



The Planning Inspectorate

Report to West Sussex County Council and the South Downs National Park Authority

by Brian Cook BA (Hons) DipTP MRTPI

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

Date: 17th February 2014

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)

SECTION 20

REPORT ON THE EXAMINATION INTO WEST SUSSEX WASTE

LOCAL PLAN

Document submitted for examination on 27 March 2013

Examination hearings held between 2 and 11 July 2013

File Ref: PINS/P3800/429/7

Abbreviations Used in this Report

BHTC	Burgess Hill Town Council
CDE	Construction, demolition and excavation
C+I	Commercial and industrial
EA	The Environment Agency
IDBR	Inter-Departmental Business Register
L&S	L&S Waste Management
LNP	Local Nature Partnership
MM	Main Modification
MOU	Memorandum of Understanding
MSW	Municipal solid waste
RS	Regional Strategy
RTAB	Regional Technical Advisory Body on waste
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
SEWPAG	South East Waste Planning Advisory Group
TPA	Tonnes per annum
TVA	Thakeham Village Action
WMPE	Waste Management Plan for England

Non-Technical Summary

This report concludes that the West Sussex Waste Local Plan provides an appropriate basis for the planning for waste of the County including that part of the South Downs National Park within it over the period to 2031 providing a number of modifications are made to the Plan. The Authorities have specifically requested that I recommend any modifications necessary to enable them to adopt the Plan.

The principal modifications can be summarised as follows:

- **MM/002 and MM/003** and the consequential **MM/013** are necessary to better explain and justify the statistical basis of the Plan and while doing so to incorporate some updates of important data;
- **MM/004, MM/005, MM/006, MM/007, MM/008, MM/014 and MM/015** are required to resolve the relationship between the key delivery policies W10, W3 and W1, remove the cap on capacity that can come forward, introduce greater flexibility into the Plan given the remaining uncertainty over the statistical basis and ensure consistency with national planning policy. They are also necessary to ensure that further provision can be made if necessary within the County for non-inert landfill and that the use of inert waste for recovery purposes (say, restoration of old mineral workings) can come forward in all areas including the National Park if certain criteria are met;
- **MM/009 and MM/010** are necessary to ensure that the development principles for the Fuel Depot and Goddards Green site allocations respectively give clear guidance for development management purposes; and
- **MM/011 and MM/016** are small but important changes which remove misleading text about the Decoy Farm and Shoreham Cement Works sites respectively. **MM/017 and MM/018** introduce minor text changes to policies W18 and W20 respectively.

Introduction

1. This report contains my assessment of the West Sussex Waste Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy.
2. The Plan has been prepared jointly by West Sussex County Council and the South Downs National Park Authority (the Authorities). The starting point for the examination is the assumption that the Authorities have submitted what they consider to be a sound Plan. The basis for my examination is the submitted draft plan (March 2013¹) which is the same as the document published for consultation in November 2012².
3. My report deals with the main modifications that are needed to make the Plan sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Authorities requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted³. These main modifications are set out in the Appendix. Where reference is made to landfill in my report this should be read as including landraise schemes too.
4. The main modifications that go to soundness have been subject to public consultation⁴ and, where necessary, Sustainability Appraisal (SA) and I have taken the consultation responses into account in writing this report. Several of these explicitly related to the additional modifications which were published in the same document and are therefore not for me to consider. Others, while concerning the proposed main modifications, suggest minor drafting changes. These do not go to the soundness of the Plan and I am content for the Authorities to accommodate those changes as additional modifications if they consider that appropriate. Other comments raise matters which do go to the soundness of the Plan and I deal with them in the relevant part of my report. However, none raise any matters or issues that were not debated at the hearing sessions. Indeed, some explicitly refer to representations already made. In those circumstances I saw no reason to hold any further hearing sessions since further discussion of the same matters would not assist me.
5. On 12 December 2013 and therefore just before the close of the consultation period on the proposed main modifications the Waste Management Plan for England (WMPE) was published. This replaces the documents referred to in paragraphs 4.3.8 to 4.3.10 of the Plan. The Authorities have considered the

¹ CD/SD/001

² CD/CD/021

³ CS/011

⁴ MD/001 and MD/002

implications of this new document and have placed a short statement on the examination web site⁵. In short, they consider there to be no conflict between the WMPE and the Plan and therefore see no reason to delay the examination. Having read the WMPE I concur with that assessment.

Assessment of Duty to Co-operate

6. Section s20(5)(c) of the 2004 Act requires that I consider whether the Authorities complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.
7. The Authorities set out how they considered that they had complied with the duty in one of the submission documents⁶. However, it was clear from my own reading of the Plan and the representations made that two issues arose from this approach. These were set out in a letter to the Authorities⁷ and I shall deal with them in the order set out there.
8. The first concerned the apparent failure to engage with the Local Nature Partnership (LNP). Although not originally on the list of prescribed bodies in Regulation 4 of the Town and Country Planning (Local Planning) (England) Regulations 2012, LNPs were added by SI 2012 No 2613 with effect from 12 November 2012. The Authorities addressed this briefly in their response⁸ to my initial letter and in more detail through the Topic Paper⁹ and the Addendum to it¹⁰.
9. In short, the LNP has not yet established the necessary procedures and protocols to allow this body to engage in the statutory planning process. In the circumstances, the Authorities could not be said to have failed to 'engage constructively, actively and on an ongoing basis' with the LNP. Furthermore, the Authorities are themselves active members of the LNP and could reasonably be expected therefore to be aware of and to have taken account of its views and principles in drawing up the Plan.
10. The second and more substantive concern related to the approach of the Authorities to provision for landfill. The Authorities responded in some detail¹¹. In summary, the points put were that:
 - The basis of the Plan is the 'worst case' scenario (1b).
 - Under this scenario there could be a need for an additional 1.42 million tonnes non-inert landfill capacity through the Plan period.
 - The Plan has a 'zero waste to landfill' aspiration and makes provision for 0.85 million tonnes per annum (tpa) capacity to come forward through built facilities to achieve both this and net self sufficiency.

⁵ CS/012

⁶ CD/SD/009

⁷ ID/001

⁸ CS/001

⁹ CS/004

¹⁰ CS/002a & CS/002b

¹¹ CS/001

- A site for an additional 0.86 million tonnes non-inert landfill capacity is identified in the Plan to address the requirement for landfill in the medium term until new built facilities become available.
 - There could therefore be a theoretical shortfall of some 0.56 million tonnes capacity for non-inert waste. This may have to go elsewhere for disposal or treatment.
 - The Authorities did not consider the 'worst case' scenario likely to occur and under the 'most likely worst case' scenario the allocated landfill site would be sufficient.
11. Several of these positions changed during the hearing sessions. However, this was the basis of the Plan on which the representations were made. In the main, those who considered that the duty had not been complied with were those who felt the provision made for non-inert landfill was inadequate. Consequently, they feared that unreasonable reliance on capacity in other areas was being assumed (the concern of principally Surrey County Council and the Bedford Borough, Central Bedfordshire and Luton Borough Shared Minerals and Waste Service) or that potentially available non-inert landfill capacity within the County was being ignored (Ibstock).
12. In response to my Matters, Issues and Questions¹² Surrey County Council stated that the matters raised in fact related to the soundness tests not a failure to co-operate¹³. This was confirmed during the hearing session. Although the Shared Service maintained its position in writing¹⁴, during the hearing session discussion it was accepted that it was the quality of the engagement that was in issue rather than the fact of it taking place. I interpret this as meaning that although the views of the Shared Service were sought they were not, in the main, acted upon. That is not substantively different from Surrey's position although the distinction between a 'duty' point and one that relates to soundness can be blurred.
13. It was not argued by anyone that the duty did not apply in respect of the preparation of the Plan and given what is said in paragraphs 156 and 178 of the National Planning Policy Framework (the Framework) that must be correct. On the totality of the evidence now before me I believe the positions of Surrey and, latterly, the Shared Service to also be correct.
14. There is ample evidence of the steps to which the Authorities have gone to engage constructively, actively and on an ongoing basis with many relevant bodies. In particular, the Authorities are active members of the South East Waste Planning Advisory Group (SEWPAG) with the County Council taking a lead on such matters as the preparation of the Memorandum of Understanding (MOU). Indeed, one of the main aims of SEWPAG is said to be to help waste planning authorities in the area (essentially the south east of England region) to fulfil the duty to co-operate on strategic issues¹⁵.

