



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

Lewes District Council

Response to Inspector's Questions

Matter 1

March 2019

Matter 1 Legal Requirements, Scope of the Local Plan and Duty to Cooperate

SUMMARY (if over 1,000 words)

Inspector's Question

1.1 Regarding 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?

LDC Response

- 1.1 The Lewes District Local Plan Part 2 (LPP2) meets all its legal requirements. The evidence base for legal compliance is set out in the Legal Compliance Checklist (CD/016). This document makes clear how all the legal requirements in relation to plan-making for the LPP2 have been met and references where key information relating to different aspects of compliance can be found. This includes, but is not limited to, the Consultation Statement (CD/006), The Duty to Cooperate Statement (CD/007), the Sustainability Appraisal (CD/004) and the Habitat Regulations Assessment (CD/005).
- 1.2 There are not considered to be any outstanding legal compliance issues.

Proposed Modifications

- 1.3. None.

Inspector's Question

1.2 Regarding the 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 ID/22 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?**

LDC Response

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?

2.1 The LPP2 is a non-strategic plan that sets out more detailed policies for specific areas, neighbourhoods and types of development. The LPP2 is produced in conformity with the Lewes District Local Plan Part 1 (LPP1), which contains the strategic policies for the district. The LPP2 will, when adopted, sit alongside the ‘made’ neighbourhood plans as part of the Statutory Development Plan for Lewes District outside the South Downs National Park (SDNP).

- 2.2 The scope of the LPP2 is in line with its intended role to support the delivery of the strategic objectives and spatial strategy of the LPP1 insofar as they apply to the area of the district outside the SDNP. Importantly the LPP2 recognises and supports the role and process of neighbourhood planning, which is also articulated in the LPP1; and the ability of local communities to deliver and implement relevant elements of the LPP1 should they determine to.
- 2.3 The LPP1 makes clear there is a role for neighbourhood plans (CD/031: p18, para. 1.36; p52 Spatial Policy SP2 and para. 6.37 in particular) within the Statutory Development Plan for the district.
- 2.4 Table 3 on p13 of the LPP2 clearly establishes the role of the 'made' and emerging neighbourhood plans in meeting the housing requirements of the LPP1 and the part that the LPP2 will play in delivering the remaining growth. Collectively, when fully adopted, they form the Statutory Development Plan for the area of the district outside the South Downs National Park.
- 2.5 The LPP2 is clear on p8, para. 1.8 that until neighbourhood plans have been approved at referendum the 'saved' policies in the Lewes District Local Plan 2003 that are specifically applicable to those designated areas, will continue to form part of the Statutory Development 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)?

- 2.6 The scope the LPP2 accords with the recent Court of Appeal Judgement of *Oxted Residential Ltd v Tandridge District Council* (CD/064), which confirms a development plan document (i.e. in our case the LPP2) may legitimately be prepared in conformity with a higher level development plan document (i.e. in our case the LPP1) and it is not required to remedy any aspect of the higher level development plan document that may require revision or amendment to bring it into line with national policy (para. 31).
- 2.7 Furthermore individual elements of a development plan (i.e. in our case the LPP1, the LPP2 and the made neighbourhood plans), which are to be read together for the purposes of development control/management may be developed at different times against a backdrop of different national policies.

iii) Are there any valid Part 2 issues which the Plan has failed to address?

2.8 There are no valid issues that the LPP2 has failed to address; there is sufficient scope within the LPP2, together with the made neighbourhood Plans to deliver the sustainable development set out in the LPP1. The non-strategic policies include allocating sites for residential and employment land uses and facilitate the provision of infrastructure and community facilities at a local level. The development management policies of the LPP2 establish the relevant principles for the types of development.

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?

2.9 The LPP2 was prepared under the transitional arrangements set out in Annex 1 to the revised NPPF and so the policies in the previous version of the framework published in 2012 will continue to apply. If applying the ‘*Oxted principle*’ cited above it is perfectly legitimate for a plan to be prepared under a specific backdrop of national policies. In this instance the new NPPF should therefore have ‘limited’ weight for the purposes of testing the soundness of the LPP2

v) Is the Plan in step with its remit in relation to the ‘made’ and emerging Neighbourhood Plans within the Plan Area?

