



## Cheshire East Local Plan

# Site Allocations and Development Policies Document

Cheshire East Council Hearing Statement

### **Matter 1: Legal Compliance & Duty to Co-operate**

**Hearing date: Tues 12 Oct 2021**

## Introduction

1. This hearing statement has been prepared by Cheshire East Council in response to the Inspector's Matters, Issues and Questions for the Examination Part 1 [INS/08] and addresses Matter 1: Duty to Co-operate and Legal Compliance.
2. The abbreviations used in this hearing statement are as defined in the Inspector's MIQs.

## Key Documents

3. The following key documents are relevant to this response:
  - Statement of Community Involvement October 2020 [BD 03]
  - Revised Publication Draft SADPD Sustainability Appraisal [ED 03]
  - SADPD Habitats Regulations Assessment Revised Publication Draft [ED 04]
  - Site Selection Methodology Report [ED 07]
  - SADPD Duty to Co-operate Statement of Common Ground [ED 51]
  - SADPD Duty to Co-operate Statement of Common Ground Appendix 2: List of Signatories [ED 51a]
  - SADPD Consultation Statement (Revised Publication Draft Version) [ED 56]
  - SADPD Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a]

## Duty to co-operate

**Q1 Does the SADPD give rise to any new strategic cross-boundary issues, that were not addressed through the duty to co-operate on the LPS?**

**Q2 If so, has the Council engaged constructively, actively and on an ongoing basis with all of the relevant authorities and prescribed bodies on the 'strategic matters' applicable to the SADPD and have they been resolved?**

4. The purpose of the SADPD is to set non-strategic policies to guide planning decisions and allocate additional sites for development to assist in meeting the overall development requirements set out by the LPS, where it is necessary to do so. As documented in the SADPD Duty to Co-operate Statement of Common Ground (DTC SOCG) [ED 51] ¶3.16, there are no strategic cross-boundary issues that arise from the policies and proposals set out in the SADPD.

**Q3 Is this adequately evidenced by the SADPD Duty to Co-operate Statement of Common Ground (SsoCG)<sup>1</sup>?**

5. As set out in ¶1.5 of the DTC SOCG [ED 51], although guidance on the preparation of a statement of common ground is directed at strategic policy-making authorities during the process of planning for strategic cross-boundary matters, the Council has prepared a DTC SOCG [ED 51] to demonstrate that the Council has properly discharged its legal duty and reached agreement with all relevant parties that the SADPD does not give rise to any new strategic cross boundary issues. The DTC SOCG [ED 51] also provides an opportunity for the Council to show how it has continued to work effectively and on an ongoing basis with relevant bodies regarding the strategic cross boundary matters identified during the preparation of the LPS. Any ongoing strategic cross boundary matters identified during the preparation of the LPS does not have a material impact upon the policies and proposals contained within the SADPD.
6. Appendix 1 of the DTC SOCG [ED 51] serves to summarise responses received from local authorities/prescribed bodies at the First Draft and initial Publication Draft consultation stages on the SADPD. Appendix 2 of the DTC SOCG [ED 51a] includes a list of signatories from local authorities/prescribed bodies who have confirmed their agreement to the DTC SOCG [ED 51].

**Q4 Are there any 'strategic matters' on which the DtC has not been met? If so, what is the evidence to support this?**

7. As set out in the Council's response to Q1 and 2 (above), there are no strategic cross boundary issues that arise from the policies and proposals contained within the SADPD.

## Other legal and procedural requirements

**Q5 Has the SADPD been prepared in accordance with the Council's Local Development Scheme (LDS)<sup>2</sup>? Are there any obvious omissions from the submitted DPD, in terms of its overall scope as described in the LDS and the non-strategic policies and site allocations delegated to it by the LPS? Specifically, is there a need for mineral safeguarding and the allocation of sites for mineral extraction to be included in the SADPD, given the expectations of Policy SE 10 of the LPS?**

8. The Council's LDS [BD 02], ¶2.2 identifies that the Local Plan for Cheshire East consists of four key documents. The third being *"the Minerals and Waste Development Plan Document which will set out policies for dealing with Minerals and Waste including the identification of specific sites and areas"*. The SADPD is not intended to cover minerals and waste matters and, therefore, the SADPD has been prepared in accordance with the Council's LDS.

