



# Warwick District Council NZC DPD Examination Matter 1: Legal and Procedural Requirements

Warwick District Council  
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Prepared by: Amit Bratch, Andrew  
Cornfoot and Barbara Carroll

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Checked by: Paul Slater

Authorised by: Andrew Cornfoot



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## 1 Question 1.1:

### How does the DPD, as submitted, have a suitable relationship with the adopted Warwick Local Plan?

- 1.1 Three strategic priorities are set out in the Warwick District Local Plan 2011-2029: a) supporting prosperity, b) providing the homes the district needs; and c) supporting sustainable communities. Priority c) refers to various considerations for the delivery of sustainable communities, including: the design and layout of new development, regeneration and enhancement of existing environments and protecting the natural and built environment (Warwick Local Plan, 1.33). The DPD contains policies that are complementary to these strategic priorities.
- 1.2 The Local Plan sets out objectives linked to the Local Plan strategy: *“The objectives provide the framework to deliver sustainable development by balancing social, economic and environmental imperatives and where possible enhancing all three”* (Warwick Local Plan, 1.35). Objective B in the Warwick Local Plan: *Providing well-designed new developments that are in the right location and address climate change* demonstrates the Council’s strategic commitment to address climate change.
- 1.3 The sub-objective number 5 of Objective B states: *“make sure that new developments are located, designed and built so that they can deal with the expected effects of climate change, particularly flooding”*. The policies contained within the DPD are aimed at ensuring new development is designed to address and deal with the expected effects of climate change and therefore are aligned with Objective B of the Local Plan.
- 1.4 The sub-objective number 4 of Objective B states: *“Make sure that new developments are in places that will reduce the need for people to use their cars. This will minimise air pollution, help address climate change by reducing road congestion and carbon emissions, and encourage people to live more healthy lifestyles by facilitating walking and cycling”*. Although not directly relevant to the content and policies of the DPD as this does not relate to reducing carbon emissions from transport, sub-objective 4 of Objective B does highlight the commitment of the Local Plan, to minimise emissions and the impacts of climate change.
- 1.5 Strategic Policy DS3 *Supporting Sustainable Communities* refers to delivering a low carbon economy and lifestyles and environmental sustainability.

1.6 The Warwick Local Plan covers the wider tenets of sustainable development. Section 12 of the NZC DPD identifies Warwick Local Plan policies which relate to energy efficiency, renewable energy generation, climate change resilience and sustainable construction and which are to be supported and expanded by the adoption of the DPD. These are:

- Policy SC0: Sustainable Communities
- Policy BE1: Layout and Design
- Policy HS1: Healthy, Safe and Inclusive Communities
- Policy CC1: Planning for Climate Change Adaptation
- Policy CC2: Planning for Renewable Energy and Low Carbon Generation
- Policy CC3: Building Standards and other Sustainability Requirements

1.7 The Council considers that the policies in the DPD support and expand the policies contained within the adopted Local Plan. Furthermore, the DPD's policies, owing to their limited scope and being confined to net zero carbon development, do not alter the overall spatial strategy of the Warwick Local Plan. The DPD policies are a response to the climate emergency declared by The Council, and such represent a pragmatic response to ensure that the Council's Local Development Scheme does not further contribute to the carbon deficit in the district.

## 2 Question 1.2:

### How is the DPD, as submitted, legally compliant?

#### Compliance with national legislation

- 2.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 [Statutory Instrument 2012 No. 767] (as amended) outline the form and content of local development documents and prescribe how the local planning authority should progress the preparation of the key stages of the Net Zero Carbon DPD.
- 2.2 The Council has met the key legal and procedural obligations set out in the Regulations during preparation of the Submission Plan in the following ways:
- **Regulation 4 - Duty to co-operate:** The manner in which the Council fulfilled its requirements is covered in answer to Question 1.5.
  - **Regulation 5 – Local development documents:** The DPD is compliant with criteria outlined in 5(1) and 5(2) and has been prepared as a local Development Plan Document (DPD).
  - **Regulation 8 – Form and content of local plans and supplementary planning documents; general:** The DPD has been prepared in accordance with the criteria set out.
  - **Regulation 9 – Form and content of the adopted policies map:** The Key Diagram and Policies Map has not been replicated in the DPD. However, the aim of the document makes reference to “the district” and it is considered to be clear that the policies relate to the entire District boundary - there is no change to the Policies Map.

