



Hearing Statement – Matter 1: Legal and Procedural Requirements

Horsham District Council Local Plan 2023-2040: Examination in Public

Prepared on behalf of Thakeham Homes Limited

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SLR Project No.: 433.000082.00001

19 November 2024

Revision: 02

Revision Record

Revision	Date	Prepared By	Checked By	Authorised By
00	28 October 2024	AM	CL	
01	12 November 2024	AM	CL	
02	19 November 2024	AM	CL	CL
	Click to enter a date.			

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1.0 Introduction

- 1.1 This Statement has been prepared by SLR Consulting Ltd on behalf of Thakeham Homes Limited. The Statement addresses **Matter 1: Legal and Procedural Requirements**.



2.0 Matter 1, Issue 1 - Whether the Council has complied with the duty to co-operate in the preparation of the Plan?

Q1: What are the strategic matters relevant to the preparation of the Plan (as defined by S33A(4) of the Planning and Compulsory Purchase Act 2004)?

2.1

1. The duty to co-operate applies to preparation of development plan documents. Preparation stops on submission¹.
2. The duty applies in relation to each and every strategic matter, individually².
3. The duty to cooperate is not a duty to agree³.
4. The duty is to engage actively and on an ongoing basis. Therefore the discussions must continue even when they appear to have ‘hit the buffers’⁴.
5. Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be undertaken requires evaluative judgments⁵.
6. In order to fulfil the duty imposed upon an inspector by section 20(5)(c) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”), the inspector must carry out a rigorous examination of the documents and evidence received so as to enable the inspector to reach a planning judgment on whether there has been an active and ongoing process of co-operation⁶.

2.2 Housing need and water supply are acknowledged to be strategic matters in DC01 paragraph 4. Housing delivery, and the direct infrastructure that is required to support it are of particular significance given the constraints imposed by water neutrality and the severe unmet housing needs that this is projected to result in.

2.3 Given the well-established Housing Market Area that Horsham sits within (the North West Sussex HMA), it is clear that co-operation between relevant neighbouring

¹ *Samuel Smith v. Selby DC* [2015] EWCA Civ 1107 at paragraph 28

² *Sevenoaks DC v. Secretary of State* [2020] EWHC 3054 (Admin) at paragraph 50

³ *St Albans City and District Council v. Secretary of State* [2017] EWHC 1751 (Admin) at paragraph 47

⁴ *St Albans DC v. SSCLG* [2017] EWHC 1751 (Admin) at paragraph 51

⁵ *Zurich Assurance v. Winchester City Council* [2014] EWHC 758 (Admin) at paragraph 110-111

⁶ *R (Central Bedfordshire Council) v. SSCLG* [2015] EWHC 2167 (Admin) at paragraph 51



authorities is required in order to work positively to find solutions to address cross boundary issues such as meeting housing needs.

Q2: For each of these, who has the Council co-operated with during the preparation of the Plan, what form has this taken? What has been the outcome of this co-operation?

- 2.4 The Council's engagement is outlined in the Council's overarching Duty to Cooperate Statement⁷ (July 2024, SD12).
- 2.5 The signed Statements of Common Ground (Ref: DC01 – DC18) have sought to demonstrate how the Council has co-operated to seek to address matters relating to cross-boundary housing needs and supply.
- 2.6 In light of the Council's own conclusion in the summer of 2023 that the full objectively assessed housing needs cannot be met (owing it seems to water neutrality constraints), the Council discussed this with neighbouring authorities and subsequently made formal requests to these authorities in November 2023 to ask for assistance in meeting the unmet needs of around 2,377 homes.
- 2.7 However, the outcome of these discussions and formal requests is that none of the Council's neighbouring authorities have been able to commit to assisting Horsham in meeting identified housing needs (save for a small proportion of oversupply in Mid-Sussex which has not been directly attributed to assisting Horsham).
- 2.8 Following those discussions the Council was under a continuing duty to engage. Having been told that neighbouring authorities could not assist Horsham in meeting their need, and that that they had unmet need, HDC failed to continue to engage by considering whether there are means of overcoming the constraint imposed by water neutrality.

Q3: What substantial concerns have been raised in terms of compliance with the duty to co-operate?

