

Brighton & Hove City Council

Examination into City Plan Part Two

Statement of Common Ground dated 4th November 2011

Brighton & Hove City Council and Natural England (Respondent Reference 212)

1. Introduction

This is a joint statement between Natural England and Brighton & Hove City Council (the council) regarding Brighton & Hove City Plan Part Two Policy DM37 Green Infrastructure and Nature Conservation.

Natural England welcomes the modifications that have been made so far to address their representations made to the Regulation 19 Plan in relation to Policy DM37 Green Infrastructure and Nature Conservation. The council will continue to work with Natural England to address any outstanding issues so that the policy better accords with the Conservation of Habitats and Species Regulations, the National Planning Policy Framework and better reflects biodiversity net gain principles.

This statement clarifies the reasons for Natural England's concerns and summarises those areas of common ground on policy DM37 Green Infrastructure and Nature Conservation in the City Plan Part Two where agreement has been reached. It also sets out where agreement has not been reached and where further changes to the policy are proposed by Natural England; these issues will be addressed through the examination matter statements.

The statement sets out proposed amendments, as set out in the Council's Schedule of Modifications, to policy DM37 of the Proposed Submission City Plan Part Two that have been agreed with Natural England (Appendix 1).

In addition, it sets out proposed amendments, as set out in the Schedule of Modifications, to policy DM37 which Natural England are not currently in agreement with (Appendix 2).

Appendix 3 sets out further changes sought by Natural England that are not included in the Schedule of Modifications and will be addressed through matter statements.

2. Background

Natural England submitted a representation to policy DM37 Green Infrastructure and Nature Conservation during the Regulation 19 consultation which took place Autumn 2020. Following this, the council has proposed changes (proposed modifications) to the policy to address concerns set out in the representation.

Ongoing dialogue between Natural England and the council has identified that some of the proposed changes, as set out within the Schedule of Modifications submitted to the Planning Inspectorate, do not fully address Natural England's original representation. Further changes are therefore sought by Natural England to address these and other concerns that have arisen since consultation.

3. Representation submitted at Proposed Submission (Regulation 19) Consultation

The main issues identified within the representation made by Natural England in relation to policy DM37 during the Proposed Submission consultation (Regulation 19 stage) are summarised below:

- The requirement for all development to be in accordance with the mitigation hierarchy could be included as an overarching principle to highlight its importance.
- Unclear whether the final paragraph of the policy “*Proposals liable to affect...*” is an overarching measure. NE suggested moving the paragraph to the beginning of the policy and/or clarifying that all proposals must be supported by assessment and mitigation measures.
- Mitigation hierarchy should be better reflected; amendments to C ii) and point (c) on page 112 were suggested.
- Approach to biodiversity net gain should be compliant with national policy and the mitigation hierarchy; biodiversity net gain should be additional to any habitat creation required to mitigate or compensate for impacts.
- Part A of the policy (Internationally Protected Sites) does not accurately reflect the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).
- The wording of point B ii) (Nationally Protected Sites) weakens the protection of nationally protected sites and is not in accordance with the NPPF and mitigation hierarchy. The loss of a nationally designated site should not be supported and cannot be mitigated.
- Inclusion of reference to the Beachy Head West Marine Conservation Zones (MCZ) required.

4. Proposed amendments to address Regulation 19 stage representation

4.1 Areas of Agreement

Both the council and Natural England agree on the following:

Mitigation hierarchy

The policy should ensure that development on all sites is in accordance with the mitigation hierarchy, and that biodiversity net gain is separate and additional to any measures required to mitigate impacts. Both parties agree to amend the text throughout the policy where relevant to highlight the importance of the mitigation hierarchy and to ensure reflection of the mitigation hierarchy and biodiversity net gain principles. The agreed text changes to the policy are set out at Appendix 1. (See Proposed Modification (PM)37, part of PM43; part of PM44, PM51).

Part B – Nationally Protected Sites

The policy should ensure that nationally designated sites are adequately protected and that impacts should be avoided. Both parties agree to amend the text of Part B to ensure adequate protection. The agreed text changes to the policy are set out at Appendix 1. (See part PM43).

Policy Clarity

The policy should be structured clearly with overarching principles set out upfront. Both parties agree to the repositioning of one paragraph within the policy. The agreed text changes to the policy are set out at Appendix 1. (See PM45).

Omissions

The policy should include all designated sites. Both parties agree to including the reference to the Marine Conservation Zone. The agreed text changes to the policy are set out at Appendix 1. (See PM54).

