

**M1-01**



# **Development and Allocations Plan**

## **Matters, Issues and Questions**

### **Matter 1**

June 2019

# Matter 1: Legal Compliance and the Duty to Co-operate

## Issue

Whether the Plan been prepared with due regard to legal and procedural requirements and the Duty to Co-operate has been satisfied.

## Questions

### **1.1 *Has the Plan been prepared and publicised in accordance with the statutory procedures of the 2004 Act (as amended) and the consultation requirements in the Regulations<sup>1</sup>?***

Yes, each stage of statutory consultation was carried out in accordance with the Act 2004 (as amended) and the Regulations 2012 (as amended) the NPPF and our Statement of Community Involvement (Reference 9).

The SD4 Consultation Feedback Report identifies the different stages in the plan's preparation including scoping, the draft plan and the pre-submission stage and how the council has met its regulation requirements.

The council carried out an early consultation on the scope and rationale for the Plan and provided an opportunity for early engagement. At both the draft and pre-submission stage of Plan's preparation, the Plan was promoted through a wide range of consultation. Copies of the DAP and all relevant supporting documents were made available to view on the council's website, at the City Library during its opening hours and during the staff held consultation events. Paper copies of documents relating to the DAP were available on request. A press notice was published and the council used social media to publicise the DAP's consultation as well as an article which was published in the council's news in brief (a newsletter which is sent out to every household in the City). Consultation materials were provided on the website and at events detailing relevant information and ways in which people could comment on the Plan.

The council has an extensive Local Plan Consultation database, comprising statutory consultees, general consultation bodies and residents. In addition, all those who made comments at the draft stage of consultation and wished to be updated on the Plan were also informed. Emails and letters were sent out to all consultees, providing information on the DAP's consultation, events and ways in which they could made comments. Several stakeholder meetings and workshops were held throughout the plans preparation, details of which are set out in the SD4 Consultation Feedback Report.

Comments were invited via the council's online consultation system, a consultation response form, they could be sent via email or in the post, and in addition post boxes were made available at the drop-in events held in the city. Representations made during the consultation process were considered by the council and informed the Plan's preparation.

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<sup>1</sup> Regulation 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Consultation Feedback Report – SD5 Appendices provides copies of the relevant consultation materials preparation for the Plan and its consultation.

**1.2 *Has the Plan been produced in compliance with the Council’s Statement of Community Involvement?***

The Plan has been prepared in accordance with the Statement of Community Involvement (2013), (SD11, 9).

The Council considers that it has exceeded the minimum consultation requirements in the Regulations. The SD4 Consultation Feedback Report and SD5 Appendices sets out the consultation methods the council undertook, how the council has met the requirements for statutory consultees, general consultation bodies and specific consultation bodies. These are the methods set out in the Statement of Community Involvement, (SD11, 9). The SD4 Consultation Feedback Report also details how the comments received during the consultation stages have been taken into account in the preparation of the Plan.

**1.3 *To what extent has the Plan’s production been consistent with the Council’s Local Development Scheme?***

The Plan has been prepared to an agreed programme set out in the Local Development Scheme (LDS) (SD11, 8). The 2013-2016 LDS initially referred to the Development and Allocations Development Plan Document. The LDS was updated in 2015 and again in 2017 to reflect the correct timetable and progress of the Plan. The key milestones set out in the LDS of publication and Submission have been met.

**1.4 *What was the methodology used for the Sustainability Appraisal (SA) and was the approach appropriate? How and when was the process undertaken? To what extent has the SA informed the content of the Plan? Have the likely economic, social and environmental effects of the Plan been adequately and accurately assessed in the SA?***

The SA that accompanied the submission DAP (September 2018) (3 and 4) incorporates the requirements of The Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the 'SEA Regulations'). The methodology used was based on the Strategic Environmental Assessment and Sustainability Appraisal guidance (Ministry of Housing, Communities & Local Government, 2015), published as part of governmental PPG. The Sustainability Appraisal sets out the process followed at paragraph 2.2 and Table 2-1 on page 4, referring to the relevant government guidance and setting out stages which are consistent with the flowchart set out in the PPG at ID 11-013-20140306, where the appropriate approach to sustainability appraisal is summarised.

