Wealden District Council Local Plan Examination
Matter 1: Legal Compliance, including Duty to Co-operate

On behalf of Mr William Fattal

May 2019
DHA/13308
Contents

INTRODUCTION.......................................................................................................................... 1
1.1 Purpose of this statement .................................................................................................. 1

MATTER 1: LEGAL COMPLIANCE, INCLUDING DUTY TO CO-OPERATE.................. 2
1.2 Issue 1: Whether the plan has been prepared in line with the relevant legal requirements and procedural matters? .................................................................................................................. 2
Introduction

1.1 Purpose of this statement

1.1.1 These comments are prepared on behalf of Mr William Fattal in respect of the Wealden District Council Local Plan Examination. They respond to the Matters and Issues Paper Stage 1 (Matter 1) key questions set by the Inspector on 9th April 2019.

1.1.2 Mr Fattal is promoting land adjacent to Jonas Drive, in the Durgates area of Wadhurst (Wealden SHELAA reference: 58/3330) and has numerous interests in respect of the emerging plan. Nonetheless, the comments contained herewith relate to matters of a strategic nature that go to the heart of soundness and legal compliance in line with the initial questions posed by the Inspector. Site specific comments will be added should the Examination proceed to stage 2 detail in due course.

1.1.3 In formulating these comments, we acknowledge that the Government published a revised National Planning Policy Framework in February 2019 but that because the Council chose to submit its Local Plan for examination before 24th January 2019 the policies in the original 2012 framework apply to this Examination. On this basis, any reference to the NPPF relates to the 2012 publication and to be “sound” it must be:

- Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

- Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

- Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

- Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

1.1.4 In formulating this response, we have addressed the Inspector’s questions directly and recapped our Regulation 19 concerns. Given many of questions are directed specifically to the Local Planning Authority, our responses have been limited to only those matters relevant to our client’s Regulation 19 response.

1.1.5 Our client will confirm in due course as to whether he wishes for us to participate in the oral sessions of the Examination.
Wealden District Council – Regulation 19 Representation on behalf of William Fattal (Matter 1)
Ref: DHA/JB/JAT/Q6609

Matter 1: Legal Compliance, including Duty to Co-operate

1.2 Issue 1: Whether the plan has been prepared in line with the relevant legal requirements and procedural matters?

Has the Plan been prepared in accordance with the relevant Act and regulations?

1.2.1 For the reasons outlined in our Regulation 19 submissions, we are concerned about a number of aspects of the proposed strategy and whether cumulatively they will contribute to the delivery of housing and represent a sound planning basis for future decision making and delivering genuinely sustainable development. For example, the strategy is too heavily weighted towards strategic development and to the south of the district.

1.2.2 Nonetheless, our reservations are in respect of appropriateness and soundness rather than legal compliance, albeit we remain troubled as to how far the plan has been prepared in accordance with the feedback of core stakeholders and statutory consultees having regard to the nature of the objections received.

Has the plan been prepared in accordance with the Local Development Scheme in relation to timing and content?

1.2.3 We note that the Council’s Local Development Scheme was updated in March 2019 to bring the emerging plan in line with the latest strategy and timetable. The LDS within which the plan has actually been prepared has been deleted by the Council and does not appear to be a formal submission document.

Has adequate consultation been carried out in accordance with the Statement of Community Involvement and the relevant Regulations? Specifically, have all relevant bodies been consulted?

1.2.4 We have no cause to believe the plan has been prepared without adequate consultation.

Has the plan been subject to Sustainability Appraisal (SA), including a report on the published plan, which demonstrates, in a transparent manner, how the SA has influenced the evolution of the plan making process and have the requirements for Strategic Environmental Assessment been met?

1.2.5 The plan has been subject to SA. Our client awaits the Council’s detailed response to this question in respect of transparency and how this has influenced core decision making.

Is the non-technical summary suitably concise? Has the SA followed the correct processes in terms of content and consultation? In particular, is the scoring methodology within the SA consistent, coherent and accurate?

1.2.6 As a general comment, the process of considering the scale of development and in particular the associated impact/mitigation on European Protected Sites has
become so complex and lacking in transparency that residents and non-professionals cannot reasonably be expected to have a proper understanding of the issues and how the plan has been prepared nor participate in the process. On this basis, we consider the plan as whole should have been underpinned by a much greater level of transparency and explanation to ensure meaningful and proper community engagement.

What are the implications, if any, to the Sustainability Appraisal, as amended, of the proposed Main Modification put forward by the Council to remove reference to air quality impacts to the Pevensey Levels SAC and Ramsar sites?

1.2.7 The implication of the Main Modifications primarily has regard to there being no demonstrable air quality impact on the Pevensey Levels SAC and Ramsar sites. The subsequent change must inevitably mean that there must be some sites/options that have potentially been unjustly ‘ruled out’ for erroneous reasons. Further evidence of the implications of the change is needed before one can determine whether the failure of the evidence goes to the heart of the soundness of the plan.

Have all reasonable alternatives been considered in terms of strategy, policies and sites? Have these reasonable alternatives, including those set out within the Sustainability Appraisal Addendum 2019, been considered on a like for like basis? Is the evidence on which the scenarios are predicated consistent? Are there any policies, or strategies, where there were no reasonable alternative options to consider? If so, what is the justification?

1.2.8 Our client’s view is that whilst a significant number of reasonable options have been considered as part of the plan making process, we are not convinced that the decision making process used to rule sites/strategies in or out is reasonable or underpinned by credible evidence.

Has the Council co-operated with the relevant local planning authorities, County Councils and appropriate prescribed bodies, in the planning of sustainable development relevant to cross boundary strategic matters? If so, who has the Council engaged with, and why?

1.2.9 This matter is for the Council to advise, but the objections raised by neighbouring authorities suggest that cross boundary agreement has not been reached to a level that is agreeable to all parties nor that would represent compliance with the duty to cooperate.

Specifically, in relation to Wealden, what are the matters of cross boundary strategic significance which require co-operation, and how have these matters been identified?

1.2.10 The primary matters inevitably relate to the distribution of development having regard to the impact upon European Protected Sites and the degree to which development needs can and should be accommodated within the District.
In considering such matters, has the Council co-operated with those identified above, constructively, actively, and on an on-going collaborative basis throughout the preparation of the plan?

1.2.11 As above. The disparity between the Council, key stakeholders and neighbouring authorities would suggest a degree of correspondence, but there is a distinct lack of evidence of cooperation and how core differences have been attempted to be narrowed to avoid the need for a formal objection.

Should reference to ‘not adversely affect the integrity of the site’ be taken to mean that, as a result of the Plan, the qualifying elements of the site should not be in a worse state than the recorded baseline condition, i.e. no significant net deterioration? Or, does it mean, in the context of an improving situation, for example, improvements in air quality, that the potential for a theoretical quantum of improvement should not be compromised by the policies of the Plan?

1.2.12 We consider the former definition should be applied. In short, the plan should ensure the strategy will deliver development within acceptable environmental tolerances.