Wealden Local Plan Examination: Stage 1

Matter 2 (Air Quality Considerations)

1. This representation has been prepared by Ecology Solutions Ltd with additional input provided by Turley, on behalf of Inspired Villages Group\(^1\) (IVG) pursuant to the Wealden Local Plan Examination (Stage 1). This representation addresses the “Inspectors Matters, Issues, and Questions for Discussion at the Examination Hearings” and specifically, Air Quality Considerations, listed under Matter 2.

2. The focus of this response is on issues relating specifically to the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA).

MATTER 2

Issue 2

Question 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?

3. It is Ecology Solutions reading of Policy AF1 that the mitigation / avoidance measures detailed at Policy AF2 can be relied upon by development identified within the local plan. For these developments, delivery would be wholly reliant upon the action of WDC in securing the delivery mechanism relating to those strategic measures for which financial contributions are to be sought.

4. For other development, not included within the plan, it is understood that a project specific Habitats Regulations Assessment would be required, and a package of bespoke mitigation / avoidance measures would need to be agreed with WDC (acting as the competent authority under the Habitats Regulations) where considered necessary in light of the results of that Habitats Regulations Assessment. In these cases, there would be a reliance on the action of WDC insofar as in acting in its capacity as Competent Authority, it will need to satisfy itself as to the conclusions of the Habitats Regulations Assessment and as to the suitability of any proposed mitigation.

\(^1\) Inspired Villages Group develop and administer high quality retirement villages (C2 use class). Representations were made by Turley, with input from other consultants including Ecology Solutions at the Regulation 19 consultation stage of the Local Plan. IVG is promoting land at Little Mount Farm, Benhall Mill Road, Frant, Tunbridge Wells, for C2 use and the promotion of this land for such use was a focus of the Regulation 19 submissions.
5. It is unclear from Policy AF1, whether in acting as Competent Authority, WDC accept that for development not included within the Wealden Local Plan (including that considered as windfall in accordance with the Plan), reliance can also be placed upon that mitigation included within Policy AF2. Clearly it would be absurd for WDC to conclude that project specific measures “h” to “k” would not be appropriate as part of a bespoke mitigation / avoidance package, but it would appear that a position has been adopted where the (developer funded) strategic element of the package is only applicable to development identified within the Wealden Local Plan. This of course runs contrary to other strategic mitigation packages operated for other European designated sites, where the mitigation package is ‘scalable’, with associated costs and tariffs reviewed on a regular basis.

6. Policy AF1 does indeed raise a significant risk to the delivery of development within the Wealden Local Plan. The mitigation as deemed to be required by WDC must not only be targeted and deliverable in order to pass the relevant tests of the Habitats Regulations, but the relevant measures must be implemented at the point when an effect could otherwise arise. It is noted that there remains a significant amount of work required to fine tune the package of measures and this will inevitably cause delays to the grant of permissions and subsequent delivery of development.

7. As a further, overarching point, it is Ecology Solutions view that given the position of Natural England (with reference to its Regulation 19 submission) and the uncertainties relating to the deliverability of the mitigation package put forward by WDC, there is the inherent risk of Judicial Review proceedings should the Wealden Local Plan move to adoption without appropriate modification to Policies AF1 and AF2.

Question 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?

8. Matters concerning the evidence base are discussed in detail within the IVG representation pursuant to Matter 1 (Habitats Regulations Assessment) of the Examination of the Wealden Local Plan. To avoid unnecessary repetition, the Inspector is directed to that representation in relation to matters concerning the evidence base. For clarity, it is considered by Ecology Solutions that Policy AF1 is not justified by the evidence base, a position also supported by Natural England.

9. This question has been addressed by Turley on behalf of IVG.

10. The Policy is inconsistent with the presumption in favour of sustainable development. Footnote 6 of the NPPF 2019 identifies those policies referred to in the Framework which “provide a clear reason for refusing the development proposed”. These policies include those relating to habitats sites. In addition, paragraph 177 of the NPPF 2019 states that the “presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.” Firstly we note that Natural
England have established that the mitigation referred to in the Plan is not required. Furthermore, we note that Policies AF1 and AF2 create a significant degree of uncertainty as to which schemes are able to rely on the mitigation measures (regardless of whether they are in fact required). This may lead the Council to conclude that the presumption in favour cannot be engaged regardless of a site/scheme specific consideration of the impacts of the development.

11. The Council’s proposed strategy as set out in policies AF1 and AF2 and the requirement for unwarranted mitigation risks the presumption in favour of sustainable development not being applied to development whether allocated or not in the Local Plan

**Question 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?**

12. It is wholly unclear from the information before the EIP how the delivery mechanism will work and where responsibilities will lie. This raises significant concerns as to the efficacy of those strategic measures for which contributions will be sought to fund the measures, the detail of which are yet to be determined. As previously discussed, there are also significant concerns as to the lack of detail on precisely how some of the measures will mitigate / avoid perceived effects and furthermore, some measures clearly do nothing by way of actual mitigation.

13. Regarding whether there are difference between the mitigation required for development identified within the Plan and development which is in addition, in discharging its duties as Competent Authority when assessing an individual application whether included within the plan or not, the legal test to be applied is whether or not any required mitigation as proposed, is fit for purpose. As discussed above, it is not explicitly clear from Policy AF1 whether the mitigation outlined in Policy AF2 can also be relied upon by development not included within the Wealden Local Plan. It would clearly not be appropriate for WDC to take the stance that all measures identified in Policy AF2 can only be relied upon by development included within the Wealden Local Plan. Indeed it is considered that should it be concluded, contrary to the view of Natural England, that mitigation / avoidance measures are required in order for a conclusion of no adverse effect on integrity to be reached, then an adopted strategic mitigation package of measures should be scalable and appropriate for use by both development included in the Plan and non-plan development.

**Question 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?**

14. This question has been addressed by Turley on behalf of IVG.

15. 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.

16. 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).

17. IVG consider 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 significantly higher.

18. 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.”

**Question 40: Are the two policies consistent with the CIL Regulations?**

19. This question has been addressed by Turley on behalf of IVG.

20. 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.
21. IVG 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”

22. 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.”

23. 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.

24. 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, IVG consider 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.

**Question 41**: 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?

25. In this matter it is simply noted that, in relation to all of the measures set out in Policy AF2 which could be considered true mitigation (i.e. they would be likely to actually bring about a reduction in emissions), as opposed to being “monitoring” or an “investigation”, it does not appear possible to differentiate these from other strategies, good practice, and the wider principles of sustainable development consistent with core planning principles of the Framework.