Appendix 3 - LDC/SDNPA second response to second pre-action letter

Trowers & Hamlin
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London/City

Dear Sirs

Lewes District Council and South Downs National Park Joint Core Strategy – Pre Action Letter of Wealden District Council

Thank you for your further letter dated 22nd July 2016.

The Authorities would make the following points:-

1. Whilst they note that the letter now utilises the format of the pre-action protocol for judicial review, they consider the points made in your letter are in substance those made in the previous letter of the 21st June 2016 which they consider they have responded to in full in their letter of the 6th July 2016 (copy enclosed for ease of reference).

2. This letter does not therefore set out the Authorities' case again in full. The Authorities stand by their letter of the 6th July 2016. In so far as this letter does not respond to any particular paragraph of you 22nd July 2016 letter does not mean the content of that paragraph is accepted, only that the Authorities consider they have already set their case out on that point in their earlier letter.

3. At section 6.2 of your July letter you have set out why you consider that you are in time to bring a challenge to Lewes District Council's adoption of the Core Strategy. With respect you have not addressed the point the Authorities make at paragraph 33 of their first pre-action protocol response letter and for the reasons set out at paragraphs 29 to 34 of that letter the Authorities remain of the view that you are out of time to bring a challenge to Lewes District Council's adoption of the core strategy.

4. The Authorities have considered the documents you refer to at 6.3 of your letter as demonstrating that you have complied with the duty to co-operate. With respect while they demonstrate that Wealden District Council and the Authorities have been discussing the issue of air quality it is not until June 2015 (by which time Lewes' Joint Core Strategy was already a...
substantial part of the way through its examination) that any suggestion was made by Wealden that there was any concern about the Authorities’ approach to the assessment of nitrogen deposition in Ashdown Forest. Even then the letter of the 15th June 2015 simply raises concerns about the approach adopted by the Authorities in consultation with Natural England, it does not identify what steps WDC considered needed to be undertaken to resolve those concerns.

5. In the circumstances the Authorities remain of the view that your very late raising of this point is not consistent with the duty to co-operate. It does not further the interest that all local authorities in the area share of putting into place and upholding development plans that will contain robust policies to enable the protection of Ashdown Forest.

6. You deal with the substance of your proposed challenge at section 8.4 of your July letter. The Authorities consider that they have fully set out their position in their previous letter on why, once they had established through their traffic modelling that the increase in journeys caused by their JCS on the roads through Ashdown Forest would be very substantially below the 1000AADT threshold, they were entitled to conclude this was likely to be “no significant” impact and as such no further ‘in combination’ assessment was required. This approach is consistent with the advice given by Natural England and with the DMRB guidance.

7. Although you state the DMRB guidance does not in terms state that the 1000AADT should be applied to the effects of a plan or project on its own, it is expressly considering in relation to any ‘scheme’ or plan whether the roads are likely to be affected by a particular proposal. If the impacts of a particular proposal are so low (below 1000 AADT) that it can be considered neutral then there is expressly within the terms of DMRB guidance no need to expend any further effort on environmental assessment of that scheme plan or proposal. The first stage in the guidance is clearly looking at the impact of the scheme alone. The DMRB guidance cannot sensibly be interpreted as requiring the 1000 AADT limit to be considered cumulatively with all plans and projects in the area, and that is not how national bodies including Natural England interpret the guidance.

8. Therefore it remains clear to the Authorities that your current challenge involves a direct attack on the DMRB Guidance.

9. As the Authorities have previously pointed out, if you wish to demonstrate that the DMRB guidance, as accepted and relied on by Natural England, in inadequate to assess the impacts of increase in road traffic on Ashdown Forest, the Authorities would expect that clear evidence
would be provided to support that view. You provided no such evidence during the process of developing the Authorities JCS and to date you have provided no such evidence. In the circumstances the Authorities cannot accept the suggestion that the DMRB Guidance as widely interpreted and relied on is incorrect.

10. In the circumstances, for the reasons briefly set out in this letter and more fully set out in the letter of the 6th July 2016, the Authorities do not consider you have identified any unlawfulness of approach in their adoption of the JCS and are not prepared to accede to the strategy being quashed. We urge you once more to work co-operatively with the Authorities while we implement our JCS and you bring yours forwards, rather than seeking to bring your proposed challenge.

