RESPONSE TO MATTER 1

REPRESENTOR ID 1998

HEARING STATEMENT
ON BEHALF OF WENTWORTH RESIDENTS ASSOCIATION

RUNNYMEDE 2030 LOCAL PLAN EXAMINATION:
STAGE 1 HEARINGS

NOVEMBER 2018
Title: Hearing Statement Matter 1

Project: Runnymede 2030 Local Plan Examination

Client: Wentworth Residents Association

Issue: Final

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Introduction

1) This Hearing Statement has been produced by ShrimplinBrown on behalf of the Wentworth Residents Association ("WRA") (representor ID 1998) in relation to the examination into the Runnymede Borough Local Plan 2030 ("the draft Local Plan"). It responds to Matter 1 of the Stage 1 Hearing Sessions.

2) As made clear in previous objections to the Local Plan, the WRA wishes to participate at the hearing sessions where this Matter will be considered by the Inspector.

3) The WRA represents the residents living on the Wentworth Estate (being over 1,000 households) and business interests in Virginia Water in all matters affecting the Estate.

4) The WRA objects to the draft Local Plan, specifically: the failure by the Council properly to discharge its duty to co-operate; the failure by the Council properly to undertake a sustainability appraisal (and related processes) into the draft Local Plan; and three proposed housing allocations:

- Policy SD20: Longcross Garden Village;

- Policy SL9: Housing Allocation at Virginia Water North; and

- Policy SL10: Housing Allocation at Virginia Water South.
**Matter 1: Legal requirements, the Duty to Co-operate and the Plan period**

1.1 Is the Runnymede 2030 Local Plan (the Plan) compliant with the Planning and Compulsory Purchase Act (2004) (as amended) and the 2012 Regulations (as amended)? In particular, is the Plan compliant with the Local Development Scheme and the Statement of Community involvement?

5) No comment.

1.2 Is the Habitats Regulation Assessment and the Sustainability Appraisal (SA) adequate? Does the SA demonstrate that the Plan has been tested against all reasonable alternatives?

**Habitats Regulation Assessment**

6) Notwithstanding what is asserted in the Council’s Habitats Regulations Assessment (May 2018) (paragraph 3.7), the Council needs to demonstrate that the process it has undertaken to date accords with the judgment of the Court of Justice of the European Union (“CJEU”) in *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17).

**Sustainability Appraisal**

7) The Local Plan: Issues, Options and Preferred Approaches consultation document (July 2016), set out seven different options (Table 4.2) before alighting on the preferred option (SS3).

8) The subsequent Additional Sites and Options consultation (May 2017) followed the same process before alighting on an amended preferred option (SS5). As the consultation document itself makes clear, the change in preferred option (to option SS5) was entirely driven by a site selection process:

“...the Council has identified through additional evidence collated since the close of the IOPA consultation that it is able to propose a higher housing target than was initially suggested, through:
• The inclusion of further allocations in the Local Plan which would provide housing;

• A reassessment of the capacity of the preferred allocations consulted upon in the IOPA document (as listed in appendix 1 of the IOPA document)

• The adjustment of a number of the assumptions factored in to the Council’s evidence base relating to housing supply.” (paragraph 2.4).

9) The accompanying Sustainability Appraisal of Issues and Options 2 (May 2017) repeats the point that the change to the preferred option, to option SS5, was entirely driven by the site selection process:

“In short, the Council has identified - through additional evidence collated since the close of the IOPA consultation - that it is able to propose a higher housing figure than was initially suggested. This is to be achieved through a number of additional proposed allocations and following the adjustment of a number of assumptions factored in to the Council’s evidence base relating to housing supply. For this reason, an additional round of public consultation is proposed.” (Section 2.5, emphasis added).

