Examination of the Wealden Local Plan

Statement on behalf of Martin Grant Homes Ltd
(Respondent: 1186155 and 1186163)

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

May 2019
1. Introduction

1.1 This statement is submitted on behalf of Martin Grant Homes Ltd for purposes of the Examination of the Wealden District Local Plan (2019).

1.2 The statement responds to the Inspectors’ Issues and Questions for Matter 1: Legal Compliance, including Duty to Co-operate. Specifically, the Sustainability Appraisal and Duty to Co-operate sub-sections in Issue 1.

1.3 This follows representations from our client to Wealden District Council’s (WDC) Proposed Submission Version Local Plan consultation (Regulation 19) in October 2018.
2. Response to Issues and Questions for Matter 1

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

Sustainability Appraisal

Question 5 - 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?

2.1 The plan has been subject to SA, as prepared in-house by Wealden District Council (WDC). A final Sustainability Appraisal Report (SAR)\(^1\) was published for consultation in August 2018 alongside the Pre-submission version of the Local Plan. Since this time, WDC has updated the final Sustainability Appraisal Report (SAR)\(^2\) and prepared an SA Addendum and Non-Technical Summary\(^3\) of the full SA.

2.2 Whilst the SA reporting is extensive, the paper trail of documents is extremely difficult to follow. The influence of the SA on the evolution of the plan making process is not transparent, as demonstrated by a number of references within the final SA report\(^4\) which point to other ‘non SA’ documents; such as the Settlement Hierarchy Background Paper\(^5\); to provide the required justification and explanation of how and when assessments were undertaken\(^6\).

2.3 The above approach does not meet the requirements of the SEA regulations\(^7\) which state clearly that a full summary of the reasons for selecting (or rejecting) the alternatives dealt with and how they are assessed should be provided within the final SAR even where these are drawn from previous documents.

2.4 As stated in the final SAR, the previous SA documents\(^8\) together with the final SAR form the Sustainability Appraisal Report and the Environmental Report (ER) for the purposes of legal compliance with the SEA Regulations. Whilst an ER may be included within an

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SA (as confirmed by Planning Practice Guidance⁹), the document must clearly show that the legal requirements in relation to the ER have been met. As there is no further signposting of where the SEA requirements have been detailed within the various SAR documents it fails to comply with the SEA Regulations¹⁰.

2.5 In addition, the SEA summary provided in the Non-Technical Summary document is not provided (as is stated) within the submitted full SA report documents and does not detail changes to the plan resulting from the assessment. Again, there is a failure to fully comply with the requirements of SEA Regulation 12 as detailed in Schedule 2 of the Directive.

*Question 6* - *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?*

2.6 Despite a significant level of cross referencing to the relevant Chapters and Appendices of the SA reports, the submitted Non-Technical Summary document nears 400 pages and is therefore not ‘suitably concise’.

2.7 The SEA regulations state¹¹ that draft plans and programmes where an environmental report has been prepared “should be made available for consultation as soon as reasonably practical after the preparation of the relevant documents.” There was however no consultation between the period December 2015 and August 2018 on the SAR March 2017 (which forms part of the ER).

2.8 The above procedural flaw in relation to SEA Regulation 13 denied stakeholders an opportunity to review and provide comments at a critical stage of plan preparation and influence the direction of further work (particularly that on growth scenarios) carried out between March 2017 and August 2018. We therefore maintain the opinion that much of the SA work is ex post facto.

2.9 In addition, we contend the final SA report does not provide adequate justification for the selection/rejection of all reasonable alternatives or for the absence of housing allocations in Uckfield as a result of SA scoring and conclusions which are inconsistent with the methodology; and which has allowed less sustainable locations to be included as allocations for housing within the Local Plan. This includes the allocation of growth to settlements that rank far lower than Uckfield, with little explanation as to why WDC conclude this is the most appropriate strategy from the realistic alternatives¹².

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⁹ Paragraph: 039 (Reference ID: 11-039-20140306), Strategic environmental assessment and sustainability appraisal, Planning Practice Guidance, Wealden Local Plan Submission Library [link] [P3]


¹² Policy WLP 7, detailing allocation of housing to Settlements such as Wadhurst, Mayfield and Berwick Station, Wealden Local Plan (January 2019) Submission Document [A1]
Question 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?

2.10 We do not consider all reasonable alternatives have been appropriately assessed to enable WDC to robustly conclude the submitted strategy is the ‘most appropriate’ 13

2.11 An OAHN must be considered a baseline for reasonable alternatives in order to meet the District’s housing needs unless there is justification for selecting a lower housing figure within the SA evidence base (i.e. supported by current and future demographic trends and market signals)14.

