

## **Report to Brighton and Hove Council**

**by R Barrett IHBC MRTPI**

an Inspector appointed by the Secretary of State

Date: 19 July 2022

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Planning and Compulsory Purchase Act 2004 (as amended)

Section 20

## **Report on the Examination of the City Plan Part Two Brighton and Hove Council's Development Plan April 2020**

The Plan was submitted for Examination on 13 May 2021

The Examination hearings were held between 2nd and 16<sup>th</sup> November 2021

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## Abbreviations used in this report

AQMA	Air Quality Management Area
CPP1	Brighton and Hove City Plan Part One
CPP2/ the Plan	Brighton and Hove City Plan Part Two
CIL	Community Infrastructure Levy
DA	Development Area
DtC	Duty to Co-operate
GDPO	Town and Country Planning General Permitted Development Order 2015 (as amended)
GTAA	Gypsy and Traveller Accommodation Assessment
HDAP	Housing Delivery Action Plan
HRA	Habitats Regulation Appraisal
HEQIA	combined Health & Equalities Impact Assessment
LDS	Local Development Scheme
LNR	Local Nature Reserve
LWS	Local Wildlife Site
National Park	South Downs National Park
National Park Authority	South Downs National Park Authority
NDSS	Nationally Described Space Standards
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
PBSA	Purpose built student accommodation
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SHLAA	Strategic Housing Land Availability Assessment
SoCG	Statement of Common Ground
SPD	Supplementary Planning Document
SUDs	Sustainable Urban Drainage Systems
UFA	Urban Fringe Assessment
the Council	Brighton and Hove City Council
the Habitats Regulations	Conservation of Habitats and Species Regulations (2012) (as amended)

## Non-Technical Summary

This report concludes that the City Plan Part Two Brighton and Hove Council's Development Plan April 2020 (the Plan/CPP2) provides an appropriate basis for the planning of the City, provided that a number of Main Modifications (MMs) are made to it. Brighton and Hove City Council (the Council) has specifically requested that I recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Council prepared schedules of the proposed MMs and, where necessary, carried out Sustainability Appraisal (SA) [BHCC45), Habitats Regulations Assessment (HRA) [SD08) and combined Health & Equalities Impact Assessment (HEQIA) [BHCC46] of them. The MMs were subject to public consultation over a seven-week period. In some cases, I have amended their detailed wording and/or added consequential modifications where necessary. I have recommended their inclusion in the Plan after considering the results of the SA, HRA and HEQIA and all the representations made in response to consultation on them.

The MMs can be summarised as follows:

- Amending, deleting or adding site allocations to ensure they are positively prepared, justified, effective and consistent with the National Planning Policy Framework (NPPF)
- Rewording policies to ensure they are positively prepared, justified, effective and consistent with the Brighton and Hove City Plan Part One (CPP1) and the NPPF
- Amendment to leading policy in relation to the natural environment to ensure consistency with national policy (DM37)
- A number of MMs to ensure that the Plan's approach to the historic environment (including policies DM26-32) reflect the statutory tests and national policy
- A number of other MMs to ensure that the CPP2 is positively prepared, justified, effective and consistent with national policy.

## Introduction

1. This report contains my assessment of the CPP2 in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether its preparation has complied with the Duty to Co-operate. It then considers whether CPP2 is compliant with the legal requirements and whether it is sound. NPPF paragraph 35 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 the Council has submitted what it considers to be a sound plan. The City Plan Part Two Brighton and Hove Council's Development Plan April 2020 [SD01], submitted in May 2021 is the basis for my Examination. It is the same document as was published for consultation from the beginning of September through to the end of October 2020.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any MMs necessary to rectify matters that make the CPP2 unsound and thus incapable of being adopted. My report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1, MM2** etc, and are set out in full in the Appendix.
4. Following the Examination hearings, the Council prepared a schedule of proposed MMs and, where necessary, carried out SA, HRA and HEQIA of them. The MM schedule was subject to public consultation for seven weeks. I have taken account of the consultation responses in coming to my conclusions in this report. Subsequent to this, I have made a factual amendment to the detailed wording of MM10. That amendment does not materially alter the content of the MMs as published for consultation or undermines the participatory processes or other necessary assessment that has been undertaken. I have highlighted that amendment in the report.

## Policies Map

5. The Council 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

Council is 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. In this case, the submission policies map comprises the set of plans identified as Proposed Changes to the Policies Map, West, Central and East April 2020 [SD03a, b and c].

6. The policies map is not defined in statute as a development plan document and so I do not have the power to recommend MMs 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. In addition, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective.
7. These further changes to the policies map were published for consultation alongside the MMs [BHCC48].
8. When the CPP2 is adopted, in order to comply with the legislation and give effect to its policies, the Council will need to update the adopted policies map to include all the changes proposed in the Proposed Changes to the Policies Map West, Central and East April 2020 and the further changes published alongside the MMs.

## **Context of the Plan**

9. The Plan area is the Council's administrative area that is not within the South Downs National Park (the National Park). It includes the City bounded to the north by the A27 and National Park and to the south by the sea. It is a tightly constrained and compact city, with a population of approximately 272,000. With a limited legacy of derelict or vacant sites the 'natural boundaries' of sea and the National Park define and limit the outward expansion of the City. The Built Up Area is roughly half of the City's geographical area.
10. The Plan area includes conservation areas, a significant number of heritage assets, internationally, nationally and locally protected sites of nature conservation interest, along with Sites of Special Scientific Interest, Special Areas of Conservation and a Marine Conservation Zone.

11. The South Downs National Park Authority (the National Park Authority) has adopted the South Downs Local Plan (2019), which covers the administrative area of Brighton and Hove that falls within the National Park.
12. The CPP1 was adopted in March 2016. That document sets out the long term vision, strategic objectives and planning policy framework to guide new development required across the City to 2030. It sets the overall amount of new housing, employment and retail development planned over the Plan period and broad locations where such development should take place. That includes the broad distribution of housing and employment land between eight Development Areas (DAs), outside the Development Areas within the Rest of the City and within the Urban Fringe. It also allocates strategic sites and sets out strategic policy in relation to matters such as urban design, transport, affordable housing, biodiversity and sustainability.
13. The role of CPP2, as identified in the Local Development Scheme 2020-2030 (LDS) [CD11], and confirmed in the introduction to the Plan, is to support the implementation and delivery of CPP1. This is to be delivered by allocating additional development sites and setting out a detailed development management framework to complement the strategic framework set out in the CPP1. In addition, it sets out some specific requirements, which are addressed later on in my report.
14. CPP1, the Waste and Minerals Plan (2013), the Waste and Minerals Sites Plan (2017), the Shoreham Harbour Joint Area Action Plan (2019) and, on adoption, CPP2, and made Neighbourhood Plans, will together comprise the development plan for Brighton and Hove Council's administrative area. On adoption, CPP2 will supersede saved policies in the Brighton and Hove Local Plan 2005. In compliance with Reg 8(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012, CPP2 includes a schedule which identifies all policies that it is intended to supersede.
15. A number of those who made representations disagreed with the CPP2's approach to the allocation of housing sites in the Urban Fringe. In this regard, the LDS sets out the scope of the CPP2 and its relationship with the CPP1. It is clear from the LDS and the CPP2 itself, that it is not intended to supersede any of the policies in the CPP1, including its approach to the scale of development to be accommodated

within the Urban Fringe. The CPP2 is required to be consistent with the adopted CPP1 under the terms of Reg 8(4) of the Regulations.

16. It is not the role of the CPP2, which is clearly intended to implement and be consistent with the adopted CPP1, to revisit the overall approach to development needs, including the matter of the Urban Fringe. The key tests in respect of the scale and distribution of development proposed are whether the CPP2 is consistent with the CPP1 and whether it would realistically deliver the scale and distribution of development envisaged. I deal with these issues in more detail further on in my report.

## **Public Sector Equality Duty**

17. A HEQIA was undertaken at various stages of plan preparation to assess and identify the health and equalities impacts of CPP2. That concludes that CPP2 has largely neutral or positive benefits for health and equalities. Certain policies were found to be particularly beneficial for those with certain protected characteristics. Overall, CPP2 was found to be inherently inclusive of a wide population demographic, including those with protected characteristics, thus helping to advance equality of opportunity for all.
18. In examining CPP2, I have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included my consideration of several matters during the Examination including, the provision of housing to meet local needs, including affordable housing and accessible and adaptable housing. It also includes consideration of matters such as the communal value of heritage, protection of community services, facilities and employment space, encouragement of sustainable forms of transport, and high quality communications.

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

19. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
20. Strategic, cross boundary planning matters were addressed through the preparation and Examination of the CPP1. As the Duty to Co-operate is an ongoing activity, the Council has continued to engage with neighbouring authorities and other groups/prescribed bodies on a regional basis throughout the preparation of the CPP2. This included co-operation on strategic planning matters (e.g. housing and



employment land provision within West Sussex and Brighton & Hove sub-region) that go beyond the scope of this Plan.

21. The Council through that co-operation has addressed strategic matters arising since the adoption of the CPP1 that affect the implementation of its strategic policies through the CPP2. That co-operation helped to address matters such as gypsy and travellers, transport infrastructure, water quality and flood risk, biodiversity in terms of national and international designated habitats and species.
22. In respect of the provision for gypsy and traveller accommodation, the Council undertook joint working with neighbouring authorities including the National Park Authority to address the requirements of CPP1. A joint Gypsy and Traveller Accommodation Assessment (GTAA) carried out in association with the National Park Authority [ED04] to cover the period 2019-2034 was undertaken. That concluded that there was no unmet need for this CPP2 to accommodate. However, a need for additional pitches within the National Park within the Brighton & Hove administrative area was identified. A Statement of Common Ground (SOCG) with the National Park Authority agreeing to work jointly to seek to address the outstanding need is before me, [SD10], along with a SOCG with all neighbouring authorities regarding their capacity to meet unmet need arising within the National Park area of Brighton & Hove [SD10].
23. In relation to cross-boundary issues in relation to the Ashdown Forest Special Area of Conservation (SAC), consultation with Natural England, following HRA, concluded that planned growth in Brighton & Hove arising from the CPP1 and taken forward by the CPP2 will not adversely impact the integrity of the SAC either on its own or in combination with other plans and projects.
24. 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 Duty to Co-operate has therefore been met.

## **Assessment of Other Aspects of Legal Compliance**

25. The CPP2 has been prepared in general accordance with the Council's LDS. In addition, consultation on the CPP2 and the MMs was carried out in compliance with the Council's Statement of Community Involvement.

