, principally in Bolsover District. Based on representations from and SOCGs with relevant organisations (SCG2 DCC Highways, SCG6 DCC Education and SCG5 CCG), there are no identified significant impacts on infrastructure in neighbouring authorities.

SoCG6 notes that whilst pupil numbers across the borough are projected to stay within existing capacity, there are planning areas which are under pressure, and that this will be closely monitored by DCC.
SoCG5 notes that although some GP surgeries are at capacity, continued joint working and forward planning should ensure the local plan spatial strategy is unlikely to have a serious impact on existing facilities.

The Strategic Highway Authority (SCG2 DCC Highways) has confirmed that existing evidence provides an appropriate baseline for the Local Plan. The council does acknowledge that the representation from the Highways Agency (and SCG8 Highways Agency) note that it will be ‘beneficial to continue to engage with the council in order to agree upon an approach for the future assessment of traffic impacts on the M1 and how these could be mitigated and delivered’. This future assessment will be based around the upgraded highway assessment model as detailed in the SCG2 DCC Highways, which will be ready to use to support the first review of the Local Plan.

A draft SoCG between CBC and BDC has been prepared and it is anticipated that a final signed SOCG will be available to submit to the Inspectors on 16th September. This SOCG will be an additional statement to the HMA SOCG provided at Appendix 9 of the DtC Statement KSD5.

The strategy of growth in the east of the borough has been subject to extensive consultation and joint evidence base as part of the Core Strategy, and subsequently during preparation of the new Local Plan. Derbyshire County Council fully support the strategy and commented that the settlements in the east of the borough ‘are in need of regeneration which can be facilitated by new housing and employment growth’ (see paragraph 1.1 of the representation from Derbyshire County Council).

There have been no DtC objections to the plan from DtC bodies on this aspect of the strategy.

The approach to cross boundary working in relation to Markham Vale is set out in response to question 4.17.

1.9 Are there any unmet housing needs from other authorities within the North Derbyshire and Bassetlaw Housing Market Area (HMA)? Has there been any need to update to the May 2018 HMA Statement of Common Ground (as per paragraph 4.2 of this statement of common ground)?

No unmet housing needs have been identified within the HMA.

1.10 Are there any duty to cooperate issues regarding unmet housing needs within potential wider housing market areas – notably Derbyshire Dales and Sheffield City? Does Appendix 6 to the Duty to Cooperate Statement and representations at the
Regulation 19 stage confirm that there has not yet been any formal request to Chesterfield to assist in meeting unmet needs?

There have been no formal requests to Chesterfield to assist in meeting unmet needs. Derbyshire Dales has adopted a new Local Plan that meets need within the district. The draft Sheffield City Region Statement of Common Ground (SCG7), which has now been endorsed by the borough council, sets out at section 4.1 (page 7) that “All Local Planning Authorities in SCR are planning to ensure that their own housing need is met within their Local Authority boundaries. Based on adopted Local Plan targets, emerging Local Plan targets and local housing need figures, there is no housing shortfall or re-distribution of unmet need required in SCR.”

1.11 Is there a Duty to Cooperate issue regarding any shortfall in Gypsy and Traveller provision across North Derbyshire (noting Table 2 of the HMA Statement of Common Ground, May 2018)? Have matters now been addressed by the September 2018 statement of common ground with the Derbyshire Gypsy Liaison Group (Appendix 7 to DtC Statement)?

The Council acknowledges that there is a shortfall in Gypsy and Traveller provision across North Derbyshire. It is important to note that although the NEDDC Local Plan examination is still underway, the Inspector has set out her conclusions on the matter of Gypsy and Traveller provision in a letter to the council:


It follows that the plan would not contain sufficient allocations for traveller sites to meet the ‘backlog’ of need identified in the Gypsy and Traveller Accommodation Assessment over the five year period to 2019 nor over the plan period as a whole. However, discussion at the hearing sessions indicated that arrangements are in hand to progress an update to the Assessment which may lead to other work to address the needs identified. Furthermore, the Main Modifications to Policy LC8 discussed at the hearing sessions would provide a more positive approach to assessing proposals that come forward on other sites. In the circumstances, I consider that further work on assessing needs and identifying sites as part of a plan review or as a separate document on traveller provision is a matter for the Council to decide in due course.

