WEALDEN LOCAL PLAN

EXAMINATION

HEARING STATEMENT

ON BEHALF OF

RYDON HOMES LTD

MATTER 1

LEGAL COMPLIANCE, INCLUDING DUTY TO COOPERATE
Issue 1: Whether the plan has been prepared in line with the relevant legal requirements and procedural matters?

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

No. There are procedural flaws in relation to proper consultation and the duty to cooperate.

See below.

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

No. There was no up-to-date LDS at the time of the submission of the Plan. The earlier version is dated November 2015 and was out-of-date. The latest version, March 2019, post-dates submission and consultation upon the Plan. PPG states that the LDS must be kept up-to-date (ref ID -003-20190315).

3. 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?

No. The evidence base was not complete at the commencement of the consultation period, 13th August 2018. Of particular importance is the lack of details of nitrogen monitoring on Ashdown Forest and the details of methods of proposed mitigation which are matters at the heart of the strategy. Some further evidence became available during the consultation period, but the 8-week period was consequently foreshortened. Full details of proposed mitigation are still not available.

4. Whether the overarching strategy of the Local Plan is designed to secure the development and use of land which contributes to the mitigation of, and adaptation to, climate change consistent with S19 (1A) of the Planning and Compulsory Purchase Act 2004? If so, how has this been translated into policies within the Plan?

One of the fundamental elements of the Plan strategy is an assertion that traffic generated by development proposed in the Plan will have a significant adverse effect upon Special Areas of Conservation. This has unbalanced the overarching strategy because that assertion is misconceived. Furthermore, mitigation measures aimed at addressing the alleged adverse traffic impacts are not fully identified or proven to be effective. By focussing on this erroneous assertion the strategy misses the opportunity to secure wider and more effective measures to address SAC and climate change issues, whilst at the same time providing for the development needs of the District in full.
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?

A Sustainability Appraisal has been prepared and the matters that it contains have influenced the evolution of the Plan. The problem is that the SA is fundamentally flawed and unnecessarily cumbersome and consequently has misdirected the Strategy and policies of the Plan.

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

The non-technical summary is far too long and detailed. It extends to 398 pages. As a result it is a daunting and unmanageable document that does not help the reader to quickly secure an understanding of the true sustainability of individual elements of the Plan as a whole. This is characteristic of the evidence base and the Plan itself which are intimidatingly voluminous and complicated, thus obscuring an understanding of the wholeness of the strategy or the contribution that that individual elements and policies make to it. Precise and incisive evidence on justification have been sacrificed for ineffective volume. This situation is exacerbated by the claim that the total SA includes Reports that accompanied earlier stages of the Plan process in 2015, 2017 and 2018 (SA Non-technical Summary, Paragraph 1.1 – 1.2) together with a post-submission Addendum. The sustainability objectives are conventional, but the scoring methodology for the effects and commentary do not appear to be robustly structured or consistent. They are generalised and not specifically referenced to the evidence base. As a result they are arbitrary and unduly influenced by pre-conceived and flawed assumptions about the impact of traffic upon the SACs, Consultation responses have been inhibited by the sheer scale of the documentation.

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?

The realisation that air quality impacts had been over-stated in terms of potential significant effects is welcomed but needs to be broadened to include other SACs and a new SA undertaken.
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?

No. Reasonable alternatives have not been considered properly:-

- although the SA is claimed to comprise a composite of SA reports from 2015 onwards, these do not form part of the submitted Plan and were considered against a very different context and evolving evidence base from the time (SA Technical Summary Para 1.7). Alternatives considered at the earlier stages of the Plan but not in the context of the submitted Plan are not proper alternatives.

- no testing of housing numbers materially higher than the selected 950 dpa was carried out in order to test the sustainability of meeting the LPEG housing requirement or assisting to meet the needs of neighbouring authorities during the formulation of the Plan. The SA at the Regulation 19 stage did not assess higher housing requirement figures. The 2019 SA Addendum assesses Scenario O – 1556 dpa and Scenario P – 1255 dpa over the period 2013 – 2038. However, this did not contribute to forming the Plan strategy, was not available for Reg 19 consultation responses and the effects are not linked to any discernible thresholds in the evidence base that justify the generally arbitrary and negative comments made or conclusions reached. This post-plan assessment therefore lacks credibility and the Council need to explain what had changed to justify testing of these alternatives at such a late stage rather than as part of the formulation of the Plan.

- no testing of a longer plan period was carried out.

- no testing of higher housing numbers at Crowborough on land outside the AONB and benefitting from access to the town’s wide-ranging facilities and rail connections was carried out. This highly sustainable alternative seems to have been ignored or discarded without reasoned justification.

