



Report to Brighton and Hove City Council

by Laura Graham BSc MA MRTPI

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

Date: 5th February 2016

PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED)
SECTION 20

REPORT ON THE EXAMINATION INTO
THE BRIGHTON and HOVE CITY PLAN PART ONE

Document submitted for examination on 28 June 2013

Examination hearings held between 22 and 31 October 2013

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Abbreviations Used in this Report

AA	Appropriate Assessment
AHVA	Affordable Housing Viability Assessment
BREEAM	Building Research Establishment Environmental Assessment Methodology
CSH	Code for Sustainable Homes
CWSGBSPB	Coastal West Sussex and Greater Brighton Strategic Planning Board
Dpa	Dwellings per annum
DtC	Duty to Co-operate
Framework	National Planning Policy Framework
HIS	Housing Implementation Strategy
HMA	Housing Market Area
LDS	Local Development Scheme
LP	Local Plan
MM	Main Modification
OAN	Objectively assessed need
PPG	Planning Policy Guidance
SA	Sustainability Appraisal

Non-Technical Summary

This report concludes that the Brighton and Hove City Plan Part One provides an appropriate basis for the planning of the City providing a number of modifications are made to the plan. Brighton and Hove City Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted. Almost all of the modifications to address this were proposed by the Council, but where necessary I have amended detailed wording and/or added consequential modifications where necessary, and I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised as follows:

- Increasing the objectively assessed need for new housing to 30,120;
- Increasing the housing requirement across the plan period to 13,200 new homes;
- Introducing greater flexibility to the redevelopment of land in employment use;
- Ensuring consistency with national policy in relation to technical standards for new dwellings;
- Removal of the reference to Brighton Marina as a District Centre and modifications to Policy DA2 to encourage a design-led approach to future development.

Introduction

1. This report contains my assessment of the Brighton and Hove City Plan Part One 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 starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan (June 2013) which is the same as the document published for consultation in February 2013.
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 Council requested that I should make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted. These main modifications are set out in the Appendix. Some of the modifications proposed by the Council are not needed for soundness and I have removed those from the Appendix. In some cases, a Main Modification to a policy or text includes a detail which, in isolation, is minor and not necessary for soundness, but for simplicity and clarity it is preferable to retain these within the Main Modifications. Within the limits prescribed by the Regulations, the Council can make additional minor modifications to the Plan at adoption.
4. I have added one Main Modification relating to the inclusion of a list of superseded policies which is necessary for legal compliance. With the exception of this modification, the Main Modifications that are necessary for soundness and legal compliance all relate to matters that were discussed at the Examination hearings or in written submissions.
5. Following the hearings in October 2013, I wrote to the Council to advise them of my preliminary findings¹. A key concern at this stage was the failure of the Plan to meet the objectively assessed need for new housing. The Council undertook further work and consulted on proposed modifications in November and December 2014. Following the receipt of representations to these modifications, I invited written submissions on the further matters and issues I identified, arising from the consultation and also revised government policy, as set out in two Written Ministerial Statements (WMS)². The Council proposed further modifications to ensure compliance with the two WMS, and these modifications were the subject of consultation between June and August 2015. In the light of the government's decision not to pursue zero carbon homes³ and the WMS

¹ Document ID21

² WMS by Brandon Lewis MP dated 28 November 2014; and WMS by Eric Pickles, Secretary of State for Communities and Local Government 25 March 2015

³ Fixing the foundations: Creating a more prosperous nation July 2015

relating to wind energy development⁴ the Council carried out consultation on further modifications to Policy CP8 Sustainable Buildings between September and November 2015. I have taken account of all the consultation responses in coming to my conclusions in this report.

6. Assessment of Duty to Co-operate

7. Section s20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.
8. The Council's Duty to Cooperate Compliance Statement⁵ outlines the steps the Council has undertaken to comply with the duty. The Statement provides details of meetings convened by the City Council. It confirms that the Council has worked with a number of neighbouring local authorities and other statutory providers, to address a number of strategic issues, most notably housing, employment and the regeneration of Shoreham harbour.
9. The Council has actively engaged at both officer and member level in a range of cross-boundary partnerships, most notably the Coastal West Sussex and Greater Brighton Strategic Planning Board (CWSGBSPB). Formal requests were sent to other Councils in the Sussex Coast Housing Market Area and beyond for assistance in meeting the City's housing need. No positive responses were forthcoming, mainly because other authorities are finding it difficult to meet their own needs as set out in the Draft Statement of Common Ground, which forms an appendix to the Duty to Cooperate Compliance Statement. However, the Duty to Cooperate is not a requirement to agree.
10. In all the circumstances, I consider that Brighton and Hove City Council has demonstrated that it has complied with the duty imposed by section 33A of the 2004 Act. Following submission of the City Plan Part One, the Council has continued to engage with other authorities, as evidenced in the Duty to Cooperate Update Paper⁶. Engagement with other local authorities has been through the CWSGBSPB, through participation in workshops and in some cases meetings directly with neighbouring authorities.