2.12 The Submission Local Plan document maintains an OAHN of 950 net dwellings per annum (dpa) as described in the Housing Background Paper15. Further comment on the ‘policy off’ OAHN baseline figures we contend should have been assessed through the SA are provided in our Matter 3 Hearing Statement. Despite evidence indicating potentially higher needs, including unmet needs from adjoining LPAs such as Eastbourne, the SA used by WDC to inform the Pre-Submission Regulation 19 consultation, tests only one growth option that meets the WDC pre-determined OAHN figure.

2.13 No justification for this approach is provided, nor, until publication of the SA Addendum in January 2019, is there any test of higher ‘policy off’ options to enable WDC to justify that 950dpa is the most appropriate basis for the plan.

2.14 The Final SA documents (including the SA Addendum) fail to clearly present the reasons for the selection and rejection of the reasonable alternatives. We draw upon the specific example of the absence of any new green field housing allocations at Uckfield which comprises one of the largest and most sustainable settlements in the district16. This did not form part of any options for housing distribution prior to WDC undertaking additional SA work post their Regulation 19 consultation, despite the preferred option for growth in sustainable settlements only17.

2.15 The distribution of housing has been informed by the Settlement Hierarchy comparison of the District settlements and their suitability for accommodating growth18. However, growth has then not been directed to all of the sustainable settlements and an impartial assessment was not possible because the growth strategy sought development within the ‘South Wealden Growth Area’. As a result, settlements within the same tier of the Settlement Hierarchy and similar identified constraints do not

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13 Paragraph 182, NPPF, 2012
14 Paragraph 60, NPPF, 2012
15 Wealden District Council (January 2019) Housing Background Paper [A30]
17 Paragraph 5.6, Chapters 1-5, Sustainability Appraisal Report (March 2017), Wealden Local Plan: Document Library [B3]
18 Paragraph 6.9, Section 6, Settlement Hierarchy Background Paper, Wealden District Council (January 2019), Wealden Local Plan: Submission Library Document [A28]
result in an equal distribution of housing, with some settlements being identified for high housing figures and others no housing at all without any further justification. The growth strategy has therefore prevented consideration of reasonable alternatives for distribution on a like-for-like basis. The results have been pre-determined by WDC and not based upon the results of the SA.

2.16 There is an evident lack of assessment of alternatives around settlements beyond Hailsham where a significant proportion of growth has been directed, despite reliance on as yet unproven water discharge capacity at Hailsham North and Hailsham South Waste Water Treatment Works to deliver this growth. The lack of alternative or contingency options remains evident within Policy WLP 13, which relies on a review of the local plan where no solution to the Hailsham North and Hailsham South Wastewater Treatment Works is delivered by 2022.

2.17 Specifically, additional growth options or alternatives that include housing around Uckfield were not tested by WDC through the SA until the addendum was prepared following the Regulation 19 consultation. Given the uncertainties outlined in the Local Plan regarding the delivery of growth at Hailsham this is surprising and points to ex post facto work to justify previous WDC decisions in an attempt to rectify earlier failings of the SA/SEA process at a late stage of plan preparation.

2.18 The SA Addendum focuses upon the appraisal of the consideration of higher housing figures over a shorter plan period (2013-2028) than that proposed in the pre-submission SAR. The Addendum maintains (paragraph 2.1) that ‘options above scenario N are not considered reasonable alternatives’ (noted that a reference is missing within the WDC report for this statement) yet goes on to consider higher housing figures under ‘Scenario P’.

2.19 ‘Scenario P’ is based on a combination of the housing growth figure and distribution under Scenario N (14,228 dwellings) with the housing figures/distribution for East Hoathly and Horam that were considered under Scenario C, as well as the potential number of dwellings that could be delivered on suitable, available and achievable sites within Uckfield and Crowborough as determined through the SHELAA for years 1-10.

2.20 Scenario P is rejected on the basis that whilst it would provide a significant housing boost for the District, and could be considered a fairer distribution of housing, placing more housing development within Crowborough and Uckfield (together with development proposed in other settlements and in combination) would have likely significant adverse effects on the Ashdown Forest SAC and Lewes Downs SAC. This blanket statement is common to a number of the rejected options and is deemed further evidence of ex-post facto justification by WDC. Particularly in the absence of further assessments of mitigation measures for these levels of growth.

