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# **ISSUE 1: LEGAL COMPLIANCE**

# **HEARING POSITION STATEMENT**

Sevenoaks District Council Local Plan Examination

SUBMITTED ON BEHALF OF RICHBOROUGH ESTATES LTD

September 2019



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## 1 INTRODUCTION

- 1.1 This statement has been prepared on behalf of Richborough Estates Ltd, the promoter relating to the potential development of circa 80-120 dwellings to facilitate the delivery of 5 traveller pitches alongside extensive landscaped areas, footpaths and open space at land east of Mead Road, Edenbridge.
- 1.2 This Statement is made following the submission of the Sevenoaks District Council ('SDC' or 'the Council') Local Plan to Secretary of State for examination. We note and approve of the scope of examination as detailed by yourself in the 'Draft Matters, Issues and Questions'. This Statement covers those questions posed within Issue 1 – Legal Compliance.
- 1.3 For the submitted Local Plan, Richborough Estates has submitted duly made representations to each stage of the Local Plan production. This includes submissions to the Council's Regulation 19 consultation (Ref: 1231) on the Submission Draft Plan, where comment was made on the soundness of the Local Plan, the Sustainability Appraisal and matters of legal compliance. These representations also confirmed our intention of representing Richborough Estates throughout all relevant hearings of the Examination in Public. This submission must be read in the context of, and in conjunction with, these earlier representations.

## 2 ISSUE 1 – LEGAL COMPLIANCE

### Q3 – Is the Local Plan legally compliant with respect to Sustainability Appraisal [SA]?

- 2.1 The legal obligations in relation to SA derive from European Union law set out in Directive 2001/42 ("the Directive") which are transposed into English law by the Environmental Assessment of Plans and Programmes Regulations 2004.
- 2.2 Section 19 of the Planning and Compulsory Purchase Act 2004 requires a local planning authority to carry out a sustainability appraisal of each of the proposals in a Local Plan during its preparation. More generally, section 39 of the Act requires that the authority preparing a Local Plan must do so *"with the objective of contributing to the achievement of sustainable development"*.
- 2.3 At the heart of the Directive is the requirement for certain kinds of plans (of which this Plan is one) to be subject to "environmental assessment":

*"the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9."*

- 2.4 The Environmental Report ("ER") is defined in Article 2(c) as:

*“the part of the plan or programme documentation containing the information required in Article 5 and Annex I.”*

2.5 In England the SA of a draft plan performs the function of the ER for the purposes of the Directive and the 2004 Regulations. The information required to be in an ER/SA is set out in Article 5 and Annex I includes:

- Article 5(1) – Identification, description and evaluation of the likely significant environmental effects both of the proposed plan policies and of the “reasonable alternatives”;
- Annex I(h) – “An outline of the reasons for selecting the alternatives dealt with”;
- Article 6(2) – The draft plan and ER/SA must be subject to public consultation at a time when there is an “early and effective opportunity” for the public to express their view;
- Article 8 – The ER/SA and the responses to the public consultation “shall be taken into account during the preparation of the plan or programme”.

2.6 The SA process is an iterative one, up to the point of adoption of the Local Plan. Whilst we identify substantial legal flaws with the SA undertaken to-date, the opportunity remains for SDC to rectify these deficiencies, as long as this supplemental work is approached with an open mind.

2.7 The principle that deficiencies in SA may be rectified, or “cured”, by later SA work, has been established in the *Cogent Land v Rochford* case and restated by the Court of Appeal in *No Adastral New Town Ltd*<sup>1</sup>. Accordingly, the necessary work to make a legally compliant SA can be incorporated as part of an addendum or replacement report, published alongside the necessary Main Modifications to the Local Plan, noting the failures in soundness discussed under other Issues.

2.8 The SA Report accompanying the Regulation 19 consultation Local Plan represents the requisite ER for the purposes of Article 2 of the Directive. It is formed of two volumes assessing that are to be read in conjunction with one another. For the purposes of this section, we refer to these documents as Volume 1 and Volume 2 of the ‘SA Reports’.

2.9 Chapter 4 to Volume 1 of the SA Report details the five spatial options tested in July 2017 Interim SA Report. In essence, these options sort to identify potential broad development strategy options for housing. At a high level, these seem a pragmatic range of options, recognising at this early stage that all reasonable alternatives would require some form of development on current Green Belt land. However, only Option H1 detailed any anticipated housing yield<sup>2</sup>, making it near impossible to provide an accurate assessment of effects without development sites to inform the potential impacts. This highlights the limitations of this earlier assessment in informing the eventual spatial options for the Plan and defining ‘reasonable alternatives’.

