Wealden Local Plan EIP: Matter 2: Vision and Objectives and Local Plan Growth
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 2 – Vision and Objectives and Local Plan Growth 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

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

32. Are the key local plan objectives which have been identified relevant; justified; and consistent with National Policy?

2.1 Whilst the Council have set out a clear Vision for the future of the District, unfortunately this has not been translated into the objectives of the Plan or the Plan itself.

2.2 Whilst the Vision sets out that “by 2028 Wealden District will have improved the health and wellbeing of its residents by meeting housing need”, as set out in Objective 11 only 14,228 homes are proposed. As explored further in our Statements on Matters 1, 3 and 4 it is considered that the Plan is failing to provide for sufficient needs of the OAN and that the level of growth has been artificially constrained predicated on a flawed approach to the assessment of potential effects on the Ashdown Forest SAC. Furthermore the Council are not proposing to meet the potential needs of adjoining authorities and further work is required to ensure the Duty to Cooperate is discharged.

2.3 Concern is also raised regarding the proposed shortened Plan period which is not consistent with National Policy and indeed is unlikely to be reached given the number of scenarios which would trigger an early review of the Plan.

2.4 We support the recognition of the suitability of Polegate to accommodate growth as set out in Spatial Objective 1 – Housing. As a result of the artificial ‘cap’ on growth which the Council have sought to apply this has not however been translated through to the Plan itself. It is notable that the proposed amendments to some settlement development boundaries would seemingly establish the acceptability in principle of developing areas capable of delivering far in excess of the windfall allowance provided for that settlement, as is the case for Polegate.

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

2.5 The Council’s latest Local Development Scheme (March 2019) anticipates adoption of the Local Plan in 2019. Given sessions have only been scheduled for Stage 1 of the Examination in Public to date this would appear somewhat ambitious, particularly in light of the additional work we consider necessary to ensure the Plan can be found sound. Even assuming this date is achieved, it is clear that upon adoption of the Local Plan there will be under 10 years remaining of the Plan. The NPPF (2012) makes clear that “Local Plans should...be drawn up over an appropriate timescale, preferable a 15-year time horizon” (paragraph 157).

2.6 Furthermore Policy WLP13 commits the Council to undertaking an early review, in part or full, of the Plan under a number of scenarios. 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.
2.7 In light of comments regarding the housing cap the District Council has sought to impose, and the additional work it is considered necessary to address the matters raised to ensure the Plan is sound, this provides an opportunity for the Plan period to be extended to an appropriate time horizon in parallel with these workstreams.

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?

35. 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?

2.8 As currently drafted it is clear that the Policy requires any and all development to await suitable mitigation measures and the delivery mechanism to be put in place by the Council. Clearly this introduces a significant degree of uncertainty in the delivery of the Plan.

2.9 Notwithstanding the above, as set out in our Statement to Matter 1, it is questioned whether mitigation measures are in fact required in any event. As such it is considered that this Policy is unnecessary based on the evidence prepared to date. Clearly, once further testing is undertaken of alternative increased growth scenarios, it may be identified that some mitigation measures are required. These measures would then need to be secured and an appropriate delivery mechanism put in place which does not represent a potential further delay to the delivery of the much needed housing as would currently be experienced under Policy AF1.

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 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?

2.10 As discussed above, it is contested whether any mitigation is in fact required to support the Local Plan. 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.”

2.11 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 other than to note that Natural England have themselves published an updated position on air quality matters in the Ashdown Forest SAC Conservation Objectives Supplementary Advice (March 2019). Importantly this concludes that:

“Modelling undertaken by Wealden District Council, Lewes District Council and other relevant Local Planning Authorities for Local Plan assessments has identified that increases in development coming forward within plans, would increase Nitrogen deposition, Nitrogen Oxides and ammonia adjacent to roads that run through Ashdown Forest from associated increased transport. However assessment of improvements in vehicular technology and in particular Euro6/VI standards that all vehicles are currently being manufactured to, will outweigh impacts from new development. The improvements will be marginally retarded by additional development but future nitrogen deposition and concentration will continue to decline with the existing trend” (page 13).

2.12 The preparation of the Local Plan 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. Additional scenario testing, including Sustainability Appraisal, is therefore required.

2.13 Until this additional work is undertaken it is not clear whether there is a threshold at which mitigation would be required and what level of development could ultimately be sustainably accommodated. The proposed approach and wording of Policy AF1 should be reviewed and amended once this additional work has been undertaken.

37. 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?

2.14 As indicated above it is contested as to whether there are any adverse impacts which require mitigation to be applied.

