



The Planning Inspectorate

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# **Report to East Sussex County Council, Brighton & Hove City Council and South Downs National Park Authority**

**by Brian Cook BA (Hons) DipTP MRTPI**

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

**Date 7 November 2016**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan**

The Plan was submitted for examination on 14 April 2016

The examination hearings were held between 2 and 4 August 2016

File Ref: PINS/G1440/429/6

## Abbreviations used in this report

The Authorities	East Sussex County Council, Brighton & Hove City Council and South Downs National Park Authority
BAL	Brett Aggregates Ltd
DCLG	Department for Communities and Local Government
DtC	Duty to Co-operate
HBC	Hastings Borough Council
HRA	Habitats Regulations Assessment
LAA	Local Aggregates Assessment
LDS	Local Development Scheme
Plan	East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan
MCA	Mineral Consultation Area
MM	Main Modification
MSA	Mineral Safeguarding Area
mtpa	Million tonnes per annum
NPPF	National Planning Policy Framework
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
WCA	Waste consultation area
WMP	East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan

## **Non-Technical Summary**

This report concludes that the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan provides an appropriate basis for the planning of the area, provided that a number of main modifications [MMs] are made to it. The Authorities have specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

All the MMs were proposed by the Authorities, and were subject to public consultation over a six-week period. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- MMs1 to 5 make the policies of the Plan effective by giving greater clarity to the way that waste proposals coming forward will be assessed against the development considerations and opportunities listed for each site and the development plan for the relevant area as a whole;
- MM1 also deletes from the Plan an allocated site that the Authorities now accept is no longer deliverable while MM3 deletes an area of opportunity and gives effect to what is a technical adjustment to the boundary of an allocated site;
- MM6 makes important changes to the site profiles in order to make the policies of the Plan effective through greater guidance as to the type(s) of waste management facility that are unlikely to be acceptable at any given location; and
- MM7 amends policy SP 8 and makes specific safeguarding of a mineral site to rectify an inconsistency in this regard with national policy.

## Introduction

1. This report contains my assessment of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. 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 it clear that in order 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 East Sussex County Council, Brighton & Hove City Council and South Downs National Park Authority (the Authorities) have submitted what they consider to be a sound plan. The East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (15.001), submitted in April 2016 is the basis for my examination. It is the same document as was published for consultation in July 2014.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Authorities requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearings, are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2**, **MM3** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Authorities prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to a six week public consultation ending on 7 October 2016. I have taken account of the consultation responses in coming to my conclusions in this report. In the main the responses either support the MMs put forward or raise issues that had been raised before and discussed during the hearing sessions. Hastings Borough Council (HBC) submitted a fairly lengthy MM consultation response. In some cases the MMs are welcomed although in the majority of cases it is considered that they do not go far enough towards addressing the concerns raised by HBC in the initial representations and in other discussions with the Authorities. In my view, there is nothing of substance in this further response that materially adds to the representations, written statements and oral evidence already submitted by HBC. I have dealt with this at length under Issues 2 and 3.

## Policies Map

5. The Authorities must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Authorities are required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. However, in this case, the submission policies map is the first such to be prepared. It comprises the set of maps identified as Policy Map A, B and C as

set out in Document 15.003 with the identified inset maps being included in the Plan.

6. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend main modifications to it. However, a number of the published MMs to the Plan's policies require further corresponding changes to be made to the policies map.
7. These further changes to the policies map were published for consultation alongside the MMs (TA-WMSP-16).
8. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Authorities will need to adopt the policies map (15.003) to include all the changes published alongside the MMs.

### **Consultation**

9. The document formally setting out the MMs was TA-WMSP-15. A number of additional documents were also made available which included a track change version of the Plan showing all the Main and Additional Modifications that the Authorities will make and a very helpful explanatory note (TA-WMSP-16).

### **Assessment of Duty to Co-operate**

10. Section 20(5)(c) of the 2004 Act requires that I consider whether the Authorities have complied with any duty imposed on them by section 33A in respect of the Plan's preparation.
11. The Authorities have set out how they consider they have co-operated with the prescribed and other bodies in the preparation of the Plan in a statement dated March 2016 (16.003) and the Matter 1 hearing statement (TA-WMSP-06).
12. Two points have been taken by those making representations about the Plan.
13. That taken by HBC is, in essence, that the Authorities have not met with HBC often enough to discuss issues, particularly in the period between August 2014 when responses were made to the draft Plan and December 2015 when representations on the pre-submission draft Plan were being formulated (SR8/3). In reporting on the meetings that did take place HBC considers that its views and concerns have been downplayed. With more constructive engagement HBC considers that a greater degree of agreement on certain matters could have been achieved.
14. The Authorities' Duty to Co-operate (DtC) statement (16.003) is quite brief and largely comprises a log of the meetings that have taken place with descriptions of their purpose but very little detail about the outcomes for the Plan content or preparation. Detailed notes are provided only for a series of officer meetings in September 2013 with the constituent district and borough councils. Of particular concern is the absence of any record of elected member involvement in the process, especially where the respective officers did not reach a consensus view or an agreement to disagree on contentious issues.