The methodology involved assessing each of the policies with the sustainability objectives identified during the SA process for the CSUCP. The same sustainability objectives from the CSUCP were used (as a starting point) to maintain continuity between the plans, as the DAP forms Part 2 of the Local Plan. The sustainability objectives used in the SA for the CSUCP were updated in the SA where required when supported by new data or following recommendations from Statutory Consultees (3) (page 10 Table 4-2).

Site Appraisal Criteria (4) (Appendix F LXXIX) were developed based on the sustainability objectives in order to assess each of the allocated sites against the same criteria. Based on the criteria, the sites then received an overall sustainability score from Deep Green (++) to Deep Red (--). The appraisal methodology and appraisal are set out in (3) Section 5 and Appendix G.

The SA process also considered iterations of the policies and included recommendations regarding how to strengthen the policies and general changes that could be made including additional policies that would benefit the DAP. The assessment is carried out in Section 6, and Appendix H which records recommendations regarding the policies suggested from the draft SA stage, with the Council response.

The SA approach was appropriate and proportionate and was an iterative process undertaken alongside the Plan, in accordance with guidance. Further explanation is provided below.

The SA assessment of the policies was undertaken over a period of 2 years, beginning in 2017. The Scoping Report was submitted for consultation in early 2017 with responses received in June-July 2017. The consultation responses resulted in updates to the Sustainability Objectives Appraisal Criteria.

The initial SA appraisal was conducted on first iterations of the DAP before it was then released for Public Consultation in October - November 2017. Responses were received from statutory consultees Natural England, the Environment Agency and Historic England. Additionally, responses were received from non-statutory consultees including local residents, several trusts including the Ouseburn Trust and Byker Community Trust, and local charities including Friends of Gosforth Central Park.

Following Public Consultation changes were made to the DAP and the SA as a result of the responses. Changes made to the SA resulted in the incorporation of increased heritage baseline information for the historic environment. Changes also resulted in updates to the sites assessment to include greater consideration for the proximity of housing and employment sites to heritage assets. Further details of the Statutory Consultee responses and the associated actions can be found in Appendix E of the SA. Appendix H includes the full appraisal of the DAP policies and provided recommendations for the Council. The SA was then updated further to appraise the Submission Draft DAP in late 2018. The SA and Submission Draft DAP were then submitted to the Secretary of State for examination on 13 March 2019.

The SA informed the content of the plan through the various iterations of the appraisal process. Feedback was provided for each of the sites and policies and changes were made by the Council where it was believed to be appropriate.

Appendix E explains the consultation undertaken, along with responses of the Council which identify how comments made in consultation would or would not influence the further preparation of the Plan. Following feedback from Statutory Consultees, the Sustainability Objectives Appraisal Criteria was updated for Objectives 4, 5, 7a, 7b, 9 (3) (Table 4.2 page 10) to include greater emphasis on flood risk, the historic environment, priority species, air and water quality in

designated sites, and the best and most versatile agricultural land. Table 4-2 details the additional Appraisal Criteria for each objective.

Records of how the Council responded to suggested changes to the policies can be found in Appendix H to the SA. This details the suggestions made for policy changes within the SA. The response section within the SA comments and suggestions outlines where changes have been made and/or the Council's reasoning behind not making suggested changes.

The SA has assessed the likely economic, social and environmental effects of the Plan, as reflected in the Sustainability Objectives set out in the DAP. These objectives included the promotion of strong and inclusive communities, ensuring good access to jobs, facilities, goods and services, living within environmental limits, protecting environmental assets and strengthening the economy. As a starting point, the same SA objectives as were utilised in the Core Strategy were adopted in the SA for the Plan for consistency. These were revised through the consultation process. Additionally, the SA for the Core Strategy was regarded as adequate as confirmed by the examining Inspector.

