



Site Allocations and Development Management Policies Plan (SADM)

Publication Stage Representation Form

For office use only

Reference No:

Date received:

Please use this form to make Representations

Please return to Hertsmere Borough Council by 5pm on Monday 14 September 2015

By post: Policy and Transport Team, Planning and Building Control, Hertsmere Borough Council, Civic Offices, Elstree Way, Borehamwood, Herts, WD6 1WA.

By email: local.plan@hertsmere.gov.uk

This form has three parts:

Part A – Personal details (only needed once).

Part B – Your representation(s). Please complete a separate sheet (Part B) for **every** representation you wish to make, remembering to insert your or your organisation’s name at the top of the page.

Part C – What information you want the Council to provide you with about future progress of SADM (only needed once).

Please read the guidance notes at the end before completing this form. They explain the terms used and will help you make your representation(s).

Part A	1. Personal details*	2. Agent details (if applicable)
Title	Mr	
First name	Matt	
Last name	Dodds	
Job title (where relevant)	Senior Planning and Biodiversity Officer	
Organisation (where relevant)	Herts and Middx Wildlife Trust	
Address	Grebe House, St Michael’s Street, St Albans	
Post Code	AL3 4SN	
Telephone number	01727 858901	
Email address	planning@hmwt.org	

*If an agent is appointed, please enter the person and/or organisation being represented in column 1 and complete all contact details in column 2.

Please note that all representations received will be made publicly available and cannot be treated as confidential. This means that the names of all those making representations will be publicly available. Other personal information relating to private individuals, including Contact details, will not however be made publicly available.



Part B

Name or organisation: **Herts and Middx Wildlife Trust**

For office use only
Ref No:
support:
object:
change:

IMPORTANT: Please use a separate Part B form for each representation

3. To which part of SADM ('the Plan') does this representation relate?

Paragraph Policy **SADM11** Policies Map Other part of Plan (specify)

4. In relation to the part of the Plan you identified in 3, do you consider the Plan to be:

Please tick which boxes apply

4(a) Legally Compliant Yes No no comment to make
4(b) Compliant with the Duty to Co-operate Yes No no comment to make
4(c) Sound Yes No No no comment to make

If you have entered 'No' to 4(c), please continue to Q5. In all other circumstances, please go to Q6.

5. If you consider the Plan to be unsound is this because it is not:

5(a) Positively prepared Please tick which box(es) apply
5(b) Justified
5(c) Effective No

**6. If you consider the Plan is not legally compliant or fails to comply with the Duty to Co-operate or, having regard to the criteria you ticked at 5 above relating to soundness is unsound, please give details of why. Please be as precise as possible.
If you wish to comment in support of the Plan's legal compliance, compliance with the Duty to Co-operate or soundness or wish to make any other comment, please also use this box.**



NPPF states that the planning system should contribute to and enhance the natural environment by:

minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

moving from a net loss of bio-diversity to achieving net gains for nature.

It further states:

To minimise impacts on biodiversity and geodiversity, planning policies should: plan for biodiversity at a landscape-scale across local authority boundaries; identify and map components of the local ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity, wildlife corridors and stepping stones that connect them and areas identified by local partnerships for habitat restoration or creation;

promote the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, linked to national and local targets, and identify suitable indicators for monitoring biodiversity in the plan;"

And:

When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity

Through these statements it is clear that it is the gov't's intention that the planning system should ensure that development should conserve and enhance biodiversity and result in net gains where possible. It is important to note that NPPF does not specify that only biodiversity on protected sites, statutorily designated sites, non-statutorily designated sites or priority habitats shall be protected and enhanced. It seeks to promote net gains for nature, wherever it is located. It is extremely important that Local Plans acknowledge this principle. Whilst NPPF does recognise a hierarchy of importance commensurate with the ecological importance of a site e.g. SAC to Local Wildlife Site, it should be acknowledged that biodiversity exists outside of these designations and therefore should receive the same consideration, albeit weighted accordingly dependant on its value. The ecological value of less important sites should be taken into the planning balance for decisions to be consistent with NPPF.

To do this, a clear, objective way of measuring the ecological value of any given site should be employed. Too often ecological assessments miss-represent NPPF by stating that impacts on non-priority habitats are not significant and therefore do not require consideration. NPPF does not say this, it says that local authorities should conserve and enhance biodiversity, and that if significant harm is accrued it should be avoided, mitigated or compensated. If it cannot be, development shall be refused.