Assessment of Soundness

Main Issues

11. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 6 main issues upon which the soundness of the Plan depends.

⁴ Local Planning: Written Ministerial Statement by the Secretary of State for Communities and Local Government 18 June 2015

⁵ BP/007 Duty to Cooperate Compliance Statement (Technical Paper) June 2013

⁶ BP/049 Duty to Cooperate Statement Update October 2014

Issue 1 – Overall spatial vision

Is the spatial strategy soundly based and does it address the key issues for Brighton and Hove? Has it been positively prepared and will it deliver sustainable development in accordance with the policies of the Framework?

12. Section 1 of the Plan identifies the context for the preparation of the Plan and the challenges facing Brighton and Hove which inform the strategic objectives set out in Section 2 of the Plan.
13. Paragraph 153 of the NPPF makes clear that the Government's preferred approach is for each local planning authority to prepare a single Local Plan for its area. Additional Local Plans should only be used where clearly justified. Planning Policy Guidance (ID 12-012) indicates that additional Local Plans can be produced, for example a separate site allocations document, but there should be a clear justification for doing so.
14. There have been a significant number of cases, where the Planning Inspectorate has accepted the submission of 'Core Strategies' for examination, after the publication of the Framework on the basis that work on them had already started and that additional local plans would be securely founded on the Core Strategy's strategic policies. These circumstances are clearly applicable to the Brighton and Hove City Plan Part One which sets the strategic context for site allocations and development management policies in Part Two of the Plan. There is no clear evidence that such an approach unacceptably compromises the ability of local residents to participate in the plan-making process.
15. The Plan recognises that new development in the City is constrained by its location between the sea and the South Downs National Park. In spatial terms, the Plan seeks to concentrate development in eight development areas. All except one of these areas are in the existing urban area of Brighton and Hove. The proposed greenfield development at Toad's Hole Valley and potential sites within the urban fringe are on the edge of the urban area which offers the potential for sustainable development.
16. The Plan recognises (paragraph 1.24) that poor air quality is a key issue for certain parts of the city, and that part of the city centre has been declared an Air Quality Management Area (AQMA). **MM58, MM61, MM62** and **MM105** are necessary to ensure that this important issue is taken into account when new development is proposed. Furthermore, this issue is addressed in relation to the Development Areas, which I consider later in this report.
17. Overall, I find that the Plan seeks to meet development needs, so far as is compatible with preserving the natural and built heritage of the City and its surroundings. I deal with specific aspects of the strategy in this report but I am satisfied that, subject to the inclusion of the MMs recommended in this report, the Plan will deliver sustainable development, in accordance with the objectives of the Framework.

Is it clear what other strategic options were considered and why they were dismissed?

18. The Sustainability Appraisal documents the various options considered by the Council through the process of plan preparation. These related to both the scale of development as well as different spatial approaches. There was criticism that an option involving greater levels of development, particularly in the urban fringe, was not adequately considered. However, I am satisfied that this issue has been addressed by the further work undertaken, including the review of urban fringe sites, see paragraphs 24 and 25 below, and the SA Addendum⁷.

Is the Plan founded on a robust and credible evidence base? Is it flexible and able to be monitored? What are the trigger points/action to be taken if monitoring indicates that targets are not being met?

19. The Plan is accompanied by a comprehensive evidence base. A number of representors criticised the Council's initial urban fringe study and for the reasons given in my initial conclusions⁸ I shared some of those concerns. I consider this issue later in this report.
20. Annex 1 to the Plan contains the Implementation and Monitoring Plan. In many cases this document fails to provide clear targets or give any indication of what will be done if targets are not met. For example, in relation to housing delivery the targets are to monitor net housing completions and maintain a five year supply of deliverable sites, but there is no indication of what will be done in the event that a five year supply is not maintained. MM113 proposes a number of amendments to Annex 1 which seek to remedy these deficiencies. However, the action to be taken in the event that targets are not met remains generally vague. In many cases the action proposed is "Development Management Intervention" and it is unclear what is intended. Nonetheless I do not consider that this is sufficient to render the plan as a whole unsound, and it is a matter that can be addressed in the preparation of the City Plan Part Two.

