



The Planning Inspectorate

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# **Report to West Sussex County Council & South Downs National Park Authority**

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an Inspector appointed by the Secretary of State for Communities and Local Government

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the West Sussex Joint Minerals Local Plan**

The Plan was submitted for examination on 26 May 2017

The examination hearings were held between 19 and 28 September 2017

File Ref: PINS/P3800/429/9

## **Abbreviations used in this report**

AA	Appropriate Assessment
AMR	Annual Monitoring Report
AONB	Area of Outstanding Natural Beauty
AWP	Aggregate Working Party
DtC	Duty to Co-operate
EIA	Environmental Impact Assessment
HRA	Habitats Regulations Assessment
LAA	Local Aggregates Assessment
LDS	Local Development Scheme
MM	Main Modification
MSA	Minerals Safeguarded Area
MSSR	Mineral Site Selection Report
NPPF	National Planning Policy Framework
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SCI	Statement of Community Involvement
SOCG	Statement of Common Ground

## Non-Technical Summary

This report concludes that the West Sussex Joint Minerals Local Plan provides an appropriate basis for the planning of the County, provided that a number of main modifications [MMs] are made to it. West Sussex County Council & the South Downs National Park Authority have specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

All the MMs were proposed by the Authorities or concern matters that were discussed at the examination hearings. Following the hearings, the Authorities prepared schedules of the proposed modifications and where necessary carried out sustainability appraisal of them. The MMs were subject to public consultation over a six week period. In some cases, I have amended their detailed wording and/or added consequential modifications where necessary. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Changes to remove reference to a 'move away' from activity within the National Park to ensure consistency with Paragraph 116 of the National Planning Policy Framework (the NPPF).
- Alterations to remove the soft sand strategy and proposed site allocation at Ham Farm, Steyning from the Plan and to require a focused early review in this regard.
- An amendment to the vision to refer to seeking net gains in natural capital.
- A change to Strategic Objective 1 to refer to the need to ensure a steady and adequate supply of minerals.
- Changes to Strategic Objective 3, to include silica sand and sharp sand and gravel and to remove reference to a declining amount of extraction within the National Park to ensure consistency with Paragraph 116 of the NPPF.
- The deletion of Strategic Objective 4 to avoid duplication.
- An amendment to Strategic Objective 14 to make clear that it applies to the operation of mineral workings.
- An alteration to Policy M1(a) to refer to at least a 7 year landbank.
- To make clear that the entire identified silica sand resource is safeguarded.
- Amendments to remove reference to landbanks in relation to silica sand and clay and to reference a stock of permitted reserves.
- A change to ensure that the strategy for clay includes the safeguarding of brick-making clay.
- Changes to Policy 7a and 7b and the supporting text to remove the need for conventional and non-conventional (including hydraulic fracturing) hydrocarbon proposals to demonstrate that the least sensitive site has been selected, but instead to demonstrate that the site is an acceptable environmental option, when considered against deliverable alternative sites.
- Alterations to Policy M7b to ensure consistency with the Infrastructure Act 2015 and the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016).
- Amendments to make clear what processing activities Policy M8 includes.
- Changes to make it clear that Policy M9 includes soft sand (including

potential silica sand) and to refer to the policies maps for minerals safeguarding areas.

- Alterations to ensure that Policy M10 references policies maps rather than inset maps.
- Amendments to the supporting text of Policy M10 to refer to brickworks as part of safeguarded minerals infrastructure and buffers of 250 metres to sensitive receptors rather than 150 metres.
- Changes to the development principles for the Extension to West Hoathly Brickworks site allocation.
- An alteration to Policy M13 to refer to the 'purposes' of designated landscapes rather than 'objectives'.
- Alterations to Policy M14, the supporting text and the glossary to ensure consistency with national policy in terms of heritage assets.
- Changes to Policy M17, the supporting text and the glossary to ensure consistency with national policy in relation to ecological matters.
- Amendments to Policy M19 to refer to climate change and to its supporting text to make reference to Strategic Objective 14.
- Alterations to Policy M22 (Cumulative Impacts) and the supporting text to clarify that the policy relates to all other types of developments.
- Changes to Policy M23 to ensure that the policy relates to the operation of mineral workings, as well as their design and to provide clarity on what evidence will be required in support of future proposals in terms of a working programme.
- Alterations to the Appendices to refer to Policies maps rather than inset maps.
- Changes to the implementation and monitoring framework for some policies, to include specific and measurable targets.
- Numerous other contextual changes required for soundness.

## Introduction

1. This report contains my assessment of the West Sussex Joint Minerals Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended) (the 2004 Act). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (Paragraph 182) (the NPPF) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authorities have submitted what it considers to be a sound plan. The West Sussex Joint Minerals Local Plan, submitted in May 2017 is the basis for my examination. It is the same document as was published for consultation in January 2017.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Authorities requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and /or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, **MM3** etc, and are set out in full in Appendix 1.
4. Following the examination hearings, the Authorities prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report and in this light, I have made some amendments to the detailed wording of the main modifications and added consequential modifications where these are necessary for consistency or clarity. None of the amendments significantly alter the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken. Where necessary I have highlighted these amendments in the report.

## Policies Map

5. The Authorities must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Authorities are required to provide a submission policies map. In this case, the submission policies map comprises the set of plans identified as Appendix C, D and E of the Plan.
6. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend main modifications to it. However, a number of the published MMs to the Plan's policies require further corresponding changes to be made to the policies map.
7. These further changes to the policies map were published for consultation alongside the MMs. When the Plan is adopted, in order to comply with the

legislation and give effect to the Plan's policies, the Authorities will need to update the policies map with the changes published alongside the MMs incorporating any necessary amendments identified in this report.