2.15 Should it be determined that mitigation is required, concern is raised regarding the approach taken in the Interim Air Quality Mitigation Strategy (2019). Whilst this does now include a tariff in respect of both residential and employment development, a flat rate is proposed for all dwellings. This does not reflect (assuming such an approach is ultimately considered sound) the differing quantum of vehicle movements which would be created depending on the size of the dwelling. Clearly this would have a greater viability implication on smaller dwellings and may restrict the delivery of these units. This would run contrary to the Vision for the District which states that:

“The housing stock will have been re-balanced by the provision of smaller dwellings reflecting the need to improve affordability in the area, meet the needs of those wishing to downsize or take their first step on the housing ladder and make the best use of land.”
38. 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?

2.16 Policy AF 1 is split into two sections. Firstly it establishes that development identified in the Local Plan (defined by footnote 14 of the Local Plan as including “allocations, specifically identified SHELAA sites and development within the windfall allowance identified in Policy WLP 7 and Policy WLP 9”) and development which is in addition to that identified in the Plan are subject to different expectations. The Policy explains that development identified in the Plan may only be delivered when suitable mitigation measures for relevant protected sites are identified and a delivery mechanism created by the LPA is in place in accordance with Policy AF2. Development in addition to that identified in the Plan will only be permitted if it can be concluded that the proposals will not adversely affect the integrity of Ashdown Forest Special Area of Conservation, Lewes Downs Special Area of Conservation and Pevensey Levels Special Area of Conservation and Ramsar Site owing to traffic movements beyond the 2014 baseline in combination with other identified development, including that allocated or identified in this Plan.

2.17 It appears as though the Plan creates two categories: development in the Plan (which may provide the financial contribution in AF2); and development in addition to that identified in the Plan (which does not appear to be able to provide the financial contribution).

2.18 It is considered that this approach is a contrived attempt to ensure that the Local Plan establishes a ceiling (i.e. the development arising from “allocations, specifically identified SHELAA sites and development within the windfall allowance identified in Policy WLP 7 and Policy WLP 9” as per footnote 14) of development which can be accommodated. Any additional development is expected under Policy AF2 to include other ‘mitigation’ measures, but the financial contribution does not appear to be available and as such the bar for additional development appears to be higher.

2.19 The Inspector’s question asks “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?”. In that regard we note the conclusions of Natural England (correspondence dated 5th October 2018) 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.”
39. What would be the impact on development viability of the proposed financial obligations set out in the Air Quality Mitigation – Interim Strategy Tariff Guidance for Residential Dwellings and Business Development?

2.20 Notwithstanding our comments regarding the principle of the need for mitigation, it is noted that a Viability Study Update has been published dated December 2018. This includes an assessment of the implications of an earlier version of the Tariff Guidance (September 2018) which proposed a tariff of £3,100 per residential unit. The proposed tariff has subsequently been amended to reduce the tariff per dwelling to £2,697 and a per sqm of floorspace contribution of £15.64 for employment development. It is noted that an updated viability assessment has not been prepared to reflect these figures.

2.21 Whilst it is acknowledged that the Viability Study Update appears to show residential development would remain viable even applying the earlier higher tariff level, as per our response to question 37 it is considered that the proposed blanket approach could potentially reduce the delivery of smaller dwellings.

40. Are the two policies consistent with the CIL Regulations?

2.22 Policy AF 2 refers to development identified in the Plan that results in the net increase in traffic movements across roads adjacent to Ashdown Forest SAC or Lewes Downs SAC providing financial contributions towards a package of measures designed to ensure that there is no adverse impact on the integrity of the relevant protected sites. Evidently such a contribution would need to be made via a Planning Obligation as confirmed by Footnote 18 of the Local Plan.

2.23 We note the Inspector’s question and consider this to be an extension of the issues in Q38. The CIL Regulations 2010 (as amended) state that (Regulation 122(2):

“A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development”

2.24 All three of the tests in Regulation 122(2) must be satisfied if a planning obligation is to be justified. In that regard we note the conclusions of Natural England (correspondence dated 5th October 2018) 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.”
2.25 If it is the case that the mitigation to be secured by financial contributions (either alone or in conjunction with other measures) is not necessary to make the development acceptable in planning terms then it is not possible for the test in Regulation 122(2) to be satisfied.

2.26 However we note that Regulation 122(2) also requires that an obligation must be directly related to the development and fairly and reasonably related in scale and kind. As a consequence, it is considered that any assessment as to whether mitigation measures are required must have regard to the specific circumstances associated with the development in question. For example, that assessment should have regard to the location, type, use and scale of development. Without undertaking that exercise it is not possible to establish whether mitigation is necessary in that particular case and clearly a blanket rate for all residential dwellings is inappropriate.