The Planning Inspectorate

Report to Wealden District Council

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an Examiner appointed by the Secretary of State for Communities and Local Government

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PLANNING AND COMPULSORY PURCHASE ACT 2004 (AS AMENDED) SECTION 20

REPORT ON THE EXAMINATION INTO WEALDEN DISTRICT COUNCIL AFFORDABLE HOUSING DELIVERY LOCAL PLAN

Document submitted for examination on March 2015

Examination hearings held on 20 May 2015 and 11 January 2016

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Abbreviations Used in this Report

AA	Appropriate Assessment
AHVA	Affordable Housing Viability Assessment
CS	Core Strategy
DtC	Duty to Co-operate
FPC	Further Proposed Change
HMA	Housing Market Area
LDS	Local Development Scheme
LP	Local Plan
MM	Main Modification
OAN	Objectively assessed need
PUA	Principal Urban Area
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SES	Strategic Employment Site
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SRA	Strategic Regeneration Area
SUE	Sustainable Urban Extension

Non-Technical Summary

This report concludes that the Wealden District Council Affordable Housing Delivery Local Plan provides an appropriate basis for the planning of the district providing a number of modifications are made to the plan. Wealden District Council has specifically requested me to recommend any modifications necessary to enable the plan to be adopted. All of the modifications to address this were proposed by the Council and I have recommended their inclusion after considering the representations from other parties on these issues.

The Main Modifications can be summarised as follows:

- Delete the reference to the written ministerial statement of 28 November 2014 (paragraph 2.4); and
- Delete the references to designated rural areas and the related threshold of 6 dwellings (net) or more (paragraph's, 2.4, 2.5, Policy AFH1, Table 1, Table 2, Glossary page 14); and
- Delete the references to areas defined as Affordable Housing Policy Area and the related threshold of 11 dwellings (net) or more, and with a combined gross floorspace of more than 1000 sqm (AFH1, Table 1, Table 2); and
- Delete the reference to nationally applied thresholds (AFH1); and
- Insert the modified threshold of 5 or more dwellings in place of the deleted thresholds of 6 and 11 dwellings outlined above (AFH1, Table 1, Table 2); and
- Insert a clause allowing a commuted sum in lieu of the on-site provision of affordable housing (AFH1); and
- Delete the references to the proposals map.

Introduction

1. This report contains my assessment of the Wealden District Council Affordable Housing Delivery Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound; a Local Plan should be positively prepared; justified; effective and consistent with national policy.

2. The starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The basis for my examination is the submitted draft plan (March 2015) which is the same as the document published for consultation in February 2015.

3. My report deals with the main modifications that are needed to make the Wealden District Council Affordable Housing Delivery Local Plan sound and legally compliant and they are identified in bold in the report (**MM**). In accordance with section 20(7C) of the 2004 Act the Council requested that I should make any modifications needed to rectify matters that make the Plan unsound and thus incapable of being adopted. These main modifications are set out in the Appendix.

4. The main modifications that are necessary for soundness all relate to matters that were discussed at the examination hearings. The Council have prepared a schedule of proposed main modifications and carried out a sustainability appraisal and this schedule has been subject to public consultation for six weeks.

5. I have taken account of the consultation responses in coming to my conclusions in this report.

Assessment of Duty to Co-operate

6. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on them by section 33A of the 2004 Act in relation to the Plan's preparation.

7. The Council has a duty to co-operate on strategic matters that cross administrative boundaries. The Council have engaged with its neighbours as a precautionary measure given that provision of affordable housing is an issue of interest in the region. The Duty to Co-operate Statement and the Council's approach is set out in the Development of the Affordable Housing Local Plan document (A13). Overall, I am satisfied that there are no outstanding strategic cross border issues.

Assessment of Soundness

Preamble

8. The Wealden District Council Affordable Housing Delivery Local Plan contains just one policy dealing with affordable housing provision (AFH1). It simply proposes to replace the Council's approach to affordable housing provision as set out in Policy WCS8 of the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (CS).