#### Compliance with Sustainability Appraisal (SA)/Strategic Environmental Assessment (SEA) Regulations.

- 2.3 Section 19 of the Planning and Compulsory Purchase Act 2004 requires a local planning authority to carry out a sustainability appraisal of each of the proposals in a Local Plan during its preparation. Sustainability Appraisals must also incorporate the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004, often referred to as the ‘Strategic Environmental Assessment Regulations. The Sustainability Appraisals that have been undertaken as an integral part of the preparation and development of the Local Plan, meet the requirements of the above regulations. Detailed response with regards to compliance with SA/SEA/HRA is provided in answer to Question 1.3.

#### Compliance with the requirements of Local Development Scheme (LDS)

- 2.4 The Local Development Scheme (LDS) provides a timetable to produce key planning documents and includes a timetable detailing the processes involved in preparation, production, and key milestones. Throughout the preparation of the DPD the LDS has been revised to provide the most up to date timetable and the versions of the LDS. The Council's latest LDS prepared in December 2022 [EXAM4] includes the Net Zero Carbon DPD as one of its commitments with an aim to adopt the document in Quarter 3 of 2023.
- 2.5 The document was first identified as a priority in the Council's LDS dated February 2019 as a Sustainable Buildings SPD with adoption date set for Q4 2020.
- 2.6 The LDS was updated in November 2019 and the name of the document was changed to Climate Change and Sustainable Buildings SPD to reflect Council's commitment to tackling climate change.
- 2.7 The document was included in the Council's LDS published in March 2020 with the same name and timescale.
- 2.8 The 2021 LDS included this document with the same title, but the timetable was changed to Adoption in Q4-2022, reflecting available staff resources and taking into account other priorities including the preparation of a South Warwickshire Local Plan (SWLP) – a joint Local Plan covering the administrative areas of Warwick District and Stratford-on-Avon District.
- 2.9 The title of the document was changed to Net Zero Carbon DPD in Council's latest LDS published in December 2022. The decision to change the document from an SPD to a DPD was taken as officers felt that the content of the document being produced went beyond just providing guidance and expanded existing Local Plan policies; the document was introducing new policy requirements that supports and expands the climate change policies in the Adopted Local Plan.
- 2.10 The timetable for the document was reflected in all the successive LDSs produced by the Council. Therefore, the Council considers that it has met the legal requirements in respect of LDS, and it has full regard to the LDS.

### **Compliance with the requirements of SCI**

- 2.11 The Statement of Community Involvement (SCI) [SD3] sets out the Council's approach to engaging with the community, business, statutory consultees and other relevant stakeholders.
- 2.12 Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 sets out that the local planning authority must notify specific and general bodies and such residents or other persons carrying on business in the area which it is appropriate to invite to make representations. Regulation 19 outlines requirements in relation to the availability of documents and the notification of general and specific consultation bodies.

- 2.13 Warwick District's Statement of Community Involvement, updated in April 2020, was used to undertake consultation at each stage of the DPD. Each stage of the DPD has been prepared in accordance with the requirements set out within the SCI. A Statement of Consultation [SUB9- Appendix 2] sets out the summary of consultation methods and relevant bodies who were consulted under Regulation 18 and 19 consultations.
- 2.14 The Council considers that it has met the legal requirements in respect of the SCI at each stage of the document production.

### 3 Question 1.3:

## Does the DPD, as submitted, have proper regard to the Sustainability Appraisal (SA) and the Habitats Regulations Assessment (HRA)?