## **Assessment of Duty to Co-operate**

8. Section 20(5)(c) of the 2004 Act requires that I consider whether the Authorities have complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. The Authorities have provided as part of their evidence, a document (JMLP/OSD/003), which identifies how they consider the DtC has been met. This sets out that the Authorities have engaged with the South East of England Aggregate Working Party (AWP) throughout the plan-making process and the production of the West Sussex Local Aggregates Assessment (LAA). This can also be said for other Local Planning Authorities and statutory bodies, through a number of local groups and through formal and informal consultation. There is evidence that many of the changes to the Plan that were made by the Authorities prior to the submission of the Plan were as a result of consultation with the above parties, to address their concerns in a constructive and active manner.
10. Particular concern has been raised with regard to the level of engagement undertaken by the Authorities as part of its DtC in relation to silica sand. However, the Authorities did engage beyond the formal consultation stages with other mineral planning authorities with silica sand resources early on in the process, through the production of its background papers and through the Silica Sand Study (JMLP/OSD/024). The Authorities also provided several emails (CD/021) at the hearing session (which I consider other parties had sufficient time to consider) that confirm that contact was made on several occasions with relevant minerals planning authorities in Scotland which also accommodate silica sand reserves. There is also evidence through meeting minutes (CD/004) that DtC discussions took place with Central Bedfordshire Council when concerns were raised by them in relation to silica sand.
11. Further to all of this, the Authorities played a key role in setting up a national meeting for silica sand, which I understand will now continue to meet on a regular basis. Whilst the national meeting took place very late in the Plan's preparation, it did, nonetheless, take place before the submission of the Plan. I consider that if there had been concerns raised at the meeting with regard to the Authorities' approach to silica sand that it would have influenced the Authorities decision whether or not to submitted the Plan for examination. I am also mindful that no minerals planning authority in England or Scotland that accommodates silica sand reserves has, as part of this examination, raised any concerns in relation to the level of contact it has had with the Authorities.
12. Overall, I am satisfied that where necessary the Authorities have engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has been met.

## Assessment of Soundness

### Main Issues

13. Taking account of all the representations, the written evidence and the discussions that took place at the hearing sessions, I have identified six main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

### **Issue 1 - Whether the Plan makes appropriate provision for the steady and adequate supply of aggregates and industrial minerals**

#### *General Matters*

14. The Plan includes a strategic objective in relation to minerals production and use. However, this does not refer to the need to ensure that the Plan delivers a steady and adequate supply of minerals, as required by the NPPF. To ensure consistency with national policy a change to Strategic Objective 1 (**MM6**) is required to address this matter. I have made a small amendment to MM6 to include a missing 'and' to ensure that the objective reads as intended.
15. The Plan refers to a 'move away' from minerals activity within the National Park. Minerals can only be worked where they are found and the NPPF at Paragraph 116 sets out that major development may at times be acceptable in designated areas such as National Parks, where there are exceptional circumstances and it can be demonstrated that it is in the public interest. Given that there are significant mineral resources in the National Park, there is potential, in the future, for exceptional circumstances in the public interest to be demonstrated and a 'move away' from activity from the National Park may not materialise. Changes to the Plan (**MM1**, **MM2** and **MM9**) are therefore necessary to more accurately reflect national policy on this matter. I have amended the wording of MM1 to include Areas of Outstanding Natural Beauty (AONB) following representations on the MM consultation, as there are some mineral resources, particularly clay, in such areas.
16. It has been suggested that the basis for assessing potential sites for allocation in the Plan would need to be revisited following such changes. However, it is clear to me from the Authorities' evidence that sites were appraised on the basis as to whether exceptional circumstances in the public interest may or may not exist and the above changes do not affect this approach.
17. Strategic Objective 3 currently only relates to soft sand. However, with the necessary changes for soundness outlined above, Strategic Objective 3 is now equally applicable to sand and gravel and silica sand. In order to avoid duplication and for the Plan to be effective, changes (**MM8**, **MM9** and **MM10**) are needed to reflect this matter and to delete Strategic Objective 4. It is suggested that Strategic Objective 3 should also refer to the AONBs. However, I am mindful that the AONBs in the Plan area do not include any notable resources of sand and gravel, soft sand or silica sand. In any event, if a proposal did come forward for such resources in the AONB, national policy, namely Paragraph 116 of the NPPF would still apply. During the MM consultation it was noted that the need for silica sand is considered on a national scale. Consequently, a minor change to MM9 is necessary to reflect

this matter. This results in the reference to 'identified need' within Strategic Objective 3, rather than 'the needs of West Sussex'. I do not consider that this materially alters the objective.

18. For sand and gravel, including soft sand, the NPPF requires minerals planning authorities to maintain a landbank of at least seven years. To reflect this, a change is needed for soundness to Policy M1 (**MM19**) to ensure that reference is made within the policy to the need to maintain a seven year landbank. Following representations to the main modifications, I have amended the wording of MM19 to refer to 'at least' a seven year landbank to accurately reflect the wording of Paragraph 145 of the NPPF. The amendment to Policy M1 will ensure that it is positively prepared and consistent with national policy.
19. During the consultation on the MMs, concern has been raised that all proposals would meet criterion a) of Policy M1 and that it should be amended to allow applications to be refused when the landbank already exceeds seven years supply. However, as set out above, the NPPF requires 'at least' a seven year landbank to be maintained. I consider that the wording of Policy M1 a) as set out in MM19, would allow the Authorities to appropriately consider the need for the development when determining a planning application.
20. I note that the implementation and monitoring table for Policy M1 includes a target that relates to maintaining a landbank outside of the National Park. I consider that an additional MM is required to remove this reference to ensure consistency with my findings set out above (**MM85**).
21. In addition, a number of contextual changes (**MM7, MM12, MM13, MM14, MM15, MM16, MM18, MM32, MM33, MM34** and **MM39**) are needed to bring the Plan up-to-date with the latest information, such as the number of existing sites and future needs for different minerals. These will ensure that the Plan is effective.

#### *Soft Sand*

22. The Plan's proposed approach to the delivery of a steady and adequate supply of soft sand within the Plan area is: a 'managed retreat' away from existing activity in the National Park; to allocate a single site that lies outside of the National Park; and to rely on increased imports from the southeast region or windfall development to meet the identified shortfall.
23. It is clear from the latest LAA that there is an existing reliance from neighbouring authorities, including London markets, on West Sussex to provide soft sand, given that West Sussex is currently a net exporter. Indeed, the Mineral Sites Selection Report 2017 (Appendix 8) identifies that the resource is of local and regional importance and there is the potential for the local and regional economy to be affected unless there are suitable other alternative sources of supply to make up the shortfall.
24. The Authorities' evidence suggests that soft sand could be imported from Kent and to a lesser degree Oxfordshire. Kent County Council through the Duty to Co-operate note that an overprovision of soft sand that could off-set a shortfall in West Sussex would rely on the replenishment of sites coming forward, which is not a certainty. Further, Kent County Council has set out that the Plan should not rely on any imported supply from Kent.