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<sup>1</sup> Core Documents ED51 & 51a

<sup>2</sup> Required by section 19(1) of Part 2 of the Planning and Compulsory Purchase Act 2004

9. There is an inconsistency between the LDS and LPS Policy SE 10 in that it was originally intended at the time of submission of the LPS (in accordance with the (2014-2016) LDS)<sup>3</sup> that mineral matters would be dealt with in the SADPD. This is why Policy SE 10 refers to various detailed mineral matters, including mineral safeguarding and allocations, being dealt with through the SADPD. However, part way through the long LPS examination process, the Council updated its LDS so that mineral matters were removed from the SADPD and added to the third (Waste DPD) work stream originally identified in the (2014-2016) LDS. This would result in the production of a Minerals and Waste DPD (MWDPD). A revised (2016-2018) LDS showing a MWDPD as a replacement third Local Plan workstream was approved by the Council on 17 October 2016<sup>4</sup>. The production of a MWDPD has remained a commitment of the Council and has been identified in all subsequent approved LDSs since this date.
10. At the request of the LPS inspector the Council submitted Homework Item 40<sup>5</sup> to him on 19 October 2016, which consisted of a copy of the updated (2016-2018) LDS. In his subsequent report on the examination of the LPS, the Inspector confirmed [BD 05] (¶24) that the LPS *"meets all the relevant legal requirements"*. These included in respect of the LDS: *"The CELPS is identified in the latest LDS (October 2016) [RH/B002.033] and earlier versions [SS/054], and its role and content comply with these documents"*. The LPS Inspector also referred in his report [BD 05] (¶33) to *"The CELPS is accompanied by an extensive evidence base, including sustainability appraisals, supporting documents, background papers, technical reports and studies, along with further evidence/statements submitted to the examination. It will be supplemented by a Site Allocations & Development Policies DPD (SADPPD) and a Minerals & Waste DPD, to provide a comprehensive development plan for Cheshire East, which will eventually supersede the previous local plans."*
11. Whilst the LPS Inspector was aware of the Council's intention to deal with mineral matters in the MWDPD, LPS Policy SE 10 was not amended to replace reference to the SADPD with the MWDPD via main modification. This would have removed the inconsistency with the LDS that has been highlighted. The Council considers this to be an oversight as the Inspector did confirm the soundness of mineral considerations being dealt with in a proposed MWDPD. Ultimately, the Cheshire East Local Plan, taken as a whole, will address the need for additional minerals planning policy, albeit within a separate DPD which will eventually form part of the suite of documents that comprise the Local Plan. This approach is also in accordance with the current LDS.

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<sup>3</sup> <http://cheshireeast-consult.limehouse.co.uk/file/2948473>

<sup>4</sup> <http://moderngov.cheshireeast.gov.uk/ecminutes/ieListDocuments.aspx?CId=809&MId=6502>

<sup>5</sup> <http://cheshireeast-consult.limehouse.co.uk/file/4212439>

**Q6 Has consultation on the SADPD been undertaken in accordance with the Council's adopted Statement of Community Involvement and the minimum consultation requirements in the Regulations<sup>6</sup>? What evidence is there to demonstrate this and that representations submitted in response to the First Draft SADPD have been taken into account as required by Regulation 18(3)?**

12. At all stages of its preparation, consultation on the SADPD has been carried out in accordance with the minimum consultation requirements specified in the Regulations and the council's SCI in force at the time of each consultation.

13. The SADPD Consultation Statement (Revised Publication Draft Version) [ED 56] sets out the evidence to demonstrate that Regulation 18 consultations were undertaken in accordance with the Regulations and adopted SCI. The SADPD Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a] sets out the evidence to demonstrate that Regulation 19 consultations were undertaken in accordance with the Regulations and adopted SCI.

14. Appendix C of the SADPD Consultation Statement (Revised Publication Draft Version) [ED 56] provides a detailed summary of the main issues raised (in plan order) through the First Draft SADPD Regulation 18 consultation. The Appendix also provides an explanation of how each main issue was taken into account in the preparation of the submission plan.

**Q7 Has the formulation of the SADPD been based on a sound process of sustainability appraisal (SA), as set out in the Revised Publication Draft SADPD Sustainability Appraisal, dated August 2020 [ED03]? In particular:**

- a. **Is the baseline evidence sufficiently up-to-date and therefore adequate, particularly in respect of potential effects on mineral resources?**
- b. **Does the SA test the policies and site allocations in the SADPD against reasonable alternatives? Is it justified in not doing so for all policies?**
- c. **Has the SA been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative?**
- d. **Is the SA decision making and scoring robust, justified and transparent?**
- e. **Has the Council provided clear reasons for not selecting reasonable alternatives?**

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<sup>6</sup> Regulations 18 and 19 of Town and Country Planning (Local Planning) (England) Regulations 2012

- f. Is it clear how the SA has influenced the SADPD policies and allocations and how mitigation measures have been taken into account?**
  - g. Have the requirements for Strategic Environmental Assessment been met, including in respect of the cumulative impacts of the SADPD?**
15. SA has informed all stages of the plan-making process. The formulation of the SADPD has been based on a sound process of SA, as set out in the Revised Publication Draft SADPD SA, dated August 2020 [ED 03].