9. Policy AFH1 'as submitted' proposed to alter the affordable housing threshold from 5 or more dwellings (net) to 11 dwellings (net) or more, and with a combined gross floorspace of more than 1000 sqm in areas defined by the Affordable Housing Policy Area proposals map. In all other areas of the district the threshold would be 6 dwellings (net).

10. At that stage, the Council's intention was to submit a policy that was consistent with the thresholds set out in the national Planning Policy Guidance which was current at that time. This required that affordable housing should not be sought for schemes of 10 units or less or less than 1000sqm, except in certain rural areas where a threshold of 6 would be applied. However, following a successful High Court legal challenge (*West Berkshire District Council and Reading Borough Council v Department for Communities and Local Government - 31 July 2015*), the thresholds in the Guidance were subsequently deleted. As such, there is currently no national policy or guidance which prescribes thresholds.

11. As a consequence the Council have consulted on potential main modifications which propose that affordable housing would be required on sites of 5 or more dwellings (net). This is the same as the CS.

12. I have taken account of the consultation responses in coming to my conclusions in this report.

Main Issues

13. Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified 3 main issues upon which the soundness of the Plan depends.

Issue 1 – Are the proposed requirements and tenure mix for affordable housing set out in Policy AFH1 justified and consistent with national policy?

Thresholds and requirements

14. As set out above, The Council's preference is now to set a threshold that requires affordable housing on sites of 5 or more dwellings (net). Therefore, the key issue is whether such a change is necessary to achieve soundness.

15. The Wealden Housing Needs Assessment of January 2010 (F9) provides the basis for the proposed affordable housing threshold of 5 or more dwellings (net). In addition to this principal report, the Council have reviewed their findings as part of the Housing Background Paper in March 2014 (F14) which

demonstrates that there has been no significant change in the need for affordable housing since the adoption of the CS. Furthermore, at the examination hearings it was demonstrated that there had been no material change in the identified need for affordable housing in the district and that there was no material difference in need between urban and rural areas. It was further explained that although housing waiting lists were decreasing in Wealden; this was largely attributed to changes in the way these figures are calculated and recorded rather than a material reduction in need. The Council stated that their evidence had been re-affirmed by their emerging Strategic Housing Market Area Assessment which was published in October 2015. This was supported by the representations of local house builders at the examination hearing, who confirmed that the evidence in relation to housing need was consistent with their working knowledge of the housing market in the district. Therefore, based on all of the available evidence before me I have no reason to disagree with these findings.

16. Nevertheless, at the examination hearing, local house builders argued, based on their local knowledge, that the Council should only seek affordable housing at the threshold of 11 dwellings (net) or more. It was claimed that this would support developers and boost the supply of housing. However, no substantive evidence was produced to demonstrate that the application of the 5 or more dwellings (net) in the current CS had led to any material reduction in house building. Given the level of affordable housing need it is necessary that the thresholds should be set as low as possible. Having reached this conclusion the submitted plan thresholds (i.e. of 10 and 6) are not justified by the available evidence or national policy.

17. Policy AFH1 requires affordable housing at a level of 35% of the number of dwellings on development sites. The evidence base, particularly the Community Infrastructure Levy Viability Assessments of November 2013 and August 2014 (G1, G2), provides justification for this. The assessments employ a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees and current land values, bearing in mind that there are variations in average land values across Wealden. Therefore, the evidence shows that the provision of affordable housing at the level of 35% would not threaten the viability of planned development.

18. Consequently, the proposed threshold requiring affordable housing on sites of 5 or more dwellings (net) at a level of 35% of the number of dwellings on development sites is supported by the available evidence and is therefore justified and consistent with the National Planning Policy Framework.

19. Accordingly, the thresholds in the submitted plan are not justified and it is necessary to replace them with the proposed threshold of 5 or more dwellings (net) (**MM3, MM4, MM5**). Following on from this there is no longer a need to identify rural designated areas or the affordable housing policy area on the associated proposals map. Therefore, it is necessary to delete references to the proposed rural designated areas and the proposals map (**MM2, MM3, MM4, MM5, MM6, MM7 and MM8**). Further, it is necessary for soundness to delete the reference to Government policy and guidance which no longer apply including the reference to national Planning Practice Guidance thresholds within Policy AFH1 (**MM1, MM3**).

