



Council's Response to Inspectors' Matters, Issues, Questions

Matter 11 – Natural and Historical Environment

Issue 1 – The Natural Environment – Policies SP13, SP14, NE1, NE2, NE4, N5 and NE6

Issue 1 – The Natural Environment – Policies SP13, SP14, NE1, NE2, NE4, N5 and NE6

Q1 What are the reasons for the suggested changes to Policy SP13? Why are they necessary for soundness?

Q1 DDC Response:

1. There have been changes proposed to 6 criteria of Policy SP13 (and associated supporting justification and implementation text) as set out in the Schedule of Additional Modifications (SD06), at AM21, AM22, AM23 and AM24.
2. The answer to this section cross refers to Matter 1, Issue 7 and the questions on Habitats Regulation Assessment, where the justification for a number of the changes has been set out.

International sites

3. Deletion of text at paragraph 3.259 (AM21) was a result of consultation with Natural England (NE) and is agreed in the signed Statement of Common Ground. NE considers that the Council was being over cautious, and the HRA describes that recreation impacts on the sites listed in the paragraph can be mitigated by incorporating policy safeguards included in the local plan, including PM3, PM5, SP13 and SP14. The indicated zones of influence were not based on site-specific evidence (not justified) and large allocations will provide large areas of recreation space for multiple benefits for people and nature. This change is agreed with NE in the Statement of Common Ground.
4. The change to criterion (c) (AM23) is proposed following consultation with Natural England (see Signed Statement of Common Ground). Natural England do not agree it is justified to require all development proposals within 500m of the Thanet Coast and Sandwich Bay SPA/Ramsar to be subject to project level HRA. The requirement for a Construction Environmental Management Plan to be submitted with all planning applications within 500m of the Thanet Coast and Sandwich Bay SPA/Ramsar is referred to at paragraph 5.30 of the Regulation 19 Habitats Regulations Assessment. The relevant implementation paragraph (paragraph 3.280) has a proposed additional amendment (AM24) which indicates that where an allocation requires a project level HRA, this will be set out in the site-specific policy. For further information see paragraph 98 of Matter 1 relating to Habitat Regulations Assessment. This change is agreed with NE in the Statement of Common Ground.



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5. The change to criteria (d) (AM23) is also proposed following consultation with Natural England (see signed Statement of Common Ground). Natural England stated that at both Stodmarsh SPA and Ramsar, and Dungeness, Romney Marsh and Rye Bay SPA, the policy requirement for wintering bird survey was excessive. References to both these sites are proposed to be removed from the policy. For the Thanet Coast and Sandwich Bay SPA Natural England argued that the 15km buffer for functionally linked land is over-precautionary. They recommended the buffer was reduced to 5km. This is clarified in implementation paragraph 3.281 (AM24). Given the NE comments, the wintering bird survey requirements in the submitted plan are currently not justified as set out in response to Matter 1, Issue 7, Question 2.
6. An Additional Modification to paragraph 2.282 (AM24) sets out the ongoing survey work for Dover to Kingsdown SAC which will be updated in conjunction with the National Trust. This is a valuable clarification and is referred to as mitigation in the HRA. It responds to an NE comment on the Habitats Regulations Assessment and is included in the Statement of Common Ground. See Matter 1, Issues 7, Question 8 for more information.

Locally Designated Environmental Sites

7. The changes to criteria h) (AM23) of policy SP13 inserts references to 'geological assets' including 'Regionally Important Geological Sites' and 'priority species'. The inclusion of these omitted assets ensure that the policy is consistent with the NPPF (para 174 and 179). The reference to 'chalk grasslands' is an example of a locally important habitat and is a helpful and factual addition which is not related to soundness. This and the reference to priority species sought to respond to a comment from Kent Wildlife Trust.
8. To accompany the new reference to Regionally Important Geological Sites in Policy SP13, a further additional modification (AM22) proposes to move paragraph 11.20 to a new location (after 3.267). It is the Council's view that this is a helpful change to plan order which will add clarity, but not necessary for soundness.