¹² ID/002

¹³ REP/3004/001

¹⁴ REP/2982/001

¹⁵ CD/SD/009, page 5

15. There is clear evidence that the Authorities have not changed the approach of the Plan towards provision for landfill in response to the ongoing engagement carried out. However, there is no evidence that this results from an unwillingness to consider the points put. Indeed, much of the evidence of ongoing dialogue to try and understand positions and reach a resolution or at least an agreement to disagree points to the opposite conclusion¹⁶. Rather, the failure to change tack results from a genuine view that the Plan is soundly based and that no change is required. That seems to me a reasonable position to take and one to be tested under the assessment of soundness; Surrey's position in fact.
16. I therefore conclude that the duty has been complied with.

Assessment of Soundness

Preamble

17. The Plan has been a long time in preparation for the reasons set out in the Authorities' opening statement to the hearing sessions. Over that period many changes to the planning system have occurred including since the 2010 general election the announcement that regional strategies would be abolished (May 2010), the Localism Act (November 2011), the publication of the Framework (March 2012) and the actual revocation of the South East Plan insofar as relevant to the issues addressed by the Plan (March 2013).
18. The Plan is a comprehensive document setting out the strategy to be followed, the strategic sites necessary for its implementation and the development management policies against which proposals for waste development will be judged by the Authorities. It will be the first plan containing such policies across the County and that part of the National Park within it.

Main Issues

19. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified five main issues upon which the soundness of the Plan depends.

Issue 1 – Whether the Plan is based on objectively assessed development and infrastructure requirements

Introduction

20. Conceptually, the steps required are straightforward and are summarised, albeit in a slightly different order, in the Background Document¹⁷. They are for each waste stream:
- An assessment of waste arising in the County at the base year (2010/11).
 - An assessment of the waste that requires management at the end of

¹⁶ See for example CD/EB/037, CD/EB/42, CD/EB/46 and others

¹⁷ CD/SD/008, page 2 of section 4

the Plan period (2030/31).

- The waste management capacity that currently exists or can confidently be expected to come forward.
- The shortfall or capacity gap that needs to be met by the Plan.

21. Under this issue I deal with these steps in turn.

Step 1: Waste arisings-context

22. Before addressing the evidence some context is necessary. The Environment Agency (EA) was created in April 1996. Included among its roles with respect to waste management was the provision of comprehensive monitoring data to enable the amount of waste arising to be tracked and recorded for each significant waste stream.
23. At around the same time regional technical advisory bodies on waste (RTAB) were established. Modelled on the regional aggregates working parties and similar in composition and remit, albeit in relation to waste rather than aggregates, the chairs met regularly with the appropriate department of government.
24. The first surveys of commercial and industrial (C+I) waste arisings were undertaken in the late 1990s and published in 2000 in the form of a report for each region setting out strategic waste management assessments. Although referenced by one of the Authorities' consultants¹⁸ it is not included in the evidence base.
25. The next survey of C+I waste arisings by the EA took place in 2002/3 with publication in 2006. Again, although referenced by the consultants it is not in the evidence base.
26. Between the date of the survey and the output publication report PPS10 *Planning for Sustainable Waste Management*¹⁹ was published (2005) with the *Companion Guide*²⁰ to it being published a year later. Paragraphs 6 to 15 of PPS10 make it clear that identifying the need for waste management in the area and the tonnages requiring management (paragraph 8) and the apportionment of that quantum to waste planning authority areas (paragraph 9) is the role of the regional planning body through the mechanism of the regional strategy.
27. Section 4 and Annex C of the *Companion Guide* set out the role expected to be played by the EA in data provision and the intention to supersede the EA's national waste production surveys by a data hub as part of a National Data Strategy promoted by Defra. The limitations of using the two EA national C+I waste production surveys are set out in the *Companion Guide*²¹.

¹⁸ CD/SD/011, paragraph 2.3.2, page 5

¹⁹ NPD/001

²⁰ NPD/002

²¹ NPD/002, Annex C, Box1

28. As far as I am aware, the next and only subsequent national survey of C+I waste production was that carried out by Jacobs for Defra and first published by that department in 2010. Again this is referenced by the Authorities' consultants but is not an examination document. I am however familiar with it from other waste local plan examinations that I have carried out.
29. Section 1.6 of it sets out the survey caveats and limitations. The most noteworthy is that the survey was designed primarily to produce national level results. More intensive sampling was carried out in two partner regions neither of which was the south east of England.
30. It is perhaps also noteworthy that Eunomia in September 2009²² stated that '...C+I waste arisings data are notoriously poor.' This remained Eunomia's stated view in June 2013²³. Furthermore, this appears to be acknowledged by government with the intention to address what is seen as a barrier (a lack of data on waste arisings) to strategic decisions on investment in waste infrastructure being included among the actions set out in the Waste Policy Review in 2011²⁴.
31. Looking briefly at the other principal waste streams, data on municipal solid waste (MSW) is generally acknowledged as reliable. Data on construction, demolition and excavation (CDE) waste is, however, even more limited than that for C+I waste with such data as there is being derived from periodic surveys commissioned by the government department responsible at the time²⁵.
32. To summarise therefore, from a planning perspective, waste arisings data has been collected to inform the preparation of regional strategies. The quality of that data varies depending on the waste stream involved and the nature of the surveys used to derive it and the South East Plan was adopted on the basis of available data. By the time the Plan was submitted for examination the South East Plan had, insofar as relevant to the Plan, been revoked and it is obvious that this step had been anticipated by the Authorities in drawing up the submitted document. Nevertheless, Framework paragraph 218 sets out the circumstances in which evidence used to inform the preparation of regional strategies may be used, supplemented as needed by up-to-date robust local evidence.
33. Nevertheless, PPS10 remains current national planning policy having not been replaced by the Framework and thus the section quoted above (paragraph 26) remains national waste planning policy. However, this assumes the availability of key data at a spatial level for which it has not been collected for at least 10 years and a mechanism for policy implementation at local plan level that no longer exists. How the Authorities have dealt with this set of circumstances is assessed next.

²² REP/28833/issue 2/footnote 5

²³ An article in Waste Planning referred to participants but not listed as a Core Document

²⁴ NPD/007 paragraphs 267 & 268

²⁵ NPD/002, Annex C, Box 2

Step 1: Waste arisings-MSW

34. Detailed data is collected by the waste disposal authority and the base-year arisings total of 403,000 tonnes has not been challenged. I have no evidence to disagree with this figure as a basis for moving forward.

Step 1: Waste arisings-C+I waste

35. At 2007/8 production of this waste stream in the County was estimated to be 755,000 tonnes²⁶. In an update report this figure was revised to 740,000 tonnes for 2008/9²⁷. Neither report explains how this figure was derived although further work undertaken for the Authorities indicates that it was an extrapolation of the 1998/9 value, presumably taken from the first EA survey²⁸. This further work, undertaken by different consultants, estimated the C+I waste arisings at the base year of the Plan as 605,000 tonnes; a reduction of some 18% on the 2008/9 value.
36. The approach taken by BPP (one of the Authorities' consultants) is set out in CD/EB/038. In essence, it is a 'bottom up' approach using data about businesses in West Sussex drawn from the Inter-Departmental Business Register (IDBR), in part established for the very sampling frame use which BPP has made of it. An adjustment has been made to ensure that the smaller businesses not covered by the IDBR are not lost. In that sense therefore local data has been used.
37. However, to generate the waste arising figure of 605,000 tonnes raw data from the Defra (Jacobs) survey of 2009 for the south east and south west regions has been used. The worked examples in the report show that these waste-per-business ratios have been drawn from a very limited number of data points. I have already referred to the caveats and limitations to this report (paragraph 29). There is no evidence either way to say whether or not these are representative of those businesses in West Sussex.
38. Furthermore, the initial outcomes (shown in Table A2.3) have been corrected to eliminate what BPP considers to be anomalous values with the corrected totals being shown in Table A2.4. Although virtually all of the values have been adjusted the reasoning for this is explained in only one case, the power and utilities sector. While I appreciate the point made by Thakeham Village Action (TVA) that the resulting overall reduction in the commercial sector (the most important) from the adjustments is relatively small, it does not alter the fact that in almost all cases the adjustments lead to a lower level of waste arising.

Step 1: Waste arisings-CDE waste

39. In short, the Authorities have taken the same approach for this waste stream as that taken to establish C+I waste arisings at the base year of the Plan. The estimated arisings in 2007/8 were 1,339,000 tonnes²⁹, 1,340,000 tonnes in

²⁶ CD/EB/002 paragraph 2.4

²⁷ CD/EB/007, paragraph 2.4

²⁸ CD/EB/038, page 3

²⁹ CD/EB/002, paragraph 2.3

2008/9³⁰ and 949,000 tonnes for the Plan base year³¹; a reduction of some 29%. Again, the approach taken by BPP is a 'bottom up' point-of-production based one rather than the 'top down' method previously employed.

