

Emily Clapp

From: Baugh-Jones, Hayden <[REDACTED]>
Sent: 10 February 2025 16:49
To: Berkeley, Simon
Subject: Mid Sussex letter
Attachments: Mid Sussex letter 060225 H.docx

Hi Simon,

Louise has done a re-draft. I have had a gander at it and made a few minor comments (and picked up typos). Overall, I think it's better and more focussed than the previous version, albeit it remains quite lengthy. It could perhaps also be a little more tactful in places.

I'd appreciate your views before I respond to Louise.

Hayden

Hayden Baugh-Jones
Inspector Manager

Local Plans Group 2

Emily Clapp

From: Berkeley, Simon [REDACTED]
Sent: 17 February 2025 15:52
To: Nurser, Louise
Cc: Baugh-Jones, Hayden
Subject: Mid Sussex letter
Attachments: Mid Sussex letter 060225 H.docx

Hi Louise

I've read your draft letter to Mid Sussex. I think you're right to follow the path you have – from what you've said, it does appear to me that they have failed the DtC.

I've made some suggestions and comments on the attached tracked changes draft. Nothing earth-shattering! Have a look and see what you think. I have commented that the first five pages (or thereabouts) are taken up setting out in detail what the legislation and national policy/guidance says. I don't think this is necessary and could be deleted or trimmed down significantly – but, at this stage, it's all about remaining as safe as possible from challenge, and this doesn't cause a problem in that regard. Plus, I think issuing the letter expediently is a priority now. So I'll leave you to ponder that!

Hope that helps. Any queries, do give me a shout. 😊
S

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DPC:76616c646f72



Dear Mr Marsh

1. Firstly, I would like to thank you for the way in which your team, together with other participants have engaged and helped me with my examination of the Mid Sussex District Plan 2021-2039 (the Plan). I apologise for the delay in responding.
2. As you are aware I have been appointed by the Secretary of State to examine the Plan, not only in relation to whether it meets the tests of soundness, as set out in the September 2023 version of the National Planning Policy Framework (Framework) but also whether it is legally compliant.
3. In my initial letter of August 7, 2024, I set out that I would examine the Plan in two stages as there were some fundamental issues, including the Duty to Co-operate (DtC), that required testing before I could be confident that I could move to the Stage 2 hearings.
4. Following the end of the Stage 1 hearings I asked for various additional pieces of work to be provided to the examination. This included, ~~amongst which I asked that you provide~~ any detailed evidence in relation to the DtC which you had not previously submitted, including copies of relevant agendas and minutes of meetings (AP0013). This was to ensure that you were given every opportunity to demonstrate that you had co-operated with the relevant prescribed bodies and complied with the DtC. I am now in receipt of the this and the other additional work¹ ~~which I requested following the close of the Stage 1 hearing sessions~~.
5. I am aware that no neighbouring authority nor any other prescribed body has suggested that Mid Sussex had not met the legal duty. I also note and that signed Statements of Common Ground have been received relating to all the neighbouring Councils and some, ~~but~~ although not all, of the prescribed bodies. ~~During the hearing sessions I queried whether this was significant and was told that I should give due weight to this, but that it should not be determinative as it is a matter for my judgment.~~

¹ Including the consultation responses to AP-018.

6. ~~Nevertheless. Unfortunately,~~ in relation to the strategic matter of the unmet housing needs of neighbouring LPAs, I have now concluded that found the Council has not met the DtC, in its preparation of the Plan. A failure to meet the DtC is fatal to the progression of a Plan and cannot be rectified following submission.

Duty to Co-operate

Legislation

7. Section 33a of the Planning and Compulsory Purchase Act (P & CPA 2004) sets out the legal obligations ~~incumbent~~ on local planning authorities (lpas), amongst others, with regard to the DtC in relation to the planning of sustainable development.

8. As you are aware as part of my examination of the Plan, I must be content that the lpa has complied with any duty imposed on the authority by S33a of the P & CPA 2004.

- ~~9. Mid Sussex District Council (MSDC) is a local planning authority. The duty is not discretionary, and therefore this legal obligation relates to it, in its preparation of development plan documents, and other activities related to their preparation as far as they relate to a strategic matter.~~

- ~~10.9.~~ The DtC requires that local planning authorities must co-operate in maximising the effectiveness with which activities are undertaken.

- ~~11.10.~~ The DtC ~~It also~~ requires every person, such as in this case, MSDC, to engage constructively, actively and on an on-going basis in any process, by which means activities, including local plan preparation, is undertaken. This legislation has remained in force throughout the preparation of the plan. As such, MSDC must have complied with it. It also requires MSDC to have regard to the activities of others, as long as they relate to a relevant strategic matter.

- ~~12.11.~~ A strategic matter is defined, amongst other matters, as a use of land that would have a significant impact on at least two

Commented [SB1]: I'm making some changes to the way the headings/sub-headings are formatted just as a suggestion - with the aim of making it easier to understand exactly where one (the reader) is in terms of what's being dealt with - if you see what I mean.

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planning areas. ~~The matter of unmet housing needs is generally considered to be such a matter.~~

Commented [SB2]: Maybe delete from here as this is picked up under the Framework section below.

~~43.12.~~ Engagement requires *considering* agreeing joint approaches to undertaking activities. This includes the preparation of joint local development documents under section 28 of the PCP.

~~44.13.~~ In undertaking the DtC, the Act requires that regard must be had to the guidance in complying with the DtC provided by the Secretary of State. This guidance is set out in the Framework and the Planning Practice Guidance.

The Framework

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~~45.14.~~ Paragraphs 24- 27 of the Framework, set out how the DtC should be implemented. It stresses the importance of effective and on-going joint working between strategic policy-making authorities and relevant bodies as being integral to a positively prepared and justified strategy. Of particular relevance to the Plan, is that joint working should help to determine whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

~~46.15.~~ It notes that Statements of Common Ground (SoCG) should be prepared and maintained by strategic policy making bodies throughout plan preparation to demonstrate effective and on-going joint working. These should document cross boundary matters which are being addressed throughout the plan preparation process; the progress in co-operation; and be publicly available throughout the plan-making process.

