

HEARING STATEMENT 2 BY HUGH STEBBING, B.Sc (Est. Man), FRICS, CHARTERED SURVEYOR

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EXAMINATION OF THE ROTHER DISTRICT COUNCIL (RDC) DEVELOPMENT AND SITE ALLOCATIONS LOCAL PLAN

This Hearing Statement is in response to the Inspector's document ID/04 "Matters, Issues and Questions" dated 22nd March 2019.

Matter 7. Policy BEX9.

It is common ground that Policy BEX9 (site BX116) is directly affected by the requirements of the Habitats Directive and that the European Council Directive 92/43/EEC Article 6(3) and Article 6(4) have major significance. An Appropriate Assessment is required for the DaSA as regards BEX9.

The application of Habitats Directive and Articles 6(3) and 6(4) have been clarified by the Court of Justice of the European Union by its judgement in the case of People Over Wind and Sweetman v Coillte Teoranta (PoW). An Appropriate Assessment (AA) must remove all reasonable scientific doubt that harm will befall protected site if it is to be granted planning permission. The same stringent test applies to an AA prepared for a DaSA.

Observations on the application of the Habitats Regulations (HR) as clarified by PoW to Policy BEX 9:

1. PoW made no distinction between Outline and Full planning applications or DaSA in terms of its requirements for the AA. They are the same for each and the AA must contain complete, precise and definitive findings and conclusions, without lacunae if the Scientific test is to be passed. The AA for the DaSA must be based on the HR/PoW requirements.
2. For BEX 9 the avoidance of harm to the protected areas of the Pevensey Levels is proposed to be by means of a SUDS scheme for surface water and a piped and pumped system for foul water. Comments in other Hearing Statements and in Representations against the DaSA set out clearly and scientifically why the SUDS proposals do not meet the HR/PoW scientific test hurdle.
3. Beyond what has already been stated I have the following comments:
 - a. As outlined in the indicative layouts shown for Outline planning application ref: RR/2017/1705/P (the Policy BEX 9 site) a significant area of housing development is shown to be to the southeast of the line of the proposed main swale. Given the topography of the site, with the Cole Stream even further to the south east, it would appear that the houses planned for the south eastern area of the site will be below the swale. It is unclear and not scientifically proven how surface water can thus drain from these houses uphill into the swale.
 - b. The requirements of the HR and PoW are that no harm must befall protected areas. This is an extended timescale at least over the lifetime of the development – say 120 years. It is common ground that the proposed SUDS scheme will require maintenance throughout the life of the project if it is to continue to perform effectively and in accordance with the standards required by the HR and PoW tests.

However, despite suggestions that long term maintenance could be accomplished through a maintenance company this fails to give the guarantees that are needed for the HR PoW scientific doubt test to be met throughout the life of the project. Further, the nature of required maintenance by a specialised company, will create the need for a thorough maintenance plan with consequent high cost and the need for detailed on site monitoring of contractor performance. For example, the swales and attenuation ponds have to have impermeable membranes to avoid the leaking of polluted water into the ground prior to the completion of the filtration processes. As an example it would not be possible to adopt the routine method of clearing drainage ditches via a tractor fitted back-hoe device since to do so would risk penetration of the impermeable membrane. A specialist approach is essential if the integrity of the membranes is to be maintained over the project lifetime. What is more, any material removed from the swales and attenuation ponds must be removed, carefully from site without contaminants entering the natural watercourses feeding the protected areas of the Levels (e.g the Cole Stream). No long term plan for maintenance has been demonstrated to pass or exceed the HR/PoW scientific doubt test. Rather, broad, but untested and unproven statements of expectation and possibility have been made. These include suggestions that should the “lead” maintenance company fail (Note: keep in view businesses such as Centrica, Serco etc) then “step in” rights will be enforced. No specified step-in provider is identified though Rother District Council is stated to be a possibility. I note that elsewhere, even where an Agency such as Thames Water has responsibilities for water safety this is no guarantee that harmful consequences will be avoided. Thames Water was recently fined £2m after raw sewage polluted two Oxfordshire streams killing almost 150 fish. There were numerous failures in the operation of a sewage pumping station which resulted in an incident that was both foreseeable and avoidable. Thames Water had failed to respond to alarms raised.

How will the long term integrity of the Pevensey Levels be preserved or enhanced as required under the NPPF if BEX 9 remains a part of the DaSA? The inability of proposals made to meet the HR/PoW requirements beyond reasonable scientific doubt over the lifetime of the project and the pre-eminence of Habitats Regulation requirements above all other town planning considerations directs that BEX 9 should be removed from the list of development sites in the DaSA.

I submit that Policy BEX9 (site BX116) be removed from the list of development sites in the Local Plan.

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