

# Advice note to Chichester District Council – Strategic Infrastructure Constraints

April 2021

## 1. Introduction and Purpose

1. The Planning Advisory Service (PAS) is providing ‘critical friend’ support to Chichester District Council (CDC) in relation to strategic infrastructure issues impacting on the Chichester Plan area. Considerable constraints exist in relation to the capacity (both short and long term) of Wastewater Treatment Works (WwTW) and the strategic road network to serve future planned development. The brief for the support is appended to this advice note (Appendix A) which provides a detailed background to the context and the nature and detail of the support request.
2. This support and advice note follows the provision of critical friend support in defining the approach and programme for the Local Plan review in 2019 and in relation to the production of an Interim Position Statement for Housing Development in 2020.
3. Section 2 of this advice note starts by providing a summary of the relevant national guidance which is pertinent to the issues being addressed. It then considers the relevant local position and context in relation to the strategic infrastructure constraints.
4. Section 3 draws together advice and matters for further consideration by the Council arising from an analysis of the relevant context and a range of relevant case studies.
5. Section 4 provides a summary of conclusions and recommendations arising from the advice note.
6. **This note is advisory only and does not constitute a legal opinion. It may be advisable for the Council to seek legal advice in order to confirm and / or supplement the advice provided within this advice note.**

## 2. Context

### National

7. The National Planning Policy Framework includes a number of requirements relevant to the consideration of strategic infrastructure constraints. These can be summarised as follows:
- Plans and decisions should apply a presumption in favour of sustainable development. Strategic policies of Local Plans should, **as a minimum**, provide for objectively assessed needs for housing, as well as any needs that cannot be met within neighbouring areas<sup>1</sup>, **unless the application of policies in this Framework<sup>2</sup> that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole** (paragraph 11).
  - Strategic policies in the Local Plan should make sufficient provision for housing (in line with the presumption in favour of sustainable development), infrastructure for transport, and infrastructure for wastewater (paragraph 20)
  - Strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, **such as those arising from major improvements in infrastructure** (paragraph 22).
  - Planning policies should identify a supply of specific deliverable sites for years one to five of the plan period, and **specific developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan** (paragraph 67). ***To be considered developable, sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.***
  - Effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, **joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere** (paragraph 26).
  - In order to demonstrate effective and on-going joint working, **strategic policymaking authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these.** These should be produced using the approach set out in national planning guidance, and **be made publicly available throughout the plan-making process to provide transparency** (paragraph 27).

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<sup>1</sup> as established through Statements of Common Ground

<sup>2</sup> habitats sites and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park or defined as Heritage Coast; irreplaceable habitats; designated heritage assets; and areas at risk of flooding or coastal change.

- Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). **Such policies should not undermine the deliverability of the plan** (paragraph 34).
- **Planning policies should seek to address potential barriers to investment, such as inadequate infrastructure**, services or housing, or a poor environment and be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances (paragraph 81).
- **Transport issues should be considered from the earliest stages of plan-making and development proposals, so that: a) the potential impacts of development on transport networks can be addressed; b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised** – for example in relation to the scale, location or density of development that can be accommodated; c) opportunities to promote walking, cycling and public transport use are identified and pursued; d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places (paragraph 102).
- Planning policies should: a) support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities; b) be prepared **with the active involvement of local highways authorities, other transport infrastructure providers and operators and neighbouring councils, so that strategies and investments for supporting sustainable transport and development patterns are aligned**; c) identify and protect, where there is robust evidence, sites and routes which could be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development; d) provide for high quality walking and cycling networks and supporting facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans); e) provide for any large scale transport facilities that need to be located in the area, and the infrastructure and wider development required to support their operation, expansion and contribution to the wider economy (paragraph 104).
- **Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe** (paragraph 109).
- Planning policies and decisions should support development that makes efficient use of land, taking into account: a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it; b) local market conditions and viability; c) **the availability and capacity of infrastructure and services – both existing and proposed – as well as their**

**potential for further improvement and the scope to promote sustainable travel modes that limit future car use;** d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and e) the importance of securing well-designed, attractive and healthy places (paragraph 122).

8. The NPPF is supplemented by Planning Practice Guidance (PPG). Guidance which is relevant to the consideration of strategic infrastructure constraints in this context can be summarised as follows:

- The statement(s) of common ground should provide evidence of effective cooperation between the local planning authority (LPA) and infrastructure providers as to strategic cross-boundary infrastructure requirements. Where effective cross-boundary working can be demonstrated in the statement(s) of common ground, this could be used as evidence when trying to secure grants for infrastructure where effective joint working forms part of the assessment criteria.
- A statement of common ground is a written record of the progress made by strategic policy-making authorities during the process of planning for strategic cross-boundary matters. It documents where effective co-operation is and is not happening throughout the plan-making process, and is a way of demonstrating at examination that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries. In the case of local planning authorities, it also forms part of the evidence required to demonstrate that they have complied with the duty to cooperate.
- A statement of common ground is expected to contain the housing requirements in any adopted and (if known) emerging strategic policies relevant to housing within the area covered by the statement, distribution of needs in the area as agreed through the plan-making process, or the process for agreeing the distribution of need (including unmet need) across the area.
- When authorities are in a position to detail the distribution of identified needs in the defined area, the statement will be expected to set out information on: a. the capacity within the strategic policy-making authority area(s) covered by the statement to meet their own identified needs; b. the extent of any unmet need within the strategic policy-making authority area(s); and c. agreements (or disagreements) between strategic policy-making authorities about the extent to which these unmet needs are capable of being redistributed within the wider area covered by the statement.
- Statements need be prepared and then maintained on an on-going basis throughout the plan making process. As a minimum, a statement needs to be published when the area it covers and the governance arrangements for the cooperation process have been defined, and substantive matters to be addressed are determined. If all the information required is not available (such as details of agreements on strategic matters) authorities can use the statements to identify the outstanding matters which need to be addressed, the process for reaching agreements on these and (if possible) indicate when the statement is likely to be updated.

- Authorities should have made a statement of common ground available on their website by the time they publish their draft plan, in order to provide communities and other stakeholders with a transparent picture of how they have collaborated.
- Infrastructure providers should be considered as additional signatories to the statement(s) of common ground. They have no responsibility for publishing, maintaining or updating the statement(s).
- A plan is an opportunity for the strategic policy-making authority to set out a positive vision for the area, but the plan should also be realistic about what can be achieved and when. This means paying careful attention to providing an adequate supply of land, identifying what infrastructure is required and how it can be funded and brought forward. At an early stage in the plan-making process strategic policy-making authorities will need to work alongside infrastructure providers, service delivery organisations, other strategic bodies such as Local Enterprise Partnerships, developers, landowners and site promoters. A collaborative approach is expected to be taken to identifying infrastructure deficits and requirements, and opportunities for addressing them. In doing so they will need to:
  - assess the quality and capacity of infrastructure, and its ability to meet forecast demands. Where deficiencies are identified, policies should set out how those deficiencies will be addressed; and
  - take account of the need for strategic infrastructure, including nationally significant infrastructure, within their areas.
- Where plans are looking to plan for longer term growth through new settlements, or significant extensions to existing villages and towns, it is recognised that there may not be certainty and/or the funding secured for necessary strategic infrastructure at the time the plan is produced. In these circumstances strategic policy-making authorities will be expected to demonstrate that there is a reasonable prospect that the proposals can be developed within the timescales envisaged.
- In order to demonstrate that there is a reasonable prospect these large scale developments can come forward, strategic policy-making authorities are expected to make a realistic assessment about the prospect of sites being developed (and associated delivery rates). Strategic policy-making authorities will need to demonstrate they have engaged with infrastructure providers, ensuring that they are aware of the nature and scale of the proposals, and work collaboratively to ensure that the infrastructure requirements are not beyond what could reasonably be considered to be achievable within the planned timescales. The authority can use statements of common ground, or other evidence, to detail agreements with infrastructure providers which confirm this and set out the further work which they will undertake to support the long-term delivery of the strategy.
- Infrastructure providers should, so far as possible, seek to plan for longer-term infrastructure requirements set out within adopted plans and reflect this in their funding and investment decisions.