Planning Practice Guidance

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~~47.16.~~ The Planning Practice Guidance (PPG) sets out the approach to producing SoCG and its content. This is as a means by which it can be demonstrated that a plan is based on effective co-operation, that the lpa sought to produce a strategy based on

Commented [SB3]: Small point - you switch between caps and lower case with this acronym - better to choose one and stick to it.

agreements with other authorities and provides further detail on how the DtC is to be implemented.

~~18.~~^{17.} The PPG explains in detail what is expected to be contained within a SoCG. ~~See~~ This includes, as appropriate; identifying the key strategic matters to be addressed; governance arrangements; housing requirements in emerging or adopted plans; how needs are to be distributed or agreeing the distribution of need across the area; a record of agreement or disagreement on key strategic matters, and the process for reaching agreements; any other additional strategic matters; and how the SoCG relates to other relevant SoCG. The SoCG is to be concise and proportionate to the matters addressed, and not to record every interaction.

~~19.~~^{18.} The SoCG are expected to set out the capacity within the strategic policy making areas to meet their own needs; the extent of unmet need; and any agreement or not, on the extent to which these needs are capable of being redistributed. Whilst it is expected that only one SoCG need be produced, it is possible to produce more than one.

~~20.~~^{19.} The SoCG are envisaged to document the activities undertaken in co-operating in addressing strategic cross boundary matters. The PPG sets out a list which is not exhaustive, of what LPAs should document. Namely, working together at the outset of the Plan making process to identify cross-boundary matters that will need addressing; producing or commissioning joint research and evidence; assessing impacts of emerging policies; and preparing joint, or agreed, strategic policies affecting more than one authority area to ensure development is coordinated, such as through the distribution of unmet needs.

~~21.~~^{20.} The geographical area will depend on the strategic matters being planned for, informed by a review of the strategic matters, and early engagement with neighbouring authorities and other stakeholders, based on demonstrable cross boundary relationships. This can include housing market areas and authorities should be pragmatic in determining the areas. The PPG sets out how housing market areas can be defined, including through migration flows and housing search patterns.

~~22-21.~~ SoCG are expected to be available throughout the plan making process, including as a minimum, once the area it covers and governance arrangements have been defined, and the matters to be addressed are determined. SoCG should be available when a draft plan has been published.

Commented [I4]: Not sure I understand this first sentence

~~23-22.~~ Authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.

Commented [SB5]: A general point: up to this point the letter is basically setting out in meticulous detail what the legislation and national policy/guidance say. It's not a problem (in terms of challenge) but I don't think it's necessary. Ideally this could be deleted - but I recognise the pressure to get the letter out asap, so in that context I'll leave it to you.

~~24-23.~~ The PPG is explicit that inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or do not rely on the inspector to direct them. It also reiterates that the DtC cannot be rectified post submission.

Plan Preparation

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~~25-24.~~ It is not clear when the review of the Plan began. In your Matter 1 hearing statement², the Plan review is reported as starting in 2020, yet the Council's most recent evidence has the process both beginning in July 2021³ and March 2022⁴. This lack of clarity is significant as the legislation requires ongoing engagement throughout the plan preparation process. As such, it is important to know when this is given the importance of identifying the cross boundary matters which need addressing at the outset of the plan making process.

~~26-25.~~ Notwithstanding the inconsistencies in your evidence, I have taken the July 2021 date set out in the chronology accompanying your response to Action Point 13 provided in November 2024, as the starting point for plan preparation. The preparation of the Plan ended at its submission of the Plan on July 10, 2024. Therefore, it is this

²² MSDC Matter 1: Paragraph 1.5.

³ AP-013 Appendix E.

⁴ AP-013 Appendix A1 page A1-3

period which is relevant for my determining MSDC's compliance with the DtC.

Background and context-

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~~27.~~^{26.} A Duty to Co-operate Framework was produced in 2015⁵ and is considered by the Council to remain relevant to the Plan. However, this has not been updated nor has the **Duty to Co-operate Protocol and Checklist** been adhered ~~to~~. ~~to, c~~Consequently, there is no little direct evidence to demonstrate how co-operation has maximised the effectiveness of plan preparation.

Commented [SB6]: I'm not sure what these things are - but so long as the lpa is aware (presumably there will be), that's probably not an issue.

~~28.~~^{27.} There are a number of strategic matters such as transport, or habitat considerations where I am confident that, whilst there may be some soundness issues which require addressing, the DtC has been complied with. Similarly, whilst I note that the Council has not provided signed SoCGs with all of the prescribed bodies set out in legislation, I do not consider this to have been determinative in my judgment as to whether the Council has met the DtC.

~~29.~~^{28.} However, the extensive unmet housing needs of neighbouring authorities has historically been a strategic issue in the sub-region that has required active, on-going and constructive engagement, and remains relevant to plan preparation.

~~30.~~^{29.} This is clearly articulated in Policy DP5 of the adopted Mid Sussex District Plan 2014-2031⁶. **The examining Inspector for that plan**~~This which was inserted by the examining Inspector. It~~ required the Council to undertake a prompt review of the Plan and to work under the 'Duty-to-Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed need for housing across the Housing Market Areas. As such, I am primarily concerned with how the Council has complied with the DtC in relation to housing.

Commented [I7]: Would this read better?

Sub-regional co-operation-

Commented [SB8]: Maybe add a v brief para after the sub-regional heading saying something like: There are some (two?) bodies in the sub-region with which the LPA could, theoretically, have engaged under the DtC as a means of engaging with neighbouring local authorities. The issue here is whether the LPA did that and, if not, whether the necessary engagement was undertaken directly with the neighbouring local authorities.

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⁵ DC2

⁶ BD1

~~34~~30. Great onus is given to the West Sussex Greater Brighton Planning Board (WSGB) within the submission Plan. It is explicitly mentioned within the emerging Plan within the Background and DtC sections as an important strategic body within the wider sub-region. As written, it appears to be an active vehicle for navigating the DtC and is cited as an example of 'ongoing work'⁷ and is extensively referenced and relied upon within SoCG with individual authorities as well as the Northern West Sussex SoCGs.

~~32~~31. It was also cited in the DtC Compliance Statement⁸ as one of the formal groupings with which the Council has engaged. I was led to expect that a SoCG with the Board would be submitted to the examination. During the hearings I requested a paper setting out why this had not been provided, given the importance seemingly given to it within the Plan and the Council's hearing statement. This detailed paper⁹ which was signed at officer level some five months after the submission of the Plan dispels the notion that the ~~WSGB~~ could have been a vehicle for cross boundary co-operation during most of the time when the Plan was being prepared. Moreover, it reported that in December 2023 the **officers** agreed that the group could not support the development of the current wave of local plans in the region¹⁰.