Similarly, the BDC Local Plan examination has not yet concluded, but there has been no indication from the Inspector that the approach the council is taking (to rely on a criteria based policy and delivery through windfall sites) is unsound, nor any requests for the council to undertake further work on this matter.
The SoCG with DGLG is between DGLG and CBC, and does not extend to include NEDDC and BDC.

Gypsy and Traveller Provision is covered within the HMA SOCG, and it is considered that this, along with the recent agreement to commission an update to the joint GTAA, addresses the issue of the shortfall.

1.12 **Is there evidence of engagement and agreement on strategic cross-boundary planning matters within the wider Sheffield City Region (SCR) as intimated at paragraph 3.8 of the Duty to Cooperate Statement? In particular, the LEPs Strategic Economic Plan ambition to deliver 70,000 net additional jobs (2014-2024) and the development of a SCR Integrated Infrastructure Plan (SCRIIP)?**

The (draft) Sheffield City Region Statement of Common Ground (SCG 7) sets out the approach to engagement and agreement on strategic cross boundary planning matters. Table 5 in the annex of the SOCG give a provisional distribution of the jobs target, but the SOCG acknowledges that this was provisional and the 70,000 jobs target was aspirational and not evidence based. Nonetheless the SoCG also confirms (section 4.1, page 7) that "The combined Local Plan housing requirements of 6,659 homes per year is also within the range of new housing calculated to meet the growth in jobs expected from the SEP" (as assessed by Edge Analytics).

**Issue 3: Habitat Regulations Assessment**

1.13 **Is the Habitats Regulation Assessment (HRA) – January 2019 (Document KSD4) robust in concluding that the policies and proposals in the plan (alone or in-combination with other plans/projects) would not have an adverse effect on the integrity of proximate European protected sites?**

The HRA includes a ‘screening’ and ‘appropriate assessment’ of the Chesterfield Pre-Submission Local Plan and the January 2019 HRA Report (KSD4) concludes that the Local Plan will not have an adverse effect on the integrity of any European protected sites that may be exposed to environmental changes associated with the plan outcomes. This conclusion is robust as it:

• reflects an updated evidence base (including additional analyses to inform the ‘appropriate assessment’);
• reflects the findings of consultation with Natural England as the appropriate nature conservation body (on the methodology and revised approach reflecting legal judgements); and
• is compliant with relevant case law including People Over Wind and Sweetman v Coillte Teoranta (C-323/17) (‘People over wind’ ruling) and Wealden District Council v. Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority [2017] EWHC 351 (the ‘Wealden’ judgement).

1.14 **Is the Chesterfield HRA appropriately prepared in applying similar conclusions to those presented in neighbouring plan HRAs on the effects of the plan’s proposals on atmospheric pollution? Does the appropriate assessment take a sufficiently precautionary approach on air quality and reflect the advice in the Natural England letter dated 18 November 2018?**

The Chesterfield HRA is appropriately prepared and takes a suitably precautionary approach to the assessment of atmospheric pollution. The Council consulted with Natural England (NE) on revisions to the approach to HRA. In the response (the letter dated 1 November), NE stated “Whilst we agree with your initial view that it is unlikely that Chesterfield-specific traffic modelling would return substantially different results from the NE Derbyshire studies we would need to see that any different circumstances including the projected growth figures resulting from the Local Plan had been considered and that this is reflected within the HRA for the Chesterfield Local Plan.” The subsequent approach contained in the January 2019 HRA Report (KSD4) does not simply apply the conclusions of the neighbouring plan HRAs directly to the Chesterfield Local Plan, but, consistent with NE’s request verifies the traffic assessments previously undertaken for the other HRAs with accurate data on the growth proposed for Chesterfield in the local Plan. This verification demonstrates that the original traffic assessments (and hence the subsequent air quality modelling) provide a robust basis for the Chesterfield HRA.