40. The previous method took the implied value from the South East Plan which itself was based on the government commissioned surveys of this waste stream referred to above (paragraph 31). This regional figure was then apportioned to West Sussex on the basis of its proportion of the regional population. While I acknowledge the point made by L&S Waste Management (L&S) that this has been subject of an independent examination prior to the adoption of the South East Plan, the more sophisticated approach set out by BPP seems inherently more appropriate for the sub-regional level estimates and, apart from the L&S point, was not otherwise challenged.

Step 1: Waste arisings-summary

41. In the absence of any apportionment of a regional requirement to sub-regional areas through a regional strategy, an accurate assessment of waste arisings at the Plan base year is critical since step 1 provides the building block from which all else under this Issue flows. However, the necessary data is simply not available at Plan area level for other than MSW. The Authorities have set out in the evidence base how their consultants have tackled this matter. Not all of the assumptions made are transparent. Moreover, there is little evidence to judge the robustness of those that are. I do note however, that in answer to a question the Authorities were able to confirm using data from the EA waste interrogator that the 605,000 tonnes C+I waste figure appeared to be of the right order. To conclude therefore I have no clear evidence (in the form of justified alternatives) to cause me not to accept the waste arisings figures put forward. However, I note that virtually every assumption made by the Authorities has the effect of driving down the amount of waste for which they are planning. The implications of this are addressed under later Issues.

Step 2: Waste requiring management at 2031

42. This step moves the amount of waste in each of the three principal streams forward from the base year to the end year of the Plan by making assumptions about the annual rates of change in each. The rates of change assumed are set out below Table 6 of CD/SD/011 with the outcome for the Plan shown in the Table. Further justification for the rates assumed is given in Appendices 1 to 3 inclusive of CD/SD/011. The rates assumed are no growth at all for MSW, CDE waste or the commercial (majority) element of C+I waste while a 1% per annum reduction in industrial waste is assumed. The effect of these rates for annual tonnages throughout the Plan period is set out in CD/SD/011, Table E1 of Appendix 5. This represents the base case scenario for the Plan, scenario 3(a) in the Background Document³².
43. There is some evidence that waste amounts have declined in the immediate past period³³. What is unclear is why since this period also coincided with the

³⁰ CD/EB/007, paragraph 2.3

³¹ CD/EB/039

³² CD/SD/008

³³ See for example TVA's statements and Appendices REP/2883/001

deepest economic recession for many decades. The effect which this may have had may be difficult to distinguish from that of other waste reduction initiatives when looking at causality. Looking forward however, it seems to me that the assumptions made require and rely on the following factors.

44. The Authorities confirmed that population and household numbers in West Sussex are expected to rise over the period to 2031. For the MSW assumption of no change to be correct requires that the waste produced per head of population or household must actually fall year-on-year. As I understand the TVA evidence this represents by analogy an absolute decoupling of waste production from population/household growth. There is no evidence that this has ever occurred continuously over a 20 year period. While I understand that the Authorities' waste management contracts require waste minimisation to be pursued by the private sector partners and TVA gave evidence of the initiatives in place and the encouragement now given to residents, the impact is likely to be in early years and may be difficult to sustain.
45. As I understand the evidence relating to the C+I waste stream, this relies mainly on structural change from a manufacturing to a service-based economy accompanied by a significant decline therefore in industrial waste production. These are assumptions drawn from studies at national or regional level. There is no evidence either way about the extent to which such structural change is likely to be experienced in West Sussex or whether it may already have taken place.
46. For CDE waste the evidence draws on three surveys of this waste stream carried out since 2000 in England³⁴. These reveal a fairly consistent level of arisings in England for the three survey years. While a fall in activity is noted during the recession years from 2007/8 it has been assumed that levels of activity and thus levels of waste produced will return to pre-recession levels but not to rise.
47. To conclude on this step, I again have no evidence to doubt the assumptions made. However, it seems to me that their effect will be to minimise the level of waste arisings at the end year of the Plan. This is recognised in part with a higher growth rate option being included and planned for. The effect of this is set out in CD/SD/011, Table E3 of Appendix 5 and represents scenario 3(b) in the Background Document.

Step 3: Existing waste management capacity

48. Information on existing site management capacity has been derived from planning application statements, operator discussions and EA permit data. Where only the latter is available I have some sympathy with the view of L&S that this may overstate the actual capacity since permits are expressed in quite wide bands and do not necessarily reflect the practicable capacity of a facility. Nevertheless, the evidence seems to be that the Authorities have assumed the top of the range as the potential capacity available. However, I do not know how many sites this may apply to.
49. The uncertainty over capacity centres on that for CDE waste. There are two

³⁴ CD/SD/011, Appendix 3

elements to this. First is the capacity available in dedicated sites and transfer stations that include an element of CDE recycling. Second is the assumed contribution from CDE recovery sites. These are addressed in turn.

50. The capacity at dedicated sites (224,065 tpa) and at transfer stations (349,313 tpa) is consistent across the various documents produced by the Authorities³⁵. However, all the dedicated sites have limited life permissions³⁶ and where these are in association with existing landfills or quarry restoration schemes renewal of those permissions once the landfill is complete or the quarry restored may not be in accord with the policies of the Plan. The implications of this for capacity shortfall assessment are addressed under the next sub heading.
51. Recovery sites are those schemes that require inert waste for implementation but are registered exempt as construction projects by the EA. Typically, these include golf courses, landscaping and noise attenuation bunds and quarry restoration. The assessed capacity at these sites varies from 3.2 million tonnes³⁷ to 3.8 million tonnes³⁸. During the hearing session the disagreement between the Authorities and L&S narrowed to two sites. L&S accepted that its analysis had excluded the St Paul's College landscaping scheme. However, the value included for Windmill landfill seems far from certain to come forward³⁹. The actual capacity available may therefore be somewhere between the two figures quoted above.

Step 4: The shortfall/capacity gap to be met by the Plan

52. The Authorities are planning on the basis of net self sufficiency in waste management capacity and zero waste to landfill. An early proposed modification defined this as meaning not more than 3% of all the waste arising being disposed of to land⁴⁰. In the submitted Plan this is presented quite straightforwardly as a total capacity required (Table 3) and the allocated sites to achieve it (Table 4). In addition, an extension to the existing non-inert landfill at Brookhurst Wood is proposed.
53. It is fair to say that both I and participants at the hearing sessions struggled to understand how the Authorities had completed this step and derived either Table 3 or the non-inert landfill requirement. In response the Authorities submitted two further Topic Papers⁴¹ to explain in more detail the workings of the model and thus how the landscape Table in Topic Paper 2 was derived. In addition, a further version of Table 3 was submitted as part of Topic Paper 3⁴² to illustrate what was required to achieve net self sufficiency and then zero waste to landfill. A number of matters are raised which I address in turn.
54. The first matter concerns some of the essential inputs to Appendices 2 and 3

³⁵ CD/SD/011, CS/002 and CS/008

³⁶ CD/SD/011 paragraph 3.2.2.2

³⁷ CD/SD/011 paragraph 3.2.2.3

³⁸ CS/008 Appendix B, Table B1

³⁹ CD/EB/055

⁴⁰ CD/SD/002, modification PM/WSCC/12

⁴¹ CS/008 & CS/009

⁴² CS/003

of CS/009. How the Authorities have assessed the capacity required to address the MSW stream is perhaps the easiest to understand. At 2031 the amount to be managed is 403,000 tpa⁴³; this derives from step 1 and is a robust figure. The amount of this that will be recycled is 60%⁴⁴ and since this is the contractual requirement placed on the waste management partner I consider this to be a robust assumption also. The residual 40% will be managed through the MBT facility at Brookhurst Wood. However, 32% of this will be 'rejects'⁴⁵ requiring landfill under net self sufficiency or further treatment/recovery under the zero waste to landfill objective.

