



## POSITION STATEMENT of the South Downs National Park Authority

### Matter 3 - Core Policies

Date: October 2018

---

Do the three Core Policies of the Plan make appropriately justified and effective provision respectively for:

#### **Policy SD1 – Sustainable Development - with respect in particular to:**

- a. the exceptions permitted by criterion 4 of the Policy
- b. consistency with national policy?

#### **Policy SD2 – Ecosystem Services – with respect in particular to:**

- a. the requirement of the Policy for all proposals to be supported by a statement on its impact upon ecosystem services?

#### **Policy SD3 – Major Development - with respect in particular to:**

- a. whether part 1 of the policy provides a justified and effective basis for an objective identification of proposals considered to comprise major development,
- b. whether part 2 of the policy makes appropriate exceptions for permitting major developments in the SDNP,
- c. whether part 3 of the policy sets appropriate requirements and constraints for the control of major development exceptionally permitted within the SDNP,
- d. whether the policy should refer to major events, as distinct from permanent development?

KEY DOCUMENTS for cross-reference:

Sustainable Development

- National Planning Policy Framework (2012) (Nat 01)
- English National Parks and the Broads: UK Government Vision and Circular (DEFRA, 2010) (Nat 03)

Ecosystem Services

- Ecosystem Services Background Paper (Core 05)
- Ecosystem Services and Householder Planning Applications: Technical Advice Note (SDNPA, 2018) (Core 06)
- Ecosystem Services Technical Advice Note (non-householder) (SDNPA, 2018) (Core 07)
- National Planning Policy Framework (2012) (Nat 01)
- A Green Future: Our 25 Year Plan to Improve the Environment (DEFRA, 2018) (Nat 05)
- Mapping of Ecosystem Services within the South Down National Park using the EcoServ GIS Mapping Tool (SDNPA, 2016) (Core 04)

Major Development

- National Planning Policy Framework (2012) (Nat 01)
  - National Planning Guidance: Natural Environment, Paragraph 005 (Nat 02)
  - Legal opinion on definition of major development (James Maurici QC, 2011) (Core 08)
  - Legal opinion on definition of major development (James Maurici QC, 2014) (Core 09)
  - Legal Opinion Supplementary Advice ( James Maurici, 2014) (Core 10)
  - Major Development Advice (Landmark Chambers, 2017) (Core 11)
-

## 1. Introduction

1.1 This Position Statement has been prepared by the South Downs National Park Authority (SDNPA) on Policies SD1: Sustainable Development and SD3: Major Development, because Background Papers were not previously prepared by the Authority on these matters. It also addresses Ecosystem Services, because although a Background Paper was prepared on this matter it did not address the issue raised by the Inspector.

Do the three Core Policies of the Plan make appropriately justified and effective provision respectively for:

## 2. Policy SD1: Sustainable Development

2.1 Policy SD1: Sustainable Development provides an overarching framework for evaluating all development proposals in the National Park. Paragraph 4.4 of the Local Plan explains that the policy reflects the three guiding policies of the Local Plan. These are the presumption in favour of sustainable development, the statutory duty to have regard to National Park purposes and the need to give great weight in the determination of planning applications to conserving landscape and scenic beauty in the National Park.

2.2 It is crucial that the South Downs Local Plan is effective at serving the purposes of the National Park, which are set out in the National Parks and Access to Countryside Act 1949, as amended by the Environment Act, 1995. It is important to note that national legislation sits above all local and national policies including the NPPF. In any event the protection given to the landscape of national parks is mirrored in the NPPF.

2.3 Overall the policy is positively worded in line with Government policy and is consistent with paragraph 154 of the NPPF, which states that 'Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where.' In our opinion, given the special planning status of national parks and the enhanced natural capital therein, it is appropriate for the policies of the South Downs Local Plan to be robustly worded so that they conserve and enhance the protected landscape; this is particularly true for those policies that related to the first purpose of national parks.