- 2.9 Paragraph 35a of the NPPF states plans should be positively prepared "*so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development.*"
- 2.10 Furthermore, Paragraph 26 states that "*...joint working should help to determine ... whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.*"
- 2.11 However, our main concern with the Duty to Cooperate is that HDC is seeking for other authorities to meet their alleged unmet need. Historically, Horsham has had to take some of the wider unmet need from the housing market area as Horsham is one of the least constrained authorities in the area and therefore the most likely to be able to provide for unmet need. To now say it cannot meet its own need is a

⁷ https://www.horsham.gov.uk/__data/assets/pdf_file/0018/138312/SD12-Duty-to-Cooperate-Statement.pdf



- major change in approach for the sub-regional housing need and, we contend, is not substantiated or warranted.
- 2.12 The NPPF requirement to produce a positive plan to meet the needs of neighbouring areas has not been met as Horsham has not sought to positively and proactively plan for the number of houses it can meet. It has simply decided that the required number cannot be met due to water neutrality and not sought to positively and proactively look for solutions.
- 2.13 We submit that HDC has failed to give consideration to all possible ways in which the Council could meet its own housing needs (and possibly the unmet needs of the wider locality) whilst also addressing the issues arising from water neutrality. For example, Wealdcross can meet the shortfall of housing in the plan period, it was previously a draft allocation, and was simply removed from the plan on the basis of an assertion that it wasn't needed due to the suppressed numbers from water neutrality. However, the Council was fully aware that we have a water neutrality solution as we have been in contact with them and the statutory bodies throughout the preparation of the new plan. We have also undertaken a pre-application enquiry to present more information. The Council should have proactively been asking us to progress our proposals and work with us to show it was seeking to meet its own housing need. A proactive discussion with neighbouring authorities seeking to meet housing need would have opened up suggestions to explore including whether there were sites that had a water neutrality solution.
- 2.14 In order to comply fully with the requirements and purpose of the duty to cooperate (as outlined in Paragraphs 35a and 36 of the NPPF), it is submitted that the Council must contribute more meaningfully to the subregional housing undersupply by seeking to find alternative and innovative solutions to meet its own needs in full, as well as to contribute to unmet needs in other constrained neighbouring areas as it has done historically under the duty. A Main Modification with our site included would address this need and no longer require the Council to seek other authorities to meet this need.

Q4: How has the Council co-operated to establish and meet a housing need? How specifically have development constraints influenced that co-operation, particularly water neutrality?

- 2.15 The Council has failed to establish a strategy with other sub-regional partners (particularly its shared HMA authorities) which meets the identified housing needs of the region, which results in an undersupply of at least 8,947 homes across the NWSHMA to the period 2024.
- 2.16 The constraints imposed by water neutrality are said by the Council to sit behind the reduced housing need target of 777 dpa (resulting in an undersupply of 2,377 homes to 2040), but the evidence submitted to date does not show how this figure has been derived, nor has any evidence been provided that shows how discussions between neighbouring authorities has led to (or influenced) this figure. It appears that this figure has been chosen as a best-guess at how much housing can be



released during the plan-period through the credits available from the (yet to be available) authority-led water offsetting scheme (SNOWS). The Council has settled on this figure without any apparent evidence to consider alternative and innovative ways to meet needs in full, for example by considering the allocation of sites with ready-to-go private water neutrality solutions.

Q5: In overall terms has the Council engaged constructively, actively and on an ongoing basis in maximising the effectiveness of the preparation of the Plan? Are the ongoing partnerships and joint working arrangements between all the relevant bodies accurately reflected in the Plan?

- 2.17 As shown in the Council’s overarching Duty to Cooperate Statement (July 2024) it is clear that the Council has engaged with other bodies, but this engagement has not led to any advancement in the effort to seek to meet identified needs across the sub-regional area and has accordingly resulted in a severe and historic shortfall in housing delivery to 2040.
- 2.18 As such, the engagement undertaken has not been constructive or effective, or ongoing, which fails to accord with the duty to cooperate.



3.0 Issue 2 - Whether the Council has complied with other relevant procedural and legal requirements?

Plan Preparation

Q1: Has the preparation of the Plan been in accordance with the Local Development Scheme in terms of its form, scope and timing?

3.1 In its present form, the plan has been prepared broadly in line with the 2023 LDS, although there has been some slippage in the dates published which is likely to result in a delay to the adoption of the plan by about 3 months (best case scenario).