- The strategic policy-making authority can use subsequent plans and plan reviews as an opportunity to provide greater certainty about the delivery of the agreed strategy. Annual reviews of the infrastructure funding statement should feed back into review of plans to ensure that plans remain deliverable. Should issues arise which would adversely affect the delivery of the adopted strategy then the authority should consider alternative strategies, through a plan review, if these issues are unlikely to be resolved.
  - The transport evidence base should identify the opportunities for encouraging a shift to more sustainable transport usage, where reasonable to do so; and highlight the infrastructure requirements for inclusion in infrastructure spending plans linked to the Community Infrastructure Levy, section 106 provisions and other funding sources.
  - A stepped housing requirement may be appropriate where there is to be a significant change in the level of housing requirement between emerging and previous policies and / or where strategic sites will have a phased delivery or are likely to be delivered later in the plan period. Strategic policy-makers will need to identify the stepped requirement in strategic housing policy, and to set out evidence to support this approach, and not seek to unnecessarily delay meeting identified development needs. Stepped requirements will need to ensure that planned housing requirements are met fully within the plan period.
  - Where there is evidence to support a prioritisation of sites, local authorities may wish to identify priority sites which can be delivered earlier in the plan period, such as those on brownfield land and where there is supporting infrastructure in place e.g. transport hubs. These sites will provide additional flexibility and more certainty that authorities will be able to demonstrate a sufficient supply of deliverable sites against the housing requirement.
9. Planning Practice Guidance makes reference to the Department for Transport Circular from 2013 *'The Strategic Road Network and the Delivery of Sustainable Development'*. This provides further context for how the LPA should manage and mitigate impacts on the strategic road network both through Local Plans and development management decisions. It states that:
- Where the overall forecast demand on transport infrastructure will surpass capacity at the time of opening of the development, then capacity mitigation will be sought. Capacity enhancement measures and the infrastructure required to deliver strategic growth should be identified at the plan-making stage. Mitigation of development impacts on capacity will be required at the time of opening and funded through agreement with the Secretary of State for Transport.
  - Where the residual cumulative impacts of development are severe, development proposals should be prevented or refused on transport grounds.
  - 'Severe' is not defined in the circular or in the NPPF. In *R. v Tunbridge Wells BC (2020)*, it was explained that recent judgements have suggested the term refers to a severe and serious adverse impact on safety and efficiency. The judge also stated

that 'severe' remains a matter of judgement for the decision-maker, informed by technical information.

### Local

10. The Council has produced (or is currently producing) a wide range of evidence which examines and details the wastewater and strategic transport constraints that exist in the context of both plan-making and development management. Work is also being undertaken to consider the potential impacts of nitrates in Chichester Harbour. The following sub-sections briefly summarise key relevant documentation which is pertinent to this advice note.

#### *Wastewater constraints*

11. The emerging Infrastructure Delivery Plan to support the Local Plan Review includes the following summary in relation to wastewater infrastructure constraints:

*“Southern Water is the statutory sewerage undertaker for most of West Sussex. There is a sewerage system, which is operated mainly under gravity, throughout Chichester Local Plan Area with limited spare capacity at Chichester (Apuldram) Wastewater Treatment Works (WwTW). Upgrades to Tangmere WwTW have now been completed, generating additional capacity to accommodate growth set out in the adopted Chichester Local Plan 2014-2029.”*

12. The Chichester Water Quality Assessment was published in 2018. The assessment was produced with the Environment Agency and reviewed the ability of the WwTW to manage pressures arising from proposed new development being considered as part of the emerging Local Plan Review in order to inform the Habitats Regulation Assessment. The Assessment highlighted a number of concerns as to whether the necessary measures can and will be delivered within the plan period. The assessment of existing capacity is now being updated and reviewed with Southern Water and the Environment Agency.
13. A joint Position Statement has been produced by the Environment Agency and Southern Water (with the involvement of the Chichester Water Quality Group) on managing new housing development in the Apuldram (Chichester) Wastewater Treatment Works Catchment recognising the capacity constraints that exist. This seeks to provide guiding principles for development proposals within the Apuldram WwTW catchment, including seeking major development proposals to demonstrate that no net increase in flows to the sewer network would occur arising from the proposed development. It also recognises that larger scale developments will be expected to drain to alternative WwTW once a new sewer pipeline connection is operational.
14. The Council continues to work closely with all relevant parties to secure appropriate solutions to enable growth being planned as part of the Local Plan Review to take place. However, the Council has expressed concerns in relation to the performance of Southern Water in carrying out its statutory obligations, and particularly how additional capacity can and will be provided in the wastewater treatment network which serves the plan area to provide for the additional capacity needed to accommodate increased housing growth, whilst ensuring that environmental harm does not occur. In addition, the Council is concerned that responses received from Southern Water in response to consultations on planning applications do not appear to be consistent with concerns being expressed in

relation to the emerging Local Plan Review. It is unclear how Southern Water are factoring in concerns relating to the cumulative impact of other development under construction or planned.

15. At its meeting on 24 November 2020, the Council resolved to write to OFWAT to express its serious concerns about the performance of Southern Water and request intervention. A letter was sent accordingly to the Chief Executive of OFWAT on 7 December 2020.
16. At the present time it remains unclear how much growth can be accommodated within the constraints that exist, and when future upgrades may be in place to accommodate further growth. This poses considerable difficulty for the Local Plan Review.