15. However, during the discussion, the Authorities explained the number and nature of elected member groupings where members of all authorities in the Plan area would meet to discuss strategic planning and other development plan matters. Primarily this was through the East Sussex Strategic Planning Members Group. The Authorities argued that at no point had HBC members raised concerns although the opportunity to do so both formally during the meetings or informally in bilateral discussions had been available. HBC officers did not dispute this account.
16. In fact, HBC's formal written position before the examination is that it '...does not consider that the matter has been so badly handled as to constitute a fundamental failure to carry out the DtC' (SR8/3). Rather, its position is one of disappointment and concern that the opportunity to achieve a greater level of agreement has been missed.
17. While that may be so, the Planning Practice Guidance (PPG) is quite clear that the DtC is not a duty to agree<sup>1</sup>. HBC is correct therefore to acknowledge that what HBC considers to be a lack of constructive, active and on-going engagement falls some way short of a failure to comply with the DtC.
18. Turning briefly now to the point taken by Brett Aggregates Ltd (BAL), it was accepted during the discussion at the hearing session that the Authorities had in fact engaged actively and continuously with Kent County Council, a matter confirmed by Kent County Council through its email to the Authorities dated 29 July 2016 (TA-WMSP-14). The concern expressed by BAL was more in the form of a disagreement with the agreed position between the Authorities and Kent County Council. That is for consideration under the first Issue of soundness.
19. Overall I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

## **Assessment of Soundness**

### **Background**

20. The Authorities' Waste and Minerals Plan (WMP) (13.001) was adopted in February 2013. It sets out a number of strategic and development management policies and establishes the provision that should be made for built waste facilities (policy WMP 5) and minerals (policies WMP 11, WMP 12 and WMP 13). It also sets out the need to define waste consultation areas (WCA) (policy WMP 6), Mineral Safeguarding Areas (MSA) and Mineral Consultation Areas (MCA) (policy WMP 14) and for railheads and wharves to be safeguarded (policy WMP 15). It does not however identify the sites to ensure that the required provision is made, the areas to which policies WMP 6 and WMP 14 would apply or those facilities that would be subject to policy WMP 15. That is the limited purpose and scope of this Plan.

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<sup>1</sup> Paragraph: 001 Reference ID: 9-001-20140306

21. During the hearing sessions the implications of a recent judgement<sup>2</sup> were discussed. It was common ground that it was beyond the scope of this examination to revisit the quantum set out in policies WMP 5 and WMP 11 in particular. The examination is therefore limited to an assessment of the extent to which the sites allocated will deliver the waste capacity and land-won aggregates required and will safeguard the necessary existing waste facilities, railheads and wharves and mineral resources.

## **Main Issues**

22. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified three main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness rather than responding to every point raised by representors.

### **Issue 1 – Does the Plan make provision for the steady and adequate supply of aggregates?**

#### *Introduction*

23. Although adopted WMP policies WMP 11, WMP 12 and WMP 13 make provision for aggregates, gypsum and clay respectively, the submitted Plan does not make site-specific provision for the extraction of any of these minerals on the basis that existing permitted reserves are sufficient to maintain the required landbanks. This position is challenged in respect of aggregates only by BAL which argues that what amounts to an extension of its current operation at Lydd Quarry should be identified in the Plan. Without such an allocation BAL contends that the Plan would not make the required provision and would thus not be sound.
24. WMP policy WMP 11 is in two parts. The first part states that provision will be maintained for the production of land-won aggregates at a rate of 0.10 million tonnes per annum (mtpa) throughout the Plan period. Since the Plan period runs from 2009 to 2026 that amounts to a requirement for permitted reserves of 1.7 million tonnes to be provided. WMP Table 11 indicates estimated reserves at 2009 to be 4.1 million tonnes split between two production units, Stanton's Farm (Novington) and Lydd Quarry; hence the Authorities' position that no further sites need to be allocated.
25. The second part of the policy requires a landbank of at least 7 years of planning permission for the extraction of sand and gravel to be maintained. NPPF paragraph 145 and the PPG explain how the Local Aggregates Assessment (LAA) should be calculated on an annual basis and used to assess the landbank. In essence it requires the permitted reserves to be divided by the annual rate of future demand based upon the latest LAA. It can be seen therefore that both parts of the calculation could change on an annual basis. However, the Authorities' position is that the future demand figure should be 0.10 mtpa and this is the figure in the latest LAA (TA-WMSP-02, Appendix K).

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<sup>2</sup> *Oxted Residential Ltd v Tandridge DC* [2016] EWCA Civ 414

26. WMP policy WMP 11 is also subject to footnote 78 which says that a specific review of the policy will be carried out if it appears that provision for the production of land-won aggregates is not being maintained. Such a review would embrace the possibility of identifying further feasible reserves.
27. Five questions are raised by this Issue which are:
- a) Can provision be made throughout the Plan period as required by the first part of WMP policy WMP 11?
  - b) Can a landbank be maintained as required by the second part of policy WMP 11?
  - c) If the answer to (a) and/or (b) is 'no' should the footnote 78 review be triggered?
  - d) If the answer to either (a) or (b) is 'no' should the Plan identify a site or sites to address the position?
  - e) If the answer to (c) is 'yes' but the answer to (d) is 'no', does the development plan as a whole give adequate guidance to determine proposals coming forward pending the adoption of the review?

