Wealden District (Incorporating Part of the South Downs National Park) Core Strategy

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Dear Mr Phillips

The Inspector has asked me to write to you about the Localism Act 2011, which received Royal Assent on 15 November 2011, and one possible impact of it on the Examination.

You will be aware that the new sections 20-23 of the Planning and Compulsory Purchase Act 2004 Act will come into force on 15 January. The effect of this in relation to your Examination is that where your Plan needs modifications to make it sound, the Inspector will not be able to recommend these 'main modifications' unless you make a specific request under new section 20(7C).

The Council and the National Park Authority (NPA) will need to advise the Inspector of how you wish him to proceed in the light of the potential modifications that have been discussed to date (see below). In order for the Inspector to make modifications to the Plan you will need to notify him formally whether you are requesting modifications under section 20(7C). In the absence of a request, you will appreciate that subject to the hearing sessions and consideration of further written statements his report could potentially be confined to identifying any soundness or legal compliance failures and recommending non-adoption of the Plan.

Although the Council/NPA has not formally published any proposed modifications these have been discussed and referred to in your letter of 2 December 2011. The Inspector hopes he will be able to proceed as has been envisaged and ensure that you have a Plan capable of adoption, particularly given the effort the Council has put into the examination process to date. He would appreciate an indication of your preferred approach at your earliest convenience.

On the 'duty to co-operate' provision, the test in the new s20(5)(c) of the 2004 Act (inserted by s110 of the Localism Act) is that the Council/NPA must have complied with any duty imposed on them by the new s33A (inserted by s110(1) of the Localism Act). Where a plan has already been submitted, no duty could have been imposed prior to that point because the duty was not in existence and, in any event, it relates to a plan's preparation only. The Inspector's view, therefore, is that the duty would not apply to the Core Strategy as it has already been submitted. If the Council/NPA disagree with that view, please would you let the Inspector know as soon as possible.

The Inspector has some queries relating to the Council/NPA's letter of 2 December 2011 in the light of the further statements it has produced on the main matters for the examination. Firstly, with regard to gypsies and travellers, as this is a matter being dealt with by written representations, the Inspector had asked in his letter of 31 October if the Council/NPA could respond specifically to the points made in the representations made by gypsy representative groups. Whereas the Council/NPA's letter and the further written statement set out the overall case in relation to the Inspector's questions they do not directly address the points made in those representations. The Inspector therefore asks again whether the Council/NPA would wish to make a specific response to those points.

Without prejudice to the Council/NPA's response to the Inspector's request relating to the Localism Act, above, you have indicated that you would be willing to promote a change to Policy WCS13 and the Inspector agrees that for clarity a change is necessary to paragraphs 7.29 in respect of sustainable construction and paragraph 3.32 in respect of the intention to develop more detailed policies on the HRA zones. It would be helpful if the Council/NPA could produce a schedule of these at an early stage so that they can be available at the appropriate hearing session.

The Council/NPA has not accepted that a change to introduce a reference to viability relating to affordable housing in Policy WCS8 is necessary. Notwithstanding the overall viability evidence for Wealden, national policy in PPS3 includes considerations of viability and the Inspector considers that the reference to "a different and potentially higher target" in Policy WCS8 does not adequately reflect the need for site specific considerations to be taken into account in individual circumstances. He therefore asks that the Council/NPA reconsiders its approach to this matter.

Finally, in his letter of 31 October the Inspector was not intending to suggest that detail more appropriate to a subsequent DPD should be included in the Core Strategy. However, as you will be aware section 13(2) of the 2004 Regulations requires that those parts of an LDD which comprise the policies of the LDD and those parts which comprise the reasoned justification must be clearly identified. The supporting text in parts of Core Strategy section 6 (e.g. para 6.11) reads as area strategies, including some material that is not included in the identified policies, and sets out a series of numbered detailed actions. It is not clear what the status of this text is as it does not provide direct justification for the identified policies. Could the Council consider further the role of this text and whether in the light of section 13(2) of the Regs any modifications might be necessary to explain its purpose.

Yours faithfully

Lynette Benton
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