Dear [Name],

Thank you for your email explaining the background and context to the publication of the Duty to Co-operate documents.

I understand from your explanation that you had advised all those authorities objecting under Duty to Co-operate grounds to the Wealden Local Plan that you would be publishing the documents but had not advised authorities which were seeking to work with you. This is most disappointing given that we have been working to improve relationships and, as indicated in the last paragraph of your email, we have been ‘working together to address the historical lack of trust’.

You will understand that the latest breach of trust has not helped this situation, although I acknowledge your apology.

In terms of harm to this Council (and possibly others) I am sure you are aware of the difficult meetings held on the preparation of a Statement of Common Ground over the Ashdown Forest issues and that considerable work was undertaken to agree wording. Due to this, the Group agreed not to disclose earlier iterations of drafts. It was felt that this approach was essential in order to protect our collective positions regarding different methodological approaches to HRA, plan making and determination of planning applications. Although Wealden withdrew from this SoCG, the other participating authorities did continue to sign up to the final SoCG and this is now in the public domain as our agreed position. I am concerned that having revealed these earlier drafts there may be far reaching consequences, although it may be some time before these occur. I assume you understand my point without needing to go into the detail.

I note that your Planning Team has requested that MSDC enter into a Statement of Common Ground as part of your work to prepare for your Local Plan examination. Whilst this Council’s Officers will respond formally to this request, at this stage and without seeing what is being proposed, I am afraid that I cannot confirm that this Council will be in a position to sign this.

Whilst I remain concerned about your approach, I do hope that in future we can work in a way that recognises the competing objectives of our Local Authorities and protects our respective positions.

[Name]
Dear [Name],

Further to my email last week, I have now had a chance to look into this issue and discuss the points you’ve raised with my officers.

Whilst I can (and will) give you a more detailed response to the individual issues you raise, it doesn’t overcome the fact that your officers weren’t advised that we were going to publish the documents in the appendix as part of our evidence base to rebut the challenge that we had failed to meet the Duty to Co-operate (DTC). We put in place a lot of effort to communicate with those who were objecting to our plan on the basis of the DTC including a reference to compiling the evidence of communication between local authorities in a letter sent on 20 December. When we were unsuccessful in persuading those Councils to withdraw their objections we advised them that we would be publishing robust information to support our position. However that didn’t extend to the Councils who hadn’t objected. That communication should have taken place in advance of publication and I apologise unreservedly for that failing to take place.

You have stated that the publication of various documents seriously undermines your Council’s position and it would be helpful for me to understand that in more detail. If there has been harm caused to your Council then I would be keen to learn what that harm is and how we can work together to address and overcome that.

In terms of justification for the publication of these various documents, unfortunately, due to the enduring objections to our plan under the DTC, we are having to robustly defend our plan against that challenge. As I have stated before, this is entirely regrettable as if a DTC challenge is successful,
then we don’t get a decision from the planning inspectorate on the fundamental issue of the Ashdown Forest; which means that whole disagreement over the approach towards the Forest could rumble on for another few years. I fail to understand how that is in any Council’s best interests.

To address that DtC challenge, we have been advised that we need to publish detailed evidence to demonstrate how we meet the DtC; this includes paperwork of all relevant meetings and background documents that show how key elements of our plan have been formulated. The advice we received is that all the paperwork we disclosed in our defence would not be exempt from publication under the Environmental Information Regulations and therefore it would be appropriate to include these documents in our evidence base.

I recognise that Councils take differing stances on the application of these regulations and what can, and can’t be disclosed. However, in the context of needing to address this DtC challenge, and from your own experiences on this point, I hope you can understand why we needed to deal with these issues in as full and frank a way as is necessary.

I also understand that different Councils have their own positions and agendas to address in objecting to our Local Plan. Since I have started in role, we have endeavoured to change our approach with all neighbouring Councils and have made significant progress on that. I believe that will stand us in good stead for the future as we all undertake the ongoing reviews of our plans. However, I have been quite clear that our member expectation is that we defend this iteration of the Local plan and therefore there will be bumps in the road until we get a decision from our Inspector post our Examination in Public.

On the detail, many of the examples quoted in your email state that things ‘could’ be misleading but it does not follow that they are misleading and it is our view that they are not. If you can help expand on this point I am happy to look at ways to correct any misunderstandings that might arise from these papers. For instance, if there are later or final versions of documents that we haven’t published then I am happy to address that by publication of that paperwork.

In relation to the confidential meeting notes issue, as you’ve highlighted, this was a meeting in 2015, which was confidential at our request as it related largely to early discussions about Wealden’s Local Plan. Since that date, your plan has been approved and ours has been sent for examination. Given that change in circumstances and due to the time expired, again it appeared to our advisors that it was reasonable that these notes would need to be published and that it wouldn’t undermine either Council’s position.

