Sirs,

Subject: pending Judicial Review relating to the determination of WD/2017/0458/MAO

This letter is written to you to honour protocols laid down by the Ministry Of Justice, specifically the Pre-Action Protocol (PAP) for Judicial Review.

I am aware of the pro-forma Annex A, letter before claim; but found following the layout difficult and resulting in an undecipherable communication. So, I trust this free-form version will address the 'required' elements of such a letter or advice.

I aware that this advice is probably over long, but I feel that the linkage with the current Examination in Public (EiP) needs to be highlighted and explained.

This advice relates to the Development identified by Wealden's Planning reference WD/2017/0458/MAO, Land at Old Marshfoot Farm, Marshfoot Lane, Hailsham. and subsequently referred to in this advice as the 'development'.

Specifically, I intend to seek Judicial Review (JR) of the conduct/ proceedings of Planning Committee South held on Thursday, 28th March, 2019 commencing at 10.30\(^1\) and held in the community hall adjacent to Wealden's offices in Hailsham, and subsequently referred to as the 'determination'.

I acknowledge that this advice is rendered prematurely as any JR cannot be issued until the development is finalised, by, in my understanding, the formalisation by legal agreements between Development Management (DM) and the applicant.

Whilst the scope of the proposed JR is limited and fixed. The emphasis and extent of supportive grounds may well change over time. This is because the submission of the request for permission to appeal 'lives in a moving window', framed in part by any determinations or conclusions reached by the Submission Local Plan EiP\(^2\).

\(^{1}\)These proceedings are permanently captured in Wealden's Webcast library
\(^{2}\)Initial sessions are scheduled commencing 21\(^{st}\) May 2019, further sessions addressing strategic allocations have yet to be scheduled
Additionally of course there remains the exploration of how a 'reasonable' planning authority would act – a crucial element in any JR related to planning issues and clearly relevant for Wealden; where there is a general concern/perception that Highways (ESCC) are no longer fit for purpose when consulted on the cumulative affects on traffic and roads on planned further housing development.

In part, to qualify the preceding paragraph, and to assist the Legal Team it should be noted that this development also 'figures' as the strategic site, HE2B Further it is part of a set of strategic allocations3 to the south and east of Hailsham which also have pending planning determinations

I have a further direct interest in the proceedings of the EiP; having submitted representations to the consultation for consideration by the appointed planning inspector; particularly here in relation to these strategic allocations and proposing that these aspects of the Local Plan are illegal and unsound. For reference: PSWLP240 (3/10/18) and PSWLP424 (4/10/18).

I feel that it is appropriate, in the circumstances, that the Programme Officer appointed to support the EiP receives a copy of this advice by way of an informative.

At last, to the crux of the matter; the details of the matter being challenged

I refer to the two directions by the Head of Planning generally suggesting that the overriding duty of the attending councillors was to 'protect the Submission Local Plan' rather than determining the application on it's merits.

For the benefit of the legal team's review these interventions occur at around 1 hr 30 minutes into the webcast of meeting and at around 2 hours 30 minutes into the webcast.

On the first occasion the direction was made at the instigation of the Chair, following the suggestion by Cllr Watts that advice should be provided on a possible rejection of DM's recommendation to approve - "the best way to defend the plan is to approve".

The later intervention, within summing up perhaps, but anyway featured the direction "refusal causes really significant problems with the local plan".

Additionally the Chair reminded the committee that protocol demanded that any refusal would called in for determination by Planning Committee North.

This 'threat' further reinforced by 'menacing', sorry to use the emotive tag, presence of the Planning Portfolio Holder seated in direct line of sight for some of the attending councillors.

The general, pervading, atmosphere summed up by the comment of a committee member referring to the build up, indeed hovering, of various senior Wealden officers at the back of the hall, including if I recall correctly the CEO.

Perhaps members of the legal team may also have been present?

How, I wonder, will I be able to convey in a short written submission, for the initial screening, the rich tapestry, or is it travesty, of the proceedings?

Beyond the obsession to defend The Plan; it appears that it is the HoP's general contention is that any developments in any emerging plan have to be approved, or rather cannot be refused for reasonable planning/policy based reasons.

It presumably follows, then, that any development in an adopted local plan cannot be refused, full stop?

3 HE2C, HSE3 and HS4A
No doubt should I be successful in proceeding beyond the screening stage any judgement handed down will reflect the consideration of this general direction by the HoP.

Other considerations

Supporting Documentation or 'directions' that might be supplied by the LPA

The general principle of building up to the Flood Line on the Levels

It was suggested by the HoP and the Chair that the Core Strategy EiP established the general acceptability of (extensive) developments bordering the Pevensey Levels.

Whilst I accept that the Strategic Allocation (SD2), adjacent to the Levels was confirmed it is not my perception, that the suggest understanding or principle featured at all.

Are the HoP and Chair confused by the two developments nominally validated by the Non-Statutory Plan (2005) which simply slipped thru?

In any event can Wealden please supply documents or references that support this view.

I trust that DM is aware that the Issues, Options and Recommendations document presented for consultation takes an entirely contrary view.

What is it about Wealden's Local Plan

Why does the plan need protection? Is it so fragile that the loss of a single site out of many result in it crashing out? Would a 'normal' local plan need protection in this way.

Constructive Dialogue and ADR

Not applicable in this instance

Completing the required information list

interested parties

Not applicable – I am acting in what I perceive to be the (general) public interest

address for notices

As per letter heading

legal representation

I will be engaging no legal representation.

Notice period for reply

14 working days

sincerely

[Redacted]

c a adams

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4 I attended, as a member of the public, all the strategic matters sessions of the EiP