

## **WEALDEN LOCAL PLAN EXAMINATION**

**Inspector: Louise Nurser BA (Hons) Dip UP MRTPI**  
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### **INSPECTOR'S MATTERS, ISSUES, AND QUESTIONS FOR DISCUSSION AT THE EXAMINATION HEARINGS**

*PLEASE NOTE: The Wealden Local Plan was submitted to the Planning Inspectorate for examination on 18 January 2019. Paragraph 214 of the revised National Planning Policy Framework makes clear that the policies of the previous Framework will apply for the purposes of examining plans submitted on or before 24 January 2019.*

*Therefore, the transitional arrangements apply to this examination. Please make sure that all documentation refers to the 2012 version of the Framework and associated Planning Practice Guidance.*

#### **VERSION 1**

The Hearings Programme may be updated. Please ensure that you check the latest position if you wish to attend a particular hearing by contacting the Programme Officer or viewing it on the website at [www.wealden.gov.uk](http://www.wealden.gov.uk).

Please remind yourself of the guidance concerning the format of the hearing at this Examination, contained in the Inspector's Guidance Note.

I have split the examination of the Local Plan into stages. These questions relate to STAGE 1. If following the Stage 1 hearing sessions, I conclude that, in relation to these issues, the Plan is capable of being found legally compliant and sound, (having regard to the potential for me to recommend main modifications) Stage 2 of the examination will then commence at a date to be subsequently arranged.

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### **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?*

1. Has the Plan been prepared in accordance with the relevant Act and regulations?

#### Local Development Scheme

2. Has the plan been prepared in accordance with the Local Development Scheme in relation to timing and content?

#### Statement of Community Involvement

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?

#### Climate Change

4. Whether the overarching strategy of the Local Plan is designed to secure the development and use of land which contributes to the mitigation of, and adaptation to, climate change consistent with S19 (1A) of the Planning and Compulsory Purchase Act 2004? If so, how has this been translated into policies within the Plan?

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### *Sustainability Appraisal*

5. Has the plan been subject to Sustainability Appraisal (SA), including a report on the published plan, which demonstrates, in a transparent manner, how the SA has influenced the evolution of the plan making process and have the requirements for Strategic Environmental Assessment been met?
6. Is the non- technical summary suitably concise? Has the SA followed the correct processes in terms of content and consultation? In particular, is the scoring methodology within the SA consistent, coherent and accurate?
7. What are the implications, if any, to the Sustainability Appraisal, as amended, of the proposed Main Modification put forward by the Council to remove reference to air quality impacts to the Pevensey Levels SAC and Ramsar sites?
8. Have all reasonable alternatives been considered in terms of strategy, policies and sites? Have these reasonable alternatives, including those set out within the Sustainability Appraisal Addendum 2019, been considered on a like for like basis? Is the evidence on which the scenarios are predicated consistent? Are there any policies, or strategies, where there were no reasonable alternative options to consider? If so, what is the justification?

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### *Duty to Co-operate*

9. Has the Council co-operated with the relevant local planning authorities, County Councils and appropriate prescribed bodies, in the planning of sustainable development relevant to cross boundary strategic matters? If so, who has the Council engaged with, and why?
10. Specifically, in relation to Wealden, what are the matters of cross boundary strategic significance which require co-operation, and how have these matters been identified?
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?
12. In considering its responsibilities under the duty to co-operate has the Council explored the production of joint research and evidence gathering to support policy choices, and producing relevant joint policies or informal strategies? If so, how, and what has been the result?
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?
14. What is the significance, if any of Wealden District Council's withdrawal of its objection to South Down's National Park's Local Plan?
15. Are there strategic matters which have not been adequately considered on a cross boundary basis? If so, why?
16. Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraphs 178- 181 of the Framework?
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?

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### Habitat Regulations Assessment (HRA)

*Please reference the relevant European site when answering the following questions. To avoid repetition, any reference to the Plan should be read as either alone, or in combination, with other plans or projects.*

18. What role has Natural England played in the production of the HRA and how has the Council had due regard to its professional expertise and its guidance? Have other key stakeholders been consulted?
19. Has the Habitat Regulations Assessment been prepared in a manner consistent with the relevant legislation? If not, please set out clearly why not.
20. Is the Plan, as submitted, likely to have a significant effect on European sites either alone, or in combination with other plans or projects? Have these other plans or projects been appropriately identified?
21. Specifically, on what basis have the relevant European sites, including those outside of the district, been selected?
22. Have the appropriate assessments of the implications for those sites been undertaken in a manner consistent with the sites' conservation objectives?
23. In doing so, are the appropriate assessments capable of ascertaining that the Plan as submitted will not adversely affect the integrity of the European sites and its qualifying features, either alone, or in combination?
24. Specifically, is the evidence, methodology, and the underlying assumptions on which the HRA has been formulated, realistic, robust, accurate, transparent, appropriate, and sufficiently replicable to allow sensitivity testing, so as to justify its conclusions? Has a qualitative, proportionate approach been taken to the potential impacts on the integrity of the sites? If not, should this be the case?
25. Should reference to '*not adversely affect the integrity of the site*' be taken to mean that, as a result of the Plan, the qualifying elements of the site should not be in a worse state than the recorded baseline condition, ie no significant net deterioration? Or, does it mean, in the context of an improving situation, for example, improvements in air quality, that the potential for a theoretical quantum of improvement should not be compromised by the policies of the Plan?