*Question (a)*

28. The simple answer to this question is 'no' because under conditions of the respective planning permissions, the end-date of the Stanton's Farm quarry is in October 2016 while that of Lydd Quarry is 2022; both dates precede the end date of the Plan period and there are no other permitted reserves. The Authorities have set out the development plan policies that would apply if proposals came forward on sites not allocated in the Plan (TA-WMSP-07, paragraph 19). Although the Stanton's Farm permission area is subject to mineral safeguarding it is not allocated. Reserves remain within the permission area. The Authorities confirmed during the hearing session that Plan policy SP8 would also therefore apply.
29. Stanton's Farm is within the South Downs National Park. It is therefore subject to WMP policy WMP 2. The policy is not clear how an application for a renewal of an existing permission would be treated since it refers only to extensions of existing quarries or new ones. Whether continued development at Stanton's Farm would be considered to be a 'major' development for the purposes of the policy would depend on the application and interpretation of the criteria set out in footnote 23 to the policy. As the Authorities fairly accepted the granting of a further planning permission at this site could not be taken as read; it would require an assessment against development management policies. In any event, even at the estimated 350,000 tonnes reserve given in evidence by the Authorities at the hearing session on the basis of pre-application discussions with the site operator, this would provide only some 3.5 years' supply of aggregates for the purpose of WMP policy WMP 11.
30. The remaining reserves are at Lydd Quarry and are somewhat less than 4 million tonnes. The quarry straddles the county boundary between East Sussex and Kent. Until recently, aggregates have been won from the Kent side of the boundary and have been taken as being produced in Kent for the



purposes of the LAA and predecessor analysis. Those reserves are now in effect exhausted since what remains on the Kent side is beneath the plant site. Production has therefore switched to the East Sussex side of the boundary.

31. The latest LAA (TA-WMSP-02, Appendix K, Table 1) shows that production from the quarry is generally in excess of 300,000 tonnes per annum and for the last 3 years has been in the order of 403,000 tonnes per annum on average. No evidence was put before the examination to suggest why this rate of production should not continue. There is no reason therefore to disagree with the evidence of BAL that reserves at Lydd Quarry would be exhausted well before the end of the Plan period, notwithstanding that production must end before then in any event by virtue of the condition on the planning permission.
32. Without further planning permissions being granted therefore provision in accordance with the first part of WMP policy WMP 11 cannot be maintained. The only safeguarded site where such a planning permission could be granted is Stanton's Farm. Those estimated reserves are insufficient to maintain production of land-won aggregates at the required rate of 0.10 mtpa throughout the Plan period.

*Question (b)*

33. Set out above is the way in which the landbank is calculated annually. The LAA is a critical component. The PPG explains that the LAA is an annual assessment of the demand for and supply of aggregates<sup>3</sup> and that the LAA should contain, among other things, a forecast of the demand for aggregates based on both the rolling average of 10-years sales data and other relevant local information<sup>4</sup> (emphasis added). In the latest LAA (TA-WMSP-02, Appendix K, paragraph 3.27) the Authorities explain why the figure of 0.10 mtpa proposed in the Secretary of State's Changes to Policy M3 of the South East Plan is used to forecast primary land-won aggregate demand in preference to past sales data. This is also the figure in WMP policy WMP 11.
34. Although the WMP was adopted in 2013 after the NPPF was published the figure of 0.10 mtpa given in the Secretary of State's Changes to Policy M3 of the South East Plan derives from the previous MPG6/MPS1 approach to forecasting demand for aggregates. In essence, this involved assessing demand at the national level taking into account, among other things, econometric modelling, establishing regional guidelines to achieve managed aggregates supply and the apportionment of the regional figure to individual mineral planning authorities. The Secretary of State's Changes to Policy M3 of the South East Plan represent the last step in what was a top-down approach. I was the Inspector on the Panel recommending to the Secretary of State what the changes to Policy M3 should be.
35. The LAA approach set out in the NPPF might be characterised as 'bottom-up'. Nevertheless, it remains forward looking as the emphasised passages referred to above confirm.