Commented [SB9]: Is that the Board's officers? If so, might assist to clarify.

~~33~~32. This is not surprising given that the last time the Board met was in March 2021¹¹. The Regulation 18 consultation took place over a year later in the following November 2022. Therefore, from March 2021 by which time your most recent evidence suggests Plan making had not even begun¹², the Board had not been an active group. As such, **it could not have engaged constructively, actively and on an ongoing basis with Mid Sussex in plan preparation**. Consequently, it should not have been relied upon or prayed in aid to demonstrate the compliance of the Plan with the DtC in either the Regulation 18 or

Commented [SB10]: Should this be the other way around - that Mid Sussex could not have engaged with the Board ... given that it's the Ipas compliance with the DtC that we're talking about here.

⁷ DP1, pages 10, 11 and 23.

⁸ DC1, paragraph 4.

⁹ AP-011

¹⁰ AP-011 page 9, paragraph 43.

¹¹ AP-013 Appendix A3, page A3-9.

¹² AP-013 Appendix E, page 3.

Regulation 19 plans or the evidence which has been provided to the examination.

~~34.~~33. My understanding is that work on future strategic planning issues has been '*paused*', albeit this has been for years rather than months, but nonetheless it has not been '*abandoned*' by the Board.

~~35.~~34. I am aware that West Sussex and Greater Brighton Planning Officers Group met a further three times during this period. However, no minutes¹³ have been provided to demonstrate how, or if at all, these meetings contributed to ~~maximise~~maximising the effectiveness of plan making with particular relation to the distribution of unmet housing needs.

Gatwick Diamond Board

~~36.~~ The Council's Chronology of the DtC only mentions the Gatwick Diamond Board twice: once in a DtC meeting in October 2023, prior to Scrutiny Committee's consideration of the consultation Plan and latterly after the Regulation 19 consultation had completed. By this time there was little scope for any change to the strategy of the Plan. There is nothing within the agenda or minutes which have been provided to suggest that the Board played an active role in proactively considering unmet needs and the role of Mid Sussex's Plan.

Overall

~~37.~~ThereforeGiven the above, it is clear that neither of the two sub-regional bodies has played an active role in influencing plan preparation, including, addressing unmet housing needs within the sub-region.

35.

~~38.~~36. As such, they have not been vehicles to maximise the effectiveness of Plan making. Put simply there has not been a sub-regional body which has taken a strategic overview to help distribute housing within the sub-region so the unmet needs of households can be provided for, ~~so that people have somewhere to live.~~ However, this lack of active wider sub-regional bodies does not

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¹³ Ditto, page A3-10.

obviate the Council from its legal responsibilities in relation to the DtC ~~which I address below.~~ The question then, essentially, is what steps the LPA took to discharge those responsibilities directly with neighbouring local authorities. I turn now to consider this

Co-operation with neighbouring local authorities

Outset of plan preparation-

~~39.~~37. The Council met with all neighbouring authorities in the autumn of September 2021, setting out their approach to its call for sites, its housing requirement, and accepted that unmet need from other authorities would be needed to be factored in. At face value the approach seemed consistent with the PPG as further individual meetings were to be scheduled in relation to the DtC and a consultation undertaken on the Site Selection Methodology to be used. This was to be amended on an iterative basis.

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Rest of plan preparation to submission

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~~40.~~38. There is little evidence to suggest that this active, constructive engagement continued an on-going basis throughout plan preparation which I explore below.

~~41.~~ I am aware that a considerable proportion of the SoCG were submitted well after the submission of the Plan and what could reasonably be considered to be in the spirit of the guidance set out in the PPG. Nonetheless, whilst the late production of SoCGs is indicative of the seriousness of the Council's approach to engaging with the DtC, it has not been determinative in my decision relating to its legal obligation.

~~39. Co-operation with individual neighbouring authorities.~~

Crawley-

~~42.~~40. Crawley lies to the northwest of Mid- Sussex and together with Horsham and Mid Sussex form the NWHMA. The Borough has

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long established difficulties in meeting its own needs due to the constraints of an intensely developed urban settlement with little opportunity for additional growth. Indeed, the Mid Sussex adopted Plan (BD1) attributes an additional housing requirement of 1,498 dwellings to help meet Crawley's unmet needs. Nonetheless, Crawley remains unable to meet all of its own needs. ~~Recently,~~ Crawley's local plan was adopted in 2024. This established that there was an outstanding need from 2023- 2040 for 7,505 dwellings which cannot be catered for within its own boundary. This situation is unlikely to change in the future.

~~43-41.~~ Mid Sussex was formally approached in January 2020 for help in meeting Crawley's needs prior to the plan preparation beginning, and again in April 2023, well before the ~~final version of the~~ Regulation 19 draft of Mid Sussex's LP was finalised in November 2023, and the Regulation 19 consultation itself in January 2024. Consequently, the principle of it having substantial unmet needs has been known prior to and throughout the preparation of Mid Sussex's Plan and indeed is central to the review of the Plan required by Policy DP5 of the adopted Plan.

~~44-42.~~ Your Council's response to both formal requests has been to state that it is committed to working with Crawley in a positive manner. However, the first letter stated that any consideration of unmet needs would have to be in the context of Mid Sussex reviewing its own plan and querying whether Crawley had exhausted all opportunities to increase capacity. The second set out how Mid Sussex had shared its Site Selection Methodology (SSM), held briefings to share the initial outcomes of the Site Selection Process, and commissioned an Urban Capacity Study. It also set out the extent of any surplus in capacity. However, it did not take a positive approach to addressing unmet needs, as it was '*not in a position to confirm the total deliverable housing in the District and therefore the amount of housing it may be able to provide to meet unmet need*¹⁴'. This was not the positive engagement required; rather a means to rebuff any request.

Commented [SB16]: I wonder if this is quite the right thing to say? Is the point here that that was the end of co-operation with Crawley - no further, ongoing or constructive engagement was undertaken once the potential capacity to assist was known, such that Crawley's approach was, in effect, ignored? If so, might be better to put it that way.

¹⁴ AP-013, Appendix 7, letter of 20 June 2023.