What is needed is a way of quantifying the impacts of development on biodiversity. In the interests of fairness this should be objective and measurable. Subjective judgements should be removed from the process wherever possible to ensure consistency and reliability of judgement for all concerned. This mechanism should require that development measurably demonstrates no net loss and where possible net gains. Fortunately such a system exists and its use has been supported by the Planning Inspectorate and Secretary of State as an appropriate mechanism for determining no net loss in planning decisions. The metric contained within the Biodiversity Offsetting system has been developed and endorsed by DEFRA and NE amongst others. It is known as the Biodiversity Impact Assessment Calculator (BIAC. Warwickshire County Council 2014). The requirement to use this metric when assessing ecological impact has already been included in several approved local and neighbourhood plans. The metric is referred to in BS 42020 which is mentioned in the text of the SADMPP document as to be applied when determining planning applications. It represents the most satisfactory way of assigning

biodiversity value to a development site with the understanding that to achieve ‘no net loss’ the site must show a neutral to positive score after it has been developed. This is a clear, unambiguous methodology. If no net loss is to mean anything it must be supported by a scientifically defensible method to assess it. This is provided by the calculator.

In order to truly deliver no net loss to biodiversity, the Hertsmere SADMPP should adopt the BIAC as the primary method of assessing no net loss and therefore demonstrating compliance with NPPF.

- 7. Please set out as precisely as possibly what change(s) you consider necessary to make the Plan**
- **legally compliant or**
 - **sound (having regard to the criteria you ticked at 5 above relating to soundness).**

You will need to say why this change will make the Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text.

In order for the plan to be made sound the following clauses should be inserted into the policy SADM11 and accompanying explanation:

Changes below in red

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4.7 The NPPF requires that development should result in no net loss to biodiversity and where possible net gains. The council recognises that biodiversity also exists outside of protected and priority habitats. Appropriate consideration commensurate with its value will be given to this in reaching planning decisions. The level of significance of impact will be assessed by referral to the DEFRA and NE endorsed Biodiversity Impact Assessment Calculator (Warwickshire County Council 2014 or as updated). Development will be expected to demonstrate a neutral to positive score in order to achieve no net loss to biodiversity.

4.8 The Council supports habitat conservation, improvement and extension, and where necessary avoidance, mitigation or compensation measures. It is important to retain the ecological, geological and biodiversity benefits of sites. Policies also seek protection of species. Where it has been identified that habitats or species that support significant biodiversity could be affected by a proposed development, the Council will require sufficient survey information and mitigation or compensation proposals at the time the application is submitted. This is to ensure that an assessment is undertaken of the possible impacts, any appropriate mitigation or compensatory measures, including planning obligations, and future management of the site and any protected species. Information shall be presented in accordance with national guidelines (as updated), e.g. BS 42020.

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Policy SADM11

... Development that would adversely affect any such site or a protected species (UK or European Law, or identified for conservation by the Hertfordshire Biodiversity Action Plan) will not normally be permitted in accordance with legislation and planning policy guidance.

Development is expected to deliver no net loss and where possible net gains to biodiversity, in accordance with NPPF. Where required, impacts will be assessed by referral to the Biodiversity Impact Assessment Calculator and will need to demonstrate a neutral to positive score.

The Council will expect developers to avoid significant harm to sites of importance for ecology, geology and biodiversity by relocating their proposed development

- (i) on an appropriate alternative site, or
- (ii) elsewhere within the same site (where the harm would be avoided).

Where this cannot be achieved, planning permission will be refused unless:

- (i) adequate mitigation measures can be employed, which will outweigh the harm caused; or, as a last resort
- (ii) adequate compensatory measures will be provided and the benefits of the development are clearly shown to outweigh the harm to the natural environment

Adequate mitigation or compensation will be assessed by employing the Biodiversity Impact Assessment Calculator.

Introduction

These guidance notes have been produced to assist anyone who wishes to make a formal representation on the published Site Allocations and Development Management Policies (SADM) Policies Plan ('the Plan'). The Plan is published so that representations can be made on it prior to it being submitted to the Secretary of State for examination. An independent Planning Inspector, appointed by the Secretary of State, will examine the Plan. Any representations made during the period for representations will be submitted with the published Plan and will be considered alongside it when it is examined by the Inspector.

Representations on the Plan can be made during the period for representations which runs from 3 August 2015 to 14 September 2015.

The Planning and Compulsory Purchase Act 2004¹ (as amended) ('the 2004 Act') states that the purpose of the examination is to consider whether the Plan complies with legal requirements, the Duty to Cooperate, and is 'sound'. Representations supporting, objecting or commenting more generally should be made within this context.

As a general guide:

- If you want to make representations on the way in which the Council has prepared the published Plan it is likely that your comments or objections will relate to a matter of legal compliance or Duty to Cooperate.
- If it is the actual content of the Plan on which you wish to comment or to which you want to object it is likely your representation will relate to soundness i.e. whether the Plan is justified, effective or consistent with national policy.