26. The Council carried out a SA at each stage of CPP2 preparation, prepared a report of the findings of the appraisal, and published the report along with the Plan and other submission documents under Regulation 19. The appraisal was updated to assess the MMs. The overall process has evaluated, amongst other things, anticipated environmental and infrastructure constraints of proposed policies and sites, along with the consideration of alternatives.
27. A number of representors queried the methodology adopted in the SA and its findings. The methodology adopted included professional planning judgement in evaluating sites and policies against defined criteria. Generally, I find that the methodology assisted in choosing sites and resulted in some improvements in the sustainability of policies through the incorporation of mitigation measures.
28. I find the methodology adopted and its findings robust and conclude that the CPP2 has been positively prepared and is justified, effective and consistent with national policy in this respect.
29. The HRA Screening Report (June 2018) [SD08a] screened out all potential impacts on European sites with the exception of air quality impacts on the Ashdown Forest SAC. Supplemented by the Air Quality Impact Assessment of Traffic Related Effects on Ashdown Forest [SD08b] overall, the Council's HRA concluded that the planned growth of the CPP1 taken forward in CPP2 policies and site allocations will not result in an adverse effect on the integrity of Ashdown Forest SAC either alone or 'in combination' with other plans and projects. Natural England was formally consulted on the HRA work and agreed its findings [SD08c]. The HRA's methodology and findings are robust and, in this regard, the CPP2 has been positively prepared and is justified, effective and consistent with national policy in this respect.
30. The Development Plan, taken as a whole, includes policies to address the strategic priorities for the development and use of land in the Council's area. In addition, it includes policies designed to secure that the development and use of land in the Council's area contribute to the mitigation of, and adaptation to, climate change. This includes CPP1 policies CP8 (sustainable buildings), CP9 (sustainable transport), CP10 (biodiversity), CP11 (flood risk) supported by CPP2 policies. Relevant policies in CPP2 include DM22 (landscape design and trees), DM37 (green infrastructure and nature conservation), DM39 (development on the seafront), DM42 (protecting the water environment), DM43 (sustainable drainage), and DM44 (energy efficiency and renewables).

31. Overall, the Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

## **Assessment of Soundness**

### **Main Issues**

32. Taking account of all the representations, the written evidence and the discussions that took place at the Examination hearings, I have identified 13 main issues upon which the soundness of the CPP2 depends. This report deals with those main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy, policy criterion or allocation in the Plan.

### **Issue 1: Whether the CPP2 is consistent with the CPP1 strategy and whether it has been positively prepared, is justified, effective and consistent with national policy in relation to the scale and distribution of development proposed and the approach to site allocations?**

33. Given the City's constraints, of the National Park to the north and the sea to the south, the CPP1 spatial strategy seeks to focus the majority of housing, employment and retail development on brownfield (previously developed) sites within the City's Built Up Area, directed to eight specific DAs (DA1-DA8) and brownfield sites in the Rest of the City. Given the significant scale of the City's housing need, the strategy for accommodating growth also includes the Urban Fringe as a broad source of potential for housing development.
34. Through Examination of my main issues, I find that the location of planned development in CPP2 generally reflects this broad spatial strategy set out in CPP1. It reflects the distribution of development across the City and Urban Fringe as set out in CPP1 Tables 2 and 3 and the broad requirements of CPP1 DA1-DA8 and SA1-SA6, which together, form the basis for the distribution of growth outlined in the above CPP1 strategy.

### **Housing**

35. CPP1 policy CP1 sets a minimum housing requirement of 13,210 to be completed over the Plan period (2010-2030). Part B of that policy indicates the broad distribution of development and the expected sources within parts of the City, including DAs, the Rest of the City, greenfield sites in the Urban Fringe, small identified sites and through small windfalls.

36. CP1 part C sets out that the rate of housing delivery will be managed so that it delivers the broad amount and distribution of housing to meet the requirements. It confirms that the adequacy of housing delivery (in terms of a five year supply of housing and in meeting planned housing delivery targets over the CPP1 full plan period) will be assessed regularly in accordance with the Housing Implementation Strategy (as referred to in CPP1 policy CP1) and through annual reviews of the Strategic Housing Land Availability Assessment (SHLAA), reported through the Council's Authority Monitoring Report (AMR).
37. The SHLAA Update 2021 [ED15] indicates a total housing supply of 15,096 net dwellings by the end of the CPP1 Plan period (the Plan period). A total of 4,391 dwellings have already been completed which leaves a minimum figure of 8,819 to meet the CPP1 requirement. In meeting that requirement, CPP1 policy CP1 clarifies that the role for the CPP2 is to allocate additional sites to help ensure that housing delivery is maintained over the Plan period.
38. I deal specifically with the issue of housing land supply and delivery in more detail under Issue 2. Suffice to say, taking account of CPP2 site allocations, completions since the beginning of the Plan period, commitments, and all other identified sources of supply, the CPP1 strategic housing requirement is likely to be exceeded at the end of the Plan period. CPP2 allocations provide for at least 3,230 dwellings, which will contribute 37% of the outstanding City Plan housing requirement.
39. Therefore, I conclude that the contribution made by CPP2 is in accordance with CPP1 requirements in Policy CP1. The allocated housing sites to meet the requirements of CPP1 are concentrated in DAs, on brownfield sites in the Rest of the City and the Urban Fringe. Therefore, in terms of the location of site allocations, the overall approach taken in the CPP2 is broadly consistent with CPP1. In this regard, it has been positively prepared, is justified, effective and consistent with national policy.

### **Employment Land**

40. CPP1 focuses employment development towards DAs (DA1-DA8) which provide opportunities for regeneration and include strategic allocations. Together, they will bring forward employment floorspace to meet a proportion of the forecast need over the Plan period. CPP1 policy CP3 sets out the strategic approach to safeguarding needed employment sites and bringing forward new employment sites. CPP1 acknowledges that there is a shortfall of employment sites to meet forecast need, which will fall to be addressed through a co-ordinated partnership approach with neighbouring authorities and the Local Enterprise Partnership. CPP1 policy CP3 clarifies the role for CPP2 in al-

locating additional employment sites and mixed use allocations to ensure employment land delivery is maintained over the Plan period (CPP1 policy CP3.6).

41. CPP1 forecasts a need for 112,240sq m of office space and 43,430sq m of industrial floorspace. CPP1 provides for 90-96,000sq m of office floorspace and 9,500 sq m of industrial floorspace. That leaves an outstanding requirement for 16-21,000sq m of office floorspace and 34,000sq m of industrial floorspace for CPP2.
42. CPP2 provides for a minimum of 10,000sqm of office space on strategic sites and mixed use allocations in accordance with the CPP1 spatial strategy and safeguards an opportunity site for business and warehouse uses. Through a positive policy framework, it also promotes the best use of land in existing industrial estates encouraging higher density flexibly designed business floorspace.
43. Overall, through strategic site allocations, mixed use housing allocations, and safeguarded land, CPP2 will help maintain the delivery of additional employment land over the Plan period. Whilst the allocations of the CPP2 will not fully meet the outstanding employment requirements from the CPP1, when taken with opportunities arising from the positive policy framework, I am satisfied that it will fulfil its role in reducing the shortfall of employment floorspace against the forecast need. In this respect, I conclude the overall approach to employment land is consistent with the CPP1. In this respect, CPP2 has been positively prepared and is justified, effective and consistent with national policy.

## **Site Allocations**

### **Allocations in the Built Up Area**

44. Evaluation of site allocations for housing, mixed-use and student accommodation allocations in the Built-Up Area were carried out through a series of City wide assessments. Sites were initially identified through the SHLAA and call for sites at Regulation 18 stage. The Council commissioned a Housing and Employment Land Study [ED17] to further test sites against CPP1 policy objectives. That included a review of the methodology for site identification and yield analysis in the SHLAA and consultation with stakeholders. In addition, the Council carried out an SA at each stage of the production of the CPP2. Further environmental assessment took place through HRA.
45. A number of representations are before me supporting a different amount or mix of development on allocated sites. Site boundaries, proposed capacities and uses are based on policy requirements and thorough on-site assessment [TP07]. Site profiles have been produced for all allocated sites. In this regard, I find the methodology used to indicate uses, site capacities and identify development

constraints to be thorough, robust and soundly based.

46. Due to the City's constraints and the limited land availability, the approach taken resulted in the allocation of all suitable sites, delivering more than 10 dwellings that are developable sites within the Plan period. This proactive approach helps to maximise the sustainable provision of housing through CPP2. It will help to address the concerns of the CPP1 Examining Inspector regarding the lack of flexibility in the housing supply. In this respect, I conclude that the CPP2 has been positively prepared and is justified, effective and consistent with national policy.

### **Allocations in the Urban Fringe**

47. Proposed allocations in the Urban Fringe were informed by the suite of Urban Fringe Assessments (UFA) [ED21-24]. Those studies involved comprehensive examination of all Urban Fringe sites not subject to 'absolute constraints' such as national or international designations. Together, they assessed each site's potential to accommodate housing development. An initial analysis identified potential sites, which were then subject to further landscape, ecology and archaeological assessment. Further analysis of environmental constraints followed, particularly in relation to local designations such as Local Wildlife Sites (LWS) and Local Nature Reserves (LNR). Specific issues raised in consultation were also assessed through those latter studies.
48. A number of objectors queried the methodology adopted in the studies that identified sites, particularly those subject to local designations. It is acknowledged that the methodology included the exercise of professional judgement. This was particularly the case in relation to safeguarding components of local wildlife rich habitats and wider ecological networks in accordance with NPPF paragraph 179. The UFA studies concluded that, for the sites now being proposed in the Plan, the potential adverse impacts of development can be avoided, minimised and/or mitigated to an acceptable degree and that Biodiversity Net Gains are achievable. The proposed allocations are therefore considered to be consistent with national planning policy and national planning practice guidance.
49. Within this context, the ecological/ biodiversity value of sites and potential impacts of development on LWS and LNR were assessed initially in the UFA 2014 [ED21a-c] and then in more detail in UFA 2015 [ED22a-g]. That study included a Desktop Study and Phase 1 Habitat Survey for all sites where potential for significant adverse impacts on ecology were identified. It sets out specific recommendations for avoidance, mitigation and enhancement options linked to the development of each site. The UFA 2015 also included a separate archaeological assessment of sites where potential heritage impacts had been identified [ED23]. The 2021 UFA update [ED24]

provides updated ecological assessments for selected sites taking account of recent changes in legislation and national policy and guidance, including the requirements to achieve biodiversity net gains. Mechanisms to ensure site specific assessment and mitigation are included in policy H2. Any development will also be subject to other policies in the Plan. Overall, I find that the approach taken by the Council in this regard is justified and soundly based.

50. I accept that planning judgement was required to balance the benefits of the provision of housing with the need to safeguard components of local wildlife rich habitats and wider ecological networks. I find the methodology adopted enabled that exercise to be robust. In this respect, I conclude that the CPP2 has been positively prepared and is justified, effective and consistent with national policy.