55. For C+I and CDE waste the colour coded cells can be followed but lines 4 and 5 in both Appendices raise questions. Turning first to line 4, as it was explained during the hearing session cells J4 and O4 (other management) are mathematical outcomes from, in the case of C+I waste, $L4-(H4+I4+K4)$ and, in the case of CDE waste, $Q4-(M4+N4+P4)$. However, for reasons set out under the step 1 and step 2 assessments above I do not consider either 2031 figure (cells L4 and Q4 respectively) inherently robust. Furthermore, of the other cells, the only 'known' figure is 'residual' (K4 and P4 respectively) since this is derived, as I understand it, from EA landfill returns. The other two cells in each calculation are assumptions. In effect therefore a key value for assessing the future recovery capacity for C+I waste (cell J7) has been derived from an equation where only one of the four other values is actually a known figure.
56. In some ways, line 5 raises an even greater concern. This is 'capacity not required for planning'. As set out in the preceding paragraph, the C+I waste figure (cell I4) is an assumption while the CDE waste figure (cell O4) is a mathematical derivation. While the C+I waste figure is only 3% of the total assessed C+I waste arisings, the CDE figure represents about 40% of the total assessed CDE waste arisings. The Authorities explain that the combined figure (400,485 or some 20% of the assessed 1.94 million tpa at 2031) is 'believed to be a combination of reuse, onsite use, mobile crushers etc' which are managed outside the formal management system⁴⁶. While it is asserted that there is no evidence to indicate that this will not continue, no evidence has been produced to justify the figures assumed.
57. The second matter is the way that existing CDE waste capacity has been viewed in order to assess any shortfall. In simple terms, both the requirement over the remainder of the Plan period (4.8 million tonnes⁴⁷) and the remaining capacity (3.8 million tonnes⁴⁸ but see paragraph 51 above) have been spread evenly across the remaining 17 years⁴⁹. This leads to a shortfall in inert recovery and disposal capacity from 2027/28 which rises to about 927,000 tonnes shortfall by 2031. No provision is made for this in the Plan on the basis that recovery schemes as yet unknown will come forward because they always have.

⁴³ CS/009 cell G4 in both Appendix 2 and Appendix 3

⁴⁴ CS/009, cell D4 in both Appendix 2 and Appendix 3

⁴⁵ CS/009, cell C17 in both Appendix 2 and Appendix 3

⁴⁶ CS/009, paragraph 4.6

⁴⁷ CS/008, paragraph 4.4

⁴⁸ CS/008, paragraph 4.4

⁴⁹ CS/008, Appendix C

58. As the Authorities appear to acknowledge⁵⁰, the equal distribution across the Plan period of both supply and demand is unrealistic and takes no account of the expiry dates of the extant permissions for facilities or the fact that over 1.6 million tonnes of the capacity is for quarry restoration. Given the stance of the submitted Plan towards this use of inert material, particularly in and adjacent to the National Park, the assumption made by the Authorities that such schemes will continue to provide capacity may not be correct.
59. The final matter concerns the assessment of required non-inert landfill capacity. What this amounts to varies considerably with the scenario being followed⁵¹. The figure of 0.47 million tonnes which aligns with the most likely worst case scenario (3a) that forms the base case for the Plan derives as set out in CS/009 at paragraph 4.14. The source for the stated 1.75 million tonnes existing capacity is Table 14 in CD/SD/011 although the Authorities' consultant confirmed during the hearing session that no account had been taken in the analysis of the expiry dates (2015) of the two planning permissions under which both landfills operate. How the 2.2 million tonnes overall requirement has been derived remains unclear. As Ibstock observed this must assume that recovery capacity is delivered early in the Plan period which the Authorities confirmed. The corollary must be that if it is not, then the landfill requirement will be higher than assumed for planning purposes.

Issue 1: Conclusion

60. For the reasons set out above I consider the only truly robust figure to be MSW arisings at the base year of the Plan. All other figures derived at each step in the process leading to the key outcome for the Plan-the capacity shortfall for which provision must be made-are based on assumptions. How or why some of these have been made is not transparent and the evidence for others is subject to legitimate debate.
61. However, the context in which the Plan has been prepared is an important consideration. Other than carrying out detailed and costly surveys of their own, the Authorities seem to have little option but to use the limited information that is available as best they can. I am mindful too that the Framework stresses the need for plans to be based on proportionate evidence⁵² and the caution in PPS10 that apportionments should avoid spurious precision as they are not intended to be a detailed forecast but are more a benchmark for the preparation of local plans⁵³. Although the Plan is not based upon an apportionment as envisaged there, the principle holds true. Finally, I am conscious of the Authorities' position that similar approaches to theirs have been taken in the preparation of adjacent county plans and been found sound.
62. While I have a number of reservations about the statistical basis for the Plan, those reservations apply equally to those alternative propositions put forward by others. The Authorities have proposed a series of modifications to section 2 of the submitted Plan (**MM/002**) including an alternative presentation of

⁵⁰ CS/008, paragraph 4.5

⁵¹ See CD/SD/008 within section 4.4

⁵² NPD/003, paragraph 182

⁵³ NPD/001, paragraph 10

Table 3 (**MM/003**) although the actual numbers in it vary only slightly. However, I have noted at certain points above that the effect of most of the assumptions made is to drive the amount of capacity to be provided downwards. I therefore regard the amounts in Table 3 as proposed to be modified as the minimum required and approach my assessment of the Plan as a whole on the basis that flexibility must be inherent within it. On that basis I recommend **MM/002 and MM/003 and the consequential MM/013**. The sub-total line in Table 3 and the explanatory footnote (b) are required since, contrary to the assertion of TVA⁵⁴, there is a requirement for additional non-inert landfill capacity.

Issue 2 – The strategy that underpins the Plan and the policy approach to its delivery

Introduction

63. As explained in Topic Paper 3⁵⁵, the Plan started as a Minerals and Waste Core Strategy with separate site allocation development plan documents to be prepared. This then evolved into a Core Strategy including sites until work on this was suspended in October 2010. However, by that time a great deal of work had been undertaken on both strategy development and site identification and the Plan sensibly builds on this.
64. The Plan sets out a vision and a number of strategic objectives. The vision itself⁵⁶ is not controversial; neither are many of the strategic objectives. Section 6 of the Plan then sets out the strategy for achieving one or more of the strategic objectives followed by the policy (policies W1 to W9 inclusive) for achieving them. Section 7 then sets out the spatial strategy and the strategic site allocations to deliver the required capacity.

The strategy, key underlying principles and key policies

65. The spatial strategy that has been developed is set out in paragraph 7.2.2 of the Plan and justified by the evidence base as described in Topic Paper 3⁵⁷. It is dictated in large part by the fact of the National Park and national planning policy towards major development within it as expressed in paragraph 116 of the Framework. The South Downs National Park Authority obtained counsel's opinion on the interpretation of 'major' in the waste context⁵⁸ and although this predated the publication of the Framework it has not been put to me that the reflection of it in the footnote to policy W13 is flawed.
66. This and the distribution of the principal population areas lead to the area of search shown on the key diagram which avoids the National Park and the Areas of Outstanding Natural Beauty and seeks to focus development largely on the coastal fringe and the areas broadly around the major north-south routes towards the east of the County.

⁵⁴ MD/009 2883/21

⁵⁵ CS/003

⁵⁶ CD/SD/001, section 5.2

⁵⁷ CS/003, answer to question 3.1

⁵⁸ CD/EB/044

67. The aspiration to achieve zero waste to landfill emerged as a key principle through the engagement and consultation process⁵⁹. Although recognised at that time by the Authorities as challenging, during the hearing sessions there was a consensus among participants that it could be achieved as now defined (see paragraph 52). Indeed, it was the position of L&S that all inert waste was capable of being recovered and that no further landfill for this waste stream was required.
68. The issue therefore is not whether it is capable of being delivered but when it will be and what implications that raises. In particular, given the wording of various submitted policies, is the way it will be interpreted in development management decision making.
69. The second key principle is the objective of net self sufficiency. The national policy background to this concept is found in PPS10⁶⁰ where it says that all planning authorities should provide a framework in which communities take more responsibility for their own waste and enable sufficient provision of waste management facilities to meet the needs of their communities. The Waste Policy Review says that there 'is no requirement for individual authorities to be self sufficient in terms of waste infrastructure and transporting waste to existing infrastructure to deliver the best environmental solution should not be considered a barrier'⁶¹. These two statements are not inconsistent but they have to be considered in the statutory context set by the Duty to Co-operate.
70. In recognition of the (then) forthcoming revocation of the South East Plan waste planning authorities in the south east have continued to co-operate and are working towards a MOU, the latest draft of which was CD/EB/047 at the time of the hearing sessions. The key points are:
- The disposal of waste to land is the least desirable form of waste management (paragraph 6.1) but there will continue to be a need for some landfill capacity in the short to medium term (paragraph 6.3).
 - Net self sufficiency is an approach by which the key planning objectives of PPS10 can be achieved (paragraph 6.5) and this is the basis on which the parties to the MOU will plan, recognising that there will be a degree of cross-boundary movement of waste (paragraph 7.1).
 - Parties will therefore plan on the basis that no provision has to be made in their local plans to meet the needs of any others basing their policies on achieving net self sufficiency (paragraph 7.2).
 - Some waste may not be planned to be managed within a waste plan area because of difficulty in delivering the required capacity. Provision for unmet needs may be included in another waste plan in line with paragraph 182 of the Framework but where an authority is not planning to achieve net self sufficiency that will be for discussion

⁵⁹ CD/EB/007, page 59

⁶⁰ NPD/001, paragraph 3, second bullet

⁶¹ NPD/007, paragraph 263

outside the MOU (paragraph 7.4).

