Matter 1: Legal Compliance, including Duty to Co-operate

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?**

   - **Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011)**
     - s33A imposes an obligation on WDC to ‘engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken’. WDC’s Consultation Statement Appendix 11 notes that Eastbourne Borough Council, South Downs National Park Authority, Tunbridge Wells Borough Council, Lewes Borough Council, and Rother District Council have all made representations raising concerns relating to cooperation, including a failure to work collaboratively.

   - **Town and Country Planning (Local Planning) (England) Regulations 2012**
     - Regulation 22(c)(iv) imposes an obligation on WDC to provide a statement setting out ‘how any representations made pursuant to regulation 18 have been taken into account’. No such statement appears to have been provided.
     - Regulation 18 imposes an obligation on an LPA to take into account any representation made to them in response to invitations. Given that WDC appears to have neither provided detail of representations made in relation to regulation 18 (purportedly set out in WDC’s Appendix 9, but this does not seem to appear in the submission documents on the website) nor complied with regulation 22, it is not possible to determine whether WDC has complied with regulation 18.
     - Regulation 19(a) requires WDC to make a statement of the representations procedure available in accordance with regulation 35. The statement is defined in regulation 17 as including the title of the local plan which the local planning authority proposes to submit. WDC’s statement does not include this information. The actual document which WDC published for consultation under the representations procedure is unclear as two possible documents exist: the document approved by WDC for submission at a council meeting on 18 July 2018 (referred to as the ‘June Local Plan’), and asserted at that meeting as being the document which will be published; and the document subsequently published on their consultation portal (referred to as the ‘August Local Plan’). There are material differences between the two documents. Please refer to the appended document, *Letter to WDC 22 October 2018*, for further detail. This letter was sent to WDC (Counsellors B Standley and A Newton) on 22 October 2018, but no response was received. In summary, failing to comply with regulation 19(a) and (17) prejudiced the consultation process as it was not clear which document was to be submitted or on which documents comments should be made.

   - The regulations include these requirements in order to ensure that participants in the representations process are able to effectively understand and contribute to the production of the Local Plan, and so that the Inspector can judge whether the planning authority has met the requirements of the regulatory framework. The confusion over
which plan was the ‘published’ version has prejudiced the process. The lack of transparency over whether representations have influenced plan production and policy means that adherence to the regulations is impossible to judge. Together, this means that the process is deeply flawed. At the very least, the plan should be re-published for public comment, and the appropriate documents made available.

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?

- By WDC’s own admission, WDC has failed to engage constructively, actively and on an ongoing basis with many of the relevant bodies: Eastbourne Borough Council, Rother District Council, Tunbridge Wells Borough Council, Lewes District Council and the South Downs National Park Authority have all said that WDC has failed in their duty to act collaboratively.
- The Statement of Community Involvement notes that WDC will keep the public ‘informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision’. As noted in response to question 1, WDC has failed to do this. The Statement also promises that the ‘final decision making’ will be placed in the ‘hands of the public’, and that ‘we will implement what you decide’. Example tools include citizen juries, ballots and delegated decisions. There is no evidence that WDC has fulfilled this in any way. Furthermore, there is no evidence that WDC has complied with many of the areas identified in their paragraph 2.7 (issues for effective consultation); for example, consulting residents who do not understand English or engaging effectively with the socially excluded. Despite acknowledging that the District has an aging population, it proposes that wherever possible, the Council will direct comments to be made online (para 4.9) (and indeed this was how the consultation was carried out).
- As noted above, WDC should be held to a proper process, which follows both regulation and their own Statement of Community Involvement. This would, at the very least, require the re-publication of the LP (with participation for identified groups considered), but might also include a more transparent process of analysis of public comment and the facilitation of public involvement in key ‘final decision making’.

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?

- Whilst it is acknowledged that WDC has engaged with Natural England (NE) on an ongoing basis, it is evident that in its urgency to ensure the plan is tested against the NPPF 12, it has rushed to publication and submission prior to getting NE’s full input on a number of crucial matters. As at publication, the appropriate assessments for air quality (Ashdown Forest SAC, Pevensey Levels SAC and Ramsar Site and Lewes Downs SAC), recreational pressure (Ashdown Forest SPA) and hydrology and water quality (Pevensey Levels SAC and Ramsar Site) (all of which underpin the LP) were incomplete (as stated by WDC) as NE had not had time to provide its comments. NE only provided its comments on the HRA and the

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1 Minutes of 13th ESCC/WDC Infrastructure/Road Map Meeting 16 May 2018 (IRM40), ‘Draft Local Plan and evidence base deadlines are 27th June, Moving forward as quickly as possible so we keep within transition period as identified in the NPPF consultation documentation, so that the Plan is assessed based on the existing NPPF.’
previously listed assessments at the Regulation 19 consultation. Whilst the regulations consider it appropriate for engagement to continue beyond examination, it must be sensible for a LA to wait for a prescribed body’s comments on such vital reports prior to finalising key policies and publishing its LP.