### **Strategic Allocations**

51. Strategic Site Allocations are larger mixed use sites that are either likely to come forward for large-scale redevelopment and regeneration over the Plan period, or cover a larger area where significant redevelopment is occurring on multiple proximate sites.
52. Strategic allocations were identified through officers' knowledge of development potential or, through the call for sites at the CPP2 scoping consultation stage. Where sites are located within CPP1 DAs, those higher level strategic priorities have informed development aspirations, quantum and proposed mix, along with site size and location. Regard was also had to previous development proposals where appropriate and stakeholder engagement and consultation as appropriate. In this respect, I conclude that the CPP2 has been positively prepared and is justified, effective and consistent with national policy.

### **Retail**

53. CPP1 Policy CP4 identifies the City's retail hierarchy. It clarifies that additional retail sites will be allocated and proposed changes to retail centre boundaries or the allocation of new centres will be executed through CPP2 or other development plan documents. It clarifies also that CPP2 should set out detailed policies regarding the appropriate mix of A1 and non-A1 uses within defined shopping centres.
54. CPP1 sets out significant retail allocations, which include an extension to the Churchill Square Shopping Centre (DA1) and some retail as part of the Brighton Marina development (DA2). Evidence indicates no requirement for CPP2 to provide additional sites for comparison retail floorspace. Nonetheless CPP2 strategic site allocations do include ancillary retail provision, where appropriate, as part of mixed use allocations. However, that is mainly to deliver high quality development that meets place making objectives, rather than meeting an identified

need for comparison retail floorspace. Given my previous comments, this accords with the requirements of CPP1.

55. CPP2 does propose some changes to the retail hierarchy, adjustments to shopping centre boundaries and the identification of Important Local Parades. Those are all based on a thorough review of all the primary, secondary, and local frontages throughout the retail hierarchy.
56. The aforementioned methodology used appropriate criteria, having regard to Planning Practice Guidance (NPPG) and the definitions in NPPF annex 2, (prior to the changes to the Use Classes Order). Annual retail health checks carried out over consecutive years were used to inform the review. Desk top studies were supplemented by survey work and on-site judgement. Generally, I find the evidence to support these relatively minor changes to the shopping centre designations proportionate and justified. They would provide an appropriate and sound basis for the application of CPP2 Policies DM12 and 13, which seek to protect main town centre uses. In this regard CPP2 has been positively prepared, is justified, effective and consistent with national policy.

### **Gypsy and Travellers**

57. CPP1 Policy CP22 makes provision for gypsy and traveller accommodation up to 2019. At that time, it identified a need for CPP2 to provide permanent pitches by 2019. No need for travelling show people plots or transit pitches in the City was identified. CPP2 is required to review traveller accommodation needs to cover the remaining Plan period to 2030 and facilitate outstanding pitch requirements post 2019 through site allocations or through joint working with adjacent local planning authorities.
58. To underpin CPP2, and meet those CPP1 requirements, the Council undertook an updated GTAA in 2019 [ED04]. That assessed need 2019-2034 and reflected the Government's revised definition for gypsies and travellers in the Planning Policy for Traveller Sites (2015) (PPTS), covering the Brighton & Hove administrative area (including the area within the National Park). That concluded that there was no outstanding need within Brighton & Hove (outside the National Park) to be met by CPP2. However, as set out under my findings in relation to the Duty to Co-operate, the Council continues to work with neighbouring authorities, including the National Park Authority, to meet the outstanding need within the National Park (within Brighton and Hove administrative area) up to 2034. The criteria based part of CPP1 policy CP22 will continue to provide a basis for the assessment of sites should they come forward.



59. No evidence is before me as to whether there is any outstanding need for sites for gypsies and travellers who do not meet the PPTS definition. Whilst any proposals that come forward can be assessed against CPP1 policy CP22, NPPF paragraph 60 confirms that in general terms, such need should be addressed as part of general housing need and planning policies dealing with housing mix and type. NPPF paragraph 62 confirms that the needs of different groups in the community are best assessed at a strategic level. This matter therefore should be considered as part of the review of CPP1. Overall, in respect of this issue, CPP2 has been positively prepared, is justified, effective and consistent with national policy.
60. In my deliberations on this aspect of CPP2, I have had regard to the aims expressed in S149(1) of the Equality Act 2010. The CPP2's approach would be capable of directly benefitting Gypsy and Travellers, who share protected characteristics as defined in S149(7) of that Act. In this way the disadvantages that they suffer would be minimised and their needs met in so far as they are different to those without a relevant protected characteristic. There is no compelling evidence that the approach would bear disproportionately or negatively on them.

### **Conclusion**

61. Overall, I conclude that CPP2 is consistent with the CPP1 strategy and it has been positively prepared, is justified, effective and consistent with national policy in relation to the scale and distribution of development proposed and the approach to site allocations.

## **Issue 2: Whether the CPP2 has been positively prepared and whether it is justified, effective and consistent with national policy in relation to its approach to the supply and delivery of housing?**

### **Meeting the housing requirement**

62. I have previously identified that the role of CPP2, in respect of housing, is confined to allocating additional sites to meet the CPP1 requirement and helping to ensure that housing delivery is maintained over the Plan period, in accordance with the CPP1 spatial strategy. CPP2 also sets out a policy framework, to help in the assessment of development proposals against CPP1 strategic aims.
63. The SHLAA update [ED15] identifies a potential supply of 15,096 dwellings (2010-2030), taking account of deliverable housing from all sources. That figure exceeds the CPP1 requirement. A total of 4,391 net dwellings have already been completed over the CPP1 plan period to date (2010-2020). That leaves a minimum of 8,819 dwellings left to meet the CPP1 requirement.

64. The Council's housing land supply is to a great extent dependent on sites allocated within the CPP1. It is not within my remit to examine the deliverability of those sites. However, some high level examination of the Council's housing land supply is required in order to make the judgement as to whether the CPP2 is meeting the requirements of the CPP1, in its approach to housing supply.
65. CPP2 provides for at least 3,230 dwellings through site allocations, which will contribute 37% of the outstanding CPP1 housing requirement. That contribution to housing supply comprises 1,225 dwellings in DAs (Policies H1, SSA2, SSA4); 2,051 dwellings in the Rest of the City, including 1,106 on strategic and non-strategic sites within the Built-Up Area (Policy H1, SSA1, SSA3); and 899 dwellings on Urban Fringe sites (Policy H2). There is a substantial supply from other sources to contribute to the remainder of the CPP1 requirement. I assess each source below.

### **Large identified sites in DAs (6 plus dwellings)**

66. CPP1 identifies a total housing potential of 6,005 net dwellings to be delivered across eight DAs and sets out an expected quantum for each. CPP2 allocates housing in two strategic sites which fall within DAs identified in CPP1 policy CP1 (SSA2 in DA4 and SSA4 in DA6). Those have a combined capacity of 600 dwellings. In addition, CPP2 policy H1 allocates sites with a combined expected capacity of 625 dwellings. CPP2 therefore allocates 1,225 dwellings within DAs, which accounts for 25% of the remaining CPP1 target for DAs, taking account of net completions since the start of the Plan period (1,041 net dwellings to 2020). That is a meaningful contribution that will help to maintain supply throughout the Plan period.
67. Further, taking account of sites under construction, existing commitments, and land on the Brownfield Land Register, the overall estimated housing supply from DAs totals 6,351 new dwellings. That total would exceed the CPP1 provision figure in policy CP1, thereby providing some headroom should some sites fail to come forward, generally fulfilling the CPP1 requirements.
68. In respect of the distribution of site allocations between the DAs, I am satisfied that the CPP2 site allocations would generally accord with the requirements of CPP1. The total identified housing supply is likely to be above or meet the CPP1 target for four of the DAs. The CPP2 strategic allocations would contribute towards meeting the requirements for DA4 and DA6. Overall dwelling numbers would be lower than the provision in CPP1 for two of the DAs; Brighton Marina/Black Rock Area (DA2) and Lewes Road (DA3). However, CPP1 policy CP1 makes it clear that the expectation is for development to be broadly in line with the distribution set out in that policy. CPP2 allocations will contribute to achieving that.

## **Rest of the City**

69. The CPP1 identified a total potential housing figure of 5,190 net dwellings on large sites in the Rest of the City (outside DAs), comprising 4,130 within the Built Up Area and 1,060 on greenfield sites in the Urban Fringe. Completions to 2020 in the Rest of the City were 1,889; all being within the Built-Up Area.
70. CPP2 allocates sites to contribute 1,106 dwellings within the Built Up Area. That would account for 49% of the outstanding CPP1 requirement (given completions to date). It allocates 899 dwellings within the Urban Fringe, which accounts for 85% of the outstanding CPP1 requirement. Together they would amount to 61% of the remaining CPP1 Rest of the City requirement. As such when taken with allocations in CPP1, and other sources of identified supply, (sites under construction, existing commitments, and land on the Brownfield Land Register), the estimated housing supply in the Rest of the City would be just below the provision set out in CCP1.
71. The shortfall is largely accounted for within the Urban Fringe. However, this is a fairly small shortfall, which responds to the environmental and other constraints that relate to many greenfield sites in the Urban Fringe. All capacity assumptions for proposed allocations are set as indicative. That means that there is scope for more housing to come forward, in line with a design led approach which responds to the environmental constraints of those sites in particular.

## **Small identified sites (5 or less dwellings)**

72. CPP1 identifies a potential supply of 2,015 net dwellings to be delivered on small sites. This includes 765 net dwellings on small sites already identified. Completions on small sites have been roughly double the provision indicated in CPP1 (1,461 net dwellings April 2020) [SHLAA ED15], in addition to dwellings under construction and planning permissions not yet commenced. That figure includes an evidenced 10% non-implementation rate. I find this assessment to be evidence based and justified.
73. CPP1 indicates an expected small sites windfall allowance of 1,250 as part of its housing delivery supply breakdown included in policy CP1. The Council's housing supply assessment has calculated a windfall allowance based on the average net housing delivery over the last five years (2015-2020). This is calculated at 157 dwellings per year (33% of all housing completions over the same period). This has been projected forward as an annual small sites' windfall allowance for the period 2022-2030. Adjustments have been made to avoid double counting with existing planning permissions.
74. Recent changes to national planning policy through expansion of Permitted Development Rights will further increase the potential for

small residential developments through changes of use and extensions. Taking all matters into account, including the higher than expected delivery from small sites over the CPP1 Plan period to date, (1,461 2010-2020), the identification of sites in the most recent SHLAA, and some evidence to indicate that trend should continue in the future, I consider that there is compelling evidence that they will provide a reliable source of supply in the future in accordance with NPPF paragraph 71.

75. CPP2 does not allocate sites below 10 units so does not meaningfully contribute to this source of supply, in accordance with CPP1. However, taking completions, commitments and windfalls into account, the total supply from small sites is significantly above the provision indicated in CPP1.