### Sustainability Appraisal (SA)

- 3.1 The SA has been undertaken in an iterative, ongoing, and transparent way with plan-making stages and consultations since SA scoping (May 2021). It has been undertaken in accordance with Government guidance.
- 3.2 The environmental, social, and economic effects of the DPD have been investigated through the use of a SA Framework of objectives, grouped within sustainability themes. SA methods are explained in section 2 of the SA Report [SUB3].
- 3.3 The SA Scoping Report (May 2021) was subject to consultation with the statutory environmental bodies. The draft SA Report (August 2021) accompanied the draft DPD on Regulation 18 consultation (26 July – 13 September 2021).
- 3.4 Comments received were taken into account and responses reported in the SA Report (March 2022) [SUB3] paragraphs 1.19 and 2.13-2.15. This document was subject to public consultation which ran between 27th April 2022 and 8th June 2022.
- 3.5 The emerging draft DPD policies NZC1-NZC4 were tested through SA and the findings are discussed in section 4 of the SA Report [SUB3]. The SA found that the implementation of the DPD will have positive effects. Mitigation measures for any potential negative effects on the natural and historic environments are provided through policies in the DPD and the Local Plan. Potential negative effects on the economy have been mitigated through consideration of exceptional circumstances. Potential risks to development viability have been investigated through a high-level assessment. Implementation of the NZC DPD with its stricter policy requirements for carbon emissions will not result in any significant negative effects. Thus, the preparation of the DPD has had proper regard to the SA.
- 3.6 Two alternative scenarios to the Council's proposed approach were also tested through the SA using the same methods in a comparable and consistent manner. The SA approach to reasonable alternatives is explained in the SA Report [paragraphs 2.11-2.12, SUB3]. The SA findings from testing the 3 scenarios are summarised in the SA Report [Table 4.2, SUB3] and discussed in paragraphs 4.56-4.65. These SA findings informed the Council in its selection of the preferred scenario - the Council decided to progress the proposed DPD as it better progresses the commitments made in its climate change emergency declaration.



## Habitats Regulation Assessment (HRA)

- 3.7 A pragmatic and proportionate HRA screening/appropriate assessment (AA) was undertaken to demonstrate that the HRA had been considered in line with recent changes to Government guidance. The HRA Screening Report (May 2021) was consulted on with the environmental bodies (NE, EA).
- 3.8 Natural England agreed with the proposed approach to the HRA/AA<sup>1</sup>.
- 3.9 Overall, the HRA concluded that the DPD will not have adverse effects, alone or in combination with other plans and projects, on the integrity of internationally designated sites. The HRA findings were incorporated within the SA Report [SUB3] and informed the Council in its preparation of the DPD.

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<sup>1</sup> *Natural England Response to SA/SEA/HRA Scoping 10/06/2021*

## 4 Question 1.4:

### Do the SA and the HRA supporting the DPD meet the requirements of the relevant Regulations?

- 4.1 The three statutory bodies were consulted on the Net Zero SA/SEA/HRA Scoping and Screening Opinion and their responses were made available as a part of Regulation 18 consultation.

#### **Sustainability Appraisal (SA)**

- 4.2 Sustainability Appraisal (SA) incorporating Strategic Environmental Assessment (SEA) is a mandatory requirement for Local Plan Documents in accordance with planning legislation<sup>2</sup> and paragraph 32 of the NPPF (updated July 2021). A proportionate approach has been taken since the Local Plan was adopted in 2017 and the DPD focuses on one issue of net zero carbon for the District ahead of the ongoing preparation of the new Joint Local Plan for South Warwickshire. The SA has been undertaken in accordance with the NPPF and UK Government planning guidance<sup>3</sup> including integrating the requirements for Strategic Environmental Assessment (SEA).
- 4.3 The SA tested the draft DPD policies and also the implications of implementing the DPD as whole [Paragraph 2.8 & Section 4 of SUB3] – and in accordance with SEA Regulation requirements. An integrated assessment (SA/SEA) must meet the requirements set out for reporting the SEA process. The SA Report [SUB3] includes a Non-Technical Summary and an appendix that clearly signposts the requirements for reporting the SEA.

#### **Habitats Regulation Assessment (HRA)**

- 4.4 The HRA was undertaken at the same time as the SA and the summary HRA findings incorporated into the SA Report [Paragraphs 4.68-4.80 of SUB3]. The HRA was undertaken in accordance with Government appropriate assessment guidance<sup>4</sup> and to meet with the requirements of the HRA Regulations.
- 4.5 The SA report [SUB3] confirms that the HRA has been prepared in a manner consistent with relevant regulations and guidance.