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21 Appendix 5, Strategic Housing and Economic Land Availability Assessment (SHELAA) (January 2019), Wealden Local Plan: Document Library [A29]
2.21 Natural England responded to the WDC Local Plan Regulation 19 consultation in their letter of 5th October 201822. In their letter, Natural England concluded the Local Plan as drafted would not adversely affect the integrity of the Ashdown Forest SAC, Lewes Downs SAC, Pevensey Levels SAC and Ramsar; and that this conclusion could be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. This may in our view indicate the potential in principle for headroom for WDC to accommodate further growth, alongside mitigation, which ought to be explored before WDC conclude they cannot accommodate additional housing needs from within and adjoining the authority.

2.22 Despite further SA work, WDC has still not provided sufficient evidence to support a windfall only housing provision at Uckfield and a disproportionately smaller contribution towards future housing supply than other sustainable settlements within the District, particularly given that Uckfield is likely to become more sustainable as a result of emerging Local Plan Policies to reinstate and upgrade the Lewes to Uckfield train line amongst other measures (Policy AF2); and bolster its retail offer (Policy RUGA 15).

Duty to Co-operate

Question 9 – Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraphs 178-181 of the Framework?

2.23 WDC have not in our view discharged their Duty to Co-operate in a manner consistent with Paragraphs 178-181 of the Framework. We maintain there has been a lack of effective cooperation by WDC in quantifying and putting in place plans and policies to address unmet housing needs arising from either WDC or from adjoining authorities. Secondly, there has not been effective and collaborative working by WDC towards devising the methodology to assess and mitigate the impact of cross boundary impacts on the Ashdown Forest SAC.

2.24 Turning firstly to cross boundary co-operation regards unmet housing needs. Para 5.24 of the Duty to Co-operate Background Paper (WDC, January 2019) acknowledges Eastbourne Borough Council’s approach to WDC to assist them with unmet housing needs. At paragraph 5.32 of the same document, WDC concede it is not that such needs cannot be accommodated within the district in principle; rather ‘this can only be delivered in a longer plan period, subject to funding, with further work required to understand / resolve impacts of development if possible.’ WDCs decision to opt for a plan period less than 10 years, less than the minimum of 10 and preferably 15 years suggested by NPPF, has negated the opportunity to cooperate effectively to put plans in place that ‘provide the land and infrastructure necessary to support current and projected future levels of development.’ [Paragraph 181 of the Framework (our emphasis)].

2.25 Paragraph 5.28 of the Duty to Co-operate Background Paper (WDC, January 2019) states WDC do not consider they will need to meet other adjoining authority’s needs. However, this appears to relate more to the short timeframe of the plan, the fact the plan is being submitted before 24th January 2019 and the stage adjacent LPAs are at

22 Page 723, Habitat Regulations Assessment (WDC, January 2019); Wealden Local Plan: Submission Document [A35]
with their Local Plan reviews. This does not evidence whether adjacent LPAs would seek assistance or indeed whether WDC themselves would seek assistance, if an appropriate ‘policy off’ OAN for housing had been assessed for an appropriate plan period at the outset (as asserted in our Matter 3 Statement). The last sentence of paragraph 5.28 the Duty to Co-operate Background Paper (WDC, January 2019), merely states Rother District Council do not require WDC to provide for its needs ‘within the short timescale of this Plan.’

2.26 Paragraph 5.28 of the Duty to Co-operate Background Paper (WDC, January 2019) also references SDNPA needs as being accounted for. Whilst it is true to say part of the district lay within the SDNPA; and hence in calculating housing need at WDC level, a very small proportion of SDNPA area needs are accounted for in the non-SDNPA parts of the district23; it does not account for the significant unmet needs of the wider SDNPA Local Plan through the Duty to Co-operate. The Submitted SDNPA Local Plan is only planning to meet 250 of the identified OAN for housing of 447 homes a year needed across the park to 2033 (Figure 3.5, Submitted SDNPA Local Plan). As a result, it cannot be said that the SDNPA wider housing needs ‘have been accounted for’ by WDC, nor is there evidence to suggest WDC have explored options or commissioned evidence to demonstrate they are unable or unsuited to contribute further to addressing such wider unmet needs. The Statement of Common Ground between WDC and the SDNPA for purposes of the SDNPA EiP24, states at paragraph 4.2 that, ‘The unmet housing need arising within the National Park in Wealden is very low, and is considered negligible when compared with the wider district and HMA, but may need to be addressed together with the wider unmet need through the local plan process outside of the National Park’ (our emphasis).

2.27 Paragraphs 178 and 179 of the Framework places a duty on public bodies to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156 of the Framework. This includes working together to meet development requirements such as housing. WDC’s Local Plan has been progressed with a plan period less than that prescribed in NPPF and based on a resulting OAN for housing we contest is too low (see our Matter 3 statement). This coupled with an objective of pressing to submit the plan before the 24th January 2019, has in our view precluded a true ‘policy-off’ assessment of OAN for housing to be quantified and assessed through a robust SA and HRA process. As a result, WDC have not been able to assess with any certainty their ability or otherwise to accommodate unmet needs of adjoining LPAs, or whether they themselves need assistance from adjoining LPAs to meet their own needs25.