Yours faithfully,

SHARPE PRITCHARD LLP
Dear Madam

**Lewes District Council and South Downs National Park Joint Core Strategy – Pre Action Letter of Whealdon District Council**

We would refer to your letters of 21st June 2016 addressed to the Lewes District Council and South Downs National Park Authority.
1. The claimant Whealdon District Council.
2. From Lewes District Council, South Downs National Park Authority
3. Reference details 5272 LDC-JCS
4. The details of the matter being challenged The decision of Lewes District Council dated 11th May 2016 and the decision of South Downs National Park Authority dated 23rd June 2016 to adopt their Joint Core Strategy (“JCS”).
5. Response to the proposed claim Neither Lewes District Council nor South Downs National Park Authority (hereafter “the Authorities”) accept that their decision to adopt the JCS was unlawful. In respect of Lewes District Council it is further considered that you are too late to bring a challenge.
6. Details of any other Interested Parties Natural England are likely to be an interested party.
7. ADR proposals None are made. The Authorities are now functus having adopted the JCS and therefore the JCS can only be quashed by proceedings. The Authorities do not propose to consent to the quashing of the JCS.
8. Response to requests for information and documents None are sought.
9. Address for further correspondence and service of court documents Sharpe Pritchard, Elizabeth House, Fulwood Place, London WC1V 6HG

1. The Authorities do not accept that you have identified any error of law in your pre-action protocol letter of the 21st June 2016 and any challenge will be rigorously resisted. The Authorities will consider this response under the following headings:

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1 Although headed pre-action letter it is noted that the letter does not follow the format for pre-action protocol letters set out in the judicial review pre-action protocol.
a. Duty to cooperate;

b. Lawfulness of the Authorities' HRA assessment;

c. Timeliness of challenge to Lewes DC

DUTY TO COOPERATE

2. Before turning to the substance of the pre-action protocol letter, the Authorities would remind Wealden District Council that local planning authorities have a duty to co-operate in relation to the planning of sustainable development\(^2\). This requires an authority to “engage constructively, actively and on an ongoing basis in any process by means of which [the preparation of development plan documents] are undertaken.”\(^3\)

3. In light of that duty the following points about the production of the Authorities’ HRA are to be noted:

a. In 2011 an Appropriate Assessment Screening Opinion was produced by the Authorities. No concern was raised by Wealden District Council in relation to this document.

b. In 2013 a Habitats Regulations Assessment Report was produced\(^4\). As noted in the preface at P5 officers from Wealden District Council assisted in the production of this document. This concluded at 5.15 to 5.20 that there would be no significant effect on Ashdown Forest SAC/SPA in terms of nitrogen deposition alone or in combination with other plans.


d. The Authorities’ 2013 HRA assessment in any event took the same approach as Wealden's appropriate assessment of their own core strategy\(^5\).

e. In 2015 main modifications were proposed to the JCS in response to the JCS Inspector’s interim findings letter at the beginning of the year. An addendum HRA was produced. While this assessed a slightly higher number of traffic movements on the roads within

\(^2\) Section 33A Planning and Compulsory Purchase Act 2004.

\(^3\) Section 33A 2(a) when read with section 33A (3) (a).


200m of Ashdown Forest it followed the same methodology as the 2013 document now criticised by Wealden.

f. It was only at this stage that Wealden made any representations on the HRA. The representations was sent by email on the 2nd October 2015. This was the last day for making representations on the proposed main modifications. As the representations were to be forwarded to the JCS Inspector on the 5th October 2015 the Authorities were left with little or no time to discuss the contents of the representations with Wealden.

g. You (Wealden) did not seek to attend the resumed hearing sessions in December 2015 on the main modifications to the JCS.

4. The Council do not consider that the approach you have taken to the Authorities' HRA assessment is in line with your duty to co-operate. You co-operated in the production by the Authorities of a HRA assessment which followed the methodology in the HRA assessment of your own core strategy and to which you took no objection. At the last minute within the examination of the JCS you raised concerns about the methodology of that HRA assessment but save through the writing of one letter did nothing in respect of those concerns. You now seek to quash the whole of the JCS. This approach is plainly not consistent with the duty to co-operate.

5. Notwithstanding that your approach is a disappointing failure to follow the duty to co-operate we now turn to address the substance of your complaint.

