Dear Lynette Benton,

Inspector’s letter of 28th May – comments received on the implications of the NPPF.

Thank you for the Inspector’s letter of 28th May and in which he has asked for our further views in respect of comments which he has now received on the implications of the National Planning Policy Framework (NPPF). In response to other comments which you have received you have in particular asked for our views where the wording in the NPPF is now different.

For ease of reference we have set out our comments under the various matters 1-6 as set out in your letter.

Issue 1: Housing land supply.

The NPPF seeks to boost significantly the supply of housing land and requires LPAs to meet their objectively assessed needs for both market and affordable housing. The Framework does however also confirm that this needs to be done as far as is consistent with the policies set out in the Framework. The NPPF also identifies the need to show a 5 year housing land supply with an additional buffer of 5% (or 20% where there has been a record of persistent under delivery).

We note that others have suggested that our core strategy is not consistent with this part of the NPPF and would comment as follows. The reference within the NPPF to “as far as is consistent with the policies set out in the framework” is key and reflects comments which the Inspector will recall we have already made to the hearing regarding general conformity with the regional strategy when taken in its entirety. This issue is not new and has already been addressed at some length at examination.
This wording in the NPPF has not been included without reason. Our substantive Hearing sessions in January and February enabled others to test, and ourselves to respond appropriately, to those same arguments in respect of housing numbers. We consider that such argument and response needs to be considered in the round and taken across the whole spectrum of what the NPPF requires of us. For example, section 11, paragraph 115 reaffirms the importance to be attached to National Parks and AONB's (affecting over 60% of the District's area) whilst paragraph 119 does the same in respect of the Habitats Regulations – both matters were addressed at length and rigorously in the January and February Hearing sessions. Paragraph 162 of the NPPF confirms the importance of assessing the capacity of necessary infrastructure to accommodate demands.

We have clearly demonstrated a 5 year supply of Housing land including from confirmation by all developers and landowners of our identified Strategic Development Areas (SDAs) that this is the case. None of those developers, agents or landowners expressed any concern regarding deliverability or viability of their sites, nor of atypical or prohibitive costs in their implementation. Our Strategy proposes to provide at least 9,600 units over the plan period and clearly meets the NPPF requirement in this regard including as set out at Section 6 of the NPPF, paragraph 47.

One significant change is that Paragraph 48 of the NPPF now enables LPAs to make allowances for windfalls if there is compelling evidence that such sites have consistently become available in the local area. Whilst we have made no such assumptions in the numbers proposed within our Core Strategy our latest Annual Monitoring Report 2010 - 2011 (AMR) clearly demonstrates (p63) that there has been an average of 229 dwellings completed from windfalls per annum over the last ten years (2001/2 - 2010/11). Indeed the number of completions for the year 2010-2011 as shown in our AMR was 709, for the year 2011-2012 this figure was 617, and that for the last five years we have been delivering at an average rate that equates with that shown in the now proposed to be shortened Core Strategy period. Whilst we acknowledge previous historical underperformance in this matter there is no current evidence of under delivery.

Whilst we acknowledge that the Habitat Regulations must influence the delivery of windfall sites within the north of the District we have evidence to show that a significant proportion of windfalls are historically on previously developed land. Taking into account our historic windfall rate, this would not prevent us from demonstrating a 5% buffer or indeed a 20% buffer if considered necessary to demonstrate consistency with the NPPF.

In this regard we consider that our Core Strategy has fully embodied the 12 Core Planning Principles set out at Paragraph 17 of the NPPF and in respect of Housing land requirements and thus meets the requirements of the Framework. The review of the strategy proposed by the Inspector clearly acknowledged identified potential for additional growth should existing significant environmental and infrastructure constraints be resolved. This is entirely consistent with paragraph 7 of the NPPF which requires the identification and coordination of growth to include the necessary provision of infrastructure. This is further emphasised within paragraph 162 of the NPPF.

**Issue 2: The suggestion that Annex 1 of the Framework affects the weight that should be attached to Policy NRM5 of the South East Plan.**

Paragraph 210 of the framework confirms that planning law requires applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Council and the South Downs National Park Authority view is quite simply that the Regional Strategy remains as part of the Development Plan (as confirmed in the footnote to paragraph 218).
Further, whilst at paragraph 218 of the framework, footnote 41 clearly confirms the Government’s clear policy intention to revoke the regional strategies there is no date or timescale that we are aware of for this to happen. The footnote further confirms that such revocation is in any case “subject to the outcome of the environmental assessments that are currently being undertaken”.