Q2: In overall terms, has the preparation of the Plan complied with the Statement of Community Involvement?

3.2 No comment.

Sustainability Appraisal

Q3 How has the Sustainability Appraisal (SA) informed the preparation of the Plan at each stage?

Q4. Does the SA assess all reasonable alternative spatial strategy options, levels of housing and employment need and options relating to other policies in the Plan? Where it is considered that there are no reasonable alternatives, relating to all policies in the Plan is this clearly explained?

Q5. Is the SA adequate and have the legal requirements of the 2004 Act and the Town and Country Planning (Local Planning) (England) Regulations 2012 (2012 Regulations) been met?

3.3 The SA has been prepared as a sustainability appraisal (as required by section 19(5) PCPA 2004) and as an environmental report (as required by regulation 12 of the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”).

3.4 The December 2023 SA updates the original SA (July 2021) which was undertaken to support the (withdrawn) 2021 plan. In light of the reduced housing target that has been established owing to water neutrality constraints to development, the updated SA supports a very different strategic approach to development than was presented in the original 2021 SA.

3.5 Thakeham’s regulation 19 representation (at paragraph 5.25) states that the SA Update does not consider the reasonable alternative of allocating strategic sites



- which can use Peak Over Threshold Harvesting and other similar techniques to achieve water neutral developments, and (at paragraph 5.26) requested that the SA/SEA be revised to make good that deficiency.
- 3.6 The approach of allocating a self-contained strategic site was supported in the original SA as a sustainable way of delivering the required growth whilst protecting and enhancing the character of the district and its environmental qualities. The consideration of this strategic approach to growth has not been considered in the updated SA, and there is hardly any mention made within the updated SA about the merits of a sustainable new garden community in the heart of the district.
- 3.7 The Updated SA states that that the Preferred Strategy taken forwards in the regulation 19 plan to deliver 10,445 homes was a balanced strategy to ensure there was not too much housing in one location, as the regulation 18 plan had proposed. The regulation 19 version instead was "...a balanced strategy which builds on the settlement hierarchy (including sustainable urban extensions), whilst also planning for a new garden village community." (p.80 of 2023 SA).
- 3.8 The report then sets out that the previous regulation 19 was a positive piece of work. "This stage of work was significant in helping the Council to recommend a growth scenario which both met the local plan objectives whilst performing well against SA objectives, in the context of meeting development needs in full. This strategy focussed on urban extensions, with additional housing needs to be delivered through the provision of a new settlement..." (para. 4.64 of 2023 SA).
- 3.9 Wealdcross was known by the Council as Buck Barn when it was previously allocated and it was clearly supported as performing well in the SA "Buck Barn was considered to offer the best opportunity to achieve a new village community in its own right, whilst also providing high quality bus access to Horsham Town (the District's largest settlement), plus onward links to the Crawley and Gatwick areas to the north, and Worthing to the South, and the employment opportunities therein." (para. 4.65 of 2023 SA).
- 3.10 Given that approach it is clear that the alternative of identifying strategic sites, and in particular the allocation of Buck Barn as a strategic site is a reasonable alternative taking into account the objectives and the geographical scope of the plan.
- 3.11 The Buck Barn / Wealdcross strategic site was removed from the submission draft plan for the reasons given at paragraph 5.5 (and in Table 7.1) of the 2023 SA, namely the impact of water neutrality on housing delivery and the Council's assessment of potential strategic sites. The SA did not consider the reasonable alternative of including a site/s which were capable of including an on-site water neutrality solution.
- 3.12 We believe that the SA should be revised so that it considers all the reasonable alternatives of meeting the district's housing needs, including the allocation of



- strategic sites which are capable of delivering sustainable water neutral development.
- 3.13 We believe that the defective 2023 SA can be resolved relatively easily as the Buck Barn / Wealdcross site has already been fully appraised in the previous SA and found to be suitable. Therefore, the 2023 SA can be updated by asking the question before the sites are assessed of “does any site have their own water neutrality solution” and where the answer is “yes” then the site does not need to be excluded.
- 3.14 The alternative is to rewrite the 2023 SA but remove the statements that say water neutrality has required the number to be reduced and accept that the plan can now plan for the required number.