LAWFULNESS OF THE AUTHORITIES HRA ASSESSMENT

6. You now seek, very belatedly, to argue the Authorities' JCS was prepared in breach of the Habitats Regulations.

The Regulations

7. Regulation 102 of the Conservation of Habitats and Species Regulations 2010\(^6\) provides:

102.— Assessment of implications for European sites and European offshore marine sites
(1) Where a land use plan—

\(^6\) Wrongly referred to in the pre-application protocol letter variously as regulation 6 and regulation 61.
(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

**The importance of Natural England**

8. Of particular importance is regulation 102 (2) which provides:

>(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

9. The appropriate nature conservation body in this instance is Natural England. They were consulted on the screening opinion, 2013 HRA assessment and the 2015 addendum. They are content with all three documents and have raised no concern about the methodology for assessing potential impacts on Ashdown Forest SAC now raised by yourself.

10. The Courts have repeatedly emphasised the importance of the views of Natural England when authorities are seeking to comply with the Habitats Regulations 2010\(^7\).

**Screening**

11. As they were entitled but not required to do\(^8\) the Authorities first screened their JCS for likely significant impacts on all European Sites either within their area or close to their area. This included screening the JCS for potential significant impacts on the Ashdown Forest SAC/SPA.

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\(^7\) See by way of example **DLA Delivery v Lewes District Council** [2015] EWHC 2311 where Foskett J said at [32] “There is a well-established principle that a decision-maker should give the views of a statutory consultee considerable weight which, of course, for this purpose includes NE in the Habitats Regulation Assessment (‘HRA’) process: see, e.g., **Shadwell Estates Ltd v Breckland DC** [2013] EWHC 12 (Admin) [72]; **R (Akester) v Department for Environment, Food and Rural Affairs**, above, at [112]; **Ashdown Forest Economic Development LLP v SSCLG, Wealden District Council** [2014] EWHC 406 (Admin) at [110].”

\(^8\) **R. (Champion) v North Norfolk District Council** [2015] 1 W.L.R. 3710
12. Contrary to the assertion at paragraph 10 of you PAP the Authorities did not screen out likely significant effects on Ashdown Forest SAC/SPA. That much is clear from table 3 of the Screening Assessment⁹ which provides in relation to Ashdown Forest:

<table>
<thead>
<tr>
<th>Site</th>
<th>Key environmental conditions to support site integrity</th>
<th>Possible affects of Core Strategy</th>
<th>Likely Significant effects to site (including potential ‘in combination’ impacts)?</th>
<th>AA needed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ashdown Forest</td>
<td>• Minimal air pollution.</td>
<td>• Increasing traffic on the part of the A22 which runs through the protected site. This could increase air pollution, negatively impacting on the site’s protected habitats and wildlife. • Increasing recreational pressures on the site, negatively affecting the population of ground</td>
<td>Yes – NE believe that it is likely that additional traffic on the A22 at Ashdown Forest will increase if additional development in the District were to occur. Being without a traffic model, we are unable to determine whether the additional traffic generated on the A22 by development in Lewes District would be significant enough to impact on the site’s integrity. As a result, we are unable to screen the site out and thus, using the precautionary principle, will have to progress to the next AA stage. Whilst there is no evidence to show that recreational disturbance is currently having an adverse impact on the integrity of the Ashdown Forest, it would need to be proved that</td>
<td>Yes</td>
</tr>
</tbody>
</table>

| to retain water throughout February to August (at least once in three years). | nesting birds found at the site as a result of increased recreational disturbance. |

Visitor numbers would not increase unduly as a result of new development within 7.5km from Ashdown Forest so as to have a negative impact on ground nesting birds and its habitat.

Within Lewes District, only the Village of Newick and the northern part of Chailey Parish lie within 7.5km from Ashdown Forest. In this area, it is not anticipated that much development would occur as a result of the Core Strategy and thus, when looking solely at development in Lewes District, it is not thought that a significant effect to the site would occur. However, when considering the large amount of housing planned within 7.5km of the forest by neighbouring authorities (Wealden and Mid-Sussex District Councils), it may be that the combined or 'in-combination' effect would be significant.

Thus, using the precautionary principle, the effect of increasing recreational pressure on the site would need to be examined on an individual
basis and in combination with plans being produced (particularly Wealden District and Mid Sussex District Councils) through the next stage of the AA. This is as there is no current evidence available to prove that there would not be a negative effect.