1.15 **Does the reference to on-going cross-authority monitoring of air pollution in the Housing Market Area Statement of Common Ground provide the appropriate way forward for this matter? What steps are being taken to advance an agreed joint monitoring framework for nitrogen deposition for the relevant SACs/SPAs? Is there agreement that this monitoring would not comprise ‘mitigation’ for the current round of plan-making and is primarily evidence gathering to inform future HRA processes?**

The HRA concluded that the Chesterfield plan will have no adverse effects (alone or in combination) on the integrity of the Peak District Moors (South Pennine Moors Phase 1) SPA, Peak District Dales SAC, or South Pennine Moors SAC due to air quality changes;
this is consistent with the conclusions of the neighbouring local plan HRAs. Cross-authority monitoring was recommended in the NEDDC local plan HRA as a precautionary measure, and CBC agrees that this is prudent. The Council and Natural England agree that the cross-authority monitoring is not a ‘mitigation’ measure but primarily a verification exercise that will also provide data for future HRAs; Natural England’s agreement on this point is provided in its email (dated 13 September 2019). The joint monitoring framework is currently being agreed between the council, Natural England, Bolsover District Council, Derbyshire County Council, Derbyshire Dales District Council, Peak District National Park Authority and North East Derbyshire District Council (A formal letter was sent out to all partners on 11the September 2019, and a response received from Natural England and PDNPA at time of writing (Implementation date to be confirmed).

**Issue 3: Climate Change**

1.16  *Has the Council had regard to Section 19 of the 2004 Planning & Compulsory Purchase Act (As amended) requiring development plan documents to include policies designed to secure that the development and use of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change? Which are the policies and how will they be monitored?*

The Council has had regard to Section 19 of the 2004 Planning & Compulsory Purchase Act (As amended) and has included policies to contribute to the mitigation of, and adaptation to, climate change. These policies are identified in Section 14 of the Soundness Checklist and the monitoring and review framework document KSD10 also identifies how these policies will be monitored.

1.17  *Flood risk (both from watercourses and surface water) is a notable issue for the Borough, particularly in parts of Chesterfield town. Is the plan’s approach to flood risk, including the site selection process, consistent with national policy and suitably precautionary, including modelling for the long term, to take account of the effects of climate change?*

The Council has worked with the Environment Agency and the County Council as Lead Local Flood Authority to ensure that the policy approach in the plan and the approach to site selection is consistent with national policy. The position is summarised in the statement of common ground on flood risk (SG3). The requirement to take account of potential future scenario effects of climate change was included within the project scope for hydraulic modelling.

**Issue 4: Sustainability Appraisal (including Strategic Environmental Assessment)**
1.18 Does the Sustainability Appraisal (SA) (Documents SD3-5) adequately and accurately assess the likely effects of the policies and proposals of the Plan on the SA ‘themes’ and test them against reasonable alternatives?

Yes, the SA:

• incorporates the requirements for Strategic Environmental Assessment (SEA) as set out in The Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations);
• has been undertaken in accordance with Government and best practice guidance (Office of the Deputy Prime Minister (ODPM) et al (2005) A Practical Guide to Strategic Environmental Assessment Directive, Ministry for Housing, Communities and Local Government (MHCLG) (2015), Planning Practice Guidance on Strategic Environmental Assessment and Sustainability Appraisal (as updated);
• reflects the judgements arising from relevant SEA case law (For example, Save Historic Newmarket v Forest Heath District Council [2011] EWHC 606 (Admin) (25 March 2011) and Heard v Broadland District Council et al. [2012] EWHC 344 (Admin) (24 February 2012);
• includes and applies a methodology that has:
  • been developed from an analysis of the key issues arising from an evaluation of the evidence base (comprising of baseline information on the state of the environment, and its evolution without the Local Plan, as well as a review of plans and programmes) and subsequent updates for each iteration of the draft Local Plan;
  • covers all the topics identified in Schedule 2 of the SEA Regulations to ensure all likely significant effects are identified, described and evaluated;
  • provides definitions of what constitutes a significant effect, when considering a local plan, and reasonable alternatives to it;
  • has been amended to address consultation responses.