2.28 The WDC response has instead placed reliance on the interim review policy WLP13, in part we suspect to enable the plan to achieve submission by the 24th January 2019. As

23 Whilst not clarified in the WDC Housing Background Paper (WDC, January 2019), Table 1 of SDNPA’s Duty to Co-operate SoCG between SDNPA and WDC for the SDNPA Local Plan Examination (SDNPA, April 2018), suggests this may amount to 7 homes per annum – copy provided by WDC at Appendix SDNP (SDNP22) of the Duty to Co-operate Background Paper (WDC, January 2019).

24 Appendix SDNP (SDNP21) of Duty to Co-operate Background Paper (WDC, January 2019)

25 Paragraph 5.30 of the Duty to Co-operate Background Paper (WDC, January 2019) confirms, Wealden District Council has not requested other local authorities to meet its need as it is considered that it is meeting its own need within the Plan period specified (our emphasis).
we contend in our Matter 3 statement, this does not result in a plan that is Positively Prepared (paragraph 182 of the Framework), nor is it a basis for effectively discharging WDC’s duty to cooperate under the Framework (paragraphs 178-181 of the Framework).

2.29 Turning to the second issue, the related cross boundary impacts of growth on the Ashdown Forest SAC. As asserted above, we do not consider WDC has used an appropriate OAN for housing or plan period at the outset to appropriately assess such impacts alone or in combination with other plans and projects. As a consequence, WDC are not able to evidence what the true implications are for meeting WD’s own housing needs, or those of adjoining LPAs such as Eastbourne. Natural England responded to the WDC Local Plan Regulation 19 consultation in their letter of 5th October 201826. This raised concerns over planned growth in the AoNB (which will be debated in Matter 2, Issue 4 of the forthcoming Examination), and importantly concluded the Local Plan as drafted would not adversely affect the integrity of the Ashdown Forest SAC, Lewes Downs SAC, Pevensey Levels SAC and Ramsar; and that this conclusion could be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. This may in our view indicate the potential in principle for headroom for WDC to accommodate further growth, alongside mitigation, which ought to be explored before WDC conclude they cannot assist adjoining LPAs with unmet housing needs.

2.30 WDC have instead sought to retrospectively commission additional evidence to support departing from this advice, which seeks to place lesser weight on a reduction in vehicle emissions arising, or speed by which these will arise from a shift in government policy towards cleaner vehicles. No doubt this will be keenly debated at the Examination session on HRA matters. However, fundamentally, WDC does not assess the implications for an appropriate OAN for housing over an appropriate plan period in our opinion. Therefore the conclusions of all of this seem academic. The true need for housing (including potential to address unmet needs from adjoining LPAs) over an appropriate plan period should have been the basis of earlier discussions with Natural England and the Duty to Co-operate bodies. This would have enabled all parties to effectively contribute to and sign up to Memorandum of Understanding over the quantum of growth (including ability to address unmet needs between the LPAs), the plan period, evidenced impacts and effective mitigation.

2.31 The Duty to Co-operate bodies have instead been denied the opportunity to cooperate effectively to put plans in place that ‘provide the land and infrastructure necessary to support current and projected future levels of development.’ [Paragraph 181 of the Framework (our emphasis)]. It is also why we suspect, despite WDC retrospective attempts to convince them otherwise, there remains unresolved Duty to Cop-operate objections to the Regulation 19 Local Plan consultation from five of the Duty to Co-operate bodies27. This includes Eastbourne Borough Councils request for the Wealden Local Plan to be halted and started a fresh with an appropriate longer time frame. A point we concur with for the reasons outlined in the preceding paragraphs.

26 Page 723, Habitat Regulations Assessment (WDC, January 2019)
27 Paragraph 7.3 of the Duty to Co-operate Background Paper (WDC, January 2019)
WDC continue to seek to defer consideration of such key issues to a later (unenforceable) review, partly we suspect, as to do so now would presumably have jeopardised submitting the plan by the 24th January. This is not in our view a plan that is Positively Prepared (paragraph 182 of the Framework), nor has it been forged through effective co-operation, one sufficient to discharge WDC’s duty to cooperate under the Framework (paragraphs 178-181 of the Framework). The Local Plan should be withdrawn and reframed to address an appropriate plan period, preferably 15 years; with appropriate assessments and effective collaboration undertaken to discharge WDCs Duty to Co-operate.

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