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<sup>3</sup> Paragraph: 061 Reference ID: 27-061-20140306

<sup>4</sup> Paragraph: 062 Reference ID: 27-062-20140306

36. The Authorities principal argument for not using past sales is that they are considered to be too volatile and thus not a good indicator of demand (TA-WMSP-02, Appendix K, paragraph 3.16). Although they do not say so explicitly, the implication is that the particular circumstances of Lydd Quarry do not amount to 'other relevant local information' to cause a departure from a 10 year rolling average which that same paragraph suggests would be 0.15 mtpa. The Authorities confirmed that this approach has been accepted by the South East England Aggregate Working Party (SEEAWP) although they also confirmed that the LAA and this approach had not been the subject of independent examination through, for example, a s77/s78 appeal.
37. The Authorities' view that past sales are volatile is based on the uneven nature of production from Stanton's Farm and the very recent contribution from the East Sussex part of Lydd Quarry allied to their view that the volumes have been influenced by particular infrastructure schemes that have now been completed.
38. However, the LAA shows that sales from Lydd Quarry are actually fairly consistent over the period 2004 to 2014 at least (TA-WMSP-02, Appendix K, Table 1). At some 199,000 tonnes 2011 was somewhat of an anomaly as during most other years between 2004 and 2012 inclusive production was over 300,000 tonnes. In 2013 and 2014 production was in excess of 400,000 tonnes. This is indicative of a steady demand from and supply to the market of a volume of aggregates at least three times the amount assumed in the WMP. It seems to me therefore that as Lydd Quarry sits astride the county boundary the two mineral planning authorities of East Sussex and Kent should reflect that contribution in their respective LAAs.
39. The second and latest LAA for Kent was submitted in evidence (TA-WMSP-15). This records reductions since 2010 in sales for sharp sands and gravels which are expected to continue since it takes production output at Lydd Quarry as having switched from Kent to East Sussex for the reasons set out earlier (paragraph 6.4.1). BAL suggested that in fact, Kent now regard material from Lydd Quarry as part of the imports to the county. This is reflected in the most up-to-date rolling 10 year sales average (Table 12). This figure is then taken forward to calculate Kent's sharp sands and gravel landbank in 2013 (Table 16) with the conclusion being drawn that Kent's permitted reserves of sharp sands and gravels falls short of a 7-year landbank by about 2.4 years (paragraph 8.1.5).
40. It seems to me therefore that, between them, East Sussex and Kent are not taking into account the full contribution to market demand historically made from Lydd Quarry in their respective LAAs. In very round terms some 200,000 tonnes per annum appears to be missing from the divisor in the landbank calculation. It is not for this examination to judge how that should be resolved by the respective authorities. However, if the Kent approach is correct, it strongly suggests that a divisor for the Authorities' LAA of 0.10 mtpa is too low and not properly reflective of future demand.
41. It follows therefore that, notwithstanding the likely depletion of permitted reserves in any event for the reasons set out under Question (a), a landbank as required by the second part of WMP policy WMP 11 cannot be shown on the evidence before the examination.

*Question (c)*

42. The Authorities explain how preparation of the 2015 LAA (TA-WMSP-02) was hampered by the delayed publication by central government of the AM 2014 survey report (TA-WMSP-07, paragraph 12). Nevertheless, there was no serious dispute that the production figures for Lydd Quarry discussed under the previous Sub Issues would be confirmed. During the hearing session discussion the Authorities accepted that once this full data is published later in 2016 the circumstances set out in footnote 78 to require a specific review of WMP policy WMP 11 are likely to be confirmed.
43. While the Authorities indicated that this review would commence as soon as possible following the need for it being established, which I would endorse, no timescale was put on its completion or the adoption of the change to the WMP. The implications of that are the subjects of the next two Sub Issues.

*Question (d)*

44. Footnote 78 identifies the outcomes of the review as being the possibility of identifying further feasible reserves. It then says 'if this is not possible...' other options will be considered with adjoining mineral planning authorities and the Marine Management Organisation. It is not my sense from either the Authorities' hearing statement (TA-WMSP-07, paragraph 18) or the discussion at the hearing session that the priority order implied by the phrase quoted would in fact be a correct interpretation of the footnote.
45. The LAA explains that geologically, sand and gravel aggregate resources within the Plan area are limited to relatively small outcrops of sand in the Folkstone Beds, river gravels and foreshore deposits of sand and gravel (TA-WMSP-02, Appendix K, paragraph 2.1). The site put forward by BAL is a foreshore deposit. Given the limited resources available it would clearly come within the purview of the footnote 78 review as BAL confirmed that it would be put forward through the 'call for sites' process set out by the Authorities (TA-WMSP-07, paragraph 18). Indeed, BAL has already proactively put the site forward in response to an earlier 'call for sites' exercise even though that was limited to a call for waste sites (15.016).
46. The site, which is in effect an extension of the existing workings to the north west, is subject to a number of environmental constraints. It is actually within the Dungeness Site of Special Scientific Interest while a Ramsar site adjoins its north west boundary. The Ramsar site, a Special Protection Area and a Special Area of Conservation all adjoin or lie generally to the south of the existing permission areas (TA-WMSP-14).
47. BAL explains the discussions that have been held with Natural England over the future development of the proposed site (SR28-01) and referred during the hearing session discussion to the generally successful and environmentally beneficial restoration of the existing workings that has occurred. However, no evidence is available from Natural England to confirm the outcome of these discussions.
48. The Authorities directed me to the WMP examining Inspector's report where her conclusions on the discussion of this issue as it affected Lydd Quarry as a

whole are set out in paragraphs 66 to 76<sup>5</sup>. She records what she termed a progressively changing position of Natural England with regard to potential hydrological impact from development at Lydd Quarry from one of an expression of qualified support to one moving clearly in the direction of opposition.

