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Mr. T. Dixon
c/o Ford Enterprise Hub
4 Barons Close
Westergate
Chichester
West Sussex
PO20 3YS

29 December 2009

Your Ref:

Please ask for:
Karl Roberts
Strategy Department
Direct Dial: 01903 737760

Our Ref: KR/SDB

Dear Mr. Dixon,

Maladministration Relating to Arun District Council's Local Development Framework

I refer to your e-mail and enclosures in respect of the above.

Firstly, may I apologise for the excessive delay in responding. In response to the issues you raise I will attempt to provide a response to each point below. However, before doing so I believe it would be beneficial to make a few general observations first which might assist.

A key element of the current system of 'plan making' is that it is very structured around the creation of an 'evidence base'. Councils are strongly encouraged to use this evidence base to determine the location of new strategic developments. As a result when a preferred Core Strategy is eventually considered at an Examination In Public, the Inspector will focus on whether the identified strategy is 'sound' i.e. based on what the evidence base says, rather than whether there are alternatives that other parties might favour.

Running in parallel to developing Local Development Frameworks with each Authority there has been a separate initiative from the Government of creating a number of 'Eco-Towns' around the country, which included Ford. The Council's response to this was two fold. Firstly, to create a Select Committee of the Council to review the Ford Eco-Town proposal and secondly to include a possible allocation of approximately 5,000 houses at Ford as an option in its 'Options for Growth' consultation exercise.

At the time of writing this letter the Council has concluded its Select Committee review which has resolved that the Ford Eco-Town proposal is not acceptable because the disadvantages of the scheme significantly outweigh the identified advantages. The final Government report in selecting preferred Eco Town sites came to a similar conclusion. Whilst all the evidence collated for this process has been beneficial and informative in developing a Core Strategy for Arun, the two processes are quite separate.

Arun in preparing its own Core Strategy has commissioned a considerable volume of work to inform what should be the preferred Core Strategy for the area. Whilst this process has yet to be completed the evidence collated to date generally supports the conclusions of the Select Committee that Ford is not an acceptable location for the scale of development proposed.

However, again at the time of writing the Council has yet to formally conclude on the acceptability (or otherwise) of any of the options that were included in its Options for Growth consultation exercise.

On the issue of Member conduct the Standards for England have made it clear in its occasional paper of August 2007 'Predisposition, Predetermination, Bias and the Code' and in the advice from Philip Sales QC, copies of which I enclose, that Councillors who are not a party to a decision to be taken (e.g.; do not sit on the relevant decision-making Committee/Cabinet), but whose Ward is affected by the decision, may make representations to the decision-makers seeking to persuade them to act in a particular manner. Furthermore, Councillors involved in decision making are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments.

Councillors seeking election by declaring to the electorate, what their policies will be if they are elected, are not then barred from participating in decisions on those policies provided they are prepared to fairly consider all relevant information when making those decisions.

Councillors involved in formulating policy are also permitted to participate in decisions implementing those policies.

There is a distinction to be made between permissible policy pre-disposition in relation to a proposal and impermissible pre-determination of that matter. Indeed Philip Sales QC adds that local government is in place to promote and administer its own already adopted policies and objectives.

The setting up of the Select Committee and its conduct of the process is a clear demonstration by Arun that in their exercise of decision making Councillors have genuinely addressed themselves to the relevant issue to be determined by them (weighing relevant considerations, ignoring irrelevant considerations) taking into account their policy on that issue and giving weight, which might be considerable to it, but being prepared fairly to consider also whether the policy they wish to promote should be adjusted, or not applied, in the light of any detailed arguments and representations concerning the particular facts of the case for decision.

Turning now to the specific points raised in your e-mail I make the following specific points using your titles for ease of reference.

Formation of 'Council-led community campaign'

Having looked at the Minutes of Cabinet of the 12th May 2008 it would have been clearer to have said 'the Minutes of the Special Meeting held on the 14th April 2008 were approved and it is noted that Council resolved to amend the recommendations as shown in the Council minutes of the 30th April 2008. The substance of this amendment must be considered in the context of the reports to which the Minutes relate. The report of Officers to Cabinet on the 14th April 2008 clearly uses the phrase 'principle of' in the recommendations, although the content of the report concerns itself mainly with 'process' and indeed the report goes on to recommend a Select Committee be established to consider the merits (or otherwise) of the Ford Eco Town. This would have been a strange step to take if the intention had been to object to the principle from the outset. The interpretation also accords with an earlier Cabinet resolution from the 9th January 2008 that 'the Council expresses its opposition to any Eco Town proposals other than through the LDF process.'