#### *Nitrates*

17. In addition to the consideration of physical capacity at the WWTW to serve planned development, the Council is also required to consider and assess the potential impacts of nitrates in Chichester Harbour, associated with waste water treatment. The emerging Infrastructure Delivery Plan to support the Local Plan Review includes the following summary in relation to wastewater infrastructure constraints:

*“Waste water treatment is not constrained in pure engineering or economic terms but constraints exist relating to licencing of discharges to controlled waters, where extra discharge may pose a risk to protected waters, especially Natura 2000 sites (Special Protection Areas and Special Areas of Conservation) and RAMSAR sites. Additional treatment capacity could be provided but may require new technologies.”*

18. Recent advice obtained from AECOM (HRA consultants to the Council) indicates that:

*“From reviewing all the steps that the Council has already undertaken it is clear that they are exploring every possibility for solving the nutrient neutrality issue for the Local Plan Review area and AECOM has not identified any measures that the Council is not exploring. However, it must be reiterated that a strategic solution for at least the first 5 years of plan delivery (including windfall) will need identifying as firmly as possible before the Local Plan and its HRA are submitted for Examination. Broad solutions for the remainder of the plan period, at least in terms of options for further exploration, should also be identified before plan submission.”*

#### *Strategic Transport constraints*

19. In 2013 the then Highways Agency provided a position statement in respect of the Local Plan that was then under production. This indicated that the Highways Agency were content with the overall scale of infrastructure mitigation measures being proposed, and that the impact arising from growth proposed by the Local Plan was not considered to be ‘severe’.
20. In December 2014, the Government published its first Roads Investment Strategy which included a commitment to improving the A27 Chichester Bypass. During 2016/7, Highways England undertook a consultation on a number of options for improvement schemes to the A27 Chichester Bypass. The responses received during the consultation highlighted the lack of community support for the options as presented by Highways England. By February 2017, Highways England had been instructed by the Secretary of State to no longer progress the project.

21. In December 2017, SYSTRA were commissioned by WSCC to produce a high level wider study, 'Build A Better A27 Study', as part of work to inform possible future A27 Chichester Bypass schemes that could be included in Highways England's Road Investment Strategy (RIS2) for the period 2020/2021 to 2024/2025.
22. When RIS 2 was published in March 2020, the A27 Chichester was identified as a "pipeline project". As such, some initial funding was identified to progress technical work on a potential scheme for inclusion in RIS3.
23. In 2018 the Council published the Transport Study of Strategic Development Options and Sustainable Transport Measures produced by Peter Brett Associates (Stantec) to inform the Local Plan Review. This study sought to understand the impacts on the existing highway network of the planned level of growth in the Local Plan Review, and to identify suitable mitigation measures accordingly. Committed development, together with planned mitigation schemes, in neighbouring Arun District and Havant District has been factored into the modelling work undertaken.
24. The Study identified mitigation measures required to satisfactorily address impacts arising from the emerging growth strategy. The total estimated costs for the mitigation measures ranged from £50.57 million to £67.1 million. By far the most significant scheme identified is for the A27 Corridor including a Stockbridge Link Road. The estimated costs for the whole corridor range from £48.04 million to £64.57 million. The mitigation schemes (including a new Stockbridge Link Road which would remove a large number of trips from the A27 and at key junctions) will not resolve the longstanding capacity issues relating to the A27, but instead will simply retain the level of queues and delays ensuring that the situation does not deteriorate further as a result of planned development.
25. The Stockbridge Link is a scheme that has been previously considered in part by Highways England within proposals for highway improvements for the wider strategic highway network. The scheme would offer benefits to the network, but may be constrained by a range of factors, including ecology, drainage, flood risk, landscape / visual impact and land ownership. The scheme is expected to require external funding.
26. The Chichester Infrastructure Delivery Plan (IDP) 2016-2035 provides the following summary of the current position:

*"There have been longstanding plans by Highways England to resolve the congestion problems of the A27 corridor, including the Chichester Bypass. The District Council has developed proposed improvements to the six junctions on the A27 to mitigate the impact of the plan development. Meeting the substantial cost of delivering this mitigation will require cooperation between local authorities and pooling of resources.*

*The A27 is the main trunk road along the south coast and as such there are cross-boundary issues with the neighbouring District of Arun, and Borough of Havant. The impacts of planned developments in these neighbouring authorities will need to be taken into account in planning improvements.*

*Highways England is responsible for the A27 trunk road, including the Chichester Bypass.*

*Funding for Strategic Road Network mitigation will be sourced through potential government and regional grants and developer contributions where viable. The Council works in partnership with Highways England and West Sussex County Council to pursue common transport goals, which will include potential new road infrastructure on or around the strategic road network, as well as changing travel behaviours and promoting the use of more sustainable modes of transport.”*

27. Emerging work undertaken by the Council indicates that developer contributions alone will not be capable of meeting the level of costs required to mitigate impacts on the strategic highway network without rendering development unviable. As a result, the necessary mitigation measures will most likely require significant external funding. At this point in time there is no certainty as to how and when that funding will be available.

*Chichester Local Plan – Inspectors Report*

28. In May 2015 the Inspector appointed to undertake the Independent Examination of the Chichester Local Plan published his report. The report confirmed that the Plan could be adopted by the Council with a housing requirement below the objectively assessed needs for housing at that time, but would need to be reviewed within five years of adoption.
29. The Inspector concluded that it was “*common ground that development in the Plan area is constrained by flood risk, environmental designations such as Chichester Harbour AONB, the SDNP and a number of designated or candidate sites of international importance for nature conservation*”. However, he found that some parts of the evidence base had used the annual housing requirement in the Plan of 410 units as a starting point in order to provide justification for this as a maximum – a figure that corresponded with the housing requirement arising from the revoked South East Plan. He also found that any increase in the housing supply in the Plan would be constrained by the limitations of the Transport Study. The figure of 415 units per annum was considered as an absolute constraint based on current transport evidence, as it did not allow for higher growth scenarios to be tested. However, the Inspector felt that on balance it was preferable to allow for the Plan to be adopted subject to a review and further work to assess highway infrastructure requirements.

*“Halting the Plan at this stage would allow an up to date transport study to be undertaken to include testing up to the agreed OAN. However the transportation situation is complex and at present there are uncertainties about the timing and detail of the A27 upgrade. Furthermore failure to adopt the Plan at this stage would delay delivery of the area’s strategic priorities and weaken the Council’s ability to ensure that development is sustainable. It would hinder the planned delivery of appropriate infrastructure to support development. In addition any delay now would undermine the momentum and the very positive work that has been carried out by local communities in preparation of NPs. For these reasons I conclude that the Plan should be adopted now, subject to a commitment to a review to be completed within five years. This will ensure that housing delivery after the first five years of the Plan period can be updated to take account of emerging evidence on highway infrastructure and rigorous testing of the impacts of providing housing up to the OAN or any updated OAN.”*

*Interim Position Statement*

30. In November 2020 the Council published an Interim Position Statement for Housing Development. The Statement does not seek to alter the statutory and/or non-statutory planning policy framework for decision-making. Rather, it sets out how the Council is taking a proactive approach in seeking to boost its supply of housing, and reflects adopted and emerging plan work, in order to provide a mechanism for the Council to provide clarity and confidence in relation to how planning applications should be determined in the interim period until the Local Plan Review is adopted.
31. The Local List includes the requirement for applicants to submit an interim position statement justification to demonstrate how the proposal would accord with all of the requirements contained within the Interim Position Statement.