- The LP should be published after the identified statutory consultees have had time to provide their input, in order that policies in the LP properly reflect the input of those consultees.

Matter 2: Vision and Objectives and Local Plan Growth

Issue 2: Does the significance attributed to air quality considerations present a positive framework which is consistent with national policy, justified and effective, and will contribute to the achievement of sustainable development within the District?

36. Is Policy AF1 consistent with the presumption in favour of sustainable development and national policy? Is the policy justified by appropriate evidence to suggest that harm to Ashdown Forest SAC and Lewes Downs SAC will take place, in the absence of mitigation, as a result of the envisaged level of Local Plan Growth, and in combination with other plans and projects?

Issue 3: Are policies EA1 – EA3 positively prepared, consistent with national policy and justified?

42. Are policies EA1 – EA3 predicated on robust evidence in terms of impacts and proposed mitigation?

Comments relate to question 36 and 42:

- EA1 itself states that where development is anticipated to have a direct or indirect adverse impact on national sites or regional sites or features for biodiversity, development will be refused unless it can be demonstrated that: (i) there is no alternative suitable location for the development; (ii) the benefits of development directly outweigh both the impacts it is likely to have on the features of the site that make it a SSSI/NNR and any impact on the national network of SSSIs; and (iii) that appropriate mitigation and compensation measures are agreed...’;

- AF1 goes on to say that development can only be delivered when suitable mitigation measures for the Ashdown Forest and the Lewes Downs are identified and a delivery mechanism created by the LPA is in place in accordance with policy AF2. It does not appear that WDC has properly identified suitable mitigation measures (AF2 sets out a range of matters, some of which would not mitigate the impact of development (monitoring air quality), some of which appear wholly undeveloped (investigation of measures to reduce local transport emissions from vehicles) and some of which are wholly unachievable (the provision of an off-line A27, the reinstatement of the Lewes-Uckfield trainline).

- Taken together, this means that until WDC actually put in place suitable mitigation measures (as yet unidentified or agreed), no further development will be permitted.

- Furthermore, the requirement that necessary mitigation measures are in place prior to planning permission being granted seems circular, given that WDC are also proposing that those same mitigation measures will be funded by development.

- It is clear from these policies and WDC’s historical approach2 that the LA wishes to use the Ashdown Forest and the Lewes Downs SACs as reasons to block development in the District. WDC has previously said: ‘The Council will continue to assess the impacts of

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2 13 March 2017, Briefing Document for the Minister, [], on the Ashdown Forest Nitrogen Deposition position and Wealden District Council proposed housing numbers
development on the Ashdown Forest, [], and until the necessary compensation/mitigation measures are in place, developments throughout the District (including those within the Core strategy Local Plan and the emerging Wealden Local Plan that do not have existing planning permissions) can only proceed where they can prove that they will not damage the SAC any further. In practical terms this means demonstrating that the development of a site will provide no more vehicle emissions than currently along the affected roads in the SAC.

- It is therefore to be expected that WDC will interpret EA1 to mean that if a development is likely to produce any additional vehicle emissions in either SAC, then the presumption is that development will be refused. At present, WDC appear to use a 7km exclusion zone around the SACs (as set out in EA2), but it is possible that these policies could be interpreted to restrict development across the District.

- This approach is manifestly not consistent with the presumption in favour of sustainable development and national policy which requires that LAs should positively seek opportunities to meet development needs of their areas.

- Whilst the NPPF notes that proposed development on land likely to have an adverse effect on a SSSI should not normally be permitted, it is difficult to envisage that the drafting was intended to mean that no development within a 7km radius should be permitted (which is the effect of the LP policies at the present time).

- Development should be permitted in anticipation of mitigation measures being put in place. This would be consistent with the approach of the NPPF paragraph 8 (as development would be able to fund future measures and actions which would improve the SACs) and paragraph 14 which requires a presumption in favour of sustainable development (rather than the proposed presumption against development which might or might not be unsustainable).