25. Oxfordshire County Council has noted that soft sand would need to be transported by road over the likely feasible distance and that there is no scope to export soft sand by rail to West Sussex. It is also noted by Oxfordshire County Council that if West Sussex was to be supplied with soft sand from other, nearer counties, this could have the knock-on effect of increasing demand for soft sand from Oxfordshire to supply markets outside their county. It is clear from the evidence before me that Oxfordshire County Council has not as part of its own development plan sought to meet any shortfall that might arise within West Sussex.
26. Turning to other relevant counties in the southeast, Hampshire has indicated that there is little scope to address any shortfall of soft sand arising within the Plan area. Surrey has indicated that they are likely to be able to maintain exports to West Sussex at current levels, but that this would not help to address the identified shortfall over the Plan period. In addition, Surrey has also set out that should the level of imports into their area decrease from West Sussex then this may cause their own resources to deplete more quickly.
27. The Authorities confirmed during the examination that there are no formal agreements in place with any authority in the southeast region to meet any shortfall in the provision of soft sand in the Plan area. I am also mindful that the Statement of Common Ground (SOCG) for soft sand between the authorities in the southeast region states that '*...the Parties agree to continue to positively plan to meet the demand for soft sand in their areas*'.
28. Policy M2 would allow windfall developments to come forward. However, given the clear difficulties that the Authorities have had in identifying potentially suitable sites outside of the National Park, I consider that this cannot be relied upon to any reasonable degree.
29. The Authorities have stated that there is potential for marine won soft sand to contribute to a steady and adequate supply of soft sand in the Plan area, but were not seeking to rely on this to meet the identified need within the Plan. Therefore, it was agreed at the hearing sessions that this was not a viable alternative to land-won soft sand at the current time.
30. As a result of all of this, I consider the strategy to rely on imports from surrounding authorities and/or windfall development outside of the National Park, to provide a steady and adequate supply of soft sand and to meet the identified shortfall, to be unsound.
31. In addition to this, the Sustainability Appraisal (SA) identified that the proposed soft sand strategy had the potential to result in significant adverse effects in terms of transport and air quality objectives during the importation of soft sand. The Authorities did not appraise any alternatives as part of the SA, as the view was taken that exceptional circumstances in the public interest did not exist to justify major development in the National Park, in accordance with Paragraph 116 of the Framework and therefore there were no reasonable alternatives.
32. Notwithstanding whether exceptional circumstances that are in the public interest may or may not exist, the Authorities accepted at the hearing sessions

that potential options for bringing forward sites outside of the National Park, where significant impacts had been identified through the site selection process, had not been appraised as a reasonable alternative against the preferred strategy, which in itself had the potential to result in significant adverse effects in terms of transport and air quality objectives. I am therefore unable to conclude that the approach to soft sand is justified and offers the most appropriate strategy, as I consider all reasonable alternatives have not been considered or appraised in the SA.

33. Given all of the above, I consider that the proposed strategy to deliver a steady and adequate supply of soft sand in West Sussex is not positively prepared, justified, effective or consistent with national policy and is therefore unsound.
34. It was discussed at the hearing sessions that it would take a significant amount of additional work to address this matter as part of the examination. To allow the rest of the Plan to come forward in a timely manner, the Authorities agreed that the most appropriate option, should I find the soft sand strategy unsound, would be to remove the proposed soft sand strategy from the Plan, including the site allocation at Ham Farm that had been selected on the basis of the unsound strategy and to undertake a focused early review of the Plan in this regard. I consider this to be an appropriate course of action, particularly given that there is currently a landbank of soft sand in the region of some 10 years.
35. A modification is therefore necessary (**MM22**) to revise Policy M2 to provide an interim policy for soft sand until the early review is undertaken and to commit the Authorities to starting the early review within 6 months from the adoption of the Plan and to require its submission to the Secretary of State within 2 years from the commencement of the review. The single issue soft sand review will consider the most appropriate strategy for the Plan area and will be subject to formal consultation.
36. It has been suggested that MM22 should include more detail in relation to development management. However, I am mindful that if a proposal for soft sand was to come forward, it would be considered against all of the policies in the Plan, including those in relation to development management.
37. Further, changes (**MM21** and **MM24**), are also necessary to replace the supporting text to provide suitable context to Policy M2. MM21 refers to additional soft sand resources being needed towards the end of the Plan period. Given the current landbank and the information provided during the hearing sessions in relation to the end dates of existing extraction site permissions, I consider this to be a reasonable expectation.
38. It has been suggested that the shortfall figure of 2.36 million tonnes set out in MM22 is incorrect as it does not reflect the figure in the latest LAA. However, as part of the examination the Authorities provided more up-to-date data than is currently available within the latest LAA that was published in January 2017. I consider the most up-to-date figure is the most appropriate to be used. Notwithstanding this, I am mindful that due to the way in which Policy M2 would be worded, this figure would ultimately be replaced by the latest figure in the LAA once a new one has been published by the Authorities.

39. A number of modifications are also necessary to remove the Site Allocation at Ham Farm, Steyning from the Plan (**MM3, MM4, MM53, MM54, MM55, MM76 and MM84**).

#### *Silica Sand*

40. The Plan sets out that West Sussex has not been a significant producer of silica sand and that any silica sand production is a result of or secondary to the extraction of soft sand. The Authorities have proposed a modification (**MM26**) to the supporting text to make this clear and to set out suitable context for Policy M3. MM26 includes a reference to there being no processing facilities specifically for silica sand in West Sussex. However, it has been brought to my attention that there is a processing facility at Minstead Quarry that, whilst not currently operational, could be used in the future should sand extraction resume on site. An amendment to MM26 to remove this reference is therefore necessary for the Plan to be effective.
41. The known silica sand reserves in West Sussex are located within the National Park. The Plan does not seek to make provision for silica sand through the allocation of sites, but contains a criteria based policy (Policy M3) that would allow the extraction of silica sand in the National Park, where a scheme can demonstrate exceptional circumstances and that it is in the public interest, in line with Paragraph 116 of the NPPF.
42. There is a national market for silica sand because of its significance and I consider that the need for additional silica sand should be considered on this basis. I have been provided with evidence to suggest that there are sufficient silica sand permitted reserves within England and Scotland to deliver a stock of permitted reserves of well over 10 years. It has, however, been suggested that there is or soon will be a national shortage of high quality silica sand that is suitable for clear glass / sodium silicate use and that therefore the Plan should allocate a site(s) to meet such needs. Paragraph 146 of the NPPF sets out that minerals planning authorities should plan for a steady and adequate supply of industrial minerals by providing a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment for silica sand of at least 10 years for individual silica sand sites and at least 15 years for silica sand sites where significant new capital is required. Evidence provided as part of the examination indicates that there is broadly 5.5 years of permitted reserves (nationally) for high quality silica sand that is suitable for clear glass / sodium silicate use.
43. Whilst minerals can only be worked where they exist, it must be acknowledged that the resources of high quality silica sand suitable for clear glass / sodium silicate use, in this case, are located in the National Park. Paragraph 141 of the NPPF sets out that when determining planning applications, local planning authorities should *'as far as is practical, provide for the maintenance of landbanks of non-energy minerals from outside National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage sites, Scheduled Monuments and Conservation Areas'*.
44. Further, Paragraph 116 of the NPPF addresses major development in designated areas, including National Parks. This advises that planning

permission should be refused for major developments in designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. One of the considerations as to whether exceptional circumstances that are in the public interest exist, is the *'...scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way'*.