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<sup>1</sup> *Cogent Land LLP v Rochford DC* [2012] EWHC 2542 (Admin) and *No Adastral New Town Ltd v Suffolk Coastal DC & SSCLG* [2015] EWCA Civ 88

<sup>2</sup> See table contained on page 26 of the Local Plan Issues and Options Consultation 2017

2.10 Chapter 5 to Volume 1 of the SA Report provides a more detailed assessment, accounting for the anticipated Local Housing Need (LHN) generated by the standard methodology<sup>3</sup> and utilising the Strategic Housing Land Availability Assessment to inform four spatial strategy options. These four options are considered by the SA Report to comprise the 'reasonable alternatives' for the purposes of Article 5 of the Directive.

2.11 The closest the PPG gets to defining reasonable alternatives is in relation to Neighbourhood Plans, this states:

*"Reasonable alternatives are the different realistic options considered in developing the policies in the plan. They need to be sufficiently distinct to highlight the different environmental implications of each so that meaningful comparisons can be made."* ID: 11-038-20190722

2.12 The objectives of the Plan include the need to *"Provide everyone with the opportunity to live in good quality, affordable housing, and ensure an appropriate mix of dwelling sizes, types and tenures."* Clearly to achieve this aim it would be reasonable to expect that, as a minimum the LHN for the District is to be met. This is especially pertinent in the context of the severe affordability crisis in SDC, where median lower quartile house prices are 14.62 times that of median lower quarter wages (13.07 for median of all house prices and wages), placing it the fourth least affordable local authority outside of London.

2.13 Table 5.2 of the SA Report breaks down the anticipated supply by development land characteristic e.g. brownfield, greenfield, Green Belt. This identifies that *none* of the reasonable alternatives identified have sought to meet the LHN for SDC. In fact, two of the options include provision for only 41.32% and 51.06% of the LHN respectively, with the eventual preferred option representing just 75.7% of the LHN. We would contend that even Option 4, identified as potentially delivering 99.6% of LHN, would still not represent a sound strategy against the tests of positively prepared set by the NPPF and cannot be considered an accurate reflection of 'reasonable alternatives' as required by the SA/SEA Directive.

2.14 For the reasons detailed within our Regulation 19 representations (Ref: 1321) and expanded on within our Issue 6 Hearing Position Statement, we do not consider the treatment of Pedham Place as a consistent within Options 3 and 4 as justified. These two options represent the only attempts to provide any meaningful attempt to deliver a strategy that begins to meet the area's LHN, and even then we contend Option 3 falls unacceptably short. Pedham Place represents an unjustified area of growth, whose delivery has not been established by draft policy, with the site to remain within the Green Belt and its potential allocation deferred to a Local Plan Review<sup>4</sup>.

2.15 The SA Report fails to provide an outline of the reasons for selecting the alternatives dealt with, as required by Annex I of the Directive. The checklist at Table A3 of the SA Report directs us to Chapters 4, 5 and 7 for an outline of reasons for selecting the alternatives dealt with. Paragraph 5.15 provides the closest thing to reasoning for the four options i.e. they each provide for a different quantum of housing. These two sentences are considered

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<sup>3</sup> Noting SDC's inaccurate belief that this was 13,960 for the period 2015-2035.

<sup>4</sup> See paragraphs 1.16 of the Plan.

insufficient reasoning for selecting no options that would meet the LHN and no options including site allocations<sup>5</sup> for more than 82% of the LHN.

2.16 Furthermore, the SA does not actually provide any alternatives for meeting different housing quantities. The only variable is the level of housing that might be delivered, not the way in which this might be delivered. This failure is especially pertinent in the context of Pedham Place, which is shown to be an unjustified site proposal. In identifying these four options as reasonable alternatives for the spatial strategy, SDC has failed the legal duty of the SA/SEA Directive.

2.17 To rectify these deficiencies, the Council is required to undertake a fresh/supplementary assessment, incorporating spatial strategy options that both meet the full LHN for the District, and option(s) that exceed this figure. It is not sufficient to assume that this is not achievable, or would have unreasonable impacts, without even undertaking such an assessment.

2.18 As a minimum, a spatial strategy that seeks to address LHN without a reliance on Pedham Place needs to be tested. There are clear options available to the Council, namely those that were included at the draft Local Plan stage, including land east of Mead Road. These sites are recognised as offering a sustainable option for meeting future growth needs. Given the acute affordability crisis facing the District, it would also seem reasonable to test a scenario that goes above the baseline level of LHN set by the standard method. Furthermore, the ER should provide actual reasoning for each spatial strategy option of why it is being tested.

2.19 Together, these amendments would represent an assessment of the actual reasonable alternative scenarios at its most basic level. At present, the only spatial strategies tested represent unsustainable options that run contrary to national policy and would exacerbate an already unacceptably extreme affordability crisis.

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<sup>5</sup> Appreciating the position that Pedham Place is not an allocation and is unjustified as a 'Broad Location for Growth'.