

## Examination: Sevenoaks District Local Plan

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**Our ref** 61191/01/MS/RC  
**Date** 5 September 2019  
**On behalf of** Sevenoaks Developer Forum

### Issue 1: Overall, has the Local Plan been prepared in accordance with the relevant legal requirements?

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#### **Q1. Has the Local Plan been prepared in accordance with the Local Development Scheme [LDS]?**

1.1 No comment.

#### **Q2. Has the Local Plan been prepared in accordance with the Council's Statement of Community Involvement [SCI] and met the minimum consultation requirements in Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) [Local Plan Regulations]?**

1.2 No comment.

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

1.3 Section 19 of the Planning and Compulsory Purchase Act 2004 sets out the requirement for the preparation of local development plan documents to be accompanied by the carrying out of a sustainability appraisal.

1.4 A sustainability appraisal (SDC003 Dec 2018) has been advanced in conjunction with the Local Plan and therefore in respect of the in-principle need to prepare a sustainability appraisal the Local Plan is compliant. However, a detailed review of the documentation set out within the Forum's Issue 3 Statement raises several concerns in respect of the soundness of the Sustainability Appraisal which means it does not satisfy the requirements of the Regulations. These include:

- 1 The apparent absence of the earlier SA documents for earlier plan consultation stages as part of the Examination Library, combined with the lack of clarity/justification on why some earlier options were rejected. This means that whilst it is asserted that the SA has adopted an iterative process, at least to some degree, and has rejected alternatives at an early stage, it is not clear that reasons have been given and have subsequently been held to remain valid in the face of changing circumstances (e.g. in the instance we raise at Q22, that the rejection of an option delivering housing on Green Belt land near transport hubs, remained valid after 'further local evidence' had been gathered and once NPPF Paragraph 138 encouraging such approaches was published). This was addressed in the Save Historic

Newmarket high court judgement<sup>1</sup> (as referenced in the later Ashdown Forest<sup>2</sup> and Friends of the Earth<sup>3</sup> judgments) as thus:

*“It is open to the plan-making authority, in the course of an iterative process of examination of possible alternatives, “to reject alternatives at an early stage of the process and, provided there is no change of circumstances, to decide that it is unnecessary to revisit them”; “But this is subject to the important proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid if there has been any change in the proposals in the draft plan or any other material change of circumstances and that the consultees are able, whether by reference to the part of the earlier assessment giving the reasons or by summary of those reasons or, if necessary, by repeating them, to know from the assessment accompanying the draft plan what those reasons are” (our emphasis)”*

- 2 The requirement to appraise ‘reasonable alternatives’ and whether the reasonable alternatives tested as part of the SA can be adequately described as meeting the objectives of the Plan (i.e. including on meeting housing need) and whether the choice of reasonable alternatives has been done so to seek to avoid the authority’s obligations by improperly restricting the range of options identified as reasonable alternatives. These are both issues with the current SA (see Q18), and conflict to a degree with the manner of properly assessing reasonable alternatives described within *Friends of the Earth*.<sup>4</sup>

- 1.5 It is agreed that the above errors can be ‘cured’ as per the judgement in Cogent Land<sup>5</sup> by a later iteration of the document which could accompany any Main Modifications that were required to address problems of soundness, but this later iteration would need to be approached with an open mind in re-appraising the alternatives based on appropriate evidence and arriving at a strategy that met the tests of the NPPF.

**Q4. Is the Local Plan legally compliant with respect to the Habitats Regulations and any requirement for Appropriate Assessment [AA]?**

- 1.6 No comment.

**Q5. Is the Local Plan legally compliant with respect to climate change?**

- 1.7 No comment.

**Q6. Is the Local Plan legally compliant with national policy, the provisions of the Planning and Compulsory Purchase Act 2004 (as amended) [PCPA] and the Local Plan Regulations for the preparation of the plan?**

- 1.8 No comment.

<sup>1</sup> R. (Save Historic Newmarket Ltd) v Forest Heath DC [2011] EWHC 606 (Admin)

<sup>2</sup> Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2014] EWHC 406 (Admin);

<sup>3</sup> R (Friends of the Earth England, Wales and Northern Ireland Ltd) v The Welsh Ministers [2015] EWHC 776 (Admin) – para 94 [96]

<sup>4</sup> R (Friends of the Earth England, Wales and Northern Ireland Ltd) v The Welsh Ministers [2015] EWHC 776 (Admin) – see para 88i-xi

<sup>5</sup> Cogent Land Llp v Rochford District Council & Anor [2012] EWHC 2542 (Admin)

**Q7. Does the Local Plan make it clear, as required by Part 4, paragraph 8(5) of the Local Plan Regulations, which parts of the existing development plan it will supersede?**

1.9 No comment.

**Q8. Does the Local Plan clearly identify which policies are strategic in accordance with paragraph 21 of the National Planning Policy Framework [NPPF] (February 2019)?**

1.10 Paragraph 21 of the NPPF (Feb 2019) requires that new Plans “*should make explicit where policies are strategic policies.... These strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.*”

1.11 At para 1.4 of the Local Plan there is reference to this, noting that in areas where a Neighbourhood Plan is being developed that the Local Plan:

*“will set the high-level strategic aims in terms of land-use and the approximate quantum of development and the Neighbourhood Plan can provide more in detail in terms of design, infrastructure and local character and distinctiveness.”*

1.12 However, the requirements of Para 21 are clear, in that the Local Plan should be explicit in identifying those policies which are strategic (and conversely, by omission, those that are not). As such, the Local Plan cannot be considered sound as this is not made clear on an individual policy basis.

