MATTER 1 ‘LEGAL COMPLIANCE, INCLUDING THE DUTY TO CO-OPERATE’

WEALDEN LOCAL PLAN EXAMINATION

STATEMENT PREPARED BY QUOD
(RESPONDENT REFERENCE: 1186776)

MAY 2019
Matter 1: Legal Compliance, including Duty to Co-operate.

**Issue 1:** Whether the plan has been prepared in line with the relevant legal requirements and procedural matters?

**Duty to Co-operate**

**Question 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?

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

**Question 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?

1.1 Section 33A(2)(a) of the Planning and Compulsory Purchase Act 2004 requires that local authorities “engage constructively, actively and on an ongoing basis” in the plan-making process.

1.2 The National Planning Policy Framework (NPPF) refers to the Duty to Co-operate in paragraphs 157 and 178-181. Crucially, paragraph 157 of the NPPF states that “Local Plans should be based on cooperation with neighbouring authorities...”

1.3 Paragraph 182 of the NPPF provides that an Inspector should assess whether a Plan has been prepared in accordance with the Duty to Co-operate, such that compliance with the duty must also be reflected in the assessment of soundness:

- positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

- effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities.

1.4 Notably, the NPPF is clear that the duty is not simply a duty to discuss matters. Paragraph 180 requires authorities to work collaboratively to enable delivery, whilst paragraph 179 makes clear that the purpose of collaboration is to meet development needs.

1.5 It is therefore in this context that this important cross boundary issue must be addressed. There is an onus on WDC, under the requirements of the Duty to Cooperate, to seek to identify how it can assist in meeting unmet needs. The housing needs will not simply disappear, they are real needs with direct economic and social implications for the region.
1.6 Whilst the Wealden Local Plan (WLP) refers to the requirements of the Duty to Co-operate, there is no evidence that any discussions that have taken place have had any practical effect on the policies of the plan and no apparent provision is proposed to address the clear un-met needs of neighbouring authorities.

1.7 The Duty to Co-operate Background Paper (August 2018) prepared by WDC to inform the WLP is intended to provide a background to the work that has been carried out as part of requirements of the Duty to Cooperate.

1.8 In terms of unmet housing need of neighbouring authorities, this identifies that Eastbourne Borough has an unmet need and has requested that WDC assist in meeting this unmet need. However, when considering this specific matter, the Paper goes on to state (para. 11.6) that:

“...within the Wealden Local Plan there is not a surplus of development (i.e. it is a supply-led figure) and therefore Wealden District cannot currently meet any shortfall from Eastbourne Borough.”

1.9 In terms of other authorities within the Housing Market Area (HMA), the Paper (para. 11.8) states that:

“...at this time it not considered that Wealden District will need to meet any needs of Lewes District, Tunbridge Wells Borough or Mid Sussex District.”

1.10 It is therefore evident that the approach of WDC fails to positively consider seeking to meet unmet need of other neighbouring authorities. No robust justification has been provided by WDC in adopting this approach. For example, the Lewes District Local Plan Part 1 Joint Core Strategy 2010-2030, which was adopted in May 2016, identifies a shortfall of up to 175 dwellings per annum. Despite this, no consideration has been given to whether WDC can assist in meeting this unmet need.

1.11 Joint working needs to be undertaken to calculate the scale of unmet needs in the HMA and actually seek to co-ordinate the meeting of those needs. Indeed, the Sustainability Appraisal should also assess a scenario of meeting the unmet needs.

1.12 The NPPF is clear that the duty is not simply a duty to discuss matters. Paragraph 180 requires authorities to work collaboratively to enable delivery, whilst paragraph 179 makes clear that the purpose of collaboration is to meet development needs. Whilst WDC, may be able to demonstrate some evidence that they have discussed unmet needs with neighbouring local authorities, they cannot show how joint work has been effective in actually making any meaningful provision.

1.13 What is absolutely clear, however, is that the Duty as set out in paragraph 181 of the NPPF has not been met because no effective provision for the clear unmet needs has been made and no mechanism proposed and committed to which provides a realistic prospect that the needs will be seriously addressed.

1.14 The WLP fails to seriously consider how they could have assisted in addressing the identified housing need of neighbouring authorities. The Duty to Cooperate is not satisfied, unless WDC regarded the un-met needs of its neighbours in the consideration of the relevant scale and distribution of development within WLP.
1.15 Against this background, it cannot be considered that every effort has been made in seeking to address the unmet needs of neighbouring authorities. Any suggestion by WDC that they cannot assist in meeting unmet needs of neighbouring authorities (a number of which have greater constraints to development than Wealden) has not been supported by robust evidence. Instead, future opportunities do exist to deliver additional housing in the District. This includes strategic opportunities to the west of Polegate, which forms part of the South Wealden Growth Area.

1.16 National policy is clear, the NPPF requires positive planning with ‘every effort’ made to meet growth requirements now. There is an opportunity and an obligation to plan now to meet and deliver housing potential. Whilst it is acknowledged that there is limited brownfield land in the District, there is substantial greenfield land that is not constrained by being located within the High Weald AONB or the South Downs National Park, that could deliver additional housing.

1.17 Given this, under the requirements of the Duty to Co-operate, WDC needs to further review its ability to accommodate future growth, above and beyond its objectively assessed need. The current approach of the WLP fails to do this, and therefore leads to a strategy that is not ‘positively prepared’ or ‘sound’. In summary this will require:

- A clear understanding of the unmet needs in the HMA and clear strategy of how this can be met, which include effective cross boundary working; and
- A further appraisal of how allocations and / or safeguarding of land within the WLP can assist in meeting the unmet needs of the HMA.

1.18 Undertaking this exercise will lead to the need for the housing target in the WLP to increase.