

Matter 1 Issue 2 Legal Compliance

This statement is made on behalf of the hundreds of representations objecting to STO1 within policy HA18. It draws on legal advice from the Environmental Law Foundation. It includes information from the Leader of West Sussex County Council (WSCC) and the ex-chair of the Storrington and Sullington Parish Council (SSPC). Supporting evidence is given in Appendices 1-4 and my representation.

Q2. Statement of Community Involvement

HDC failed to comply with most of the principles set out in paragraph 1.15 of the Statement of Community Involvement when developing Strategic Policy HA18 for Storrington and Sullington as part of the Horsham District Local Plan (HDLP).

Early involvement

HDC strategic planners failed to engage in discussions requested by the Parish Council to develop site development proposals for inclusion in the HDLP. The Storrington, Sullington, Washington Neighbourhood Plan (SSWNP) 19 had been developed in cooperation with HDC. However, from the outset of the Local Plan development process our Neighbourhood Plan, and SSPC, were ignored. Correspondence dating back to 2020 (Appendix 1) shows SSPC's dissatisfaction with consultation. Whilst some meetings were held with SSPC, they were very much 'tick-box' consultations and NOT ONE change was made as a result of any of these meetings.

The law regarding public consultations of this type is clear, commonly referred to as the *Gunningham* principles. As summarised by Lord Woolf in *R v North and East Devon Health Authority Ex p Coughlan* [2001] QB 213 at [108]:

“To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

In approaching the consultation conscientiously, the authority must “have embarked on the consultation process prepared to change course, if persuaded by it to do so;” *R v Barnet LBC Ex p B* [1994] ELR 357 at [375].

In the present case, the Council has barely communicated with the Parish Council, nor its local residents. There is no evidence that it conscientiously took into account the responses made, nor was it prepared to change course, despite considerable public opposition and such development being prohibited in the Neighbourhood Plan. **As such, the consultation was legally inadequate.**

Providing clear opportunities for involvement

No public exhibitions were held in Storrington or neighbouring parishes during the Regulation 18 consultation. This would have been an opportunity to explain why HDC were proposing to ignore our Neighbourhood Plan, for example:

- by proposing a development site within the SSWNP Green Gap;
- excluding development sites proposed within the SSWNP which HDC had previously assessed as being suitable;
- and ignoring its own assessment for the SSWNP that the Western field of STO1 was unsuitable for development (Appendix 4).

The same legal principles detailed above would apply here. Further, the residents are unable to understand the Council's reasoning in the available documentation to explain how they came to the conclusion that the site was suitable.

The test for sufficient reasons is very well-established. The reasons given for a decision must be intelligible, adequate and enable the reader to understand why the matter was decided as it was; *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953 at [36]. The question is whether the reasons given leave room for genuine, as opposed to forensic, doubt as to what was decided and why; *R (CPRE Kent) v Dover District Council* [2017] UKSC 79; [2018] 1 WLR 108 at [42]. Reasons can be briefly stated and there is no requirement to address each and every point made, provided that the reasons explain the decision maker's conclusions on the principal important controversial issues.

In this case, residents do not understand how HDC has addressed its complaints regarding the allocation of the site, nor its incompatibility with the Neighbourhood Plan. This is a significant and controversial issue in the examination, for which the residents have been given no opportunity for involvement and no justification.

Ease of access to information

HDC consistently withheld drafts of the local plan from both SSPC and the public.

HDC made the documentation difficult, or impossible, to find online without knowing exactly what search terms to use. For example up to 15 Jan 2024 (when this issue was pointed out) a Google search for "HDC Local Plan" took you to the 2015 Local Plan. No onward link to the plan revision process or related documentation was included on that page.

Provide feedback and share information

HDC Regulation 18 Consultation Report highlights HDC received 75 objections to STO1. The objections highlighted: factual errors and omissions; how the site overrides the SSWNP and numerous legal, NPPF and HDLP Strategic Policy non-compliances. The summary conclusions drawn by HDC did not provide feedback on any of these issues.