The following SA documents have been produced during the preparation of the Chesterfield Borough Local Plan:

• Sustainability Appraisal, Scoping Report, October 2016
• Sustainability Appraisal of the Consultation Draft Local Plan, January 2017 (PS4);
• Sustainability Appraisal of the Pre-Submission version of the Local Plan, January 2019 (SD3);
• Technical Note: Chesterfield Borough Local Plan Sustainability Appraisal - Addendum, June 2019 (SD5).

The SA has identified, described and evaluated the likely significant effects of the following (through the application of the SA Framework):
- Local Plan Vision and Strategic Objectives;
- the amount of growth to be provided over the plan period (development requirements) and distribution of that growth (Spatial Strategy);
- site allocations to deliver the development requirements; and
- Local Plan policies.

In completing the SA, reasonable alternatives for the following were developed and subject to appraisal, in a manner consistent with the preferred approach:
- housing growth (with options ranging from 270 dwellings per annum to 345 dwellings per annum) over the plan period;
- employment growth (with options ranging from the provision of 77 ha to 90 ha of employment land);
- the Spatial Strategy (with options ranging from concentrating development to dispersing development);
- strategic site options and smaller site options to deliver the development requirements; and
- Local Plan policies.

Reasons for the rejection and selection of the preferred options are provided (and reconfirmed) at each stage of the SA process and reported in the appropriate SA Report.

1.19 **Does SA adequately record unreasonable options and indicate (briefly) why any such options have been discounted?**

Consistent with the SEA Directive, regulation, planning policy and guidance, reasonable alternatives have been considered, and taking into account case law requirements, have been subject to a consistent SA methodology to ensure equal treatment in order to identify, describe, evaluate the likely significant effects.

In particular, the SA has considered a number of reasonable alternatives relating to:
- the amount of growth to be provided over the plan period (development requirements)
- the distribution of that growth (Spatial Strategy);
- site allocations to deliver the development requirements; and
- Local Plan policies.

Reasons for the rejection and selection of the preferred options are provided (and reconfirmed) at each stage of the SA process and reported in the appropriate SA Report. With regard to the amount of growth, paragraph 5.3.10 of the SA Report (SD3) states “Option 2 was rejected because it would require additional greenfield releases and is not
considered by the Council to be realistic or deliverable, it has however been assessed on a precautionary basis to ensure compliance with the SEA Directive.”

Section 5 of the SA Report (SD3) presents a summary of the appraisals of the housing and employment land target options (Sections 5.3 and 5.4) and spatial options (Section 5.5). Policies are considered in Section 5.6 and options for Strategic Sites are considered in Section 5.7. Reasons for selecting preferred options and rejecting others are set out in each of the sections.

In terms of the appraisal of non-strategic housing sites, the Land Availability Assessment (LAA) was used by the Council to screen possible sites, taking forward those sites that were deliverable/developable. It was not considered necessary to list the sites that did not make it through the screening process in the SA Report.

1.20 What concerns have been raised about the SA methodology and outputs and what is the Council’s response to these? Have the requirements for Strategic Environmental Assessment been met?

The Scoping Report was subject to consultation between 19th October and 23rd November 2016. Responses were received to the consultation from the Environment Agency, Natural England, Historic England, Highways England and Derbyshire CC. Responses related to proposals for additional information to the plans and programmes as well as minor amendments to the SA framework. Appendix A of the Sustainability Appraisal of the Consultation Draft Local Plan, January 2017 (PS4) contains a schedule of the consultation responses, the Council’s response and the subsequent action taken.

Six consultation responses were received to the Sustainability Appraisal of the Consultation Draft Local Plan, January 2017 (PS4). These were from the Environment Agency, Natural England, Historic England, Rhodia Ltd, Derbyshire Wildlife Trust and East Midlands Butterfly Conservation. Responses include support for the SA findings, minor amendments to information presented an in one case (Historic England) queried the treatment of cultural heritage within the SA and requested that a separate Heritage Impact Assessment is undertaken of all sites screened into Stage 2b of the LAA process. In response, further changes were made to the SA framework, the findings of the SA (where appropriate) and the Council agreed a framework for Heritage Impact Assessment and applied it to all sites that passed Stage 2b of the LAA process. Appendix A of the Sustainability Appraisal of the Pre-Submission Draft Local Plan, January 2019 (SD4) contains a schedule of the consultation responses received to the 2017 SA Report, the Council’s response and the subsequent action taken.
Appendix A to the SA Addendum (June 2019) (SD5) sets out responses to the SA Report (January 2019) (SD3). No comments on the SA Report were received from the statutory consultees (Natural England, Historic England and the Environment Agency).

