Wealden Local Plan Examination

This is the Position Statement from Eastbourne Borough Council (hereafter referred to as ‘the Council’) prepared in response to the Inspector’s Matters, Issues and Questions (version 1).

Matter 1: Legal Compliance, including Duty to Cooperate

1. The Council does not consider that the Plan has been prepared in accordance with the Planning and Compulsory Purchase Act (PCPA) 2004 particularly in light of the Duty to Cooperate (Section 33A) and additionally due to the fact that Wealden District Council (WDC) submitted a main modification alongside the Plan that they consider is required to make the Plan sound. The PCPA 2004 (Part 2, 20 2)b) requires the planning authority to submit a Plan that is ready for examination; NPPF 2012, para 182, establishes this to mean ‘sound’ – the Plan as submitted is not considered sound by the Local Planning Authority if a main modification is submitted alongside it in order to make it sound.

The Council highlighted on a number of occasions to WDC officers (primarily through the Ashdown Forest Working Group forum) that air quality at Pevensey Levels SAC was not considered an issue and WDC therefore had sufficient early notice, such that the modification could/should have been made prior to the Regulation 19 publication and not at Regulation 22 submission. The basis of the Council’s confidence in this matter came from extensive communication with AECOM as well as Natural England and this was expressed to WDC officers, therefore the Council feels more weight should have been given to its concerns. This is particularly important given the proximity of the Pevensey Levels SAC to Eastbourne borough and the reliance on the air quality issue to guide the level and distribution of growth in the Plan, which does not seek to meet any of Eastbourne’s significant unmet need.

2. The current Local Development Scheme available on the WDC website is dated March 2019, which is 2 months after submission of the Plan and no other versions are available on the website. It is not clear when the “formal commitment to produce a local plan with a minimum of 15 year period after adoption” (p9 para 1.6 SA Scoping Report 2015) changed to producing a plan with 8 years from adoption (assuming adoption in 2020).

3. No comment

4. No comment
Sustainability Appraisal

5. No comment

6. No comment

7. The implications are significant for the robustness of the SA. The impact on air quality from traffic adversely affecting the Pevensey Levels SAC is identified a number of times as a reason for selecting or rejecting alternatives, including in the 2018 SA e.g. Vision (Table 3), growth level for Ninfield (Table 69), as well as AF 1 (Table 10) and EA1 (Table 81).

The growth and spatial scenarios are derived and tested using traffic and air quality modelling that includes the Pevensey Levels SAC and it is still apparent that overall growth patterns and levels are being determined on the basis of air quality impacts, including on the Pevensey Levels SAC. This is exemplified in the 2017 SA Table 23 Reasons for Selecting Alternatives for Hailsham, Polegate and Stone Cross air quality issues at Pevensey Levels SAC are cited as reasons (additionally Tables 24-27 growth scenarios and reasons for selection and rejection).

In summary, treatment of the Pevensey Levels SAC as having an air quality issue is embedded within and throughout the SA documents – merely to remove reference to it would not result in proper assessment of the growth scenarios in light of the revised position that there is no air quality issue for the Pevensey Levels SAC. The Council is seeking a proportion of its unmet need to be provided in South Wealden and this should be properly assessed in the light of air quality issues not being a constraint to development.

8. A large number of alternatives have been assessed, however the Council would question whether the basis for assessment and selection is reasonable given the underlying assumptions regarding the Pevensey Levels SAC and air quality have been found to be wrong. The Council considers this also applies to the Lewes Downs SAC and Ashdown Forest SAC. The assessment and selection of the growth scenarios and spatial distribution is based upon the assumption that there is an adverse effect on the integrity of these sites from air pollution from traffic arising from new development and this is simply not the case if the advice from Natural England is followed in terms of allowing for some improvement in background emissions as forecast by DEFRA.
Duty to Cooperate

9. Further to our Regulation 19 representation on this matter highlighting concerns that the Council had not been engaged by WDC meaningfully on technical studies (or outcomes from technical studies) regarding the Pevensey Levels SAC. The first indication officers received that a change in WDC stance was likely on Pevensey Levels SAC emerged on 30th December 2018. Confirmation of this position was only received on 16th January 2019, two days prior to WDC submission of its Local Plan. This decision was not made collaboratively and the outcome cannot be attributed to compliance with the Duty to Cooperate, furthermore as explained above the true ramifications of this decision have not been assessed in terms of development and growth scenarios and Eastbourne’s unmet housing need.

In recent months (December 2018 – January 2019) the Council and WDC officers have been working towards a Memorandum of Understanding (MoU) to establish a clear framework for future plan-making, including the formal identification of the shared functional geography between Eastbourne and South Wealden. This work cannot address the past deficiencies in plan-making cooperation for Wealden’s submitted Local Plan; furthermore the Council is extremely disappointed that draft versions of this MoU (particularly EBC151-153) complete with officer’s comments, track changes and workings have been published in an attempt to evidence compliance with the Duty to Cooperate. It is the Council’s view that publishing these drafts is in direct conflict with the Duty to Cooperate and a breach of trust (officers should be able to work on draft documents in a ‘safe environment’ without risk of unauthorised publication). Eastbourne elected Members had not authorised publication of the MoU and certainly do not sanction the publication of officers track changes and comments in this way – it is unacceptable and at odds with the Duty to Cooperate in terms of constructive or collaborative ways of working.