10) The Council’s subsequent Sustainability Appraisal Report-Part 3A (January 2018) asserts that “…the information presented by the Council is more than just potential development sites. It is a mix of options, potential approaches and sites” (Section 2.1). However, the opposite is true. The information presented by the Council was (and is) in fact entirely driven by potential development sites. There was (and is) no mix of options, potential approaches or sites. This is an inappropriate approach given the legal requirement to assess reasonable alternatives.
11) The Sustainability Appraisal itself explicitly accepts this by explaining that its “Outline reasons for selecting alternatives” were driven by the evidence base, in particular the Green Belt Review, and not any assessment of alternative strategies:

“The alternatives develop a range of possibilities for delivering a spatial strategy, which takes account of a number of evidence documents, most notably the Green Belt Technical Review, Green Belt Villages Review, Strategic Housing Market Assessment (SHMA), Strategic Land Availability Assessment (SLAA) and Employment Land Review (ELR).

As the ability to meet housing and employment needs were clearly linked to the evidence of land supply and where this potential supply is located, as well as the Green Belt Technical Review, a range of options were developed to reflect a range of housing and employment scenarios and how these would impact on the Green Belt in terms of land take and where this would fall. The options were also developed to take account of the ability to deliver avoidance measures for the Thames Basin Heaths Special Protection Area (TBHSPA) in the form of Suitable Accessible Natural Greenspace (SANG). As such, options were developed, which considered a range of housing targets and what this meant for balancing employment needs and requirement for SANG as well as the impact to the Green Belt.” (Table 2.2a, emphasis added).

12) Not only does this expose the absence of any strategic approach by the Council, it also demonstrates that the Sustainability Appraisal does not accord with the relevant Regulations and has not properly assessed reasonable alternatives.

1.3 Does the Plan as a whole accord with s19(1A) of the Act by including policies that are designed to secure that the development and use of the land in the Borough contribute to the mitigation of, and adaptation to, climate change?

13) No comment.
1.4 Has the Council engaged constructively, actively and on an on-going basis with all relevant organisations on the strategic matters that are relevant to the Plan’s preparation, as required by the Duty to Cooperate?

14) There is some important context to any assessment as to whether the Council has satisfied its statutory Duty to Co-operate. In particular, previously it failed to do so when purporting to promulgate a previous iteration of the Local Plan.

15) Although the draft Local Plan consultation is accompanied by reports reporting how the Council have purportedly engaged with adjacent Local Authorities, they do not withstand scrutiny. There is no substantive evidence to demonstrate that the Council has been effective in discharging this Duty. In this regard, the draft Local Plan only states that consultation is “ongoing” and provides no detail as to what extent, if at all, consultation has actually taken place. Of itself, this is fatal to the soundness of the draft Local Plan, which must now be withdrawn and the Council invited to start the process again by properly and fully engaging with neighbouring Local Authorities.

16) Following the Local Plan Inspector’s report on the Duty to Co-operate (April 2014) the Council set out its approach towards the Duty to Co-operate in the Meeting the Duty to Co-operate Statement (October 2015) and Duty to Co-operate Update Statement (July 2016) which underpinned the Local Plan: Issues, Options and Preferred Approaches consultation document (July 2016) which itself set out the Council’s preferred strategy (SS3). However, the failure of the Council to co-operate effectively is vividly exposed by the fact that the consultation document was heavily criticised by a number of Duty to Co-operate partners and others for proposing a housing target that fell short of the Council’s Objectively Assessed Need (“OAN”) for housing, resulting in an Additional Sites and Options consultation (May 2017), accompanied by a further Duty to Co-operate Update Statement (May 2017), which then suggested an alternative strategy (SS5). The Duty to Co-operate is an ongoing process (and requirement) and this repeated failure of the Council properly and fully to engage with it is revealing.
This failure is particularly important with regards to the Green Belt as it is a strategic issue. As the Green Belt Review (December 2014) made clear at the very outset of the plan making process:

“Green Belt policy is a strategic policy, which must therefore be considered collectively by local authorities, particularly where Green Belt surrounding an urban area falls into different administrative boundaries” (paragraph 4.2.3).