49. While I wish to emphasise that I do not doubt that BAL have correctly reported the position with regard to discussions with Natural England, in the circumstances described in the preceding paragraph, I do not consider it appropriate to rely on a report of Natural England's position that is uncorroborated in writing. I cannot be clear that this would be Natural England's consistent position.
50. In any event, BAL fairly acknowledged that work to prepare any planning application and Environmental Statement is not well advanced. While the assertions set out in the hearing statement may well be confirmed once that work has been undertaken, I do not consider sufficient confidence exists now to confirm that the Plan would be sound with the inclusion of the site by way of a MM. No other possible mineral extraction sites were put forward for consideration in this examination.

#### *Question (e)*

51. The policies that the Authorities would apply in the consideration of planning applications pending the outcome of the footnote 78 review have been identified above [paragraph 28]. In general terms therefore the development plan as a whole sets out an appropriate framework. However, the Authorities also confirmed that Plan policy SP 8 would also apply. This policy is not consistent either with national planning policy (NPPF paragraph 143) or WMP policy WMP 14.
52. The Minerals section of the PPG explains the purpose of mineral safeguarding and the approach that should be taken to defining MSAs including reference to the British Geological Survey report *Minerals safeguarding in England: good practice advice*. The Authorities confirm that this has been taken into account (15.001, paragraph 4.9). The PPG defines a MSA as 'an area designated by a Mineral Planning Authority which covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development.'
53. The PPG was published after the adoption of the WMP and on the evidence before me I am not aware if the term MSA was defined before or, if it was, how it was defined. WMP policy WMP 14 states that the Authorities '...will safeguard areas for land-won resource to ensure viable resources are not sterilised.' In the absence of any evidence to the contrary 'desired' (PPG) must be presumed to be equivalent to 'viable' (WMP policy).
54. WMP policy WMP 14 thus sets the strategic framework for mineral safeguarding recommended in the BGS report. Policy SP 8 limits the areas that are safeguarded to those that already have extant planning permission.

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<sup>5</sup> <http://consult.eastsussex.gov.uk/file/2405298>

These are also the existing MSAs set out in the box following WMP paragraph 4.41. There is no evidence before the examination to suggest that these have been reviewed or that they are the only resources that are viable. Indeed, the evidence of BAL in respect of the extension site at Lydd Quarry is to the contrary on both counts.

55. In both its original representations (SR28) and its Matter 2 hearing statement (SR28-01) BAL set out the extent of the resource assessed as a result of a borehole and trial pit investigation. The evidence is that this is a viable resource and BAL confirmed during the hearing session discussion that if working was not able to continue into this area once the permitted reserves were exhausted it would be effectively sterilised since access to it would be difficult and it would be divorced from the plant site.
56. As the 'purpose of the policy' heading to WMP policy WMP 14 makes clear, the identification of a MSA does not necessarily imply that the resource will be worked. However, WMP paragraph 4.43 is equally clear that development proposals coming forward on land outside the identified areas will only be supported in the limited circumstances set out.
57. On the evidence, I consider that the extension to Lydd Quarry put forward by BAL meets all of the criteria to be included in the Plan as an MSA under policy SP 8. Not to do so is contrary both to national policy as amplified in the PPG and to WMP policy WMP 14. The Plan is thus not sound in this respect. The Authorities acknowledged this during the hearing session discussion and **MM7** will rectify this deficiency in the Plan.

#### *Conclusion on this Issue*

58. For the reasons set out the Plan cannot maintain provision for the production of land-won aggregates at a rate of 0.10 mtpa throughout the Plan period. There will be no permitted reserves at that date because either mineral working under the planning permissions will cease in accordance with a condition of the permission or the workable reserves will be depleted at current rates of production. For that reason alone it will not be possible to maintain a landbank of at least 7 years. However, there are also concerns over the divisor figure being used by the Authorities in the LAA. This will be reviewed once AM 2014 is published and this is likely to trigger the review anticipated by footnote 78 to WMP policy WMP 11. The fact of the footnote already places the obligation suggested by BAL in its MM consultation response upon the Authorities to review the WMP.
59. This is the mechanism set out in the WMP for resolving an identified issue in regard to provision over the Plan period and the maintenance of the required landbank. Bringing forward further feasible reserves is one, but only one, of the options available to the Authorities to address the situation should it arise. It will be important to proceed with the footnote 78 review quickly but the issues raised in respect of WMP policy WMP 11 in the preceding paragraph do not mean the Plan is unsound because it does not identify additional reserves now. Furthermore, although a site which could add further reserves has been put forward, there is insufficient evidence to confirm that the Plan would be sound if it was included now.

60. However, as a resource which is viable but could potentially be sterilised it needs to be added to policy SP 8 to be consistent with national and WMP policy. **MM7** secures this and ensures that the Plan is sound in this respect. A consequential change to the submitted Policy Map is also required which the Authorities have already indicated will be made. In the light of the response to the MM consultation from BAL the extent of the area to be shown should be discussed and, if possible, agreed with BAL.
61. Finally, NPPF paragraph 143, bullet 3 and WMP policy WMP 14 both require MCAs to be identified in the Plan. Policy SP 11 confirms that they will be and the basis on which it will be done. The Authorities confirmed that between receipt of this report and formal adoption of the Plan, the submitted Policy Map will be altered to show their extent.