Tenure mix

20. Amongst other things, the National Planning Policy Framework includes a requirement for local authorities to identify the tenure of housing in particular locations. Policy AFH1 states that there is a presumption in the policy which seeks to apply a tenure mix for development sites of up to 49 dwellings (net) or less, around 80% of the affordable homes provided would be for social rented accommodation, with the remainder being for intermediate accommodation. For development sites of 50 dwellings (net) or more, around 40% of the affordable homes provided would be for social rented accommodation, 40% affordable rent and 20% intermediate accommodation.

21. Representations received in writing and at the examination hearing have suggested that the imposition of the proposed tenure mixes would be at odds with the Governments proposed changes to the National Planning Policy Framework and the emerging Housing and Planning Bill. In particular, the delivery of affordable housing nationally, changes to the funding of social housing and the change from social rent to affordable rent. In addition, concern was raised with regard to the practical day to day application of Policy AFH1 by the Council in their determination of planning applications. Further, it was stated that these changes could result in viability issues and therefore prevent housing development coming forward.

22. The Council's evidence clearly demonstrates a need for social rented accommodation and the proposed tenure mixes within Wealden; this is consistent with the National Planning Policy Framework. The detailed evidence contained within the Wealden Housing Needs Assessment of January 2010 (F9), Housing Background Paper March 2014 (F14) and the Viability Assessments of November 2013 and August 2014 (G1, G2), provide a basis for this.

23. The Housing Needs Assessment recommends the following affordable housing mix based on housing needs in Wealden; 82% social rented housing, 16% intermediate rent and 2% shared ownership. Therefore the proposed tenure mix for development sites of up to 49 dwellings (net) is consistent with the available evidence. However, changes in social housing grant mean that it is currently difficult to deliver social rented housing particularly on larger sites where the viability assessments show that as sites get larger they become less viable. Therefore, the Council have proposed 40% of dwellings for social rent, 40% of dwellings for affordable rent and 20% of dwellings for intermediate products. This proposed tenure mix is a pragmatic response and is likely to contribute towards achieving housing choice and sustainable mixed communities.

24. Further, the wording of Policy AFH1 makes clear that the tenure mix is a presumption and the policy does allow a degree of flexibility in its application on the grounds of viability, subject to these issues being evidenced by the developer. Moreover, Policy AFH1 does not preclude the provision of other types of affordable housing including affordable rent and intermediate housing. Therefore, with these safeguards in place the implementation of the Plan and Policy AFH1 would not put the implementation of the CS at serious risk and in this respect the Plan is sound.

Issue 2 – Does Policy AFH1 allow for adequate flexibility to ensure the delivery of affordable housing, with particular regard to tenure mix, viability and future changes in national legislation/policy?

25. Policy AFH1 accepts that tenure mix can be adjusted and the proportion of affordable housing can be reduced if it is demonstrated that it is necessary to achieve viability. In addition, the Council have consulted on the proposed addition of a clause within Policy AFH1 allowing for a commuted sum in lieu of on-site provision. This would be applied in the case of exceptional circumstances where it is uneconomical or impractical to provide affordable housing. The proposed insertion of this clause would provide necessary flexibility of the Plan and helps address issues of site specific deliverability that may be experienced by developers, Registered Providers and/or other promoters of affordable housing. I therefore recommend it (MM3).

26. Read as a whole the proposed Plan, and its supporting text, allow scope for negotiation and flexibility - including for example, the possibility that different tenure mixes would be acceptable where viability or funding are demonstrated to be an issue.

27. The Council also proposed a change to the plan to include a clause regarding potential future changes in national policy in relation to the thresholds at which affordable housing should be sought. The draft clause sought to introduce a degree of flexibility enabling the use of national affordable housing thresholds in place of the local thresholds if these are introduced.