Issue 2 – Housing

Objectively assessed housing need

21. The submission plan includes a figure of 15,800 as the objectively-assessed need for new homes over the plan period. This figure has been revised during the Examination. The most recent study⁹ assesses the need across the plan period (from 2010 to 2030) as 30,120 new homes. This study is based on the DCLG 2012 household projections and takes account of affordable housing need, assessed as being a net need of 810 dwellings per annum. Taking account of the evidence of market signals, of affordable housing need and of the demographic projections, the study

⁷ BP/050 Sustainability Appraisal Addendum October 2014

⁸ ID21

⁹ EP/069 Objectively Assessed Need for Housing: Brighton and Hove. June 2015 (G L Hearn)

finds that an uplift of 173 homes per annum would support an improvement in affordability. This is included in the figure of 30,120, which equates to an annual average of 1,506 new dwellings. There is broad support for this revised figure, included in **MM10**, which is necessary to ensure consistency with national policy and guidance.

Housing requirement

22. The submission plan proposes a housing requirement of 11,300 new homes during the plan period which is a significant shortfall against the assessed housing need. In my initial findings¹⁰ I noted that Brighton and Hove is subject to significant constraints in finding land for new development. This is largely because of its location between the English Channel and the South Downs National Park, which limits the outward expansion of the City. Furthermore, there is a limited supply of vacant, derelict or underused brownfield sites within the urban area. However, I indicated that the Council should rigorously assess all opportunities to meet housing need and I drew attention to three potential sources: windfall sites; urban fringe sites; and land allocated for employment use, and I consider these further below.
23. The Council has proposed **MM72** which increased the housing requirement across the Plan period to 13,200 new homes. The modification revises the number of new homes to be delivered from various sources in accordance with the latest evidence available. There are consequent modifications to the policies for the Development Areas, which are set out below, and also to Policy SA1 (**MM56**).

Windfall sites

24. **MM11** and **MM72** include an increase in the expected contribution from small site development to 2,015 new homes, comprised of an estimated 1,250 units from small windfall sites and 765 units from identified small sites, across the plan period. This level of windfall development reflects past trends, and meets the requirements of paragraph 48 of the Framework. These modifications are necessary to assist in reducing the shortfall in the supply of new housing and to ensure consistency with national policy.

Urban fringe sites

25. In my early correspondence with the Council¹¹ and in my initial findings¹² I expressed concerns regarding the approach that had been taken to assessing the potential for development in the urban fringe, which had led to the very restrictive policy (policy SA4) contained in the submission plan. In response to these concerns, the Council instructed consultants to carry out a review of sites in the urban fringe¹³. This review concludes that about 1,000 new homes could be delivered in the urban fringe, and this is reflected in **MM64**.

¹⁰ ID21

¹¹ ID01

¹² ID21

¹³ BP/048, BP/048a, BP/048b

26. Some representors oppose any development in the urban fringe and some have questioned the accuracy of some of the site assessments in this study. Others express the view that the Assessment does not reflect the full potential for development in the urban fringe. The City Plan Part One does not, with the exception of Toad's Hole Valley (see Development Area DA7 below), allocate urban fringe sites. The Council has indicated its intention to undertake a more detailed assessment of these sites through the preparation of Part Two of the City Plan. **MM64** allows for sites to come forward in advance of the adoption of Part Two of the Plan but any such proposals would be subject to scrutiny through the development management process in the usual way.
27. I am satisfied that the 2014 Urban Fringe Assessment provides a robust evidence base to guide the strategic level policy in the City Plan Part One. Decisions on whether individual sites should be developed will be made through the process of preparation of the City Plan Part Two or, in advance of that, through the development management process. I am confident that the Plan, as proposed to be modified, will strike the right balance between meeting the need for new housing and retaining open space and will provide an appropriate framework for the allocation of sites in Part Two of the Plan. **MM99**, **MM101** and **MM102** are necessary to ensure consistency between Policy SA4 and Policies CP16 Open Space and CP17 Sports Provision.

Land allocated for employment use

28. The City acts as an important economic growth hub for the wider sub-region. The Employment Land Study Review¹⁴ found that vacancy rates are low and even sites with poor quality units were meeting employment needs at some level. The study concluded that there were no sites which should be released to other uses. The City Plan does not seek to accommodate all identified employment floorspace needs and this has been recognised as a Duty to Cooperate issue. However, the Council has accepted that there may be a need for greater flexibility, to take into account, in particular, viability issues. **MM75** and **MM76** are necessary to ensure adequate flexibility to ensure consistency with national policy.

Are there other opportunities to increase the supply of housing and if so what are they?

29. Given the physical and environmental constraints of the City there are very limited opportunities to increase the supply of land for housing. There may be scope for some further intensification through redevelopment of sites within the urban area but there is no evidence before me to indicate that such development would be likely to yield a significant uplift in housing land supply beyond that anticipated by the windfall allowance.

Housing trajectory and five year housing land supply.

30. The National Planning Policy Framework, paragraph 47, requires local planning authorities to ".....illustrate the expected rate of housing delivery

¹⁴ EP/010

through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target". Planning practice guidance advises that "LPAs should aim to deal with any undersupply within the first five years of the plan period where possible".