Legal Compliance and Duty to Co-operate

The Inspector will first check that the Plan meets the legal requirements under Section 20(5)(a) and the Duty to Cooperate under Section 20(5)(c) of the 2004 Act (before moving on to test for soundness).

Legal Compliance

You should consider the following before making a representation on legal compliance:

- The Plan should be included in the current Local Development Scheme (LDS) and the key stages should have been followed. The LDS is effectively a programme of work prepared by the Council, setting out the documents it proposes to produce over a set period. It sets out the key stages in the production of any documents the Council proposes to bring forward for independent examination. The LDS is published on the Council's website and available at its main offices.
- The process of community involvement for the Plan should be in general accordance with the Council's Statement of Community Involvement (SCI). The SCI is a document that sets out the Council's strategy for involving the community in the preparation and

¹ View the 2004 Planning Act online at <http://www.legislation.gov.uk/ukpga/2004/5/contents>

revision of planning documents and the consideration of planning applications. The SCI is also published on the Council's website and is available at its main offices.

- The Plan should comply with the Town and County Planning (Local Planning) (England) Regulations 2012 ('the Regulations')². On publication, the Council must publish the documents prescribed in the Regulations, and make them available at their main offices and on their website. The Council must also notify bodies specified in the Regulations and any persons who have requested to be notified.
- The Council is required to provide a Sustainability Appraisal Report when it publishes the Plan. This should identify the process by which the Sustainability Appraisal has been carried out, and the baseline information used to inform the process and the outcomes of that process. Sustainability Appraisal is a tool for appraising policies to ensure they reflect social, environmental, and economic factors.

Duty to Co-operate

You should consider the following before making a representation on compliance with the Duty to Co-operate:

- The Duty to Co-operate came into force on 15 November 2011 and any plan submitted for examination on or after this date will be examined for compliance. Councils will be expected to provide evidence of how they have complied with any requirements arising from the Duty.
- The 2004 Act establishes that non-compliance with the Duty to Co-operate cannot be rectified after the submission of the Plan. Therefore the Inspector has no power to recommend modifications in this regard. Where the Duty has not been complied with, the Inspector has no choice but to recommend non-adoption of the Plan.

Soundness

Soundness is explained fully in paragraph 182 of the National Planning Policy Framework (NPPF)³. The Inspector has to be satisfied that the Plan has been positively prepared, is justified, effective and consistent with national policy. To be sound the Plan should be:

- **Positively prepared** – the Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the Plan should be the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the Plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the Plan should enable the delivery of sustainable development in accordance with the policies in the NPPF.

² View the Planning Regulations online at <http://www.legislation.gov.uk/ukxi/2012/767/contents/made>

³ View the National Planning Policy Framework online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

If you think the content of the Plan is not sound because it does not include a policy where it should do, you should go through the following steps before making representations:

- Is the issue with which you are concerned already covered specifically by national planning policy? If so it does not need to be included in the Plan.
- Is what you are concerned with covered by any other policies in the Plan on which you want to make representations or in any other Plan?
- If the policy is not covered elsewhere, in what way is the Plan unsound without the policy?
- If the Plan is unsound without the policy, what should the policy say?

General advice

It should be emphasised that the purpose of the SADM Policies Plan are to spatially deliver the Council's adopted Core Strategy and update detailed development management policies. If you wish to make a representation seeking a change to the Plan or part of it you should make clear in what way it is not sound having regard to any / all of the

- legal compliance check,
- Duty to Cooperate and
- four tests for soundness set out above.

You should try to support your representation by evidence showing why the Plan should be changed. It will be helpful if you also say precisely how you think the Plan should be changed. Representations should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change, as there will not normally be a subsequent opportunity for further submissions based on the original representation made at publication stage (i.e. the representation you are making now). After this current publication stage, further submissions will be only be able to be made at the request of the Inspector, based on the matters and issues he/she identifies for Examination.

Where there are groups who share a common view on how they wish to see the Plan changed, it would be very helpful for that group to send a single representation which represents the view, rather than for a large number of individuals to send in separate representations which repeat the same points. In such cases the group should indicate how many people it is representing and how the representation has been authorised.

Please note: representations are only valid if your name and address are supplied. Anonymous representations cannot be considered. Respondents should also note that representations are not confidential and that they will be published on the Council's website and copies will be placed at appropriate venues across the borough for public inspection. Contact details indicated on representations from individuals will however not be made public.

Agents should state the full name of the person or organisation that they are representing. These names, and the names and contact details of Agents, will also be publicly available.