### **Other sources of supply**

76. The Council includes other sources within its assessment of housing delivery, including prior approvals. It is estimated that this source will deliver 429 net dwellings within the Plan period. In accordance with the SHLAA methodology a 30% non-implementation rate is then applied. Given past delivery rates and the recent expansion of permitted development rights, I consider this to be a realistic assessment of this future supply.
77. The Housing Delivery Action Plan (HDAP) [ED16] commits the Council to a range of actions to boost housing delivery, including accelerating its direct delivery of affordable housing and taking action to unlock stalled sites. The Council's assessment therefore also includes net dwellings delivered through the Council's Estate Regeneration Programme. That commits the Council to deliver at least 500 homes on its own land. Taking account of potential sites under consideration, the extent of the Council's land holdings, and its corporate commitment in this regard, I consider this to be a realistic source of delivery, within the Plan period.
78. The Council's monitoring indicates that housing delivery since the start of the CPP1 period has fallen short of the CPP1 target. However, the SHLAA and the HDAP demonstrate improved housing delivery in 2017/18 and 2019/20. This improved delivery plus the identification of housing sources that will deliver in excess of the CPP1 provides confidence that the CPP1 housing target will be met within the Plan period. In addition, it provides flexibility should some of the sites fail to come forward in that same period.

### **Five year supply**

79. Whilst I am satisfied that the proposals in CPP2 are such that the aims of CPP1 will be met and housing development delivered in accordance with it, it is not appropriate for me to consider specifically

whether the Council has a five year housing supply as part of this Examination. This is because that would require me to examine sites already allocated in other plans that are not before me. Having said that, the Council provided information on its five year supply. That concluded that it would not be able to demonstrate a five year housing land supply on adoption of CPP2; a matter that was undisputed in evidence.

80. The Council, using the most recent published figures setting out the housing land supply position (SHLAA) Update 2021, indicates a five year housing shortfall of 342 net dwellings (equivalent to 4.7 years housing supply). However, since it is more than five years since adoption of CPP1, in accordance with national policy, local housing need must now be calculated using the Government's standard method rather than the CPP1 housing requirement. In addition, the Council is required to apply an additional 35% uplift as one of the top 20 cities in the urban centres list. The local housing need figure using the standard method (including the 35% uplift) is 2,311 homes per year which compares to the CPP1 average annual figure of 660 homes per year. Set against this increased housing need figure, the 5-year housing supply figures (as set out in the SHLAA Update 2020) shows a current shortfall of 6,604 net dwellings (equivalent to 2.2 years of housing supply).
81. Given the City's significant constraints in finding land for housing already outlined, a revised vision and spatial strategy is required to meet that significantly increased housing figure and realise a five year supply. This would require a review of CPP1. That is not within the remit of this Examination. This Examination concerns a subsidiary plan to CPP1, which deals with the allocation of sites for an amount of housing which has already been considered in CPP1 and found sound. The NPPF does not require such a plan to address the question of whether any further housing provision needs to be made.
82. It is clear that the delivery of housing has not been at the pace anticipated and that the monitoring provisions of the CPP1 have been engaged and considered. The LDS indicates that a review of CPP1 will take place early in 2022 with anticipated adoption 2025. The Council has confirmed that this review is underway. However, adoption is some way off.
83. It is acknowledged that the lack of a five year housing supply is a threat to the intended plan led approach of CPP1 and CPP2 when taken together. However, the Plan will still provide more certainty for the CPP2 site allocations and policy framework. It will enable CPP2 to contribute to meeting identified needs. Given the constraints faced by the City, this weakness is not sufficient to render the CPP2 unsound.

Overall, it is better to have a Plan in place, even with some deficiencies. However, this matter will need to be addressed as part of the review of CPP1.

84. My deliberations under Issues 9-12 conclude that I have found compelling evidence that most of the housing site allocations, (bar 3<sup>1</sup>) in the CPP2 have a reasonable prospect of being available and viably developed during the Plan period. In reaching my conclusions, I set out MMs which include site deletions that are generally compensated for through the addition of new sites. The MMs also include deletions of sites that are substantially complete (6 sites within policy H1), together with some minor adjustments to site capacities where necessary. In those regards, the proposed housing site allocations have been identified within the policy framework provided by the CPP1. Within this context there is a reasonable degree of variety in terms of the size, character and location of sites.
85. Taking all of these factors into account and the lower requirement for certainty in terms of specific sites later in the Plan period (NPPF paragraph 68), I consider that the total potential supply of housing sites in the CPP2 will effectively contribute to meeting the residual requirement in the Plan period and there would be some flexibility should sites not come forward as envisaged. In this regard CPP2 would help to meet the objective set out in NPPF paragraph 60, in boosting significantly the supply of homes.

### **Conclusion**

86. Overall, therefore, I conclude that CPP2 has been positively prepared and is justified, effective and consistent with national policy in relation to its approach to the supply and delivery of housing.

### **Issue 3: Whether the CPP2 has been positively prepared and whether it is justified, effective and consistent with national policy in relation to its approach to meeting particular housing needs?**

87. CPP1 policy CP1, seeks to ensure that all new housing development contributes to the creation and/or maintenance of mixed and sustainable communities. In furthering that aim, CPP2 includes a range of policies including Policies DM1-DM8 aimed to deliver a mix and type of housing development to take account of housing needs in the local area. CPP2 policies address the needs of an ageing population, stu-

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<sup>1</sup> Policy H1 Table 6 Land between Marine Drive & rear of 2-18 the Cliff Brighton and 2-16 Coombe Road

Policy H2 Table 8 Land at and adjoining Horsdean Recreation Ground Patcham

dents, those wishing to build their own homes and those with specialist needs or those who are vulnerable. In this regard, CPP2 will help ensure a range of house types, tenures and sizes are provided to support mixed, balanced and sustainable communities to deliver the aims of CPP1 Policy CP1. I consider each in turn below.

### **Policy DM1 Housing quality, choice and mix**

88. Policy DM1 seeks a wide choice of high quality homes which will contribute to the creation of mixed and balanced communities in accordance with national policy. It includes requirements for accessible housing, in terms of accessible and adaptable homes and homes suitable for wheelchair users. The policy wording does not adequately reflect part M4(3) of the Building Regulations or the NPPG, in making a distinction between wheelchair adaptable and wheelchair accessible homes; the latter being applied in circumstances in which the Council has nomination rights. **MM01** will correct this and is necessary to ensure that the policy is justified and effective.

### **Policy DM3 Residential conversions and retention of smaller dwellings**

89. Policy DM3 seeks to protect the City's stock of smaller family homes in response to the identified needs and constrained supply. The threshold of 120 sq m specified in the policy relates directly to the Nationally Described Space Standards (NDSS). It will ensure that any sub-division of existing residential units will provide at least one residential unit of 70+ sq m (i.e. a 2 bedroom 4 person unit), whilst still allowing space for a smaller flat of 50+ sq m (1 bedroom 2 person unit). I consider it to be a reasonable threshold, which will enable the protection of smaller dwellings and the provision of a mix of units using the NDSS as a basis.

90. **MM02** is necessary to clarify what is meant by 'original floor area' to ensure consistency with the Town and Country Planning General Permitted Development Order 2015 as amended and clarify the size requirements of part B of the policy in respect of a minimum of two bedrooms. Both changes are necessary to improve clarity and therefore ensure effectiveness.

### **DM4 Housing and accommodation for older persons**

91. This policy seeks to ensure that there is sufficient supply and range of housing accommodation suitable for older people. Proportionate evidence is provided to demonstrate the local need [ED01] and the policy requirements have been viability tested [OD80a-j]. The supporting text at present is not consistent with the NPPG in respect of the Use Class for extra care/ assisted living. Other detailed changes to the policy wording and supporting text are necessary to support inter-generational communities and ensure the policy requirements are

clear. Those changes are necessary to ensure that the policy is effective in meeting local need, supporting mixed and balanced communities, and consistent with national policy. **MM03** would do this.

### **Policy DM5 Supported accommodation (specialist and vulnerable needs)**

92. Policy DM5 seeks to ensure an appropriate range and supply of residential accommodation for people with special needs. **MM04** clarifies the policy wording to ensure that it clearly indicates the way in which a decision maker would react to a proposal. That change is necessary to ensure that the policy is effective.

### **Policy DM8 Purpose built student accommodation (PBSA)**

93. Policy DM8, together with CPP1 policy CP21, supports PBSA. It requires a predominance of cluster flats within PBSA, to ensure that developments provide suitable accommodation for a broad spectrum of students. However, the requirements are not specific. **MM05** will rectify that by including a specific requirement for at least 50% of bed-spaces to be provided in the form of cluster units as opposed to a predominance. That change is necessary to ensure that the policy is effective. That MM will also update the supporting text to reflect the Council's current practice in controlling access to parking permits, again necessary to ensure effectiveness.

### **Conclusion**

94. I conclude therefore that, subject to the MMs recommended, CPP2 has been positively prepared and is justified, effective and consistent with national policy in relation to its approach to meeting particular housing needs.

## **Issue 4: Whether the CPP2 has been positively prepared and whether it is justified, effective and consistent with national policy in relation to the approach towards building a strong, competitive local economy?**

### **Employment Land**

95. Informed by the Industrial Estates Audit [OD78], CPP2 policy E1 provides the potential for a shortfall in industrial and warehouse floorspace against the CPP1 target to be further reduced. It safeguards the opportunity for new business and warehouse floorspace to come forward during the Plan period, alongside the delivery of a strategic waste facility at Land at Hangleton Bottom. Use of the site for a waste management facility was established through the East Sussex, South Downs and Brighton and Hove Waste and Minerals Site Plan (2017) [CD10b]. Potential for business and floorspace provision was identified through site assessment and



recent developer interest. However, as submitted the policy does not adequately address the constraints of Benfield Valley LWS or any potential impacts on the National Park. **MM47** would address these deficiencies and update the Use Classes to ensure consistency with the Use Classes Order. Those changes are required to ensure that the policy is consistent with national policy, effective and justified.

### **Community Facilities**

96. Policy DM9 supports the provision of new community facilities in appropriate locations and seeks to guard against the unnecessary loss of existing facilities. The criteria in DM9 are considered appropriate and will guard against the unnecessary loss of valued facilities in line with NPPF paragraph 93. However, the policy does not reflect recent changes to the Use Classes Order, or the implications of it, in terms of their location within a retail centre. **MM06 and MM07** would rectify this and ensure consistency with other retail policies in CPP2 (DM12 and 13). Those MMs are necessary to ensure effectiveness and consistency with national policy.
97. Policy DM10 seeks to protect public houses where it is demonstrated that they are economically viable and meeting local community needs. It does not seek to control the loss of ancillary facilities such as gardens, visitor accommodation etc, the loss of which can impact the ability to trade and its attractiveness. **MM08** will rectify this, both in the policy wording and supporting text. It also confirms how proposals for new or extended public houses will be assessed. This MM is necessary to ensure that the policy is effective.

