

## Swale Borough Council Local Plan Examination Statement

### Matter 1: Procedural matters

This statement has been produced as part of the examination of the Swale Borough Local Plan: Bearing Fruits 2013 and its Proposed Main Modifications June 2016. It answers the Inspector's questions relating to Matters 1.1-1.3.

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## 1. Procedural Matters

1. This statement should be read in conjunction with the Council's responses within SBC/PS/117.

### **Matter 1.1 Has the modified Plan been the subject of appropriate sustainability appraisal and strategic environmental assessment?**

1. The Swale Local Plan has been prepared alongside a process of sustainability appraisal (SA)<sup>1</sup>. The SA documents are made up of a suite of documents, which mirror the progress of the Local Plan. These documents are set out in Appendix 1 to this statement and are available on the [Swale Borough Local Plan Examination document library](#).
2. The output of SA work in support of the modified Plan is published at SBC/PS/105a-c. Paragraphs 2.1.3 of SBC/PS/105b and c explain that this stage has been prepared as an Addendum to the SA Report submitted in April 2015:
 

*“Whilst the focus of this report is on proposed modifications (and alternatives), there is a need to bear in mind that the proposed modifications will (if taken forward) be implemented alongside the rest of the Local Plan, i.e. that part which is not the focus of ‘modification-making’. Hence there is some need to read this SA Report Addendum alongside the 2015 Report”.*
3. In setting out the methodology, paragraph 8.2.3 of SBC/PS/105b goes onto state:
 

*“The focus of the appraisal is on the proposed modifications (given that it is the proposed modifications that are currently the focus of consultation); however, explicit consideration is also given to the effects of the Local Plan as modified (i.e. the cumulative effects of the proposed modifications and the rest of the Local Plan as submitted)”.*
4. In other words, following this methodology, Chapter 9 of the SA Report Addendum has in fact appraised the proposed modifications for each of the sustainability objectives and then re-examined the conclusions reached in 2015 for the Plan as a whole (i.e. inclusive of the submission plan and modified provisions).
5. A small number of consultation responses on the SA were received and the Council's responses are set out in SBC/PS/117q: Appendix 9 – CSR 9. One representation, at LP 2210 and LP 2222 was received from Strategic Planning & Research Unit (SPRU), acting for MLN (Land and Properties) Ltd whose omission site is at land east of Scocles Road (SHLAA Site SW/133). MLN Ltd employed sustainability consultants URSUS to conduct a quality assurance check of the Swale SA process.

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<sup>1</sup> Sustainability appraisal and strategic environmental assessment are tools used at the plan-making stage to assess the likely effects of the plan when judged against reasonable alternatives. Sustainability appraisal incorporates the required strategic environmental assessment.