2.10 This is answered in question i) above, which clearly identifies the remit of the LPP2 in relation to the ‘made’ and emerging neighbourhood plans. The ‘*Oxted ruling*’ in para 31 states a local planning authority must have regard to any other development plan document already adopted – this may logically be extended to ‘made’ neighbourhood plans where the Council has not sought to implement the strategic policies of the LPP1 where the local community has determined to implement them for themselves. The Council respects the aspirations and process of the emerging neighbourhood plans and has assisted these communities to deliver the strategic policies of the LPP1 within their own development plans.

Proposed Modifications

2.11. None

Inspector's Question

1.3 Regarding: 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?**

LDC Response

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?*

3.1 The LPP2 is a non-strategic plan and so the Council is not required through strategic policy-making duties to cooperate further with the specific Duty to Cooperate bodies on LPP2, having already done so for the strategic LPP1. Nonetheless local planning authorities are bound by the statutory duty to cooperate and there are issues that have arisen since the adoption of the LPP1 that have required conscientious cooperation worthy of formal documentation within the Duty to Cooperate Statement (CD/007). The formal Duty to Cooperate mechanism should provide robustness to the LPP2 plan-making process; it is not limited to strategic policy-making.

3.2 In this context the Council confirms it has adequately discharged its statutory duty and cooperatively addressed matters arising since the adoption of the LPP1 that affect the implementation of its strategic policies through both the LPP2 and neighbourhood plans. The Duty to Cooperate Statement specifically addresses the disaggregation of the spatial strategy for housing growth between Lewes district inside and outside the National Park; and it thoroughly addresses the 'in-combination' air quality impacts of the spatial strategy for housing growth on the Ashdown Forest Special Area of Conservation (SAC).

3.3 Other outcomes of the statutory duty to cooperate include in relation to the strategic mitigation measures for recreation impacts on the Ashdown Forest. The Council entered into an interim Legal Agreement on 9th December 2015 to secure the delivery of a Strategic Access Management and Monitoring (SAMM) Programme in the Ashdown Forest. Partner local authorities Lewes, Wealden and Tandridge District Councils and the Conservators of Ashdown Forest entered into the interim agreement to facilitate an earlier date for the implementation of the SAMM Strategy in order to release development where

this had previously been restricted due to Ashdown Forest SPA mitigation requirements.

- 3.4 The authorities are continuing to work cooperatively towards the final legal agreement between the authorities, including Mid Sussex and Sevenoaks District and Tunbridge Wells Borough Councils who were unable to sign at the earlier time as they were unable to achieve democratic authority within the earlier timeframe. All the required democratic authorities are now in place for the legal agreement to be signed; however Wealden District Council and the Conservators of the Forest are proposing some last minute changes due to the hosting of the Access Management Officer Post¹. The final legal agreement for signing is imminent, nonetheless Lewes District Council has been able to approve development within the 7km zone and collect and pass the SAMMS contributions due to the interim legal agreement and accompanying SAMM Tariff Guidance Document (CD/071).
- 3.5 The Council can also demonstrate cooperation through facilitating mitigation for development within another local planning authority area within 7km of the Ashdown Forest that cannot provide its own SANG (Suitable Alternative Natural Greenspace). The Council has released capacity for two dwellings at the Reedens Meadows SANG in Newick. This formal off-set approach has been agreed by Natural England where an authority has no planned development within the 7km zone and so would struggle to deliver such strategic scale infrastructure.

ii) In particular, does the Plan satisfy the DTC in relation to planning for the longer-term growth of neighbouring areas?

- 3.6 The non-strategic LPP2 is not required to address strategic policy-making and therefore the question of unmet need in neighbouring areas is outside the scope of the LPP2. The Duty to Cooperate Statement (CD/007) provides an update of the on-going work the Council is undertaking with its sub-regional partners in the West Sussex and Greater Brighton Strategic Planning Board, but this is merely an update, the outcomes of that emerging evidence base will inform the review of the LPP1 in 2020. Matter Statement 4 provides a recent update on the outcome of the latest Board meeting.

Proposed Modifications

- 3.7 None.

¹ The Access Management Officer Post was to be hosted by the Conservators and is now proposed to be hosted by Wealden District Council.