45. It has been suggested by several parties that any need considerations should be based purely on permitted reserves. Given there is a national market for silica sand and that the resource in this case is located in a National Park, I consider that it is necessary to examine what is being done on a national basis to plan for additional resources of high quality silica sand that is suitable for clear glass / sodium silicate use. I understand that minerals planning authorities that accommodate silica sand have recently set up regular national meetings which will consider how best to plan for the national need for silica sand. This approach is consistent with Paragraph 146 of the NPPF, which states that minerals planning authorities should plan for a steady and adequate supply of industrial minerals by *'co-operating with neighbouring and more distant authorities to co-ordinate the planning of industrial minerals to ensure adequate provision is made to support their likely use in industrial and manufacturing processes'*.
46. The evidence provided by the Authorities and representors has identified that there is the potential for allocated sites within adopted Development Plan Documents (Surrey and Norfolk, who I understand has now adopted the Single Issue Silica Sand Review) to contribute a further 6.5 million tonnes of silica sand resource that is suitable for clear glass / sodium silicate use. Should these come forward, as envisaged in those development plans there would be in the region of 10 years worth of supply that is suitable for clear glass / sodium silicate use. The site allocations within the adopted development plans would have been examined and considered to be deliverable. In addition to the identified site allocations, I am mindful that Norfolk has also identified some areas of search in order to provide for a steady and adequate supply of silica sand, which is likely to include silica sand that is suitable for clear glass / sodium silicate use. Further, the area of search at Chilmead Farm in Surrey also has the potential to produce in the region of 1.2 million tonnes of high quality silica sand that is suitable for clear glass / sodium silicate use. It is therefore evident that the need for additional silica sand that is suitable for clear glass / sodium silicate use is to a reasonable degree being planned for within the national market area and outside of designated landscapes.
47. Given that the Plan area has not in the past played any significant role in the supply of silica sand in the national market; that there are no manufacturing industries reliant on a supply of silica sand from West Sussex; and the other clear efforts being made nationally to address the need for additional silica sand that is suitable for clear glass / sodium silicate use, outside of designated landscapes, I consider that a criteria based policy approach that would allow proposals to come forward if exceptional circumstances are demonstrated and where it is in the public interest, is a sound approach.
48. This approach would allow proposals to come forward and be considered if there is a worsening trend in terms of the supply of silica sand that is suitable for clear glass / sodium silicate, for example if site allocations in other

development plans fail to be delivered. This situation will need to be monitored carefully. I am also mindful that there is a statutory requirement to review Plans every 5 years and such matters including the national position in terms of silica sand would therefore also be reviewed in the not too distant future. Given all of the above, I conclude that the Plan's approach to the steady and adequate supply of silica sand, including that which is suitable for clear glass / sodium silicate use, is sound.

49. Turning to associated matters, the Authorities have put forward modifications to Policy M3 and the supporting text to seek to ensure that the best use of silica sand is secured to ensure that such deposits are used for industrial end-uses and not for aggregate use. Having regard to the representations made during the main modification consultation, I have concerns with regard to such changes. This is on the basis that the end-use of the resource would be difficult to secure and enforce. Therefore, planning conditions or legal obligations are unlikely to be able to be enforced. Such a requirement could also stifle competition. Notwithstanding this, I am mindful that part (a) of Policy M3 requires there to be a demonstrable need for the resource and therefore a suitable market for the material. I consider that this would allow a thorough examination of the need for the silica sand resource to be undertaken and this would ensure that the resource is used for appropriate purposes, in accordance with Paragraph 142 of the NPPF. Consequently, I do not consider the proposed modifications in this regard are necessary for soundness.
50. Changes (**MM25**, **MM28**, **MM29** and **MM30**) are needed to the supporting text and monitoring framework for Policy M3 to ensure that the Plan refers to a stock of permitted reserves rather than to a landbank to ensure consistency with national policy. In order for the Plan to be effective, an amendment (**MM27**) is also needed to the stated strategy for silica sand, to make clear that this includes safeguarding the entire identified silica sand resource.
51. I understand that there are proven silica sand reserves at a site (referred to as 'Horncroft'), which is located outside of the minerals safeguarding area for sand shown within Appendix E of the Plan, which forms part of the policies map. In order for this part of the Plan to be consistent with national policy, the minerals safeguarding area for sand, will need to be revised to incorporate the Horncroft site. On a related matter, the built up area boundary of Crawley also needs to be updated within the policies maps.

#### *Clay*

52. It has been suggested that the proposed extension to West Hoathly Brickworks will not result in a stock of permitted reserves of at least 25 years to the Brickworks. However, the allocation was the only one put forward and it would, nonetheless, make an important contribution to the stock of permitted reserves. Policy M5 also includes criteria that would allow for other sites to come forward in the future, if needed. I consider this to be an appropriate and sound approach.
53. Policy M5 does, however, refer to maintaining a landbank, whereas national policy requires the maintenance of a stock of permitted reserves. To ensure consistency with national policy, changes to Policy M5 (**MM37**), the supporting

text (**MM35**) and to the monitoring framework (**MM38**) are required for soundness. A change (**MM36**) is also required to the supporting text to make clear that part of the strategy for clay is to safeguard the brick-making clay resource, this will ensure compliance with national policy.

*Other related matters*

54. Policy M8 of the Plan relates to minerals processing. However, it is not entirely clear what processing activities the policy relates to and changes are needed to Policy M8 (**MM43**), the supporting text (**MM44**, **MM45** and **MM46**) and to the glossary (**MM81**, **MM82** and **MM83**) to provide clarity and to ensure consistency with national policy.

*Main issue conclusion*

55. The Plan, when considered with the recommended modifications, provides an appropriate basis to secure a steady and adequate supply of aggregates and industrial minerals.

**Issue 2 - Is the Plan's approach to safeguarding justified and consistent with national policy**

*Policy M9: Safeguarding Minerals*

56. The policy sets out that the entire mineral resource is safeguarded, through Minerals Safeguarded Areas (MSAs), which are illustrated in the policies map that form appendices to the Plan. However, Policy M9 itself does not refer to these maps to provide a suitable spatial context. In addition, Policy M9 refers to the umbrella term of sand and gravel, which has led to some confusion if this includes soft sand (including the potential for silica sand). A change (**MM47**) is necessary to address these matters and for the Plan to be effective.