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26. Is the approach to the use of evidence underpinning the HRA consistent with the '*precautionary approach*' as described in the '*Communication from the Commission on the precautionary principle*'?
27. What is the relevance of the recent CJEU Ruling on C-293/17 and C-294-17, as well as C-461/17, to the Council's approach set out in the HRA?
28. On what basis has the threshold for development and its distribution been considered to be acceptable? Are the adverse impacts considered to be '*real*', not '*fanciful*'?
29. Assuming that the mitigation measures set out in the HRA are required, what evidence is there that these will work?
30. Does the evidence in the HRA support the assertion that suitable air quality mitigation measures are no longer required for the Pevensey Levels SAC and Ramsar Site within Policy AF1?
31. Is the Plan's strategy and distribution of development consistent with the recommendations of the HRA?

### **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?*

32. Are the key local plan objectives which have been identified relevant; justified; and consistent with National Policy?
33. Is the Plan period effective, justified and consistent with national policy?

*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?*

34. Why is the Council's proposed Main Modifications to remove reference to the Pevensey Levels Special Area of Conservation and Ramsar site required to make the Plan as submitted sound?
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

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Plan? Would development be dependent on the delivery mechanism being created **or** implemented?

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?
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?
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?
39. 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*?
40. Are the two policies consistent with the CIL Regulations?
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?

*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?
43. Are these policies consistent with the CIL Regulations?

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44. What is the justification for setting out the 400 m and 7 km thresholds? Is it clear what is meant by 'large residential developments'?
45. Are the policies consistent with national policy?

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

46. Having regard to the core planning principles set out within the Framework, and the exceptional circumstances and public interest tests set out in paragraph 116 of the document, is the development proposed within the AONB, including that which could take place within extended settlement boundaries, soundly based?
47. In particular: (a) what is the need for the development proposed, including in terms of national considerations? (b) what is the likely impact of permitting, or refusing, the housing development on the local economy? (c) is there scope for providing for the housing development outside of the AONB, or meeting the need for it in some other way? (d) what is the likely effect of the development on the environment, landscape and recreational opportunities having regard to the potential for moderation?

### **Matter 3: Objectively Assessed Needs for Housing and Employment Land**

*Issue 1: Whether the Council's approach to calculating its full, objectively assessed needs is justified, based on up-to-date and reliable evidence, effective, positively prepared, and consistent with national policy?*

#### *Objectively Assessed Need- Housing*

48. Does the plan period cover an appropriate time frame for the provision of housing (2013-2028), and is it consistent with national policy? Should it be extended. If so, why? Why is a different time period chosen to that set for employment and retail matters?
49. Is the wider HMA within which Wealden sits appropriately drawn?
50. Is Wealden's functional housing market discrete? How has the housing requirement for the wider HMA been considered with particular reference to the South Downs National Park and Eastbourne BC? Should an OAHN for the wider HMA have been set in addition to the OAHN which is specific to Wealden? What influence have the overlapping and neighbouring housing

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markets had on the setting of Wealden's OAHN, in particular those of Eastbourne and the South Down's National Park?

51. Should the recently published 2016- based household projections be taken into account in setting the OAHN? If so, what would be the consequence?
52. Is the OAHN figure of 950 dwellings per annum, robust and justified? Does it take into account appropriate market signals, household size and household formation, forecast jobs growth and the need for adequate levels of affordable housing to be provided?
53. Has an allowance been made for vacancy rates and second homes with reference to existing and future housing stock?
54. Is the level of housing planned appropriate? Should it be increased or decreased? If so, to what level and on what basis?

### Employment:

55. Does the plan period cover an appropriate time frame for the provision of employment and retail matters (2015-2028), and is it consistent with national policy? Should it be extended, if so, why
56. Is the objectively assessed need for economic development based on an appropriately defined functional economic market area? In particular, how have the economic linkages with Eastbourne been considered?
57. Is the level of employment provision and capacity for further retail floorspace appropriate? Should they be increased or decreased? If so, to what level and on what basis?

### **Matter 4: Supply of housing.**

As set out above, subject to being able to conclude that the Plan is capable of being found legally compliant and sound, I am intending to move to a second phase of hearing sessions at which I would consider matters in detail, such as the supply of housing. However, the following issue would be usefully considered at this stage of the examination.

*Issue 1: Is the Council's approach to its housing supply, justified, effective and consistent with national policy?*

58. Is reliance on the scale of windfall housing predicated within the LP being delivered, realistic, justified and consistent with national policy? In particular, how have the Core Areas been determined? How does the

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projected contribution from windfall housing compare with recent housing delivery? Is it appropriate to rely to such an extent on windfall housing rather than the allocation of housing sites within a plan led system?