6. As the URSUS review itself points out, it does not make any comment on the quality or robustness of the actual appraisal findings themselves.
7. The MLN Ltd/ SPRU/ URSUS critique is that the publication of the SA Report Addendum (and its Non-Technical Summary) alongside Proposed Modifications to the Swale Local Plan in the summer of 2016 equated to a legal flaw in the plan-making/SA process. They argue that:
  - 1) Instead of an Addendum, the Council should have updated and consulted on the full April 2015 SA Report, ensuring that it contained all the information required by Annex I of the SEA Directive and the SA regulations.
  - 2) That the report published alongside Proposed Modifications should have contained information about the alternatives considered at all previous stages of the SA, including those appraised in October 2015 and June 2016, why the alternatives were selected and why preferred options were chosen.
8. As part of the Council's responses to the representations received to the Proposed Main Modifications, the Council's SA consultants AECOM prepared a response to the MLN Ltd/ SPRU/ URSUS critique which can be found at SBC/PS/117q: Appendix 9 – CSR 9 (Appendix 1). Table 1 of that document sets out why the Swale SA process has been robust and legally compliant with Tables 2 and 3 setting out a detailed rebuttal of specific points raised by URSUS.
9. The Council notes that URSUS's basis for their quality assurance checklist is a document called *Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents: Guidance for Regional Planning Bodies and Local Planning Authorities*, ODPM, November 2005. This guidance document is over 11 years old and so out of date that it can only be found in the national archives, having been superseded in 2009 by the CLG Plan-making Manual and again in 2014 by Planning Practice Guidance (PPG). AECOM did not review the URSUS's quality assurance checklist in detail due to its vintage and lack of robustness.
10. In contrast to the URSUS work, it can be noted that AECOM's checklist (Table 1 of SBC/PS/117: Appendix 9 – SBC/CSR/9 (Appendix 1)) sets out how and where regulatory requirements have been and will be met and is based on current guidance set out in Planning Practice Guidance.
11. The Council's view is that it is appropriate, and legally compliant, to publish an SA Report Addendum (and not a full SA Report Update) alongside Proposed Modifications. This is because the focus of the consultation is on specific aspects of the plan (the Proposed Modifications and alternatives) as opposed to all aspects of the plan which have been examined in previous SAs and were not, in any event, the subject of the consultation in the summer of 2016.
12. Publishing a full SA report update alongside Proposed Modifications would have had the effect of confusing stakeholders and the public, who were directed to comment only on the proposed main modifications. With the SA Report Addendum already at 108 pages long, the Council believes the document to have been well

suited for the consultation purposes and appropriate in the context of the overall SA process.

13. Publication of SA Report Addendums is common practice within AECOM and other reputable companies, with the following examples amongst the many that can be found:
  - 1) SA Report Addendum published alongside [Proposed Modifications to the Warwick Local Plan, Feb 2016](#) - (scroll down to link).
  - 2) SA Report Addendum published alongside [Proposed Modifications to the Felixstowe Peninsula Area Action Plan Development Plan Document, October 2016](#).
  - 3) SA Report Addendum published alongside [Proposed Modifications to the Dacorum Site Allocations Plan, July 2015](#).
14. Furthermore, had the URSUS approach been followed, the outcome would have been no different, particularly, as explained in paragraph 4 above, the SA Report Addendum of June 2016 had not only appraised the proposed modifications against each of the sustainability objectives, but had also re-examined the conclusions reached in 2015 against the plan as a whole.
15. In conclusion, the Council consider that the Local Plan is legally compliant in that it has been the subject of appropriate sustainability appraisal and strategic environmental assessment. The SA Report Addendum provides a full appraisal of both the Proposed Modifications (as is appropriate for the stage reached), together with the cumulative effects of the plan as a whole. It also presents an appraisal of relevant (up-to-date) alternatives, and presents a discussion of how these alternatives were arrived at, with reference to the 'back-story' as appropriate.

#### **Matter 1.2 Has the modified Plan been subject to Habitats Regulations Assessment?**

16. The submitted plan was subject to an HRA at CD/005 (April 2015), whilst the Proposed Modifications were considered at SBC/PS/104. Both documents show that the Modifications can be screened out (i.e. that they will not result in a Likely Significant Effect either alone or in combination) and the Plan provides sufficient mechanisms to require and facilitate the delivery of measures and safeguards to protect European sites.

#### **Matter 1.3 Is the modified Plan consistent with national planning policy in the NPPF?**

17. There are clearly many parts of the NPPF where 'consistency' with its provisions is advocated. However, paragraph 151 of the NPPF requires Local Plans to be prepared with the objective of contributing to the achievement of sustainable development, being consistent with the principles and policies set out in the Framework, including the presumption in favour of sustainable development. The Plan's compliance with the NPPF was previously addressed within SBC/PS/042

(Matter 2.1 from the first stage of the Examination) and within the Council's PAS Soundness Checklist (SBC/PS/015). Therefore, this statement focuses on the test of soundness relevant to this matter; namely that to be consistent with national policy, NPPF paragraph 182 states that the plan should enable the delivery of sustainable development. This is made with reference to paragraphs 7-10.