*Policy M10: Safeguarding Minerals Infrastructure*

57. It has been suggested that the approach of Policy M10 to safeguarding temporary wharves that do not benefit from permanent permission is not consistent with national policy. Whilst the NPPF at Paragraph 143 does not refer to temporary safeguarding, I consider that to permanently safeguard such sites after planning permission for mineral use has expired, would not be an appropriate approach, as it could lead to sites laying derelict for long periods of time and that is not, in my view, what the NPPF intends.
58. In a similar manner, concern has been raised that criteria (a) and (d) of Policy M10 are too flexible and could result in much needed wharf and rail depot capacity being lost to non-minerals related development. However, it is clear that Policy M10 would only allow the redevelopment of a permanently safeguarded site: if the site or infrastructure is no longer suitable for continued use; or the loss of the site is part of a wider strategy or scheme that has wider social and/or economic benefits that outweigh the retention of the site or infrastructure; or a suitable replacement has been identified that is available. Again, I consider that to place a blanket ban on all safeguarded sites from being redeveloped, without the consideration of any other factors could lead to sites that are no longer needed laying derelict for long periods of

time and that is not what the NPPF intends. Overall, I consider that the approach to safeguarding minerals infrastructure in Policy M10 is sound. Although, changes (**MM48**, **MM49** and **MM77**) are needed to Policy M10 and Appendix D to refer to policies maps rather than inset maps, for the policy to be effective.

59. On a related matter, I consider that there is sufficient spare capacity at the permanent minerals infrastructure facilities, as identified in the LAA, to accommodate an increase in demand over the Plan period, including the potential for soft sand to be gained from marine sources.
60. Several changes to the supporting text of Policy M10 are required to ensure that the Plan is effective. These include: the addition of brickworks as a type of safeguarded minerals infrastructure (**MM51**); ensuring consistency within the Plan and with the Minerals Safeguarding Guidance that has been published alongside the Plan in terms of the potential for buffers that may be required to sensitive uses (**MM52**); and to provide important context for the safeguarded site at Ardingly Rail Depot (**MM50**).

#### *Main issue conclusion*

61. I consider that the Plan's approach to safeguarding, when considered with the recommended modifications is justified and consistent with national policy.

### **Issue 3 - Whether the site selection process, including its methodology and criteria is justified, effective and consistent with national policy and whether the Extension to West Hoathly Brickworks site allocation is acceptable in environmental terms and in all other regards**

#### *Site Selection Methodology*

62. The site selection methodology and criteria is set out in the Mineral Site Selection Report (MSSR) (JMLP/OSD/012). The MSSR describes that there were five key stages undertaken to assess the suitability of sites for allocation in the Plan. The MSSR includes the assessments of all mineral site types, including those sites put forward by the industry following a 'call for sites', for which there has been subsequently no need to make allocations (such as for sand and gravel). It is clear that the Authorities' approach was at an early stage to assess whether a site was 'acceptable in principle' against a number of set criteria. I consider that the criteria provide a sufficient framework to consider whether, at a high level, sites are 'acceptable in principle', in accordance with national policy.
63. I consider the Authorities' approach to considering the individual merits of each site and whether it is likely to be 'acceptable in principle' before considering whether they are required as part of the strategy or would be in accordance with the strategy and/or overarching national policy to be reasonable. This is because plan making requires the collation of significant evidence and refinement through consultation stages over several years. Consequently, it is not always possible to know early on in the Plan making process if a site(s) is/are going to be required as part of the final overall strategy that is put forward in the Plan. I therefore find the Authorities' staged approach to the consideration of sites to be acceptable.

64. It has been suggested that there are some inconsistencies and errors in the scoring of sites within the MSSR. I consider that in undertaking such a large task it can inevitably result in some minor errors. However, overall I am satisfied that the Authorities' site selection methodology and its application, including the 'traffic light system' is robust and sound. In addition, in many cases the scores given require planning judgements to be made. Several of the concerns above relate to the Hambrook sites, however, it is important to note that these sites do not form part of the Plan.

*Extension to West Hoathly Brickworks*

65. The proposed extension to West Hoathly Brickworks would provide the brickworks with up to 3 years of supply and is approximately 9 hectares in size. The site is located within the High Weald AONB. Paragraph 116 of the NPPF sets out that major development within AONBs should not be allowed unless there are exceptional circumstances and where it can be demonstrated it is in the public interest. The same paragraph also sets out a number of considerations that are of relevance to the consideration of whether exceptional circumstances exist. These are: the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. These criteria are also reflected in Policy M13 of the Plan.
66. The NPPF at Paragraph 146, sets out that minerals planning authorities should plan for a steady and adequate supply of industrial minerals by providing a stock of permitted reserves of at least 25 years for brick clay and for cement primary and secondary materials to support a new kiln. The need to secure a stock of suitable reserves of some 25 years demonstrates the importance of the resource, which is at the least of regional importance. It is clear that the site allocation is needed to contribute to securing a stock of permitted reserves for the West Hoathly brickworks. Turning to the local economy, the Authorities MSSR identifies that some 40 people are employed by the brickworks. Should the brickworks have to close because of a lack of a clay source, this would result in a notable impact on employment. In addition, the output from the brickworks is a major contributor to the local and regional economy.
67. The Authorities' evidence on potential alternatives within the MSSR is contradictory. The report in Appendix 8 identifies that there may be potential to import clay from sites in East Sussex, namely Little Standard Hill, Ninfield and Ashdown Brickworks, Bexhill and therefore exceptional circumstances do not exist. However, the main body of the report at Paragraph 3.52, states that there is uncertainty that any permission to export clay from East Sussex would be allowed and therefore, to guarantee the continued operation of the brickworks, and to safeguard the associated employment at the site, it is in the public interest to allocate the site.
68. At the hearing sessions, the Authorities accepted that Paragraph 116 of the NPPF states that to justify major development in an AONB, exceptional circumstances must exist and it must be demonstrated that it is in the public

interest. The Authorities did, however, at the hearing session set out that there is significant uncertainty with regard to the potential to export clay from East Sussex to the West Hoathly Brickworks and on that basis, and having regard to all other matters associated with Paragraph 116 of the NPPF, they argued exceptional circumstances, which in the public interest do exist.