In the case of the South East Plan we specifically drew attention at the substantive hearing sessions that the published Environmental Report on the revocation of the South East Plan specifically notes at paragraph 28 of that report that nationally and internationally designated sites will continue to be subject to statutory protection. We submitted to the substantive Hearing sessions the letter which we sent, dated 5th December 2011, to the environmental assessment team at the Department of Communities and Local Government which further confirms the endorsement in that environmental report that LPAs shall not grant permissions for proposed development “unless they have certainty that it will not, either individually or in combination with other plans or projects, adversely affect the integrity of the European site concerned”.

We attach a copy of that letter of 5th December 2011 and would conclude that the suggestion that the weight to be attached to Policy NRM 5 is different following the publication of the NPPF is not valid and indeed misses the more significant point. Not only does NRM5 still remain as an important and integral part of the adopted Development Plan at the time of this examination, but importantly, whenever the Regional Strategy may be revoked, the clear requirements and duty placed upon us by the Habitats Regulations, remain unaltered.

**Issue 3: Soundness requirements of paragraph 118 – Plans to be positively prepared**

We understand that a number of responses have suggested our Plan is not positively prepared or overcoming constraints that may prevent it coming forward. We do not agree with this view when we have shown that we have accommodated the maximum growth that we can without breaching acknowledged environmental constraints.

We have also shown, and were supported in so doing by comments made to the Hearing by relevant landowners and developer interests, that we have identified deliverable sites that can come forward with no perceived atypical or abnormal costs. We were also able to show how we had worked with landowners and agents, as well as infrastructure providers, to plan positively for such growth. Other comments from some agents which the Inspector has received, have confirmed their view that the Plan has been positively prepared.

We confirmed to the Hearing sessions that traffic/transport matters, SANGs provision and land availability had not in themselves been seen as limiting growth. We further indicated to the Hearing our proposed Infrastructure Delivery Plan and implementation and delivery programme and have identified in our latest AMR those triggers that would necessitate review, all matters we consider show a positive approach to plan preparation and delivery.

The Inspector’s proposed main modification for review in 2015, both in respect of evidence heard on waste water and possible future infrastructure provision and on monitoring re nitrogen deposition, are also examples of showing how the plan is positively prepared.

In terms of joint working we produced evidence to show our positive and joint working approach with neighbouring authorities in respect of SWETS studies, our SHMA and Strategic Flood Risk work and also in respect of Appropriate Assessment. We are currently working with Mid Sussex to develop an on site mitigation strategy for the Ashdown Forest and we are working on a SANGs strategy to allow development that would otherwise be unsuitable. We have shown through our joint working on the SWETS transport studies how we have endeavoured to identify solutions to matters of concern rather than seeking to use
these as a constraint on growth. In essence we were clearly cooperating closely with neighbouring authorities before the duty to cooperate was brought in by the Localism Act.

Regarding our alleged unmet Housing need we produced evidence to the examination to confirm our view on Housing need for Wealden and indeed the fact that the RS allocations were not based solely upon any local housing need but upon other factors. Indeed the NPPF states that we should meet the objectively assessed needs ("as far as is consistent with the policies set out in the framework") which we would consider to be different from the essentially demographic projections that the RS figures were based upon. A number of commentators have still seen fit to consistently misrepresent our affordable housing need as opposed to 812 in need of one of a wide variety of housing need initiatives. This matter was also exhaustively dealt with at the earlier hearing sessions by the Council.

The issues regarding the impact of development upon Ashdown Forest are essentially covered above. However the matter also of the waste water issues in the south of our District had also, through a comprehensive and tested evidence based approach, shown that currently we are not able to simply divert more growth from south to north or vice versa. Our review work and monitoring, together with the implementation of appropriate wastewater infrastructure may provide opportunity at some future time but certainly not at present. We maintain that our Strategy has been positively prepared.