The mitigation hierarchy

9. The changes to criteria I) and J) (AM23) of Policy SP13 respond to a comment from Natural England (NE) who considered the policy to lack clarity. The amendment has been agreed with NE (signed Statement of Common Ground). The Additional Amendment deletes the hierarchy set out in the policy and replaces it with a simple reference to the NPPF which has a mitigation hierarchy at paragraph 180(a). Associated paragraph J) as related to the mitigation hierarchy is also proposed to be deleted.
10. The final paragraph at the end of this policy also has an amendment relevant to soundness (also AM23), replacing 'comply with the requirements of policy SP14', with 'take account of the requirements of Policy SP14'. This is an important



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clarification about the relationship of proposals for mitigation, compensation, and enhancement with Policy SP14. When adopted, the Local Nature Recovery Strategy will be key to biodiversity net gain and ecological networks. It would be inconsistent not to refer to this emerging strategy in Policy SP13.

Other changes

11. The amendment to paragraph 3.267 (AM22) seeks to correct the use of terminology in respect of the South East Marine Plan. The amendment responds to a comment from the Marine Management Organisation and has been included in the Statement of Common Ground.
12. An amendment to paragraph 3.275 refers to 'Plan Bee'. This change is not necessary for soundness and responds to a comment from Kent County Council. In the Statement of Common Ground with KCC, DDC and KCC agree that the wording on AM22 in relation to Plan Bee can be made clearer and propose that the following modification should instead be made to paragraph 3.275 to add: Kent's Plan Bee¹ should also be taken into consideration.

Q2 Is it clear to users of the Plan how all development proposals (excluding householder developments) should connect to 'off-site networks' under Policy SP14? Will this be possible for all development types and locations?

Q2 DDC Response:

13. The NPPF at paragraph 179 requires plans to '*promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity*' and paragraph 180 requires that '*opportunities to improve biodiversity in and around developments should be integrated as part of their design*'. The Council considers that wherever possible new development should deliver this requirement. However, it is accepted by the Council that there may be circumstances whereby the characteristics of the development mean it is not possible to achieve, such as a change of use where the application site forms part of a building only and there is no outdoor space. It is not possible to list all the potential exclusions to a policy, however the Council would have no objection to a minor addition of the words 'where possible' to criteria b) if the Inspectors consider that it would provide further clarity on the matter.

¹ [Kent Plan Bee Pollinator Action Plan](#)



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14. Most development types and locations will be able to connect to or improve off site networks. Even if there is not a nearby habitat network to directly connect to, then an 'island' of habitat can still contribute to a network overall, reducing the distance between similar habitats and reducing the isolation of individuals within a species. Even minor urban development could include a native hedgerow, pond or carefully chosen tree to enhance an ecological network, even if it would only represent a 'stepping-stone' or 'island' to assist the dispersion and movement of some species.

Q3 What is the justification for biodiversity net gain requirements in Policy NE1? What information is available to demonstrate that these targets can be achieved?

Q3 DDC Response:

15. The NPPF at paragraph 179 states that plans should '*identify and pursue opportunities for securing measurable net gains for biodiversity.*'
16. Biodiversity net gain (BNG) represents a significant change to how the planning system accounts for biodiversity. The current system relies on ensuring no net loss to biodiversity through the protection of protected and designated sites, habitats, and species from harmful development. This system works well to avoid the most severe impacts on biodiversity and protect the best sites for wildlife, but less well to manage the gradual erosion of lower value and more common habitats which benefit a broad range of flora and fauna.
17. Cumulatively, even 'insignificant' losses of habitat at a development scale add up to significant rates of biodiversity loss overall, and this approach is contributing to the biodiversity losses occurring throughout England.
18. The recent State of Nature Report (2023)² shows that wildlife is continuing to decline across the country, with species' abundances falling by an average of 32% in England since the 1970s, and 13% of species threatened with extinction from Great Britain.
19. The Environment Act, granted Royal Assent in November 2021, includes a requirement for development to deliver a minimum 10% BNG. The Council has taken this forward into Local Plan policy due to the uncertainties over implementation of the mandatory BNG requirement at the time of the initial Local Plan drafting.
20. The full implementation of the mandatory minimum 10% BNG for development was, until recently, expected in November 2023, following publication of secondary

² [State of Nature Report \(2023\)](#)



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legislation and Government guidance. Mandatory BNG is now expected to come into force at some point in January 2024, with the guidance and secondary legislation expected in November 2023.

