Reference 1185183
Thakeham Homes

Wealden Local Plan Examination

Matter 1 Legal Compliance, including Duty to Co-operate
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Issue 1: Whether the plan has been prepared in line with the relevant legal requirements and procedural matters?

This statement has been prepared by RPS Consulting Services Ltd, on behalf of Thakeham Homes.

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?

1.1 No. We have concerns with the Council’s approach to identification and appraisal of housing growth options that would deliver the Plan Vision to meet the housing needs of the District by 2028. The various iterations of the SA have sought to appraise a range of growth ‘scenarios’ which are derived from an earlier consideration of the distribution of development.

1.2 The implication is, therefore, that the distribution of development has influenced, or potentially determined, the scale of growth to be planned for. This is evident based on the descriptions of the housing growth scenarios, which refer to the inclusion (or exclusion) of dwelling completions. This clearly illustrates that the scale and distribution of growth are linked, rather than being considered as discrete aspects of the emerging Plan based on a proportionate evidence base that has established the level of housing need in the District (set out in the SHMA/OAN evidence). In addition, it is noticeable that the SA Reports consider distribution of growth prior to the overall scale of growth. However, there is no justification presented for this approach.

1.3 With regards to the appraisal of housing distribution options, and with reference to Ninfield settlement, it is not clear how the preferred sites in Ninfield have been selected to deliver the overall housing growth (submitted to be 14,228 dwellings over the period 2013-28) in comparison to those reasonable alternatives that were rejected. We note that there is no separate document submitted for examination that detailed the reasoning behind the choices made, and we are therefore reliant on the SA to provide the necessary justification.

1.4 In relation to SA, the SA Report Non-Technical Summary January 2019 (Table 121 at paragraph 15.113 refers) states that the appraisal underpinning the selection of settlements and sites is contained within the SA March 2017 Report and corresponding appendices, published as part of the pre-submission draft Plan, and refers specifically to Table 279 as providing the justification for the selection/rejection of SHELAA sites. The Council is therefore relying on settlement and sites appraisal work carried out over two years ago that has not been updated in light of new information available since, raising immediate concerns regarding the robustness and credibility of the SA in this regard.
1.5 This becomes evident when reviewing Table 279 of the SA March 2017 Report. The selection and rejection judgments set out, including the rejection of Site C (SHELAA Site Ref 474/3710, Land adjoining Downs View) in the table relate to the suggested ‘Higher Growth Scenarios A-D’ which relate to the previously proposed Plan period (2013-37) and not revised Plan period (2013-28).

1.6 Furthermore, the appraisal of all reasonable individual site options in relation to Ninfield has not been updated in light of subsequent scenarios, including the Council's preferred growth strategy based on 14,228 dwellings over the period 2013-28 (Scenario N). This is despite Ninfield being acknowledged in the Submission Version of the Plan (paragraph 22.11 refers) as “…a sustainable settlement with good accessibility and a good provision of local services and facilities where an opportunity exists to deliver sustainable development to meet housing need…”. The credibility of the site options appraisal carried out is further undermined by the exclusion of other reasonable housing growth alternatives from the SA process (see our submissions on question 8 below).

1.7 Consequently, it is our view that the SA process lacks sufficient transparency and the consistency needed to comply with the requirements for SA and SEA in terms of the appraisal of the preferred strategy against all reasonable alternatives. In addition, it is not clearly set out (i.e. in a separate section of the SA Report) how the SA has influenced the preparation of the plan strategy, policies and site allocations.

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?**

1.8 No. It is our view that the document purporting to be the non-technical summary is overly detailed (being 398 pages in length), which undermines its purpose, which is to provide a summary of the significant outcomes of the SA process, in particular the appraisal of the preferred strategy against reasonable alternatives.