1.13 This is something that can be rectified through modifications to the plan. Having regard to Sevenoaks District Council Responses to the Inspector’s initial questions (ED3 June 2019) we note that the District Council has acknowledged that they should seek to distinguish between the strategic and non-strategic policies.

1.14 The Council suggests that the strategic elements of the various policies are set out in bold type to distinguish them from the non-strategic elements and have produced a document (ED5) to demonstrate how this would appear. Whilst this is an improvement on the plan as currently drafted, we consider that there are two alternative options which would be preferred solutions.

- 1 The first of these would be a table (perhaps provided before the start of Chapter 1), which details each policy proposed within the Plan, confirming whether the policy (or parts thereof) is strategic.
- 2 A second option would be to divide each policy up into two distinct elements, with requisite sub headings of ‘Strategic’ and ‘Non-Strategic’. This would ensure that there is clarity between those policies and strands of policy which relate to strategic and non-strategic matters.

1.15 Whilst the inclusion of either of those two options outlined above would ensure technical soundness in respect of Paragraph 21 of the NPPF (and allow for much easier referencing within and to the plan policies than bolding), Paragraph 20 is relevant in that it confirms that ‘*Strategic policies should set out an overall strategy for the pattern, scale and quality of development*’. A policy is not strategic simply by carrying that moniker; it is imperative that the policy performs the function of a strategic policy. As we set out in our response to Q40 (Issue 6), the proposed housing policy as currently worded does not perform this function as it fails to

actually set out a housing requirement identifying the scale of development; there is no strategic policy performing such function.

**Q9. Do the strategic policies look ahead a minimum 15 year period from adoption, to anticipate and respond to long term requirements and opportunities as required by paragraph 22 of the NPPF?**

- 1.16 Paragraph 22 of the NPPF requires Strategic policies should look ahead over a minimum 15-year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.
- 1.17 The submitted plan covers a period of 2015-2035 whilst the proposed amended plan covers a period of 2019-2035 (see Q42). The end of the plan is the end of the monitoring year 2034/35 and so falls to be the end of March 2035. Therefore, the plan’s strategic policies currently adequately cover a minimum 15-year period from adoption, provided that the plan is adopted in early 2020. Any significant delay for necessary main modifications before adoption will need to see the end of the plan period extended commensurately.
- 1.18 Whilst the policies set the strategy for the next 15 years, it is important to consider why a 15-year period is considered necessary – namely to anticipate and respond to long term requirements and opportunities as defined in NPPF para 20. In anticipating future requirements and opportunities, SDC should have liaised closely with the business community, taking account of the Local Industrial Strategy<sup>6</sup>. In this regard, it is considered that the Economic Policies set out within Policy EMP1 do not adequately support future growth across the District. For example, parts one and two ‘Sevenoaks Urban Area – Economic Study’<sup>7</sup> which supports EMP1 was only published in April and March 2019 respectively: after the Regulation 19 consultation took place. Furthermore, EMP1 does not take into account the infrastructure improvements that are scheduled to come forward which are identified within the Council’s own Economic Development Strategy (2018-2021). These include:
- 1 Lower Thames Crossing
  - 2 Southeastern railway franchise transfer which will take place early in the plan period
  - 3 Expansion of Heathrow, Gatwick and Biggin Hill airports
  - 4 Making Kent Quicker programme
- 1.19 Policy EMP1 currently confirms the intention to safeguard existing employment land and to support the allocation of new sites, however it is considered that additional weight should have been given to the emerging availability of faster internet which can support business development (see NPPF para 112), trends towards working from home, and transport improvements through the building of the lower Thames crossing and the new South Eastern rail franchise (see NPPF para 102). The Sevenoaks Infrastructure Delivery Plan (INSO01) notes the response from Network Rail in Sept 2018 which indicated that “*Further rail capacity improvements are also likely to come through the new franchisee*”.
- 1.20 One of the key tests of soundness is that a plan must be positively prepared and must therefore consider the wider growth context within which the Local Plan sits. Whilst Employment policy EMP1 does not take into account future potential growth arising from these improvements, it should also be noted that there is no suggestion in the Plan of increased housing needs as a

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<sup>6</sup> PPG ID: 2a-026

<sup>7</sup> ECO007 & ECO008

possible result of increased commuter-led demand arising from improved and more frequent rail services as a result of the franchise transfer or the potential need to increase housing provision to support economic growth within the District to allow employers to recruit locally (improving sustainability and responding to NPPF paras 80-81).

- 1.21 As such it is considered that whilst the strategic policies do cover a sufficient time period (subject to adoption in 2020) and thus match the technical requirement for 15 years), they do not sufficiently respond to long term opportunities (for which the 15-year period defined in NPPF para 20 is intended to encompass) and are therefore unsound.