The summary of HDC Regulation 19 representations relating to STO1 illustrated the same issues. HDC has not addressed, or provided any feedback on, the bulk of the non-compliances highlighted. Neither have they corrected the factual errors and omissions which were pointed out. **The result is that the plan submitted to the Examiner materially misrepresents STO1 across multiple HDLP documents.**

Two recommended changes to the HDLP have been made for STO1: to assess the wider landscape impact on views of the South Downs National Park (SDNP); and, on the settings of the 3 listed buildings adjacent to the site. Both goals are supported by legislation, NPPF and HDLP Strategic Policies. However, decreasing the harm on one, increases the harm on the other. Photographic and mapping evidence provided within representations highlights these goals to be mutually incompatible. This is graphically summarised in the Annex. A further site visit, accurate map reading, and a walk along footpaths 2442, 2463/2463-1 would have confirmed this to HDC officials.

Appendix 2 is the response to an FOI request (HDCIR7779). It highlights that HDC has deleted all working material relating to its Habitat Regulations Assessment (HRA), Sustainability Appraisal and HDLP site descriptions prior to the Examination hearings. Thus, HDC may now lack the detail required to respond effectively during the Examination, or undertake any changes afterwards.

Q6. Habitat Regulations Assessment

The STO1 HRA is inaccurate and inadequate. It does not comply with Part 4 of the Conservation of Habitats and Species Regulations 2017 (CHSR 2017).

Before turning to the errors in the Assessment, it is necessary to detail the legal requirements for an HRA.

In *Wadenzee*, the Court of Justice of the EU found that the Habitats Directive must be interpreted and applied by reference to the precautionary principle.¹

The requirements for an appropriate assessment were set out in *People Over Wind & Sweetman v. Coillte Teoranta* (C-323/17) [2018] PTSR 1668, echoing many other cases:

“the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned”

It is at the time of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question; *Commission v Portugal* [2007] Env LR D4, [24]; *Commission v Spain* [2011] EUECJ C-404/09 at [104].

This represents a high threshold. The Council must be sure that there is no reasonable scientific doubt in the findings of the current HRA.

Taking those principles into account, the STO1 HRA does not meet the required legal standard. It contains numerous factual errors which wholly misrepresent the landscape, nature, character and visibility of the site, including:

¹ Case C-127/02, Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij [2005] 2 CMLR 31 (“Waddenzee”), para 44 and 58.

The impact of development across the woodland between the central and eastern field of STO1 has been ignored (Annex Figure 1).

The linear development proposed by HDC, which crosses all 3 fields to a single exit at Fryern Road, would necessarily pass through this woodland, and footpath 2448.

HDC are aware that this woodland contains protected species (bats and dormice) from the ecological report prepared for planning application DC/23/0290.

Mapping and ecological evidence shows that the woodland is over 300 years old. It is being considered for formal designation as Ancient Woodland.

The assessment ignores the presence of bats [REDACTED] and their habitats, across the whole STO1 site. HDC did not take account of verified sightings from the iRecord database and ecological surveys for planning applications for STO1's western field and the DC/23/0290 development site (Figure 1).

The field boundary between the central and eastern field is also over 300 years old. It [REDACTED] has had nightingales nesting. The impact on protected species of putting a linear development through this hedgerow has been ignored. Its destruction, without justification, does not comply with the Management of Hedgerows (England) Regulations 2024.

The assessment incorrectly states that the hedgerows limit sightlines to the wider countryside. The STO1 development will be visible over 1km away from footpath 2463/ 2463-1 to the north, urbanising views of the South Downs National Park (SDNP) (Figure 3).

The fields north of Northlands Lane (the eastern and central fields of STO1) are not 'semi-disturbed areas'. They are uncultivated grassland. The field margins, grass and scrub areas are a perfect habitat for small mammals, including dormice [REDACTED], and invertebrates.

The assessment incorrectly states that the central field is surrounded by hedgerows (Figure 1). The field only has a hedgerow, interspersed with trees, on the west side of the field. The eastern side is woodland – see above. The northern side has deciduous trees, but little hedge, so the listed buildings in East Wantley are visible to the north, especially from Autumn to Spring. The southern edge of the central field contains matures trees, hiding the houses on Melton Drive and protecting the SDNP view.

Many of these mistakes are present because the assessment relied on satellite imagery. HDC did not correct these errors, to take account of their site visit and make use of available information (Appendix 3_3).

HDC has deleted all working material relating to its HRAs (Appendix 2).