**Issue 4: Approach to economic development - Policies WCS3 and WCS6**

We disagree with the comment that the approach to economic development does not reflect the emphasis on supporting sustainable economic growth in the framework. Our employment land review evidence, that on retail expansion together with that on available land is, we consider a positive, appropriate and deliverable way forward. Paragraphs 3.18-3.25 of our Core strategy show how we do intend to positively support economic development, including tourism across the District through a variety of measures. At the hearing sessions it was explained on a number of occasions that the economic growth proposed in the core strategy goes beyond that of the projected demographic change and seeks a step change in the economy across the district. This we consider, taking into account all of the evidence base, supports sustainable economic growth.

We also set out for each of our Towns a positive approach to economic development and regeneration objectives. The NPPF sets out (at paragraph 21 in particular) that we should set out a clear economic vision and set criteria or identify strategic sites for local and inward investment to meet anticipated needs over the plan period. We consider Policy WCS3 does that. We identify for a number of our SDAs clear and positive reference to employment land and to additional retail provision in two of our principal towns. Policy WCS6 seeks to appropriately encourage and grow those more sustainable settlements whilst also supporting the wider economy in the most sustainable way through significant urban extensions – an approach which not only ensures sustainable economic growth but which is required of us through the South East Plan.

We have clearly identified for a number of our SDAs commensurate employment allocations (eg SD1,SD4,SD3,SD8) based upon evidence from our employment land review work and our retail capacity studies as well as our local knowledge regarding the deliverability of employment growth. These are additionally supported by sustainability and viability assessments to ensure positive and deliverable economic growth.

In response to suggestions that we do not reflect the NPPF emphasis of supporting sustainable economic growth, it is important to underline some of the significant changes from the draft to the final version of the NPPF. In particular where the necessary wider definition of sustainable was clearly included in the final version of the NPPF. This was in response to concerns from many that the draft version appeared to support economic growth
at any cost. Indeed within the Ministerial Forward to the NPPF, this is now confirmed, in terms of seeking to achieve sustainable development, as also encompassing social and environmental as well as economic objectives. These approaches are further detailed at paragraphs 6 and 7 of the NPPF and paragraph 8 also confirms these roles are interdependent rather than mutually exclusive. We believe our strategy meets and reflects the intentions of Government and the requirements of the NPPF in this regard.

**Issue 5: Exclusion of development on nationally and Locally designated biodiversity sites - consistency with paragraph 113 of the NPPF**

Essentially the reference at paragraph 3.30 of our Core Strategy reflected the broad approach taken to our SHLAA exercise. The SHLAA focus group which included representatives from the development industry considered that land identified as SSSI (ie national status) and Ancient Woodland should be automatically excluded from SHLAA suitable status. However the use of local designations was not per se a reason for exclusion. Rather that we were able to identify suitable alternative land that did not necessitate having to select land with any acknowledged local conservation status. Within the District overall, there was a significant amount of land put forward and it was not therefore deemed necessary or appropriate to seek to use land which had any significant and recognised conservation status. This is entirely consistent with the approach advocated by the NPPF at paragraphs 113 and also 118- bullet point 2. This is further detailed below.

In developing our core strategy however and our strategic sites DPD we do acknowledge in response to the comments received from the agent for SDA12, the potential of a sustainable extension to Tunbridge Wells at SD12 in the Parish of Frant, notwithstanding significant local opposition.

However in response to the issue raised, our Issues and Options consultation on the SSDPD clearly shows in some of those options for this particular SDA, that some of the land designated as SNCI, might be considered for development. This is also detailed in our SHLAA, which has been updated for the SSDPD as part of the process of being a “living” document. It will be for the SSDPD process to define precisely where development would be appropriate and on what land. We do not therefore consider that the suggestion that our core strategy approach is inconsistent with the NPPF which requires that protection of sites be commensurate with their status.

The NPPF clearly gives support to the protection of biodiversity e.g. at paragraph 117 “to minimise impacts upon biodiversity“ and at paragraph 118 bullet point 2 which clearly states that ,”if significant harm resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Contrary to the suggestion made in this representation we have already confirmed that we do have an up to date evidence base to support this approach. In this respect it is necessary to look at the whole content of the NPPF as it deals with biodiversity matters rather than suggest that our core strategy is inconsistent with it by only referring to one element. For the reasons set out above we do not believe that our Strategy is inconsistent with the NPPF.