### 3. Advice and Matters for Further Consideration

#### Meeting objectively assessed housing needs and the Duty to Cooperate

32. National planning policy is clear that Local Plans should positively seek opportunities to meet the development needs of their area, in addition to being sufficiently flexible to adapt to rapid change. Wherever possible, Local Plans should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas.
33. In producing and finalising the Local Plan Review the Council therefore must firstly clearly and robustly quantify objectively assessed needs in accordance with the PPG, based on utilising the standard methodology as a starting point. Consideration also needs to be given to the unmet needs of neighbouring areas. Once this has been determined and agreed in accordance with the Duty to Cooperate through statement(s) of common ground, the next stage is to consider to what extent the Local Plan Review is capable of meeting the identified need, with reference to paragraph 11b and footnote 6 of the NPPF, being cognisant of other relevant national planning policy requirements.
34. In the case of the Chichester Local Plan Review, the circumstances theoretically exist to enable the Council to justify not meeting the full objectively assessed needs for development if it can be demonstrated that to do so would be contrary to national policy in respect of the relevant constraints listed in footnote 6 of the NPPF (habitats sites and/or designated as Sites of Special Scientific Interest; areas at risk of flooding or coastal change; Areas of Outstanding Natural Beauty; and a National Park) or that the adverse impacts of meeting needs would significantly and demonstrably outweigh the benefits.
35. National planning policy has a clear expectation that development needs should be met wherever possible. To justify not meeting development needs the Council would need to demonstrate that 'no stone has been left unturned' in seeking to ensure that the development needs of the plan area are being met as far as possible, including seeking to obtain agreement from neighbouring areas that any unmet needs may be accommodated. To not meet development needs in full would place the onus fully on the Council to present a clear and convincing evidence-based justification to the independent examination as to how all attempts had been made to meet development needs both within the plan area and further afield, and that it was simply not possible or practical to do so within the parameters of the NPPF.
36. It is of crucial importance that the Council ensures that effective ongoing cooperation with neighbouring LPAs, relevant statutory consultees and infrastructure providers is documented in a published statement(s) of common ground at the earliest possible opportunity, and certainly no later than the publication of the 'Regulation 19' Submission Version of the Local Plan Review. This should follow guidance contained in the [PPG](#) and the advice and template produced by the [Planning Advisory Service](#). Importantly, the statement(s) of common ground should detail the distribution of identified development needs within the area, including the extent of any unmet needs, in addition to how strategic infrastructure needs are to be addressed. The need for improvements to wastewater treatment capacity and for strategic improvements to the A27 are strategic cross-boundary issues which have the potential to constrain growth in Chichester District and beyond. Indeed, it is clear that future growth plans in both Arun District and Havant Borough, and

potentially the wider sub-regions, will be constrained without sufficient upgrades. A joined up approach should be pursued as far as possible to address these constraints together with the relevant statutory consultees and agencies, and this should be documented within the statement(s) of common ground. Should the Council ultimately reach the conclusion that the objectively assessed needs of the plan area cannot be met in light of the evidence, the statement(s) of common ground will provide essential evidence in providing the necessary justification that the duty to cooperate has been met. The Council will need to be clear what role, if any, strategic planning relating to Local Strategic Statement 3 will have in addressing infrastructure and housing needs over the medium to long term, and how this may impact upon the later years of the plan period.

37. A number of recent Local Plan independent examinations have shown the critical importance of demonstrating that the Duty to Cooperate has been met, particularly in terms of the consideration of unmet housing needs:
38. In early 2020 the Inspector appointed to undertake the Independent examination of the [Wealden Local Plan](#) recommended that the Council should withdraw the Local Plan because there had been “*a lack of constructive engagement with neighbouring authorities and Natural England in respect of impacts on habitats and landscape and in respect of the issue of unmet housing need in Eastbourne*”.
39. In October 2019 the Inspector appointed to undertake the Independent examination of the [Sevenoaks Local Plan](#) wrote to the Council to recommend withdrawal due to a lack of constructive engagement with neighbouring authorities with regard to addressing Sevenoaks’ unmet housing need. The Inspector flagged that clear evidence of positive engagement with neighbouring authorities in order to resolve the issue of unmet needs on a cross-boundary basis did not exist in a positive form, and that the issues were not adequately resolved before submission.
40. In the Inspectors Report to the South Downs National Park Local Plan examination in 2019 the Inspector found that the Authority had complied with the Duty to Cooperate through the provision of Statements of Common Ground with neighbouring authorities to seek to accommodate, as far as possible, the balance of housing need that cannot be met within the Park. The Inspector concluded that:
 

*“there is no statutory or policy obligation upon the SDNPA to provide for its entire OAN, given there is robust evidence that the development capacity of the Park falls demonstrably below it. I consider that the arrangements for the unmet need to be accommodated have progressed as far as can reasonably be expected, consistent with the NPPF and regard them as adequate for the purposes of this Plan.”*
41. **The case studies highlight that if the Council is to pursue and successfully justify a strategy which does not meet the needs of the plan area as a result of infrastructure and / or environmental constraints, let alone the unmet needs of neighbouring LPAs, the Council must clearly demonstrate why the needs of the plan area cannot be met with reference to national planning policy (particularly paragraph 11(b) and footnote 6 of the NPPF). Adequate mechanisms must be in place, together with a clear commitment from all relevant parties through a statement(s) of common ground to address unmet needs in the plan area and potentially beyond. Where robust evidence exists that development,**

**capacity does not exist to enable full needs to be met, the Council must be able to demonstrate that arrangements for addressing unmet need have progressed as far as reasonably can be expected.**

#### Infrastructure constraints limiting growth

42. National planning policy is clear that Local Plans should seek to facilitate transportation and wastewater infrastructure improvements to enable planned growth to be accommodated. It is recognised that such improvements may take time to be delivered, particularly where they are reliant on developer contributions, and that such contributions should not be so onerous as to potentially jeopardise the viability and deliverability of the Local Plan.
43. National planning policy and guidance recognises that external Government funding may be required to unlock major infrastructure upgrades. LPAs should work with statutory agencies and infrastructure providers to ensure that strategic infrastructure improvements are included in relevant business plans, and that infrastructure requirements to support planned growth *“are not beyond what could reasonably be considered to be achievable within the planned timescales”*. National planning policy also recognises that funding gaps may exist at the time a Local Plan is adopted, and that regular local plan reviews as required by paragraph 33 of the NPPF can provide an effective mechanism to update a Local Plan to reflect changing circumstances over time.
44. In October 2020 the Inspector appointed to undertake the Independent Examination of the [Welwyn-Hatfield Local Plan](#) provided his preliminary conclusions and advice in relation to the Local Plan which had been submitted for examination in May 2017. He stated:
 

*“The evidence before the examination suggests that parts of the A1M and the A1000, the main north south road links, and the A414, which provides east-west links to Hertford, St Albans and beyond, are already heavily congested at peak periods. There are no guarantees that necessary road improvements, to facilitate the free flow of traffic along these routes, will be implemented in a timely manner during the plan period. In such circumstances an overall strategy that led to an increase in net in-commuting would not be sustainable and should not be found sound. Indeed, the Council should be seeking to reduce the necessity for high levels of in-commuting through the plan’s housing proposals”*
45. After a prolonged examination of over three years the Inspector has now required the Council to either propose additional housing sites, sufficient to meet the objectively assessed housing needs or withdraw the Local Plan from examination.
46. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, the Council has been required by the Inspector to explore all possible avenues to ensure that housing needs will be met despite the lack of certainty that heavy congestion on the strategic road network can or will be addressed through upgrades over the course of the plan period. The Inspector has accepted that upgrades may not be in place, but instead expects the Council to find ways to seek to redress the high levels of in-commuting which are exacerbating congestion, whilst still meeting housing needs through the Local Plan.**
47. On the other hand, in late December 2020, the Inspector appointed to undertake the Independent Examination of the [Tandridge Local Plan](#) wrote to the Council to express

concern in relation to the cumulative impact of growth planned in Tandridge District and nearby areas which may contribute towards capacity issues at Junction 6 of the M25. He states:

*“In the absence of the certainty in delivery of transport mitigation, it is uncertain which, if any, of the Plans proposals may go ahead without residual cumulative impacts of development on the transport network being severe in terms of the Framework? These are significant concerns which go to the heart of the Plan.”*

48. The Inspector concludes that:

*“It is clear to me that there are specific policies of the Framework which indicate that development should be restricted in Tandridge and that in principle, the Plan would be sound in not meeting the OAN in full.”*

49. He goes on to state that the Plan needs to be redrawn to provide for recalibrated growth levels that take into account the constraints in light of an updated and agreed objectively assessed need figure and for a range of concerns relating to soundness to be addressed, or for the Council to withdraw the Plan and reconsider it.

50. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, the Inspector has determined that the Plan would not be ‘sound’ in meeting local housing needs in full. Having considered the evidence the Inspector has concluded that the Plan would be likely to have a ‘severe’ impact on the strategic highway network without necessary certainty that the required strategic highway improvements can be funded and delivered within the plan period.**

51. The [Maldon Local Development Plan](#) (LDP) was adopted in 2017 and was prepared in the context of significant infrastructure constraints on future growth, and therefore provides a helpful case study – although it should be borne in mind that the Plan was examined under the provisions of the NPPF 2012.

52. The District of Maldon, in east Essex, is predominantly rural. Through the production of the LDP the Council was required to plan for significantly higher growth levels than had historically been delivered in the District. This posed considerable challenges given the limited infrastructure capacity available to support higher growth levels. Particular constraints related to secondary school provision, highway capacity and sewerage capacity in the Maldon / Heybridge area (the largest urban area in the District). Growth in Burnham-on-Crouch (the only other town) was also limited by primary school capacity. Whilst the levels of growth required represented significant increases on historic levels, they were not considered high enough in themselves to viably justify significant new strategic infrastructure upgrades such as new roads or a new secondary school.

53. Through the production of the LDP it became apparent that growth requirements could (just) be accommodated within the limitations of the infrastructure available with suitable upgrades being made during the course of the plan period. However, as the Maldon and Heybridge area is only served by one secondary school, the school would be required to grow in size to the upper limit of acceptability. Any more growth than that planned in the LDP would require a new secondary school and significant sewerage infrastructure upgrades, which would not be viable or achievable with a radically higher level of growth.

Significant concerns were raised by neighbouring Chelmsford City Council about the impact that planned growth would have on the A414 which connects Maldon with Chelmsford. However, as the only 'A' road serving the District, it was inevitable that growth requirements would impact upon the road. Planned growth in Burnham-on-Crouch could be accommodated within existing primary school capacity, but any higher levels of growth would require a new school, which was not considered to be viable or achievable.

54. The Council was required to demonstrate and ensure that the available infrastructure capacity would be sufficient to support the delivery of growth planned through the LDP. This situation was made more challenging by the fact that the LDP examination extended over a number of years, during which time the Council was unable to demonstrate the existence of a five-year housing land supply. This resulted in the submission of a large number of 'speculative' planning applications. During this period the Council had to determine each application on its merits in accordance with the presumption in favour of sustainable development, whilst being mindful that each additional consent would 'eat away' at the limited available infrastructure capacity. The Council was frequently put in a difficult position when determining planning applications prior to the adoption of the LDP, particularly where infrastructure providers did not (or were not able to) consider the cumulative implications of the proposal that was subject to a planning application alongside the emerging (not yet adopted) LDP. Generally speaking, infrastructure providers did not feel able to object to such schemes.
55. In response to these challenges, the Council produced its own [advisory statement](#) on this matter, to ensure that the decision maker should consider cumulative infrastructure requirements even where infrastructure providers did not object to specific 'speculative' planning proposals. In other words, the decision maker had a responsibility to consider cumulative implications of growth proposals on infrastructure capacity even where the infrastructure provider did not raise an objection. However, any determination of 'prematurity' would need to be taken with great care and reference to national planning policy and guidance.
56. Throughout the production of the LDP the Council worked closely with infrastructure providers, and particularly Essex County Council, to consider how growth requirements could be accommodated within the constraints that existed. The Council produced various iterations of the [Infrastructure Delivery Plan](#) (IDP), and a detailed infrastructure phasing plan during the independent examination of the Plan. In his [report](#) of the examination the Inspector commented as follows on the approach of the IDP and Infrastructure Phasing Plan:

*“Within the IDP is the Infrastructure Phasing Plan ('the IPP'). This has also been revised on a number of occasions throughout the examination. The most up-to-date version is in the Housing Update. This is a chart that sets out the proposed strategic allocations and the housing delivery for each on a year-by-year basis. It also lists the infrastructure requirements, indicates the site or sites reliant on its delivery and illustrates, again on a year-by-year basis, the timing of the infrastructure delivery relative to the associated housing delivery. Infrastructure costs and funding sources are also shown, including the sites from which contributions are expected. In short, it sets out what infrastructure is needed, where and when it is needed, how it will be*

*delivered and who is expected to pay for it. This is reflected in Policies S4 and S6...In my view, stemming from the IDP and the evidence informing it, the IPP is a detailed piece of work. I understand from the hearings that it has been drawn up in close consultation with the site promoters and infrastructure providers involved. This is a laudable approach. It lends confidence that the necessary delivery of infrastructure has been properly thought through. In my view, it represents a satisfactorily robust assessment."*

57. The Inspector went on to consider the approach to the provision of the necessary infrastructure alongside housing:

*"Looking at the IPP and Policies S4 and S6 which reflect it, it is wholly evident that the proposed Garden Suburb sites and other strategic allocations require a substantial level of infrastructure to support their development. To put it simply, the list is long and costly. In my view, this is a significant issue for the soundness of the Plan. I note the points raised about the timing of new education provision and housing. But if housing delivery were to slip, so too would the need for the school and early years provision. Setting the delivery of one relative to the other is a matter for the Council to ensure through planning obligations or possibly through planning conditions imposed on permissions. I see no reason why one or the other of these mechanisms could not provide adequate controls. It is clear to me that highways and schools capacity in Maldon and Heybridge, and the capacity of schools in the Burnham and Southminster grouping, is a significant constraint to new residential development above that proposed through the allocations in Policy S2. There is no evidence that a greater level of housing could be satisfactorily accommodated."*

58. Through the examination the issue of applying 'caps' to development was considered. Whilst capping development was not considered to be justified the Inspector concluded as follows:

*"I have considered the necessity for unequivocal 'caps' to explicitly prevent any further housing. However, in the absence of any clear evidential basis, that course would not be adequately justified. Rather, it is more appropriate in my view to ensure that any additional residential development is strictly limited."*

59. Main modifications were inserted into the policies of the LDP to make it clear that significant infrastructure constraints exist which strictly limit the capacity for development. Relevant policies in the adopted Plan explicitly state that the Council will resist proposals unless they can be accommodated without prejudicing or delaying the proposed allocations or planned infrastructure improvements.
60. The Plan takes a flexible approach to overcoming capacity constraints associated with the sewer network in the Maldon and Heybridge area. Paragraphs 2.56 and 2.58 points to the need for upgrades to the existing foul main. But Policy S4 requires that *"adequate provision is made for enhanced and comprehensive sewerage infrastructure"*. These are not prescriptive policies and allow for flexibility. In effect they leave the detailed matter of the precise solution to be decided at the relevant planning application stage.