1.9 Lack of overall scoring for each option, preventing comparison between alternatives at each level in the plan (strategy, policies and sites)

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?**

1.10 No. It is our contention that the SA process has not considered all reasonable alternatives, contrary to advice in the PPG and the requirements of the NPPF.
1.11 The PPG (Reference ID: 11-018-20140306) specifies that reasonable alternatives should represent ‘different realistic options’ that are ‘sufficiently distinct’ to allow for meaningful comparison in terms of their sustainability implications. In addition, the NPPF (paragraph 182) makes clear that, for the Plan to be sound, consideration is needed against the reasonable alternatives ‘based on proportionate evidence’.

Issues and Options stage (2015)

1.12 In terms of the starting point, the WLP Sustainability Appraisal Report Part A (October 2015) published for the Issues and Options Consultation, the Council assessed six housing growth ‘options’ (paragraph 4.2.122-4.2.129 refers). It is noted that the preamble to the appraisal of these options (set out at para 4.2.119-4.2.121) refers to options for meeting the housing needs of Wealden (OAN). These figures, ranging from 660 to 735 dpa, are derived from analysis set out in the latest SHMA available at the time. Whilst this is broadly appropriate in principle, all these options were in fact set below the lower end of this range (660 dpa), except for only one option (694 dpa). The reason for this appears to relate to the potential that the Plan may not be able to meet its housing need based on environmental constraints that might restrict the supply of sites (but which is not evidenced in the SA report). The upper figure (735 dpa) was also not assessed at this point. Furthermore, at this stage, no other higher housing growth option was considered alongside these alternatives. A higher figure (840 dpa) was considered later in the Part A report but, curiously, this was done in the context of a specific distribution of development (paragraph 4.7.40 refers) to address unmet need from Eastbourne. However, whilst higher than the upper range of 735 dpa, it is not clear as to why this was considered separately to the other growth options nor what the basis for the 840 figure was in the first place.

1.13 On this basis, we consider that the suggested reasonable alternatives for future housing growth presented by the Council at the Issues and Options stage paid insufficient regard to the evidence base relevant to overall housing need in Wealden (as set out the SHMA), contrary to the NPPF.

Proposed-Submission and Submission SA stages (2017 and 2018)

1.14 Subsequent stages of the Local Plan process took a different approach to devising reasonable alternatives for overall housing growth. In total, eighteen ‘scenarios’ were put forward during the various consultation stages prior to submission of the Plan for examination. We do not intend to go through each of these here, but we have some fundamental concerns regarding their appropriateness as ‘reasonable alternatives’ as part of the SA process.

1.15 The SA March 2017 Report (dated June 2018) was published alongside the Proposed Submission Local Plan. It identified eight housing growth scenarios, ranging from 11,456 dwellings (2013-37) to 14,101 dwellings (2013-28) (paragraph 1.58 of report refers). These scenarios were developed at the time the plan period was drawn back from 2027 to 2028. The change in plan period
potentially renders six out of the eight scenarios as null and void (scenario A to F), whilst Scenario G (14,101 dwellings; or 940 dpa) and Scenario H (11,456 dwellings; or 458 dpa) are set below the Council’s preferred OAN of 950 dpa (para 4.3.3 of the Housing Background Paper refers) over the period 2013-28. The only exception is Scenario C, which would represent an annual rate of 972 dpa. Consequently, the options as defined here represent a major shortcoming in the process of devising all ‘reasonable alternatives’ in the context of meeting the development needs of Wealden given that the Council’s preferred growth option had yet to be formally tested at this point.

1.16 The SA Report August 2018 (and dated August 2018) was also published alongside the Proposed Submission Local Plan. This report (Section 2 refers) identified an additional six scenarios (I to N), however four of these (I, J, K and L) all relate to the same figure (11,724) and so do not constitute ‘discrete’ options that would allow a meaningful comparison to be done in line with the PPG. The value to the SA process is therefore questionable. Furthermore, the other two scenarios (M and N), set out at paragraph 2.19 of the SA Report August 2018, once again are set at a level below the Council’s preferred OAN of 950 dpa.

