**HORSHAM DISTRICT LOCAL PLAN 2023 TO 2040 EXAMINATION**

Matter 6d: Strategic Policy HA(NP1), Land at Adversane (Kingswood) (MM227)

**Note on behalf of Janina Pedan: wastewater, reliance on other regulatory regimes, and enforcement**

28 October 2026

## 1. Purpose

1.1 At the Matter 6d session the Council said that it is required to regard parallel regulatory regimes, such as the Environment Agency's control of discharges to water, as functioning. That is not an accurate statement of the law, and the point bears on the wastewater issue and on the Inspector's question about enforcement. The time available on 20 October also did not allow Ms Pedan's points on wastewater under item (vi) to be put. Sections 3, 6 and 7 summarise them and raise no new issue: each is made in her Matter 6d statement (sections 3, 4, 7 and 8) or her response to the Council's table (HDCJB28a). Ms Pedan would be grateful if the Inspector would accept this note.

## 2. The limits of the Gateshead presumption

2.1 NPPF 2023 paragraph 194 says that planning decisions "should assume that these regimes will operate effectively". That is policy, not law. In a recent Horsham case concerning water supply and the Arun Valley, Lang J held: "The proposition that a planning decision-maker is entitled to proceed on the basis that other regimes will operate effectively and properly is not a legal requirement to do so. It is a rebuttable presumption that a decision-maker may depart from, if the evidence justifies it" (*Crest Nicholson Operations Ltd v SSHCLG* [2025] EWHC 2194 (Admin), [103]; see also [47]). An authority may rely on another regime, but it "cannot simply ignore the issues in question" and "must assess them sufficiently so as to be able to satisfy itself that the other regulatory regime is capable of regulating the relevant issues" (*Vanbrugh Court Residents' Association v Lambeth LBC* [2022] EWHC 1207 (Admin), [23], drawing on *Gateshead MBC v SSE* [1995] Env LR 37).

2.2 The same applies to plan-making. Lieven J upheld a local plan policy about waste that did not assume existing regimes would operate effectively, holding that "there is clear evidence to support their approach" and that there was "good reason … to depart from [194] of the 2023 NPPF" (*National Farmers' Union v Herefordshire Council* [2025] EWHC 536 (Admin), [81]).

2.3 Where an assessment is required by law, the limit is firmer. An authority "must take care not to treat the existence of another regime as a basis for 'confining' and 'limiting the scope' of an assessment which the LPA is statutorily obliged to conduct" (*R (Caffyn) v Shropshire Council* [2025] EWHC 1497 (Admin), [3], applying *R (Finch) v Surrey CC* [2024] UKSC 20, [106] and [108]). Lang J considered that principle "likely" to apply "by analogy, to an appropriate assessment under the Habitats Regulations" (*Crest Nicholson*, [103]). In *Caffyn* an in-combination assessment of ammonia from intensive poultry units was unlawful because it left out projects consented under the environmental permitting regime. Shropshire's reliance on the national policy on parallel regimes to leave them out was "legally flawed", the more so "where the whole point is to identify real world, in-combination effects" ([61(iv)], [63]). That was said of regulation 63(1)(a); regulation 105(1) applies the same test to plans.

## 3. Wastewater and the Arun Valley sites

3.1 **Which works.** The HRA expects Adversane to use Pulborough or Billingshurst (HDCJB12, Appendix C, p.98) but does not say which, or what headroom either has. Neither is among the four works relied on at HRA 4.21, one of which (Warnham) was decommissioned in 2022, and neither bears out the Council's premise that an untightened permit means effluent 'deemed acceptable by the EA' (HDCJB28a, Issue 1).

3.2 **Pulborough.** Its permit (A1507/S/07, limits from 31 March 2025) sets no limit for phosphorus or nitrogen, and phosphorus in its effluent has not been measured since March 2009 (Environment Agency archive, SO-F0002868). The Council's 2023 workings applied 8 mg/l there, against 0.9 mg/l at Billingshurst (SD07, Appendix D, pp.125 to 126): each home connected at Pulborough adds about nine times as much phosphorus. In July 2025 the Environment Agency recorded '2024 DWF %Q90 for site is 85.92', with the larger primary tanks 'full and surcharged' (report S/571465).