18. The Council's SA Report Addendum of June 2016 (SBC/PS/105b) sets out the contributions of both the Proposed Modifications and the Modified Plan toward appraisal objectives. These are outlined below and give a potential steer on potential impacts.

The SA of the Proposed Modifications

19. Paragraph 10.1.1 of the SA Report Addendum of June 2016 (SBC/PS/105b) presents its overall conclusions on the Proposed Modifications. Table 1 provides the Council's summary of the effects.

Table 1 Summary of effects of the Proposed Modifications

Positive Effects		Negative Effects	
Significant	Minor	Significant	Minor
Housing	Health, Population, Economic growth, employment and skills	Air quality, Soil	Landscape, Cultural Heritage, Biodiversity

20. Air quality effects arise from the allocation proposed at Newington (Policy New AX6). The SA acknowledges (paragraph 10.1.1 of SBC/PS/105b) that the assessment is uncertain, but is satisfied as to the policy provisions. The soil effects arise from a loss of BMV land, reflecting allocations made in the A2 corridor.
21. In respect of the effects under landscape, cultural heritage and biodiversity, the SA refers to these as 'tensions', which have been classed as minor negative effects in Table 1. The SA conclusions reflect that the plan's policy framework and mitigation reduce the significance of any impacts.

The SA of the Modified Plan

22. Of the SA conclusions on the modified plan as a whole, Table 2 summarises the effects which are taken from section 9 of SBC/PS/105b.

Table 2 Summary of effects of the Modified Plan

Significant Positive Effects	Significant Adverse Effects
Housing, Economic growth, employment and skills	Air quality, Soil

23. In terms of air quality, SA conclusions reflect the levels of allocations close to AQMAs, whilst for soil, it reflects the total loss of land, especially BMV in the A2 corridor.

24. The SA does not specifically highlight minor effects, but the commentary is suggestive of less than significant negative effects on landscape (due to countryside gap impacts) and possibly upon heritage and biodiversity. There are also less than significant positive effects on health and possibly population.
25. Some mention of SA transport impacts is required, in terms of both the Proposed Modifications and the Modified Plan, as it is less explicit as to their significance; instead referring to specific tensions and pressures (paragraphs 9.8.1/2). Overall conclusions refer to various measures of the Plan limiting impacts on specific issues (paragraphs 9.8.6, 9.8.8).
26. It is also relevant to consider the contributions arising from the spatial strategy and the Plan's planning policies. The SA tells us that under air quality, climate change, transport and traffic themes, the spatial strategy offers the greatest potential for use of non-car modes (9.2.7, 9.4.7, 9.8.7), whilst for health and population it supports regeneration (9.12.5, 9.14.5). The strategy also limits impacts on heritage (9.5.10/11), biodiversity (9.3.8) and designated landscapes (but not local countryside gaps). In the case of the air quality and soil themes (9.2.7, 9.7.3), the spatial strategy leads to significant effects, but the plan's core, site allocation and development management policies are overall proactive toward the biodiversity (9.3.8) and health themes (9.12.5).
27. Finally, in paragraph 7.2 of the SA, the Council sets out its reasoning for its preferred option and response to the SA. Page 19 also set out its view on the plan's performance as a whole against the three SD strands. This echoes the SA conclusions (albeit with additional commentary on the improvements to infrastructure, landscape and biodiversity) in respect of gains under the social and economic strands. It also highlights the adverse consequences within the environmental strand, but sets out how the strategy, choice of sites and the mitigation proposed have minimised them.

The overall balance and the presumption in favour of Sustainable Development

28. The NPPF is wide ranging and it is inevitable that parties will view a Local Plan as inconsistent or contrary to isolated parts. Likewise, they may take a different view as to the contribution to one of more of the SD strands or the overall balance to be reached. There are therefore tensions needing to be reconciled by the decision-maker that require a range of judgements. Paragraph 14 of the NPPF helps the decision in this respect via the presumption in favour of sustainable development which applies to both plan-making and decision-taking. Table 3 outlines the plan-making components of paragraph 14 and sets out the modified Local Plan's compliance.