13. Not only is it clear that the Authorities in fact did not screen out the effects of traffic on Ashdown Forest from development in their JCS it is also abundantly clear that they were fully aware of the need to carry out an assessment of the impacts of the JCS in combination with other plans and projects because in relation to recreational pressures that was the basis on which an appropriate assessment was concluded to be required.

**Appropriate assessment**


*All that is required is that, in a case where the authority has found there to be a risk of significant adverse effects to a protected site, there should be an “appropriate assessment”. “Appropriate” is not a technical term. It indicates no more than that the assessment should be appropriate to the task in hand: that task being to satisfy the responsible authority that the project “will not adversely affect the integrity of the site concerned” taking account of the matters set in the article. As the court itself indicated in Waddenzee the context implies a high standard of investigation. However, as Advocate General Kokott said in Waddenzee: “107. ... the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.” In short, no special procedure is prescribed, and, while a high standard of investigation is demanded, the issue ultimately rests on the judgement of the authority.*
15. Having concluded that the impact of the increase in traffic potentially caused by the JCS to the Ashdown Forest SAC/SPA could not be screened out the Authorities had to develop a methodology for carrying out an appropriate assessment of the JCS. In developing this methodology it is important to bear in mind that any process involving the release of combustion products into the atmosphere will contribute to atmospheric pollution such that a plan or project that resulted in a single additional journey on a given road through Ashdown Forest will be contributing to pollution to some degree. To ensure that appropriate assessment of plans and proposals that contribute to an increase in traffic is a practical and proportionate exercise the Air Quality Technical Advisory Group (AQTAG) has drawn a clear distinction between:

'plans and projects considered to be inconsequential and never likely to have an in-combination effect (and so not included in any assessment of likely significant effect in-combination with a new plan or project) and those concluded to have 'no likely significant effect' (insignificant alone but which may need to be considered in the assessment of any other new plans or projects')¹⁰

16. Two sources of guidance enabled the Authorities to conclude whether the JCS was a 'plan or project' considered to be inconsequential, the Design Manual for Roads and Bridges and the AQTAG air quality screening approach.

DMRB

17. The Design Manual for Roads and Bridges contains scoping advice which enables consideration of whether there are likely to be impacts on particular stretches of road requiring investigation through air quality calculations. That provides:¹¹

3.10 ...... In summary, scoping seeks to decide which environmental topics are to be examined in environmental impact assessments and environmental assessments and how much effort should be expended – either a simple or detailed assessment......

Local Air Quality
3.11 The objective of this scoping exercise for local air quality is to indicate whether there are likely to be significant impacts associated with particular broadly- defined routes or corridors,

¹⁰ AQTAG position regarding In-combination guidance and assessment. Correspondence between AQTAG and PINS. March 2015

as developed by the design organisation and the Overseen Organisation. The steps to be taken are as follows:

3.12 Obtain traffic data for the Do-Minimum and Do-Something scenarios for the years to be assessed. Identify which roads are likely to be affected by the proposals. Affected roads are those that meet any of the following criteria:

- road alignment will change by 5 m or more; or
- daily traffic flows will change by 1,000 AADT or more; or
- Heavy Duty Vehicle (HDV) flows will change by 200 AADT or more; or
- daily average speed will change by 10 km/hr or more; or
- peak hour speed will change by 20 km/hr or more.

3.13 Identify on an appropriate map (typically 1:25,000 or 1:10,000 scale) all existing and planned properties where people might experience a change in local air quality, near the affected roads. ...... Also identify any nature conservation sites (Designated Sites) and their characteristics. The Designated Sites that should be considered for this assessment are those for which the designated features are sensitive to air pollutants, either directly or indirectly, and which could be adversely affected by the effect of local air quality on vegetation within the following nature conservation sites: SACs (SCIs or eSACs), SPAs, pSPAs, SSSIs and Ramsar sites. Sites designated for geological purposes need not be assessed. Further information on Designated Sites is given in Annex F. Only properties and Designated Sites within 200 m of roads affected by the project need be considered.