~~45.43.~~ A SoCG¹⁵ with Crawley was submitted to the examination over two months after the Plan had been submitted and I have not been provided with earlier iterations. This SoCG was provided well after what could be considered a reasonable delay, particularly as the consultation on the Regulation 19 version of the Plan, had taken place at the turn of the year, after which there was little opportunity to influence plan preparation. The SoCG refers to the historic work which has been undertaken prior to the commencement of work on the Plan and the wider Northern West Sussex HMA¹⁶, which I consider below. A number of shared objectives are set out. It is agreed that a *'robust and appropriate SHMA has been completed for each local authority'*, and that MSDC has shared and invited comments on the site selection process.

~~46.44.~~ Nonetheless, I have interpreted the phrase *'that **each** considers that they are doing the maximum reasonable to meet the housing needs'*, in the context of Crawley's Regulation 19 response to DPH1: Housing. Here Crawley set out a number of concerns relating to the submission Plan, including a recommendation that, *'all potential sources of housing supply which might contribute to meeting identified needs are proactively explored...'*¹⁷. This clearly suggests that Crawley did not consider that Mid Sussex was doing the maximum reasonable to meet the unmet housing needs which Policy DP5 envisaged and the DtC requires.

~~47.45.~~ Moreover, the SoCG sets out that both authorities will engage with other DtC forums and references future work. Whilst this may be sensible, it is not relevant to the examination of the Plan as the DtC ~~can~~ only relates to activity up to submission.

~~48.46.~~ In sum, notwithstanding the examples of cross boundary work which have taken place, such as the co-operation relating to the allocation at Crabbet Park which falls on the boundary between Crawley and MSDC, and whose housing will contribute to MSDC's housing requirement, I am not convinced that Mid Sussex has engaged constructively, actively and on an ongoing basis during plan

¹⁵ DC6

¹⁶ DC3 and DC4

¹⁷ Crawley Borough Response to Regulation 19 consultation.

preparation to help Crawley with its extensive and widely anticipated, on-going unmet housing needs.

~~49-47.~~ Indeed, the LPA ~~it~~ has not committed to providing a definitive quantum of housing for Crawley's needs, ~~rather instead~~ relying on whatever is left once Mid Sussex's own needs have been provided for. This is the antithesis to the approach set out in Policy DP5 of the adopted Plan, and reflecting the legislation underpinning the DtC which would require a planned, strategic approach to be taken to wider housing needs.

Commented [SB17]: I'd delete this - the policy isn't really the point, better to focus on the legislation (and ref the policy after, perhaps?)

Horsham

~~50-48.~~ To the west of MSDC is Horsham. Historically, with Mid Sussex, it has met Crawley's unmet housing needs within the Northern West Sussex Housing Market Area (NWSHMA). Following Natural England's Position Statement, published in late 2021 there are unresolved issues, which do not form part of my examination, relating to water neutrality and housing provision. A small part of the Mid Sussex's boundary with Horsham falls within the Water Neutrality Zone. However, Horsham is extensively affected, and its position is that it cannot meet its own housing needs in full or help meet Crawley's unmet needs.

~~51-49.~~ This position would have been evident early in Mid Sussex's plan preparation and there may have been an opportunity for Mid Sussex to work constructively to address some of those needs. Indeed, in August 2022 Horsham wrote to your Council suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology be reappraised¹⁸. I am aware whilst any site taken forward as a result of the Regulation 18 and Regulation 19 consultations were considered, no further sites were allocated throughout the plan preparation process.

~~52-50.~~ Following a meeting in August 2023, it was not until November 2023 that Horsham formally requested the help of Mid Sussex to cater for the excess 2,275 homes for which it considers that it cannot identify sites without falling foul of the Habitat

¹⁸ AP-013- Appendix A2.

Regulations. However, by this time the strategy of the Plan had been set, albeit the Regulation 19 consultation had not begun.

~~53-51.~~ I note that Mid Sussex did not formally respond to Horsham's request, sent in late November 2023 until early March 2024. This was over three months later and after your Regulation 19 consultation had been completed. By this time there was little opportunity to maximise the effectiveness of plan preparation.

~~54-52.~~ Moreover, whilst the letter was full of goodwill and commitment to continuing engagement, citing Mid Sussex's sharing of its SSM and its maximisation of its housing supply, it did not provide any meaningful evidence of what, if anything, Mid Sussex could do to help Horsham. Rather it relied on the imprecise and vague approach to meeting unmet needs within the ~~Northern West Sussex Housing Market Area (NWSHMA)~~ set out within the Housing SoCG which I consider below.

Northern West Sussex Housing Market Area

~~55-53.~~ The Northern West Sussex authorities of Horsham, Crawley and Mid Sussex have~~s~~ long been recognised as an established Housing Market Area (HMA)¹⁹. They have a long history of working together with a wider remit than housing. However, my examination of the Plan and the DtC in relation to the planning of sustainable development can only relate to the period between the commencement of work on the Plan and its submission in July 2024. A General SoCG²⁰ was signed in July 2024 but received after submission of the Plan.

~~56-54.~~ I appreciate that a joint Plan has not been taken forward. In common with my fellow inspectors who examined Crawley's Plan, I consider this to be reasonable in the circumstances of each of the three authorities starting their plan making at significantly different times.

~~57-55.~~ Other than the Water Neutrality work²¹, much of the joint activity and evidence bases to which I have been referred, including

¹⁹ Para 1.5, H1

²⁰ DC3.

²¹ ENV13.

the At Crawley Study 2009²², predates the commencement of the emerging Mid Sussex plan and the emergence of the current wider sub-regional issue of unmet housing need.

Commented [SB18]: The Plan?

~~58-56.~~ I also note that the three authorities reference working positively together as part of the WSGB and the GDB to demonstrate their compliance with the DtC. However, as already established the WSGB has had a diminished, or indeed no role during the time in which the Plan has been prepared.

Commented [SB19]: Not sure what this is

~~59-57.~~ The three authorities have also signed a specific SoCG relating to housing²³. Again, this leans heavily on historic joint evidence bases such as the Housing Market Appraisals (HMA) which confirm that the three local authorities make up the principle HMA for each authority. This SoCG makes explicit that the DtC remains relevant with an unmet housing need of 8,947 dwellings within the three authorities.