61. In relation to the constraints that existed on the strategic highways network and the concerns that were raised regarding capacity through the independent examination, the Inspector concluded:

*“Paragraph 32 of the Framework says that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is no compelling evidence to demonstrate that the delivery of the proposed housing sites in Maldon and Heybridge would lead to such impacts.”*

62. By this point in time, the Council had already approved a number of planning applications relating to strategic sites in the LDP. As a result, the inspector noted that the matter had in effect therefore been resolved through the planning application process:

*“Consequently, this is not a matter that should stand in the way of their allocation. Even if the transport impacts would be severe, given the decisions already made by the Council through the planning application process, rejecting the allocations now could not prevent those effects from occurring.”*

63. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, the Inspector concluded that the growth needs of the District could *just* be accommodated within the infrastructure constraints that exist. The Plan includes provisions to ensure that development proposals would be accompanied by the necessary infrastructure upgrades. This was evidenced through the production of a detailed infrastructure phasing plan produced by the District Council through close partnership working with the County Council and other infrastructure providers. The Inspector was provided with clear evidence of what could be delivered and when, which was supported by relevant infrastructure providers through the examination process. This demonstrates the importance of close partnership working with infrastructure providers to ensure that the proposals can be satisfactorily accommodated within the capacity that exists, or is planned to exist, within the plan period.**
64. In 2015 the [Euston Area Plan](#) was jointly produced by the Greater London Authority, Transport for London & London Borough of Camden. The Plan was produced as a development plan document to form part of the Camden Plan. It should be borne in mind that the Plan was examined under the provisions of the NPPF 2012.
65. The Plan was prepared to provide a long term planning framework to guide transformational change in the Euston area, focussed around the redevelopment of Euston Station. The Plan was prepared in the context of the proposals to terminate the High Speed Two line at Euston, which was opposed by Camden Council due to the significant land take required to build the line and the wider impacts on the Borough.
66. The Plan was developed to be flexible to allow for different station designs and also changes in circumstances surrounding the HS2 project. Strategic Principle EAP 1 makes clear that between 2,800 and approximately 3,800 additional homes will be delivered for the Euston area by 2031:

*“The amount of housing appropriate will be dependent upon the footprint and design of Euston Station, ability to overcome constraints associated with railway*

*infrastructure, particularly the cost and viability of decking, and compatibility with wider plan objectives and policies.”*

67. Through the independent examination of the Plan the Inspector carefully considered whether the Plan met an appropriate balance between the need for flexibility and the capability to deliver the proposals. In his [report](#) the Inspector concluded as follows:

*“The NPPF (at paragraph 154) states that Local Plans should be aspirational but realistic, and that they should set out the opportunities for development and contain clear policies on what will or will not be permitted and where. My Examination of the EAP has focused on this issue, and I reached the broad conclusion from my assessment of the EAP itself, the accompanying evidence base documents and the representations that were made to the EAP, that the balance described above has been weighted too heavily in favour of the Plan’s flexibility. This was leading to continuing and justified uncertainty within the Euston communities, both business and residential, as to the intended outcomes from the EAP’s development strategy.”*

68. As a result, the Inspector recommended a series of main modifications to the Plan in order to ensure that it included sufficient clarity regarding the deliverability of proposals.
69. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, the Inspector determined that the Plan needed to provide greater certainty and clarity on what was being planned, and the deliverability of those plans. The Local Plan should provide sufficient certainty and clarity in terms of what is going to be delivered and when.**

#### Achieving ‘sustainable’ development

70. In 2017 [Mid Sussex District Council](#) sought to argue through the independent examination of the Local Plan that the proposed housing requirement of 800 dpa is the point above which the advantages of additional housing provision are significantly outweighed by the disadvantages. It should be borne in mind that the Plan was examined under the provisions of the NPPF 2012. The Sustainability Appraisal concluded that higher level provision would be likely to have severe negative impacts on environmental sustainability objectives. The District has a number of nationally important designations, including the South Downs National Park, the High Weald Area of Outstanding Natural Beauty (AONB) and various heritage designations, and is within the zone of influence of Ashdown Forest, which is a Special Protection Area (SPA), and much of the remainder of the District is rural.
71. The Inspector found that the Sustainability Appraisal and Strategic Housing Land Availability Assessment did not in themselves provide an adequate basis for supporting the Council’s conclusion, and that there was “*a degree of circularity about the Council’s argument*”. He stated:

*“The SHLAA rejects a number of sites on the basis of availability, transport access, sewerage, landscape capacity, heritage assets, ancient woodland and so on. These are important issues but what the analysis does not do is to consider the extent to which they might be resolved or mitigated through highways and footway improvements, sewerage infrastructure, selective development of parts of sites, the incorporation of green buffers and other measures. In some cases the absence of evidence counts against a site without any further assessment. Moreover, more*

*consideration should have been given to the potential for new freestanding developments as opposed to settlement extensions.”*

72. In conclusion the Inspector found that:

*“There are some constraints in certain localities, such as sewerage and highway capacity, which may be partially dependent on the programmes of other bodies to resolve. But housing provision is a government priority and should be reflected in the programmes of other public bodies. It is also the case that both site-related development contributions and CIL will assist in future in addressing such constraints.”*

73. The Inspector concluded that the Local Plan minimum housing requirement should be increased to 1,026 dwellings per annum, which included for 150 dwellings per annum of unmet need arising from Crawley.

74. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, there was an expectation that infrastructure constraints could and should be overcome in favour of meeting local housing needs. There is also an expectation that Local Plans should seek to accommodate unmet needs arising from neighbouring areas where it is possible to do so. Relying on the Sustainability Appraisal process to identify and justify a ‘tipping point’ beyond which further housing provision would have negative impacts on the local environment is too subjective, and the Council should seek to assess all reasonable options for meeting local housing need.**

75. In the Independent Examination of the [Lewes District Part 1 Local Plan](#) in March 2016 (it should be borne in mind that the Plan was examined under the provisions of the NPPF 2012) the Inspector agreed with the Council that the agreed objectively assessed housing need figures could not be met in full in the District at that time *“without unacceptable environmental consequences that would be contrary to the policies and guidance in the NPPF and PPG”*. However, the Inspector required the Council to identify further housing sites in the Plan *“to more closely accord with the NPPF and to provide a higher number of new homes”*. He stated:

*“The Plan as modified would thereby get materially closer to meeting the full identified OANs over the plan period in the wider interests of sustainable development, particularly its social and economic aspects.”*

#### **Demonstrating deliverability of strategic infrastructure to support growth**

76. The [North Essex Authorities Strategic \(Section 1\) Plan](#) was adopted by the respective Councils (Tendring District Council, Colchester Borough Council and Braintree District Council) in February 2021. However, during a prolonged independent examination the Inspector required a significant amount of further work to be undertaken by the Councils in order to demonstrate the deliverability of the Plan, and also required significant modifications to be made to the Plan. It should be borne in mind that the Plan was examined under the provisions of the NPPF 2012.