71. The key policies to deliver the spatial strategy and the two key principles are as follows.
72. The strategic waste sites identified as necessary to deliver the required capacity set out in policy W10 are all within the area of search. This is the first of the key policies.
73. Policy W3 is the second of the key policies and builds flexibility into the Plan by setting out the circumstances in which proposals for built waste management facilities that are not on sites allocated in policy W10 can come forward, including in those parts of the County (including the National Park) beyond the areas of search.
74. The third key policy is policy W1. Although specifically cross referenced in some policies (for example, policies W8 and W9 and, by a cross reference to policy W9 within it, policy W13) it is an overarching policy that articulates the net self sufficiency and zero waste to landfill principles that underpin the Plan. As such, it needs to be met by any proposal coming forward. It states that any proposal for disposal to land of waste arising in West Sussex will need to be consistent with the objective of zero waste to landfill by 2031 and also confirms that proposals for the disposal to land of waste arising from outside West Sussex will not be permitted at all.
75. The final key policies are policies W8 and W9 which respectively deal with the disposal of non-inert and inert waste to land. Related to this is policy W13 which, in part, addresses this issue within the National Park.
76. The relationship between these key policies is flawed and in several respects unsound. The reasons are set out in the following paragraphs.

The relationship between policies W10, W3 and W1

77. Policy W10 is the key Plan policy to ensure that the assessed waste management capacity is delivered on sites that will ensure the implementation of the spatial strategy. This is the essence of the 'positively prepared' and 'justified' tests of soundness. Policy W10 and therefore the Plan fails to meet those tests. First, neither the wording of policy W3 nor that of policy W10 gives preference to an allocated site over any other site that might come forward. Second, and more importantly, policy W1 could work to prevent development on an allocated site if other facilities had been developed already on unallocated sites in accordance with policy W3.
78. Policy W1 (a) requires all proposals for built facilities (this is an inference given the criteria (b) and (c) wording) to demonstrate consistency with the objective of net self sufficiency. How this would be assessed at the development management stage is not defined in the Plan although additional text is proposed as part of **MM/004** (paragraph 6.2.7c). However, the final sentence of Plan paragraph 7.3.5 makes it quite clear that if capacity has already been developed, including on an unallocated site, then the need for the development of the allocated site would no longer exist.

79. Framework paragraph 14 places a presumption in favour of sustainable development at the heart of national planning policy while national waste planning policy says that applicants do not have to demonstrate a quantitative or market need for a proposal that is consistent with an up-to-date development plan⁶². My understanding is that the sites in policy W10 are quantitatively needed. If that need has already been satisfied through capacity provided elsewhere, any further proposal would be for a market need identified by the applicant. To require applicants to climb the hurdle of policy W1 is therefore not consistent with national policy.

The approach to disposal of waste to land and the relationship between policies W8, W9, W13 and W1

80. Although the Plan seeks to achieve net self sufficiency in respect of facilities for the transfer, recycling and treatment of waste⁶³ it explicitly does not seek to achieve this for the disposal of waste to land. Moreover, the Plan makes no provision for the disposal of waste to land from outside West Sussex⁶⁴ and this is given policy expression through submitted policy W1.
81. Even under zero waste to landfill and assuming that the overall assessment of waste arising at 2031 is of the right order, there will still be a need to provide landfill for about 60,000 tpa depending on which scenario is followed. As discussed under Issue 1 it is difficult to translate this into a landfill requirement over the Plan period because several of the assumptions are not transparent. While the Authorities consider that the allocation at Brookhurst Wood is sufficient and the approach of not identifying any further inert landfill capacity is appropriate, as set out under Issue 1, the statistical basis for this is not robust. I believe therefore that some participants such as Surrey County Council and the Shared Service are correct to be concerned that there may be demand for landfill capacity outside West Sussex for waste arising within the Plan area.
82. There is no evidence that potential receiving areas have been identified and have agreed to provide the required capacity. There is therefore a risk, given what I have identified under Issue 1 as significant uncertainty about the statistical basis for this aspect of the Plan, that the Plan will not provide the necessary capacity for disposal of waste to land and would thus not meet the 'positively prepared' test of soundness. Much depends on whether policies W8, W9 and W13 when read in the context of policy W1 will allow additional capacity to come forward.
83. Dealing first with policy W8 and non-inert landfill capacity, I appreciate the objective of the Authorities not to over-provide landfill capacity and thus draw in waste from other areas. However, the approach of the Plan is likely to result in the capacity in other areas being used for residual waste from West Sussex. Any proposal would have to show consistency with the objective of zero waste to landfill by 2031. Much would depend on the way the Authorities actually interpret that requirement when proposals come forward. However, because of the way criterion (b) is worded, criterion (a) applies only to

⁶² NPD/001, paragraph 22

⁶³ CD/SD/001, paragraph 5.3.4

⁶⁴ CD/SD/001, paragraphs 6.2.6 & 6.2.7

- existing operations of which there are now only two⁶⁵. An extension to one, Brookhurst Wood, is proposed in policy W10. The requirement of criterion (b) (ii) to show no opportunities to extend the operation of an existing site 'elsewhere' in order for a new landfill to be permitted seems unduly onerous. Policy W8 is therefore very unlikely in my opinion to deliver any additional landfill capacity.
84. Turning now to policy W9, consistent with its position that all inert waste is capable of recovery L&S argued that there should be no requirement to show need for the development in terms of waste policy and therefore policy W1 (policy W9, criterion (a)). The need would derive from the construction project or quarry restoration for which the inert material would be used. This would have been assessed when that project was granted planning permission. It was also argued that criterion (c) did not reflect the reality that heavy clays and other excavation material (put as the 'E' in CDE waste) would never be subject to recycling or treatment and restricting the material to be used to this would make it impossible to find a home for a significant proportion of the inert waste arising. The Authorities accepted these points and agreed to modify the policy.
85. Finally, to policy W13 as it relates to proposals involving the use of inert material. I appreciate the intention of the Authorities and their objective to ensure that the volume of material placed is commensurate with the reasonable purpose of the scheme proposal.
86. The duty of the Authorities when pursuing the purposes of the National Park is to seek to foster the economic and social well-being of the local communities within the Park without incurring significant expenditure in doing so. The purposes of the National Park are (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the area and (b) promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public. When performing any function in relation to land in the Park if it appears that there is a conflict between those purposes greater weight shall be given to purpose (a)⁶⁶.
87. As set out under Issue 1, the contribution towards the assessed need from the restoration of old mineral workings is very significant (paragraph 58). While some may be able to come forward in accordance with restoration schemes required by condition, others may need express planning permission. While I accept it relates to one former quarry only which may have particular issues associated with it, CD/EB/036 does, as pre-application advice, give an indication of the way in which policy W13 (d) could be interpreted by the Authorities. The evidence of L&S which owns the site was that it would be unlikely to come forward in those circumstances.
88. Michelmersh Brick Holdings expressed similar concerns commenting that the policy appeared unduly complex and commending the previous wording in the Regulation 18 draft of the Plan⁶⁷. I have some sympathy with that position and note that Michelmersh Brick Holdings has not commented on policy W13

⁶⁵ CD/SD/011, Table 14

⁶⁶ Sections 61 and 62 of the Environment Act 1995

⁶⁷ CD/CD/013

as proposed to be modified⁶⁸ suggesting that the wording proposed addresses that concern.