10. As highlighted in our Regulation 19 consultation response, matters of cross-boundary strategic significance, which require cooperation include: Eastbourne’s unmet housing need; Wealden development’s impacts on Eastbourne’s infrastructure, including Eastbourne’s flood storage capacity, road infrastructure, public transport infrastructure, community facilities and education infrastructure - all of which can be considered in the context of a shared functional geography, which has not been properly recognised in the WDC Local Plan.

Particularly concerning to the Council is that development viability in Wealden in areas contiguous with Eastbourne (Stone Cross, Polegate and Willingdon sites) is vastly better than in Eastbourne and no infrastructure contributions or mechanisms for contribution have been identified for infrastructure improvements within Eastbourne from the impacts of this development. (Furthermore the top-slicing of financial contributions from these sites to fund mitigation of a conservation site ~30km away without consulting the Council on the impacts for local infrastructure provision, is not considered appropriate in the context of cooperation).
11. The Council does not consider that WDC has cooperated actively, constructively or on an ongoing basis (as cited in our Regulation 19 response) and this position has substantially arisen post their Regulation 18 Issues and Options consultation; the issues are not so prevalent prior to that 2015 consultation. It is the last three years of plan-making that are of particular concern in this respect, when a change of strategy occurred and the approach to the European conservation sites intensified and WDC plan-making (including evidence base) became considerably more secretive. The Council received no formal notification or other direct, meaningful engagement advising that a proportion of its unmet housing need was no longer being planned for within Wealden district. The Council does not consider that technical information contained within a presentation to a county-wide audience regarding the testing of growth scenarios adequately, effectively or respectfully deals with this significant change in strategy and its consequences for Eastbourne Council and Eastbourne’s growing unmet housing need.

12. The Council believes that WDC has not taken opportunities to produce joint studies and approaches to strategic issues and has not even invited the Council to participate on Steering or Working Groups (post 2014) for studies involving the Eastbourne area, including the transport studies: K1 and K2 Wealden Local Plan Transport Studies 2017 and 2018 and K8 Hailsham-Polegate-Eastbourne Movement and Access Corridor; the Strategic Housing Market Assessment 2016 (H3); any of the Habitat Regulations Assessment evidence base and in particular I20 Pevensey Levels Air Quality Modelling 2018; A31 Infrastructure Delivery Plan 2019.

By way of contrast and to demonstrate more effective working relationships in the past between the two councils, the Foreword to the Eastbourne Core Strategy Local Plan, adopted in 2013, states in the first paragraph:” We have also worked closely with our partners in Wealden District Council to ensure that the technical studies and research that informed this plan are complementary for both administrative areas”.

13. The Council does not consider that mutual benefit has been achieved, in particular in the areas of housing and infrastructure provision and this is not helped by the shortened length of the Plan (8 years from adoption). When the Council last had the formal opportunity to comment, at Regulation 18, the proposed Plan Period was 2013 to 2037 (C1 Wealden Local Plan Issues and Options Consultation Paper, p55). The change in plan period and the reasons for this ought to have been communicated to the Council, to manage expectations that the Council had concerning housing and infrastructure provision to serve Eastbourne and to be
delivered within the context of the shared functional geography of Eastbourne, Willingdon, Polegate and Stone Cross.

14. No comment

15. Yes, as stated above, the significant matter of housing and infrastructure provision to serve Eastbourne to be delivered within the shared functional geography have not been adequately addressed within the Plan.

16. No, the Council does not believe the Duty to Cooperate has been discharged in line with the NPPF for the reasons outlined above. There has been a significant deterioration in collaboration on Wealden District Council’s part since 2015. Clear areas of common interest between Eastbourne and Wealden have not been diligently addressed to achieve benefit for Eastbourne, which has no other local planning authority to turn to in respect of unmet housing need and with whom Wealden clearly shares a contiguous functional geography relating to housing market area, employment, services, facilities, flood risk and infrastructure.

17. The Council does not believe WDC has demonstrated diligence or given proper consideration to meeting cross boundary strategic priorities. A belated focus on the Duty to Cooperate, particularly in the form of a discussion over a MOU that was commenced after the end of the Regulation 19 representation period and cannot influence the content of this version of the Wealden Local Plan, cannot be regarded as a genuine attempt to address the concerns of the Council. This point is further demonstrated by the publication of the vast Duty to Cooperate Background Paper and Appendices, which only seeks deflect the objections rather than taking a collaborative approach to address the issues raised and seek to build bridges.

The limited 8-year timespan of the Plan, particularly in light of the considerable expense of the huge evidence base, is a missed opportunity in the context of addressing unmet housing need for Eastbourne, which is a highly constrained borough, physically and due to flood risk.

The Council can get nowhere near meeting its OAHN and this point was made clearly to WDC in the Council’s representation at the Regulation 18 stage of the Wealden Local Plan. At that stage WDC were proposing to deliver 97 dwellings per annum of Eastbourne’s undersupply (2,328 over the Plan period), which the Council welcomed, however the Council’s representation highlighted this still left a further 63 dwellings per annum (1,512 dwellings across the plan period) of unmet need. The unmet need has only grown since then and now stands at ~461 dwellings per annum. The Council considers that WDC should have planned for a longer plan period and sought to address Eastbourne’s unmet housing need in line with the Duty to Cooperate and NPPF requirements.
The Council is therefore seeking the outcome of an acknowledgement of the Failure of the Duty to Cooperate accompanied with an invitation to WDC to withdraw the Local Plan and work with Eastbourne Borough Council to address the housing need within the shared functional geography. If this is carried out in the context of the 2019 NPPF this would at the least guarantee a Plan that looked at 15 years (at least) from adoption that would be capable of delivering both housing and infrastructure to meet the identified need.