69. The importation of clay from the existing sites at Little Standard Hill, Ninfield and Ashdown Brickworks, Bexhill to West Hoathly brickworks would result in a significant increase in vehicle movements to the site over a long distance. Additionally, it appears that the likely route from the two sites in East Sussex to West Hoathly would be via the A22, which runs through the Ashdown Forest Special Area of Conservation (SAC). It is unclear whether alternative routes would be possible or viable.
70. The Authorities have set out that the importation of clay to the brickworks could result in additional costs which might affect the viability of the brickworks. I consider that this is an important factor, bearing in mind the distance that the clay would need to be transported. Given this, I am of the view that there is a significant level of uncertainty that the importation of clay to the brickworks from East Sussex is a likely or viable option.
71. The Landscape Sensitivity and Capacity Assessment (2011) that has been undertaken determined that the site has a medium to high sensitivity and low to moderate capacity to accommodate minerals development. However, the assessment also notes that the low-lying topography allows scope for the mitigation of visual impacts, by planting to reduce visibility from the hills to the northwest. I observed on my site visit that there is a good sense of enclosure that is provided by the existing woodland and hedgerows. Further, there is a good level of screening along the road and to the village to the south and southeast.
72. The development principles for the site would require that any extraction is undertaken in small areas in sequence to minimise any visual intrusion along with perimeter mounding and additional planting. I consider that this would help to ensure that any potential landscape and visual impacts were minimised. There will inevitably be some impact on the special qualities of the AONB and the potential for some cumulative impacts with the existing brickworks during the operation of the site. However, given the above, I am not of the view that there would be a significant level of harm. Further, the site would only see clay extraction for approximately 3 years and I consider that the site can be restored in such a way, in accordance with the development principles of the site, which would conserve and possibly even enhance the purpose and special qualities of the High Weald AONB in the longer term. This view is also shared by the High Weald AONB Unit in their consultation response.
73. Overall and on balance, I am satisfied when having regard to the considerations listed in Paragraph 116 of the NPPF that exceptional circumstances exist and it is in the public interest to allocate the site within the High Weald AONB.
74. Concern has also been raised in relation to the potential for increased transport movements and the effect that this would have on local residents

and on the Ashdown Forest SAC, having regard to the Wealden Judgement<sup>1</sup>. However, the Authorities confirmed at the hearing sessions that the extracted clay would be moved to the brickworks internally and there would be no additional transport movements generated as the site would be worked sequentially to the existing clay pit. It was also confirmed that it is fully anticipated that the brickworks would continue to operate as existing, in terms of transport movements and no new planning permission would be required for the operation of the brickworks itself. As a result, I consider that the site allocation would be unlikely to result in any additional effect on local residents or have any adverse effect on the Ashdown Forest SAC, in terms of transport and nitrogen deposition. The Habitats Regulations Assessment (HRA) of the Plan (December 2016), did screen the site in for Appropriate Assessment (AA), but this was based on water quality matters and not in relation to transport movements.

75. The supporting text to Policy M11: Strategic Minerals Allocations, includes a number of development criteria for the site that any future planning applications must address. I consider that a number of changes (**MM56** and **MM57**) are needed to ensure that the Plan is effective and consistent with national policy. These relate to ensuring suitable regard is had to ancient woodland and to avoid unnecessary duplication. In addition, for the Plan to be effective and to correct an error, an amendment is needed (**MM58**) that requires a site liaison group to be set up, if considered necessary, rather than a continuation of a suggested existing group that I am informed does not exist. Finally, I have been made aware that the existing site boundary (blue line) for the site illustrated in Appendix C does not include all of the land owned by the operator. A change will therefore need to be made to the policies map (Appendix C) to address this matter for the Plan to be effective.

#### *Main issue conclusion*

76. I consider that the site selection process, including its methodology and criteria is justified, effective and consistent with national policy and the Extension to West Hoathly Brickworks site allocation is acceptable in environmental terms and in all other regards.

#### **Issue 4 – Whether the Plan's approach to oil and gas (both conventional and non-conventional i.e hydraulic fracturing) is justified and consistent with national policy and guidance**

77. The Plan includes two policies in relation to oil and gas. These relate to conventional and non-conventional (including hydraulic fracturing) hydrocarbons. I have received many representations that raise concern with regard to hydraulic fracturing and suggest that it should not take place and would not help to achieve climate change targets. However, the Government is clear that shale gas has the potential to provide the UK with greater energy security, growth and jobs.

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<sup>1</sup> Wealden District Council v. Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority [2017] EWHC 351 (Admin).

78. It has been suggested that techniques utilising acidisation should be considered in their own right and be subject to more robust protection measures. However, there is no such distinction made in legislation, national policy or guidance. I consider that the approach of the Plan to have two policies relating to conventional and non-conventional (including hydraulic fracturing) hydrocarbons to be in accordance with current legislation (for example the Infrastructure Act 2015 and the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016), national policy and guidance. The Authorities have defined hydraulic fracturing as per the Infrastructure Act, which they consider appropriate in their own local circumstances. No substantive evidence was provided to the examination to indicate otherwise. I consider that the Plan's policies will ensure that all oil and gas related proposals will be suitably considered and determined.
79. It is submitted by several parties that an Environmental Impact Assessment (EIA) should be required for all proposals for hydraulic fracturing, including those for advanced well stimulation techniques utilising acidisation. However, the EIA Regulations (2017) sets out when such proposals should be subject to an EIA. There is no statutory basis to require an EIA where it is not required by the Regulations. Further, I consider that there is no need within the policies to duplicate the requirements of other development management policies within the Plan, as these will apply to proposals for conventional and non-conventional hydrocarbons.
80. Policies M7a and M7b currently require the proposal site to be the least sensitive, deliverable location, from which the target reservoir can be accessed. However, I consider this to be an overly onerous requirement, which is not supported by national policy or guidance. Whilst I am of the view that the consideration of alternative deliverable sites is an appropriate measure to ensure applicants have had full regard to all feasible environmental options, I consider that the focus should be on the delivery of an acceptable environmental option, taking into account other deliverable alternative sites. This does not mean that the 'least harmful' site considered would be acceptable, as has been suggested, as all other aspects of the policies would need to be satisfied, which includes comprehensive environmental criteria.
81. This approach would accord with national policy and guidance, particularly Paragraph 143 of the NPPF that states as part of plan-making, environmental criteria should be set out '*so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment...*'. Given the above, changes (**MM40, MM41 and MM42**) are therefore required to Policies M7a and M7b, along with the supporting text in this regard.
82. For Policies M7a and M7b to be effective and consistent with national policy, a number of other changes (**MM40 and MM41**) are necessary to: avoid duplication; to refer to the historic environment and to correct the terminology for designated ecological sites. The MMs to both policies that were consulted upon proposed to delete part (a) (iv) in both policies to avoid duplication (amongst other changes). However, this was a drafting error and should not have been deleted. I have therefore not removed part (a) (iv) from the policies in MM40 and MM41.

