Wealden Local Plan EIP: Matter 1: Legal Compliance, including Duty to Co-Operate Land north of Polegate

May 2019
1. **Introduction**

1.1 This Statement has been prepared by Turley on behalf of our client, Taylor Wimpey Strategic Land in relation to Matter 1 – Legal Compliance, including Duty to Cooperate of the Wealden Local Plan Examination.

1.2 Our clients have important land interests in the Local Plan area, including at Polegate.

1.3 We set out our response to the questions posed by the Inspector, where relevant to our client’s previous submissions, in Section Two of this Statement. Our comments have regard to national planning policy guidance and other material considerations.
2. Matters to be Examined

Sustainability Appraisal

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 Local Plan process has been supported by an associated Sustainability Appraisal (SA) process. The SA process has gone through a series of iterations with versions of the document published dated March 2017, August 2018 and January 2019 respectively.

2.2 The SA process has however been predicated on the basis of the Council’s perception of the potential for increased development to cause harm to the Ashdown Forest SAC. Table 36 of the original SA (March 2017) notes:

“The overall housing growth figure put forward in Policy WLP1 has been arrived at in line with transport modelling and evidence base work on the effects of nitrogen deposition on Ashdown Forest SAC, and the impact development within the District, alone and in combination with other plans and programmes, will have on the heathland habitat. Scenarios A-H were tested through the Ashdown Forest Transport Model as reasonable alternatives for housing growth within the District and this showed that the Plan will seek to contribute to the whole SAC around 1% process contribution, in combination with other deposits, and therefore it would be under the threshold of the likely significant effect, but this is significantly greater closer to the roads. Its considered that the growth put forward by Policy WLP1 can go ahead taking into account the significance of the growth identified, but harm may take place to the SAC and therefore mitigation and compensation will be required.”

2.3 Clearly therefore the SA process has been undertaken on the assumption that the technical work undertaken in support of the Local Plan is robust and therefore has not fully tested all development scenarios as it is assumed that a cap on growth is required. As we will discuss further below, in light of Natural England’s comments and the substantial and compelling case submitted by a wide range of respondents, including the development industry, in respect of the Proposed Submission Local Plan (June 2018) consultation it is clear that the Council’s approach to development is erroneous.

2.4 As such, whilst we do not comment on the approach taken within the SA itself and the methodology utilised (as raised in Question 6), this has been predicated on an incorrect assumption which has therefore influenced the degree to which the SA has been able to influence the Plan. Accordingly it is considered that the SA should be revisited in due course to test alternative development scenarios including increased levels of growth. Such an approach will ensure the requirements for Strategic Environmental Assessment have been met and the Plan is soundly based.
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?

2.5 As discussed above, the SA process has been predicated on the basis of the Council’s interpretation of the evidence base and the imposed cap on development. The testing of options in relation to strategy, policies and sites has therefore been undertaken within this context and has failed to demonstrate that a greater quantum of development could not be achieved in a sustainable manner.

2.6 Although the Council have reviewed the development boundaries for individual settlements and set a windfall allowance for these, the Council have failed to undertake an assessment of the most appropriate sites to meet these needs despite the significant proportion of the future development provision they comprise. It is clear therefore that the Council have failed to fully assess whether the draft Local Plan represents the most appropriate strategy, this is further demonstrated by the significant number of triggers for an early review.

2.7 In the context of a need to increase the amount of housing being planned for in Wealden District, Taylor Wimpey consider that Polegate represents a sustainable settlement for a proportion of this to be accommodated and which should have been the subject of a more rigorous assessment through the current Local Plan process. Whilst it is acknowledged that there is a windfall allowance to allow 97 dwellings to come forward within the revised development boundary of Polegate it is considered that additional capacity exists above this figure and the capacity of the settlement should not be artificially restricted to this level.

2.8 Notably the Development Boundary Background Paper (August 2018) concludes in relation to Polegate that:

“The hard northern edge of Polegate is further defined by the line of protected trees between Sayerland Road and Levett Road. Whilst the A27 Polegate Bypass cuts through the open countryside to the north, the intervening land between this and the existing built edge of Polegate is included in an expanded development boundary in order to reflect recent growth and the physical boundary of the A27.”

2.9 It is clear therefore that capacity does exist around the settlement. It is noted that our client’s site was assessed under site reference 193/1510 of the SHELAA (2018) but incorrectly assessed as not being suitable for housing. This conclusion was reached on the incorrect assessment that the site was isolated from existing residential development as a result of the OS base not having been updated to reflect the Taylor Wimpey scheme under construction at that time. As such the site was not subject to appropriate further technical assessment and Sustainability Appraisal through the Local Plan process as it was discounted at an early stage due to this flawed assessment.

2.10 Accordingly it is considered that the SA should be revisited in due course to test alternative development scenarios including increased levels of growth including at Polegate.
Duty to Co-operate

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?