## **Issue 2 – Does the Plan provide the sites needed to deliver the waste capacity required by WMP policy WMP 5?**

### *Introduction*

62. WMP policy WMP 5 sets out a minimum and a maximum waste management capacity for which the provision of built waste facilities should be made to ensure net self-sufficiency. Capacity figures are shown separately for 'recycling and composting' and for 'other recovery' and for three specific years during the Plan period. WMP Table 8 converts this capacity into an indicative sites range at the same three dates but this is not part of the policy.
63. In each case the range shown is wide and the reasons for that are well understood given the paucity of up-to-date waste data on which to base forecasts of existing and future waste arisings for the commercial and industrial and construction, demolition and excavation waste streams in particular. The Authorities confirmed that the Plan is based on providing for the maximum capacity in each category. That is 170,000 tonnes per annum recycling and composting capacity and 220,000 tonnes per annum other recovery capacity.
64. At April 2016 some 76,500 tonnes additional recycling and composting capacity had been provided; very close to the 80,000 tonnes capacity (maximum) set out in WMP policy WMP 5 for that date (TA-WMSP-08, paragraph 7). Performance to date against the maximum other recovery capacity requirement of 200,000 tonnes has not been so good although discussions had been held with prospective developers at two of the identified sites which, if developed, could make a significant contribution towards the requirement (TA-WMSP-08, paragraph 9).
65. WMP policies WMP 7a and 7b identify the broad areas (Areas of Focus) within which the best opportunities for sites are likely to be found and more detailed criteria for site identification respectively. The latter are essentially those now found in Appendix B of the National Planning Policy for Waste.
66. All of the sites that are listed in Plan policies SP 1, SP 2, SP 3 and SP 4 are within an Area of Focus identified on the WMP Key Diagram and each Area of Focus contains at least one such site. All also meet the criteria set out in WMP policy WMP 7b.

67. In principle therefore the sites that have been identified accord with national policy and the relevant WMP policies and progress is being made towards delivery of the upper end of required capacity range.
68. In detail, the sites listed in the Plan have emerged through a fairly standard selection process which is comprehensively described in 16.005. In brief, a long list of sites was progressively screened against various criteria including habitats regulation assessment (HRA), sustainability appraisal (SA) and strategic flood risk assessment using a traffic light grading system.
69. Three options for the number of sites to be allocated were subject to SA and a multi-faceted approach was found to provide the greatest SA benefits. Under this option locations graded red or red/amber in the site appraisal process were not considered for inclusion on the shortlist. Those chosen provide locations well above the minimum number required with a spatial spread across the Plan area with the aim of maximising opportunities for potential developers.
70. Chosen locations were then divided into allocations (policy SP 1), areas of opportunity (policy SP 2), areas of search (policy SP 3) and physical extensions of existing waste sites (policy SP 4). Each of these 20 sites is supported by a waste site profile that describes the site; sets out some other information; lists development constraints and opportunities; and gives a summary of the SA and HRA as it affects the delivery of facilities at the site. A further 48 existing industrial estates are listed where proposals for waste management development would be supported in principle (SP 5). These are set out in a separate submitted Plan document (15.002) which contains similar site profile information.
71. None of those making representations have taken issue with the approach summarised in the preceding paragraphs. There are however the following questions which need to be considered for their implications for the soundness of the Plan. They are:
  - a) Are the sites identified compatible with or prejudicial to the economic development aspirations of HBC?
  - b) Are the identified sites deliverable?
  - c) Are sufficient sites safeguarded by policy SP 6 to ensure delivery of the required waste management capacity?

*Question (a)*

72. There are two aspects to the HBC representation which argues that in the blanket identification of employment sites within the Borough for waste management development the Plan is unsound. The first relates to the effect that waste management uses would have on inward investment and thus job creation. The second concerns the poor site utilisation of land by waste management uses and therefore the low employment density achieved. A subsidiary point taken is the generally low-skill jobs created and thus the low pay rates associated with waste management development. All of these concerns are brought into sharp focus in respect of site SP-O/G, Queensway (land west of) in Hastings listed in policy SP 2 as an area of opportunity, the allocation of which HBC wishes to see deleted from policy SP 2.