3.3 **Billingshurst.** The Infrastructure Delivery Plan lists 'WWTW revised DWF Permit and capacity upgrades', rated 'Critical', for Land East of Billingshurst alone (HDCJB19, p.218). In June 2026 the Agency found the works 'needing 3, 6K tankers a day' to stay within its ammonia limits (report C0013083). Southern Water's own forecast, made before Adversane was allocated, puts its spare

dry weather flow capacity at 10% in 2020 and minus 6% by 2050 (DWMP Technical Summary, 2021, Appendix B).

3.4 **Nitrogen.** HRA 4.16 records Natural England's introduction of 'a total nitrogen target', and its advice that 'Most of the wastewater treatment work in the Arun Rother and Stor do not have nitrogen stripping' and that nitrogen is 'particularly impactful' on the plants forming part of the Ramsar features. Both targets are 'significantly exceeded' (HDCJB28d, p.2). No works in the catchment has a total nitrogen limit. Yet HRA 4.21 addresses phosphorus only, 4.46 treats phosphorus as limiting 'rather than nitrogen', and the Council's table responses do not mention 4.16 or the nitrogen target.

3.5 **Baseline.** It is common ground that the existing permits are baseline (HDCJB28a, Issue 1, as revised). A baseline is what the plan's effects are measured against, not a measurement of them: the question is whether the plan is likely to have a significant effect 'either alone or in combination' (regulation 105(1)). Permits limit concentration, not load. The Council's own 2023 workings, applying Natural England's method, count each new home's effluent at 90% of the permit limit; on that basis 650 homes at Billingshurst add about 50.7 kg of phosphorus and 1,500 kg of nitrogen a year (SD07, Appendix D, pp.126 and 136) to sites already failing both targets. Adversane is about five times that size. Where conservation status is unfavourable, the scope to authorise activities that may further affect a site 'seems necessarily limited' (*Coöperatie Mobilisation for the Environment*, C-293/17 and C-294/17, [103]).

3.6 **The Review of Consents citation.** The Council attributes the tightened limits to 'a standard national process undertaken by the Environment Agency (called Review of Consents)', and so treats them as 'deemed sufficient to protect the European site by the regulator' (HDCJB28a, Issue 1). The only source the HRA cites for the limits is a WINEP extract accessed in December 2020 (footnote 53). The permits themselves record the limits as water industry programme improvements under Water Framework Directive drivers (WFD_IMPm, WFD_IMPg), set for river standards, not under a Habitats driver or against the 2021 targets. The Site Improvement Plan the HRA cites at footnote 52 records, as Action 3A, works upstream of the Arun Valley sites 'which have not been addressed through Review of Consents (ROC)'.

3.7 The Council also treats growth within each works' permitted flow as already accounted for: additional nitrogen and phosphorus arise, it says, only 'if it lies beyond the headroom of existing WwTW discharge consents' (HDCJB28a, Issue 2). That assumes the regulator assessed each works at its full permitted flow against the sites' current targets. Nothing shows that it did. The Council itself calls the process 'unrelated to Local Plans' and directed at 'existing concerns' (Issue 1); Pulborough has no phosphorus limit; and Billingshurst's permitted flow is forecast to be exceeded (paragraph 3.3). Treating in-combination effects as 'somehow catered for' by a proxy of this kind 'lacks coherence' (*Wealden DC v SSCLG* [2017] EWHC 351 (Admin), [109]).

3.8 The current programme, agreed in March 2023, contains a Habitats Regulations investigation of the impacts of water company activities and permit standards on the Arun Valley sites, due by 30 April 2027 (PR24 WINEP, action 08SO101055a). The regulators are still investigating the question that 4.21 treats as answered, and as a reflection of a deemed or tacit approval of nitrogen and phosphorus limits at treatment works by the Environment Agency. Nothing produced before the examination supports that point.

**4. Application to the examination**

4.1 Properly stated, the presumption assists the Council. It may rely on the Environment Agency wherever the Agency's controls reach the issue, provided it has looked. But a presumption can only go so far: it cannot supply a control that the regime does not impose. No works in the catchment has a nitrogen limit; Pulborough has no phosphorus limit; the limits relied on were set for river standards, not for the European sites; and the Agency is itself investigating the effects of water company discharges on the Arun Valley sites (paragraphs 3.2, 3.4, 3.6 and 3.8). On those matters there is nothing for the presumption to operate on, and Ms Pedan does not need to show that the Agency is failing in order to make them.