31. Annexe 3 of the City Plan, as proposed to be modified (MM116), comprises the Housing Implementation Strategy. The Plan's requirement of 13,200 new homes during the plan period implies an average rate of 660 new dwellings per year. Annual completions in the first four years of the plan period (2010 – 2014) were below this, although there was a slight improvement each year, giving rise to a shortfall of 1,238. Taking this into account, together with the fact that most sites proposed for development are brownfield sites within the urban area which have been particularly vulnerable to the effects of construction cost increases and development finance difficulties, the housing trajectory anticipates that annual completions will almost meet the annualised target from 2014 to 2019 (655 dwellings per annum (dpa)) and will then exceed it for the five years through to 2024 (856 dpa) before returning to a delivery rate just above the annualised requirement (712 dpa). In all the circumstances I consider the housing trajectory to be an ambitious but realistic expectation of housing delivery throughout the Plan period and that it is acceptable to base the five year housing requirement on this trajectory.
32. I have considered whether there is a record of persistent under delivery of housing such that the five year housing land supply should be 20% higher. However, a good rate of housing delivery was achieved between the mid- 1990s through to 2007. The lower rate of housing delivery since then is largely related to poor market conditions. Having regard to the advice in PPG that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, I do not consider this to constitute a record of persistent under delivery and I therefore consider that the appropriate buffer is 5%.
33. Appendix B of the Housing Implementation Strategy (HIS) shows that the Council can only demonstrate a five year supply of land for housing if that calculation is based on the housing trajectory, rather than a simple annualised requirement, and that dealing with the under supply of 1,238 dwellings in the first four years of the plan period is spread over the rest of the plan period, rather than the first five years.
34. If the five year housing land supply requirement were based on the simple annualised requirement ($660 \times 5 = 3300$) plus the shortfall (1238) and 5% buffer (227), it equates to a five year requirement of 4765, an annual target of 953 dwellings per annum. This exceeds the actual number of dwellings built in the City in all but three of the last twenty years. In current circumstances, where the economy is still recovering from a major recession it is unrealistic to think that levels of housebuilding will rise fast enough to meet this requirement.
35. If the five year requirement is based on the housing trajectory with the shortfall spread across the plan period, as shown in option C of Appendix

B to the HIS, the Council can demonstrate a housing land supply of 5.0 years. This provides very little flexibility, which is a significant weakness of the Plan. However, the adoption of the City Plan Part One will provide greater certainty for the allocations contained within this plan and will also facilitate the allocation of additional sites through the City Plan Part Two. In the light of the particular constraints faced by the City, I am not persuaded that this weakness is sufficient to render the whole plan unsound, but the Council will wish to give this matter very close consideration through the preparation of the City Plan Part Two.

36. I asked the Council to make some minor changes to the revised version of Annex 3, namely to clearly show the annual rates of proposed housing delivery, rather than relying on the bar graph. This is intended to make calculation of the five year housing land supply, throughout the plan period, more straightforward. This is a minor, factual alteration and I do not consider it necessary to carry out further consultation or SA. I have amended the wording of MM116 to refer to the latest version of Annex 3.

Overall conclusions on housing land supply

37. The City Plan Part One, as proposed to be modified, seeks to meet only 44% of the objectively assessed need for new housing. This is a very significant shortfall which has important implications for the social dimension of sustainable development. However, as noted above, the City is subject to significant constraints in finding land for new development. The target of 13,200 new homes is expressed as a minimum, which offers scope for that number to be increased when more detailed consideration of individual sites is undertaken for the preparation of the City Plan Part Two.

Affordable Housing

38. It is generally recognised that there is considerable need for affordable housing in the City. Policy CP20 seeks to maximise the provision of affordable housing, and this approach is supported by the Affordable Housing Viability Study (AHVS)¹⁵. The Policy includes a degree of flexibility to allow site specific circumstances, including viability, to be taken into account.
39. The Council initially proposed modifications to ensure compliance with the WMS of 28 November 2014. Following the High Court judgement in *West Berkshire District Council and Reading Borough Council v SSCLG*, the WMS can no longer be treated as a material consideration, and the Council has withdrawn the modifications.

Student accommodation

40. The Plan notes the increasing demands for student accommodation but also recognises that this has to be balanced against the general need for new housing and the problems that can arise from a concentration of Houses in Multiple Occupation (HMOs). Notwithstanding the evident need

¹⁵ EP/001 Affordable Housing Viability Study Update 2012

for additional student accommodation, but bearing in mind the limited opportunities for new development, I consider the Plan strikes an acceptable balance between the need for student accommodation and general housing needs. **MM107** and **MM109** clarify the approach to be taken to proposals for purpose built student accommodation and to new HMOs. These modifications are necessary to ensure the Plan is effective.

