

# 219 – Sussex Wildlife Trust

## Matter 16 Environment and Energy DM37-46

### DM37 Green infrastructure and nature conservation

1. Does the policy approach to biodiversity net gain and the mitigation hierarchy accord with NPPF paragraph 180, which sets out the mitigation hierarchy (avoid, mitigate, compensate)? Are modifications necessary to address this?

Sussex Wildlife Trust (SWT) agrees with BHCC that main modifications **MM46**, **MM54** and **MM59** are necessary to ensure that the policy accords with NPPF paragraph 180. These modifications provide clarity that these measures are applicable to all development rather than only those impacting on designated sites.

2. Does the policy appropriately set out the requirements for internationally designated sites, including the Habitats Regulations requirements, nationally and locally protected sites so as to be justified, effective and consistent with national policy, with particular regard to biodiversity net gain and the mitigation hierarchy?

SWT believes that main modifications **MM50**, **MM51** and **MM69** are required to ensure the policy is consistent with national policy, particularly NPPF paragraphs 174a, 175 and 180.

However in relation to **MM50** and the addition of 'on or off site additional measurable net gains in biodiversity/geodiversity can be achieved', we believe there should be a further modification so the line reads:

'on **site** or off site as part of a strategic ecological network, additional measurable net gains in biodiversity/geodiversity can be achieved.'

This is in order to future proof the policy to allow offsite net gains to be targeted most effectively and efficiently as part of the wider requirements for Nature Recovery Networks in the forthcoming Environment Bill. This is also in line with the requirements of the NPPF to take a strategic approach to maintaining and enhancing ecological networks.

We believe this amendment is also required in relation to new criteria iii of Part C (**MM53**)

SWT objects to elements of **MM53** and **MM67** in relation to locally designated sites. Our Regulation 19 response sets out why including 'unless allocated for development in the City Plan' in part C of the policy is contrary to the NPPF and incoherent with the other policies in the submission plan and the City Plan Part 1. **MM53** does improve clarity, particularly in relation to the core requirement for all developments to mitigate impacts and provide net gains to biodiversity. This is also reiterated in the last line of **MM67** which we support.

However, isolating out locally designated sites that have been allocated for development in the plan is contrary to the requirement in the NPPF to safeguard them. It is incoherent as the council maintain that these allocations can be delivered without an adverse effect – this is why it is allowing the allocations.

We believe a further modification is required under **MM53** so that the section reads:

#### C. Locally protected sites

Development proposals that will result in an adverse effect on the integrity of any local site will not be permitted, unless:

- i) There are exceptional circumstances that justify the development of the site that can be demonstrated to outweigh the need to safeguard the nature conservation value of the site/feature. Where an exception is considered the mitigation hierarchy will apply.
- ii) The impacts can be mitigated through on or offsite habitat creation: and
- iii) On site or offsite as part of a strategic ecological network, additional measurable net gains in biodiversity/geodiversity can be achieved

SWT objects to the examples of ‘exceptional circumstances’ set out in **MM67** as it is too vague and does not meet the bar set in the NPPF for equivalent issues e.g. footnote 63. For example, a new bus stop is transport related infrastructure, but SWT would argue not exceptional enough to warrant adverse impacts on a Local Wildlife Site.

Furthermore, we disagree that the examination of the City Plan Part 1 (CPP1) sets out the exceptional circumstances. The CPP1 Inspector’s Report [CD23] clearly states that the CPP1 does not allocate urban fringe sites and that decisions on whether individual sites should be developed, will be made through the process of preparation of the CPP2. We would not consider the City’s large unmet housing need as exceptional. Indeed, this is likely to be the situation for many years to come due to the geography of the city. Additionally, the majority of local authorities in Sussex are failing to meet their 5 year housing supply and again this is not exceptional i.e. it is typical across the county.

#### 4. Should the policy include a specific net gain target? If so would this be justified by the evidence?

SWT believe that a target of ‘at least 10%’ should be included in the policy to align with the forthcoming requirements of the Environment Bill. As a member of the Sussex Local Nature Partnership, we support BHCC recommended modification **MM66** which commits the council to an SPD and to work towards evidencing a viable target of 20%. We note that Litchfield District have successfully adopted a SPD with a BNG target of 20%<sup>1</sup>. Until a SPD for Brighton & Hove is adopted, we feel that ‘at least 10%’ is reasonable and in line with forthcoming national policy. The ‘at least’ would also mean that there would be no conflict if 20% is evidenced to be achievable and therefore adopted in a SPD at a later date. It would also provide clarity to developers of what is required of them.

#### **DM38 Local green spaces**

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<sup>1</sup> Lichfield District Biodiversity & Development Supplementary Planning Document 2016

3. Is there justification for any other local green spaces that would meet the criteria set out in national policy and guidance?

SWT's Regulation 19 response clearly sets out why Whitehawk Hill LNR should be designated as a Local Green Space (LGS) in this plan and why its omission makes policy DM38 unsound.

The updated Local Green Space Topic Paper [TP04] explains how the council have assessed sites put forward during consultation, but still provides no clarity on how sites were originally selected in the 2014 Urban Fringe Assessment [ED21a-c].

Looking at Appendix 1 of TP04, the council accepts that Whitehawk Hill meets criteria a and b from NPPF para 102, indeed it meets the Historic Significance requirement, when the other four proposed LGS do not. The council state in TP04 para 7.4 -7.5 that the only reason for not designating the site, is that it covers a more extensive area, with few clearly defined boundaries and therefore does not meet criterion c in NPPF para 102.

SWT strongly disagrees with this conclusion and can demonstrate a number of obvious features that could provide clear boundaries. Not least Wilson Avenue at the north east, as this already sets the boundary of the LNR and is the boundary of the South Downs National Park. Other boundary features could be Warren Road, Manor Hill and the racecourse track.

It does not appear that the council, either in TP04 or the updated UFA [ED24] have considered any potential boundaries or that the arguments put forward in the Regulation 19 consultation have been fully reviewed.

SWT also strongly disagrees that the site has a high degree of protection through CPP1 policies [para 7.5, TP04]. The council acknowledge in para 4.3 that a LGS designation does imply a greater level of protection than existing open space policies CP16 and CP17. Although, Whitehawk Hill has a statutory nature conservation designation and should be protected through biodiversity policies such as CP10, it is still being put forward by the council for development. Further to this, the council's justification for allocating housing on a LNR is the need to plan positively for housing within the context of a significant citywide housing shortfall. However, as set out in our response to Matters 2 and 7, this shortfall will never go away. There will always be extreme pressure to encroach further onto designated sites as the council continue to fail to meet the unachievable housing targets required by the NPPF standard method.

Whilst SWT does not believe any development should occur on the LNR, if the H2 allocation does go forward, it is paramount that there is not a shift to the continuous 'nibbling away' of the LNR. SWT feel strongly that a LGS designation would allow the site to be protected in the long term for the benefit of both biodiversity and local residents. The whole of Whitehawk Hill LNR should be designated as LGS under DM38 or if the allocation in H2 is found to be sound by the Inspector, then the remainder of the site should go forward as a LGS.