

## Examination into Lewes District Local Plan Part 2: Site Allocations and Development Management

### Inspector's Matters, Issues and Questions Discussion Note

#### Introduction

This note summarises the matters and issues identified by the Inspector in the form of questions, and they will form the basis of the Examination Hearings which commence on Tuesday 2 April 2019 at The Council Chamber East Sussex County Hall, Council Chamber, St Anne's Crescent, Lewes, East Sussex BN7 1UE.

This note may be refined in the light of the Inspector's consideration of the Hearing Statements received prior to the Examination Hearings.

Please note that the word limit for further statements is 3,000 words per question (excluding supporting information, such as Appendices).

#### Matter 1 - Legal Requirements, Scope of the Local Plan and Duty to Co-operate

##### 1.1 Legal Requirements:

*Does the Local Plan meet all its legal requirements (e.g. in relation to the Local Development Scheme; Statement of Community Involvement; and Local Development Regulations 2012)? Are there any other legal compliance issues?*

##### 1.2 Scope of this part of the Local Plan

- (i) *Is the scope of the Plan in line with its intended role, for example as set out in Section 1 Introduction and in particular in paragraphs 1.3 and 1.4 of the submitted Plan? The submitted Plan makes clear reference to the strategic objectives and spatial strategy in the Local Plan Part 1, which provides for the delivery of 6,926 net dwellings from 2010 to 2030, of which 5,494 are to be delivered in the plan area (i.e. outside the South Downs National Park), with a residual total of 1,660 dwellings to be provided for in this - Part2 - Plan?*
- (ii) *Does the scope of the Plan accord with the recent Court of Appeal (COA) Judgment of Oxted Residential Ltd v Tandridge District Council (EWCA Civ 414; 29 April 2016)? This COA Judgment is in the Examination Library, and the paragraphs that I would*

particularly like to draw attention to are: 28, 31, 32 and 38. The third sentence of paragraph 38 states: **An Inspector conducting an examination must establish the true scope of the development plan document he is dealing with, and what it is setting out to do. Only then will he be able to properly judge "whether or not, within the scope and within what it has set out to do", it is "sound"** (Section 20(5)(b) [of the 2004 Act]).

- (iii) Are there any valid Part 2 issues which the Plan has failed to address?
- (iv) What weight, if any, should be given to the second version (2018) of the NPPF (The Framework), given that the Plan was submitted prior to 24 January 2019?
- (v) is the Plan in step with its remit in relation to the 'made' and emerging Neighbourhood Plans within the Plan Area?

### 1.3 Duty to Cooperate (DTC):

- (i) Is the DTC, which covers strategic matters, applicable to the Plan, and if so, has the Council adequately discharged the DTC in preparing the Plan?
- (ii) In particular, does the Plan satisfy the DTC in relation to planning for the longer-term growth of neighbouring areas?

### Matter 2 - Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA)

- 2.1 Is the Plan supported by the SA and HRA?
- 2.2 What evidence is there that the SA has influenced the Plan and/or undertaken a full assessment of realistic alternatives?
- 2.3 Do any adverse effects identified in the SA require significant mitigation, and how does the Plan address these issues? Has appropriate account been taken of the recent Sweetman 2 Judgment in the European Court of Justice (ECJ)? Is there still a need for an Appropriate Assessment?
- 2.4 Regarding 2.3 above, does the HRA satisfy the requirements of the relevant legislation in relation to any impacts on Ashdown Forest SAC?

**Matter 3 – Does the Plan deliver the total housing provision set out in Part 1 of the Plan to meet the needs of the Plan area over the plan period in accordance with national policy?**

**3.1 New Homes Quantum:**

- (i) *The quantum of new homes provided for over the plan period (as set out in Table 3) appears to accord with the growth requirements as set out in Spatial Policy 1 in Part 1 of the Local Plan, i.e. meeting the residual requirement of the District outside the National Park of 1,660 dwellings. Do any parties wish to comment on the justification and effectiveness of the figures in Table 3?*
- (ii) *Is there enough flexibility of housing land supply in the Plan over the plan period to ensure that the housing requirement in the plan area will be met in full? If the Plan is found to be insufficiently flexible in this regard, what further steps should the Council take to rectify this?*
- (iii) *What is the rationale for the division of the housing provision between the National Park and the rest of the District which comprises the Plan area?*