Cabinet Members at their meeting on the 14th used the same words as those set out in the Officer's recommendation. At the Full Council meeting on the 30th April 2008 there was a detailed debate and it was resolved to amend the recommendation from Cabinet so that 'the principle of' became 'the process of'. This was proposed and seconded by Members of the Cabinet. The collective decisions of Cabinet at the meeting on the 14th April 2008 cannot be taken as evidence that they as an individual Councillor have pre-determined themselves in the matter which is under further consideration by Full Council.

It is perhaps worth adding that where the powers of Cabinet or a Committee are to consider a matter and make a recommendation to Council that is no more than a preliminary view by the Councillors involved in making the decision comprising of the recommendation. It is then for those Councillors along with all Councillors present at the subsequent Council meeting to consider that recommendation in the light of all the relevant information available at that time.

Appointment of Select Committee

Whilst you seek to create a linkage with the Cabinet Members it was Full Council as a collective body who confirmed the appointment of members to the Select Committee.

Relationship with Developers

The article provides a context for how this particular scheme might fit in with the wider regeneration agenda for Littlehampton.

Predetermination of LDF

The consultation version of the Regional Spatial Strategy included reference to development being focused towards sustainable urban extensions within the district. It is considered entirely appropriate for the Council to express a view when asked on whether it agreed with the proposed additions to the RSS. To do otherwise would have left the regional bodies without an understanding of what Arun's position was.

LDF Project Board – Predetermination

This as the name suggests is a project board, the role of which is to project manage the process of moving towards the creation of a Core Strategy. It is not a formal Committee of the Council.

Withholding key documents from the LDF Core Strategy Options for Growth Consultation

The document to which you refer was commissioned to aid the Select Committee's understanding of the potential economic impacts of the Ford Eco Town, it was not commissioned per se as part of the Core Study evidence base, although it's existence helps to build up a better understanding of the impacts both positive and negative of 5000 units at Ford.

My understanding is that the document is and always has been available on the Council's website on the Eco Town pages.

Bias in the dissemination of information

In your e-mail you refer to the response received from the Council Leader – Councillor Gill Brown to your e-mail of the 8th December 2008. This was a very full response and I note you do not raise any new issues other than to question whether the practice continues. I do not therefore believe I can add any other useful response other than to say that since virtually all information held is subject to the Freedom of Information Act and could have been made available to a third party without the original recipients' knowledge. Therefore blind copying makes very little difference to the availability of information in the long term. I do note however, what you say about the perception that might be inadvertently given in using the blind copy function.

Relationship between Arun District Council and the Campaign Against Ford Eco-Town (CAFÉ) action group

I note from the bundle of enclosures you kindly provided that this issue was responded to by Sue Fairs Browning on the 23rd September 2008 under point 3. Having re-read that communication there is nothing I feel I can usually add.

Councillors participating in an election campaign opposing an Eco Town

Again, you received a lengthy response from the Leader of the Council on the 19th May 2008 which addressed the issue you raise. Members are governed by a Code of Conduct. As far as I am aware no formal complaint has been made to the Council's Standard's Committee nor the Standards Board for England. I do not believe therefore there is anything I can usefully add to the conclusions on the point as set out in the enclosures, other than to say if the Councillor seeking election is not predetermined then clearly neither are those who deliver that members election material.

Councillor Dr Walsh – position

Members are governed by a Code of Conduct. As far as I am aware no formal complaint has been made to the Council's Standard's Committee nor the Standards Board of England. I will copy this section of your complaint to Dr Walsh to give him the opportunity to offer any additional comments. I will therefore respond further on this point under separate cover.

Cabinet Member for Planning – Predetermination

Under this section you refer to the location of exhibitions held in 2005. Karen Dower – Policy Manager gave at the time what I regard as a sensible response to your enquiry. I do not believe it is necessary to replay a debate from 4 years ago.

The transcript you have provided is of the programme as broadcast. Following Councillor Bower's own concerns that the interview had been edited, the BBC was asked by the Council to provide a copy of the unedited recording of the interview. The BBC advised that they did not have the unedited recording.

Again, as far as I am aware no formal complaint has been made to the Council's Standard's Committee nor the Standards Board of England. In any event I understand Councillor Bower made a very full apology at the time for any distress his participation in the BBC programme may have caused.