In conclusion, the Council is satisfied that the SA incorporating SEA, EqlA and HRA [SUB3] has been produced in accordance with the relevant requirements.

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<sup>2</sup> Section 19(5) of the 2004 Planning & Compulsory Purchase Act and Regulation 22(a) of the Town & Country Planning (Local Planning) (England) Regulations 2012

<sup>3</sup> <https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal>

<sup>4</sup> <https://www.gov.uk/guidance/appropriate-assessment>

## 5 Question 1.5:

### Do the aims and objectives of the DPD, as submitted, accord with national policy?

- 5.1 The Council considers that it has legally complied with national legislation as part of the preparation of this DPD including:
- Planning and Compulsory Purchase Act 2004 (As amended)
  - Localism Act 2011
  - Town and Country Planning (Local Planning) (England) (Regulations 2012)
  - The Planning and Energy Act 2008
- 5.2 NPPF Paragraph 21 states that *strategic policies should be limited to those necessary to address the strategic priorities of the area.*
- 5.3 NPPF Paragraph 22 states that *strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities.*
- 5.4 NPPF Paragraph 152 states *'The planning system should **support the transition to a low carbon future in a changing climate**, taking full account of flood risk and coastal change. It should help to: **shape places in ways that contribute to radical reductions in greenhouse gas emissions**, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; **and support renewable and low carbon energy** and associated infrastructure.'* [**WDC emphasis added in bold and underlined**]
- 5.5 NPPF Paragraph 153 outlines that *'Plans should take a proactive approach to mitigating and adapting to climate change...'*
- 5.6 NPPF Paragraph 154b states that *'...any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards'*.
- 5.7 The DPD is consistent with NPPF to the degree that the policies address strategic priorities identified within the local authority area (as noted in response to Q1.1 above) and is a proactive approach to mitigating against climate change.
- 5.8 This does not fully align with the NPPF paragraph 22 that strategic policies should look forward by 15 years. The DPD does not look to extend the overall Local Plan period beyond 2029.

- 5.9 The DPD is partial update of the Local Plan which has a limited and specific scope – to respond to the Council’s declared Climate Emergency and reduce carbon emissions from new development. The DPD does not change the spatial priorities of the Warwick Local Plan, spatial strategy or strategic housing and growth requirements.
- 5.10 Further, the Council has commenced a full review of the Warwick District Local Plan 2011-2029 – through the emerging South Warwickshire Local Plan. As a full review, this will take longer to prepare and adopt and is identified in the Council’s Local Development Scheme [EXAM 4] for adoption in Q4 2025.
- 5.11 The preparation of a focussed DPD which could be adopted more quickly is a pragmatic and justified response to the Council’s climate emergency and is considered a sound approach despite the limited degree of conflict with NPPF paragraph 22. It is noted that a similar conclusion was reached in relation to the B&NES Local Plan Partial Review [EXAM 6].
- 5.12 It is noted that responses to consultation identified conflict with the Written Ministerial Statement on Plan Making dated 25 March 2015 (WMS 2015) which clarified the use of plan policies and conditions on energy performance standards for new housing developments. The statement sets out the government’s expectation that such policies should not be used to set conditions on planning permissions with requirements above the equivalent of the energy requirement of Level 4 of the Code for Sustainable Homes (this is approximately 20% above 2013 Building Regulations).
- 5.13 This issue has been considered through recent Local plan Examinations including B&NES [EXAM 6] and Cornwall [EXAM 7] and it may be concluded that the relevance of the WMS 2015 in assessing the soundness of plans has been reduced significantly. The following conclusions of the B&NES Inspector address this:
- The Government amended Part L of the Building Regulations in 2021 (now in force) in respect of energy efficiency standards, to a level which exceeds that in Level 4 of the Code for Sustainable Homes (Part L 2021 is a 31% reduction over Part L 2013, whereas Code for Sustainable Homes Level 4 is a 19% reduction over Part L 2013) (EXAM 6 paragraph 82)
  - The change in Part L of the Building Regulations is an interim measure in the implementation of the Future Homes Standard, with which the Government has stated from 2025, will deliver homes that are zero-carbon ready. The change in the Building Regulations is part of Government action to meet its legal commitment to bring all greenhouse gas emissions to net zero by 2050 (The Climate Change Act 2008 (2050 Target Amendment) Order 2019). (EXAM 6 paragraph 83)
  - The WMS 2015 has clearly been overtaken by events and does not reflect Part L of the Building Regulations, the Future Homes Standard, or the legally binding commitment to bring all greenhouse gas emissions to net zero by 2050.

