Matter Legal Compliance /WDC

Wealden District (Incorporating part of the South Downs National Park)

Core Strategy Hearing

Legal Compliance - Statement by WDC/ SDNPA

December 2011

Matter Legal Compliance /WDC

Wealden District Council and South Downs National Park Authority
Response to the Inspector's Matters, Issues and Questions
(Issued 3 November 2011)

Legal Compliance

Has the Core Strategy (CS) been prepared in accordance with the Local Development Scheme ?

Yes. The Council's LDS sets out the timetable and order of production for each of our DPDs and the consultation processes and timings that will accompany each stage of production. The basic content of our LDS in respect of production of the CS and explanation of its purpose has not changed. Where slippage has occurred to this timetable e.g. due to the changes to the Regulations announced in 2008, we have updated our LDS and this information has been made available on our website. Revisions to the timetable for our LDS were discussed and agreed with Government Office for the South East (GOSE) prior to approval as this was required of the Regulations at that time. The Council' s latest LDS was approved by Cabinet at its meeting on 14th December and is also now posted on the Council's website. This confirms the current timetable the and joint submission of our Core Strategy with the South Downs National Park Authority and reflects the formal coming into being of the National Park as Planning Authority for part of Wealden District from 1st April 2011.This revised LDS has been agreed with the SDNPA (authorised by the Director of Planning in accordance with the SDNPAs Scheme of Delegation to Officers).

Has the CS had regard to the Sustainable Community Strategy?

Yes. The LDF/ Core strategy has been a regular item on the agenda for the Local strategic partnership and when the portfolio holder for Planning or the Head of Planning Policy & Environment have attended the LSP to provide briefings and updates on the CS .Our Background Paper BP 8 Summary of Core Strategy Consultation and Participation sets out within Appendix 1 a number of these together with two sets of specific joint LSP led LDF workshops to help develop our CS and to ensure that it has regard to the approved Sustainable Community Strategy (SCS). Attached as Appendix A to this statement is a matrix to show how closely aligned many of the Policies contained within the CS are with the broad objectives set out in the SCS. Also attached as Appendix B is a statement setting out in greater detail the close working relationship between the LSP and the CS.

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Is the CS in general accordance with the Statement of Community Involvement and public consultation requirements?

The Council's Statement of Community Involvement (SCI) was produced following major community and stakeholder involvement during 2006. The Council received over 2000 responses to its initial SCI consultation. Section 3 of our BP8, at paragraph 3.1(page 5) refers to the development of our SCI and confirms that the SCI is available to view on the Council's website.

Background paper 8 provides a summary of consultation and participation on our Core strategy and sets out for each of the key stages of development of the CS how this was undertaken. Section 4 deals with the 2007 Issues and Options consultation - including who was consulted and how and a full list of stakeholder engagement events is set out at Appendix 1 of BP8.

Section 6 (page 13 of BP8) shows how we further developed this work through workshops involving Members, representatives of the LSP, Parish and Town Councils. Section 7 sets out our approach, compliant with the SCI in respect of our 2009 Spatial Development Options consultation. We ran this for a period of eight weeks, exceeding the minimum timeframe of six weeks as set by the changes to the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended). Section 7 also sets out the very wide range of consultation mechanisms used.

Our submitted statement under Regulation 30 (d) (ii) (Examination library reference A7) confirms our approach to the 2007 and 2009 exercises and provides copies of letters, leaflets, press advertisements and information on deposit points to substantiate this approach. This paper A3 also details our consultation arrangements and formal letters and adverts in respect of the proposed submission Core Strategy and the representations procedure set down under Regulation 27 of the Town and Country (Local Development) (England) Regulations 2004, as amended. This included a set of frequently asked questions and guidance notes on the representations procedure which were posted on our website and made available in hard copy form at all deposit points.

We consider that the Core Strategy and the process followed for its production of the Core strategy is in general accordance with our SCI and meets public consultation requirements.

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Has the CS been subjected to Sustainability Appraisal ?

Yes. Sustainability Appraisal has been an integral part of the process of developing our Core Strategy. Consultation documents have been accompanied by published sustainability reports. Our production of our initial SA scoping report was published and consulted upon in 2006 and included consultation with the SEA bodies referred to which included English Heritage, the Environment Agency, the then Countryside agency and English Nature (these latter two bodies are now combined as Natural England).

Our SA of the development and production of our Core Strategy has consisted of 4 key stages (1)Production of an SA scoping report in 2006 leading to our 22 agreed sustainability objectives, (2) The Sustainability Appraisal Report which accompanied the Core Strategy Spatial Development Options was published and consulted upon between July and August 2009, (3) The SA which accompanies the proposed submission Core Strategy was published as part of the regulation 27 representations procedure, and (4) production of the SA report which accompanies the Submission Core Strategy DPD. Background Paper BP10 and the submitted background papers to the SA itself (Examination library reference A3).

Is the CS in general conformity with the Regional Strategy ?

Yes .We confirmed in our response to the question posed in the Inspector's letter of 7th September, at paragraphs 1.1 - 1.13 that our Core strategy is in general conformity with the RS. We also set out why we consider that it is necessary to look at all other relevant policies and Policy Objectives within the RS when making any assessment of general conformity. We reaffirmed this view at the exploratory meeting and in particular the need for absolute (as opposed to general) conformity with the habitats regulations and the specific criteria set out at Policy NRM5 of the RS. We recall that the only arguments at the exploratory meeting that the CS was not in general conformity were confined solely to the issue of housing numbers.