### **Employment**

98. CPP1 Policy CP3 sets out the strategy for safeguarding existing employment land and premises. Part 3 requires the identification and protection of industrial estates and premises and encourages upgrading and refurbishment. Policy DM11 seeks to ensure that new business floorspace is designed to respond to the changing economic conditions and to support economic growth. However, it does not reflect recent changes in the Use Classes Order. **MM09** addresses this and is necessary to ensure that the policy is effective and consistent with national policy.
99. In its categorisation of sub-uses under Class E, it would ensure consistency with CPP1. It would help to ensure that applications for new office floorspace on allocated sites are delivered successfully, to address the City's identified forecast and market demand for office floorspace over the plan period.

## Shopping Centres and Parades

100. Policy DM12 seeks to control changes of use within shopping centres. In identifying primary and secondary shopping frontages and seeking to control changes of use from retail, it is at discord with national policy and fails to reflect recent changes in the Use Classes Order. **MM10** amends the policy and supporting text to support a wide range of uses appropriate to a shopping centre, subject to justified criteria that seek to enhance vitality and viability, in accordance with NPPF paragraph 86. It adds additional criteria to protect the character and appearance of the Lanes and North Laine, given the change in emphasis of the amended policy. In the supporting text, it gives assurance that, in light of the impact of the Covid 19 pandemic, effective monitoring with external organisations as appropriate will take place. Those amendments are necessary to ensure that the policy, as a whole, is positively prepared, justified, effective and consistent with national policy.
101. Post consultation, I have made an amendment to correctly reference other CPP2 policies in DM12 1c; a change that is required to ensure effectiveness. That minor change is included in **MM10**. As it is a factual change, it does not materially affect the content of the MM as published for consultation for the reasons set out in paragraph 4 of this report.
102. Policy DM13 seeks to control changes of use in smaller shopping parades and individual shops. For the same reasons as the previous policy, amendments are required to ensure consistency with national policy and the Use Classes Order and properly reflect associated Permitted Development Rights. **MM11** does this. In addition, it includes changes that restrict the policy to Important Local Parades and refine the criteria for assessing other uses, including removing the threshold on retail units and the need to demonstrate marketing to support a change of use from retail. Those changes are necessary to ensure that the policy is justified, effective and consistent with national policy. The amended policy and supporting text would provide a positive strategy for growth in Important Local Parades, whilst protecting the amenity of neighbouring uses.
103. The same issues relate to policy DM14, which aims to support the commercial and leisure uses at Brighton Marina. It restricts changes of use to retail, commercial and leisure. **MM12** would ensure that the policy supports the range of uses included in Use Class E and F2, which include service and local community uses. It would ensure that the policy as a whole is effective and consistent with national policy.

104. Policy DM15 seeks to control changes of use on the seafront. The restrictions do not accord with the Use Classes Order. **MM13** would address this introducing a wider range of uses according with the Use Classes Order and national policy. Those changes are necessary to ensure consistency with national policy and effectiveness.

### **Conclusion**

105. I conclude therefore that, subject to the MMs recommended, the CPP2's approach towards building a strong, competitive local economy has been positively prepared, is justified, effective and consistent with national policy.

## **Issue 5: Whether the CPP2 has been positively prepared and whether it is justified, effective and consistent with national policy in relation to its approach to design and heritage?**

### **Design**

106. Policy DM18 promotes high quality design in accordance with NPPF paragraphs 126 and 127. The wording of that policy is not clear as to how a decision maker would react to a development proposal, particularly in relation to the requirements for incorporation of public art. **MM14**, clarifies the type of development that should incorporate an artistic element, having regard to the Council's Public Art Strategy. It amends policy wording to ensure the requirement for high quality design is clear and, in the supporting text, clarifies the varying scales of local context, how design can impact the comfort, sociability and image of a place, and clarifies the role of the Urban Design Framework and future design codes in supporting CPP1 and CPP2 design policies. These changes will ensure that the policy is clearly expressed, unambiguous and therefore effective.

107. Policy DM20 seeks to protect the amenity and human health of proposed, existing and nearby users, residents or occupiers. The policy wording fails to capture the full range of harms that can arise to those adjacent and nearby. **MM15** would rectify this. It also provides clarity on the status of Supplementary Planning Document (SPD)17 Urban Design Framework as a factual update. The modification as a whole will ensure that the policy is clearly expressed and effective.

108. Policy DM22 promotes high quality landscape design and protection of trees within new development. Policy requirements as submitted, in relation to the retention of existing trees and hedgerows lack clarity. **MM16** will address this, providing the necessary clarity and explanation in the supporting text of those and other policy requirements, such as the multi-functional uses of existing landscape fea-

tures, in terms of food growing, the role of existing trees and hedgerows in supporting climate change mitigation and resilience. It would also acknowledge other SPD relevant to trees in relation to development, their maintenance and funding. Those changes are necessary to ensure consistency with NPPF paragraph 131 in relation to tree planting and to ensure that the policy is effective.

109. Policy DM25 supports the provision of efficient and reliable digital/electronic and telecommunications infrastructure across the City. At present the policy requirements in relation to heritage assets, new development or major renovation works to existing buildings and the removal of older communications equipment are not clearly expressed. **MM17** clarifies the policy requirements, which is necessary to ensure that the policy is effective and consistent with national policy.

### **Heritage**

110. Policies DM26 and DM27 seek to protect both conservation areas and listed buildings. At present neither properly reflects the heritage balance set out NPPF paragraphs 201-202. **MM18 and MM19** will address this and set out the requirement for a heritage impact assessment where appropriate. Those changes are necessary to ensure that the policies are justified, effective and consistent with national policy.
111. Policy DM28 seeks to identify and protect locally listed buildings. **MM20** is necessary to ensure clarity in the policy provisions in respect of assets identified during or prior to the development process. It also explains the need for a heritage impact assessment in appropriate cases. Those amendments are required to ensure that the policy is justified, effective and consistent with national policy.
112. A specific policy seeks to protect the setting of heritage assets. Policy DM29 does not properly reference the heritage balance set out in NPPF paragraph 201-202, the requirements of NPPF paragraph 199, in according great weight to the conservation of a heritage asset, and does not include a requirement for a heritage impact assessment as appropriate, in accordance with Historic England latest advice. **MM21** would address this and provide clarity in policy wording. Those changes are necessary to ensure that the policy is justified, effective and consistent with national policy.
113. Policy DM30 seeks to preserve or enhance Registered Parks and Gardens. The policy does not properly reflect the heritage balance set out in NPPF paragraph 201-202, require a heritage impact assessment in accordance with Historic England latest advice or clearly express the requirements for temporary uses. **MM22** would

address these deficiencies, which is necessary to ensure the policy is justified, effective and consistent with national policy.

114. The protection of archaeological remains is dealt with in policy DM31. However, that policy does not clearly express the heritage balance set out in NPPF paragraph 201-202, nor the requirement for archaeological field evaluation or survey prior to any determination on a planning proposal. **MM23** would introduce amendments to correct this, which is necessary to ensure that the policy is justified, effective and consistent with national policy.
115. Policy DM32 seeks to preserve or enhance the Royal Pavilion Estate, the building and its gardens. In relation to proposals that seek to re-establish the Royal Pavilion Estate as a single historic estate, the term 'transform' in relation to the quality and infrastructure of the gardens does not properly reflect conservation philosophy. Further, it fails to clearly explain, in the supporting text, the reasons for potential adverse impacts of temporary cultural events on the historic interest of the promenading gardens, in particular on public views and access. It also fails to acknowledge the positive impacts of the 20<sup>th</sup> century restoration scheme. **MM24** would introduce amendments to address those failings, both in policy wording and supporting text, and is necessary to ensure that the policy is clear and unambiguous and thereby effective.

### **Conclusion**

116. I conclude therefore that, subject to the MMs recommended, the CPP2's approach towards design and heritage has been positively prepared, is justified, effective and consistent with national policy.

### **Issue 6: Whether the CPP2 has been positively prepared and whether it is justified effective and consistent with national policy in relation to its approach to transport?**

117. Policy DM33 promotes and provides for sustainable transport. In requiring development to be in line with subsequent revisions to the parking standards set out within CPP2, the policy would not be effective, as an update to the parking standards must take place through a review of CPP2. In addition, requiring high quality specific facilities that encourage and enable cycling in all development, would be onerous. **MM25** addresses these points, clarifies that non-standard cycles include cycles designed for those with disabilities and provides factual updates and references to relevant national and local documents. Those changes are required to ensure that the policy is clear, unambiguous and effective when read as a whole.

118. Policy DM34 supports the development of purpose-built transport interchanges, including park and ride facilities and coach stations. It does not correctly explain the role of the Local Transport Plan in progressing the provision of strategic transport interchange facilities. **MM26** will correct this and provide accurate reference to national policy and guidance, all of which is necessary to ensure that the policy is clear, unambiguous and effective.
119. Policy DM35 sets out the requirements for transport plans and assessments in seeking to reduce traffic generation and encouraging sustainable forms of transport. The requirements in relation to major development in Air Quality Management Areas (AQMA) are ambiguous and the requirement for development to be in accordance with locally derived untested standards renders the policy ineffective. **MM27** provides necessary changes in those respects. It also clarifies that any impacts on air quality are assessed within a transport statement or assessment, including the need for an air quality assessment. This is necessary to ensure that the policy is consistent with national policy and effective.
120. CPP2 parking and servicing requirements are expressed in policy DM36. It requires development to accord with any subsequent revisions to the Council's parking standards (expressed in SPD and CPP2 appendix 2). As any revisions to an SPD cannot change a policy requirement and any revision to CPP2 would need to be made through an update to the Plan, the policy would not be effective. **MM28** addresses this and in the supporting text clarifies how the Council can ensure that developments are permit free when applicable. These changes are necessary to ensure that the policy is effective.

## **Conclusion**

121. I conclude therefore that, subject to the MMs recommended, the CPP2's approach towards transport has been positively prepared, is justified, effective and consistent with national policy.

## **Issue 7: Whether CPP2 has been positively prepared and whether it is justified, effective and consistent with national policy in relation to its approach to the environment and energy?**

122. CPP2's requirements for green infrastructure and nature conservation are set out in Policy DM37. As submitted the policy fails on a number of fronts. Overall, it is not clearly structured, so as to set overarching principles up front, followed by specific requirements

relating to the hierarchy of designations. Due to this and failings of the detailed policy wording and omissions, overall, it does not appropriately reflect national policy in relation to net gain or the mitigation hierarchy. In those respects, it also fails to clearly set out that all proposals liable to affect green infrastructure and nature conservation must be supported by assessment and mitigation measures. Furthermore, provisions in relation to Internationally Protected Sites do not accurately reflect the Conservation of Habitats and Species Regulations (2012) (as amended) (the Habitats Regulations). In addition, it does not accord with national policy and the mitigation hierarchy in relation to nationally protected sites, implying that the loss of a nationally designated site can be mitigated. Finally, no reference is made of the Beachy Head West Marine Conservation Zone. As such it does not cover all appropriate designations.