In *R (Akester) v Department for Environment, Food and Rural Affairs* [2010] EWHC 232 (Admin) at [115], Owen J followed the dicta of Pill LJ in *R. (on the application of Young) v Oxford City Council* [2002] 3 P.L.R. 86 at [20] and stated that **it is important that the**

decision-making process by which an appropriate assessment is made is recorded and made clear. In this case, there is no such record, and the residents are unable to view the Council's working in respect of the HRA.

Sustainability Appraisal

Q5. The STO1 Sustainability Appraisal does not comply with Regulations 8 and 10 of the Town and Country Planning Act Regulations 2012 (TCPA 2012).

Representations provide detailed evidence that HA18 is not consistent with 13 HDLP strategic policies, contravening regulation 8(4) TCPA 2012 and regulation 17.5 of the Planning and Compulsory Purchase Act (PCPA) 2004.

- It does not reflect that STO1 is within the Green Gap established within the SSWNP.
- It does not account for the impact of its out-of-village location when assessing access to facilities, transport and employment. Cars would be the dominant form of transport, increasing pollution within the Storrington AQMA and contributing to Climate Change.



- It does not assess the capacity of local facilities (e.g. schools and medical services) to meet the additional demand. In *Planning School Places 2024* WSCC forecast a deficit in Storrington Primary School future provision for 2025-27, without accounting for developments that have already been approved. Steyning Grammar School is also proposing to close its Storrington site.
- WSCC were not consulted about the ability to meet infrastructure requirements associated with HA18 (STO1 and STO2) and other sites in the vicinity.
- It draws on an inadequate and inaccurate HRA.
- STO1 has a housing density of 6.5 properties per Ha. This is the lowest of all the sites in the HDLP. One of the STO1 development proposers' states: "**this amount of development represents a grossly inefficient and ineffective use of land**". However, it is not scored as 'Red', 'significant negative impact likely'
- The impact on the setting of only one of the three listed buildings adjacent to the site is considered and Historic England's setting guidance has not been followed. The impact on the settings of the two listed buildings in the East Wantley was not considered even though the ribbon development would come within 100m (Figure 1).

- The HDLP incorrectly states that East Wantley will be “about 250m away” as the reason for not considering the impact of STO1 on the setting of its listed buildings. However, maintaining 250m separation from East Wantley would preclude any development in the STO1 Central and Eastern fields (Figure 1).

If all of these factors had been considered accurately, STO1 would have scored ‘Red’ for: access to services and facilities; biodiversity and geodiversity; landscapes and townscapes; historic environment; efficient land use; transport, air quality and climate change. Consequently, it would have been ruled out.

The errors and omissions in the Sustainability Appraisal highlighted above mean that the HDLP does not comply with Regulation 10 of TCPA 2012. This requires that a Council have regard to the need “in the long term, to maintain appropriate distances between establishments and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest”.

Q3. The criteria used in the Sustainability Appraisal were not fit for purpose and not accurately applied.

They did not provide a basis to accurately assess the sustainability requirements in the NPPF. Applying the criteria in associated HDLP Strategic Policies would have produced a more accurate assessment of NPPF compliance.

Had the Sustainability Appraisal been accurate and fit for purpose, STO1 would have been ruled out prior to reaching the regulation 18 stage.

Q4. The Sustainability Appraisal does not assess all reasonable alternative strategy options. For example:

- It did not properly assess sites HDC had previously assessed as ‘suitable’ for the SSWNP.
- It did not assess spatial alternatives within the STO1 site which would reduce the harm to protected species.

In regulation 12(2)(b) of The Environmental Assessment of Plans and Programmes Regulations 2004 the Council is required to assess reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme. **That has not been done in this case.**

In *Ashdown Forest Economic Development LLP v Wealden District Council* [2016] Env. L.R. 2 at [42], Richards LJ held that the **identification of reasonable alternatives is a matter of judgment for the decision-maker, but they must at least turn their minds to the question of alternatives. There is no evidence that has been done here.**

Q8. Climate Change

Details presented earlier and representations highlight **STO1 will exacerbate rather than mitigate Climate Change.**

- Cars will be the dominant form of transport.
- Building and operating a ribbon development across 'virgin' countryside would be energy intensive.
- STO1 will result in the loss of a substantial number of mature trees and hedgerow.

Q10. Neighbourhood Plan

HDC has not complied with Regulation 19(2h) of the PCPA 2004:

“(2) In preparing a local development document the local planning authority must have regard to – (h) any other local development document which has been adopted by the authority.