28. Having very carefully considered the representations received and the discussion at the hearing sessions on 11 January 2016, I have decided not to recommend this change as a main modification. This is because I am not convinced it is necessary to achieve soundness, having regard to paragraph 182 of the National Planning Policy Framework. In particular, there is no need for the plan to include policies that strive to anticipate potential future changes to government policy or guidance, to do so would be speculative. Instead, any changes in national planning policy would stand to be considered as a material consideration when determining a particular planning application. Alternatively, it would be open to the Council to review the relevant plan and policy in such circumstances.

29. There was a detailed discussion at the examination in relation to the effect of the Plan in relation to the Government's stated intention to boost the supply of starter homes within the emerging Housing and Planning Bill. This discussion focused on affordability in relation to local wage levels. I have carefully considered the representations, however, there is no substantive evidence to suggest that the Plan would prevent or preclude starter homes being brought forward as a housing option within Wealden.

30. With all these points in mind the Wealden District Council Affordable Housing Delivery Local Plan is sufficiently flexible to deal both with the wide variety of delivery models and changing market conditions. This flexibility will enable individual housing schemes to be dealt with on a site by site basis and therefore the Plan is positively prepared. In this respect the Plan is soundly based.

Issue 3 - Does Policy AFH1 allow affordable housing to be brought forward by smaller developers/not for profit organisations?

31. In the course of the examination hearings it was argued that not for profit and community land trusts could be placed at a disadvantage over traditional developers when bringing forward affordable housing only schemes. However, after detailed discussion at the hearing**,** there was a consensus that the main constraints affecting not for profit/community land trusts were the sale value of land at prices which are affordable and the availability of finance. These issues are outside the scope of the Plan. Moreover, Policy WCS9 (Rural Exception Affordable Housing) of the CS, specifically sets out the Council's support for housing initiatives by community land trusts and similar organisations/groups. Consequently, it was accepted by the representative parties at the hearing that the Plan and in particular 'Policy AFH1' do not preclude affordable housing only sites being developed, subject to compliance with the policy requirements of the CS and the National Planning Policy Framework.

32. Therefore, based on all of the available evidence before me, Policy AFH1 would not preclude or disadvantage not for profit and community land trusts bringing forward affordable housing only schemes and in this respect the Plan is sound.

Other considerations

33. Finally, it is important to keep the Plan and its impact on the delivery of development under review. The Plan sets out how monitoring arrangements would be linked to the Council's Annual Monitoring Report and I consider these measures to be appropriate for Wealden. However, it would help to provide clarity and certainty if the data indicators are published on a regular basis (annually) and this is confirmed at the time of adoption.

Assessment of Legal Compliance

34. My examination of the compliance of the Plan with the legal requirements is summarised in the table below. I conclude that the Plan meets them all.

LEGAL REQUIREMENTS	
Local Development Scheme (LDS)	The Wealden District Council Affordable Housing Delivery Local Plan is identified within the approved LDS November 2015 and has been prepared in accordance with it.
Statement of Community Involvement (SCI) and relevant regulations	The SCI was adopted in February 2007 and consultation has been compliant with the requirements therein, including the consultation on the post-submission proposed 'main modification' changes (MM)
Sustainability Appraisal (SA)	SA has been carried out and is adequate.
Appropriate Assessment (AA)	The Habitats Regulations AA Screening Report contained within the SA dated December 2014 sets out why AA is not necessary for Policy AFH1.

National Policy	The Wealden District Council Affordable Housing Delivery Local Plan complies with national policy except where indicated and modifications are recommended.
2004 Act (as amended) and 2012 Regulations.	The Wealden District Council Affordable Housing Delivery Local Plan complies with the Act and the Regulations.

Overall Conclusion and Recommendation

35. The Plan has a number of deficiencies in relation to soundness for the reasons set out above which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.

36. The Council have requested that I recommend main modifications to make the Wealden District Council Affordable Housing Delivery Local Plan sound and capable of adoption. I conclude that with the recommended main modifications set out in the Appendix the Wealden District Council Affordable Housing Delivery local plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

Jameson Bridgwater

INSPECTOR

This report is accompanied by the Appendix containing the Main Modifications