77. As submitted, the Plan proposed three Garden Communities, providing between 29,000 and 43,000 homes in total. In [correspondence with the Councils](#) in June 2018 the Inspector

provided a number of interim conclusions on the Plan. These ultimately led to the removal of two of the three proposed Garden Communities within the Plan. One of the most significant concerns raised by the Inspector related to the lack of clarity on the deliverability of Garden Community proposals that were founded on significant new strategic transportation infrastructure projects and upgrades. The Inspector found that:

*“In my view the evidence provided to support the GC policies in the submitted Plan is lacking in a number of respects.*

*Policy SP5 includes two major trunk road schemes in its list of strategic infrastructure priorities: the A12 Chelmsford to A120 widening scheme which is included as a committed scheme in Highways England’s RIS1 programme, and the A120 Braintree to A12 dualling scheme which is currently under consideration for inclusion in RIS2. Both schemes are intended to relieve existing congestion problems and support economic growth in North Essex*

*In this context, the scale of the GC proposals means that they could not be developed in full without the additional strategic road capacity provided by these schemes.*

*No firm view on the feasibility of either West of Braintree Garden Community or Colchester / Braintree Borders Garden Community can be taken until it is known whether or not the A120 dualling scheme is included in that programme (or can be otherwise fully funded). While the GCs would contribute to the cost of the scheme, I have seen no evidence that it could be fully funded if it is not included in RIS2. It may be possible to devise interim solutions to accommodate a proportion of the generated traffic, and thereby enable early phases of one or both GCs to proceed, but that would not justify an in-principle endorsement of the GC proposals as a whole.*

*In addition, a decision has yet to be made on the alignment for the dualled A120. The alternative alignments still being considered have quite different implications for the A120’s relationship with CBBGC.*

*I appreciate that the NEAs, ECC and Highways England are working together constructively to resolve these issues. Nonetheless, greater certainty over the funding and alignment of the A120 dualling scheme and the feasibility of realigning the widened A12 at Marks Tey is necessary to demonstrate that the GC proposals are deliverable in full.”*

78. **This demonstrates that, in this particular local plan examination and taking into account all relevant local circumstances and evidence, the Inspectors were unable to conclude that (two of the three) proposed Garden Communities could be considered to be developable without sufficient evidence that key strategic road infrastructure would be likely to be in place in a timely fashion. It was clear from the evidence that the delivery of the Garden Communities was predicated on the delivery of strategic road upgrades, and therefore without clarity on funding and delivery arrangements, it was not possible to conclude that the Garden Communities could be considered to be developable or deliverable in full.**

### Deliverable versus developable and viability

79. In finalising the Local Plan, it will be important for the Council to clearly differentiate between planned housing sites that are considered to be 'deliverable' within the first five years of the plan period (in accordance with the definition in the NPPF - sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years), and those considered to be 'developable' in years 6+. Importantly, developable sites only need to be sites ***with a reasonable prospect that they will be available and could be viably developed at the point envisaged.***
80. Similarly, the Council must ensure that infrastructure required to support growth in the first five years of the plan period is clearly identified, and that suitable delivery mechanisms and funding are in place to secure this infrastructure without rendering the plan unviable.
81. Infrastructure required to support growth planned later in the plan period will by its very nature be less certain. Funding gaps for large scale strategic infrastructure projects are not uncommon. The scale of any funding gap can only be fully realised following completion of the Local Plan viability assessment. However, the Council must be able to demonstrate to the appointed planning inspector that infrastructure that is crucial to the delivery of the Local Plan strategy will, on the balance of probability be delivered in a timely fashion. This requires evidence of ongoing collaboration and joint working with key delivery partners, and progress towards obtaining external funding necessary to unlock growth.
82. Stated commitments from key delivery partners, such as Southern Water, Highways England, West Sussex County Council and neighbouring local authorities to continue to work collaboratively towards securing the necessary funding to deliver the necessary mitigation and capacity enhancements will be crucial. This should be supported by a clear programme to demonstrate to the Inspector how and when the necessary funding can be (in the balance of probability) secured. This should then inform the trajectory and phasing assumptions for the delivery of key sites.
83. It is also most likely that the Inspector will want to clearly understand precisely what can be delivered in the first five years of the plan period within the available infrastructure capacity (and with smaller scale interim solutions in place), before the need for longer term strategic improvements is triggered. The position reached should be endorsed by the relevant infrastructure providers.
84. The requirement for Local Plan policies to be monitored and subject to regular review provides an appropriate mechanism to update policies over time should a change in circumstances occur. Ideally the Council should present a clear and convincing narrative of how and when the strategic infrastructure can and will be provided to support planned growth and enable development needs to be met. Failing that, the Council would need to present clear evidence of why the strategic infrastructure cannot be provided within the plan period and therefore why growth must be constrained, but such an approach is likely to face considerable scrutiny at independent examination both in terms of the Duty to Cooperate and soundness.

### Development phasing and a stepped trajectory

85. Once the Council has been able to identify what can be considered to be deliverable within the first five years and appropriately supported by existing and short-term infrastructure upgrades, this may provide the basis for the identification of a phased housing trajectory. This can be justified where strategic infrastructure improvements are required to ‘unlock’ longer term growth, and to ensure that a five year supply of deliverable housing land will exist on adoption of the Plan. However, if such an approach is to be pursued the onus will again be on the Council to demonstrate that ‘no stone has been left unturned’ in seeking to maximise short-term delivery in the Local Plan Review, including considering alternative spatial strategy options and working with neighbouring LPAs to request that any shortfall is met elsewhere through the Duty to Cooperate.
86. Examples of good practice for stepped housing trajectories are the Arun Local Plan, adopted in 2018, and the Epping Forest Local Plan, which, whilst currently undergoing examination is moving towards the main modifications stage.
87. A summary of Arun’s approach can be found in their [Local Plan](#) within pages 116-119 in addition to policy HSP1. The justification and evidence for the stepped trajectory is set out within the [Housing Implementation Strategy](#). For Epping Forest, the [Housing Implementation Strategy update](#) (2019) provides a summary and justification for the approach taken by the Council.