9. 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?

The Duty to Cooperate Background Paper includes extensive details of the involvement of Officers and Members of the Council in partnerships, discussion groups and meetings covering a wide range of cross-boundary strategic matters.
However, this is not, of itself, evidence of cooperation or engagement. At best it demonstrates active involvement, but there is little evidence of the cooperation, collaboration, effective and on-going joint working or preparation of Statements of Common Ground that are required by Paragraphs 24 – 27 of the Framework (2019). If WDC seek to claim that a lower standard of co-operation is required by Paragraphs 178 – 181 of the Framework (2012), then this is strongly disputed.

10. **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?**

The matters identified in Section 5 of the Duty to Co-operate Background Paper are agreed to be sufficiently comprehensive.

11. **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?**

No. The Council have been active and indeed animated on some cross-boundary matters - notably Housing and Habitats Regulations Assessment which are key to the vision and objectives of the Local Plan. However, from the developer experience over the past 6 years since the adoption of the Core Strategy the Council have been tardy, inconsistent, secretive, intransigent, confrontational and litigious in their dealings with individual developers, developer stakeholder groups, neighbouring authorities and Government bodies. This is illustrated by, inter alia:-

- delays in implementing a review of the Core Strategy;
- variable but consistently dogmatic positions on development control matters;
- refusal to divulge monitoring information in relation to Ashdown Forest upon which they were relying;
- decisions not to work with Natural England in preparing the Plan strategy and resisting their consultation response advice;
- objecting to planning applications and Local Plans in neighbouring LPA areas and raising the potential for High Court challenge of planning decisions and Local Plans.
- Legal challenge of the Lewes District Local Plan and most recently the Camberlot Stables, Upper Dicker appeal decision.

The e-mail trails attached to the Council’s Duty to Co-operate Background Paper (Appendices) give a flavour of some of the disharmony in the interaction with neighbouring Authorities (e.g. TWBC Pages 100 – 108 of DTCBP). The limited number of SOCGs and Memoranda of Understanding is further testimony to the lack of effective cooperation and engagement that has taken place.
12. **In considering its responsibilities under the duty to co-operate has the Council explored the production of joint research and evidence gathering to support policy choices, and producing relevant joint policies or informal strategies? If so, how, and what has been the result?**

There is some evidence of initiatives along these lines, but there is little meaningful evidence of joint positions feeding into the evidence base or influencing policy choices. In particular, there are only two SOCGs – with Tandridge DC, agreeing little mutual connectivity, and Ashdown Forest SPA being agreed, although in the first instance disagreements had led to the WDC contribution being removed. WDC are also unable to sign the SOCG prepared by Ashdown Forest Working Group in relation to the SAC as explained in the Background Paper.

The DTC BP provides extensive detail of the disagreements between WDC and neighbouring authorities and groups, particularly Ashdown Forest Working Group, SDNPA, Lewes DC, Rother DC, Mid Sussex DC, Tunbridge Wells BC and Eastbourne DC. The Inspector is directed to the Individual Engagement section of the DTC BP. This explains the reasons why collaboration has been ineffective in producing results and the Inspector will take a view on how and why this is the case. There is a clear impact upon the soundness of the current Plan and potential for improvement with the better cooperation in the future that is necessary to produce a sound Plan.

13. **As a consequence, of the Council’s legal duty to co-operate, how has the effectiveness of plan-making activities been maximised to enable deliverable, effective policies? In doing so, has joint working on areas of common interest been undertaken for the mutual benefit of Wealden and its neighbouring authorities and, if so, what has been the outcome?**

As above.

14. **What is the significance, if any, of Wealden District Council’s withdrawal of its objection to South Downs National Park’s Local Plan?**

No comment.

15. **Are there strategic matters which have not been adequately considered on a cross boundary basis? If so, why?**

As in Q10 above the range of strategic cross boundary matters identified is agreed. However there are important matters that have failed to reach conclusive agreement and the Plan evidence base is deficient and the Plan itself is unsound as a result.

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

No. Mutual benefit has not been achieved in sufficient areas of common benefit (Para 178), joint planning policies are desirable and achievable but have not been sufficiently secured (Para 179), there has been insufficient collaboration between the Council and other bodies on strategic planning priorities to enable the delivery
of sustainable development (Para 180) and co-operation has not been effective in resolving cross boundary impacts (Para 181). This is not unachievable but the lack of success to date is sufficiently serious and significant to undermine the soundness of the Submission Plan.