Issue a. - with respect to the exceptions permitted by criterion 4 of the Policy

2.4 Criterion 4 of Policy SD1 states that planning permission will be refused if the development proposal fails to 'conserve' the landscape, natural beauty, wildlife and cultural heritage of the National Park. This relates to the first purpose of national parks. The policy does not seek to refuse planning applications that do not 'enhance' the landscape, natural beauty, wildlife and cultural heritage of the National Park. Nor does it seek to apply a presumption against development proposals that fail to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public in line with the second purpose of national parks .

- 2.5 The two exceptions set out in criterion 4 provide a certain amount of flexibility in the implementation of this policy. The word 'exceptionally' is given its common meaning defined in the Oxford English Dictionary as 'unusual; not typical.'
- 2.6 Criterion 4(a) of the policy requires the benefits of a development proposal to 'demonstrably' outweigh the 'great weight' attached to landscape, natural beauty, wildlife and cultural heritage of the National Park. This requires applications to be supported by robust evidence of the scheme's benefits. The phrase 'great weight' is used in accordance with paragraph 115 of the NPPF, which states that great weight should be given to conserving landscape and scenic beauty in national parks.
- 2.7 Criterion 4(b) of the policy requires the 'substantial compliance' of a planning application with the relevant policies of the development plan. This establishes in policy the first paragraph of the Local Plan, which states that the Plan should be read as a whole and that all Local Plan policies should be viewed together and not in isolation. The phrase 'substantial compliance' introduces an element of flexibility for the local planning authority to exercise judgement in the determination of planning applications.

Issue b. - with respect to consistency with national policy?

- 2.8 Core Policy SD1: Sustainable Development is consistent with both national legislation set out in the 1995 Environment Act and national policy set out in the NPPF (Nat 01) and the Vision and Circular for English National Parks and the Broads (Nat 03). References to a number of NPPF paragraphs clearly demonstrates this consistency with national policy.
- 2.9 Paragraph 14 of the NPPF states that a presumption in favour of sustainable development lies at the heart of the NPPF. The first criterion of Policy SD1 states that the Authority will take a positive approach that reflects this presumption in favour of sustainable development when considering development proposals.
- 2.10 Paragraph 14 of the NPPF also states local plans should meet objectively assessed needs unless specific policies in the Framework indicate development should be restricted. Footnote 9 then gives examples of these policies and includes national parks as an example. The negative wording in the fourth criterion of Policy SD1 therefore reflects Government policy. Further discussion on not meeting objectively assessed needs is set out in the relevant background papers and position statements prepared by the Authority.
- 2.11 Paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in national parks. It also states that the conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight. The fourth criterion of Policy SD1 is consistent with this national policy.
- 2.12 Paragraph 154 of the NPPF states that local plans should contain clear policies on what will and will not be permitted and where. Policy SD1 sets out the overarching framework for this and other Local Plan policies set out the detailed policy context on a variety of matters. For example, Policy SD12: Historic Environment states

that 'Development proposals will only be permitted where they conserve and enhance the historic environment' and Policy SD5: Design states that 'Development proposals will only be permitted where they adopt a landscape-led approach.'

2.13 It should be noted that a number of national policies set out in the NPPF are selectively negative, for example, paragraph 27 of states that an application for a town centre use that fails the sequential test should be refused. Furthermore, footnote 9 of the NPPS is clear on where development should and should not be restricted.

### 3. Policy SD2 – Ecosystem Services

Issue a. - with respect to the requirement of the Policy for all proposals to be supported by a statement on its impact upon ecosystem services?

