Wealden Local Plan Examination – Inspector’s Matters, Issues, and Questions for Discussion at the Examination Hearings

Hesmonds Stud, East Hoathly, Lewes BN8 6QH

Examination Statement

On behalf of Hesmonds Stud

May 2019
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Matter 1: Legal Compliance, including Duty to Co-operate</td>
<td>1</td>
</tr>
<tr>
<td>2.0</td>
<td>Matter 2: Vision and Objectives and Local Plan Growth</td>
<td>4</td>
</tr>
<tr>
<td>3.0</td>
<td>Matter 3: Objectively Assessed Needs for Housing and Employment Land</td>
<td>8</td>
</tr>
<tr>
<td>4.0</td>
<td>Matter 4: Supply of Housing</td>
<td>9</td>
</tr>
</tbody>
</table>
**Appendicies**

Appendix A – Habitats Regulations Assessment

- Annexes

Appendix B – Letter from Wealden District Council
Wealden Local Plan Examination – Inspector’s Matters, Issues, and Questions for Discussion at the Examination Hearings

Please find below our responses to the Inspector’s Matters, Issues, and Questions for Discussion at the Examination Hearings on behalf of Hesmonds Stud.

We confirm that we have followed the Guidance Note from the Inspector.

We can also confirm we would like to attend the Examination and present our case that the emerging Plan is not sound with reference to paragraph 182 of the National Planning Policy Framework (2012).

Hesmonds Stud submitted a planning application under Council Ref: WD/2016/2796/MAO which was validated by the Council on 9th December 2016. This broadly sought planning permission for 205 dwellings. The application remains undetermined by the Council. Hesmonds Stud’s primary interest in the Local Plan is to secure the allocation of the site that is the subject of this application.

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

7. 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. This makes the selection of Scenario O or Scenario P (which we favour above all other options) commensurately more attractive.

   2. In relation to Scenario P as set out Sustainability Appraisal – Addendum – 2019 the rationale behind rejecting the option found on page 21 and 22 would now essentially amount to the Council’s suggestion that the option would have an adverse impact on the integrity of the Ashdown Forest that cannot be mitigated.

   3. This is not a suggestion we agree with for two reasons. Firstly, we concur with Natural England that mitigation is not required for the development contained in the
Plan and therefore any mitigation measures necessary need only focus on the additional development present in Scenario P.

4. Secondly, the Appropriate Assessment submitted at Appendix A to this Statement confirms that the 205 dwellings proposed under Council Ref: WD/2016/2796/MAO can be permitted / allocated in addition to the development contained in the submitted Plan without an adverse impact on the integrity of the Ashdown Forest.

8. 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?

5. The SA appraises a reasonable set of options, particularly given the 2019 Addendum. The evidence base is seemingly consistent. The issue is that it consistently overstates the impact of the Plan on the Ashdown Forest. Please see Appendix A.

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

6. Clearly Neighbouring Councils are best placed to talk to this and therefore our comments are succinct.

7. No and the duty to cooperate cannot be rectified by a main modification. The NPPG advises that:

“the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved.” (Paragraph: 022 Reference ID: 61-022-20190315)

8. Seemingly very little has actually been achieved in relation to the Ashdown Forest in terms of positive outcomes.

_Habitat Regulations Assessment (HRA)_
20. Is the Plan, as submitted, likely to have a significant effect on European sites either alone, or in combination with other plans or projects? Have these other plans or projects been appropriately identified?

9. No. Please see Appendix A. Through Appropriate Assessment we have demonstrated that all of development currently contained within the Plan in addition to the 205 dwellings proposed under Council Ref: WD/2016/2796/MAO.

10. This document outlines the manner in which we believe the Ashdown Forest should be treated and provides a critique of the Council’s evidence base including the methodology and the underlying assumptions on which the HRA has been formulated.

24. Specifically, is the evidence, methodology, and the underlying assumptions on which the HRA has been formulated, realistic, robust, accurate, transparent, appropriate, and sufficiently replicable to allow sensitivity testing, so as to justify its conclusions? Has a qualitative, proportionate approach been taken to the potential impacts on the integrity of the sites? If not, should this be the case?

11. Again, please see Appendix A. If the Council’s assumptions regarding which emissions scenario to use are correct, followed to their natural conclusion it means no one in Wealden District will buy a newer, cleaner car in the next 9 years. This is fanciful. Scenario B is therefore supported although Scenario C also has merit.

12. Our Appropriate Assessment at Appendix A confirms that from the detailed assessment work undertaken even under the worst case, fanciful, scenario (where no improvements are accounted for), in combination, any effect is limited to only the A26 and A22, is extremely limited in extent and would only affect habitats which are not qualifying interest features of the SPA / SAC.