Provision for gypsies and travellers

41. Policy CP22 identifies a need for 18 permanent pitches to meet assessed requirements to 2019 based on the work undertaken in the years 2007 – 2010 for the, later abandoned, partial review of the South East Plan. This evidence base is no longer up-to-date, and does not cover the full plan period for the City Plan Part One, but the plan recognises that a revised assessment will be necessary and the Council advised during the Examination that a new GTAA had been commissioned jointly with neighbouring authorities. This assessment was completed in November 2014¹⁶.
42. Policy CP22 safeguards existing sites, including the established transit site at Horsdean, and establishes criteria for the consideration of proposals for new sites. The Policy includes a commitment to make provision for additional or outstanding pitch requirements through site allocations in Part Two of the City Plan or through joint working with adjacent local authorities. It also makes reference to the potential requirement for an early review of Policy CP22 to incorporate pitch requirements over the full plan period.
43. It is less than ideal that the City Plan part One does not fully comply with the Framework and PPTS, notably the requirements to set pitch targets and identify a five year supply of deliverable sites and sites or broad locations in later years of the Plan period. However, the Council has provided evidence of work undertaken with the aim of identifying a site or sites to meet the need to 2019¹⁷, which provides a degree of confidence that the Council intends to address this issue in Part Two of the Plan. In all the circumstances, I consider that this issue is likely to be resolved more quickly through the adoption of the City Plan Part One which will enable the Council to move forward with Part Two of the Plan and, if necessary, an early review of Policy CP22.

Housing Standards

44. In response to the WMS of 25 March 2015 which introduced new national planning policy on the setting of technical standards for new dwellings, the Council has proposed **MM68**, **MM69**, **MM106**, and **MM120**. These modifications are necessary to ensure compliance with national policy.

¹⁶ EP068 Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment – BHCC and SDNPA (November 2014)

¹⁷ MD/007 Report and Papers to Council Cabinet Meeting March 2012

Issue 3 – Employment

Do the City Plan's policies and proposals adequately address the needs of all employment-generating sectors of the economy, and is there appropriate flexibility in the policies and proposals? Is the protection of the specified primary industrial estates and business parks for Class B uses fully justified?

45. As noted above the City is an important employment hub. The Employment Land Survey Review¹⁸ identifies the likely requirements for business space over the Plan period, including a significant requirement for business space. The Plan seeks to address this need primarily through the policies for the development areas. **MM73** and **MM77** are necessary to ensure that appropriate allocations for other (i.e. non B class) employment generating uses will be made in the City Plan Part Two. The Review also supports the retention of the primary industrial estates and business parks. **MM75** and **MM76**, allow for the location of waste management facilities in the established industrial estates and business parks. These modifications also introduce greater flexibility to allow a net loss of employment floorspace in mixed use redevelopments where it can be justified in accordance with the factors set out in the reasoned justification; and increased flexibility to allow the release of non-allocated sites where such sites are not suitable for alternative employment uses; and that redevelopment for housing will be considered in accordance with policy CP20 Affordable Housing, rather than simply giving preference to affordable housing.

Issue 4 – Retail

Hierarchy of centres

46. The Council's own Retail Study¹⁹ does not justify the designation of Brighton Marina as a District Centre, and the Council's aspirations for the area are not sufficient reason to designate it as such at the present time. **MM78** removes the Marina from the list of designated District Centres under Policy CP4 (see also consideration of Policy DA2 below).
47. The Retail Study is thorough and comprehensive, and there is no convincing evidence before me which would justify the designation of additional District Centres such as, for example, the Hove Station Area.

Retail impact assessment threshold of 1,000 sq m

48. The default threshold for requiring a retail impact assessment included in the Framework is 2,500 sq m. Policy CP4 establishes a locally set threshold of 1,000 sq m. Evidence produced for the Council²⁰ taking account of the advice in PPG, identifies various factors, including the relatively small size of both convenience and comparison goods stores, which indicate weaknesses in the Brighton Regional Shopping Centre

¹⁸ EP/010 Employment Land Study 2012

¹⁹ EP/031 Brighton and Hove Retail Study Update 2011

²⁰ BHCC12 Statement in response to Matter 6 Retail Appendix 1 Section 5

which make it vulnerable to trade diversion from stores of 1,000 sq m net floorspace. **MM79** which changes the requirement from gross to net floorspace is necessary to ensure the Plan is justified and effective.

Issue 5 – Development Areas

Is the scale and mix of development proposed for the Development Areas (DA1 – DA7) appropriate to those areas and will the proposals assist in meeting the strategic objectives of the City Plan? Is there clear evidence that the proposals are viable and deliverable?