**3.2 Distribution of new homes:**

- (i) *Does the proposed residual distribution of new homes (also set out in table 4.1) accord with the principles of sustainable development, and the parameters as set out in policy Spatial Policy 2 of the Local Plan Part 1, including taking account of considerations such as: the proportion of new housing planned for urban areas/most sustainable settlements; proximity to employment, sustainable transport and community facilities; and adverse impact on areas/zones of environmental importance?*
- (ii) *Does the total of 200 dwellings 'to be determined' in Table 3 refer to windfall sites, rural exception sites in Table 2 or from other sources? How are these figures reconciled?*

**3.3 Housing Delivery:**

- (i) *Does the Plan provide enough evidence to demonstrate that the proposed new homes total can be implemented over the plan period? For example, is there evidence to demonstrate the reasons why allocated sites with lapsed planning permissions are likely to be implemented in full within the remainder of the plan period?*
- (ii) *Are the implementation rates of the **larger sites**, at NH02 – Land at Newhaven Marina (331 dwellings) and Caburn Field (90 dwellings)*

*dwellings), fully deliverable within the plan period and are therefore realistic?*

- (iii) Is the reliance in the Plan on **Neighbourhood Plans** (NPs) to deliver 75% of the residual need (1,250 dwellings) realistic? A brief progress note, outlining the housing allocations in each NP, the take up of these allocations to date and the realistic prospects for development during the remainder of the plan period, would be helpful.*
- (iv) Is the reliance on **windfall sites** in the Plan realistic?*
- (v) **Additional sites:** Bearing in mind the above considerations, and the requirement of paragraphs 47[2] and [3] of the Framework, should the Plan identify an increased number of specific, deliverable sites in the form of housing allocations?*
- (vi) Has an allowance been made for **non-delivery** of planning permissions, and if so, what is it?*

#### 3.4 **Five Year Housing Land Supply:**

*Would the Plan at adoption be able to demonstrate that it has a five-year supply of specific, viable and deliverable sites to achieve the Plan's housing requirements?*

#### 3.5 **Qualitative aspects of housing supply:**

*Is there a need for any qualitative parameters for housing provision in the Plan, such as provision for affordable housing, self-build, older persons' accommodation, care homes, accessible housing and student housing?*

#### 3.6 **Affordable Housing:**

*Is policy DM2 justified and in accordance with national policy? Should it apply across the Plan Area or just in rural communities?*

#### 3.7 **Gypsies and Travellers:**

*Is policy GT01, which allocates a site for the provision of 5 net additional permanent Gypsy and Traveller pitches on land south of The Plough, to the north of Plumpton Green village, justified and in accordance with national planning policy?*

*Bearing in mind the guidance contained in the National Planning Policy Traveller Sites 2015 (PPTS2) and in Section 41 of the PPG on the relationship between Local Plans and Neighbourhood Plans:*

- (i) *Firstly, is policy GT01 in conformity with the requirements of Core Policy 3 (Gypsy and Traveller Accommodation) of the Lewes Joint Core Strategy 2010-2030?*
- (ii) *If policy GT01 does not accord with Core Policy 3, has the Council considered alternative sites as part of the preparation of the Plan?*
- (iii) *How does policy GT01 relate to the Plumpton Neighbourhood Plan (PNP) (including the spatial plan for the parish) and the advice in the Government's National Planning Policy for Traveller Sites 2015*
- (iv) *Given the national policy requirement to provide for the needs of the gypsy and traveller community, in the event of policy GT01 being found unsound and no alternative sites currently "on the table", how should the Plan be modified to address this issue? One possible option would be to commit to an early review of the Plan to address the need for gypsy and traveller sites; in addition, another modification could comprise a set of development management criteria to give the Council a consistent set of parameters to assess any future planning applications for gypsy and traveller sites.*

### **3.8 Appropriate level of detail:**

*Does the Plan provide enough detail in relation to the larger housing and employment allocations to satisfy the requirements of the "what, how and when" provisions as set out in the PPG and The Framework?*

### **3.9 Other Housing Issues:**

*Are there any other housing issues which need to be considered in this Examination?*

## **Matter 4 – Is there a need for the Plan to deal with the housing shortfall in neighbouring authorities?**

- 4.1 *No mention is made in the Plan of the need to make housing provision to meet the **needs of surrounding local planning authorities** or other parts of the South East. Can it therefore be assumed that there are no expectations and/or evidence from these sources to justify the provision of new housing within Lewes to meet outside needs during the plan period?*
- 4.2 *In any event, should it be addressed by a review of Part 1 of the development plan?*

**Matter 5 - Are the Plan's provisions for the protection and enhancement of its environmental, landscape, biodiversity, open space, recreation and leisure and heritage assets in accordance with national policy?**