Moreover, this failure has continued more recently. The Council received legal advice to review its Duty to Cooperate activities carried out during the preparation of the Local Plan to date, as summarised in the Duty to Co-operate Review (September 2017). Unfortunately, this identified continuing failures (paragraph 1.4) and recommended that the Council produce a “concise, clear, standalone report which reviews the discharge of the duty to date.” (paragraph 1.5). However, notwithstanding the contents of this report, it is impermissible for the Council to seek to go back in time to correct past errors by way of an ex post facto justification for its clear failure.

The Duty to Co-operate Review (September 2017) also recommended a more regular review of the Duty to Co-Operate through regular updates to the Local Plans Members Working Group ("LPMWG"), with the first review having taken place on 3 October 2017 (paragraphs 2.3 and 2.4). The later Duty to Co-Operate Update (May 2018) explained that regular updates to the Leader had been taking place since September 2017 and that regular updates to Members commenced in March 2018 (paragraph 3.2). The Duty to Co-Operate Update and Compliance Statement (July 2018) gave “Specific examples of how the introduction of more robust and regular monitoring of the Duty to Cooperate with Members has allowed the resolution of issues quickly and positively...” (paragraph 3.3). However, these updates to the Leader and to Members are too late and too superficial and, in any event, do not come anywhere close to demonstrating that the Council has satisfied the Duty.

The Duty to Co-operate Review (September 2017) also queried whether “Are all the [Duty to Co-Operate] partners still correct?” It stated that:
“Officers consider that the list of partners to be engaged with moving forward needs to be refocused. It is considered that a line needs to be drawn where the Council can evidence that there is unlikely to be any real chance of achieving positive outcomes with certain authorities and refocus its efforts on those authorities with which it has the closest functional links with, and those which the Council believes, following an assessment of constraints, have the best chance of assisting Runnymede meet any unmet needs.” (paragraph 2.4).

21) The subsequent Duty to Co-Operate Update (January 2018) found that of the 20 Local Authorities with whom the Council had been seeking to agree Statements of Common Ground and Memoranda of Understanding, for 12 “the Council’s evidence base does not support that there are strong functional links” whilst for a further three the links are limited to one specific issue (Table 2). However, the Council failed to offer any meaningful justification for this apparent change in their approach. The nature, scope and extent of the duty has not changed at all throughout the process. Having come this far through the Local Plan process it is of significant concern (and, frankly somewhat absurd) that the Council at such a late stage should purport to decide with which Local Authorities it should be engaging. This serves only to further reinforce our fundamental concern that the Council’s approach has been far too superficial and does not come anywhere close to satisfying the Duty. The other obvious concern is that the Council is now purporting to 'change the goalposts' in a belated attempt to escape censure for what is a clear and ongoing breach of the Duty. It would be wrong for the examination to proceed, given this clear breach. Instead, the Council should first be required to properly and fully engage with the duty and attend to any necessary changes to the evidence base underpinning the draft Local Plan.

22) The failure in the Duty to Co-Operate is exemplified by the failure of the Council to reach agreement with key consultees. As summarised in the Duty to Co-Operate Update (May 2018), objections to the Regulation 19 consultation (January 2018) were made by Highways England (paragraph 9.1) and the Environment Agency,
about a range of issues including a concern about the adequacy of infrastructure capacity to accommodate the growth identified in the draft Local Plan (paragraph 11.1). The Duty to Co-Operate Update and Compliance Statement (July 2018) confirms that Highways England (paragraph 9.3-9.5) and the Environment Agency (paragraph 11.1-11.2) continue to object.

23) These flaws are fundamental and fatal. It is revealing that the Council has failed properly to engage with neighbouring Local Authorities in relation to strategic and also operational and self-evident cross-boundary issues such as housing and employment. It is no answer for the Council to seek to shorten the Local Plan period and to suggest an early review in order to see what happens with adjacent Local Authorities. To the contrary, it serves only as an admission that more effective co-operation could and should be taking place now.

24) For all the above reasons, the Council has failed to discharge its duty and the Local Plan must be rejected now.

1.5 Is the Plan period (2015-2030) justified? If not, how should this be rectified?

25) The Council will need to demonstrate that the proposed shortening of the draft Local Plan period accords with the NPPF (specifically, paragraphs 47 and 157) and the NPPG.