Wealden Local Plan

Examination Statement - Matter 2

Prepared for:

The Ashdown Forest Stakeholder Forum

May 2019
Examination Statement – Matter 2
Examination into the soundness of the Wealden District Council Local Plan

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Appendix 1 - Ashdown Forest Stakeholder Forum Members

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1. Introduction

1.1. This Examination Statement outlines the position of the Ashdown Forest Stakeholder Forum (the Forum) in response to the Inspector’s Main Matters, specifically:

- Matter 2: Vision and Objectives and Local Plan Growth

1.2. This Statement should be read alongside the Forum’s representations of October 2018 and the Statement made for Matter 1 (Legal compliance, including duty to Co-operate).

1.3. The comments on specific policies provided in this Statement are provided in the event that the Inspector rejects the criticisms made of the Habitats Regulation Assessment (HRA) by various parties. However it should be noted that the Forum’s overall position is that set out in the Statement for Matter 1, that the HRA is substantially flawed and not fit for purpose, and therefore the overall strategy contained within the WLP is not sound and mitigation measures contained within specific policies of the WLP are not required.
2. Update on Current Position

Representations submitted to WDC Local Plan Consultations

2.1. Our Statement for Matter 1 outlines an update on our representations, which should be read alongside this Statement.

Representations by other key stakeholders

2.2. Tunbridge Wells Borough Council (TWBC), South Downs National Park Authority (SDNPA) and Lewes District Council (LDC): The three authorities prepared a joint response to the Regulation 19 WLP consultation, much of which relates to the HRA and is therefore relevant to Matter 1, however some comments in relation to draft policies AF1 and AF2 are provided. The authorities comment that policies AF1 and AF2 are based on a flawed HRA and therefore conclusive evidence that they are needed has not been provided. In addition the authorities note that no evidence to suggest that the mitigation measures proposed through AF2 will be effective has been provided and indeed, some of the mitigation measures proposed are not actually mitigation measures.
3. Main Matter 2 - Vision and Objectives and Local Plan Growth

*Issue 1: Whether the Spatial Vision for Wealden is justified, effective, consistent with national policy and positively prepared*

**Q33. Is the Plan period effective, justified and consistent with national policy?**

3.1. The National Planning Policy Framework (NPPF) is clear of the need for a 15 year plan period (para 157). The Forum questions whether the plan period 2013-28 is robust, effective and positively prepared. On adoption (likely in 2020) the plan will only have eight years. A positive, long term and proactive approach to planned growth and the Ashdown Forest requires an effective plan period of 2020-2035.

*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*

**Q35. Is a simple reading of policy AF1, that all development, irrespective of whether it is included within the list of categories set out in footnote 14 of the LP, or where it is located within the Plan area, is reliant on the action of the LPA? Does this raise any risk to the delivery of development within the Plan? Would development be dependent on the delivery mechanism being created or implemented?**

3.2. Clearly Policy AF1 as drafted requires suitable mitigation measures for the identified European sites to be identified, and a delivery mechanism created before any development contained within the WLP can come forward. The wording of the policy has the effect that development contained within the plan is entirely reliant upon WDC producing and implementing mitigation measures. This is not a positively prepared approach as it caveats development coming forward, and could realistically result in the adoption of a plan that cannot be implemented.

3.3. Furthermore, as set out in the Forum’s Statement for Matter 1, it is contested whether mitigation measures are required, as they are based on the findings of a flawed HRA.
3.4. We would suggest that in the event that the Inspector finds the overall approach taken by WDC in the WLP to be sound, policy AF1 is reworded to remove the first paragraph and the reference to mitigation measures and policy AF2.

Q36. 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 Special Area of Conservation and Lewes Downs Special Area of Conservation 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?

3.5. As set out in the Forum’s Statement for Matter 1, it is not considered that the HRA is suitably robust or fit for purpose. As such, the strategy taken by WDC is not justified. On this basis, and specifically in relation to policy AF1, it is clear that the policy is not justified, as the HRA conclusion - that harm to the Ashdown Forest and Lewes Downs will take place in the absence of mitigation - is incorrect. This view is shared by a number of other key stakeholders as identified in the Forum’s Statement for Matter 1.