~~60-58.~~ However, it does not set out in a convincing manner how their engagement increased the effectiveness of plan making, such as setting a definitive figure for or even a range of the quantum of housing which Mid Sussex should provide to contribute towards unmet needs.

~~61-59.~~ The SoCG suggests that at the time of its signing, after the submission of the Plan, that Mid Sussex has a headroom of 1,208 dwellings. However, there is no consideration of how this surplus would be distributed between the two lpas. Nor ~~7~~ has a fixed quantum of development which could be relied upon been set and an explanation of how it would relate to any annual requirement and subsequent monitoring. This is particularly important, given that the oversupply figure is also expected to contribute to the resilience of MSDC's own housing supply, to be drawn on by MSDC in the event that were some of the sites within the Plan do not to come forward²⁴.

~~62-60.~~ This lack of clarity is pertinent as during the Pplan's preparation the surplus has varied from 302 dwellings at the

²² O12.

²³ DC4.

²⁴ DP1, DPH1.

Regulation 18 consultation (which was purely to ensure resilience for MSDC), to 996 dwellings in relation to the Regulation 19 plan, and finally after submission, within the agreed SoCG, the Councils suggest a headroom of 1,208 dwellings. All these changes have taken place without any additional allocations. Consequently, there must be a significant question mark as to how reliable any potential contribution would be in meeting unmet needs. Moreover, there is an unmet need of 59 pitches from Horsham of Gypsy and Traveller accommodation.

~~63-61.~~ Meaningful co-operation has been couched in terms of the difficulties in taking on unmet needs. Much effort has been put to setting out why the unmet pressures cannot be managed, such as the agreement that the authorities have 'worked to explain and understand each other's housing supply position' and that there were no further suitable sites close to the administrative borders. However, the ability to provide homes to meet the needs of neighbouring authorities should not be restricted to sites close to the boundary given the extent of the reach of the HMA within Mid Sussex.

~~64-62.~~ In coming to this conclusion, I am aware of the historic Mayfield site proposal²⁵ which would straddle the Horsham and MSDC border, with the majority of the proposed 10,000 homes provided within Horsham District. However, this has not had the support of HDC since before the beginning of the preparation of MSDC's Plan. Therefore, it has not been actively pursued and has been withdrawn from consideration by the site promoter.

Commented [SB20]: Not sure how this para is relevant?

~~65-63.~~ I note that each authority references their independence in relation to housing and employment targets and timetables for plan production citing their rights to develop their own plans that fit the specific circumstances of the District/Borough's communities. Clearly, this right is incontrovertible.

Commented [SB21]: Again, not sure how relevant?

~~66-64.~~ In sum, it seems from the minutes of the meetings provided²⁶ that there has been a disproportionate onus on the process of

²⁵ SSP3, site 678.

²⁶ AP-013, Appendix 2.

providing a signed SoCG for the three Councils, rather than maximising the effectiveness of plan preparation.

~~67-65.~~ However, the authorities are agreed that, in theory, any unmet needs within the HMA should have first call on any surplus capacity. Following this, once these needs have been provided for, those of the Coastal West Sussex HMA can be considered, and then those of other adjacent and nearby authorities. Meeting the needs of other neighbouring authorities outside of the priority order would only be acceptable where this can be justified by evidence and considered jointly with the NWS HMA members.

~~68-66.~~ Given the quantum of unmet needs in the HMA, at c 9000 dwellings, this would, in principle, make it highly unlikely that any other local authorities would ever be able to benefit from MSDC taking on any of their unmet needs. I note that this approach has previously been tested at examination in relation to Horsham and Mid Sussex's adopted Plan. However, Policy DP5 of the adopted Plan, makes explicit the importance of working to address unmet need in the sub-region.

~~69-67.~~ This includes working with all neighbouring authorities: an approach consistent with the legislation which requires a lpa to co-operate with every other person, in maximising the effectiveness of plan preparation, in relation to the planning of sustainable development. Moreover, in the context of the significant unmet needs elsewhere, which I address below, this position cannot be tenable moving forward, particularly, in the context of no active pan regional responses to the wider unmet housing need.

~~70-68.~~ Nonetheless, I note concerns were raised in early 2023²⁷ by Crawley that, in the absence of an active WGSB, other authorities should be invited to the NWSHMA to, '*demonstrate that the NWS authorities are not just looking inwardly at the NWS HMA but are actively pursuing and awaiting engagement from the Coastal Authorities.*' As far as I am aware this has not been done.

Commented [SB22]: Practice?

Commented [SB23]: In the wider sub-region, including beyond the HMA?

Commented [SB24]: Is this a ref to Policy DP5?

Commented [SB25]: I'd go careful here - you're assessing whether the DtC has been met, not whether lpas should be actually agreeing to address unmet needs.

Commented [SB26R25]: And this sentence appears to be about the future - which is not what you're looking at.

Commented [I27]: superscript

²⁷ AP-013, Appendix A2 Meeting 5 January 2023.

71.69. I have noted that in May 2024, by which time the strategy of the Plan had been established and it was ready to be submitted for examination, ~~that~~ it was suggested that the NWS authorities SoCG be sent to other members of the WSGB so as to, *'proactively prepare and circulate material before Plan submission which is in itself evidence of positive planning and meeting the DtC'*²⁸. On the basis that both MSDC and Horsham were about to submit their plans for examination this would not be evidence of ongoing engagement; rather an attempt to retrofit co-operation into the narrative. I am also aware that I have not been provided with any evidence of whether there was formal member on-going engagement in plan preparation.

Commented [SB28]: A nice phrase and you're probably right - but ... co-operation runs up to submission. Maybe something like: ... Given that both MSDC and Horsham were about to submit their plans for examination, it is difficult to see how this amounts to engagement of any meaningful sort. Rather, it seems to me that it was an attempt to focus the collective narrative around performance in relation to the DtC. That is not, in and of itself, co-operation under the Duty.

72.70. In sum, the housing SoCG suggests that it has not been possible to provide for unmet needs other than through any housing which is surplus to Mid Sussex's needs. This position is vague and is neither consistent with the objectives of the Framework nor those of Policy DP5 of the adopted Plan. Moreover, the SoCG appears to commit to working together to address unmet needs at a future date, citing the ~~w~~Water ~~n~~Neutrality as a ~~reason~~~~a~~ ~~issue~~ why needs cannot be met in full. This is something which the PPG counsels against and is not relevant to my consideration of the DtC and the preparations associated with this Plan.