### **1.5 *Does the SA test the Plan against all reasonable alternatives?***

Yes. The approach taken in the SA must be seen in the context of the purpose underlying the DAP, which is to provide site allocations and designations to deliver the growth strategy set out in the CSUCP, recognising that strategic allocations have already been made through that plan, as well as development management policies which emerge from the strategic direction set by the CSUCP. The policies in the DAP are therefore largely determined by the policy context established in the CSUCP and by the need for consistency with the NPPF. The SA process of the CSUCP also considered the options for meeting strategic needs and setting strategic policy.

The Council identified the appropriate sites options for assessment in the SA, through an iterative process which included an initial call for sites and then a site selection process according to an agreed selection methodology which was directed at rejecting sites that were unsuitable for housing and employment development. Section 5 of the SA explains how the allocation sites were appraised and site selection from the Housing and Economic Land Availability Assessment. The sites assessed in the SA (see Appendix G) are those considered by the Council to be suitable for consideration as options for allocations in the DAP, within the context already set through the CSUCP and its associated SA. Consultation at successive stages of the SA process did not result in any other alternative sites that were considered suitable for further assessment.

In relation to policies, the approach to development management policies has been determined by strategic and national policy, but as explained above, the SA process involved the consideration of other suggested options for the drafting of policies, on which comments were provided by the Council in the final SA (see

Appendix H). When considering the variations of the policies, the SA drew conclusions about the strength of the policies and where they could be improved. The SA process is therefore adequate as regards the consideration of alternatives.

**1.6 *Has adequate consideration been given to Habitats Regulations Assessment? Will the Plan, alone or in combination, adversely affect any Natura 2000 sites? Has the Council taken account of the judgement in People over Wind, Peter Sweetman v Coillte Teoranta? Is Natural England satisfied with the content of the Plan?***

Adequate consideration has been given to the Habitats Regulations Assessment. When considering whether an appropriate assessment of the DAP was necessary under the Habitats Regulations, the Council has taken into account and relied upon the preparation and assessment of the CSUCP. The CSUCP was itself the subject of an habitats screening assessment, which concluded that none of the policies in the CSUCP would cause any likely significant effect on any European site (by way of context, it is to be noted that no Natura 2000 sites lie within the Council's administrative area).

The DAP proposes allocations and development management policies within a growth strategy and policy framework which has therefore been assessed in compliance with the Habitats Regulations. The allocations and policies in the DAP are consistent with the CSUCP, in particular because the housing and employment allocations reflect the development anticipated by the CSUCP habitats screening assessment. The Council considers that the conclusions of the screening assessment for the CSUCP therefore continue to apply and that the DAP does not trigger any requirement for appropriate assessment. It has seen no evidence of any material change in circumstances since the habitats assessment of the CSUCP which would affect its conclusions or otherwise require any further appropriate assessment of the DAP.

The SA process has not raised any concerns over impacts resulting from the allocations or the policies in relation to sustainability objectives which consider the protection of designated sites.

The Council has confirmed its position with Natural England who stated that the CSUCP Habitat Regulations Assessment Screening was not likely to have a significant effect and concluded that the DAP would also not have a significant effect. Further communication with Natural England has taken place during the course of preparation of the DAP. The communication was a part of the public consultation process. In each instance, Natural England did not identify any issues with the SA appraisal process relating to the requirement for an Habitat Regulations Assessment. Details of the comments can be found in Appendix E of the SA. The DAP would not, therefore, adversely affect any Natura 2000 sites, either alone or in combination.

The Council has taken account of the People over Wind judgment. In that case the Court of Justice of the European Union (CJEU) held that it was not appropriate at the screening or "trigger" stage of Habitat Regulations Assessment to take account of mitigation measures to avoid or reduce harmful effects on a European site.

In the circumstances of the DAP, it was concluded that any likely significant effects could be screened out having regard to the screening exercise undertaken for the CSUCP which had reached the same conclusion, without taking into account identified mitigation measures as considered in People over Wind.