- 5.1 *Is policy DM33 (Heritage Assets) compliant with NPPF 133 and 134?*
- 5.2 *Is policy DM14 for multi-functional Green Infrastructure justified and in accordance with national planning policy?*
- 5.3 *Overall, are the policies dealing with the protection and enhancement of the plan area's natural/heritage assets, including the requirement for ecological impact assessments, sufficiently to meet the requirements of national policy?*
- 5.4 *Does policy DM25 (Design) ensure sufficient protection of the living conditions (amenities) for both occupiers of existing development and occupiers of proposed new development?*
- 5.5 *Does policy DM24 (Protection of Biodiversity and Geodiversity) compliant with section 15 of the Framework?*
- 5.6 *Is policy DM22 (Noise) justified and in accordance with national policy?*
- 5.7 *Is coastal erosion an issue within the plan area, and if so, should it be addressed by a policy?*
- 5.8 *Does the Plan satisfactorily address the issue of climate change?*

**Matter 6 - Are the policies to manage and promote the Local Economy and Employment Areas and Allocations sound?**

- 6.1 *Is the policy framework in the Plan for **employment land provision**, which includes policies E1, for land at East Quay, Newhaven, and E2, for land adjacent to American Express Community Stadium, Village Way, Falmer, together with the approach for sustainable economic growth in core policy 4 in Part 1 of the development plan, and the policies in this Plan (DM 9, 10 and 11) for rural areas, justified and realistic to meet the plan area's economic needs during the plan period?*
- 6.2 *Regarding **policy E1, for land at East Quay, Newhaven**:*
- (i) *The site is located within and adjacent to Tide Mills shingle beach/distinctive wildlife area, and close to the South Downs National Park. In addition to its sensitivity in terms of its biodiversity and landscape, the site is also part of an area which is used for recreational and leisure purposes and functions as a tourism/visitor attraction.*
- (ii) *Given this background, (a) what is the evidence to support the need for the proposed employment development (such as a business plan*

*and any employment land need studies)? (b) if there is a need for more employment land, which other sites were considered? (c) is the policy supported by the SA and HRA?*

- (iii) Have any constraints to effective development of the policy, such as the construction of the port access road, been overcome? Is the date of 2020 in the Plan for the completion of the road aspirational? Have the flood risk issues been satisfactorily addressed in the Plan? How critical are other potential adverse factors, such as air and noise pollution, traffic congestion and impact on the marine environment?*
- (iv) What are the arguments which tip the sustainable balance in favour of employment development rather than keeping the site undeveloped to protect its wildlife and recreation, leisure potential, tourism/visitor attraction and its potential harmful impact on the setting of the National Park?*
- (v) Based on the outcome of the arguments in (iv) above, is there a sustainable case for reducing the extent of the proposed employment land, to secure an 'appropriate' balance between conserving the biodiversity of the site, its landscape character, the setting of the National Park and the recreation and employment use?*

**6.3 Regarding *policy E2, for land adjacent to American Express Community Stadium, Village Way, Falmer:***

- (i) Is the policy justified and positively prepared?*
- (ii) Is the level of detail appropriate, or is it over - prescriptive?*
- (iii) How significant would its visual impact be on the setting of the National Park, and if it has the potential to harm its setting, has the Plan fully addressed this matter?*
- (iv) Should the policy also address traffic and access considerations?*

**6.4** *How effective is the Plan in protecting existing and allocated employment sites from other uses, such as housing? Should the Plan set out the parameters of an 'independent assessment' in relation to the attractiveness of the market, and if so, over what period of time?*

**6.5** *Does the Plan address the need for a housing/employment balance? Is there a balance between housing provision and maintaining an adequate supply of employment land?*

**6.6** *Is there scope to consider mixed use areas where there is evidence of underuse/closure of industrial/commercial uses?*

- 6.7 *Is there a need for setting out a detailed planning framework for promoting the retail and commercial centres in the Plan Area, or is the approach in Part 1 of the development plan sufficient? Should the Plan aim for a town centres first approach for office development?*
- 6.8 *Is policy DM9 for farm diversification justified?*
- 6.9 *Should there be a more proactive emphasis in the Plan to support the rural economy, for example the employment land allocations in Ringmer NP?*