1.17 Significantly, only one of the fourteen scenarios referred to above is set at a level consistent with the Council’s preferred OAN (Scenario C, 972 dpa). It is therefore arguable whether these scenarios, when taken together, represent ‘discrete’ alternatives in line the PPG. Other scenarios were considered (Scenario O and P) as part of the SA Addendum 2019, but these appear to be an afterthought in an attempt to redress previous shortcomings in ignoring higher growth options, but we question whether one of these (Scenario P; 1,555 dpa) is a valid ‘reasonable alternative’ given that similar options were discounted in the Issues and Options SA Report 2015 (paragraph 4.2.155 refers).

1.18 Furthermore, the SA process has excluded a number of reasonable alternatives that would allow for a meaningful comparison of potential options to inform the growth strategy of the Plan based on proportionate evidence, in addition to those put forward. Specifically, the January 2017 OAN Report (Table 6.1 refers) and the March 2017 OAN Update Report (Table 1.10 refers) both identify several OAN calculations that provide a suitable basis from which to derive reasonable alternatives to appraise in the context of the SA. In relation to the Council’s preferred plan period (2013-28) the March 2017 OAN Report identifies six potential levels of growth for Wealden that offers the opportunity for a meaningful comparison of the sustainability implications of different growth scenarios. These alternatives range from 930 to 1,233 dpa, which would allow for proper consideration of growth options that are directly related to a proportionate evidence base that would support the wider objectives of the Plan to meet housing needs of the District, in accordance with Article 5(1) of the European Directive 2001/42/EC “on the assessment of the effects of certain plans and programmes on the environment”, and the NPPF (para 182).

1.19 Based on the foregoing analysis, it is evident that the Council has failed to consider all reasonable alternatives, both in terms of the range of options (only one option assessed is above the OAN,
albeit only 27 dwellings higher per annum), but also the SA excludes several reasonable alternatives that are discrete enough to allow for a meaningful comparison in line with the PPG.

**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?**

1.20 No. In our view, as explained further below in this statement, we raise significant concerns regarding the approach taken by WDC to the process of co-operation with relevant neighbouring authorities (in particular, Eastbourne Borough Council).

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?**

1.21 There are a range of cross-boundary strategic matters which require co-operation as part of the Wealden Local Plan, the most important being the need to address the housing needs of the housing market area. How the housing market area (HMA), and thus the cross-boundary matters relating to it, was defined is not entirely clear. The HMA appears to have been derived unilaterally by Wealden District Council (WDC) as part of the SHMA 2016 Report, and that agreement was subsequently sought through consultation with neighbouring local authorities in particular following publication of the Issues, Options and Recommendations Consultation undertaken during 2015 (paragraph 11.1-11.2 of the Pre-Submission Duty to Cooperate Background Paper August 2018 refers).

1.22 The outcome, based on the Council’s evidence, suggests that WDC is in a HMA alongside Eastbourne BC, Tunbridge Wells BC, Rother DC, Lewes DC and Mid Sussex DC. However, the approach taken by WDC in coming to this conclusion reflects the broader concern, as highlighted in the representations submitted at Regulation 19 stage, that Wealden has acted throughout the plan-making process in *isolation* rather than in *collaboration* with its neighbours as part of a shared objective to meet needs across the wider HMA, contrary to the duty and national policy.

1.23 In our view, such an approach merely replicates the usual approach to public consultation process that would be carried out on emerging Local Plans, rather than representing proper engagement with those bodies critical to delivering the level of growth to meet the objectively assessed needs of the HMA, as required by the duty.

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?**
1.24 No. Planning Practice Guidance (paragraph 9-010-20140306) sets out a clear expectation that cooperation will result in the production of effective policies on strategic matters and that ‘outcomes will form the basis for testing compliance, not just whether local authorities have approached other parties. This is significant when considering the Council’s evidence submitted to the examination in support of its view that it has met the duty obligations.