The SSWNP covers the period 2018-2031. It was 'made' in Sept 2019. It was developed in cooperation with HDC. However, it has been ignored:

- STO1 is within the 'Green Gap' established within the SSWNP. HDC is using the 'Green Gap' as a criteria to refuse planning applications, but it is not mentioned in the site descriptions, sustainability appraisal or HRA.
- Sites within the SSWNP, which HDC assessed as being suitable, are not included within HA18 of the HDLP. These would have provided affordable housing to meet the local needs highlighted in the SSWNP.
- Development of the STO1 western field was assessed as being unsuitable and unachievable by HDC (Appendix 4). STO1 extends the site eastwards, making the harm significantly worse, but it does not resolve the landscape and access issues.
- STO1 has 6.5 houses per Ha density – the lowest of any site in the HDLP. The implication is that it will provide little or no affordable housing to meet the local housing needs identified in the SSWNP.

Further, it is well-established that a neighbourhood plan becomes part of an authority's statutory development plan upon adoption.

Regulation 8(5) of The Town and Country Planning (Local Planning) (England) Regulations 2012 states: “Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.”

Here, there is no consideration whatsoever of the Neighbourhood Plan in the draft site allocation. The Council is therefore in error. They must explain that the relevant policy in the Neighbourhood Plan has been superseded by the site allocation and give sufficient and cogent reasons as to why this has been done.

ANNEX A

Figure 1 STO 1 mapping showing key features



Figure 2: STO1 footpath and wider landscape impact (also see Figure 3)

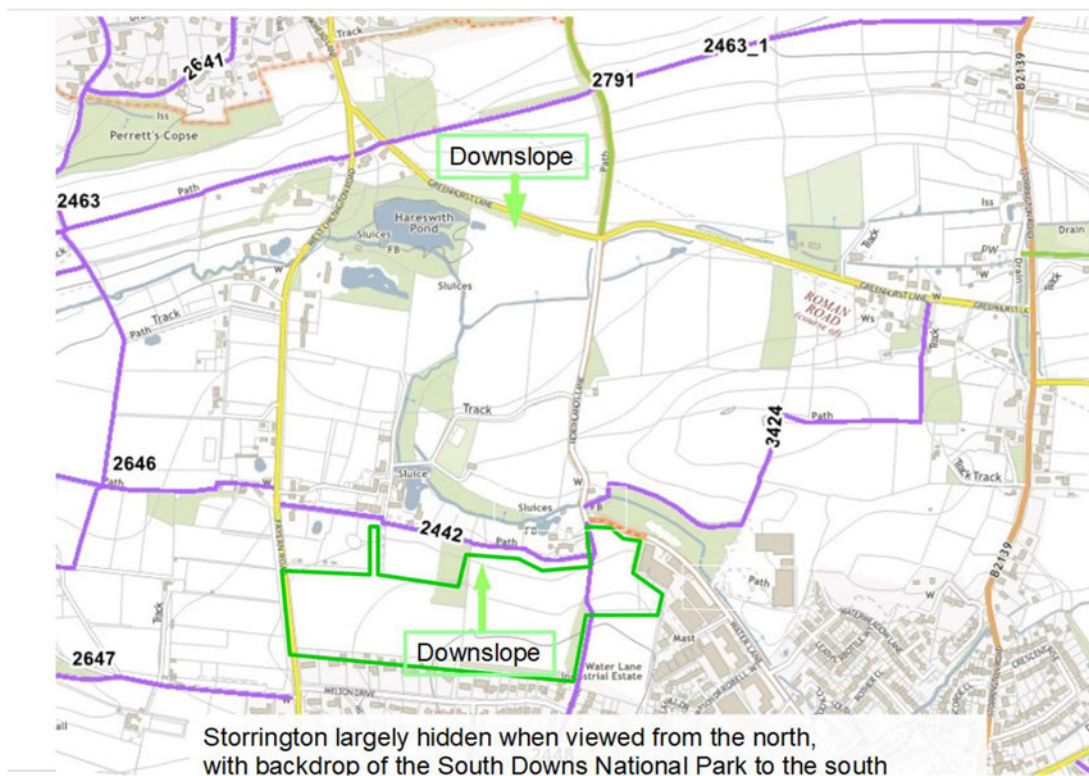


Figure 3 View of STO1 from footpath 2463 with the South Downs National Park behind