17. Has Wealden been diligent in making every effort to meet cross boundary strategic priorities, including addressing potential unmet development needs arising from neighbouring authorities?

No. It is clear that WDC has taken the view that it must meet its own OAHN in the first instance before considering the under supply of other local authorities (DTC BP Para 5.24). Having achieved what it regards as its OAHN (disputed) WDC did not go on to test the sustainability of higher provision figures until after the Submission Plan Strategy had been settled, subjected to Regulation 19 consultation and finalised for submission to the Secretary of State. The unjustified reliance on the “cap” upon development arising from the flawed Ashdown Forest Transport Model has prevented the full and fair assessment of the ability of WDC to assist in addressing unmet housing needs from neighbouring authorities.

18. What role has Natural England played in the production of the HRA and how has then Council had due regard to its professional expertise and its guidance? Have other key stakeholders been consulted?

Natural England (NE) are the statutory body responsible for advising on the natural environment. Their views on these matters are independent, environmentally sympathetic, expert and should be given considerable weight. WDC sought their advice in the earlier stages of the Plan preparation, but differences of opinion emerged and WDC preferred their own view, not involving NE in the preparation of their final submission strategy and HRA. NE were involved as statutory consultees at the Reg 19 consultation stage but, with the exception of the Pevensey levels SAC, WDC chose to largely ignore their clear, but contrary advice, and no major modifications were made to the Plan in response. That is regrettable and WDC should have given NE advice, and that of other expert opinion submitted at the Reg 19 stage, greater weight. They will need to explain why they decided to disregard NE advice. Confidence in the soundness of the Plan is significantly reduced as a result.

Natural England advice stated “the competent authority should assess the implications of a Plan or project against an improving background trend”. In not taking NE’s direct or standing advice WDC has chosen to rely on the least realistic “worst case” scenario in producing the HRA. The Communication from the European Commission on the precautionary principle clarified “The precautionary principle which is essentially used by decisions makers in the management of risk should not be confused with the element of caution that scientists apply in their assessment of scientific data”. WDC has applied the precautionary principle to assessment of scientific data and not to the management of risk.
19. **Has the Habitat Regulations Assessment been prepared in a manner consistent with the relevant legislation?** If not, please set out clearly why not.

No comment.

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 plan or projects been appropriately identified?

No. More co-ordination with emerging policy in Local Plans prepared by Neighbouring Authorities is required and the positive effects of a wider mitigation project for Ashdown Forest degradation should have been taken into account.

21. **Specifically, on what basis have the relevant European sites, including those outside of the district, been selected?**

No comment.

22. **Have the appropriate assessments of the implications for those sites been undertaken in a manner consistent with the sites’ conservation objectives?**

No comment.

23. **In doing so, are the appropriate assessments capable of ascertaining that the Plan as submitted will not adversely affect the integrity of the European sites and its qualifying features, either alone, or in combination?**

The HRA has been assessed using “worst case” emissions scenarios based on transport data that has been widely challenged by expert opinion and other stakeholders; as such the results of the HRA are questionable. On this basis it is unsafe to assume that the Plan as submitted (will or) will not adversely affect the integrity of the European site and its qualifying features, either alone or in combination.

24. **Specifically, is the evidence, methodology, and the underlying assumptions in 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?

See Technical Notes 1, 2 and 3 attached.
25. **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?**

See Technical Notes 1 and 2 attached.

26. **Is the approach to the use of evidence underpinning the HRA consistent with the 'precautionary approach' as described in the 'Communication from the Commission on the precautionary principle'?**

See Technical Notes 1 and 2 attached.

27. **What is the relevance of the recent CJEU Ruling on C-293/17 and C-294/17, as well as C-461/17, to the Council’s approach set out in the HRA?**

See Technical Notes 2 and 3 attached.

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'?**

See Technical Note 1 attached.

29. **Assuming that the mitigation measures set out in the HRA are required, what evidence is there that these will work?**

See Technical Note 2.

30. **Does the evidence in the HRA support the assertion that suitable air quality mitigation measures are no longer required for the Pevensey Levels SAC and Ramsar Site within Policy AF1?**

No comment.

31. **Is the Plan’s strategy and distribution of development consistent with the recommendations of the HRA?**

No. There are a number of inconsistencies and irregularities, such as windfall calculation, exceptions housing and other potential increases in development that would be consistent with Policy AF1(a) but exceed the HRA assessment level. The HRA 'worst case' scenario justifies a more restrictive and prescriptive strategy than is contained in the Plan. The Plan strategy sits uncomfortably between the 'worst case' position of the HRA and the NE position which allows for a positively prepared plan to meet the development needs of the District in full.