Conclusions on this Issue

89. In response to the evidence and the discussions during the hearing sessions the Authorities have proposed a number of significant modifications to the Plan which were first set out in CS/010 and further discussed during the final hearing session in July 2013. Although quite wide in their scope and necessary for the soundness of the Plan they do not alter the strategy or the fundamental principles on which it has been based. Rather, they ensure that the policies to implement that strategy and those principles will be effective and consistent with national policy - two of the soundness tests that I must apply.
90. Policy W1 is revised to ensure, in effect, that each line from Table 3 (see **MM/004**) is set out. Reflecting the concern raised under Issue 1, the Table 3 figures are to be interpreted as a guide rather than a control total with proposals for capacity above that amount being capable of being permitted where the requirements set out can be demonstrated. While proposed criterion (f) appears to relate only to C+I waste, I understand that the MBT rejects are likely to be subject of other contracts leading to their recovery rather than landfill.
91. However, as set out above (paragraphs 55 to 58) the required capacity for CDE waste is subject to great uncertainty and does not figure in Table 3 in any event. I do not consider it appropriate therefore to include it as a control total. Furthermore, I do not accept that any control figure is required given how the Authorities expect the necessary schemes will come forward. The capacity provided will be dictated mainly by the scheme itself rather than the material volumes that will be used. I do not consider the further change suggested by the Authorities⁶⁹ takes this much further forward since it would still require a 'need' (market) to be shown. Given the proposed wording of policy W9 which would control the amount of material to be used through criterion (e), this is both unnecessary and somewhat imprecise. I therefore agree with L&S that criterion (e) serves no useful purpose⁷⁰.
92. With the proposed addition of criterion (a) (i) to policy W3 the relationship between it and policy W10 is now consistent with national policy. The modifications proposed to policy W1 and the supporting text to both it and policy W10 also make it clear that proposals on allocated sites do not have to be justified by reference to quantitative or market need. This too brings the Plan in accord with national policy. Whilst these modifications could lead to the provision of transfer, recycling or recovery/treatment capacity on allocated sites beyond that required for the assessed needs of West Sussex, this does not seem to me inconsistent with the principle of net self sufficiency which underpins the MOU.
93. TVA has criticised the wording of policy W1 as proposed to be modified on the

⁶⁸ MD/009 3043/12

⁶⁹ CS/012

⁷⁰ MD/009 3063/36

grounds that it is capable of more than one interpretation⁷¹. However, when read with the wording of Policy W3 as proposed to be modified I do not believe this concern is well founded. Moreover, any of the three redrafts suggested by TVA would, in my opinion, reintroduce a cap on the provision from the allocated sites. As explained above, this would render the Plan unsound.

94. Finally, Policies W8, W9 and W13 are proposed to be modified to distinguish between the disposal of waste to land and the depositing of waste on land for beneficial use and to clarify the approach to be taken to such proposals within and adjacent to protected landscapes. I consider these necessary to achieve delivery of the assessed need for these two waste streams and thus meet the 'effective' test of soundness. The amendment to the proposed main modification suggested by TVA⁷² is not necessary since net self sufficiency is the basis on which the Plan has been prepared. While inert waste may not travel far for commercial reasons that may not be the case for non-inert waste, especially where there is a shortage of available capacity. The geographic restriction suggested by TVA would not therefore be appropriate.
95. L&S has argued that policy W13, even as proposed to be modified, remains more onerous in its treatment of proposals outside than inside the National Park. Accordingly, it is suggested that either clause (b) be deleted or criterion (a) be amended although no wording is put forward⁷³. While I appreciate the point being made and recognise that there is no geographic limit to the application of criterion (b), the policy is not meant to be applied as L&S fear. My understanding is that it simply seeks to ensure that proposals which could, without appropriate mitigation, undermine the objectives of the designation due to their visual prominence from within the National Park are not permitted. This representation does not therefore raise a soundness issue. However, the Authorities may feel that an additional modification along those lines to paragraph 8.4.4 would add clarity to the Plan.
96. **MM/004, MM/005, MM/006, MM/007, MM/008, MM/014 and MM/015** are therefore recommended subject only to the following change to **MM/004**. For the reasons set out (paragraph 91) criterion (e) should be deleted from policy W1 as proposed to be modified with consequential renumbering of criteria (f) and (g) to (e) and (f) respectively. It will be for the Authorities to consider whether they wish to further alter paragraph 2.10.11 as a consequence by way of an additional modification.

Issue 3 – Whether the Plan will deliver the waste management capacity objectively assessed as being required over the Plan period

Introduction

97. The site selection process is explained by the Authorities in Topic Paper 4⁷⁴. It follows a well established process by which a long list of potential sites brought forward from various sources is narrowed down by assessment against familiar criteria to arrive at a number of sites. The only significant

⁷¹ MD/009 2883/23

⁷² MD/009 2883/26

⁷³ MD/009 3063/38

⁷⁴ CS/005

criticism of the process itself rather than the outcomes was the decision to exclude on principle any site in the National Park. However, the Authorities explained that the purpose was to identify strategic sites which, as defined, are those with a potential management capacity of at least 50,000 tpa⁷⁵. Such sites would be 'major' and thus it would be contrary to national policy to seek to allocate land within the National Park. I agree.

98. The site selection report⁷⁶ uses a traffic light system to rate each criterion. Red is a 'showstopper' that cannot be mitigated while Green means any issue identified can, in principle, be addressed. Amber indicates that further work is required.
99. No site with any criterion assessed as Red has been allocated in the Plan. However, other sites have a mix of Greens (mostly) and Ambers. It is not clear from the evidence whether the proportions of each at any site had a bearing on its ultimate selection. Rather, this appears to have been influenced mainly by deliverability. While this is one of the soundness tests, as is clear from the discussion around both the Fuel Depot and the Decoy Farm sites this is not an absolute position but is one that can change over time.
100. In addition, the Authorities have followed all the other local planning authorities preparing waste plans that I have examined and interpreted paragraph 18 of PPS10 as meaning that the Plan should not specify any particular built waste management facility type on any allocated site. Policy W10 would therefore allow any of the range of waste management facilities required to meet the need set out in policy W1 to be permitted on each of the sites listed in policy W10(a).
101. While this interpretation may be correct it tends to hamper the site assessment process since it has to deal in fairly broad terms with what could be a wide range of outcomes. This is especially pertinent to the criteria addressing landscape and visual designations, nature conservation designations, residential amenity and neighbouring land uses and cumulative impact since the impact of, say, a large scale thermal treatment plant could be significantly different to that of a materials recovery facility. From the indicative contributions of each site given in Table 4 it is clear that if the required other recovery capacity comes forward in the form of a single site solution, that could not be accommodated at either the Hobbs Barn or Fuel Depot allocations.
102. The development principles for each site given in the Plan are therefore important. However, the site assessment proformas in CD/EB/029 can give only limited guidance about the extent to which any specific waste management facility will be able to meet those development principles and be granted planning permission. On the other hand, those seeking to argue that the Plan would be unsound if an allocated site were retained need to show that it could not be developed for any of the built waste management facility types envisaged for it. In other words, there must be a clear 'showstopper' for me to recommend that the site be excluded. I cannot agree with a representation

⁷⁵ CD/SD/001, paragraph 6.4.8 by implication

⁷⁶ CD/EB/029

on the proposed main modifications⁷⁷ that, in effect, mass burn incineration should be ruled out as a matter of principle. This would be inconsistent with national waste policy only recently reaffirmed in the WMPE.

103. No substantive representations were made that either allocation at Brookhurst Wood (built facility or the landfill) would render the Plan unsound. However, each of the other allocations were subject to such representations and I deal with them in the order in which they appear in policy W10.

Ford and Hobbs Barn

104. Although separate allocations, these two sites are geographically close to one another. The transport implications that would be raised by their development are similar and, if both came forward, potentially cumulative. I shall therefore deal with them together. Three issues are particularly relevant to the allocations of these two sites; cumulative traffic impacts; the effect on the strategic gap identified in the Arun Plan; and the absence of sufficient detail to support the allocations. I deal with these in turn.

105. The first of these is raised principally by Arun District Council and is driven by what it regards as a failure of the Authorities to take into account the emerging local plan, the development patterns proposed and the transportation implications of them. The Authorities do not accept that and set out their position in the Topic Paper⁷⁸. In essence, the Authorities' position is that they have taken into account the position of the emerging Arun plan as it has been known at any point in time. Both parties expanded upon this during the hearing session.

106. On this matter I appreciate the positions of both parties and of those others in the local area who have concerns about this. In essence, the issue arises because the two plans are at different stages in their progress to adoption. The evidence is that the Authorities have been assiduous in modelling the most up-to-date position of the Arun plan that is clear and in which they can have confidence for planning purposes. On that basis I note also that the Highways Agency is content that the allocations will not cause an issue for that part of the network falling within its remit⁷⁹. Furthermore, the cumulative transport impact is clearly acknowledged in the site proformas for both sites as is the requirement for site specific transport assessments to support any planning application⁸⁰. This is carried forward into the Plan in the same terms in the development principles for each site which have to be satisfactorily addressed under policy W10 (c) for planning permission to be granted.

107. While there may be implications for the development of either or both sites when this more detailed work is carried out in association with a planning application, I see no reason why at this stage this matter should lead to the exclusion altogether of either allocation from the Plan or indeed the exclusion of particular waste management facility types on either.