4.2 Areas of Disagreement

Natural England does not agree with the changes that have been proposed to the policy to address the following recommendations or concerns:

Mitigation hierarchy

The requirement for all development to be in accordance with the mitigation hierarchy has been included as an overarching principle, as suggested. However, Natural England does not agree to all of the changes proposed and corresponding footnote. The proposed changes, with which Natural England is not in agreement with, are set out in Appendix 2. (See PM38)

Part A – Internationally Protected Sites

The policy should reflect the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended). Although changes have been proposed to this section of the policy, Natural England does not agree these changes sufficiently reflect requirements of the NPPF or the Habitats Regulations. The proposed changes, with which Natural England is not in agreement, are set out in Appendix 2. (See PM42)

Biodiversity Net Gain

Natural England support the approach for development to achieve a net gain in biodiversity. Although various changes to the policy have been made, Natural England does not agree with some of the changes proposed and does not agree that biodiversity net gain should be pursued for statutory designated sites. The proposed changes, with which Natural England is not in agreement, are set out in Appendix 2. (See PM43, PM44).

Policy clarity - designated sites section

To improve the clarity of the policy, it was suggested to reposition some of the policy text to the start of the section on designated sites. However, Natural England does not agree with the content of this paragraph. The text proposed to be moved, with which Natural England is not in agreement is set out in Appendix 2. (See PM46).

5. Additional amendments sought by Natural England (at 14th May 2021/8th July 2021)

- The mitigation hierarchy is a requirement of the NPPF and should be referenced as such along with the Code of Practice for Planning Development cited.
- Nationally Protected Sites are excluded from biodiversity net gain. The policy reads as though biodiversity net gain principles can be used when assessing impacts to statutory sites; this is not the case. Advise that biodiversity net gain should be included as a general requirement under Nature Conservation.

- The policy on Internationally Protected Sites detracts significantly from the robust policy afforded to internationally protected sites through the NPPF and the Habitats Regulations. This needs to be revised to reflect the NPPF and the requirements of the HRA. The Council cannot grant permission for schemes where there is an Adverse Effects on the Integrity of the Site (AEOI) and compensation is needed without first consulting the Secretary of State. Suggested that text is deleted.
- Remove points (b) and (c) of the final policy paragraph on page 112 which is proposed to be moved to the start of the section on “designated sites”
- Further consequential amendments.

The additional amendments proposed by Natural England are set out in Appendix 3 for information.

End of Statement

Signed on behalf of Natural England

Rebecca Pearson

Senior Adviser-Sussex and Kent Team

Signed on behalf of Brighton & Hove City Council

Helen Pennington

Senior Planning Officer

Appendix 1 Agreed Proposed Modifications

Proposed Modifications to address representation by Natural England regarding policy DM37.

Modification Number (BHCC04)	Policy, page and reference	Proposed Modification
MM63	DM37 page 110	<p><i>Amend first paragraph in Nature Conservation section to read:</i></p> <p><u>Development should avoid adverse impacts and All development should seek to conserve and enhance biodiversity and geodiversity features ensuring:</u></p>
Fomer MM51 (BHCC02) now superseded by MM70 (BHCC04) (also see Appendix 2 for areas of disagreement)	DM37 Part B page 111	<p><i>Amend Part B. Nationally protected sites to read:</i></p> <p>Development proposals should avoid impacts on nationally protected sites (<i>link to new footnote</i>). Development proposals likely to have an adverse effect on the site's notified special interest features will not be permitted unless:</p> <p>i) the benefits of the development, at this site, clearly outweigh <u>both</u> the likely impact to notified features on the site and any broader impacts on the network of nationally protected sites; and</p> <p>ii) <u>the loss impacts can be mitigated in accordance with the mitigation hierarchy; and through on or off site habitat creation to achieve a net gain in biodiversity/ geodiversity.</u></p> <p><i>Footnote to read: <u>Development likely to have a significant effect on nationally protected sites will be required to assess the impact by means of an Environmental Impact Assessment.</u></i></p>
MM72 (also see Appendix 2 for areas of disagreement)	DM37 Part C page 112	<p><i>Amend Part C. Locally protected sites to read:</i></p> <p>ii) <u>the loss impacts can be mitigated through on or off-site habitat creation; and to achieve a net gain in biodiversity/geodiversity.</u></p>
MM73	DM37 final paragraph page 112	<p><i>Move and amend the following section of the final paragraph from page 112 to follow the bullet point list on page 111. Paragraph reads:</i></p> <p>Proposals liable to affect green infrastructure and nature conservation features either directly or indirectly must be supported by an appropriate and detailed site investigation/assessment and accord with provisions set out in the mitigation hierarchy⁷¹. Measures to avoid or prevent harmful effects will be required.</p>
MM85	DM37 supporting text page 115	<p><i>Add new paragraph after existing paragraph 2.282. New paragraph to read:</i></p> <p><u>In addition to any measures required to mitigate impacts, net gains in biodiversity should also be achieved. Biodiversity net gain should be delivered on site where possible, or off site as</u></p>