83. For the Plan to be effective and to ensure compliance with the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016, in terms of protected areas and groundwater, a number of changes (**MM41**) are required to Policy M7b. I consider that MM41 will ensure that groundwater is appropriately safeguarded in accordance with national policy.
84. Policies M7a and M7b both currently state that the suitability of proposals for alterations to permitted operations will be considered against the development management policies. For the policies to be justified and effective a change is required (**MM40** and **MM41**) to clarify that this should only relate to minor proposals. Several concerns have been raised during the MM consultation that it is not clear what a minor proposal would be. Whilst this would be a matter of judgement for the decision maker, the policies make clear that extensions of time, physical extensions or extensions to operations within the boundary will be considered against the requirements of Policies M7a and M7b. This ensures that any significant or material alterations to the existing operation would be considered against the full requirements of Policies M7a and M7b. I consider that it would be overly onerous, disproportionate and not effective to require minor non-material amendments to existing operations to have to fulfil the requirements of Policies M7a and M7b.
85. It has been suggested that Policies M7a and M7b should incorporate measures to reduce climate change. However, I consider that there are other policies in the Plan that suitably address such matters (for example Policy M23) and there is no need for duplication.

*Main issue conclusion*

86. Taking into account the recommended modifications, I consider that Policies M7a and M7b offer a suitable approach to the consideration of future conventional and non-conventional (including hydraulic fracturing) proposals to ensure that permitted operations do not have unacceptable adverse impacts and the Plan is justified and consistent with national policy and guidance in this regard.

**Issue 5 – Whether the development management policies of the Plan are effective and consistent with national policy**

87. The Plan contains a suite of development management policies. Policy M13: Protected Landscapes sets out a number of criteria. Criterion (b) identifies that proposals for mineral development located outside protected landscapes will be permitted provided that they do not undermine the objectives of the designation. However, the NPPF refers to the purposes of the designation, rather than the objectives. An amendment (**MM59**) to Policy M13 is therefore necessary for the Plan to be consistent with national policy.
88. It has been suggested that Policy M13 should refer to the settings of designated landscapes and that such development should be subject to Paragraph 116 of the NPPF. I consider that criterion (b), along with the requirements of Policy M12, which refers to settings would ensure that such matters were fully considered as part of any future planning applications. Further, to restrict development within the setting of a designated landscape, unless exceptional circumstances were demonstrated to exist and it is in the public interest, would run contrary to the NPPF, which states that this is only

relevant to development within designated landscapes. I consider that the Policy is therefore sound in this regard.

89. Policy M14 relates to the Historic Environment and changes (**MM60** and **MM78**) are needed to the policy and the glossary to refer to and define correctly the term heritage assets, to ensure the Plan is effective and consistent with national policy.
90. To ensure that the Plan is consistent with national policy and is effective a number of changes are required to Policy M17: Biodiversity and Geodiversity (**MM61**), the supporting text (**MM17**, **MM62** and **MM63**) and glossary (**MM79** and **MM80**). The Authorities' proposed modification to Policy M17 included a new section, part b), which relates to sites of European importance. Having considered the MM consultation representations, I consider that there is no need to replicate the requirements of the Conservation of Habitats and Species Regulations 2017 within Policy M17. Consequently, I have not included this section within MM61. I consider that the supporting text to the policy, along with MM63 offers suitable reference to such requirements for future applicants.
91. It has been suggested that Policy M17 should set out that for energy extraction that may affect an internationally protected site, an appropriate assessment will be required to demonstrate the potential for significant effect. Again, I consider that such matters would be suitably considered through the requirements of the Conservation of Habitats and Species Regulations 2017 and there is no need for duplication within Policy M17. Other concerns have been raised that the policy should refer to 'up-to-date ecological information'. However, I am mindful that this is required by the Authorities' local validation lists and ultimately the suitability of any ecological surveys to support future proposals would be a matter for the decision maker. Therefore, I consider that such a change is not required for soundness.
92. The Authorities have suggested an amendment to alter the Plan's vision (**MM5**), to seek to deliver net gains to natural capital. I consider this to be an appropriate course of action for the Plan to be effective.
93. Policy M18 relates to Public Health and Amenity and I consider that for the Plan to be effective, it is necessary to make clear in the supporting text that the policy should be read in conjunction with other policies, such as Policy M22 Cumulative Impact and M15: Air and Soil (**MM64**).
94. In order for Policy M19: Flood Risk Management and its supporting text to be effective and consistent with national policy, modifications (**MM65** and **MM66**) to refer to climate change are required.
95. For the Plan to be effective and consistent with national policy, changes are needed to Policy M22: Cumulative Impact (**MM67**) and its supporting text (**MM68**) to make clear that the policy is relevant to all other development and not just other minerals development. The Authorities have suggested that the modification to the supporting text of Policy M22 should refer to the potential for cumulative effects on internationally important ecological sites. I consider that the change is necessary for the Plan to be effective, although I have amended the modification to reflect my above findings, that there is no need to replicate the requirements of the Conservation of Habitats and Species Regulations 2017 within Policy M17.

96. It has been suggested that Policy M22 should list out the relevant factors that would be considered. However, I consider that the umbrella term 'environment' is suitable for the policy to be effective and sound. Further, there is no need, in terms of soundness, to set out that proposals will need to demonstrate that planning conditions will be an effective and sound means to reduce impacts to minimal levels. This is because the suitability of planning conditions to mitigate impacts would be a consideration for the decision maker as part of the development management process.
97. Policy M23 relates to the design and operation of minerals development. To ensure that it is sufficiently clear within the policy wording that the requirements are relevant to both the design and operation of minerals development, and therefore for the Plan to be effective, changes are needed (**MM69** and **MM70**). For the same reason, an amendment is also necessary to Strategic Objective 14 (**MM11**). In addition, to provide clarity on what evidence will be required in support of future proposals and consequently for the Plan to be effective, changes are required to the supporting text (**MM70** and **MM71**). There has been a suggestion that the Policy, in terms of minimising greenhouse gas emissions and climate change, should include the end-use of the extracted minerals. However, I agree with the Authorities that it can be very difficult to control the end-use of minerals and therefore it would be inappropriate to include this within the policy.
98. In order for Policy 24: Restoration and Aftercare to be effective, a change (**MM72**) is needed to the supporting text to ensure that the potential for recreational uses after extraction is sufficiently emphasised. It has been suggested that reference to leisure and recreation studies that have been published by district councils should be made within MM72. However, I consider that these would be considered in any event when examining suitable restoration options for sites and there is no need for their inclusion within the supporting text for soundness.
99. Policy M26 relates to maximising the use of secondary and recycled aggregates. To ensure the Plan is effective and for consistency with the LAA and latest Annual Monitoring Report (AMR) changes (**MM73** and **MM74**) are needed to the supporting text to set out the most recent and up-to-date information in relation to capacity and sites.