⁷⁷ MD/009 920/28

⁷⁸ CS/005

⁷⁹ CD/EB/30

⁸⁰ CD/EB/29

108. I understand the strategic gap issue to be confined to the proposed Hobbs Barn allocation only. The location of the site within the Littlehampton and Middleton-on-Sea strategic gap is recognised on the relevant site proforma⁸¹. However, so is the planning history of industrial planning permissions on the site and its current use is noted as various industrial uses and open storage.
109. I appreciate the concerns of the District Council and other nearby property interests that in visual terms the gap could be perceived as having been eroded by the more significant development envisaged and that certain types of waste management facility could undermine the tranquillity of the area which is a characteristic feature of it and contributes to its inherent value. I also recognise the scepticism regarding the likely success of any screen planting in mitigating any adverse effects because of the particular environmental characteristics of the area.
110. Nevertheless, these are all matters that would be assessed as part of the appraisal of any planning application and judged against the development principles set out and other development management policies as necessary. I have taken account of the appeal decision⁸² that was issued during the hearing sessions but this does not alter my conclusion since each appeal is determined on its own facts.
111. The 'sufficient detail' point is applicable to both proposed allocations. Again, while I have some sympathy with this view, it is an inherent feature of the higher level assessment that is appropriate at the plan-making level given the approach being followed to the type of facilities that might come forward (see paragraph 101).
112. The main issue identified with Hobbs Barn in the assessment⁸³ is the location of the proposed allocation within Flood Risk Zone 3a. However, the EA has confirmed that an appropriate sequential test has been undertaken and that confirmation among the development principles that only 'less vulnerable' uses will be permitted addresses any potential flood risk concerns.
113. Both the District⁸⁴ and parish⁸⁵ councils have raised further matters in response to the publication of the proposed main modifications. I do not consider any of these matters to be different in substance from those known about and discussed during the hearing sessions. I appreciate that further work has been carried out on Arun's emerging local plan but as far as I am aware it is yet to be submitted for examination and is therefore still at a relatively early stage in its progress towards adoption. When it is finally adopted it will be part of the development plan against which all proposals in Arun must be assessed. Any issues arising from the height of any proposal at either site can be judged in that context.
114. In summary, the evidence does not reveal any issues for either site that would cause me to conclude that either site would be undeliverable either as a whole

⁸¹ CD/EB/29

⁸² REP/3036/001

⁸³ CD/EB/29

⁸⁴ MD/009 3036/40

⁸⁵ MD/009 3055/31

or in part for particular waste management facility types. There is no evidence therefore that either would fail the 'effective' test of soundness.

Fuel Depot

115. This is a potentially challenging site to develop given its past uses, its open aspect, its proximity to Chichester and its historic heart and highway access issues. Although all but one of the key issues are marked 'Green'⁸⁶ the development principles reveal the extent of the issues that need to be addressed for this site to come forward. Nevertheless, in their Topic Paper⁸⁷, the Authorities set out the outcomes of the discussions they have held with the District Council, the Highways Agency and the EA and confirm that all of these matters can be addressed at detailed planning application stage.
116. As alluded to above (paragraph 99), the most important issue for the deliverability of this site is the position of the landowner. As is clear from the Plan it was always intended that any waste management uses coming forward would be part of a comprehensive development. However, it was assumed that about half of the developable area would be devoted to the waste management use. On further analysis of the site development costs it was confirmed at the hearing session that the landowner is now of the view that no more than 1 hectare could be taken by waste management uses if the development is to remain viable.
117. Nevertheless, both the landowner and the Authorities remain confident that the capacity planned could come forward on a reduced site area. Accordingly the Authorities propose **MM/09 and MM/013**. On the evidence before me I see no reason to disagree and therefore recommend these main modifications.
118. There is one other matter that goes to the soundness of the Plan with regards to this allocation. The Plan is quite clear that any waste management development coming forward on this site is likely to be part of a comprehensive redevelopment and also likely to be complementary to the non-waste use⁸⁸. One of those complimentary waste management uses could be an advanced thermal treatment facility providing both heat and power to the other uses. Such development would almost certainly require an emissions stack. The Authorities' Topic Paper would appear to rule such a use out and thus identify a 'showstopper' for a particular waste management facility type⁸⁹. However, from the discussion during the hearing session it was quite clear that it was the height of any stack that would be determinative, not the fact of one. That is the context in which I have read the Topic Paper and the reason why I do not recommend that thermal treatment plants be excluded from the allocation.

Goddards Green

119. This allocation lies to the west of the Burgess Hill Sewage Works very close to

⁸⁶ CD/EB/29

⁸⁷ CS/005 section 4.10

⁸⁸ CD/SD/001 PARA 7.3.11

⁸⁹ CS/005 para 4.12 says '....a waste facility with a stack would not be suitable at this allocation.'

the roundabout junction of the A2300 and Cuckfield Road. A little further to the west lies the A23. Although currently a 'greenfield' site somewhat remote from the built-up area of Burgess Hill, that is planned to change as is clear from the map at Appendix 1 of the Authorities' Topic Paper⁹⁰. From that, it is clear that there will be a considerable employment development to the south of the A2300.

120. Burgess Hill Town Council (BHTC) does not object to certain waste management uses coming forward at the allocated site. However, BHTC considers, correctly in my view (see paragraph 101), that a large-scale thermal treatment plant could come forward. Several concerns are raised about this including the impact on the landscape; the threat to investment in a crucial major mixed use development; and an unwelcome and incongruous development at the gateway to the town.
121. The challenge that the development of this site would pose is recognised in the proforma for this site⁹¹ where the 'landscape and visual designations' measure is graded 'Amber'. In particular, that 'any tall structures are likely to be visible from Burgess Hill' is noted.
122. However, the wider development context of this allocation cannot be ignored. The area is planned to change significantly and the current gateway to the town will alter fundamentally as a consequence. While BHTC argued for a height restriction on any buildings that might come forward on the site, there is at present no such height restriction on the employment development to the south in any planning document available in either adopted or draft form or in any planning guidance. Although I have some sympathy with the point being made by BHTC, there is nothing to inform the height restriction sought.
123. The Authorities have responded to this concern with some proposed changes to the wording of the development principles for this site. These are embodied within **MM/O10** and in my view go as far as is possible to address the issue in the light of the information now available. I consider that the additional wording suggested by BHTC for paragraph 7.3.16 of the Plan⁹² are already implicit within the phrase '...including mitigation of any adverse impacts.' No further change is therefore required for soundness but if the Authorities wish to respond for clarity they may do so as a further additional modification.
124. Although BHTC asserted that investment would be held back by a large-scale and visible development at the site, no evidence of such a consequence elsewhere was put forward. With the changes in **MM/O10** which I recommend, I see no reason why this site should not be allocated in the Plan for the full range of waste management uses identified.

Conclusion

125. For the reasons set out above, subject to the implementation of the main modifications that I have recommended, I see no reason to exclude any of the allocations included in Policy W10 of the Plan either as a whole or in respect of

⁹⁰ CS/005

⁹¹ CD/EB/29 page 42

⁹² MD/009 619/39

specific waste management facility types. However, each site is subject to a considerable number of development principles all of which would have to be satisfactorily addressed for planning permission to be granted for a proposed scheme. This is not a criticism of the Authorities' approach. It is simply a consequence of the high level site assessment that has been and in reality can only be, carried out. It does however mean that the required waste management capacity cannot be guaranteed to come forward at the allocated sites. That is the context for the next Issue that I consider.

Issue 4 - Does the Plan provide sufficient flexibility if the allocated sites do not come forward or is there a need to include further sites?

Introduction

126. Under Issue 1 I have set out my reservations about the statistical basis for the Plan and recommended certain main modifications to address those as far as is possible. However, there remains uncertainty, in my view, about the amount of waste that needs to be planned for and thus the capacity gap that has been assessed.
127. Under Issue 2 I identified what I considered to be the shortcomings in the way the key policies related to one another with the consequence of unduly restricting the waste management capacity that might come forward. The Authorities have responded positively to those concerns and the main modifications that I have recommended address those issues.
128. Turning to Issue 3, I have no reason to doubt that the allocated sites are potentially capable of delivering the assessed requirements. However, given the uncertainty about what those requirements are and the need for the development principles at each site to be met, there remains a need for flexibility within the Plan.
129. With those recommended main modifications I consider that what I interpreted as both an unjustified cap on the capacity that could come forward and an unjustified approach that failed to provide non-inert landfill capacity even for such waste arising in West Sussex have been removed. I now consider the Plan sufficiently flexible to respond to the uncertainties that I have identified. It follows therefore that I do not see any need to add further sites. However, I nevertheless consider those that have been suggested in the remainder of this section.