21. The lack of timely Government guidance and secondary legislation to clarify the requirements for mandatory BNG, alongside the uncertainty of the full implementation date are part of the reason for the policy remaining in the plan, in its current form, until the current date. The Council also seeks to retain the policy for BNG to ensure that local requirements for BNG can be sought in planning applications.
22. The proposed Additional Modifications (AM105) provide minor clarifications, but the Council has further considered whether rewording the current BNG policy could make its justification clearer. However, until the publication of the secondary legislation and Government guidance, there is still uncertainty regarding how the acceptability and appropriateness of BNG proposals will be considered by the Council in its planning decisions, when the legal requirement for mandatory BNG is secured in the General Planning Condition.
23. It is the Council's understanding that there will be clarification from Government regarding the information necessary to accompany a planning application in the form of a 'draft Biodiversity Gain Plan'. This should allow consideration of the BNG proposals in the Council's decision making, but the secondary legislation and guidance are awaited.
24. It is the Council's view that BNG proposals should be considered alongside and in the context of other ecological information, including protected species and other ecological impacts, and with demonstrable application of the mitigation hierarchy.
25. Given the expected timing of the publication of Government guidance during the Examination, the Council considers that there are benefits to waiting until these are published before preparing amended BNG policy wording. This will ensure that the policy wording can take all the relevant information and national requirements into account. At the time of the Examination hearings, the Inspectors will be updated on this matter.
26. Importantly (and as part of the justification for the policy) the Council seeks to go further than the legislative requirements to ensure that the biodiversity gains deliver local priorities.
27. The Council believes that the objective to achieve BNG is relevant to all development. The NPPF (para 174 and 179) requires decisions and plans to deliver net gains for biodiversity. The Government's consultation on mandatory BNG confirms at page 20 that '*any exemption from mandatory BNG would not prevent planning authorities requiring biodiversity gains to be delivered by exempted developments in line with local or nationally set planning policy*'.



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28. Notwithstanding the forthcoming secondary legislation and guidance, the Council's view is that the following procedural matters and local requirements should be set out in the Local Plan BNG policy:
- The development threshold above which a minimum 10% BNG will be sought (to be in accordance with Government indications for mandatory BNG)
 - That development exempted from mandatory BNG should seek (where possible) to demonstrate biodiversity enhancements. Proposed biodiversity enhancements should be included in the ecological report (where relevant) or the design and access statement and include adequate and proportional ecological information to support this.
 - That Biodiversity Metric 4.0 will be used to calculate BNG (to be superseded by 'the statutory metric').
 - That the need to provide BNG does not override existing legal and policy protections in place for protected and designated sites, species and habitats.
 - That mitigation and compensation for impacts to protected and designated sites, species and habitats can be used to reach a point of 'no net loss', and that biodiversity net gains must be in addition to any mitigation and compensation measures required for these impacts.
 - That BNG proposals will focus on local priorities and be informed by local guidance including the Dover District Green Infrastructure Strategy, the Kent Biodiversity Strategy and the Kent Local Nature Recovery Strategy (when published). This will include a hierarchical approach for provision of BNG and local priorities for the location of BNG delivery.
 - That BNG should be achieved on-site with retained and enhanced habitats, appropriate buffers, and creation of habitats to increase connectivity for wildlife. Where appropriate evidence demonstrates that ecologically meaningful BNG cannot be fully achieved on-site, off-site BNG can be explored.
 - That planning applications shall be supported by a draft Biodiversity Gain Plan with supporting information to demonstrate how at least 10% biodiversity net gain will be achieved.
29. Local objectives and priorities will be summarised in a BNG SPD / supplementary guidance, but to date the draft Dover Green Infrastructure Strategy, Kent Biodiversity Strategy and the Kent Local Nature Recovery Strategy are relevant.
30. In summary, the Council requests that modifications be made to this policy to provide clarity, justification and improve effectiveness. However, given the timing of



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the publication of Government guidance and secondary legislation (expected in November 2023), it would be sensible and helpful to draft the modification after the information becomes available.