3.6. Furthermore, irrespective of whether mitigation is actually required or not, policy AF1 is without a doubt neither positively prepared nor consistent with national policy. The policy as drafted has the effect that any development identified through the plan being delivered is wholly reliant upon the actions of the LPA. This could lead to a situation where the plan cannot be implemented and development identified cannot be brought forward, despite being included in the plan.

Q37. How will the delivery mechanism work? Who is responsible for it? How does it mitigate any adverse impacts, and is there a clear direct link between development and mitigation on a pro rata basis? Should there be one? Is there a difference between the mitigation required for development already identified within the Plan and development which is in addition to that which has already been considered within the Plan’s HRA?

3.7. WDC have not identified how the delivery mechanism will work or who is responsible for it. In addition, the list of mitigation measures set out in policy AF2 does not appear to be based on accurate evidence and therefore is not justified. Furthermore, a number of the proposed mitigation measures are not actually mitigation measures, and no evidence has been provided to demonstrate that the measures identified will actually have a positive effect.
3.8. It is also of concern that the proposed mitigation tariff, contained in the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development, appears to be a blanket approach, which does not account for the size, location, tenure or type of dwellings, simply suggesting a single tariff figure per dwelling regardless of these details. This vague approach may risk stifling smaller developments and may hinder WDC achieving their required housing mix, due to the higher proportionate costs for smaller units. As such this does not ensure a positive approach to planning.

3.9. Should the position on the HRA, and policy AF1 be accepted, then the plan must recognise the risk to the delivery of the housing trajectory. There is a risk of various Grampian-style conditions being imposed on new development, potentially adversely affecting the delivery of development.

Q38. Is criterion a) of Policy AF1, clear what development will fall within its remit and how developers should satisfy its requirements? Is the policy internally consistent in how the Lewes Downs SAC and the Ashdown Forest SAC are treated? What evidence is there that the harm would ensue without mitigation, and that the mitigation measures set out within Policy AF2 would be effective and directly relate to the proposed development?

3.10. As outlined in the Forum’s statement on Matter 1, whether there is any harm to mitigate is disputed. In addition, it is questioned whether the mitigation measure identified through policy AF2 actually constitute mitigation, and no evidence has been provided to demonstrate that mitigation would be effective. As such, policy AF2 is not considered to be justified or effective.

Q39. What would be the impact on development viability of the proposed financial obligations set out in the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development?

3.11. The most recently published Viability Study is an update dated December 2018. This acknowledges in paragraphs 2.4 and 3.4 the “Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance” which was published in September 2018 setting out the tariff of £3,100 per dwelling.

3.12. It is stated in paragraph 10.1 that this mitigation tariff cost was not included in any previous viability assessment. However, the December 2018 viability assessment has been updated to include the air pollution mitigation fee of £3,100 per residential unit on all appraisals. This is recorded separately to the S106 costs on the financial appraisals.
3.13. It is however relevant that the tariff has been updated since through the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development. This document sets a slightly lower tariff of £2,697 per dwelling and also provides a rate (per sqm of floorspace) for employment development of £15.64. The viability assessment does not appear to have taken into account the employment floorspace tariff and has not been updated to reflect the lower residential tariff, in the event that the Inspector considers mitigation necessary, the viability assessment should be updated to reflect these costs in order to ensure that the WLP will be effective.

Q40. Are the two policies consistent with the CIL regulations? and

Q41. Specifically, how would such measures set out in Policy AF2 be differentiated from other strategies, good practice, and the wider principles of sustainable development consistent with core planning principles of the Framework?

3.14. The Forum questions whether the mitigation measures proposed through the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development are mitigation measures or simply good planning practice. The Forum has no objection to the aspiration to deliver the measures identified but is of the view that they should not be labelled as mitigation measures, in light of our previous comments regarding the need for mitigation.