DA1 Brighton Centre and Churchill Square Area

49. Policy DA1 seeks the replacement of the Brighton Conference Centre and allows for the redevelopment of Churchill Square. The need for this regeneration is not disputed, although a number of respondents have requested detailed changes to the policy wording. The Council has proposed **MM12 – MM17** to address some of these concerns by introducing increased flexibility; specifying the minimum requirement for new retail development as a net requirement; and strengthening the requirements that the impact of development proposals on air quality are taken into account. Subject to the inclusion of these modifications, I consider the policy to be sound.

DA2 Brighton Marina, Gas Works and Black Rock Area

50. Policy DA2 seeks to establish a co-ordinated approach to development in the Brighton Marina and nearby sites. The strategic allocation makes provision for a mix of uses within the Marina and on the Gas Works site. The Black Rock site is allocated for community leisure and recreation purposes.
51. Brighton Marina was established by the Brighton Marina Act 1968. The Act contains various restrictions on the nature and extent of development. One such restriction is that development should not breach the cliff height. The development plan cannot remove this restriction but the Act also includes provisions for the Council to grant a waiver to allow this restriction to be disregarded. The Council has done so in relation to the scheme which is currently under construction and which is referred to in policy DA2. There is no convincing evidence before me to support the contention that extant planning permissions cannot be implemented for legal reasons.
52. Given the failure to meet the objectively assessed need for new housing and the limited opportunities to increase the supply of new housing it is important that the Marina makes as significant a contribution to the provision of new housing as possible. There is convincing evidence that the cliff height restriction would threaten the viability of development because it would restrict the number of units that could be achieved. My attention was drawn to an appeal decision relating to a scheme which would have breached the cliff height. The appeal was dismissed because of the inadequacy of the accompanying legal agreement, but the

Secretary of State did not conclude that the breach of the cliff height was a reason to dismiss the appeal. Those conclusions were specific to that scheme but lend force to the view that a design-led approach will be preferable to restricting specific parameters of any future scheme. **MM19** removes the cliff height restriction in favour of highlighting this as one of the issues to be addressed. This MM is necessary to enable a viable scheme to come forward which can make a significant contribution to meeting housing needs whilst respecting the natural and built heritage assets in the surrounding area.

53. As noted above, the Council's own evidence does not support the designation of the Marina as a District Centre. **MM18**, **MM21**, **MM81**, and **MM112** remove references to the District Centre designation but encourage an increase in retail and other facilities to support the proposed increase in population.
54. **MM20**, **MM22**, and **MM23** all introduce further flexibility for development proposals which is necessary to aid viability and make the Plan effective.

DA3 Lewes Road

55. Policy DA3 seeks to reinforce the role of Lewes Road as the City's academic corridor. The Policy and development areas seek to make provision for a range of uses including new academic facilities and student accommodation. The policy is generally worded in quite flexible terms which will enable more detailed proposals to be developed within the overall parameters set out. The Council has proposed modifications **MM25**, **MM26**, **MM27**, **MM28**, **MM29**, **MM30**, **MM31**, **MM32** to ensure compatibility with policy CP8 Sustainable Buildings (see below); to reinforce the need to take account of air quality issues; to ensure the protection of groundwater sources; to introduce further flexibility in relation to the type and mix of development sought; to clarify the relationship with the already adopted Planning Brief for Preston Barracks and University of Brighton SA and the extant planning permission for the Falmer Released Land. The modifications are necessary to make the plan effective.

DA4 New England Quarter and London Road Area

56. Policy DA4 seeks to revitalise this area which is close to Brighton Station. Given its good transport links the Council takes the view that this should be the preferred location for new office development. The Policy also provides for other uses including residential and retail development. However, given the need for additional office development that has been identified in the Employment Land Study Review²¹, I do not consider it would be appropriate to change the policy to allow other uses, such as student housing, which could potentially reduce the contribution that the area could make to providing new office space.
57. The Council is proposing **MM33**, and **MM34** to reinforce the need to take air quality issues into account and to revise the minimum number of

²¹ EP010

residential units to be provided to take account of the latest information. These modifications are necessary to ensure the plan is effective.

DA5 Eastern Road and Edward Street Area

58. Policy DA5 seeks to secure significant improvements to the area and promote development on four identified sites, including the redevelopment of the Royal Sussex County Hospital to provide additional hospital floorspace. The Policy has a degree of flexibility and promotes mixed use development on the identified sites. I do not consider that the policy can be regarded as unduly restrictive. The Council is proposing **MM36, MM37, MM38, MM39, MM40, MM41, MM42** which clarify various matters including, the requirement for off-site water supply and sewerage systems; to ensure compatibility with policy CP8 (sustainable buildings); to include the most up to date assessment of the number of residential units that can be provided; and to clarify the likely timescales for development of the Freshfield Road Business park and Gala Bingo Hall allocation. I conclude these modifications are necessary to ensure the Plan is effective.