123. Given the extent of amendment necessary, **MM29** effectively rewrites the policy to address these failings. In short it has a new structure, with provisions that clearly set out the mitigation hierarchy as an overarching principle and ensure requirements for internationally protected sites appropriately reflect the Habitats Regulations. It amends provisions in relation to nationally protected sites to ensure alignment with national policy, stating that biodiversity net gain principles cannot be used to assess impacts on statutory sites and that provision relating to locally protected sites accords with the mitigation hierarchy. It also ensures that any on or off site additional measurable net gains are part of the local strategic ecological network, ensuring that they are local to the designated site. Those changes are necessary to ensure that the policy accords with national policy, is clear in its requirements and therefore is effective.
124. Much concern was expressed regarding this policy and extensive discussion took place at hearings. Most concerns are addressed in the MM proposed. Overall, I consider, in relation to the nature conservation requirements, that the use of the word 'protected and notable species' referring to protection under the Habitats Regulations, Wildlife & Countryside Act and Natural Environment and Rural Communities Act, is more encompassing than priority species. It would include notable species such as swifts, of particular relevance to the City.
125. In relation to internationally protected sites, the inclusion of text that explains the application of the Habitats Regulations, although it repeats national policy, has a useful purpose and does not make the

policy as modified unsound. In relation to locally designated sites, clearly setting out that sites allocated in CPP2 could be an exception to the general protection accorded to locally protected sites, would ensure that the policy would be effective. Without this, the site allocations would not be justified and effective. In addition, the policy wording overall, recognises that there could be adverse impacts but those would have to be mitigated in accordance with the policy provisions. In this respect, policy DM37 generally accords with the NPPF when read as a whole, including paragraph 179, which seeks to identify, map and safeguard components of local wildlife rich habitats and wider ecological networks.

126. Policy DM38 designates a number of Local Green Spaces and sets out a policy framework to ensure their protection. The list of four were initially identified through the UFA (2014) [ED21], as part of a comprehensive assessment of the Urban Fringe. Generally, those are green wedges into the urban area, which act as wildlife corridors and important routes for people wishing to access the National Park. Concerns regarding the methodology used and those sites not included in the list were addressed in subsequent studies [ED22 and ED24]. Overall, I find that the designations proposed have been identified through the application of an appropriate and robust methodology that accords with the criteria set out in NPPF paragraph 102. Each site is in reasonable proximity to the community it serves, demonstrably special to the local community and local in character. It is acknowledged that the methodology included the exercise of professional judgement, both in site selection and boundaries. However, that judgement has been fairly and reasonably applied.
127. A number of representors put forward sites for inclusion in the policy. The Council has carried out a detailed site assessment [TP04] of promoted smaller City sites. However, a comprehensive assessment of all sites in the Built Up Area has not been undertaken. Insufficient evidence is therefore available to support inclusion of these sites, particularly in relation to value to the local community and their demonstrable special qualities.
128. In relation to Urban Fringe sites, I have a significant number of representations requesting that Whitehawk Hill LNR and the wider Racecourse landscape should be included as a Local Green Space. That is a large site extending to some 50 hectares, and an even greater area if surrounding open space is included. It covers an extensive area of the Urban Fringe. I consider that it therefore falls within the definition of an extensive tract of land, rather than being local in character. Its designation would meet neither national policy



nor guidance. Representors suggested the designation of part of that land and put forward suggested boundaries. However, I have limited substantive evidence to identify robust boundaries to identify a smaller designation. There may be scope for further sites to be designated through the preparation of neighbourhood plans subject to meeting NPPF criteria. The omission of Whitehawk Hill LNR and Racecourse landscape does not render CPP2 unsound in this regard.

129. Policy DM39 seeks to control development on the seafront, requiring account to be taken of conditions in the coastal zone and where appropriate the provision of coastal defences. The policy does not clearly accord with the mitigation hierarchy set out in NPPF paragraph 180, in relation to designated sites and incorrectly references untested documents. **MM30** rectifies this, making it clear that development affecting the Marine Conservation Zone will need to accord with the mitigation hierarchy set out in policy DM37 and sets out the requirement, where appropriate, for a Marine Conservation Zone Assessment.
130. Policy DM40 seeks development that does not give rise to nuisance and/or pollution. Requirements in relation to emissions from transport, heat and power systems and new biomass combustion and combined heat and power plants in relation to AQMAs are not clear, and the lighting requirements are restricted to outdoor lighting only. In addition, it inappropriately refers to compliance with untested local documents. **MM31** addresses these failings and in the supporting text clarifies the potential impacts of internal lighting referring to best practice guidance. These changes are necessary to ensure that the policy is effective.
131. Policy DM41 ensures that development proposals do not prejudice health, safety, natural capital or the City's environment. The policy requirements are ambiguous. **MM32** introduces wording that clearly sets out the circumstances in which planning permission will be granted. That is necessary to ensure that the policy is clear and effective.
132. Policy DM43 sets out the requirement for Sustainable Urban Drainage Systems (SUDs) in new development. It does not clearly set out the need to consider SUDs as an integral part of the design process. **MM33** encourages a landscape led approach, integrating SUDs into the early design process in accordance with best practice. That, together with correct referencing to untested documents, introduced in **MM33**, is a necessary change to ensure that the policy is effective.

133. Policy DM44 encourages energy efficiency and reduction in carbon dioxide emissions in new development. That policy does not clearly set out its relationship with the requirements of CPP1 CP8, which deals with sustainable buildings. Further, the extent of the policy requirement, which includes changes of use, conversions and non-residential development are not clear and do not appropriately take account of the emerging Future Homes Standards and Building Standards. **MM34** restructures the policy and changes detailed wording to ensure the remit of the policy and its requirements are clear, refers to the Future Home Standards and Future Buildings Standards to ensure that the policy is future proofed and explains the additions and the supporting information requirements in the supporting text. These changes are required to ensure that the policy is effective and consistent with national policy.
134. Policy DM46 encourages the inclusion of integrated heat and communal heating systems, where appropriate. **MM35** is necessary to ensure that the policy correctly refers to guidance that does not have the status of the development plan. That change is required to ensure that the policy is effective.

### **Conclusion**

135. I conclude therefore that, subject to the MMs recommended, CPP2's approach towards the environment and energy has been positively prepared, is justified, effective and consistent with national policy.

### **Issue 8: Whether the Special Area policy (Benfield Valley) has been positively prepared, is justified, effective and consistent with national policy?**

136. Special Area policy SA7 Benfield Valley aims to facilitate the positive and ongoing management and maintenance of the area's open spaces, wildlife and heritage assets and to improve and enhance public access and connectivity with adjoining urban areas including the National Park. It is a strategically important green space in the west of the City which is a LWS, an important open space for local communities and an important green wedge linking the urban area to the National Park. It includes heritage assets; a listed barn and surrounding conservation area, along with a broad and linear area designated in CPP2 as a Local Green Space; a designation that I have previously found to be sound. That designation will help to ensure the Valley's green wedge landscape role in the City and to protect its character.
137. Part of the open space, to the north and south of Hangleton Lane is designated as a policy H2 housing allocation. Those sites are within

the least sensitive part of the open space, being visually relatively contained. It has been demonstrated that there is the potential to mitigate the adverse impacts of development. However, given the area's significance within the City and the prospect of development on the H2 allocated sites<sup>2</sup> I consider that a strategic approach to the area's management and maintenance is justified.

138. Furthermore, the policy does not refer to the policies map and the requirement for a landscape and visual impact assessment to inform landscape led masterplans to accompany residential development is not clear. **MM36** would address this, which is necessary to render the policy effective.

### **Conclusion**

139. I conclude therefore that, subject to the MM recommended, the CPP2's approach towards the identified Special Area policy has been positively prepared, is justified, effective and consistent with national policy.

## **Issue 9: Whether the CPP2 strategic allocations have been positively prepared, are justified, effective and consistent with national policy?**

### **SSA1 Brighton General Hospital site**

140. Policy SSA1 allocates Brighton General Hospital for comprehensive redevelopment to include health, care, community facilities and a minimum of 200 dwellings.
141. The City's hospital site is a brownfield site. It occupies a prominent and elevated position on a high ridge to the east of the City. The main Arundel building with its later infirmary and workhouse blocks form a group of landmark buildings. Prominent mature trees, hedgerows and planting complement the walled enclosure. Its redevelopment has the potential to meet City-wide priorities through the reprovision of new purpose built health and care facilities alongside new housing and community facilities.
142. The policy, as submitted, does not accurately reflect national policy in relation to the conservation of heritage assets, including the listed building, its setting and the non-designated assets. Further provisions are not sufficient to ensure the protection of any swift colonies, which are notable species. Additionally, the provisions refer to outdated Use Classes Order. **MM37** addresses all these points, both within the

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<sup>2</sup> Assessed at paragraphs 186-187 of this report

policy wording and supporting text and ensures that the policy is justified, effective and consistent with national policy.

### **SSA2 Combined Engineering Depot**

143. Comprising operational railway land, this site sits adjacent to Brighton mainline station. The site falls within CPP1 policy DA4, which seeks a co-ordinated use of this mixed use area. It contains some railway buildings, set within a deep cutting contained within the railway lines and the main road. Close to the listed railway station, viaduct and West Hill Conservation Area, this mixed use allocation adequately takes account of its heritage neighbours. However, it fails to make provision for the potential railway heritage within its site. **MM38** therefore sets out the potential for heritage assets meeting the criteria for non-designated assets within the site and the need for a heritage impact assessment to accompany any planning application. It also amends the Use Classes of the workspace and managed starter units promoted in the allocation to accord with the most recent changes to the Use Classes Order. These changes are necessary to ensure that the policy is effective.

### **SSA3 Land at Lyon Close**

144. This site includes a range of buildings, including office buildings and retail warehouses. The allocation promotes housing and the provision/retention of 5,700 sqm of flexible business floorspace, which recognises the changing nature of employment in this area of the City.
145. Representors questioned the quantum and mix of uses promoted within this allocation. However, several developments have already come forward that have defined site capacity and proposed uses and are a strong indicator of the site's deliverability within the Plan period.
146. However, the policy does not refer to the current Use Classes Order and inappropriately refers to untested documents. **MM39** would address that and ensure that the policy is effective.