13. Any potential effects arising, even under the worst-case scenario only affect very narrow corridors adjacent to the relevant roads and habitats which are inconsequential to the qualification of the site as an SPA / SAC. Under the realistic emission factor “b” scenario, effects are either further reduced or non-existent in relation to the current Hesmonds Stud proposal.
28. On what basis has the threshold for development and its distribution been considered to be acceptable? Are the adverse impacts considered to be ‘real’, not ‘fanciful’?

14. A report entitled Ecological Monitoring at Ashdown Forest: Considering the Current and Future Impacts on the SAC caused by Air Quality and Nitrogen Deposition” (July 2018) has been produced on behalf of Wealden District Council.

15. The Report identifies that there are significant difficulties in directly attributing observed effects on habitat composition / quality to one source pathway. For example at paragraph 7.1.4 it is stated:

“Thirdly, disentangling the effects of subtle drivers of ecological change from the effects of other, stronger, or more pervasive, drivers is a challenge and usually requires dedicated experimental manipulation”. (Paragraph 7.1.4)

16. It is very clear that the study does not demonstrate that there is a clear correlation between traffic related air quality impacts and degradation of qualifying (heathland) habitat types. This is a matter also discussed by Natural England within its Regulation 19 Response. At paragraph 49 it states:

“In summary, generally through the ecological monitoring report, it is noted that background air quality is a pressure on Ashdown Forest but much of the specific ecological monitoring and analysis is generally unable to attribute road contributions to be a statistically significant contributor to this.” (Paragraph 49)

17. In this respect, the Council has failed to produce evidence in line with Morge vs Hampshire County Council [2010] EWCA Civ 608. It has not been demonstrated that the risk is “real” or “not fanciful.”

Matter 2: Vision and Objectives and Local Plan Growth

Issue 1: Whether the Spatial Vision for Wealden is justified, effective, consistent with national policy and positively prepared?

32. Are the key local plan objectives which have been identified relevant; justified; and consistent with National Policy?
18. The strategy is not justified. At its core it puts the protection of the Ashdown Forest SPA / SAC. The Council overstates the impact of development on the Forest. The Council’s entire rationale for the distribution of housing throughout the District has been based on a complete falsehood. The strategy should be altered to Scenario P in the SA Addendum 2019 which confirms:

“Whilst this Scenario would provide a significant housing boost for the District, and could be considered a fairer distribution of housing, it would have significant adverse effects on the Ashdown Forest SAC and Lewes Downs SAC.”

19. Given we do not accept the significant adverse effects alleged, we believe this is a superior option.

20. In addition the Council has been doing its level best to make a discussion over the spatial strategy for the District redundant by approving a number of significant planning applications in the south of the District which cumulatively substantially prejudice the discussion on the merits of the distribution of housing. The Council has actively been trying to implement the contents of its emerging Local Plan prior to Examination. Please see Appendix B.

33. Is the Plan period effective, justified and consistent with national policy?

21. No, the majority of the Plan period is over. Even with a fair wind, the Plan will essentially be an 8 year Plan. 2020 until 2028. Almost as soon as it is adopted it will need to be reviewed. The Council’s track record in this respect is poor, hence why we are only now, in mid-2019, seeing the fruits of a review that was supposed to take place 2015 or before.

Issue 2: Does the significance attributed to air quality considerations present a positive framework which is consistent with national policy, justified and effective, and will contribute to the achievement of sustainable development within the District?

35. Is a simple reading of policy AF1, that all development, irrespective of whether it is included within the list of categories set out in footnote 14 of the LP, or where it is located within the Plan area, is reliant on the action of the LPA? Does this
raise any risk to the delivery of development within the Plan? Would development be
dependent on the delivery mechanism being created or implemented?

22. Yes. In the event of a five year housing supply shortage due to lack of delivery on the
allocated sites during the plan period the Council could still refuse developments on
the basis they are not ‘policy compliant’ and can therefore not access mitigation. This
renders paragraph 11 of the NPPF of no consequence for Wealden District which
cannot be correct and would undermine delivery of necessary homes.

36. Is Policy AF1 consistent with the presumption in favour of sustainable
development and national policy? Is the policy justified by appropriate evidence to
suggest that harm to Ashdown Forest Special Area of Conservation and Lewes
Downs Special Area of Conservation will take place, in the absence of mitigation, as
a result of the envisaged level of Local Plan Growth, and in combination with other
plans and projects?

23. No. Mitigation is not necessary for the growth currently set out in the Plan for the
reasons set out in Natural England’s Regulation 19 response which has been
embraced by PINS in Appeal Ref: APP/C1435/W/18/3197286.

39. What would be the impact on development viability of the proposed financial
obligations set out in the Air Quality Mitigation – Interim Mitigation Strategy Tariff
Guidance for Residential Dwellings and Business Development?