**Issue 6: other matters raised**

A number of the representations which you have received seek, in our view, to use the publication of the NPPF as a mechanism to go over old ground and to repeat arguments already dealt with at length in the hearing sessions of January and February. Some have argued that the intended revocation (yet to come) of the Regional Strategy will make all argument in respect of Policy NRM5 irrelevant. This not only ignores the fact that the RS clearly remains, at this point in time, as part of the adopted Development Plan but also puts aside arguments which we heard repeatedly from development interests at the Hearings in
respect of, for example, the housing targets that it gave, that the RS remains as the Development Plan and should be applicable for the lifetime of the Core Strategy in order for general conformity to be achieved. With respect this seems to be wanting to argue the matter of longevity of the RS both ways.

Such comments about Policy NRM5 also overlook or fail to appreciate that whilst the revocation of the Regional Strategy is clearly the Government’s stated intention this makes absolutely no difference to the duty placed upon the Local Planning Authorities by the Habitats Regulations or indeed the content of those Regulations. Again matters which were given due and full consideration at Hearing.

Within a number of the representations which you have received and depending upon the particular interest represented some have quite clearly confirmed that our strategy complies with National Core Policies for delivering sustainable communities, and with the new duty to cooperate. We consider that we have shown that our approach and our Strategy is sound.

Others have commented that the LPAs should have been given opportunity to re write the Core Strategy to comply with the NPPF before being consulted upon it. With respect this would have delayed matters by many years, would not have given any deliverable supply of housing land and singularly fails to recognise the Government’s and Ministerial exhortations to LPA to prioritise production of Core Strategies, to provide certainty and to plan positively for growth. Others have referred to Localism and the role of Neighbourhood Plans as a reason to delay the Core Strategy - all matters yet to be finalised in their potential contribution to overall growth but not any reason for further delay.

Some have commented that the NPPF does not appear to introduce new policies which would require revision of the strategy, with the possible exception of the “presumption in favour of sustainable development” and the suggested wording for a model Policy that has come from the Planning Inspectorate (and upon which we have already commented) we would agree. In examining Local Plans the NPPF (paragraph 182 – bullet points 1-4) requires four key things of us, a) for the plan to have been positively prepared, b) justified, c) effective and d) consistent with National Policy. We consider that these are arguments that will already be familiar to the Inspector in the way they were addressed at the substantive hearing sessions in January and February of this year. In essence the NPPF requires us to show that our plan enables the delivery of sustainable development in accordance with the policies in the Framework. We consider that it does and that we have, through extensive consultation, evidence gathering and evidence testing, shown that it does.

**Additional queries**

Finally the Inspector’s letter of 28th May seeks our response and comments in respect of two additional matters.

Firstly whether the requirement, set out in the NPPF, to produce a Local Plan with additional development plan documents being produced only where clearly justified has resulted in any changes for the Council regarding its intentions. Secondly, we are requested to amend our LDS to reflect the fact that it will not now be possible to adopt our Core Strategy in June 2012 as currently shown.

Our approved Local Development Scheme (November 2011) shows that we intend to produce three DPDs (Core Strategy, Strategic sites DPD and Sites Allocations DPD) together with a timeframe for production of a community Infrastructure levy (CIL). We will be reporting to the Council’s Local Development Framework Sub Committee on the 23rd July with reports on the Core Strategy, Strategic Sites DPD, and Community Infrastructure Levy.
Our third DPD, (the Sites allocations DPD) will need to consider carefully whether, in the light of the recent replacement of a significant number of PPS’s and PPG’s by the NPPF, there is merit in including in this DPD a number of key development management policies to replace saved policies that will be “lost” once the transitional arrangements set down in the NPPF expire. Further, in respect of the Government’s publication of its planning policy for traveller sites, whether this also needs to be addressed in that DPD or should be subject of a separate DPD.

We can confirm that the LDS will be amended to reflect the fact that the joint Core strategy submitted by the South Downs National Park Authority and the District Council will not be adopted in June. Our report to the LDF Sub Committee on the 23rd July will propose a later date for adoption consistent with the issue of the Inspector’s final report.

Yours sincerely,

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Head of Planning Policy & Environment
Wealden District Council

Tim Slaney
Director of Planning
South Downs National Park Authority