73. HBC set out the argument in detail in its hearing statement (SR8-01) and elaborated upon this during the hearing session. Although I shall address the concerns in turn, both flow, in my opinion, from a fundamental misconception about the nature of modern waste management facilities. Some waste management facilities are of the type characterised by significant elements of external activity which can have a generally untidy appearance and an apparent lack of control over emissions to air. However, more often they are simply receiving materials which are then processed into either an interim product for onward transport as the raw material to be fabricated into a final product or that final product, often in the form of an energy source such as syngas. Such processes are almost wholly enclosed in buildings indistinguishable from others on industrial estates.
74. There also appears to me to be a misunderstanding on the part of HBC about the way the policies of the Plan will be applied in practice. This is explained by the Authorities (TA-WMSP-08, paragraphs 17 and 18). In summary, sites in policy SP 1 are not subject to any alternative use in another development plan and are therefore safeguarded by policy SP 6 for waste management use as a priority. Sites in policies SP 2 and SP 3 are not safeguarded for waste management use, mainly because they are identified in a development plan for employment use. Proposals for employment use would be in accord with the development plan and would not be resisted therefore by the Authorities. However, once developed in accord with the development plan, the buildings may be suitable for a future waste management use. The Plan would allow those uses to come forward subject to development management principles.
75. Turning now to the two aspects raised by HBC, the nub of the first concern is set out in the statement by HBC's Principal Estates Surveyor (SR8-01, paragraphs 17 and 18). The key passage is 'Current occupiers include many high tech and 'clean' businesses that would not be able to co-exist with many waste reclamation operations. When discussing premises with potential occupiers assurance is often sought on neighbouring use and this could be prejudiced by the current ESCC proposed policy'.
76. No evidence has been provided to support these opinions. No letters from prospective developers or occupiers have been submitted asking for the assurances mentioned or stating that investment or tenancy will not now proceed because of the policies in the Plan. I am therefore able to give little weight to this view.
77. Furthermore, HBC's stance does not pay sufficient regard to the wide range of waste management facilities that can be developed or their environmental effects. Although some may generate the noise, odour and dust that was referred to during the discussion, this can be controlled by conditions attached to both the planning permission and the environmental permit that will need to be issued by the Environment Agency. Moreover, as noted above, many recycling and recovery facilities exhibit none of these characteristics and are often wholly enclosed within buildings. Indeed, some can be complementary to the business uses elsewhere on the development, especially those which have the potential to provide heat and power. This is a point specifically referred to in paragraph 4 of the National Planning Policy for Waste which is very supportive of locating waste management facilities on industrial estates



and sites identified for employment uses. The Plan is not therefore inconsistent with national policy in this regard.

78. Moving on to the second aspect, HBC provided some evidence about employment densities within four sites allocated in the development plan (SR8/01a, Appendix G, Table 1) and job density numbers arising at waste operations (SR8/01a, Appendix G, Table 2). However, while Table 2 provides numbers based on actual facilities, Table 1 is an estimate of what might be delivered by different B use classes if the floor space assumed in the development plan policy is achieved. The comparison is not therefore like-for-like.
79. The Authorities gave oral evidence about a number of other waste management facilities where employment per square metre was in the order of the targets set out in HBC's development plan.
80. I do not consider the evidence presented during the examination to be conclusive either way on this point. Furthermore, HBC asserts that the most labour intensive waste management jobs are also the most low-skilled and low-paid. While intuitively this may seem a valid assertion, the evidence to support it is not given. Nor is any equivalent comparison made for jobs that may be provided in B8 employment in particular.
81. In fact, this goes to a point that tends to undermine the argument put by HBC in this regard. The Queensway sites (LRA 6 and LRA 9 in the adopted Hastings Local Plan: Development Management Plan-TA-WMSP-12) are both allocated for 'employment: B use classes'. Elsewhere the development plan refers to 'employment' as being planning use class B which is further clarified as 'business uses are essentially those within Class B of the Use Classes Order, including offices, research and development uses, light manufacturing, general industry, warehousing/storage and similar sui generis uses' (emphasis added) (Hastings Local Plan: The Hastings Planning Strategy-TA-WMSP-11-page 78, footnote 29).
82. Waste management facilities are often characterised as being akin to B2 employment uses although for the most part they do not fall with any of the classes set out in the Town and Country Planning (Use Classes) Order 1987, as amended. They are therefore *sui generis* uses. The meaning of policy is ultimately a matter for the court. However, while acknowledging the aspirations for Queensway and other sites put forward by HBC during the examination, the policies would appear to allow a wide range of employment uses to be developed at these sites which could, even on the HBC development plan policies, include waste management facilities. I do not therefore consider the Plan to be inconsistent with the HBC development plan or unsound for that reason.
83. Nevertheless, during the discussion, the Authorities acknowledged that some types of waste management facilities would be unlikely to be able to satisfactorily address the development considerations set out in the waste site profiles. The most obvious would be open windrow composting which is very unlikely to be accommodated within an industrial estate or built employment use setting. **MM6** addresses this issue and relates to the soundness of the

Plan as it further limits the nature and number of facilities that might come forward.