In relation to the issue of redaction, if there are specific examples where any details have been left in then please let me know and I’ll ask that these are edited and the revised versions redacted. We have previously been advised of a telephone number being missed for redaction in error and that correction has taken place and reported to the Information Commissioner (who has since confirmed that we had taken appropriate corrective action and no further action was required).

I trust that the above helps in understanding why matters have progressed in this way. We continue to wish to work together to address the historical lack of trust that I have inherited. We are committed to doing all we can to address that but I also believe it is incumbent on us all to work together to repair those relations. In that regard I would respectfully ask if we can move away from
the group email approach that continues to be used in relation to the Wealden Local Plan, particularly where matters are being raised that are pertinent to a single authority. That would be in line with the spirit of the meeting we had and also helps in recognising the different interests of each Council in our Local Plan that can sometimes be difficult to align and/or address in a single email reply to all.

I would end though by repeating the apology I offered up front for the lack of communication with your Council prior to publication. Whilst we have made significant strides to improve in that area, we clearly aren’t there yet but we will continue with our efforts to improve in that regard.

Kind regards

Trevor Scott
Chief Executive
Wealden District Council

---

From: @midsussex.gov.uk>
Sent: 28 February 2019 13:26
To: Trevor Scott @wealden.gov.uk>
Cc: @crawley.gov.uk; @horsham.gov.uk; @hastings.gov.uk; @rother.gov.uk; @southdowns.gov.uk; @tandridge.gov.uk; @sevenoaks.gov.uk; @tunbridgewells.gov.uk; @eastsussex.gov.uk>
Subject: Submission Wealden Local Plan - Duty to Cooperate Submission Documents

Dear Trevor,

Submission Wealden Local Plan – Duty to Co-operate Submission Documents

---
I was very surprised to find out that Wealden has taken the decision to publish a significant number of confidential meeting notes and emails as part of your evidence base for your Local Plan Examination. I am also disappointed that you have done this without consulting this Council or neighbours.

I am disappointed that this Council was not made aware that this material would be put into the public domain; and that you did not seek agreement over its publication; or provide my Planning staff with the opportunity to review the material prior to its publication.

As a result you have published a number of confidential papers which are of particular concern.

As you are aware, the work on the Ashdown Forest and Air Quality matters is extremely sensitive and is constantly subject to FOI requests which historically this Council has refused because they relate to emerging policy and are therefore exempt. By publishing the detailed workings on these sensitive matters, your Authority has significantly undermined this position.

We have collectively worked hard to try to reach a consensus over a number of highly contentious matters and to have the workings of the various Groups made public seriously undermines the outcomes we have sought to achieve. More importantly, because the documents are often draft, they are misleading.

Of particular concern and examples are as follows:

- The published documentation includes drafts of documents which relate to policy development. Of particular concern in this respect is the publication of the transport model information prepared to support the Ashdown Forest Statement of Common Ground.

- Confidential meeting notes and e-mails have been published even where the notes clearly indicate that the meeting was being held in confidence. An example is the meeting held between Wealden District Council and Mid Sussex District Council on the 25th June 2015. Wealden District Council is clearly noted as confirming that the meeting was confidential. (See page MSDC15 of the Mid Sussex District Council appendix).

- The SAMM work is currently being finalised and subject to a legal agreement, so the documentation released in the SAMM appendix could be misleading and taken out of context. It is regrettable that you did not wait until the work was finalised.

- The same applies to the Ashdown Forest Working Group appendix where the information released could be taken out of context which could prejudice current and ongoing work, for example, work related to the consideration of air quality mitigation measures should they be necessary.
Since Wealden District Council has only released information it holds not all correspondence on some matters has been released. Therefore there are instances where the final position of Mid Sussex District Council could be misinterpreted. Clearly for this reason Wealden should have published the final version of Memorandums of Understanding and Statements of Common Ground.

Some of the draft meeting notes which have been published have since been amended and therefore the inclusion of these notes is misleading.

Finally, personal details tend to be redacted, however, there are inconsistencies in the redaction and several instances where details have not been redacted and the names and contact details of officers have been made public; this is not acceptable.

Based on the above, I don’t think I need to explain why I am so concerned about your decision. This approach seriously undermines this Council’s position and I can only assume this is deliberate.

I thought that we had made progress over the last year to ensure we work in an open and transparent manner. Unfortunately, the publication of this information without any consultation is not in the spirit of partnership working and is a serious breach of trust.

I strongly urge you to publicly address this matter in order to ensure you are not misleading the public.

Finally, I am carefully considering this Council’s position in relation to appropriate action.

Yours sincerely,

Kathryn Hall
Chief Executive
Working Together for a Better Mid Sussex