**1.7 *Does the Plan as a whole include policies designed to ensure that the development and use of land within the district contributes to the mitigation of, and adaptation to, climate change in accordance with the Act<sup>2</sup>?***

The DAP includes a range of policies which together with strategic policies in the CSUCP provide comprehensive planning policies for mitigation of, and adaptation to, climate change. The policies will ensure that the impact of development on climate change is minimised and mitigated where necessary, and that adaptation is promoted to ensure that new development is not affected by current or future climate risks.

Objective S011 seeks to reduce CO2 emission from development and future growth while adapting to the issues, mitigating adverse impacts and taking advantage of the opportunities presented by climate change and the policies which will deliver this are listed in Section 2.

The DAP refers to climate change mitigation and adaptation in several of the DAP policies; including flood risk management, design, protecting and enhancing Green Infrastructure, pedestrian and cycle movement and trees and landscaping. This demonstrates the council's recognition that addressing climate change is a cross cutting issue.

Newcastle is committed to mitigation of, and adaptation to, climate change. Sustainable travel choices are promoted with existing and proposed planning policies helping to minimise car trips and increase walking and cycling. Major developments are expected to demonstrate public transport accessibility at planning application stage. Policy DM10 Pedestrian and Cycle Movement promotes sustainable travel and seeks pedestrian and cycle links to ensure that major developments are within acceptable walking and cycling distance of key local facilities and services and DM11 requires major development to promote and facilitate the use of public transport and also designates park and ride facilities. These policies should be read together with the CSUCP policies.

Policies in the People and Place section require both mitigation and adaptation measures. Policy DM20 Design requires high quality and sustainable design to address the impacts of climate change and adverse microclimatic conditions. Policy DM24 requires assessment and mitigation of air quality and overheating. Policy DM26 requires management and reduction of flood risk through a range of measures including SuDs and preventing properties from flooding by incorporating allowance for climate change in design. Policy DM27 seeks to deliver wide ranging benefits to green infrastructure maximising multifunctionality, climate change mitigation and adaptation, and enhancing connectivity and biodiversity. DM28 Trees and

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<sup>2</sup> Section 19(A) of the Planning and Compulsory Purchase Act (as amended)

Landscaping requires provision to assist in reducing or mitigating run off and flood risk. Policy DM29 requires net biodiversity gain.

### ***Duty to Co-operate***

**1.8 *Has the Council engaged constructively, actively and on an ongoing basis with all relevant organisations on any strategic matters of relevance to the plan's preparation, as required by the Duty to Co-operate, and in maximising the effectiveness of the Plan? How have cross boundary issues been addressed through co-operation?***

The SD6 Duty to Co-operate Statement of Common Ground (DtCSoCG) demonstrates how the council has complied and continues to comply with the requirements of the Duty to Co-operate as set out in section 110 of the Localism Act (2011), the NPPF and the Town and Country Planning (Local Planning) (England) Regulations (2012), the council considers that it has fully complied with the Duty to Cooperate in the preparation of the Plan.

The SD6 DtCSoCG evidences how the council has cooperated constructively, collaboratively and on-going basis with adjoining local authorities, prescribed bodies and other relevant organisations. This has involved a range of methods, including regular meetings, stakeholder workshops, stakeholder partnerships and joint working on relevant evidence-base documents. Ongoing engagement with neighbouring authorities has been considerable, proportionate and reflective of the issue concerned.

The Core Strategy and Urban Core Plan set out the strategic issues and policies to address the strategic matters affecting Newcastle and Gateshead, while the Development and Allocations Plan deals with non-strategic issues. As such, the strategic matters were addressed during the preparation and examination of the CSUCP, Part 1 of the Local Plan.

**1.9 *Are there any outstanding concerns from neighbouring authorities or other Duty to Co-operate bodies, and if so, how is it intended to resolve them?***

There are no cross boundary issues, outstanding concerns from neighbouring authorities or other bodies arising from the Development and Allocations Plan or in relation to non-compliance with the duty to co-operate.

The non-strategic nature of the Plan is reflected in the relatively small number of comments received from neighbouring authorities during the consultation of the Plan. The comments made during the consultation process from Duty to Co-operate bodies and examples of the council's joint working with relevant bodies are set out in the SD6 Duty to Co-operate Statement of Common Ground.