## 4. Summary and Conclusions

88. This report provides advice to support the progression of the Chichester Local Plan Review in response to strategic infrastructure constraints and issues impacting on the Chichester Plan area. The advice responds to the brief provided by the Council (Appendix A). This section provides a summary of the advice provided and conclusions to assist the Council in finalising the Local Plan Review.
89. In the case of the Chichester Local Plan Review, the circumstances theoretically exist to enable the Council to justify not meeting the full objectively assessed needs for development if it can be demonstrated that to do so would be contrary to national policy in respect of the relevant constraints listed in footnote 6 of the NPPF, or that the adverse impacts of meeting needs would significantly and demonstrably outweigh the benefits.
90. However, this would require the Council to demonstrate that 'no stone has been left unturned' in seeking to ensure that the development needs of the plan area are being met as far as possible, including seeking to obtain agreement from neighbouring areas that any unmet needs may be accommodated elsewhere. To not meet development needs in full would place the onus fully on the Council to present a clear and convincing evidence-based justification to the independent examination as to how all reasonable attempts had been made to meet development needs both within the plan area and further afield, and that it was simply not possible or practical to do so within the parameters of the NPPF.
91. National planning policy is clear that Local Plans should seek to facilitate transportation and wastewater infrastructure improvements to enable planned growth to be accommodated. It also recognises that external Government funding may be required to unlock major infrastructure upgrades. National planning policy expects the Council to work with statutory agencies and infrastructure providers to ensure that strategic infrastructure improvements are included in relevant business plans. However, the Council should ensure that infrastructure requirements to support planned growth "*are not beyond what could reasonably be considered to be achievable within the planned timescales*".
92. National planning policy recognises that funding gaps may exist at the time a Local Plan is adopted, and that regular local plan reviews as required by paragraph 33 of the NPPF can provide an effective mechanism to update a Local Plan to reflect changing circumstances over time.
93. National planning policy allows for development in Local Plans to be phased to take into account constraints. The housing trajectory in the Local Plan Review should seek to phase housing delivery over the plan period having regard to the constraints that exist. Sites included in the first five years should be '*deliverable*' – that means that they should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.
94. The Council should calculate how much housing the Local Plan Review will need to accommodate within the first five years of the housing trajectory to ensure that a five year housing land supply can be demonstrated on the adoption of the Plan. It should explore all reasonable options to identify suitable sites to achieve this, including requesting the assistance of neighbouring local authorities. Should the Council determine that this is not

possible under the circumstances, then it may be possible to justify the use of the stepped housing trajectory.

95. Sites included in the trajectory for years 6+ of the Plan period should be demonstrably '*developable*' – these are sites with a reasonable prospect that they will be available and could be viably developed at the point envisaged. The test for sites in years 6+ of the trajectory is therefore far less rigorous, and in some cases this may mean that lack of certainty over funding and delivery of strategic infrastructure required to support growth later in the plan period may not be a barrier to allocation – assuming that the infrastructure is not beyond what could reasonably be expected to be delivered.
96. This advice note has highlighted a range of case studies which provide an indication as to how Local Plans across the country have sought to respond to strategic infrastructure constraints that exist, and how appointed Planning Inspectors have assessed these approaches through independent examination. It is clear from the range of case studies presented that conclusions reached by Inspectors on this issue vary considerably depending upon the local circumstances and evidence that exists. In some cases, such as the Tandridge Local Plan and the South Downs National Park Local Plan, Inspectors have concluded that the development capacity of the areas is restricted by environmental and infrastructure constraints, and that to meet objectively assessed needs would be contrary to national planning policy. In other cases, such as the Welwyn-Hatfield Local Plan and the Mid-Sussex Local Plan, Inspectors have concluded that whilst development constraints do exist, they do not outweigh the need for the Local Plans to meet objectively assessed housing needs.
97. The Council should be cognisant of the case studies highlighted in preparing the Publication version of the Local Plan Review. However, the advice note also highlights the inherent difficulties in trying to draw out specific conclusions or comparisons from recent examples of Local Plan independent examinations. In examining the Local Plan Review, the appointed Inspector will be seeking to consider and balance a wide range of evidence in order to draw conclusions. There will inevitably be a significant element of planning judgement required within the parameters of national planning policy and guidance. However, the role of the Inspector is to examine whether or not the submitted plan is sound and legally compliant, and therefore it will be down to the Council to provide the necessary explanation, justification and narrative to robustly support the approach taken within the Local Plan Review. The presentation of the evidence and the position taken by the Council within the Local Plan Review (including statements of common ground) will be a key determinant – and it will be vital to present a strong and convincing narrative to the Inspector which clearly references the key paragraphs of the NPPF and PPG.
98. That being said, it is the case that an Inspector would take some convincing to conclude that objectively assessed needs could not be met purely because of lack of certainty over strategic infrastructure delivery. National planning policy is clear that local authorities should be seeking to significantly boost housing land supply through local plans in order to ensure that the target of 300,000 homes a year will be built nationally. An Inspector would not agree to a lower housing requirement unless there are very clear and evidenced barriers to growth. It is also the case that an Inspector would be likely to promote the use and application of the Local Plan Review mechanism to respond to changes in the status of

infrastructure provision over time, and also that they would look to the Council to be leading the case for the delivery of strategic infrastructure that is required to support growth plans. If the key infrastructure providers were to sign up to a Statement of Common Ground declaring that the infrastructure that is needed cannot and will not be in place to support required growth levels that would be different, as presumably they would hold and maintain an outright objection to the Plan through the examination process to substantiate their position. However, the Council (together with neighbouring authorities and delivery partners) must continue to be proactive in seeking to find solutions which will ensure the longer term delivery of the necessary strategic infrastructure.

99. In order to determine the approach to determining the level of growth that can robustly be included in the Local Plan Review, it will be essential for the Council to reach an agreed position with key delivery partners, including statutory consultees, relevant duty to cooperate bodies, relevant site promoters and relevant infrastructure providers as to:
- How much growth can be accommodated within the infrastructure constraints that exist across the plan period and in the first five years;
  - How much growth could be accommodated through short-term / interim improvements to infrastructure capacity, and when would such improvements provide for any additional capacity;
  - When longer-term strategic infrastructure upgrades could realistically be in place to deliver additional capacity, and how much additional development this could theoretically enable.
100. The Council will be expected to demonstrate that there is a reasonable prospect that the proposals can be developed within the timescales envisaged. The Council should seek to ensure that the agreed position on these points is reflected in Statement(s) of Common Ground which are available to support and justify the approach taken in the Local Plan Review. The approach to finalising the spatial strategy, housing trajectory (and Infrastructure Delivery Plan) of the Plan should then mirror the agreed position established within the Statement(s) of Common Ground. The production of an agreed and robust Infrastructure Phasing Plan alongside the housing trajectory and Infrastructure Delivery Plan would help to provide a great deal of clarity and confidence to the Planning Inspector at independent examination. The preparation of an Infrastructure Phasing Plan would also help to justify the need for a stepped housing trajectory, should this be required.
101. From the case studies presented in this advice note, it is evident that the Council, together with key delivery partners, should be doing everything possible to identify and deliver solutions to infrastructure constraints that will enable the delivery of growth (subject to the policy restrictions identified within paragraph 11 of the NPPF).
102. Should the Council determine that it will not be possible for the Local Plan Review to accommodate objectively assessed housing needs as required by national planning policy, the Statement(s) of Common Ground will provide essential evidence to assist the Inspector at Independent Examination. However, the Council must also ensure that 'no stone has been left unturned' and that all reasonable options to accommodate growth have been proportionately considered. This includes potential options to accommodate growth

through alternative spatial strategy options that may not be subject to the same degree of infrastructure constraints.

103. In development management terms, it will be vitally important for the Council to ensure that a considered approach is taken to determining planning applications in advance of the adoption of the Local Plan Review which considers cumulative impacts of growth. Applications being determined prior to the adoption of the Local Plan Review should not prejudice the progression and delivery of the Local Plan Review. However, national planning policy is clear that the circumstances which may warrant a refusal on the grounds of prematurity will be limited. The Council should be mindful of paragraph 49 of the NPPF when considering prematurity as a potential reason to refuse a planning application in advance of the adoption of the Local Plan Review.