73.71. Notwithstanding the signed individual SoCGs with Crawley and Horsham, I consider that the DtC has not been met with these two constituent authorities as MSDC has not engaged constructively, actively and on an on-going basis in plan preparation.

Other Neighbouring Authorities-

74.72. The latest HMA produced for MSDC is clear that there are in fact two other HMAs which overlap with the district²⁹. In addition, it is clear from the chronology of the DtC activities³⁰ supplied by the Council that outside of the NWSHMA that MSDC has not actively engaged other than in a cursory manner.

²⁸ AP-013, Appendix 2 Meeting 23 May 2024

²⁹ H1 Paragraph 1.8.

³⁰ AP-013, Appendix E.

~~75-73.~~ MSDC officers met with officers in the South Downs National Park (SDNP) in August 2022. Given its status as a National Park it is severely constrained and lies immediately to the south of the plan area for Mid- Sussex.

~~76-74.~~ To its south is Brighton and Hove (B & H), which like Crawley, has very little opportunity to expand. In its case, it is bound by the English Channel to the south and the SDNP to the north.

~~77-75.~~ Currently, it has a considerable quantum of unmet needs at 17,000 dwellings, which is even greater than those of Crawley and Horsham, with substantially more likely in the future. It has been known since before the adoption of the extant Mid Sussex Plan³¹ in 2018 that B & H's unmet housing needs are, and will, remain considerable. Notwithstanding the intervening SDNP, B & H consistently ranks as being the local authority from which most people move from into Mid Sussex (1,094)³². This clearly demonstrates the close functional links in the housing market which is recognised within the SHMA and is an indicator of close functional links recognised within the PPG.

~~78-76.~~ Notwithstanding the extensive needs of B & H, as set out above the NWSA SoCG³³ prioritises the unmet needs of Horsham and Crawley. This means the unmet needs of B & H, have to all ~~extent~~ intents and purposes been discounted. As such, irrespective of the acute need experienced by B & H, there has been no meaningful attempt to maximise the effectiveness of plan preparation in relation to such an important strategic cross boundary issue. An informal request for Mid Sussex to help meet B & H's needs was made in September 2021.

~~79-77.~~ I note from the minutes of the NWSA that your Council had concerns that B & H did not have a clear understanding of the extent of its unmet needs and did not agree with the hierarchy set by the three authorities. In this context, where it was self-evident that B & H has extensive unmet needs the lack of a formal request for help in meeting B & H's needs is not surprising.

Commented [SB29]: That's the phrase, isn't it?

Commented [SB30]: Should this be opening sentence of next para?

Commented [SB31]: Not sure what the difference is between a formal and informal request? Does it matter?

³¹ BD1.

³² REP-42888161-002 Figure 1, source ONS table IM2022-T2b

³³ DC4.

~~80-78.~~ However, even without such a request there does not appear to have been active, constructive and ongoing engagement with B & H, rather your Council had minimal interaction with B & H. It briefed and consulted on the SSM, together with other neighbouring lpa's in September 2021. In mid-2022 a further meeting took place between the authorities. Its purpose was to, *'Explain the background to the preparation of the District Plan Review; ensure B & H is fully briefed on the plan preparation process and the evidence, and to provide an opportunity to question and understand the work of MSDC...'*³⁴. Again, this approach is not the active constructive engagement to maximise plan preparation, required by the DtC.

~~84-79.~~ Moreover, during the meeting B & H set out its concerns, regarding the NWSA's hierarchical approach to unmet needs. B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing. As far as I can gather these points were dismissed out of hand. ~~B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing.~~

Commented [SB32]: Without constructive dialogue or any otherwise meaningful exploration of the issues, maybe? Out of hand seems a bit harsh ...

~~82-80.~~ Further meetings were arranged to correspond with the Regulation 18 and 19 consultations. As such, there was little opportunity to shape the Plan outside of the consultation process.

Commented [SB33]: Not sure this is true re Reg 18.

~~83-81.~~ Lewes lies to the east of Mid Sussex to the north of B & Highton and Hove and abuts the southern half of the district. It too is constrained. MSDC officers met with it during the Regulation consultation. Following this, Lewes wrote to MSDC ~~was written to~~ in February 2024 to request assistance in meeting a potential quantum of unmet need of around-between 2,675 ~~and~~ 6,628 dwellings to 2040.

Commented [SB34]: I think you need to say what MSDC did in response to the request ... otherwise it's left hanging.

~~84-82.~~ Wealden completes the eastern boundary of the district and is behind Mid Sussex in its plan preparation. However, it considers that it has a shortfall of 4,071 dwellings and made a formal request again after the Regulation 19 consultation for help in relation to meeting its unmet housing needs. A DtC meeting took place with

³⁴ AP013- Appendix A6, meeting of 15 June 2022.

Wealden in November 2022 by which time the Regulation 18 Plan had begun its committee cycle.

Commented [SB35]: As with Lewes, this is inconclusive - I can't tell whether this is part of the shortcoming or not.

85-83. Finally, Tandridge lies to the north of Mid Sussex. It has a number of policy constraints and considers that whilst it is at an early stage in Plan preparation that it is unlikely to be able to meet all its needs.

Commented [SB36]: Not sure how this fits in with DtC failure. If it doesn't, is there any need to mention it? Wasn't Tandridge's LP at examination for much of Mid Sussex's plan preparation?

86-84. Additional requests that your Council provide for others' unmet needs have been received during the plan preparation from Worthing, Elmbridge, Hastings, Chichester, and Epsom and Ewell.

Commented [SB37]: Again ... so what? What has MSDC done/not done about it?

87-85. In sum, MSDC is surrounded by local authorities who either have an undefined or defined quantum of unmet housing needs and these needs are significant³⁵.

Commented [SB38]: As above

Conclusion

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88-86. Crawley, ~~B & H Brighton and Hove~~ and other neighbouring authorities have long acknowledged significant and extensive unmet housing needs. ~~Indeed, these which~~ were recognised by the previous Inspector. Moreover, other neighbouring local authorities such as Horsham have grappled with issues of ~~w~~Water ~~n~~Neutrality and potential impacts on their ability to meet their own and other's needs.