Q7a

16. The baseline is sufficiently up-to-date and therefore adequate. A revised SA Scoping Report was published for consultation between 27 February 2017 and 10 April 2017. As highlighted in ¶2.5 of the 'Revised Publication Draft SADPD SA' [ED 03] the scoping information was revised, where possible, to take account of any new or updated information. This has been consulted on alongside the SA, which has supported the SADPD on an iterative and ongoing basis. A summary of the baseline information is provided in Appendix B of the SA [ED 03]. Furthermore, as set out in the Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a] (p394) the SADPD has been subject to two rounds of consultation enabling the minerals industry and others to put forward up-to-date minerals related evidence to the council to explain why any of the small number of allocations that are being proposed is significant in terms of the overall remaining mineral resource in the borough and why its safeguarding should be given priority over the need for the council to achieve its wider objectives. While the council has received no such information, it has made further changes to the site selection criteria and relevant proposed site policies to make sure that appropriate account is taken of the effect on mineral resources as part of the policy making and site development process. The council considers its approach is entirely consistent with ¶31 of the NPPF by using an adequate and proportionate approach to the use of evidence in plan making.

Q7b

17. The SA [ED 03] tests the policies and site allocations in the SADPD against reasonable alternatives, as presented in Chapter 3, Chapter 4, Appendix D, and Appendix E of the SA [ED 03]. This includes details on how the reasonable alternatives were developed, and, in relation to sites, utilises the SSM set out in the 'Site Selection Methodology Report' [ED 07]. Appendix D specifically deals with alternatives for policy themes and justifies why, where relevant, a formal alternatives appraisal was not warranted. The SA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various consultation stages. No objections were received from the prescribed bodies to the SA [ED 03].

#### Q7c

18. The SA [ED 03] been robustly prepared with a comparative and equal assessment undertaken of each reasonable alternative. All sites have been assessed against a consistent methodology set out in the 'Site Selection Methodology Report' [ED 07]. The SA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various consultation stages. No objections were received from the prescribed bodies to the SA [ED 03].

#### Q7d

19. The SA decision-making, and rating used for sites, is robust, justified and transparent. It is based on performance against 25 specified objectives and uses the SSM set out in the 'Site Selection Methodology Report' [ED 07]. The justification is provided in detail in Appendices A to I of the SA. The SA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various consultation stages. No objections were received from the prescribed bodies to the SA [ED 03].

#### Q7e

20. The Council has provided clear reasons for not selecting reasonable alternatives, which are presented in Chapter 3, Appendix D and Appendix E of the SA [ED 03]. The SA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various consultation stages. No objections were received from the prescribed bodies to the SA [ED 03].

#### Q7f

21. The SA is a key stage of the SSM, influencing the Council's approach to the identification of sites for allocation in the SADPD, however the SA findings are not the sole basis for a decision. It is clear how the SA has influenced the SADPD, policies and proposals and how mitigation measures have been taken into account. For example, ¶4.100 of the SA [ED 03] highlights the amendment made to proposed Policy INF 5 "Off-airport car parking" in relation to permeable materials. Another example can be found in ¶4.214 of the SA [ED 03], where the SA highlighted that proposed Policy INF 10 "Canals and mooring facilities" did not take account of the canal's historic environment – an additional policy requirement was added to safeguard or enhance the canal's role as a heritage asset. The SA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various consultation stages. No objections were received from the prescribed bodies to the SA [ED 03].

#### Q7g

22. Appendix A of the SA [ED 03] shows how the SA meets the requirements of the Strategic Environmental Assessment Directive – a Checklist (SA [ED 03] Table A.1) based on the requirements contained in Schedule 2 of the

Environmental Assessment of Plans and Programmes Regulations 2004 signposts where the regulatory requirements are met in the SA. The cumulative effects of the SADPD are set out in Chapter 5 of the SA [ED 03].

**Q8 Is the Equality Impact Assessment at Appendix G of the SA of the Revised Publication Draft SADPD robust<sup>7</sup>? Does it demonstrate whether the policies and allocations of the SADPD would have any negative effects on people with protected characteristics in Cheshire East? Are further mitigation measures required?**

23. The Equality Impact Assessment at Appendix G of the SA [ED 03] of the Revised Publication Draft SADPD is robust. As set out in the Regulation 20 Representations Statement (Consultation Statement Part II) [ED 56a] (p391) a revised Equality Impact Assessment has been published in Appendix G of the 'Revised Publication Draft SADPD SA' [ED 03], building on work previously carried out on Equality Impact Assessment; the SA is an iterative process. The SADPD has been the subject of public consultations, carried out in accordance with the approved SCI [BD 03]. The Equality Impact Assessment demonstrates that the SADPD has been prepared with due regard to the Public Sector Equality Duty and that policies would not have a negative impact on people with protected characteristics. The Council considers no further mitigation measures are required.