- 5.14 Having regard to the Council's declared climate emergency, the DPD is necessary to deliver the NPPF expectation of "*radical reductions in greenhouse gas emissions ... in line with the objectives and provisions of the Climate Change Act 2008*" (NPPF paragraph 152 and footnote 53), and the plan's legal duty to mitigate climate change as per the Planning and Compulsory Purchase Act 2004 Section 19. It is considered that as the WMS 2015 has been overtaken by events, the inconsistency of the DPD with it is not unsound or inconsistent with relevant national policies.

## 6 Question 1.6:

### Has the Duty to Cooperate been fulfilled properly?

- 6.1 Warwick District Council considers that it has fully engaged and fulfilled its requirements with the Duty to Cooperate, in accordance with Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) and meets paragraphs 24 to 26 of the NPPF 2021.
- 6.2 Warwick District Council actively engages with neighbouring Local Planning Authorities on a monthly basis through the Coventry, Solihull and Warwickshire Association of Planning Officers (CSWAPO) – a group including all local authorities in the stated area, comprising 8 District, City and County councils. Near the start of the preparation of work on this DPD, in September 2019 WDC presented to CSWAPO on the emerging DPD and received support from authorities for our approach to tackling the climate emergency. A standing item on every CSWAPO agenda is “Local Plan Updates”. Therefore, as the Plan has progressed, representatives of each council on CSWAPO have been kept apprised of progress on the Plan and have had opportunities to express any views on the emerging plan. From these discussions, it is apparent that neighbouring authorities are keen to see whether Warwick’s DPD is found to be sound, as some may look to adopt similar policies in due course.
- 6.3 All 7 Coventry and Warwickshire authorities in the CSWAPO group were consulted at both the Regulation 18 and 19 stages. Warwickshire County Council has expressed its support for the DPD through representations in response to both consultations. No representations were received from any other local authority at either stage.
- 6.4 The nature of the policies in the DPD relate to building standards within Warwick District and are considered to have a neutral or if anything a positive impact upon neighbouring authority areas as they will help mitigate the impacts of climate change. The Council has not sought to produce a Statement of Common Ground with neighbouring authorities on matters relating to this DPD as whilst WDC appreciates that climate change is a matter that does not stop at local authority boundaries, the policies give rise to limited strategic matters and any cross boundary implications through the DPD’s policies (namely NZC2(C) – Offsetting) have been addressed collectively through joint working under the Warwickshire Ecosystem Services Trading Protocol (see Matter 6, paragraphs 5.1 - 5.9)
- 6.5 At the Regulation 18 and 19 consultation stages, the Council also consulted the following public bodies referred to in Part 2 of the Town & Country Planning (Local Planning) (England) Regulations 2012:
- (a) the Environment Agency
  - (b) the Historic Buildings and Monuments Commission for England (English Heritage)
  - (c) Natural England

- (f) the Homes and Communities Agency (Homes England)
- (g) Coventry & Warwickshire Clinical Commissioning Group / South Warwickshire Foundation Trust
- (h) Network Rail
- (j) Transport for West Midlands; and

The Coventry and Warwickshire Local Enterprise Partnership

6.6 No representations were received from these bodies in response to either consultation. Given the nature and scope of the DPD, it was considered appropriate not to consult with the other prescribed bodies.

6.7 Warwick District Council considers that it has fully engaged and fulfilled its requirements with the Duty to Cooperate.