

## **Examination of the Arun Local Plan (ALP)**

### **Agenda for the hearing session on June 2 2015**

#### **Matter 1: Legal and Procedural Requirements**

Note: Discussion will cover the above issues on the basis of the plan as submitted without prejudice to the Council's pending reconsideration of the District's 'objectively assessed housing needs' (OAN). Once that crucial matter has been clarified and the Council has considered its implications for the future of the plan as a whole, the examination may well need to return to some of these issues, particularly but not necessarily only Issue 1.3 (the duty to cooperate).

The following topics will be discussed in strict sequence. When the Inspector is satisfied that he has obtained the information he needs on each one he will move discussion on to the next topic.

#### **Issue 1.1**

- a) Has ALP been prepared in accordance with the Local Development Scheme 2014-17 (PE LP18)? [see ADC response paper to Matter 1]
- b) Has ALP been prepared in compliance with the adopted Statement of Community Involvement (PE LP21)? [see ADC response paper to Matter 1]
- c) Has ALP been prepared with regard to the Sustainable Community Strategy (PE V&01)? [see ADC response paper to Matter 1]
- d) ALP has been subject to an appropriate 'Habitats Regulations Assessment (PE LP12)'? [see ADC response paper to Matter 8, Issue 6 for the way that the 'conclusions and additional recommendations' at para 4.6 of PE LP12) have been taken forward']
- e) Has the preparation of ALP complied with all necessary legal requirements (except those points covered specifically by issues 1.2 and 1.3 below)?

#### **Issue 1.2 Sustainability Appraisal (SA)**

Do the successive stages of SA of the plan provide a clear analysis supporting the Council's decisions about & between the 'reasonable alternatives', consistent with the principles established by the leading cases noted below?

Save Historic Newmarket Ltd v Forest Heath DC [2011] EWHC 606 (Admin) (25 March 2011)  
Heard v Broadland DC [2012] EWHC 344 (Admin) (24 February 2012)  
Cogent Land LLP v Rochford DC [2012] EWHC 2542 (Admin); (21 September 2012)  
Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2014] EWHC 406 (Admin) (21 February 2014)

There is commentary on these cases in the Planning Advisory Service paper 'Plan-making case law update: Main Issue 3: Sustainability Appraisal, November 2014'.

The 'Intended Full Report' section of the SA of October 2014 (PE LP02) records (8.24) that 12 of the 19 candidate locations for housing growth identified in Options for Growth 2009 were subjected to comparative SA. The conclusions of the SA are set out at 8.76 to 8.83 and summarised in 8.53 of the non-technical summary at the front of the document. The favoured choices were identified as Angmering, Barnham/ Eastergate/ Westergate (BEW), BREQ, and Littlehampton West Bank. Ford and Fontwell were described as requiring 'more detailed assessment'. Ferring and North Middleton 'could be considered to be sustainable locations', subject to certain issues. The other locations were 'not sustainable and should not be taken forward taken forward for strategic level growth'.

The Council's response statement on Matter 1 indicates (1.2.10) that other sites promoted by landowners were not considered 'reasonable alternatives' due to their size and inability to accommodate the required quantity of development. Some were within areas already appraised.]

Relevant questions to consider here include:

1.2.1 Was the comparative analysis set out anywhere before the October 2014?

1.2.2 Has a set of reasonable alternatives been identified and assessed to an equal degree?

[Judicial comment in para 26 of the PAS note includes that 'As to the substance of the work to be done by a local planning authority under Article 5 in identifying reasonable alternatives for environmental assessment, the necessary choices to be made are deeply enmeshed with issues of planning judgment, use of limited resources and the maintenance of a balance between the objective of putting a plan in place with reasonable speed (particularly a plan such as the Core Strategy, which has an important function to fulfil in helping to ensure that planning to meet social needs is balanced in a coherent strategic way against competing environmental interests) and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined. The effect of this is that the planning authority has a substantial area of discretion as to the extent of the inquiries which need to be carried out to identify the reasonable alternatives which should then be considered in greater detail.']

1.2.3 Does the SA give an adequate 'outline of reasons' for its conclusions concerning the chosen alternatives and those rejected?

1.2.4 Are any deficiencies in the SA such that it could not reasonably be described as an 'environmental statement' as defined by the Regulations?

[Judicial comment in para 25 of the note is that 'In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the 'full information' about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations ... but they are likely to be few and far between.' It is also commented that 'the responsible authority must be accorded a substantial discretionary area of judgment in relation to compliance with the required information for environmental reports'.]

### **Issue 1.3 Duty to Co-operate (DtC):**

[Note: Paras 178-181 of the National Planning Policy Framework (NPPF) refers to the duty of public bodies to cooperate on planning issues which cross authority boundaries, particularly those relating to strategic priorities. Authorities are required under the Localism Act to 'engage constructively, actively and on an on-going basis through the plan making process'. Government expects joint working on matters of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities. These matters include meeting development requirements which cannot be wholly met within an authority's area, eg through lack of physical capacity within its area, or because significant harm would otherwise be caused to the principles of sustainable development. There is no duty to agree, but authorities are expected to make every effort to secure necessary cooperation and demonstrate that they have complied with the duty. If the DtC has not been complied with a Local Plan cannot proceed further in examination. Any defect in compliance with the duty cannot be rectified through any option available to the examination process.]

Dealing with the Local Plan in the form submitted in January 2015, does the Council's DtC Statement (PE LP13), also dated January 2015, demonstrate compliance with the duty as summarised above?

The note at the head of this agenda refers to the current uncertainty pending the Council's clarification of its position on the objectively assessed need for market and affordable housing. This may well require the examination to return matters related to the DtC.

However, for the present, the hearing needs to consider:

1.3.1 Do the structures and processes set in place through the Coastal West Sussex and Greater Brighton Planning Board and other mechanisms (see Annex 2 of the DtC statement) and the outcomes of those structures & processes demonstrate ADC's compliance with the duty?

1.3.2 On the more specific issue of housing, allowing for the different respective timetables for the local plan submissions for Arun and Worthing, does the DtC statement, or indeed ALP itself (at 3.37, 12.1.12, 12.1.66 and the part of policy H SP1 relating to unspecified levels of possible future development at Ford and Fontwell) express an appropriate, sufficiently overt and unambiguous recognition of the outcome of the DtC engagement through the joint HMA studies? [Note for example that the GL Hearn study on housing and the DtC (PE LVP03A), dated May 21013, indicates at figure 9 that Arun was at that time the only District of the 6 in the Sussex Coast Housing Market Area with a deliverable capacity greater than its own objectively assessed need.]

1.3.3 Do the memoranda of understanding between Arun and Mid Sussex (DtC statement annex 7.1), Lewes (annex 7.2), Horsham (annex 7.3&4) and Crawley (annex 7.5&6) indicate compliance with the duty?