		<u>appropriate and should still be secured where proposals have negligible or no adverse impacts on biodiversity.</u>
PM88	DM37 paragraph 2.284 page 115	<i>Add new sentence at end of paragraph 2.284 to read:</i> <u>National sites also include Marine Conservation Zones (MCZ), designated through the Marine and Coastal Access Act 2009. The Beachy Head West MCZ lies partly within the City Plan area.</u>

Appendix 2 Proposed Modifications that have not been agreed with Natural England

Modification Number	Policy, page and reference	Proposed Modification
Former MM46 (BHCC02) now superceded by MM64 (BHCC04)	DM37 bullet point list page 110	<i>Amend bullet point list in Nature Conservation Section to read:</i> <ul style="list-style-type: none"> • <u>accordance with the mitigation hierarchy (link to existing footnote)</u> • <u>an additional net gain in biodiversity is achieved;</u> <p><i>Footnote reads:</i> The “mitigation hierarchy” is set out in the Biodiversity – code of practice for Planning and Development and the British standard for Biodiversity management (BS42020) 2013. In essence it seeks avoidance of harm; then mitigation; then compensation alongside new benefits for wildlife.</p>
MM69	DM37 Part A page 111	<i>Amend Part A. Internationally protected sites to read:</i> <u>All development must comply with the Conservation of Habitats and Species Regulations (as amended) (link to new footnote).</u> Development likely to have significant effects on an international site (either individually or in combination with other plans or projects) and which would affect the integrity of the site will be subject to Habitat Regulations Assessment and will not be permitted unless the council is satisfied that: <ul style="list-style-type: none"> i) There is no alternative solution (which can be adequately demonstrated by the developer); <u>and</u> ii) There are imperative reasons of overriding public health or public safety for the development; and iii) Adequate <u>mitigation measures and/or</u> compensatory provision is secured. <p><i>New footnote to read:</i> <u>The Conservation of Habitats and Species Regulations 2017 (as amended)</u></p>
Fomer MM51 (BHCC02) superceded bby MM70 (BHCC04)	DM37 Part B page 111	<i>Amend Part B. Nationally protected sites to read:</i> <ul style="list-style-type: none"> iii) <u>on or off site additional measurable net gains in biodiversity/geodiversity can be achieved.</u>

MM72	DM37 Part C page 112	<i>Amend Part C. Locally protected sites to read:</i> iii) <u>on or off site additional measurable net gains in biodiversity/geodiversity can be achieved.</u>
Fomer MM55 (BHCC02 supeceded by MM74 (BHCC04)	DM37 final paragraph page 112	<i>Move and amend the following section of the final paragraph from page 112 to follow the new proposed section heading entitled “Designated Sites” on page 111 and prior to existing paragraph that reads “Proposals for development within a designated site of importance to nature conservation...”</i> <i>Paragraph to read:</i> Where proposals are liable to cause direct or indirect harm to a designated site, they must provide: a) <u>evidence to demonstrate that the objectives of the designation and integrity of the area will not be undermined;</u> b) <u>funded management plans that secure the long term protection and enhancement of remaining features⁷²; and</u> c) <u>up-to-date information about the biodiversity/geodiversity which may be affected, and how loss impacts can be mitigated to achieve and additional measurable net gains achieved.</u>

Appendix 3 Additional amendments proposed by Natural England (May 2021; July 2021)

Additional amendments proposed by Natural England as at May/July 2021 shown as double underline; deletions proposed shown as double strike-through.

Policy, page and reference	Modification Number (where relevant)	Amendment proposed by Natural England	BHCC response
Policy DM37 page 110	See MM64, MM65, MM66 for final modifications proposed	<i>Amend bullet point list to read:</i> <ul style="list-style-type: none"> • <u>accordance with the mitigation hierarchy requirements of the NPPF*(link to footnote);</u> • <u>an additional measurable net gain in biodiversity is achieved;</u> • that recognised protected and notable <u>priority</u> species and habitats are protected and supported; • <u>Ancient woodland and irreplaceable habitats are protected</u> • that appropriate and long-term management of new or existing habitats is secured <u>and opportunities to connect habitats are secured</u> to ensure a network of nature recovery; and 	<i>BHCC agree with the suggestions put forward by Natural England with the exception of the deletion of wording in the 3rd bullet point, “protected and notable” and reinstatement of “priority” species as this amendment was made to encompass a wider range of species.</i>