*Question (b)*

84. The key element in determining the deliverability of any particular site identified is the willingness of the landowner to make it available for waste management uses. In some respects therefore there is an overlap between this question and question (a).
85. The Authorities' approach to the views of landowners is set out in the evidence (16.005, paragraph 3.43). In summary unwillingness on the part of the landowner is not, of itself, seen as a 'showstopper' as either ownership could change over the life of the Plan and/or development strategies could alter.
86. That seems to me an appropriate stance to take as it would allow development plan support for waste management uses in the event of either change coming about. In coming to this view I have had particular regard to the effect of the policies and the limited number of sites that are actually safeguarded for waste management [paragraph 74].
87. While I recognise that SeaChange Sussex are at present unwilling landowners of both sites SP-O/G (Queensway) (SR8/01a, Appendix F) and SP-S/C (Sidley (land North of), Bexhill) (SR17/1a) neither are safeguarded. As I do not accept that their employment development is compromised by perceptions of the effect of waste management uses being on what are large sites in any event, I do not consider the Plan to be unsound if they continue to be identified.
88. The Authorities do nevertheless consider that two sites should no longer be identified as they are now accepted as undeliverable; the Plan would thus be unsound if either was included.
89. The first is SP-A/A (Coal Yard, Hove) where the likelihood of development of the site for other uses is now far more advanced than it was when the Plan was subject to pre-submission consultation (TA-WMSP-08, paragraphs 19 to 21). **MM1** gives effect to the necessary change.
90. The second is SP-S/E (Whitworth Road, Hastings). During the discussion at the hearing session, the Authorities elaborated on the written evidence (TA-WMSP-08, paragraph 22) to confirm that this deletion was as a result of discussions between HBC and the Authorities as documented in the Authorities' DtC Statement (16.003). **MM3** alters the submitted Plan as necessary to make it sound in this respect.
91. The final change (within **MM3**) is, technically, a correction of an error (TA-WMSP-08, paragraph 23) but since it affects policy wording a MM is required. I appreciate the point made by Rother District Council regarding consistency of policy wording (TA-WMSP-17, MM12) but consider this is a matter from the Authorities. The effectiveness of the policies is not affected in any way and thus no issues of soundness are raised.

### *Question (c)*

92. This is a matter that I raised in my initial letter to the Authorities (ID1). My concern was that only those sites that would be safeguarded by policy SP 6 could be assumed to come forward and contribute towards the required capacity since it could well be that those within the areas of opportunity (SP 2) and the areas of search (SP 3) might be fully developed in accord with the other development plan allocations applicable to them. To an extent my initial concern was reinforced by the Authorities' hearing statement (TA-WMSP-08, paragraphs 17 and 18) and the deletion of one of the four sites within policy SP 1 [paragraph 90].
93. However, the Authorities explained that the Plan was essentially permissive of development and the capacities in WMP policy WMP 5 were not to be interpreted as a cap on provision. In essence, while the Plan gave guidance and a locational steer to the waste industry, planning applications coming forward would be considered on their own merits against the development plan policies as a whole.
94. The evidence gave considerable support for this as an approach that was delivering additional waste capacity. Some 11 planning permissions have been granted since the adoption of the WMP. The detail is set out in the evidence (TA-WMSP-08, Appendix A) and shows several where a change of use of a B use class building on an industrial estate has taken place. Furthermore, the Authorities had examined the potential capacity that could come forward on just the safeguarded sites, excluding SP-A/A, and established that taking realistic assumptions, the required capacity could be provided.
95. On balance therefore I am satisfied that there is sufficient flexibility within the Plan for the required capacity to come forward notwithstanding the limited number of sites that are actually safeguarded for waste management use.

### **Issue 3 – Other Matters**

96. Satisfactorily addressing the development considerations and opportunities set out within the site profiles is important to the effective application of policy and delivery of sites. However, as submitted the Plan is ambiguous in regards to the way that those matters will be taken into account and thus unsound. These concerns are addressed by **MM1, MM2, MM3, MM4 and MM5** which add appropriate wording to policies SP1, SP 2, SP 3, SP 4 and SP 5.
97. Time limited recycled and secondary aggregate facilities can make an important contribution to the waste management capacity for producing this material. As submitted policy SP 6 was unclear whether such facilities fell within its scope. The Authorities will clarify this by a minor addition to the text of the policy that resolves this issue; this was set out in Document 16.012.

### **Assessment of Legal Compliance**

98. 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 Local Plan has been prepared in accordance with the County Council's LDS (February 2016), The National Park Authority's LDS (January 2014) and the City Council's LDS (Summer 2014).
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted by the County Council February 2013, by the City Council in March 2015 and by the South Downs National Park Authority in January 2014. Consultation on the Local Plan and the MMs has complied with their requirements.
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Habitats Regulations Assessment (HRA)	The Habitats Regulations AA Screening Report [July 2015] sets out that 1 site would not lead to likely significant effects on European sites, either alone or in combination with other plans and projects; that the same conclusion can be drawn for 12 sites subject to them not being delivered as energy from waste facilities; that 2 sites would require an understanding of the effects of road traffic; and that 5 sites would require project-level HRA screening. Natural England has not indicated that it does not support this.
National Policy	The Local Plan complies with national policy except where indicated and MMs are recommended.
2004 Act (as amended) and 2012 Regulations.	The Local Plan complies with the Act and the Regulations.

## Overall Conclusion and Recommendation

99. The Plan has a number of deficiencies in respect of soundness 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.

100. The Authorities have requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*Brian Cook*

Inspector

This report is accompanied by an Appendix containing the Main Modifications.