**Matter 7 – Are the Transport, Infrastructure, Implementation, and Monitoring provisions of the Plan sound?**

- 7.1 *Are there any necessary infrastructure needs that are not addressed in the Plan and the IDP?*
- 7.2 *Are any of the high impact sewerage constraints classified as 'show stoppers'?*
- 7.3 *In view of ESCC the Highways Authorities comments, can the 2018 IDP be relied upon to support specific allocations in the Plan?*
- 7.4 *Should the Plan include a policy covering Electric Vehicle Charging Points (EVCPs)?*
- 7.5 *The Environment Agency expresses concern that it is not immediately apparent that a sequential test has been undertaken by the Council regarding flood risk. Has agreement subsequently been reached on the acceptability of sites proposed for the housing and other uses in the Plan?*
- 7.6 *Is the issue of water supply satisfactorily addressed by policy DM22 (Water Resources and Water Quality)?*
- 7.7 *How serious are the problems of connectivity, for example along the A259 coastal route, and should the Plan include specific policies to address this issue?*
- 7.8 *Is policy DM36 (station parking) justified and appropriately worded?*
- 7.9 *Is policy DM35 (footpath, cycle and bridleway network) justified and effective?*

**Matter 8 – Are the Plan's provisions for planning boundaries in policy DM1 justified and effective?**

- 8.1 *Is the policy sufficiently focused on protecting vulnerable gaps of countryside between settlements?*

- 8.2 *Is policy DM1 too restrictive, especially in relation to the need to accommodate an additional 468 windfall dwellings as set out in the Plan?*
- 8.3 *Should the policy be extended to some of the larger settlements, such as Newhaven, Seaford and Peacehaven?*

### **Matter 9 – Development Management, Uncertainties and Risks**

- 9.1 **Development Management:** *Should the Plan provide sufficient guidance to cover aspects of development management which are not explicitly covered in the development plan?*
- 9.2 **Uncertainties and Risks:** *Overall, does the Plan take sufficient account of uncertainties and risks? How flexible is it?*
- 9.3 **Monitoring:** *Are the monitoring arrangements soundly based?*
- 9.4 **Residential conversions in the countryside:** *Is policy DM4 justified and in accordance with national policy?*
- 9.5 **Agricultural Land:** *Is the sequential approach in policy DM19 to protect agricultural land justified and in accordance with national policy?*
- 9.6 **Equestrian Development:** *Is policy DM6 justified and in accordance with national policy? Does the policy and/ or its supportive text need to provide additional detail in relation to access suitability and overgrazing?*
- 9.7 **Other matters:** *Do any of the other development management policies require scrutiny in this Examination?*

### **Matter 10 – Site Allocations in the Plan**

- 10.1 *Are the Residential Site Allocations acceptable in terms of (a) environmental/heritage impact; (b) impact on the living conditions of existing and/or future residents; (c) whether a safe and acceptable vehicular access and sufficient parking can be secured; (d) whether there is a willing land owner(s) for all the land concerned; (e) whether there would be a loss of high quality agricultural land; (f) flood risk; (g) sustainability, including bus services, shops, schools, healthcare provision, equipped and informal play space and other community facilities and; (h) any other relevant infrastructure, planning, marketing or viability constraints in addition to the considerations already set out in the respective policies?*
- *Policy NH01 South of Valley Road, Newhaven; how do the proposed access arrangements overcome the concerns expressed by the highways authority?*
  - *Policy NH02 Land at The Marina, Newhaven*

- *Policy BH01 Land at The Nuggets, Valebridge Road, Burgess Hill; how does this site integrate with the 100-dwelling requirement in Strategic Policy 2 at the Edge of Burgess Hill?*
- *Policy BA01 Land at Hillside Nurseries, High Street, Barcombe Cross*
- *Policy BA02 Land adjacent to the High Street*
- *Policy BA03 Land at Bridgelands*
- *Policy CH01 Glendene, Station Road, Chailey*
- *Policy CH02 Layden Hall, East Grinstead Road*
- *Policy RG01 Caburn Field, Ringmer*
- *Policy GT01 Land South of the Plough, Plumpton*

10.2 Are the **Employment Site Allocations** acceptable in terms of (a) environmental impact including whether the loss of land currently in local wildlife sites (LWS) is acceptable; (b) impact on the living conditions of existing and/or future residents; (c) whether a safe and acceptable vehicular access can be secured; (d) whether there is a willing land owner(s) for all the land concerned; and (e) any other relevant infrastructure, planning or viability constraints in addition to the Key Development Considerations already set out?

- *Policy E1 Land at East Quay, Newhaven Port*
- *Policy E2 Land Adjacent to American Express Community Stadium, Village Way, Falmer*

10.3 **Other suggestions for housing sites in the Plan:** *The Inspector will not examine the suitability of any of these sites at this stage unless/until it has been demonstrated that one or more of the proposed housing sites in the Plan have not been found to be sound during the course of the Examination.*

**Matter 11 – Are there any other issues of soundness which this Examination should cover?**

11.1 *Are there any other soundness issues which this Examination should cover?*

*Mike Fox*, Planning Inspector, 5 February 2019