2.11 The submission of the Local Plan was accompanied by a Duty to Cooperate Background Paper (January 2019) prepared by the Council. The Paper sets out how the Council believes it has discharged the Duty to Cooperate. Whilst it is recognised that the Duty to Cooperate is not a duty to agree, as made clear in the NPPF every effort should be made.

2.12 Whilst the Council considers it has discharged the Duty to Co-operate it is notable that this position is not supported by a number of adjoining Local Authorities and there remain significant outstanding objections from Natural England in particular who are a key statutory consultee given the key strategic issues requiring collaboration as identified by the Council themselves.

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?

2.13 Clearly in the context of Wealden District, two of the key strategic matters are matters in relation to the Ashdown Forest SAC and housing requirements. We address each of these matters in turn below.

2.14 With regards to the Ashdown Forest the Council has consistently prepared its own evidence in isolation from adjoining authorities and has reached fundamentally different conclusions on the potential for impacts to occur. This approach has influenced the entire premise of how the Plan has been prepared. Notably, not only is the approach pursued by Wealden contrary to that taken by a number of adjoining authorities, Natural England in its response to the Local Plan Regulation 19 consultation dated 5th October 2018 concluded that:

"Natural England is satisfied that it can be ascertained that the plan or project will not adversely affect the integrity of Ashdown Forest Special Area of Conservation (SAC), Lewes Downs SAC and Pevensey Levels SAC and Ramsar from air quality impacts. Natural England’s advice regarding air quality is that this conclusion can be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. This is based on the evidence provided, our expert knowledge of the particular characteristics, interest features and management of the designated sites in question, and our professional judgement."

2.15 It is noted that the Council has subsequently provided additional evidence to seek to support their own approach. This evidence places less weight on the potential implications of reductions of vehicle emissions or speed. We do not comment on the robustness of this evidence as part of this Statement.

2.16 From the above it is however clear that the Council have not met the requirements of the Duty to Cooperate in relation to matters related to the Ashdown Forest issue. As a consequence of this the Council have also failed to fully assess its ability to meet both its own objectively assessed need for housing and to meet the unmet needs of adjoining authorities.
2.17 It is notable that the SHMA and associated documentation provides a wide range of calculations of housing need from 930 to 1,233 dwellings per annum over the Plan period (2013-2028). Furthermore the evidence itself provides no indication as to which scenario the appointed technical consultants consider to be reflective of the Council’s objectively assessed need. Whilst a range of scenarios is appropriate to be tested through the SHMA it is considered that the current spectrum and the Council’s decision to proceed with a figure of 950 dwellings per annum risks underestimating the full objectively assessed need of the District. The Council have chosen to ignore the higher estimates of housing need, suggesting these are ‘outliers’ and simply taken a mid-point between the lower estimates of need, which are in fact those based on the official projections. Supply in the District has fallen substantially below the level of need for a significant period and as such it is of even greater imperative that the current Plan fully reflects the level of need going forwards and makes appropriate provision for meeting these needs. We note the representations submitted by the Home Builders Federation which identify an OAN of 1,119 dpa and would support their conclusion that the true OAN for the District exceeds 1000 dpa.

2.18 As such it is considered that the Plan firstly fails to make provision for the full objectively assessed needs of the District and makes no provision for any unmet needs of adjoining authorities. We note the concerns raised by Eastbourne Borough Council in particular in respect of their unmet needs and their perception of a lack of effective cooperation. It is noted that the representations by Eastbourne Borough Council on the Pre-Submission version of the Local Plan identified a shortfall of at least 459 dwellings per annum based on the September 2017 SHELAA. As set out in the Duty to Cooperate Statement (August 2018) Wealden have utilised an annual requirement for 336 dpa in Eastbourne, whereas the Borough contend that the Local Housing Need for Eastbourne Borough is 649 dpa. There is therefore potentially a significant quantum of housing need not being planned for and which through the Issues and Options version of the Wealden District Local Plan the Council themselves had identified would be appropriate to be met within Wealden if they can be appropriately and sustainably located.

2.19 Whilst the Council have seemingly sought to minimise such issues through the proposed shortened Plan period this is considered inappropriate as discussed in respect of Matter 3. It is unclear therefore whether the Plan will even reach the 9 year post-adoption Plan period in its current form, with an early review highly likely to be triggered, although clearly the undertaking and completion of such a review is unenforceable.

2.20 Given Wealden’s approach to the testing of growth options which have been artificially restricted by their perception of the Ashdown Forest issue, the Council cannot robustly demonstrate that they would be unable to meet the needs of adjoining authorities (or indeed their own full objectively assessed need). As noted in respect of question 8, additional opportunities for growth do exist and these should be subject of further testing to ensure the Plan is sound and the Duty to Cooperate is discharged.
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?

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?

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?

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

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

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?

2.21 Given the interrelated nature of these questions, please see our response to question 10 above.