Decoy Farm

130. At paragraph 7.3.17 the Plan appears to offer quite firm support for the development of waste management facilities at this site on the edge of Worthing. The site proforma⁹³ identifies only two 'Ambers' among a large number of 'Greens' on the measures assessed. Both relate to essentially the same point, namely how the area can best be accessed given the potential impact of development on residential areas as vehicles pass through.

⁹³ CD/EB/29 page 46 onwards

131. However, for the reasons set out in the Authorities' Topic Paper⁹⁴ the Borough Council, which owns the land, does not at this time support such a development. The site could not now be allocated since, as undeliverable, such an allocation would fail the 'effective' test of soundness. Nevertheless, should the Borough Council take a different view in future, as now proposed to be worded, development at the site could come forward in accordance with Policy W3. The potential developer indicated at the hearing session that this would be an acceptable way forward.
132. In the circumstances the Authorities propose by way of **MM/O11** to delete paragraph 7.3.17 from the Plan. Since I consider that it gives a misleading picture I agree and recommend this main modification.

Shoreham Cement Works

133. This is a large site that straddles the A283 with good access to the A27 further to the south. Although there is a waste management use currently on one part of the site the disused and increasingly derelict former cement works buildings are dominant features in the landscape. While the potential for major waste management facility development here is recognised, the location of the site in the National Park is rightly noted as a 'showstopper'⁹⁵.
134. During the hearing session those promoting the site acknowledged that its allocation within Policy W10 would be contrary to the Plan strategy and, potentially, national planning policy. It was further recognised that Policy W13, even as proposed to be modified, would present a high hurdle if a proposal was to be successfully brought forward.
135. I agree with those interpretations which seem to me to be wholly consistent with Framework paragraphs 115 and 116. However, as drafted following the main modifications that I have recommended, development at the site could come forward. It would however be contrary to the strategy of the Plan and national planning policy to allocate it for a strategic scale waste management facility.
136. In this context paragraph 8.4.6 of the Plan adds nothing and, as with the Decoy Farm text, is potentially misleading. I therefore recommend **MM/O16** which deletes this text from the Plan.

Slinden Bottom Gravel Pit

137. While this site has been considered by the Authorities having come forward after the publication of the 'long list' of potential sites, it was not taken forward in the Plan for the two reasons set out in the Authorities' Topic Paper⁹⁶. Although one, the location of the site within the National Park, is understandable given national planning policy, the other (the lack of need for inert waste disposal capacity) appears to have misunderstood the purpose underlying the promotion of the site by L&S.

⁹⁴ CS/006

⁹⁵ CD/EB/20 page 147

⁹⁶ CS/006

138. The position advanced by L&S consistently through the hearing sessions was that very little CDE waste is now disposed of at all. Most is used in construction projects and recovery operations. For the most part the former are not determined as County Matter applications and the latter generally arise pursuant to restoration conditions on mineral planning permissions. I agree with the Authorities that in neither case would it be appropriate to allocate a site in the Plan.
139. As is clear from the Topic Paper, there is a somewhat complicated planning history to this particular site which, as I saw during an accompanied site visit, is a former part-restored mineral working that, to my mind, would benefit from being finished notwithstanding that it is not prominent in the public view. There is clearly a dispute as to whether that restoration may proceed under an extant permission. If it cannot it seems to me that there must be a policy framework in place to allow a proposal to come forward, particularly given the past and continuing importance of quarry restoration to the supply of inert waste management capacity (see paragraph 58). I believe the main modifications that have been proposed to Policies W8, W9 and W13, which I have recommended, put that framework in place. Since it would be neither necessary nor consistent with national policy to recommend allocation of the site in those circumstances, I shall not do so. Nothing new is said in the further representation from L&S⁹⁷ which causes me to revise that conclusion.

Laybrook Brickworks

140. This site is promoted by Ibstock for inclusion in the Plan to provide non-inert landfill capacity. As set out in the Topic Paper, the estimated void capacity is some 4 million cubic metres. Even if the Authorities' objectives to divert waste from landfill were largely unfulfilled and the proposed extension to Brookhurst Wood landfill did not come forward, the potential capacity would still exceed the likely requirements of West Sussex.
141. This position was, I believe, accepted by Ibstock during the hearing session discussion. However, the need to identify additional non-inert landfill capacity within the wider region will have to be faced in the next round of plan preparation as existing capacity is depleted. In the absence of regional strategies the mechanism for doing so will be through the Duty to Co-operate. As drafted, what is the latest version of the MOU available to me⁹⁸ seems unlikely to enable this challenge to be met.
142. In the absence of a robust site search to identify where additional capacity might be found, I consider that the allocation of Laybrook Brickworks would not be justified by the evidence base. It could however come forward under Policy W8 in the light of the main modification that I have recommended.

Conclusion

143. In response to the main modifications consultation representations were received⁹⁹ from a locally significant metal recycling company that the current

⁹⁷ MD/009 3063/37

⁹⁸ CD/EB/047

⁹⁹ MD/009 1037/13

operational site was under threat from a potential local plan housing allocation and that alternative site should be identified in the area. None was specifically identified although Decoy Farm was referred to. The reasons why Decoy Farm could not be allocated at this stage are addressed above and, since no other site was suggested, this representation cannot be taken further. For the reasons set out above I do not consider that the additional sites put forward should be allocated in the Plan for it to be found sound.

Issue 5 – Other Matters

144. The Authorities have proposed a number of other main modifications that I have not yet addressed. **MM/001** converts paragraphs 1.3.3 to 1.3.5 inclusive of the Plan into policy (W0) to reflect the requirements of the Framework. As the distance from the publication date of the Framework has increased a policy to this effect becomes less necessary. The Authorities have in effect acted upon advice given to them when the Framework was less than a year old. Since the main modifications were published that advice has changed. Accordingly, **MM/001** is no longer required and I do not therefore recommend that it be made.
145. On balance, I do not consider **MM/012** (the deletion of paragraph 7.3.20 relating to the non-allocation of Lidsey Landfill site for further physical extension) to be necessary for soundness. I therefore do not recommend it but, of course the Authorities may make the change as an additional modification; I can see the merit in doing so. The important change in relation to this site is through **MM/006** (to Policy W8) without which permission for any extension to the time permitted to complete the landfill would not have been possible. Since the Plan appears to assume that this capacity would be available that would have undermined the strategy.
146. Finally, both **MM/017 and MM/018** are minor but material changes to Policy wording and are recommended. They are correctly listed by the Authorities as main modifications having regard to the wording of s23(2) of the 2004 Act. While the change to policy wording proposed does not go to the heart of the Plan neither can be considered an 'additional' modification.
147. Finally, by way of additional modifications the Authorities propose to introduce two measures which are not therefore for my consideration. The first is a Glossary of Terms which I consider helpful. The second is a short section on monitoring and implementation which is supported by quite extensive additions to the text boxes on this topic that follow each policy. In the main the additional wording defines intervention levels. While this is helpful I consider a weakness to be the failure to specify what actions will be taken if the intervention level is reached. New paragraph 1.6.2 suggests this will be a review of the evidence base, specific policy or policies or of the Plan as a whole. Nevertheless, the Plan as proposed to be modified is now sufficiently flexible to enable proposals brought forward by industry (which I believe they will be if industry too perceives that required capacity is not coming forward) to be favourably considered if the policy criteria are met.

Assessment of Legal Compliance

148. My examination of the compliance of the Plan with the legal requirements is

summarised in the table below. I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Minerals and Waste Development Scheme (MWDS)	The Local Plan is identified within the approved MWDS (May 2012) which sets out an expected adoption date of October 2013. This was revised to December 2013 following a slight delay in submission but the revised date did not allow for any consultation on the main modifications that might be (and in the event were) required. The Local Plan's content and timing are compliant with the MWDS as updated.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in March 2007 with a second review published in June 2012. This had not been adopted when consultation began but it did not alter the principles or approaches set out in the March 2007 SCI. Consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report (October 2012) sets out why AA is not necessary.
National Policy	The Local Plan complies with national policy except where indicated and modifications are recommended.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act (as amended) and 2012 Regulations.	The Local Plan complies with the Act and the Regulations.

Overall Conclusion and Recommendation

- 149. The Plan has a number of deficiencies in relation to soundness and/or legal compliance for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the Act. These deficiencies have been explored in the main issues set out above.**
- 150. The Council has requested that I recommend main modifications to make the Plan sound and/or legally compliant and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the West Sussex Waste Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.**

Brian Cook

Inspector

This report is accompanied by a separate document containing the Appendix of the Main Modifications