My understanding is that the apology offered contributed to the view that it was reasonable in the circumstances for Councillor Bower to resume Chairmanship of the LDF Sub-Committee.

However, the point you raise does illustrate how careful Officers and Members need to be in the choice of words they use not to create the wrong perception and to seek some control over the content of the broadcast.

Secret Discussions with Hallam Land Management Regarding LDF Option 3

As you are aware Officers of the Council had no discussions with Hallam Land Management about possible development at Westergate between early 2007 and early 2009.

The Options for Growth consultation exercise was an opportunity for the public to comment on a range of development options being considered by the Council, and was not intended as an opportunity for third parties to critique and comment on each others representations.

To answer your specific question I do not believe Councillor Bower was aware of these proposals when he made his TV appearance since he was not involved in the 2007 Officer discussions and the TV appearance pre-dated the 2009 representations.

Recent Core Strategy Options for Growth consultation

You make reference to the level of responses in some areas being very low. However, the level of response will obviously be influenced by the size of the population in the stated location and also to what degree the location might be affected by the proposals. Overall, the level of response received was welcomed and compared well with similar exercises undertaken by other Councils.

With regard to the other points you raise the printed copies were intended for those who didn't have access to the Council's website or who could get to the Council's offices.

It was unfortunate that announcements were made about putting the consultation questionnaire in the 'Arun Times' before the practicalities and cost of doing so were understood.

In terms of timing the displays/information were available on the Council's website and two evening sessions were held at Council offices. The location of the exhibitions was determined having regard to what was in the Options for Growth document. The locations were not chosen having regard to the HLM proposals because Officers were consulting on the Council's Options for Growth, not individually promoted schemes, and the location of the exhibitions were central to the 'area of search' in Option 3.

Overall in terms of consultation it is always possible to do more and as a Council we always seek to learn from what we do. That being said the Council also has to balance the likely benefits of additional consultation and anticipated responses rates with the cost of doing such.

Conclusions

As you will be aware the Council has yet to conclude its deliberations on the evidence base that is being developed to inform the development of the Council's Core Strategy. That being said a number of the documents now available do point towards Option 2 of the three options being the least favourable. It is therefore likely that at sometime early in the New Year that Members will be asked to debate and make a decision on a recommendation to reject Option 2 as a possible location for a strategic housing allocation.

The Council believes the approach it has taken in respect of its 'Options for Growth' consultation has been correct. You contend that 'the Council has deliberately avoided proper consideration of LDF Option 2'. Yet the Council has consistently included Option 2 in all of the evidence base that it has commissioned. Furthermore, the Council has yet to make any formal decisions regarding Option 2. Therefore based on the totality of the Council's actions to date I consider your complaint to be unjustified. That being said the Council always seeks to learn from what it has done to determine if there are ways in which it could have been done better.

The Council has treated your letter as a Stage 1 complaint and has concluded that the complaints contained therein are not justified. You have a right to ask for this complaint to be escalated to a Stage 2 complaint in which it would be reviewed by an Officer outside the service.

Finally, I have also been asked by way of conclusion to also seek some clarification. I note your letter of complaint is co-signed by John Penfold who is also Chairman of Aldingbourne Parish Council. I assume Mr Penfold is a signatory to the letter in a private capacity. Obviously any promotion of one option would potentially benefit from the rejection of another option. I note from the minutes of Aldingbourne Parish Council that Mr Penfold did not declare an interest in matters relating to the Core Strategy and also stated at a meeting with myself, the Chief Executive, the Parish Clerk and the District Councillors that he was no longer associated with the proposal affected by Option 2, yet he appears as a co-signatory to this letter. The Council would welcome a response on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Karl Roberts', with a horizontal line underneath it.

Karl Roberts
Assistant Director
Planning Services & Housing Strategy

copy to: Ian Sumnall, Chief Executive Officer (by e-mail)
Wendy Ashenden-Bax (by e-mail)

Group Leaders

Cllr Mrs. G. Brown (by e-mail)
Cllr S McDougall (by e-mail)
Cllr M Northeast (by e-mail)
Cllr Mrs S Olliver (hard copy)

Ward Members

Cllr Mrs M Briggs (by e-mail)
Cllr Mrs J Goad (by e-mail)
Cllr D Maconachie (by e-mail)
Cllr Dr Walsh (by e-mail)

Mr H Cleary – CLG (by e-mail)
Planning Inspectorate (by e-mail)
Local Government Ombudsman (by e-mail)