**Q9 Is the SADPD legally compliant with respect to the Habitats Regulations<sup>8</sup>, as interpreted by recent case law, and any requirement for appropriate assessment? Does the SADPD Habitats Regulations Assessment (HRA)<sup>9</sup> ensure compliance? Are any Main Modifications to the SADPD necessary to ensure it would not have any likely significant impacts in the light of the HRA?**

24. The SADPD HRA Revised Publication Draft [ED 04] was prepared by Jeremy Benn Associates (JBA Consulting) on behalf of the Council. The HRA has been prepared in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and following best practice guidance.
25. The HRA has been prepared on an iterative and on-going basis, with its methodology and approach consulted on at various stages alongside the SADPD.
26. The SADPD HRA Revised Publication Draft [ED 04] has followed a clear three stage methodology<sup>10</sup> set out in Table 2-1 (p3). In accordance with recent relevant case law,<sup>11</sup> the SADPD HRA Revised Publication Draft [ED 04] does not consider protective, avoidance or mitigation measures for the stage 1 screening assessments. These measures were carried forward and

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<sup>7</sup> Core document ED03

<sup>8</sup> Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>9</sup> Core document ED04

<sup>10</sup> Task 1 Screening / Task 2 Appropriate Assessment / Task 3 Mitigation and Alternatives

<sup>11</sup> People over Wind & Sweetman v Coillte Teoranta Case C-323/17



considered as part of the stage 2 appropriate assessment, as highlighted in ¶2.3.2.

27. The SADPD HRA Revised Publication Draft [ED 04] identified the potential for likely significant effects of the policies and proposals contained in the SADPD as a result of changes in water levels (due to abstraction) for the River Dee and Bala Lake Special Area of Conservation. However, following an appropriate assessment it was determined that existing policies and provisions of Natural Resources Wales, the Environment Agency and United Utilities in relation to water supply, will ensure that the SADPD will have no adverse impact on this European site. There are no Main Modifications required to the SADPD in the light of the HRA on this basis. No objections have been received from prescribed bodies to the SADPD HRA Revised Publication Draft [ED 04], including Natural England, prepared to support the Revised Publication Draft SADPD.

**Q10 Does the SADPD, taken as a whole, include policies designed to ensure that the development and use of land in Cheshire East contributes to the mitigation of, and adaptation to, climate change in accordance with the PCPA 2004<sup>12</sup>?**

28. The SADPD, taken as a whole, includes policies designed to ensure that the development of and use of land in Cheshire East contributes to the mitigation and adaptation to, climate change in accordance with Section 19(1A) of the Planning and Compulsory Purchase Act 2004 (as amended).
29. The non-strategic policies in the SADPD have been prepared to be consistent with the LPS, including Strategic Priority 3 'Protecting and enhancing environmental quality' which, amongst other provisions, looks to deliver in criterion 3, a reduction in the borough's impact on climate change. It also builds on LPS policies including Policies SE8 'Renewable and low carbon energy' and SE 9 'Energy efficient development', as examples.
30. The council has declared a climate emergency and has prepared an environment strategy, which sets out its key strategies and action plans towards an ambition to becoming carbon neutral by 2025 (SADPD [ED 01b], ¶4.41a). The SADPD has been developed to contribute towards that ambition.
31. The SADPD contains policies designed to ensure that the development and use of land contributes to the mitigation of, and adaptation to, climate change. These include, amongst others:
  - GEN 1 'Design principles' – criterion 11 notes that development proposals should incorporate measures that can adapt to and/or show resilience to climate change and its impacts.
  - ENV 7 'Climate change' – lists a wide range of measures that development proposals should incorporate to address climate change in terms of mitigation and adaptation. It also includes measures in relation to

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<sup>12</sup> Section 19(1A) of the Planning and Compulsory Purchase Act 2004 (as amended)

energy efficiency and decentralised, renewable and low carbon energy sources.

- ENV 8 'District heating network priority areas' – encourages the take-up of opportunities to create district heating networks.
- ENV 9 'Wind energy', ENV 10 'Solar energy' and ENV 11 'Proposals for battery energy storage systems' – set a clear policy framework within proposals for renewable and low carbon energy can come forward.
- INF 3 'Highway safety and access' - introduces specific standards for electric vehicle charging points in major developments.