Five comments were received from organisations and these are summarised at Appendix A of the addendum.

The Trans-Pennine Trail Office requested that Tables 5.7 and 5.8 in the SA Report relating to housing site options should include note of the Trans Pennine Trail where relevant. The SA did not identify any potential effects in relation to the Trail and the Council considers that the Local Plan contains adequate policies to conserve and enhance the route. No changes are proposed as a consequence of the comment.

The other four comments related to the selection of sites:
- 843 - Strategic Development Land Ltd;
- 851 - Gladman Developments Ltd
- 854 - Peter Brett Associates on behalf of Midlands Land Portfolio Ltd
- 856 - Mr Frank Sissons DLP Planning

All four submissions question the approach and findings of the 2019 SA Report as it relates to specific sites.

Appendix A to the SA Addendum (SD5) provides a summary of the comments and the Council’s response to the above representations. No changes to the Local Plan are proposed as a consequence of these comments.

Appendix B of the SA Report (January 2019) (SD4) includes a Quality Assurance Checklist demonstrating how the SA accords with the requirements of the SEA Directive and associated Regulations.

**Issue 5: Site Selection Process - general**

1.21  Are the outputs for the Land Availability Assessment in documents KSD17-19 broadly consistent with the jointly agreed methodology?

Yes. A consistent methodology was followed throughout that was checked for consistency with the HMA agreed methodology. The outputs from the LAA are broadly consistent with the jointly agreed methodology in relation to the following:

- The sources of land supply
- The site size thresholds
- The consideration of availability at stage 1
- The sieving factors in stage 1 correspond to those at stage 1 of the jointly agreed methodology
- The sieving factors in stage 2a correspond to those at stage 2 of the jointly agreed methodology
- The consideration of viability at stage 2a and 2b
- The consideration of whether or not constraints can be overcome at stages 2a and 2b
- Sites availability, suitability and viability are concluded on and they are categorised as being undevelopable, developable or deliverable.
- Estimated trajectories for delivery are used where no specific evidence is available.

1.22 **Is there consistency between the outputs of the Land Availability Assessment and Sustainability Appraisal, particularly in sieving sites and considering the potential to mitigate any likely harm?**

The Site Selection Topic Paper (TP4) explains the process taken to sieving sites in the LAA. Potential Strategic Sites were assessed through SA as part of the assessment of strategic options, first reported in January 2017 and then in January 2019. Potential non-strategic sites were sieved by the Council using LAA and those determined to be developable or deliverable were fed into SA prior to a submission version of the Local Plan being prepared.

The process of SA and LAA complement each other, being separate processes utilising similar evidence and feeding into a final judgement as to whether or not sites should be promoted for allocation in the Local Plan.

The SA Report (Submission Document SD3) is consistent with the outputs from LAA and also the final step of site selection where planning judgement was applied with the benefit of both SA and LAA outputs. Table 5.6 presents the reasons for selecting or rejecting the strategic site options. Appendix I presents the detailed appraisal of all proposed strategic sites and reasonable alternative sites. Table 5.7 presents the summary of the SA of the housing sites. Appendix J presents the detailed appraisal of all proposed housing sites and the reasonable alternative sites. Table 5.8 presents a summary of the reasons for rejection and selection of the sites. Table 5.6 was updated to ensure that it was fully reflective of the Council’s reasoning and included in the Addendum to the SA (June 2019) (SD5).

1.23 **Having regard to the new PPG chapter on ‘Effective Use of Land’ is there any evidence that land allocated through previous plans should be reallocated for a more deliverable use?**
There is no evidence that land allocated in the previous plan should be reallocated. Where sites have continued allocations from the previous Local Plan policies map there is evidence of delivery (such as Chesterfield Waterside and the Staveley and Rother Valley Corridor) and/or a continued intentions on the part of the landowner (such as the former Wagon Works at New Whittington).