89-87. The review of the adopted Plan³⁶ envisaged under Policy DP5 was to ensure that additional sites could come forward in sufficient time to contribute to the sub-region's unmet housing need. This process was to be planned effectively and strategically. Clearly, it would have been an easier task for the Council if one of the wider sub-regional organisations actively took the lead in addressing unmet needs. However, this was not the case. ~~Nor has any evidence been provided of co-operation at Member level.~~

Commented [SB39]: This feels slightly out of place in this para - maybe move elsewhere?

90-88. Nonetheless, your officers will have been aware of this unmet need and the Council's legal obligations, well before the

³⁵ H5 paragraph 40.

³⁶ BD1

significant milestones in the preparation of the Plan. Consequently, in the absence of the two more geographically diverse groups taking an active role, the onus on Mid Sussex was made even greater to ensure that it addressed its legal obligations in relation to the DtC. These obligations are not discretionary. Moreover, as long as S33a of the Planning and Compulsory Purchase Act remains in force, they are required to be complied with in order for a development plan to be able to progress.

Commented [SB40]: Do you mean the sub-regional groups?

Commented [SB41]: Hmm - I'd go careful here - it almost sounds like you're saying the legal onus was made greater, which isn't the case - it's just that in practical terms the inactivity of the sub-regional groups meant that MSDC needed to co-operate directly with each local authority directly.

Commented [SB42]: That seems redundant, why say it? I'd suggest deleting the last sentence here.

91-89. The obligation to maximise the effectiveness of plan preparation in addressing the real, on-going, established, and deep-seated issue of unmet needs, with the concomitant social and economic impacts of not providing homes remains. It is indisputably a difficult task given the environmental constraints within MSDC. Nonetheless, as the PPG is clear, it is not appropriate to defer addressing potentially unpopular decisions. As such, it was incumbent on the Council to wrestle even harder in relation to unmet needs.

Commented [SB43]: Again, go careful. It sounds like you're saying MSDC should have agreed to plan to meet those unmet needs, but the DtC is not a duty to agree - the point is that there is a very significant amount of unmet need in the sub-region, including in the HMAs within which the district lies, and the Council has not co-operated in an ongoing etc way - I'd stick to the words used in the Act, I think.

Commented [SB44]: And I'd go careful here too - again it sounds like the lpa was under some additional legal burden to try harder to meet unmet needs.

92-90. In considering this obligation, I am aware that Mid Sussex has its own constraints, such as the North Downs National Landscape, the setting of the South Downs National Park and the limitations to development relating to the Ashdown Forest SPA/SAC and that the water neutrality issue effects a relatively small strip of land on the western edge of Mid Sussex. The shortcoming here is not that the Plan fails to contribute sufficiently to meeting the significant unmet needs of the wider area. The DtC imposes no obligation to agree. Rather, the failure here is that the Council has not considered the requests of its neighbours – namely [list authorities concerned] – in a constructive, active and ongoing way. The Council has, consequently, not maximised the effectiveness of plan preparation.

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~~93. Therefore, in the context of the quantum of unmet needs where requests have been made to Mid Sussex to help (c 30,000 dwellings over and above its LHN) it would be unreasonable to suggest that it could or would take a significant proportion of the unmet needs of its neighbours.~~

Commented [SB45]: I have suggested adding this here and deleting the following few paras. This is simply to get to the point more quickly. See if you think essential points are still covered and nothing vital missed, but I would stick to the concision approach. I do think, though, that you need to be clear about precisely which local authorities the DtC failure relates to ... I wasn't sure from the paras above about Lewes and the others where I've made comments.

94. Moreover, it is long established that the DtC does not necessarily require a duty to agree. However, the Council should have evidenced that it had undertaken all it could to maximise the effectiveness of plan preparation.

95. In my judgment, it is far from clear that at the outset and throughout the preparation of the Plan that a constructive and on-going approach to maximising the effectiveness of plan making was taken. In other words, there is no convincing evidence that the plan preparation was approached with an open mind in respect of taking the unmet needs of neighbouring authorities and that work on common areas of interest has been diligently undertaken by the Council for the mutual benefit of the District and neighbouring authorities.

Commented [I46]: Think you need something like this here

96. In conclusion, I consider that the Council has not undertaken constructive engagement with neighbouring authorities on an ongoing basis. The absence of such engagement means the submitted plan has not been shaped by an adequate consideration of the strategic issue of housing, nor has the Council adequately engaged with neighbouring authorities to assist in their plan-making processes. Had it done so, and maximised the effectiveness of plan preparation, the overarching development strategy of the submitted Plan, including the amount and location of development could well have been different.

97.91. In sum, I appreciate that the contents of this letter will be a disappointment to you. However, a failure to meet the DtC is a matter which cannot be rectified. As such, there are two options open to the Council, either to withdraw the Plan from examination or to ask that Consequently, I would ask that you consider your position and whether you will withdraw the Plan or ask that I write a report of my conclusions. I should say that the latter would involve further expense, and that the contents of the report would, whose contents are likely to be very similar to this letter.

Commented [SB47]: I think I would ask the lpa to reply letting you know when you could expect their decision re withdrawal or report.

98.92. I have asked that the Programme Officer posts a copy of this letter on the website. However, I am not inviting comment from other examination participants.

Commented [SB48]: Either the Council or other examination participants on the content of this letter?

Yours Sincerely

Louise Nurser

INSPECTOR

From: [Berkeley, Simon](#)
To: ["PSMatthewPennycook@"](#) [REDACTED]
Cc: [Arthur Young](#); [John Romanski](#); [Sara Lewis](#); [Andrew Langley](#); [Ben Jones](#); [Ed Francis](#); [Gabi Wydrzynska](#); [Plans Briefing](#); [Phillips, Rebecca \(Inspector\)](#); [Stallwood, Graham](#)
Subject: Mid Sussex and Horsham Local Plans - urgent
Attachments: [Mid Sussex and Horsham Post Hearings Letters PINS Protocol Note March 2025 .docx](#)
[MSDC DtC 18 02 25 1824.docx](#)
[Inspectors Hearings Interim Findings Letter 120325.docx](#)

Dear Gabe/Holly

Please see attached Inspectors' letters on a for information basis that the Inspectors intend to send to Mid Sussex and Horsham regarding their emerging Local Plans. A brief summary note is also attached, and the position is summarised below. Are you content for these letters to be issued by the Inspectors?