3.15. In addition, a number of the measures proposed are considered to be infrastructure improvements which would be covered by CIL Regulations and therefore should not be brought forward as mitigation measures regardless. These specific items area as follows:

- Visitor Parking at Gateway locations;
- Reduction of Speed Limits (depending upon S278 agreements and whether hard infrastructure will be provided);
- Priority parking for Low Emission Vehicles (LEVs);
- Provision of electric vehicle charging points in local centres, railways and car parks;
- Congestion management (depending upon S278 agreements and whether hard infrastructure will be provided);
- Polegate Parkway Station;
- A27 offline improvements;
- Upgrading of Uckfield – Eridge Line;
- Reinstatement of Lewes – Uckfield Line; and
- A27 online improvements.

3.16. The Forum are aware that the CIL Regulations are due to change which may affect pooling restrictions and may necessitate a review of CIL in Wealden.

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

Q42. Are policies EA1 – EA3 predicated on robust evidence in terms of impacts and proposed mitigation?

3.17. As set out in the Forum’s Statement for Matter 1, it is not considered that the HRA upon which the strategy taken forward by WDC through the WLP, is sufficiently robust or accurate. Consequently, policies EA1 – EA3 should be reviewed in light of this.

Q44. What is the justification for setting out the 400 m and 7 km thresholds? Is it clear what is meant by ‘large residential developments’?

3.18. Policy EA2 is unclear as it does not specify what large development schemes are, nor does it clarify what is meant by ‘close to but beyond the 7 kilometre boundary’. The policy as worded is vague and does not provide sufficient certainty to developers as to the requirements for appropriate assessment for developments beyond the 7 km boundary. The policy should be reworded to be more precise, if the Inspector deems that the policy is required at all.
Q45. Are the policies consistent with national policy?

3.19. Policy EA2 in particular is not consistent with national policy as it is imprecise. Paragraph 154 of the NPPF (2012) states that “Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan”. There are a number of ambiguous elements to the policy which should be addressed in order to ensure clarity is provided, this includes the reference to ‘larger residential developments’ and the location ‘close to but beyond the 7 km boundary’ addressed previously in this statement.

Issle 4: Whether the approach to development within the High Weald Area of Outstanding National Beauty is justified, effective and consistent with national policy?

3.20. The Forum have no comment on this issue and associated questions.
4. Conclusions

4.1. In conclusion, as set out in the Forum’s Statement for Matter 1 it is considered that the HRA underpinning the WLP is not justified, sufficiently robust or fit for purpose, and the conclusions contained therein are disputed. As such, the WLP itself is not justified, effective, positively prepared or consistent with national policy.

4.2. Notwithstanding this position, this Statement has provided responses to the Questions raised by the Inspector in relation to Matter 2, in the event that the criticisms made of the HRA by various parties are rejected and the overall approach taken by WDC to the WLP is considered sound by the Inspector.

4.2.1. The specific elements of the WLP that we consider to be unsound, in relation to Matter 2 are:

- Policy AF1 requires the LPA to identify and implement mitigation measures prior to development within the plan being delivered. This is an unsound approach as it is not justified, consistent with national policy or positively prepared.

- The mitigation measures contained within policy AF2 and the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development do not appear to be based on robust evidence. It has also not been demonstrated that the measures proposed would actually work. In addition, a number of the measures appear to simply be good planning practice, or even infrastructure improvements covered by CIL Regulations. As such, irrespective of the fact that the Forum does not believe mitigation to be necessary, policy AF2 and the Air Quality Mitigation – Interim Mitigation Strategy Tariff Guidance for Residential Dwellings and Business Development are not justified, effective or consistent with national policy.

- Policy EA2 is not clear. It does not identify what is meant by ‘large development’ or ‘close to but beyond the 7 km boundary’. This uncertainty results in an unclear policy which is not effective or consistent with national policy.
Appendices
Appendix 1 - Ashdown Forest Stakeholder Forum Members
Membership List

The Forum consists of the following members:

- Catesby Estates
- Chailey Homes
- Croudace Homes
- Dandara
- Stonewater
- Taylor Wimpey
- Wates Developments
Examination Statement

Matter 2

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