Table 3 Components of paragraph 14 of the NPPF

NPPF Paragraph 14		Modified Local Plan Compliance
1.	Local planning authorities should positively seek opportunities to meet the	Allocations provide for the housing and economic needs of the area, with priority to the regeneration of major areas of previously

NPPF Paragraph 14	Modified Local Plan Compliance
development needs of their area.	developed land, whilst using other sites to maximise opportunities for transport enhancement, new facilities and new greenspace and identifying the means to deliver necessary infrastructure.
2. Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:	The OAN and associated employment needs area being met by the Local Plan, whilst the triggers within Policy ST2 and the Implementation and Delivery Plan, enable the Council to move rapidly to address change.
a. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or	See paragraphs 29-39 below.
b. specific policies in the Framework indicate development should be restricted (see also NPPF reference to footnote 9).	<p>After mitigation, none of the locations/matters listed in footnote 9 to the paragraph are judged to act in such a way as to dictate that development should be restricted. For example:</p> <ul style="list-style-type: none"> <li>• The HRA (SBC/PS/104) confirms there are no bird and habitat directive issues. Natural England is content.</li> <li>• No SSSI are impacted upon. Natural England is content.</li> <li>• No adopted Local Green Spaces are affected.</li> <li>• The AONB or its setting is not significantly harmed.</li> <li>• Harm to designated heritage assets is less than substantial. Heritage England and heritage officers are content.</li> <li>• Locations at risk of flooding or coastal erosion are avoided, or where required for regeneration purposes, the Environment Agency is content.</li> <li>• Transport impacts not judged as 'severe' (paragraph 32). No soundness issues raised by highway authorities, subject to addressing A249 issues (see SBC/PS.121).</li> </ul>

29. Having met the first two parts of NPPF paragraph 14, two 'limbs' - 2a and 2b of Table 3 - must be satisfied. Firstly, 2a requires the decision maker to determine where the balance of Local Plan impacts lie across the economic, social and

environmental strands of SD. Secondly, 2b requires compliance in respect of any specific NPPF policies of restriction.

30. In respect of 2a and the balance for the Modified Plan as a whole, the overall effects arising from the spatial strategy, the choice of sites and the policy wordings proposed are important because they place the positive and negative effects in an overall context. In this respect, paragraph 26 above can be noted.
31. The decision maker must attach weight to specific issues. In terms of the positive effects of the Local Plan, NPPF paragraph 19 states that the weight to be given to meeting economic needs should be significant, reflected by the very considerable provision made for economic development by the plan. The Council also judges that considerable weight should be given to any significant positive effects arising from meeting the OAN as a result of providing a considerable number of new homes to meet local needs and their support for regeneration, infrastructure and community provision. It also considers, as set out in section 7.2 of SBC/PS/105b, that there are some benefits for landscape, biodiversity and green infrastructure arising from some site allocations which should be taken into account.
32. In terms of the negative effects upon air quality and from the loss of BMV land (inc. it's economic and other benefits), weight should be given to these matters. For air quality, there will inevitably be uncertainties associated with its significance and it can also be noted that the strategy of the plan and its policies limit impacts by avoiding allocations, as far as possible, close to AQMAs and identifying sites for allocations in sustainable locations. Allocation and development management policies support assessment, mitigation and alternative travel modes, whilst other impacts can only be addressed via planning applications.
33. In the case of losses of soil, particularly BMV land, as demonstrated by Matter 2.5, as the Council has acted in accordance with paragraphs 110 & 112 of the NPPF, the significance of the weight to be attached to its loss is diminished.
34. Added to the above, must be the lesser weight to be given to the more minor negative effects on landscape, biodiversity and cultural heritage, where impacts have been reduced by the site selection process and the mitigation proposed by policies.
35. In the case of transport, having regard to the SA and Transport Statement of Common Ground (SBC/PS/121), the adverse effects, with the mitigation in place, are judged as less than significant in that they are not severe in terms of NPPF paragraph 32.
36. Putting the above within a strategic context, as highlighted by paragraph 26, it can be noted that in terms of the overall housing target, the spatial strategy of the Local Plan, the choice of sites and the framework of policies and mitigation, the Council has done all it can to avoid and minimise adverse impacts and that where these occur, they are necessary, inevitable and unavoidable. However, in respect of NPPF paragraph 14 (2a in Table 3), the question remains as to whether the negative effects significantly and demonstrably outweigh the benefits?