### **SSA4 Sackville Trading Estate and Coal Yard**

147. This allocation relates to a trading estate with retail warehouses and some light industrial and storage units, along with a car pound and coal yard. Planning permission has been granted for its comprehensive redevelopment and during hearings site clearance was underway. The permission has defined the site capacity and indicates deliverability.
148. **MM40** corrects the Use Classes referred to in the policy, ensures protection for groundwater sources and includes a number of factual updates relating to the Urban Design Framework and the Hove

Station Area SPDs. Together, those changes are necessary to ensure that the policy is clear, unambiguous and effective.

### **SSA5 Madeira Terrace and Madeira Drive and SSA6 Former Peter Pan leisure site**

149. SSA5 and SSA6 are sites with unique development requirements, the latter being a seafront site sitting within the Madeira Terrace and Drive locality. They both contribute to the restoration and revitalisation of the Madeira Terrace and Madeira Drive part of the seafront, which requires regeneration and investment to better relate to the area of the seafront to the west of the Palace Pier. The policies support the strategic approach to regeneration of this area set out in CPP1 policy SA1. Heritage and biodiversity impacts are key considerations and the CPP2 policies contain appropriate criteria to ensure that development impacts on designated sites and heritage assets are appropriately mitigated.
150. However, alterations to both policies are necessary to ensure effectiveness and that they accord with national policy. **MM41** ensures that SSA5 refers to the current Use Classes Order, ensures proposals respect heritage assets, provides factual updates to the status of some listed buildings, refers to the conservation management plan and Eastern Seafront Masterplan SPD and clarifies the scale and type of visitor accommodation promoted. It also refers to the potential to improve access to Madeira Parade and Madeira Drive by reopening the closed staircases or improving lift access between the two.
151. **MM42**, in relation to SSA6, ensures Use Classes are up to date, updates the At Risk status of some listed buildings and sets out how potential impacts should be assessed. That MM is necessary to ensure effectiveness.

### **SSA7 Land adjacent to American Express Community Stadium**

152. The SA identified this site to have potential for employment uses. The policy complements a similar policy in the adjoining adopted Lewes Local Plan Part Two [OD83]. The site is close to the National Park and appropriate criteria are included to ensure impacts on the National Park and its setting are appropriately mitigated. Site capacity has been identified through pre-application discussions. The requirement for sustainable transport infrastructure is justified, given the proximity of sustainable transport options. In addition, CPP1 policy CP9 requires development in such locations to minimise and mitigate car use. The requirement for a training place agreement, is justified on the basis of the additional development that would come forward, regardless of training provided by the Community Stadium

at present. At the end of the day both requirements will be tested through the development management function.

153. **MM43** corrects the Use Classes of development supported by the policy and sets out the requirement for a heritage impact assessment. That is required to accord with national policy and to protect the setting of the Registered Park and Garden at Stanmer Park, and the listed buildings of the University of Sussex campus. All changes are necessary to ensure consistency with national policy and effectiveness.

### **Conclusion**

154. I conclude therefore that, subject to the MMs recommended, CPP2's approach towards the allocation of strategic sites has been positively prepared, is justified, effective and consistent with national policy.

### **Issue 10: Whether the CPP2 housing and mixed use allocations have been positively prepared, are justified, effective and consistent with national policy?**

155. Policy H1 allocates a list of housing and mixed use sites, identified in accordance with the methodology set out in paragraphs 44-46 of this report. CPP2 table 6 sets out residential allocations and clarification of permitted additional uses, whilst CPP2 table 7 lists mixed use housing allocations and sets out minimum policy requirements for other acceptable uses.
156. Amendments to policy H1 are necessary to replace 'minimum' residential units with 'indicative'. That wording will provide a reasonable degree of certainty about the scale of development (and allow overall supply to be calculated), whilst providing flexibility to allow a design-led approach. That would not discount the potential for sites to deliver more or less housing should detailed design indicate.
157. Sites of less than one hectare allocated in CPP2 will contribute approximately 17% towards the outstanding CPP1 requirement. Overall, the Council estimates that approximately 60% of the CPP1 housing target is likely to be provided on sites of less than one hectare within the Plan period. That is well above the minimum 10% required by national policy (NPPF paragraph 69a). This should be clarified in this policy. Correction of the Use Classes referred to in tables 6 and 7, in accordance with recent updates, is required to ensure compliance with national policy.

158. Sites which are complete or substantially complete should be deleted from the list<sup>3</sup>. In addition, I have concluded that some sites are not available/deliverable/developable within the Plan period. Those sites should be removed from the tables, and others I have found sound that have become available and are deliverable or developable within the Plan period should be added. My reasoning on each change is below. Associated alterations to overall numbers should be made. **MM44** addresses all of these matters and is necessary to ensure that the policy has been positively prepared, consistent with national policy, is justified and effective. My reasoning for changes in relation to proposed allocations are set out below.

#### **Land at Marine Drive and rear of 2-18 The Cliff**

159. This is a greenfield site allocated for 10 residential units. It was an allocation in the previous Plan and was granted planning permission for 16 low density and low environmental impact dwellings. That planning permission has now lapsed. Since that time the site has been designated as a LWS. I have limited substantive evidence to assure me that any impacts of development could be mitigated or indeed that biodiversity net gains could be delivered. Reducing the number of dwellings does not alleviate my concern in this regard. On this basis I am not assured that the site could be delivered within the Plan period, if at all. It should therefore be deleted.

#### **2-16 Coombe Road**

160. This site is in use by a storage company and is proposed for allocation of 33 dwellings with business space on the ground floor. The landowner has confirmed that the site will not be delivered within the Plan period. That is an impediment to its timely delivery. It should therefore be deleted. This and the site deletion referred to in the previous paragraph are included within **MM44**; changes that are necessary to ensure that the Plan is positively prepared, justified and effective.

#### **Land at corner of Fox Way and Foredown Road**

161. This is a privately owned greenfield site, fronting two roads, within a low density residential area. Whilst it is presently publicly accessible, it is unknown whether access is authorised. It is allocated for 10 dwellings.

162. However, the site has outline planning permission for 14 dwellings. That confirms developer interest and gives assurance on site capacity. Whilst there are some constraints to development, including a small area at low risk of flooding and biodiversity concerns, the

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<sup>3</sup> 87 Preston Road; George Cooper House; Whitehawk Clinic; Buckley Close Garages; 189 Kingsway; Kings House, Grand Avenue.

planning permission indicates that mitigation is possible. The indicative number of residential dwellings should therefore be increased in accordance with the most recent planning permission. That change is included within **MM44** and is necessary to ensure that the Plan is positively prepared, justified and effective.

### **Land between Manchester Street/Charles Street**

163. This site is centrally located and is currently in use as a car park. It is allocated for 12 dwellings, with the potential for some business or entertainment uses. Whilst it was previously allocated for a greater number of residential units, at the landowner's request provision for commercial uses was included as part of **MM44**.

164. As amended the allocation does not set a maximum number of dwellings, or the requirement for a mix. Rather it expresses an indicative dwelling number and other permitted uses. The indicative dwelling number or indeed the scale of development generally, could be increased if that is justified through a detailed examination of site specific considerations. Given on site heritage constraints the site capacity and proposed use is justified. I have no reason to consider the allocation unsound. It is justified, the policy effective and consistent with national policy as amended by **MM44**.

165. An allocation for commercial use, with no housing, would fail to make best use of a brownfield urban site and would not contribute towards meeting the significant need for housing in the area.

### **71-76 Church Street**

166. **MM44** includes a reduction in the capacity of this site from 50 to 10 dwellings with employment floorspace allocated in the northern part of the site. The policy as submitted did not take full account of the constraints relating to the listed former drill hall in the northern part of the site. The landowner's feasibility work indicating a greater capacity is predicated on the demolition of that listed structure. Given the heritage constraints and nature of the former drill hall, a reduced dwelling capacity is justified. Further, the former drill hall is likely to be able to accommodate sensitive adaptation to E Class uses, rather than the amount of intervention likely to be associated with a residential use. Taking all these matters into consideration, this change is necessary to ensure that the allocation is consistent with national policy, justified and effective.

### **Saunders Glassworks**

167. This site is centrally located near Brighton commercial centre. A former glassworks, it has an extant planning permission for 49 dwellings, site clearance has been carried out and it is in use as a



coach park. That provides confidence that the site is suitable, available and provides some justification for the site capacity proposed. Given on site conditions, some additional E class uses could be accommodated. That change is included in the **MM44**. It will ensure best use of previously developed land, that the allocation is consistent with national policy, justified and effective.

### **154 Old Shoreham Road**

168. This is an omission site. Currently a furniture store, it is within CPP1 policy DA6. That is a mixed-use area, adjacent to the Sackville Estate (SSA4). The site is promoted for inclusion as a housing allocation for an indicative 30 units, with ground floor E Class uses, intended to help activate the frontage. The site capacity accords with the 100dph density expected in the CCP1 policy DA6. That density is justified, given the highway, potential contamination, ground water flooding and other site constraints. The site has been put forward as an allocation by the landowner which indicates its availability. It should therefore be included as an allocation to help meet the overall shortfall in housing. That change is included in the **MM44**. It will ensure best use of previously developed land, that the allocation is consistent with national policy, justified and effective.

### **Land at Preston Road/ Campbell Road**

169. This is another omission site. This site is located within CPP1 policy DA4 and is in active Class B2 use. It is relatively back land in nature, enclosed on all sides by either residential or commercial uses, and railway embankment or viaduct. It has a limited outlook. Given the minimum densities sought by CPP1 policy DA4, the heritage constraints, including the listed railway viaduct, policy constraints relating to any loss of B2 uses and the impact of development on future occupiers and those nearby, the relatively low proposed site capacity is justified. Developer interest has been confirmed indicating its availability. Taking all matters into consideration, the site is suitable and available for development within the Plan period. It should therefore be included as an allocation to help meet the need for housing. That change is included in the **MM44** and is necessary to ensure consistency with national policy, and that the Plan is positively prepared, justified and effective.

170. Changes throughout the policy have been made by **MM44** to ensure consistency with the current Use Classes Order; a change required to ensure effectiveness and consistency with national policy.

### **Conclusion**

171. I conclude therefore that, subject to the MM recommended, the CPP2's approach towards the allocation of housing and mixed use

sites has been positively prepared, is justified, effective and consistent with national policy.

