Gladman Developments Ltd
Matter 1 Hearing Statement
Wealden Local Plan Examination

Legal Compliance, including the Duty to Co-operate.

May 2019
Question 10: Specifically, in relation to Wealden, what are the matters of cross boundary strategic significance which require cooperation, and how have these matter been identified?

1.1 The submission Local Plan is supported by document A32 Duty to Cooperate Background Paper (January 2019), that paper sets out in Section 5 what it considers to be the key strategic matters that would impact on at least two planning areas. These are housing, Gypsy and Traveller provision, employment and retail land, infrastructure, flooding and habitats regulation assessment (HRA). Gladman agree with the Council in the identification of these strategic matters.

1.2 The document also in Section 5 outlines how these have been identified and the background which sits behind them, it considers in detail the scale of work undertaken by the Council in discussing these matters.

Question 16: Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraphs 178-181 of the Framework?

2.1 As previously noted document A32 of the examination library shows in detail the scope of engagement undertaken by the Council in regard to the Duty to Cooperate. The question therefore is has the scope of the engagement undertaken by the Council, and the effectiveness of that engagement been sufficient to demonstrate that the Duty to Cooperate, firstly in the legal sense, has been passed and subsequently if that hurdle has been passed are their issues arising from the Duty to Cooperate which might be said to impinge on the soundness of the submitted plan.

4.1 It is apparent from reading representations into the Local Plan as well as document A32, that the Council and its immediate neighbours have disagreements on a number of matters, not least issues relating to HRA and the Ashdown Forest, however there is a clear trail of engagement between the authorities on the range of key issues identified in Question 15. The NPPF (2012)\(^1\) requires local planning authorities to demonstrate effective cooperation when their Local Plans are submitted for examination. In the case of Wealden it is clear that extensive discussions have taken place between the partners, therefore it cannot be in question that cooperation has taken place. It is to the effectiveness of the cooperation that must be considered, this must be seen in the context that under the NPPF (2012) this is not a duty to agree and whilst the NPPF refers to joint committees, memorandum of understandings etc. it does not prescribe that these must be done to ensure that a plan has passed the Duty to Cooperate.

4.2 If it is considered that the Duty to Cooperate is passed in the legal sense, it is also important to consider any implications there may be with regard to soundness, in this regard clearly the mechanisms for dealing with HRA issues are important. Should the plan be found unsound with regard to the Duty to Cooperate it is highly likely that the Council will revert to its policy of an effectual moratorium on house building. Whilst this in itself should not be a reason for an unsound plan to be found sound, it should be a consideration in relation to whether the Local Plan will need to be the subject of immediate review upon its adoption.

\(^1\) Para 181
4.3 Should the Inspector conclude that the plan either failed to pass the legal test of the Duty to Cooperate and/or failed the test of soundness in relation to the Duty to Cooperate Gladman would urge the Inspector to give consideration as to the mechanisms proposed by the Council in regard to mitigation in relation to the Ashdown Forest. A consideration of the need for and/or robustness of the mechanism primarily contained within policies AF1 and AF2 and discussed in our Matter 2 Statement would be helpful for moving forward the situation with regard HRA and the Ashdown Forest, even in the event of the wider plan not being considered legally compliant or sound.