3.14 If none of the roads in the network meet any of the traffic/alignment criteria or there are no properties or relevant Designated Sites near the affected roads, then the impact of the scheme can be considered to be neutral in terms of local air quality and no further work is needed. [emphasis added]

18. Therefore the considered view of the producers of the DMRB is that if a project will result in an increase of daily flows of less than 1000 AADT it can be scoped out. In those circumstances there is no need to consider cumulative impact with any other schemes because it can be concluded that the impact of the individual plan or project is inconsequential and never likely to have a cumulative impact.

19. To suggest, as you do at paragraph 11 of the Pre-action Protocol letter that a series of plans or projects need to be assessed to consider if they cumulatively exceed 1000 AADT is a substantial misunderstanding of the DMRB guidance.

20. It should also be noted that the only relevance of exceeding the 1000 AADT threshold is that if the threshold is exceeded further detailed study will be needed because increase in air pollution cannot be considered inconsequential. Therefore it is incorrect to suggest that if one plan or project exceeded the 1000 AADT threshold that would lead to no 'headroom' for any other plan or project.
AQTAG air quality screening approach

21. The other source of guidance which enables an authority to conclude whether potential impacts from road traffic are inconsequential so that there is no need to carry out detailed cumulative assessment is the AQTAG guidance. This guidance carries the criteria of 1% of the critical load or level based on the Process Contribution of the individual scheme. That this is applied to the individual plan or project only was confirmed by AQTAG in March 2015 to the Planning Inspectorate:

“For installations other than intensive pig and poultry farms, AQTAG is confident that a process contribution (PC, as predicted by H1 or a detailed dispersion model) < 1% of the relevant critical level or load (CL) can be considered inconsequential and does not need to be included in an in-combination assessment” [emphasis added].\textsuperscript{12}"

22. The Authorities' appropriate assessment adopted the above approach. It provided as follows:

5.15 Stage 1 (Screening) of the HRA process concluded that due to additional transport movements caused by additional development the Core Strategy proposes, it could not be ruled that nitrogen deposition caused by additional transport movements would not have a significant negative effect on the Ashdown Forest SAC and SPA.

5.16 As with the Lewes Downs SAC, it is necessary to further investigate the impact of nitrogen deposition on the Lewes Downs SAC that the Core Strategy is likely to cause to the Ashdown Forest.

5.17 The Ashdown Forest is home to European dry heaths and Northern Atlantic wet heaths with Erica tetralix – the conservation objectives for the site are found online. Such habitats are sensitive to acidification and eutrophication as described in table 4. As was the case for the Lewes Downs SAC, given that the Core Strategy will encourage residential development in the district that will increase transport movements around the site, it is important to assess the significance of the resultant nitrogen emissions.

5.18 The same methodology used for assessing the affected roads around the Lewes Downs SAC was used to assess the affected roads around the Ashdown Forest SAC. The findings of the report by ESCC are presented in Appendix 3. The report found that, additional transport movements caused by the Core Strategy on the roads within 200m of the Ashdown Forest SAC/SPA would be:

- 94 AADT on A22
- 158 AADT on A26
- 71 AADT on A275
- 19 AADT on B2026

\textsuperscript{12} AQTAG position regarding in-combination guidance and assessment. Correspondence between AQTAG and PINS. March 2015
5.19 As the above results show, the Core Strategy would not generate 1,000 AADT on the roads near to the Ashdown Forest SAC/SPA. Based on the advice given by Natural England at the Screening stage, we can 'screen out' the Ashdown Forest SAC/SPA from the rest of the HRA process, in terms of potential air quality impacts.

5.20 As such, it has been determined, in consultation with Natural England, that the Core Strategy would not have a significant negative effect on the Ashdown Forest SAC/SPA in terms of nitrogen deposition either alone or in combination with other plans. Therefore mitigation or avoidance measures are not required.

23. Although Natural England required an AQTAG assessment in relation to the Lewes Downs SAC (see 5.12 and 5.13) they did not require that assessment in relation to the Ashdown Forest SAC/SPA, no doubt because of the very low increase in traffic flows caused to the Ashdown Forest by the JCS.