- 3.1 The SDNPA considers that Core Policy SD2: Ecosystem Services is both appropriately justified and effective in its requirement for all development proposals to be supported by a statement on its impact on Ecosystem Services.
- 3.2 The policy requirement is supported by robust and proportionate evidence set out in the Core Document Library. Ecosystem Services are the goods and services we get from the natural environment. Multiple Ecosystem Services are produced from the National Park's stock of natural capital. For example, clean drinking water is provided as a provisioning service by the aquifers that underlie the chalk of the South Downs. The main evidence on Ecosystem Services has been provided by the EcoServ GIS Toolkit, which generates fine scale maps illustrating the human need for Ecosystem Services and the capacity of the environment to generate them. This is explained in the document Mapping of Ecosystem Services within the South Down National Park using the EcoServ GIS Mapping Tool (Core 04).
- 3.3 In order to ensure that we conserve and enhance the stock of natural capital in the National Park, it is important that we monitor the impact of development on ecosystem services.
- 3.4 The Technical Advice Note (TAN) on Ecosystem Services for non-householder planning applications (Core 07) cites EcoServ GIS as a potential evidence source to address the eleven criteria of Policy SD2. For example, the EcoServ maps on Pollination could be used to meet criterion SD2 (a) on sustainably managing land and water environments. Other sources of evidence listed in the TAN for this criterion are the SDNPA Viewshed Study (TLL 08) and the Water Framework Directive. There are other Ecosystem Service mapping/assessment tools available to use in the formulation of planning applications such as Tool Assessor<sup>1</sup>, which is a free on-line resource.
- 3.5 Interactive EcoServ maps will be available to access on the 'Policies Map Plus.' This will be an on-line mapping system open to the public, without charge, providing a

---

<sup>1</sup> <https://ecosystemsknowledge.net/resources/guidance-and-tools/tools/tool-assessor>

suite of data linked to the National Park purposes. It will be possible to view on one platform the standard Policies Map with allocations and designations, Ecoserv maps, more detailed data on tranquility and dark night skies and projects such as Secrets of the High Woods and Heathlands Re-united.

- 3.6 The Authority did consider alternatives to the policy requirement. We could have set a threshold below which a statement would not be required. An obvious option was to use the GPDO definitions of major, minor and householder and only require statements for major and/or minor applications. However, there was no evidence to support this threshold. Furthermore, as most applications received by the Authority are actually householder, setting an arbitrary threshold would have been a missed opportunity for development proposals in the National Park to enhance Ecosystem Services. This can be illustrated by the fact that over the last three financial years our PS2 return to Government classified our valid applications as follows: 2% were majors, 24% were minors and 74% were others (householders fall within this latter category). Also a relatively minor development proposal may be located in an important area for Ecosystem Services, for example, an area where it may be necessary to protect or enhance a specific Ecosystem Service.
- 3.7 Our preferred approach set out in draft Policy SD2 is that all planning applications should provide this information. This means that everyone who is seeking to develop in the South Downs National Park will need to consider how their proposal will impact on the goods and services nature provides near them in the National Park. This could range from providing a bat box on a two storey house extension to planting a native hedgerow on a new housing development to replacing a concrete parking area on an industrial estate with permeable surfacing to help reduce flood risk and surface water.
- 3.8 The Authority considers the requirement to be effective, proportionate and deliverable. We are mindful that Policy SD2 is an innovative policy that members of the public and developers will not be familiar with. That is why we have written two Technical Advice Notes (Core 06 and 07) to help everyone meet this new policy requirement. The Authority does not seek to make this requirement unduly onerous and states in paragraph 4.16 of the Local Plan that 'The preparation of the statement should be proportionate to the impact.' The Householder TAN has a simple checklist to complete and send in with a planning application. The non-householder TAN is more technical and aimed more at planning professionals acting as agents on a development site. It encourages developers to embed Ecosystem Services into the design process from the conceptual stage of a planning application.
- 3.9 Policy SD2 is consistent with national policy set out in the NPPF (paragraph 109). Recognising the wider benefits of Ecosystem Services is a major policy drive in the Government's 25 Year Plan to Improve the Environment (Nat 05) and a whole tranche of other Government strategies such as the UK Industrial Strategy (2018) and UK Clean Growth Strategy (2017). The policy also reflects evidence emerging from the research councils' projects, which highlighted the challenges and priority of mainstreaming ecosystem services within planning processes.