#### *Main issue conclusion*

100. I consider that the development management policies of the Plan, when considered with the recommended modifications are effective and consistent with national policy.

#### **Issue 6 – Implementation and monitoring framework**

101. The Plan contains an implementation and monitoring framework for each policy. In many cases, the framework includes a trend/target which states that '*No trend/target identified, as it is not expected that unacceptable proposals will progress to planning application*'. However, the Authorities have accepted that it cannot ensure that this would be the case and AMRs also confirm that unacceptable proposals have previously progressed to the planning application stage. Further, I consider for the Plan to be effective the implementation and monitoring framework for each policy should include a

specific and measurable target. Changes are therefore necessary (**MM20, MM23, MM31** and **MM75**) to address this matter.

*Main issue conclusion*

102. When considered with the recommended modifications, the implementation and monitoring framework provides an appropriate basis to monitor the Plan's policies.

## **Assessment of Legal Compliance**

*Statement of Community Involvement*

103. There are two Statements of Community Involvement (SCIs) of relevance to the Plan, the West Sussex SCI (June 2012) and the South Downs National Park SCI (March 2012). These set out what methods and techniques would be used at various stages of the preparation of the Plan for engaging with the community, along with the groups and organisations that should be consulted. The Authorities have published a Statement of Consultation (JMLP/CSD/005) which demonstrates that a number of methods were used to engage with relevant stakeholders in accordance with the Authorities SCIs. This sets out that at each stage in the Plan's preparation, how stakeholders and the community were engaged.
104. A number of concerns have been raised in relation to the consultation that was undertaken by the Authorities. The first of these relates to the fact that a representor was not included in the engagement on the Background Papers and the Mineral Sites Study that took place early on in the preparation of the Plan (2014). However, the SCIs do not state that full consultation would be undertaken on background documents before the publication of the Regulation 18 draft Plan and its evidence. The fact that the Authorities undertook only a focused consultation before the Regulation 18 draft Plan consultation does not, in my view, result in any conflict with the Authorities' SCIs.
105. A representor has suggested that the Authorities have not complied with Regulation 18(3) in the Town and Country Planning (Local Planning) (England) Regulations 2012 (the 2012 Regulations), which obliges them to take account of representations received, as they believe the Authorities have not summarised their comments accurately in the Regulation 18 consultation outcomes report (JMLP/CD/011). I agree with the Authorities that the purpose of this report is to provide a summary of the representations made and identify key matters associated with soundness. It is not to set out the consultation responses in full. Whilst it is unfortunate that it is felt that the representor's comments have been inaccurately set out, I see no reason to believe that the full comments were not considered by the Authorities in accordance with the 2012 Regulations, when taking the Plan through its preparation. As set out above, the 2012 Regulations require the Authorities to take account of all representations received. However, the Regulations do not require a change to the Plan or the supporting evidence if the Authorities do not believe it is required for legal compliance (including procedural matters and the DtC) or soundness.

106. Further, I understand that the Authorities went to specific efforts to respond directly to some of the concerns raised by the representor during the Regulation 18 consultation, which they were not formally obliged to do. I consider that such actions went beyond what is formally required of the Authorities. I am also mindful that much of the concerns in relation to the above matters relate to the evidence for the Hambrook Sites. However, these sites do not form part of the Plan.
107. Other concerns have been raised that the Authorities did not consult Wiston Parish Council in accordance with the West Sussex SCI. This relates to the amendment to the boundary of the proposed Ham Farm allocation before the Plan was submitted, which resulted in part of the site being located within the Wiston Parish boundary, when it had not been previously. However, I consider that the Authorities have consulted appropriately in relation to this issue, in accordance with the West Sussex SCI. In any event, for other reasons, as previously set out above, I am recommending that the Ham Farm allocation is deleted from the Plan.
108. On a related matter, it has been suggested that the Authorities unlawfully restricted the scope of the Regulation 19 consultation, as the representation form conflates legal and procedural matters. Whilst the representor did not feel restricted by this matter, concern was raised that others may have been. Whilst legal and procedural matters are both listed under the heading 'Legal Compliance' within the representations guidance notes, I consider that the form and guidance note provided a sufficient level of detail and guidance to allow representors to make informed representations. I am also mindful that no other parties have raised such concerns.
109. Overall, I am satisfied that the Authorities have consulted in accordance with their SCIs and the 2012 Regulations.

*Conclusion*

110. My examination of the compliance of the Plan with all other legal requirements is summarised in the table below. With the recommended modifications, I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Local Development Schemes (LDS)	The Plan has been prepared in accordance with the West Sussex LDS December, 2016 and the South Downs National Park LDS (Fourth Revision) August, 2017.
Statements of Community Involvement (SCIs) and relevant regulations	The West Sussex SCI was adopted in June 2012 and the South Downs National Park SCI was adopted in March 2012. As detailed above consultation on the Plan and the MMs have complied with their requirements.
Sustainability Appraisal (SA)	SA has been carried out and is adequate in respect of the Plan as proposed to be modified.

Habitats Regulations Assessment (HRA)	The Habitats Regulations AA Screening Report (Revision 4) December 2016 sets out that the Plan may have some negative impact, and an appropriate assessment for the Extension to West Hoathly Brickworks should be undertaken. The appropriate assessment undertaken by the Authorities found that the site would not have any significant effects. I agree with this view. Overall, the Plan, as proposed to be modified, would not have any significant effects on European protected sites and Natural England supports this conclusion.
Climate Change	The Plan includes Policies M19, M20 and M23, which secure that the development and use of land in the Plan area contributes to the mitigation of, and adaptation to, climate change and ensure compliance with Section 19 (1A) of the Planning and Compulsory Purchase Act 2004 (as amended by the 2008 Climate Change Act).
National Policy	The Plan complies with national policy except where indicated and MMs are recommended.
2004 Act (as amended) and 2012 Regulations.	The Plan complies with all other requirements of the Act and the Regulations.

## Overall Conclusion and Recommendation

111. The Plan has a number of deficiencies in respect of soundness and legal compliance for the reasons set out above, which means that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
112. The Authorities have requested that I recommend MMs to make the Plan sound and legally compliant and capable of adoption. I conclude that with the recommended MMs set out in Appendix 1, the West Sussex Joint Minerals Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the NPPF.

*Jonathan Manning*

INSPECTOR

This report is accompanied by Appendix 1 containing the Main Modifications.