What information is available to show the targets can be achieved?

31. The requirement for 10% biodiversity net gain is included as a base cost in the Whole Plan Viability Study (GEB08a³ and GEB08b⁴).
32. The densities of development proposed in the Plan generally reflect needs for landscaping, open space, sustainable drainage and biodiversity enhancement, so that wherever possible the requirements can be delivered on site.

Q4 Is Policy NE1 effective and justified by including requirements for developments to accord with supplementary planning documents?

Q4 DDC Response:

33. It is intended that the supplementary planning document would provide guidance on how development can accord with the requirements of the Policy NE1, rather than requiring anything in addition to the policy requirements. If the Inspectors, consider it necessary for soundness then the Council would raise no objection to the policy wording being amended to clarify this. In addition, consultation on the Levelling Up and Regeneration Bill included a proposal to discontinue the use of Supplementary Planning Documents. Whilst this is still a draft proposal and the LURB is still undergoing changes and does not have Royal Assent, the Council considers that a further modification to the policy would ensure flexibility to make potential changes to the planning system that could be embedded in the reference by making the following amendment:

‘Development proposals must provide a minimum of 10% BNG above the ecological baseline and ~~in accordance with~~ be informed by the BNG SPD/ supplementary planning guidance’

34. An updated wording for Policy NE1 has not however been proposed for the reasons set out at question 2.

³ GEB08a [Whole Plan Viability Study Main Report and Appendices \(2020\)](#)

⁴ GEB08b [Viability Study Update Note \(2022\)](#)



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Q5 What are the reasons for the suggested changes to Policy NE1? Why are they necessary for soundness?

Q5 DDC Response:

35. The suggested changes sought to provide clarification in the light of the changing situation regarding mandatory biodiversity net gain. Further Government guidance and secondary legislation are expected in November 2023. As set out in question 2, the modifications should be considered after this has been published. The Council consider this to be a pragmatic way to respond to the changing situation.

Q6 Is Policy NE2 (subject to the Council's suggested changes) consistent with paragraphs 176 and 177 of the Framework, which require great weight to be given to conserving and enhancing the landscape and scenic beauty of AONBs and require the scale and extent of development within these areas to be limited?

Q6 DDC Response:

36. Yes, the Council consider that Policy NE2 (subject to additional modifications 107 and 108) is consistent with paragraphs 176 and 177 of the NPPF. The modifications proposed are in direct response to the Kent Downs AONB Unit representations and the wording has been agreed with the Kent Downs AONB Unit, as set out in the Statement of Common Ground.

'It is agreed that Policy NE2 (subject to the Council's suggested changes) is consistent with paragraphs 176 and 177 of the Framework, which require great weight to be given to conserving and enhancing the landscape and scenic beauty of AONBs and require the scale and extent of development within these areas to be limited.'



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Q7 What are the reasons for the suggested changes to Policies NE4, NE5 and NE6? Why are they necessary for soundness? Subject to these changes, will the policies be justified, effective and consistent with national planning policy?

Q7 DDC Response:

37. NE4: The supporting text policy to Policy NE4 (para 11.32) is amended by adding '*minimising harm to habitats and species*' to the benefits achieved from local improvements in air quality (AM112). This responds to a comment from Natural England and their agreement is recorded in the Statement of Common Ground. This is an important, but factual amendment which is not necessary for soundness. The planning system has an important role to play in driving forward improvements in air quality. There are two Air Quality Management Areas declared in the Dover District, due to exceedance of the annual mean Air Quality Strategy objective for NO₂; a situation caused primarily by road traffic emissions. Further justification is set out in paragraphs 11.32 to 11.35 of the local plan. This policy is effective and consistent with national policy, including paragraph 186.
38. NE5: The supporting text policy to Policy NE5 is amended by deleting the final sentence of paragraph 11.48 and inserting replacement text at paragraph 11.51. These changes are linked together and sought to respond to comment SDLP1504 from the Environment Agency. Following submission of the Plan, the EA have been consulted with on the suggested changes (AM113 and AM114). The EA has requested a change to AM114. It is therefore proposed that paragraph 11.51 is replaced by the following post submission modification instead:

Delete and replace 11.51:

39. ~~11.51 "For residential and commercial developments where there is no mains connection within reasonable distance, applicants will be required to provide details of a water treatment package plant or equivalent that is compliant with, and has been approved by Environment Agency guidance, as part of a planning application. Applications for residential extensions will not be required to provide such details. In the areas of the district that are not on mains drainage, wastewater treatment plants may potentially be installed if they can meet non-mains design criteria. As part of planning applications, applicants will be required to provide details of a wastewater treatment plant or equivalent that is compliant with non-mains drainage regulations and aligns with Environment Agency risk assessment guidance. Applications for residential extensions will be required to show any risks are not exacerbated and ensure current drainage systems comply with non-mains drainage regulations and meet building regulations. Discharges from treatment plants or equivalents may require an environmental permit from the Environment Agency unless it meets exemption criteria"~~



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40. This text has been agreed in the Statement of Common Ground.
41. The justification for the policy is set out at paragraphs 11.40 to 11.48 of the Local Plan. Drinking water for the Dover district is predominantly supplied by groundwater sources. Negative impacts upon water quality can occur either indirectly through pollution of surface or groundwater or indirectly through the treatment of wastewater. In line with the objectives of the Water Framework Directive, development must not result in a water body failing to meet identified limits in the South East River Basin Management Plan. In terms of wastewater it is essential that developers work with Southern Water to ensure that infrastructure is delivered in a timely manner. The council believe the policy is effective (subject to the modifications proposed) and consistent with national policy.
42. NE6: Policy NE6 is amended (AM115) by replacing the first sentence and final paragraphs of the policy from 'should' to 'must'. This change reflects the importance of the River Dour as a priority habitat and one of only 200 chalk streams in the world. The justification to the policy describes the need to protect fragile ecosystems, improve water quality, and ensure it can contribute to green infrastructure and the distinctive environment of the town. Subject to this change the Policy is justified, effective and consistent with national policy.



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Issue 2 – The Historic Environment – Policies SP15, HE1, HE2, HE3 and HE4

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Q1 Are the Plan's heritage policies consistent with the approach to conserving heritage assets in the Framework, having particular regard to the tests in paragraphs 200-203?

Q1 DDC Response:

43. The Council considers that the heritage policies of the Plan (Policies SP15, HE1, HE2, HE3 and HE4) are consistent with the NPPF, and specifically with the tests in paragraphs 201 – 203. In particular, policy HE1 sets out and differentiates between the approach that the Council will take to proposed developments that will lead to substantial harm to, or total loss of significance of, a designated heritage asset, and proposed developments which will lead to less than substantial harm to the significance of a designated or non-designated heritage asset, in accordance with the tests of paragraphs 201 – 203 inclusive. The footnote to paragraph 201 is addressed in the supporting text to Policy HE3 (paragraph 12.25).
44. With regard to the requirements of paragraph 200 of the NPPF, these state that harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification, that substantial harm to or loss of grade II listed buildings and registered parks and gardens should be exceptional, while that to assets of highest significance should be wholly exceptional. This approach is endorsed in the Plan and set out in paragraph 12.5 of the supporting text to Policy HE1 rather than in the policy wording itself.
45. The Council does not consider this issue to be a matter of soundness, but if for clarity the Inspectors consider the wording of paragraph 12.5 should be moved to within Policy HE1, the Council would raise no objection to this post submission modification being made.



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Issue 2 – The Historic Environment – Policies SP15, HE1, HE2, HE3 and HE4

Q2 Where changes are suggested by the Council in Core Document SD06, why are these necessary for soundness?

Q2 DDC Response:

46. The proposed changes to the supporting text, set out within SD06, listed as references AM26, AM116, AM117 and AM118 in the table, have been proposed to add clarity to the application of policies SP15, HE1 and HE4. They cover a small number of minor factual corrections to the supporting text to SP15, clarification of the requirements that the Council will expect for Heritage Statements, and clarifying the terminology used for historic parks and gardens.
47. Whilst such additional modifications add clarity and therefore contribute to the effectiveness of the Policies in question, the Council does not consider the changes to be necessary for soundness.