4.2 The presumption also answers a narrower question than the one before the examination. Paragraph 194 allocates responsibility for 'the control of processes or emissions'. The planning system's statutory objective is sustainable development (Planning and Compulsory Purchase Act 2004, section 39(2)), of which environmental protection is one strand (NPPF 2023, paragraph 8(c)), and plans must prevent development 'contributing to … unacceptable levels of … water pollution' and take account of 'cumulative effects' (paragraphs 180(e) and 191). Where the regimes overlap, only planning controls the input. The Environment Agency regulates what a works discharges, but it cannot decide how many homes are built, where, or when they connect. The sewerage undertaker

cannot refuse a connection 'on the ground that the additional discharge into the system will overload it', and 'the only way' to defer connection 'would appear to be through the planning process' (*Barratt Homes Ltd v Dŵr Cymru Cyfyngedig* [2009] UKSC 13, [23], [57]). The cumulative load from the plan's growth is therefore a planning question for the inspector.

4.3 Parliament did not intend the planning system to be agnostic on this point. It 'has chosen to implement much of the UK's environmental protection through' the planning system (*SSCLG v Venn* [2014] EWCA Civ 1539, [15]). The Court of Appeal has since explained that Venn was 'able to infer that Parliament intended that environmental protection would be achieved through' the planning Acts 'combined with relevant policies for the protection or regulation of the environment', reflecting 'the well-established role played by the planning regime in environmental protection' (*HM Treasury v Global Feedback Ltd* [2025] EWCA Civ 624, [140] to [141]). And where Parliament wanted plan-level habitats assessments to assume that another regime will deliver nutrient standards, it said so in limited and qualified terms: the duty to assume that a treatment works will meet its nutrient pollution standard from its upgrade date applies only where the works is a 'significant plant' discharging into a catchment designated under section 96C of the Water Industry Act 1991 (Habitats Regulations, regulations 105(7) and 110A, inserted by the Levelling-up and Regeneration Act 2023; Water Industry Act 1991, sections 96B and 96L), and even then subject to a direction that the assumption is not to apply (regulation 110B). The Arun Valley is not designated (Notice of designation of sensitive catchment areas 2024). In 2025 Parliament extended the assessment duty itself to Ramsar sites (regulation 105(1A), inserted by the Planning and Infrastructure Act 2025, in force 21 May 2026). Outside the statutory assumption, reliance on another regime remains 'an evaluative public law judgment' (*Crest Nicholson*, [103]), and the in-combination test exists so that 'real-world in-combination impacts are confronted' (*Caffyn*, [61], of regulation 63(1)(a), whose test regulation 105(1) shares).

4.4 The point also goes to confidence in the examination. Where representors doubt that another regime is protecting a site, the law's answer is to examine the evidence. Stating the presumption alone, and as a requirement of the NPPF or the 'planning system' more broadly, conveys the opposite on a matter of considerable and well demonstrated public concern.

**5. Enforcement**

5.1 The Inspector asked what the Council would do if developers or operators did not comply, and the Council described its enforcement powers. Those powers are discretionary: an enforcement notice may be issued where "it is expedient" (Town and Country Planning Act 1990, s. 172(1)(b)). Injunctions (section 187B), step-in powers (section 106(6)) and monitoring fees are beyond this note. The question is simply whether the powers are actually used.

5.2 The available evidence suggests that formal enforcement of environmental conditions and obligations is rare. In a national survey of district councils in 1983, 67 per cent of non-metropolitan and 60 per cent of metropolitan authorities did not monitor planning agreements (e.g. s106), and 29 and 20 per cent respectively said that they did not monitor conditions; where checks were made, they were "largely on an ad hoc basis" (J Jowell and D Millichap, 'The Enforcement of Planning Law: A Report and Some Proposals' [1986] JPL 482, 483). Formal enforcement was "a last resort and used primarily as a background threat to induce compliance", and authorities took their cue "not from a breach of planning law as such, but from public complaint about a breach": as one respondent put it, "If no-one notices, then it's not causing a problem" (484, 486). A breach of a condition that protects a habitat rarely prompted a complaint.

5.3 On the best available evidence, little has changed in 40 years. On 42 completed housing estates in five English planning authorities, only 53 per cent of the ecological enhancements required by the planning permissions were present, and 34 per cent excluding newly planted trees; the authors concluded that there is "effectively very little regulation of developer behaviour" in practice (K Chapman, M Tait and S Postlethwaite, *Lost Nature: Are Housing Developers Delivering Their Ecological Commitments?* (Wild Justice, December 2024), summary report, 3 and 12). For biodiversity net gain, the National Audit Office has found that "[t]he discretionary nature of local authority planning enforcement means that there are compliance and enforcement risks", that authorities "have not received additional funding specifically to monitor or enforce on-site gains", and that, as to compliance and enforcement, "there is doubt about whether local authorities will be able to discharge these duties effectively" (*Implementing Statutory Biodiversity Net Gain*, HC 729 (2023–24), paras 15 and 21).