#### 4. Policy SD3 – Major Development

Issue a. - with respect to whether part 1 of the policy provides a justified and effective basis for an objective identification of proposals considered to comprise major development

- 4.1 Part 1 of Policy SD3 explains how the Authority will determine what constitutes major development in the South Downs National Park. This is consistent with national guidance set out in the NPG: Natural Environment (paragraph 005) that ‘whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context.’ This is carried forward to footnote 55 of the 2018 NPPF.
- 4.2 The approach has been used extensively and successfully by the Authority when determining whether a development proposal in the National Park constitutes major development. The approach was supported by the Honourable Mr Justice Stuart-Smith at the High Court of Justice in the case of a challenge to the grant of planning permission at Madehurst Lodge in the South Downs National Park (Core 14). The first of two challenges was that the National Park Authority failed to correctly apply the test for major development in NPPF paragraph 116. The challenge failed and Mr Justice Stuart-Smith stated that ‘What the OR (Office Report) did was to conduct a reasoned and reasonable assessment of the potential for harm and to conclude that, although some harm would eventuate, the criteria for categorising the proposal as a “major development” within the meaning of paragraph 116 were not satisfied.’ This High Court decision provides robust evidence that the policy approach taken by the Authority is both justified and effective.

Issue b. - whether part 2 of the policy makes appropriate exceptions for permitting major developments in the SDNP

- 4.3 Part 2 of Policy SD3 replicates the exceptions set out in the three bullet points of paragraph 116 of the NPPF.

Issue c. - whether part 3 of the policy sets appropriate requirements and constraints for the control of major development exceptionally permitted within the SDNP

- 4.4 The Authority thinks that it is entirely reasonable and proportionate for the policy to expect all major development proposals that have met part 2 to seek all opportunities to conserve and enhance the special qualities of the National Park. Special qualities are referenced in the second purpose of national parks. The special qualities of the South Downs were identified in the State of the National Park Report (Core 02) as a list of the things that make it special, both as a baseline for measuring changes over time and to hold the Authority and its partners to account for their contributions to its future.

- 4.5 The eight factors listed in the third part of the policy are based on the concept of One Planet Living. This is a flexible sustainability framework adopted by public bodies and businesses across the world. A relatively local example is North West Bicester, which is the UK's first eco-town. Further information is available on the website <https://www.bioregional.com/oneplanetliving/>
- 4.6 Paragraph 4.28 of the supporting text to Policy SD3 provides further information on the principles. There are only a limited number of planning applications received each year by the Authority that are considered to constitute major development and so full pre-application advice including input from the Design Review Panel will be given on how to meet the requirements of the policy.

Issue d. - whether the policy should refer to major events, as distinct from permanent development?

- 4.7 Paragraph 4.1 of the Local Plan states that 'these core policies will be used in the assessment of all planning applications.' Therefore if a major event or a permanent development requires planning permission it will be necessary for it to comply with Policy SD3: Major Development. In order to provide clarity on the matter the following Main Modification to Paragraph 4.21 of the supporting text is suggested and is duly added to SDNPA.3 Main Modifications:

'It should be noted that this policy applies to all development proposals that require planning permission including temporary events should they be deemed to constitute development.'

## 5 Summary

- 5.1 All three core policies are appropriately justified and effective. Policy SD1: Sustainable Development includes a presumption in favour of sustainable development, serves the purposes of the National Park and gives great weight to conserving landscape and scenic beauty in the South Downs. Policy SD2: Ecosystem Services is based on robust evidence, such as the EcoServ GIS Toolkit. The requirement for an Ecosystem Services Statement is not unduly onerous with Technical Advice Notes produced to help with their preparation. Policy SD3: Major Development provides a local context on how it will be determined whether a development constitutes major development and if it does how it will be dealt with. Clarification is proposed for the supporting text that the policy applies to all development proposals that require planning permission including temporary events.