24. There would be a negative impact. This is important as the Council is pursuing a
strategy which will inevitably result in provision of affordable housing being less than
the 35 per cent required by adopted planning policy at best and at worst an entirely
undeliverable strategy. The Council’s Viability Study Update (2018) states in relation
to the mitigation tariff:

“These key issues remain unchanged. In September 2018 the Council published an
interim mitigation strategy tariff guidance for residential dwellings only which equates
to a £3,100 per dwelling contribution secured through Section 106, applicable to all
sites with residential development. This impacts upon viability but not to the extent
that it substantially alters our overall conclusions regarding the deliverability of the
Plan.” (Paragraph 2.4)
25. Given key issues remain unchaged, it is difficult to square the Council’s comments with the comments in the 2017 Viability Assessment that:

“The South Wealden Growth Area is a key part of the Plan delivery and constitutes a large proportion of the District’s overall unit allocation. This area is allocated for 3,219 homes, thus is a key part of the 3,748 (dwellings on allocations) homes allocated by the plan. Therefore the marginality of viability in this Growth Area, as shown by our results, does represent a significant potential obstacle to meeting the residential unit delivery target of the whole Draft Plan – although it is important to emphasise that this obstacle can be overcome in a number of ways, such as by a reduction in affordable housing requirements.” (Paragraph 2.5)

26. It seems unlikely that sites that are subject to acknowledged constraints have become more viable and therefore more likely to deliver affordable housing despite the acknowledgement that the mitigation tariff will impact viability.

27. Regardless, affordable housing stands a greater chance of being delivered at policy complaint levels in East Hoathly than it does in Hailsham. This is therefore a more appropriate strategy.

Issue 3: Are policies EA1- EA3 positively prepared, consistent with national policy and justified?

42. Are policies EA1 – EA3 predicated on robust evidence in terms of impacts and proposed mitigation?

28. No, please see above and Appendix A.

Issue 4: Whether the approach to development within the High Weald Area of Outstanding National Beauty is justified, effective and consistent with national policy?

46. Having regard to the core planning principles set out within the Framework, and the exceptional circumstances and public interest tests set out in paragraph 116 of the document, is the development proposed within the AONB, including that which could take place within extended settlement boundaries, soundly based?
29. No, there is land deemed deliverable in the Council's SHLAA available outside of protected landscapes, for example in East Hoathly, which should be developed in preference to land within the AONB.

47. In particular: (a) what is the need for the development proposed, including in terms of national considerations? (b) what is the likely impact of permitting, or refusing, the housing development on the local economy? (c) is there scope for providing for the housing development outside of the AONB, or meeting the need for it in some other way? (d) what is the likely effect of the development on the environment, landscape and recreational opportunities having regard to the potential for moderation?

30. Plainly there is scope to for providing for the housing development outside of the AONB, for example on the land subject to Council Ref: WD/2016/2796/MAO which has currently been excluded from the Plan due to the Council's false assessment of the impact of the proposal on the Ashdown Forest.

Matter 3: Objectively Assessed Needs for Housing and Employment Land

Issue 1: Whether the Council's approach to calculating its full, objectively assessed needs is justified, based on up-to-date and reliable evidence, effective, positively prepared, and consistent with national policy?

Objectively Assessed Need - Housing

48. Does the plan period cover an appropriate time frame for the provision of housing (2013-2028), and is it consistent with national policy? Should it be extended. If so, why? Why is a different time period chosen to that set for employment and retail matters?

31. No, the plan period is too short. It will be 2020 (at the earliest) by the time the Plan is adopted which in effect gives us an 8 year Plan. The Council has a persistant record of underdelivery (hence the application of a 20 per cent buffer to its five year housing land supply calculation) and therefore a longer plan period would provide a greater number of sites and therefore more flexibility in delivery. At present, the Council is putting nearly all of its eggs in Hailsham's basket. This approach does not follow guidance in the Framework that:
“Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change”

32. If development is hindered in Hailsham due to the acknowledged constraints at paragraph 2.3 of the 2019 Viability Report that are:

• Potentially higher off-site infrastructure costs
• Higher on-site infrastructure costs in the case of larger schemes
• Cost implications of mitigating impact on protected areas
• Lower residential sales values for private housing (in particular in the Hailsham area and other parts of the south of the District)

33. Then the Council will fall back into a situation where it cannot demonstrate a five year housing land supply.

34. This approach also relies on the Council to undertake a timely review of the Plan, something it has already demonstrated itself to be unable to do through this Plan which should have been reviewed in 2015.

Matter 4: Supply of Housing

Issue 1: Is the Council’s approach to its housing supply, justified, effective and consistent with national policy?

58. Is reliance on the scale of windfall housing predicated within the LP being delivered, realistic, justified and consistent with national policy? In particular, how have the Core Areas been determined? How does the projected contribution from windfall housing compare with recent housing delivery? Is it appropriate to rely to such an extent on windfall housing rather than the allocation of housing sites within a plan led system?

35. No. The Core Areas have been tightly drawn and have limited scope to accommodate what are in some cases rather large allowances. There is no certainty regarding delivery. Applications may not come forward. If there is a necessity for windfall allowances, these are welcome although should not come at the expense of allocations which provide greater certainty of delivery and also can deliver affordable housing.
Yours sincerely

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