5.4 Lawyers for Nature's research, not yet published, found no formal enforcement action relating to an environmental condition or obligation by any of the 4 Sussex authorities sampled between February

2024 and August 2026; the underlying data is available at [reference]. Horsham was not in the sample, and the same data has been requested from it. The Council's own Local Enforcement Plan says that it "is highly dependent upon the general public" to report suspected breaches, that "certain conditions are monitored (as resources allow)", and that its "strategy of monitoring compliance of BNG is currently being formulated" (*Local Enforcement Plan 2026*, paras 5.4, 13.1 and 11.2).

5.5 This matters in law as well as in practice. Where an HRA conclusion depends on measures secured by condition or obligation, the authority must have sufficient information to be "duly satisfied that the proposed mitigation could be achieved in practice" (*No Adastral New Town Ltd v Suffolk Coastal DC* [2015] EWCA Civ 88, [72]). Evidence on whether such measures are monitored and enforced is part of that information.

**6. Sufficiency of the evidence, and what is asked**

6.1 Ms Pedan does not contend that harm is shown. Her point is that the screening has not been made 'on the basis of objective information' (regulation 105(1); *Waddenzee*, C-127/02, [44] to [45]). The risk is real, not hypothetical (*Boggis v Natural England* [2009] EWCA Civ 1061, [37]): the HRA links Adversane to the Arun Valley through wastewater (4.20) and the Council now confirms that paragraph 4.21 is its only basis for screening that pathway out. For the same reasons the conclusion is not based on 'relevant and up-to-date' or 'proportionate' evidence (NPPF 2023, paragraphs 31 and 35(b)).

6.2 Ms Pedan asks that the HRA update (a) identify the works that will serve each allocation draining to the Arun, including Adversane, and whether its flows can be accommodated within existing permits; (b) screen phosphorus and nitrogen for the SAC, SPA and Ramsar features, alone and in combination, with an appropriate assessment if an effect cannot be excluded; (c) reconcile HRA 4.16 with 4.46, recording Natural England's answer to that specific question (regulation 105(2)); and (d) be published with the further main modifications, not 'following completion of the examination' (HDCJB28, 8.4), since any requirement it shows to be needed can only be secured by a main modification (PCPA 2004, s.23).

6.3 **Phasing.** Southern Water records limited wastewater network capacity at Adversane, 'not a constraint' if occupation is 'phased to align with the delivery of wastewater infrastructure' (14 August 2026). Ms Pedan accepts that MM93 addresses timing. Rather than a new policy criterion, a sentence in paragraph 7 of the supporting text, in the form used there for the railway bridge, would suffice: 'It may also be necessary to restrict the amount of development that could come forward until such a time that the water supply and wastewater infrastructure needed to serve it is in place, based on the advice of Southern Water.' This is ordinary infrastructure planning, not HRA mitigation: phasing governs when effluent arrives, not what it does once it arrives.

**7. The HRA element of Natural England's criterion**

7.1 Ms Pedan welcomes the agreement to a wintering bird survey. The Council, supported by the promoter, said the HRA element duplicates Strategic Policy 17; while Table 3 stands, it is not 'unnecessary duplication' (NPPF 2023, paragraph 16(f)). Natural England, the statutory consultee, considers MM227 neither legally compliant nor sound without the criterion (comment /887), and its advice may be departed from only for cogent reasons (*R (Wyatt) v Fareham BC* [2022] EWCA Civ 983, [9(4)]).

7.2 Clause 11 of Strategic Policy 17 applies to development 'with the potential to impact' the Arun Valley sites. The plan's HRA records Adversane as 'Not suitable' and 'Project-level AA Required: No' (Table 3), a finding Natural England disputes and which the promoter's shadow HRA will follow (Quod scoping report, 4.60). A survey alone produces evidence that nothing in the plan then requires to be assessed.

7.3 Either of two outcomes would meet the point: (a) retain the criterion, if necessary as an information requirement under regulation 63(2): 'any application must be accompanied by at least one season of non-breeding bird survey and the information needed for a Habitats Regulations Assessment of any loss of functionally linked land'; or (b) correct Table 3, as the Council has offered, to record Adversane as potentially functionally linked land requiring project-level assessment, and say so in the HA(NP1) supporting text, so that Strategic Policy 17 applies.