37. In this respect, the Council is not seeking to demonstrate that its Plan is without harm, but has considered the overall effects of the plan's spatial strategy, choice of sites and its framework of policies and potential mitigation that in total limit adverse impacts, whilst maximising benefits. Notwithstanding this, there are adverse effects (paragraphs 32-35) which impact upon the performance of the plan against the environmental SD strand. However, against its social and economic strands and to some limited extent the environmental strand, the Plan's positive effects (paragraph 31) are very significant and greater overall. The Council's conclusion therefore, in respect of 2a, is that the adverse effects identified are not judged by the Council to be significantly and demonstrably outweighing the benefits of the Plan as a whole.
38. In respect of 2b within Table 3, as indicated by Table 3 itself, the Local Plan is not contrary to any NPPF policy of restriction (NPPF footnote 9).
39. Therefore, in terms of all the two 'limbs' at 2a and 2b within NPPF paragraph 14, the Council confirms that the Modified Local Plan meets the presumption in favour of sustainable development and that it is thus consistent overall with national planning policy.

**Appendix 1: Sustainability appraisal documents which have accompanied the preparation of the Swale Borough Council Local Plan (2008-2016)**

1. Draft Core Strategy Sustainability Appraisal Scoping Report (Scott Wilson, 2008) (CD/113)
2. CD/112a Interim Sustainability Report of the Core Strategy Pick Your Own Options Document (URS Scott Wilson, December 2010) (CD/112a)
3. Non-Technical Summary of the Core Strategy Pick Your Own Options Document (URS Scott Wilson, December 2010) (CD/112)
4. Interim Sustainability Appraisal of the Draft Core Strategy Bearing Fruits (URS, March 2012) (CD/111)
5. Interim Sustainability Appraisal of Bearing Fruits 2031 draft Local Plan, Parts 1-4 and Appendices (URS, August 2013) (CD/110a-c)
6. Interim Sustainability Appraisal of Bearing Fruits 2031 draft Local Plan (URS, August 2013) Non-Technical Summary (CD/110)
7. Sustainability Appraisal of Bearing Fruits 2031 Publication draft Local Plan (URS, December 2014) (CD/108)
8. Sustainability Appraisal of Bearing Fruits 2031 Publication draft Local Plan Non-Technical Summary (URS, December 2014) (CD/108a)
9. Sustainability Appraisal of the Swale Local Plan, SA Report (URS, April 2015) (CD/003)
10. Sustainability Appraisal of the Swale Local Plan, SA Report Non-Technical Summary (URS, April 2015) (CD/004)
11. Sustainability Appraisal of the Swale Local Plan Part 1: Post Submission Interim SA Report I (Broad Strategy Alternatives) (AECOM, October 2015) (SBC/PS/033)
12. Sustainability Appraisal of the Swale Local Plan Part 1: Post Submission Interim SA Report II (Site Options) (AECOM, October 2015) (SBC/PS/033a)
13. Sustainability Appraisal Addendum of Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Main Modifications (AECOM, June 2016) (SBC/PS/105b)
14. Sustainability Appraisal Non-Technical Summary of Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Main Modifications (AECOM, June 2016) (SBC/PS/105a)
15. Sustainability Appraisal Addendum Erratum of Bearing Fruits 2031: The Swale Borough Local Plan, Proposed Main Modifications (AECOM, June 2016) (SBC/PS/105c)
16. Sustainability Appraisal (SA) of the Swale Borough Local Plan Post Submission SA Report 3 (South West Sittingbourne) (AECOM, December 2016) (SBC/PS/120)