DA6 Hove Station Area

59. Policy DA6 seeks to encourage employment-led mixed use development. This approach is justified by the findings of the Employment Land Study Review²² and the potential for sustainable transport links. The Council has proposed **MM43** which reduces the minimum number of residential units to be provided, having regard to the clear intentions of the owner of the Goldstone Retail Park to retain the site in its existing use. The Council has also proposed **MM44** which clarifies the relationship to the AQMA and the need to take account of air quality issues. These modifications are necessary to ensure the plan is effective.

DA7 Toad's Hole Valley

60. Policy DA7 allocates 37 hectares of land on the northern fringe of Brighton for development to include a minimum of 700 residential units, together with employment space, a new secondary school, public open space and ancillary uses such as shops, cafes and a community facility. A large number of representors sought the removal of this allocation and the site's designation as local green space.

61. The site abuts the boundary of the South Downs National Park and was expressly excluded from the Park after careful consideration by the Inspector who held the South Downs Inquiry in 2008. Nonetheless, it is part of the downland backdrop to Hove and the setting of the National Park. The Policy seeks to ensure that development respects the setting of the National Park. It is inevitable, however, that development of the scale envisaged in the Policy would have an adverse effect on views out of Hove and on the setting of the National Park. That harm to the environmental dimension of sustainable development has to be balanced against the benefits that would be derived from the provision of new homes.

²² EP/010

62. As a large site on the edge of the existing urban area there is potential to create a sustainable form of development, notwithstanding the challenges to overcome if existing bus routes are to be extended, which were drawn to my attention by some representors at the hearings²³. In addition, the provision of some employment uses and a new secondary school will add to the sustainability of the proposals. The proposals also offer the opportunity to protect and improve the Site of Nature Conservation Importance which abuts the western boundary of the development area.
63. As noted above, the housing target in the Plan represents a very significant shortfall against the objectively assessed need for new housing. If this site were not to come forward for housing development, or if development were to be proposed at a lower density, the shortfall would be even greater. In all the circumstances, I consider that the benefits of the proposed development of the site to meet the need for new housing outweigh the likely harm to the landscape and the setting of the National Park. I recognise that this is a different conclusion to the one reached by the Inspector who held the inquiry into objections to the Hove Borough Local Plan Second Review in 1994, but the context for her decision, particularly in relation to the national and local policy context relating to the supply of land for housing, has changed significantly since that time.
64. The Council has proposed **MM45** which, amongst other things, ensures compatibility with policy CP8 (sustainable buildings). This modification is necessary to ensure the plan is effective.

DA8 Shoreham Harbour

65. Shoreham Harbour straddles the boundary between the administrative areas of Brighton and Hove City Council and Adur District Council. A Joint Area Action Plan (JAAP) is being developed by the two Councils together with West Sussex County Council. Policy DA8 provides a strategic context to guide the preparation of the JAAP, in so far as it relates to land within the City. The impact of new development on existing communities and on the character and appearance of surrounding areas, are matters that can be taken into account in the preparation of the JAAP.
66. The Council has proposed **MM46, MM47, MM48, MM49, MM50, MM51, MM52, MM53, MM54, MM55** which are intended to reflect the latest position in relation to preparation of the JAAP and other matters such as the safeguarding of mineral wharf facilities. Not all these modifications may be strictly necessary for soundness, but they aid clarity and the effectiveness of the Plan so for this reason I recommend their inclusion.

Development Areas – overall conclusion

67. Subject to the inclusion of the modifications I identify above, the scale and mix of development proposed for the Development Areas (DA1 – DA8) is appropriate and deliverable and will assist in meeting the strategic objectives of the City Plan.

²³ See for example Rep-29-005

Issue 6 – Infrastructure, Developer contributions, Sustainable buildings, Viability

Does the Infrastructure Delivery Plan identify all key infrastructure requirements, including transport and water-related requirements?

68. Annex 2 to the City Plan Part One forms the Infrastructure Delivery Plan which sets out key infrastructure requirements for the delivery of the Plan. MM114 and MM115 update the submission draft version and are necessary to ensure that the Plan is justified and effective.
69. In common with many other cities Brighton and Hove suffers from a degree of traffic congestion. Policy CP9 Sustainable Transport encourages the provision of an integrated sustainable transport strategy. There is no evidence before me to demonstrate that major new transport infrastructure is needed, or that such schemes would be a more effective way of addressing transport issues.
70. The Council has proposed MM90, MM91, MM92, MM93, and MM119 to clarify various aspects of Policy CP9 and to ensure that the approach to parking standards accords with the requirements of the Framework.
71. The Council has proposed a number of MMs, including MM84, to address the concerns of Southern Water. A number of other MMs relate to the Development Areas and are listed above. Others are listed below in relation to Policy CP8 and the IDP. I am not persuaded that there is a clear need or justification for a strategic policy to support the provision of water and wastewater infrastructure. If a clear need can be demonstrated for additional facilities to support new development, this can be addressed through the City Plan Part Two.