Policy DM37 page 111	N/A	<p><i>Amend second bullet point to read:</i></p> <ul style="list-style-type: none"> protected and notable <u>priority</u> species and habitats 	<p><i>BHCC disagree with this amendment, as set out above.</i></p>
DM37 Part A page 111	See MM69 for final proposed modification	<p><i>Amend Part A. Internationally protected sites to read:</i></p> <p><u>All development must comply with the Conservation of Habitats and Species Regulations (as amended) (link to new footnote). Development likely to have significant effects on an international site (either individually or in combination with other plans or projects) and which would affect the integrity of the site will be subject to Habitat Regulations Assessment and will not be permitted unless the council is satisfied that:</u></p> <ul style="list-style-type: none"> i) There is no alternative solution (which can be adequately demonstrated by the developer); and ii) There are imperative reasons of overriding public health or public safety for the development; and iii) Adequate mitigation measures and/or compensatory provision is secured 	<p><i>BHCC understands that the suggestion to delete all the text, with the exception of the first sentence, would simplify the policy. However, BHCC consider the text suggested to be deleted to reflect paragraphs 63, 64 and 68 of the Habitats and Species Regulations. The text also aligns with policy SD9 in the adopted South Downs National Park Local Plan (2019). BHCC therefore do not agree with the suggestion to delete this text.</i></p> <p><i>BHCC agree that the following wording in point (iii) "mitigation measures and/or" should be deleted as this does not reflect paragraph 68 of the Habitats and Species Regulations.</i></p>
DM37 Part B page 111	See MM70 for final proposed modification	<p><i>Amend Part B. Nationally protected sites to read:</i></p> <p>Development proposals should avoid impacts on nationally protected sites (<i>link to new footnote</i>). Development proposals likely to have an adverse effect on the site's notified special interest features will not be permitted unless <u>the only exception is if:</u></p> <ul style="list-style-type: none"> i) the benefits of the development, at this site, clearly outweigh <u>both</u> the likely impact to notified features on the site and any broader impacts on the network of nationally protected sites; and ii) the loss <u>impacts</u> can be mitigated <u>in accordance with the mitigation hierarchy; and through on or off-site habitat creation to achieve a net gain in biodiversity/geodiversity.</u> 	<p><i>BHCC agree with this suggestion as this reflects guidance in relation to the inability to secure biodiversity net gain on nationally protected sites.</i></p>

		<p>iii) on or off site additional measurable net gains in biodiversity/geodiversity can be achieved.</p>	
Policy DM37 page 112	See MM72 for final proposed modification	<p><i>Amend policy at Part C. Locally protected sites to read:</i></p> <p>Unless allocated for development in the City Plan, d Development proposals that will result in an adverse effect <i>*(link to new footnote)</i> on the integrity of any local site which cannot be either avoided or adequately mitigated will not be permitted, unless:</p> <p>i) <u>the site is allocated for development in the City Plan or there are exceptional circumstances that justify the development of the site and can be demonstrated to outweighing the adverse effects on the local designation are clearly demonstrated;</u> and</p> <p>ii) <u>the loss impacts can be mitigated through on or off-site habitat creation; and to achieve a net gain in biodiversity/geodiversity.</u></p> <p>iii) on or off site additional measurable net gains in biodiversity/geodiversity can be achieved.</p>	<p><i>BHCC do not agree with this suggestion and wish to seek biodiversity net gain on locally protected sites.</i></p>
Policy DM37 page 112	See final MM74 for final proposed modification	<p><i>Amend the paragraph to read:</i></p> <p>Where proposals are liable to cause direct or indirect harm <u>impact</u> to a designated sites, they must provide:</p> <p>a) <u>evidence to demonstrate that the objectives of the designation and integrity of the area will not be undermined;</u></p> <p>b) funded management plans that secure the long term protection and enhancement of remaining features; and</p> <p>c) up to date information about the biodiversity/geodiversity which may be affected, and how loss impacts can be mitigated to achieve and additional measurable net gains achieved.</p>	<p><i>BHCC agrees with the first suggestion in the opening paragraph as “impact” covers indirect or direct harm and is more encompassing. However BHCC does not agree with the suggestions to delete points (b) or (c) in their entirety.</i></p>

From: [REDACTED]
[REDACTED] [Helen Pennington](#)
Cc: [REDACTED]
Subject: draft SOCG Natural England Signed
Date: 04 November 2021 13:22:10
Attachments: [draft SOCG Natural England Signed.docx](#)
Importance: High

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Dear Helen

I confirm I have read, noted and signed the attached SOCG. I confirm that the areas of agreement/disagreement are accurately reflected in the Appendix. Please note that the Council should not grant permission for applications which cannot demonstrate no adverse effect on integrity (AEOI) of internationally protected sites. This then becomes a matter for the relevant Secretary of State.

With best wishes

[REDACTED]

[REDACTED]

Senior Adviser
Sussex and Kent Team

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