We confirmed at the exploratory meeting that the requirement for conformity with HR and thus Policy NRM5 of the RS was absolute (rather than any matter of general conformity). Criterion (ii) of NRM5 makes it clear that where it cannot be concluded that there will be no adverse impact on the integrity of a European site a Plan will not be approved **"irrespective of conformity with other Policies in the RSS"**

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Contrary to assertions made by some at the exploratory meeting that the RS had taken this matter fully into account when setting housing numbers it was confirmed that at the time of the examination of the RS the results of the necessary Appropriate Assessment work required simply were not known. Whilst the RS clearly acknowledges the importance of the matter - and sets this down in the strongest possible terms in NRM5 - the requirement to undertake the AA work was left to the LPAs as part of their LDF process. Our evidence clearly shows that in respect of the Ashdown Forest the European site is already in a deteriorating state and that in respect of the Pevensey Levels that growth in south Wealden is severely limited by waste water capacity. As part of the response to the Inspectors letter of 7th September 2011 we listed at the end of our response of 3rd October a summary of evidence produced since the SEP was adopted - Items K1 - K7 of that summary identify the various evidence and reports produced in respect of Habitats Regulations Directive

The interpretation of the phrase "general conformity" was dealt with by the Court of Appeal in Persimmon Homes (Thames valley) v. Stevenage Borough Council and where Lord Justices laws, Wall and Lloyd found as follows.

Lord Justice Laws stated in his judgment:

"I will deal with the construction of “general conformity”. The term is nowhere defined in the legislation. The court must therefore apply its ordinary meaning as a matter of language, taking into account, however, the practicalities of planning control which are inherent in the statutory scheme. The question of construction is, essentially, as to the flexibility of the requirement of general conformity: is it relatively tight, or relatively loose? Any attempt to elicit an exact meaning of the term “general conformity” would, I suspect, founder on what may be called the rock of substitution — that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation. We have to confront the words the legislature has chosen.

The practicalities of planning control to which I have referred include two features which between them must surely inform the extent to which the general conformity requirement is strict or relaxed. The first feature is that the implementation of planning policies in structure plans and local plans is very likely, in the nature of things, to be subject to long lead-times. The second is that, over such periods of time, the needs and exigencies of good planning policy are liable to change. The interpretation of the general conformity requirement has to accommodate these factors. In my judgment they tend to militate in favour of a looser, rather than a tighter approach"

Lord Justice Lloyd concurring with Lord Justice Laws considered the same point saying:

"*The use of the phrase "general conformity" leaves some scope for flexibility and even, as noted above, for some conflict. The context is that of the structure plan authority setting a general policy, which could no doubt be regarded as a strategy, for its area, leaving it to the local plan authorities within the area to implement those policies and that strategy by detailed policies. It cannot be open to a local plan authority to subvert the general policies, or to resolve that it will not give effect to a general policy within its area. It is open to such an authority to exercise some flexibility as to how the general policy is implemented, though the degree of flexibility depend on the nature of the general policy*"

Mr Justice Wall also concurring with Lord Justice Laws said in his judgment:

"I highlight only one point. This is a highly specialist area. Like Laws LJ, I see the question whether or not there is "general conformity" between identified plans as essentially a matter of degree, and of planning judgment. In such circumstances, it seems to me entirely appropriate that the function of the court under section 287 should be limited to review on Wednesbury principles. To hold otherwise runs the obvious danger, it seems to me, of the court being invited to re-take the merits decision.
In my judgment, therefore, the judge adopted the right approach, and was entitled to hold that the statutory phrase "general conformity" was wide enough to encompass a reproduction of the structure plan policy in the local plan, subject to a qualification as to justification or timing that nonetheless contemplated that the purpose of the strategic plan may be achieved in the plan period."

Basically the case was decided upon the point that a local authority has to act reasonably and should be allowed a fair degree of latitude in doing so - as long as a decision is not Wednesbury unreasonable the decision should be allowed to stand.

We have set out why we believe that the application of this test of general conformity must address the totality of the Policies and Policy objectives within the RS and why our evidence base supports the Core Strategy submitted - as a reasonable, effective, justified and deliverable approach. This, together with the confirmation referred to above on the Court's interpretation of the words "general conformity" confirms our view that the Core Strategy is in general conformity with the Regional Strategy.

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Has the CS had regard to national policy?

Yes. Our 2007 consultation set out the various requirements of the LDF process and with specific mention of the context of the Core Strategy as set within the regional requirements of the RS. We refer specifically in the document to the need to have regard to National Policy and refer to PPS1, PPS7, PPS3,PPS12 and PPG13 and what this means for our Core Strategy.

As part of the 2009 development of Spatial options we identify the broader planning context for the Core strategy and confirm at Paragraphs 1.29 and 1.30 of that document that our Core strategy is required to conform to national, regional and strategic planning guidance. Our submission Core Strategy document explains at paragraph 1.5 that it is founded upon but does not duplicate Government guidance on national policy contained within the series of documents provided as Planning Policy Statements and Planning Policy Guidance. We confirm that the strategy has been developed with due regard for National Policy.

Has a Habitats Regulations Assessment been prepared ?

Yes. This requirement is reaffirmed in Policy NRM5 of the RS which states that *"Where a likely significant effect of a plan or project cannot be excluded, an appropriate assessment in line with the Habitats Directive and associated regulations will be required."* We have undertaken Appropriate Assessment of our Core Strategy under the Habitats Regulations. This work was carried out in 2009 - 2011 and is published and submitted as Background Paper 9 to the Core Strategy.

Does the CS comply with the 2004 regulations (as amended),particularly in terms of consultation arrangements ?

Yes. In response to the more general question on consultation above we have set out the consultation arrangements that were carried out in respect of the 2009 consultation on the spatial options for development and on the Regulation 27 representations procedure for the proposed submission Core Strategy. These took account of the changes to the 2004 Regulations that were introduced in 2008 by the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended) and allowed for consideration of representations and the need for any changes prior to submission.