Addendum Appropriate Assessment

24. Following proposed main modifications to the JCS, the Authorities carried out an addendum to the Appropriate Assessment. Materially that changed paragraph 5.18 of the original appropriate assessment as follows:

5.18 The same methodology used for assessing the affected roads around the Lewes Downs SAC was used to assess the affected roads around the Ashdown Forest SAC. The findings of the report by SCC are presented in Appendix 3. The report found that, additional transport movements caused by the Core Strategy on the roads within 200m of the Ashdown Forest SAC/SPA would be:

- 119 AADT on A22
- 190 AADT on A26
- 92 AADT on A275
- 22 AADT on B2026

Reason for change: Transport work has been updated to reflect Focussed Amendment’s housing distribution.

Conclusion on lawfulness of the Authorities’ HRA

25. It will be apparent from the above that the Authorities’ HRA was a lawful process. In carrying out the appropriate assessment of impact on the Ashdown Forest SAC/SPA the Habitats Regulations give a broad discretion to the authority as to the methodology to be used. Guidance in the DMRB makes it clear that if a plan or project will on its own cause less than a increase
of 1000AADT on a road near a SAC/SPA then the need to carry out any further assessment including cumulative assessment can be scoped out. The increase that will be caused by the JCS is very substantially short of the 1000AADT figure.

26. In any challenge the Court will place very substantial weight on the views of Natural England. Natural England were repeatedly consulted on the HRA process for the JCS. They were content both with the use of the 1000AADT threshold, the methodology of appropriate assessment and the conclusions of the appropriate assessment including the conclusion at paragraph 5.20 of the 2013 assessment that "the Core Strategy would not have a significant negative effect on the Ashdown Forest SAC/SPA in terms of nitrogen deposition either alone or in combination with other plans".

27. Your arguments in the pre-action protocol letter are in truth an attack on the conclusions of the DMRB that a plan or project causing an increase of less than 1000AADT can be scoped out and does not need to be considered cumulatively. If you wish to argue that nationally applicable guidance accepted by Natural England and routinely applied by decision makers is scientifically wrong you will need to provide very clear evidence to support your view. Further the Authorities are of the view it would have been appropriate to provide any such evidence during the process of forming the JCS, not by way of later legal challenge.

28. In the circumstances the Authorities were entitled to take the approach they did to the JCS HRA, and any challenge will be robustly resisted.

TIMELINESS IN RELATION TO LEWES DC

29. Your pre-act on protocol letter appears to be based on the assumption that the appropriate time to challenge a joint core strategy is within six weeks of its adoption by the last authority to adopt it. The Authorities cannot agree with that assumption.

30. The statutory scheme is as follows (all statutory references are to the Planning and Compulsory Purchase Act 2004):

   a. Section 23(5) provides for the adoption of development plan documents and 23(5) provides "A document is adopted for the purposes of this section if it is adopted by resolution of the authority."
b. Section 38 (3)(b) provides that in England outside London the development plan is (inter alia) "(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area"

c. Section 113 covers challenges to development plan documents and provides at 113(3B) an application for leave to challenge such a document "must be made before the end of the period of six weeks beginning with the day after the relevant date", relevant date being defined at 11(c) as "for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be)".

31. Therefore it is clear that a development plan document such as JCS is adopted from the moment of the local authority’s resolution. From that time it becomes part of the development plan for the area and must be challenged within 6 weeks of that date. That would all mean that a challenge must be made within six weeks of the adoption by Lewes DC.

32. Some guidance in relation to joint core strategies is provide by section 28 which provides:

(1) Two or more local planning authorities may agree to prepare one or more joint local development documents.
(2) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document
(3) For the purposes of subsection (2) anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned in subsection (1) in connection with a joint local development document.

33. While the effect of section 28(3) is that the JCS has to be adopted by both Lewes and SDNP, there is nothing in either section 38 or 113 to suggest either that the document only becomes part of the development plan for the area on adoption by both authorities or that the time limit for challenge only starts running when it is adopted by both.

34. Therefore the Authorities take the view that the last day for challenging the adoption of the JCS by Lewes DC was the 22nd June and you are now out of time for such a challenge.

CONCLUSION

35. The Authorities are not prepared to concede to the quashing of the JCS and will robustly defend any challenge. A challenge to the JCS will not further the objectives of protecting the Ashdown
Forest SAC/SPA, an objective that the Authorities are sure you share. The Authorities would urge you in line with your duty to co-operate not to seek to challenge the JCS but to continue to work collaboratively with the Authorities to further the development of our respectively planning areas.

Yours faithfully

SHARPE PRITCHARD LLP