Sustainable Buildings (Policy CP8)

72. Policy CP8 requires all new development to incorporate sustainable design features with reference to the Code for Sustainable Homes (CSH) and Building Research Establishment Environmental Assessment (BREEAM) standards. A WMS dated 25 March 2015 by Secretary of State for Communities and Local Government, set out new national planning policy on the setting of standards for new dwellings. The CSH was withdrawn by the WMS. For the specific issue of energy performance, local planning authorities are able to set and apply policies which require compliance with energy performance standards that exceed the requirements of Building Regulations up to the equivalent of CSH Level 4. MM85 replaces the submission draft policy CP8 with a requirement equivalent to the former CSH Level 4 (i.e. a 19% carbon reduction against Part L of the Building Regulations 2013).
73. The Sustainable Buildings Background Paper²⁴ sets out the local circumstances which justify imposition of this standard, including the City's high ecological footprint arising, in part, from the number of older

²⁴ TP/003

buildings in the City. MM85 also establishes that new residential development will be expected to meet the national standard for water efficiency, which is justified by the evidence in the South Downs National Park Authority Water Cycle Study, the relevant sections of which are included in the Council's Statement²⁵. In addition the MM removes the requirement for residential conversions to meet a BREEAM standard. MM85 is necessary to ensure compliance with national policy.

Is there clear evidence that the combined requirements for developer contributions and/or CIL will not render development unviable?

74. The Council's Combined Policy Viability Study, which was not finalised until after the plan was submitted for examination, found that the combined requirements of the plan raised serious doubts about the viability of development across the Plan area. The Council argued that the flexibility in the policies would enable development to come forward. Whilst it is useful to have sufficient flexibility to allow for site specific issues to be taken into consideration, it is not an acceptable substitute for ensuring that the Plan facilitates development throughout the economic cycle, as required by the Framework.
75. A significant factor affecting viability was the CSH requirements included in the submission policy CP8. The Brighton and Hove combined Policy Viability Study Update 2014²⁶ found that reducing the CSH target from Level 5 to Level 4 (see paragraph 72 above and MM85), ensured that development across the large majority of the City would be viable and deliverable. The study identified that some development typologies, notably flatted developments in some areas of the City, were unviable in certain circumstances due to market conditions. In these particular circumstances, the flexibility in the policies should enable sites to be developed.

²⁵ BHCC39 Matter 3 Consistency with NPPF with Addendum

²⁶ EP/066

Assessment of Legal Compliance

76. 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	
Local Development Scheme (LDS)	The City Plan Part One is identified within the approved LDS June 2014 which sets out an expectation that the plan will be adopted by July 2016. The City Plan Part One's content and timing are broadly compliant with the LDS.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in September 2006 and was updated in March 2015. Consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes.
Sustainability Appraisal (SA)	SA has been carried out and is adequate. It is widely accepted that a Local Plan is likely to have significant environmental effects and that SEA will be required. Section 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 requires a responsible authority to prepare a statement of its reasons if it determines that environmental assessment is not necessary. There is no requirement to prepare a statement of reasons where it determines that environmental assessment is necessary.
Appropriate Assessment (AA)	The Habitats Regulations AA Report (May 2012, updated July 2014) sets out why a full AA is not necessary and this is supported by Natural England
National Policy	The Local Plan complies with national policy except where indicated and modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	Regulation 8(5) of the 2012 Regulations requires that where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy. The evidence base for the Local Plan contains a list of superseded policies (Document BP/018), which was in the public domain throughout the Examination. The Council has suggested some minor changes to BP/018 in Document BP/073. MM117 is necessary to ensure that the list of superseded policies is contained within the Plan itself. These modifications have not been subject to public consultation or sustainability appraisal. However, I do not consider that anyone's interests are prejudiced, or that sustainability

	<p>appraisal is required because of the factual nature of the information.</p> <p>Policy SA5 seeks to set priorities for land within the South Downs National Park that lie within the City Council's administrative boundary. The rationale for this is that the City Council is a key landowner. However, the City Council is not the planning authority for this area and it therefore has no authority under the Act or the Regulations to make planning policy that is intended to apply within the National Park. MM65 and MM66 rectify this issue. Subject to the inclusion of these MMs the City Plan Part One complies with the Act and the Regulations.</p>
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Overall Conclusion and Recommendation

77. 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 2004 Act. These deficiencies have been explored in the main issues set out above.
78. 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 Brighton and Hove City Plan Part One satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Laura Graham

Inspector

This report is accompanied by the Appendix containing the Main Modifications