1.25 The Council relies on two background papers as evidence that it has met the legal duty tests, those being the Duty to Cooperate Background Papers published in August 2018 and January 2019. In our view, neither of these papers includes any evidence of what would reasonably constitute ‘outcomes’ resulting from effective cooperation between WDC and relevant local authorities in relation to needs across the HMA, including Memoranda of Understanding or other statements that show how cooperation on strategic matters has produced a meaningful output from the process, or engagement resulting in draft policies seeking to address those matters.

1.26 Instead, the submitted Background Papers on Duty to Cooperate rely heavily on an extensive commentary and appendices referring to meetings and discussions held between WDC and other parties since 2014 on various matters relating to the emerging Local Plan. In our view, this does not comply with the obligation under the duty with respect to meaningful outcomes or preparation of effective policy.

1.27 Furthermore, there are question marks regarding the effectiveness of the engagement undertaken by WDC with its neighbouring authorities, in particular with Eastbourne Borough Council. As highlighted above, and in previous representations, Eastbourne Borough (EBC) forms part of the HMA that also includes Wealden and that EBC has made a request to Wealden for it to accommodate some of its unmet housing needs. This appears to be the most clearly defined cross-boundary strategic matter to address under the duty obligations in this Local Plan.

1.28 However, there has been no resolution, or even any meaningful progress, since Eastbourne raised this matter some years ago. Far from representing a constructive and active engagement process, the engagement has not resulted in any formal stated position between the parties, either in the form of a memorandum or proposed strategic policy prior to submission of the Plan for examination that demonstrates how WDC will work with EBC to address the unmet need with the HMA. In fact, EBC maintain a number of objections to the Local Plan regarding the duty to cooperate approach carried out by WDC thus far.

1.29 In our view, this is further evidence of a lack of collaborative engagement required under the duty.

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 polices or informal strategies? If so, how, and what has been the result?**
1.30 It is acknowledged that some joint working has been carried out on the evidence gathering process (i.e. Strategic Flood Risk Assessment). However, on the critical aspects of the evidence base relating to establishing the up to date objectively assessed need across a defined HMA, this is lacking and represents a significant failing of the local plan process in terms of planning strategically across local authority boundaries given the clear justification for doing so.

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?

1.31 No. Based on the engagement and current impasse between Wealden and Eastbourne outlined above, we consider this to represent the limited joint working on the most pressing area of common interest (housing need) and that the outcome (Wealden’s unwillingness to accommodate any unmet need from elsewhere in the HMA) is solely for the benefit of Wealden District rather than for the mutual benefit including its neighbours, in particular Eastbourne.

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

1.32 For the reasons set out elsewhere in this statement, strategic matters relating to housing need have not been adequately addressed on a cross-boundary basis.

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

1.33 No. The NPPF (2012) makes clear the importance of collaboration and joint working to enable local authorities to meet development requirements which cannot be wholly met within their (i.e. Eastbourne’s) own area (paragraph 179 refers). This is especially relevant where it is accepted that a HMA crosses individual local authority boundaries, as in the case of the Wealden and its neighbours.

1.34 Unfortunately, the approach taken by Wealden reflects the disjointed nature of the evidence base on housing need across the wider area, for example the situation now exists whereby individual areas have prepared their own evidence on housing need producing an overlap in terms of housing market areas, rather than clearly defining needs on a comprehensive basis derived from a single evidence base. This represents a significant failing of plan-making across local boundaries, which has resulted in one local authority (Eastbourne) objecting to the others (Wealden) Plan, whilst at the same time agreeing that they both share the same HMA.

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?
1.35 No. Based on the foregoing analysis, it is our view that WDC has not made every effort to meet cross-boundary priorities, most notably addressing the unmet needs from its neighbours. This is self-evident from the conclusions of the Duty to Cooperate Background Paper January 2019 (paragraph 7.3 refers) which, rather than clearly defining the outcomes and outputs from engagement process as evidence to support its view that it has met duty obligations, WDC appear to apportion blame on its neighbours i.e. Eastbourne, for the lack of effective progress dictated by its own timescales for submission.