**Issue 11: Whether the CPP2 housing allocations in the Urban Fringe have been positively prepared, are justified, effective and consistent with national policy?**

172. Policy H2 allocates a list of housing sites within the Urban Fringe, identified in accordance with the methodology set out in paragraphs 47-50 of this report. Table 8 lists the allocations, along with critical information including the site area, area of development potential, potential dwellings numbers, indicative percentage of family homes and an indication of key considerations in relation to each site.
173. A significant number of representations relate to the principle of allocation of land in the Urban Fringe. However, that matter was dealt with in CPP1. Allocations in the Urban Fringe are a requirement of CPP1 policy CP1, which sets a minimum housing requirement of 1,060 on greenfield sites in the Urban Fringe to be allocated in CPP2. To be consistent with CPP1, CPP2 will need to deliver that requirement.
174. In accordance with my findings in paragraphs 47-50 of this report, the methodology used to identify sites is thorough and robust. It is based on a comprehensive assessment that then goes on to assess each site, its constraints and potential to accommodate development. It also addresses specific concerns raised regarding potential constraints to development including landscape, ecology and archaeological constraints.
175. Some sites included LWS and LNR. This attracted objection in principle. I have dealt with this matter in paragraphs 47-50 of this report. Suffice to say here that the CPP1 Examination established the need to identify some housing in the Urban Fringe, including considering development potential on sites not subject to national designations. That is included within CPP1 policy CP1. In this respect, CPP2 accords with CPP1.
176. Some objected to the visual impacts of proposals. Whilst I accept that development on these sites is likely to have some visual impact, I am content that, in each case, site specific mitigation would be capable of mitigating harms as identified in the UFA studies [ED21-24].
177. Table 8 refers to 'potential' number of dwellings. That implies a cap on the number of dwellings that could come forward. Amendment is necessary to replace 'potential' with 'indicative'. That wording will provide a reasonable degree of certainty about the scale of development (and allow overall supply to be calculated) whilst

providing flexibility to allow a design-led approach. That would not discount the potential for sites to deliver more or less housing should detailed design indicate.

178. In addition, clarification that all development is expected to include a proportion of serviced plots for self and custom build dwellings is required to ensure that CPP2 accords with NPPF paragraph 62 in relation to those types of dwelling. That will help to meet the needs of those wishing to commission or build their own homes enabling the Council to deliver its statutory duty in this regard<sup>4</sup>.
179. Corrections to terms such as ecological impact assessment and heritage statement are required for clarity, along with clarification of the ecological assessments underpinning the allocations undertaken to date. **MM45** addresses these matters and is necessary to ensure that the policy, as a whole is justified, effective and consistent with national policy.
180. Sixteen sites are proposed for allocation, some of which have planning permission. Robust evidence was presented indicating that most sites are available, suitable and likely to come forward within the Plan period. I address particular matters relating to individual sites below.

#### **Land at former nursery Saltdean**

181. The landscape appraisal in the 2021 UFA update recommends that existing boundary vegetation around the northern and western sides of the site should be retained. That would reduce the developable area of the site, which would reduce the dwelling yield. **MM45** includes an amendment to reduce the area of site with development potential from 0.96ha to 0.75ha and reduce the number of dwelling units from 24 to 18. That would result in a developable area of just over 75% of the total site area. These amendments are necessary to ensure that the policy is justified, effective and consistent with national policy. **MM49** amends the boundary indicated on the site map of this allocation in CPP2 appendix 4. That is necessary for the same reasons.

#### **Land at and adjoining Horsdean Recreation Ground Patcham**

182. Patcham Court Field has recently been designated as a LWS. Following ecological assessment in the UFA 2021 Update, it was concluded that the proposed scale and extent of development (25 dwellings) could not be achieved without causing a significant loss of habitat that contributes to the LWS. The significant mitigation required would be unachievable within the allocation, even with a lower dwelling number of 10. In summary, ecological constraints

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<sup>4</sup> Self Building and Custom Housebuilding Act 2015

indicate that this site should be deleted. **MM45** does just that and is necessary to ensure that the Plan is justified, effective and consistent with national policy. **MM49** deletes the site map of this allocation in CPP2 appendix 4. That is necessary for the same reason.

### **Land at and adjoining Brighton Race Course (Land at Whitehawk Hill)**

183. A proposal to develop this site for 200 dwellings was not pursued by Homes for Brighton & Hove (the Council's joint venture partnership with the Hyde Group) in 2019. That was because the proposal would be challenging in terms of financial viability, due to a number of significant access and technical difficulties requiring significant structural/engineering works. Those technical challenges were found to harmfully impact development viability.
184. However, the structural/engineering requirements for a smaller scale development such as in this allocation would be less significant. This allocation is for 30 dwellings. Sufficient information has been provided to convince me that a significantly smaller development would not impact viability in a similar way.
185. Full recognition has been given to the site's location within a LNR and LWS and the potential impacts of development have been carefully considered through the methodology outlined in paragraphs 47-50 of this report. Whilst the allocation is located within the central part of the LNR, it includes a very small proportion of it. It would not result in the loss of any habitats for which the LNR and LWS are designated. In addition, the scale and density of development would allow for mitigation to compensate for loss of other habitats and features, which contribute to the LNR's overall diversity and ecological value, including the dense scrub.
186. Whilst it would inevitably narrow the semi-natural corridor within the LNR as a whole, an ecological network would still persist. That would avoid fragmentation of the LNR as a whole. There would be potential to deliver biodiversity net gains that could enhance the ecological features for which the LNR is designated. Further, the proposed development would be located adjacent to existing, which would reduce its visual impact.
187. Overall, I am satisfied that mitigation could significantly reduce any adverse impacts of development, so as to avoid unacceptable harm. Any development proposals will be subject to all development plan policies and further tested through the development management process.

## **Benfield Valley**

188. The suggested boundary and scale of housing accords with the conclusions of the ecological and landscape assessments undertaken as part of the UFA, supplemented by the UFA 2021 Update. At the hearings additional evidence from the County Ecologist and County Landscape Architect was heard that supported those conclusions. Additional justification including assessment of impacts on ecology, historic environment, open space, accessibility, highways, and transport is provided in the Benfield Valley Topic Paper [TP05].
189. Overall, the allocated land, on either side of Hangleton Lane, would be a small part of the overall area. The more sensitive northern part of the open space would be free of development. The allocation would enable the open space as a whole to still function as a 'green wedge' into the urban area and maintain the north-south visual and wildlife corridors. They would be located some distance from heritage assets. The terms of the policy, clearly set out the criteria required to assess any development proposal, which would also be subject to other development plan policies. The policy recognises that more detailed ecological assessments will be required at the planning application stage to identify specific development impacts, and to further inform any appropriate mitigation requirements. Overall, I find that the allocation of the two sites is soundly based.

## **Conclusion**

190. I conclude therefore that, subject to MMs recommended, the Plan's approach towards the allocation of sites in the Urban Fringe has been positively prepared, is justified, effective and consistent with national policy.

## **Issue 12: Whether the CPP2 PBSA has been positively prepared, is justified, effective and consistent with national policy?**

191. Policy H3 allocates three sites for PBSA, setting indicative bedspaces and other required uses in CPP2 table 9. Sites have been identified and assessed in accordance with the methodology set out in paragraphs 44-46 of my report, which I have previously found to be robust and justified.
192. As the London Road site is now substantially complete it should be removed from the list. In addition, the site capacity for the Hollingdean Road site should be increased in accordance with a recent planning permission and the site address amended. Those matters are corrected by **MM46**. That modification also includes reference to Ground Water Protection Zones, which is required to ensure ground

water resources are protected in accordance with CPP2 policy DM42. That will ensure consistency with other CPP2 allocations. Those changes are necessary to ensure that the policy is justified, effective and consistent with national policy.

### **Conclusion**

193. I conclude therefore that, subject to the MM recommended, the CPP2's approach towards the allocation of PBSA sites has been positively prepared, is justified, effective and consistent with national policy.

### **Issue 13: Whether the CPP2 is positively prepared and is justified, effective and consistent with national policy and CPP1 in relation to its approach to infrastructure viability and monitoring?**

#### **Infrastructure**

194. Infrastructure requirements to support planned development were comprehensively considered through the preparation and Examination of the CPP1. CPP1 policy CP7, sets out the approach to identifying infrastructure requirements through the Infrastructure Delivery Plan (Annex 2) and securing appropriate developer contributions towards infrastructure through S106 planning obligations. Since then, the Council has adopted its Community Infrastructure Levy (CIL) charging schedule.

195. Where appropriate, CPP2 identifies specific infrastructure required to support planned development associated with specific designations and site allocations.

196. In relation to traffic infrastructure requirements, updated traffic modelling considered the cumulative impacts of planned development on the strategic road network. Traffic modelling supported the quantum of development in CPP1. Additional updated modelling assessed the need for updated junction mitigation as a result of the distribution of development supported in CPP2. A SoCG between the Council and National Highways sets out agreement that mitigation measures, in principle, are realistically achievable and a solid basis for successfully mitigating the strategic road network impacts attributable to this Plan [BHCC34]. A positive policy framework will support its provision.

#### **Viability**

197. As part of the preparation and formal Examination of CPP1, the Council was required to produce a whole plan Combined Policy Viability Study. That study took account of all policy requirements to ensure that, taken together, they would not undermine the deliverability

of the Plan as a whole. The role of the CPP2 is to assist in the implementation and delivery of the adopted CPP1. In only a few policy areas does it introduce additional policy requirements, as previously identified.

198. The CIL Viability Studies [OD80a-j] build upon and assist in updating the CPP1 viability evidence base. They take account of all the relevant CPP1 policy requirements and factor in additional CPP2 ones to ensure that a CIL would not prevent chargeable forms of development coming forward.
199. Where policy requirements in CPP2 go beyond what was required in CPP1 (e.g. the standards set in DM44 for all types of development), it is clearly acknowledged that viability considerations will be taken into account when considering development proposals. That will ensure development is not unduly prohibited from coming forward. Generally, I am content that viability assessments were undertaken in accordance with relevant national guidance and that they are proportionate and robust.

### **Monitoring**

200. CPP1 Annex 1 Implementation and Monitoring [CD02] sets out the key monitoring indicators and targets and identifies how the CPP1 will be implemented. CPP2 is accompanied by Implementation and Monitoring Targets [SD04, as modified by Table 2 of BHCC49, in light of discussion at hearings]. It is proposed that these monitoring targets will be included in an updated Annex 1 [CD02] to the CPP1. This will be updated as an addendum following adoption of the CPP2.
201. The monitoring framework includes specific and measurable indicators and targets as applicable and actions to be taken if a target is not achieved. Many of the indicators have been used in previous Plans and have been found to be effective. Together they will enable assessment as to whether the policies are being delivered.
202. As the parking standards set out in CPP2 Appendix 2 refer to outdated Use Classes, **MM48**, which addresses this, is required to ensure consistency with national policy, and that relevant policies are justified, effective and consistent with national policy.

### **Conclusion**

203. I conclude therefore that, subject to the MM recommended, the CPP2's approach towards infrastructure, viability and monitoring has been positively prepared, is justified, effective and consistent with national policy.

## **Overall Conclusion and Recommendation**

204. The CPP2 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 explained in the main issues set out above.

205. The Council has requested that I recommend MMs to make the CPP2 sound and capable of adoption. I conclude that the Duty to Co-operate has been met and that with the recommended MMs set out in the Appendix the CPP2 satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

*R Barrett*

Inspector

This report is accompanied by an Appendix containing the MMs.