Many thanks and kind regards

Simon Berkeley
Professional Lead for Local Plans
The Planning Inspectorate

Summary

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the Duty to Co-operate (DtC) and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this *"cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part"*.
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.

Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

-

We recommend that the letters are issued to the two Councils without delay.

PINS Inspectors' letters: Mid Sussex and Horsham Local Plans**March 2025****Summary**

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Mid Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the DtC and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any specified amount of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this *"cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part"*.
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.
- Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.
- The Mid Sussex and Horsham Inspectors are writing to the Councils recommending that the Plans should be withdrawn.

ContextCrawley

- The Local Plan was adopted in October 2024 with a housing requirement of 5,330 over the 2023 to 2040 plan period.
- The Plan identifies an unmet housing need of 7,505 dwellings over the plan period.

Mid Sussex

- The current Local Plan was adopted in March 2018.
- The emerging plan was submitted for examination in July 2024 with a proposed housing requirement of 19,620 over the 2021 to 2039 plan period (1,090 dpa).
- 2024 LHN: 1,039 dpa
- NPPF LHN: 1,356 dpa
- 2023 HDT: 142%

Horsham

- The current Local Plan was adopted in November 2015.
- The emerging Local Plan was submitted for examination in July 2024 with a proposed housing requirement of 13,212 over the 2023 to 2040 plan period (777 dpa).
- 2024 LHN: 15,487 (911 dpa)
- NPPF LHN: 1,357 dpa
- 2023 HDT: 62%

MPs

- Andrew Griffith (Cons) (Arundel and South Downs)
- John Milne (Lib Dem) (Horsham)
- Mimms Davies (Cons) (East Grinstead and Uckfield)
- Alison Bennett (Lib Dem) (Mid Sussex)

DtC background

Crawley

- The adopted Crawley Local Plan sets out the expectation that its unmet housing need (7,505 dwellings) will need to be considered through DtC discussions as part of the Local Plan Reviews for the other authorities within the Housing Market Area (primarily Horsham and Mid Sussex).
- The Plan notes that the *“adopted Local Plans for Horsham and Mid Sussex districts had anticipated to provide an additional 3,000 dwellings above their objectively assessed housing needs, in order to meet Crawley’s unmet need. However, through the Local Plan Reviews this figure is likely to change, particularly as the Standard Method increases their own housing requirements to above their current adopted Plan commitments”*.

Mid Sussex

- The Council met with all neighbouring authorities in the Autumn of September 2021, setting out its approach to housing, and accepted that unmet need from other authorities would need to be factored in.
- On submission, the Plan’s housing requirement was 19,620 dwellings with a proposed supply of 20,616. The Council’s stance is that the difference – 996 dwellings – would contribute to the “resilience” of the Plan (in terms of meeting the needs of Mid Sussex) and “unmet need” in the housing market area in general.

Engagement with sub-regional planning groups

- There are two sub-regional planning groups that cover Mid Sussex – the West Sussex Greater Brighton Planning Board (WSGBPB) and the Gatwick Diamond Board.
- The Council referenced WSGBPB as an active vehicle for navigating the DtC. It last met in March 2021, before the commencement of plan-making.
- In relation to the Gatwick Diamond Board, the Inspector notes that this body is only mentioned twice in the Council’s evidence relevant to the DtC.
- The Inspector concludes that these groups have not played an active role under the DtC.

Engagement with Crawley

- Crawley has made several formal requests for Mid Sussex to contribute to meeting its unmet housing need, in January 2020 (before the commencement of plan-making), and in April 2023 (before the Regulation 19 draft Plan was finalised). Crawley’s response to the Regulation 19 consultation reiterated that there was a significant outstanding issue of unmet housing need.
- The Inspector’s letter notes that Mid Sussex and Crawley have been involved in wider housing market area DtC meetings, but these were primarily focussed on procedural issues. Whilst the two Councils did meet twice, the Inspector concludes that *“Crawley’s needs were, in effect, ignored in the absence of ongoing and constructive engagement”*.

Engagement with Horsham

- The Inspector also has concerns in relation to engagement with Horsham. Horsham wrote to Mid Sussex in August 2022 suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology reappraised. Horsham formally requested that Mid Sussex contribute to Horsham’s emerging unmet housing need in November 2023. Mid Sussex did not reply until March 2024, and undertook its Regulation 19 consultation in the meantime. The Inspector considers that the reply did not say anything meaningful about what, if anything, Mid Sussex could do to assist. The Inspector’s letter concludes that Mid Sussex did not engage with Horsham in the active and ongoing way prescribed under the DtC.

Engagement with Brighton and Hove

- Mid Sussex is also partly within the Coastal West Sussex housing market area. This includes Brighton and Hove, which is constrained by the South Downs National Park to the north and the English Channel to the south. Evidence to the examination puts Brighton and Hove’s unmet housing need at 17,000 dwellings.
- Brighton and Hove made a request for Mid Sussex to contribute to meeting its unmet housing need in September 2021. The Inspector’s letter says that Mid Sussex had *“minimal interaction”* with Brighton and Hove, and that their points were *“dismissed without constructive dialogue or any otherwise meaningful*

exploration of the issues". It concludes that plan preparation has not been maximised and that consequently the DtC has not been met.

Horsham

The position and engagement between Regulations 18 and 19

- Regulation 18 consultation took place between February and March 2020. At that point in time, Crawley anticipated equal contributions from both Horsham and Mid Sussex towards addressing its unmet housing need (estimated at that time to be 5,925 homes). The Regulation 18 draft Plan proposed a housing requirement of between 1,000 and 1,400 dpa, exceeding the LHN figure of 965 dpa. This could have contributed towards meeting Crawley's needs.
- A draft Plan was prepared in July 2021 based on a housing requirement of 1,100 dpa. The spatial strategy included a new village of at least 2,100 homes. This draft of the Plan was not consulted on. The Inspector cannot find any evidence of this draft Plan being considered "in any great detail" under the DtC.
- Natural England published a position statement in September 2021 setting out that all development within the Sussex North Water Supply Zone, which includes Horsham, will need to be water neutral. This is to avoid harm to the integrity of internationally and nationally designated nature sites in the Arun Valley.
- Work began on a joint local authority-led initiative, the Sussex North Offsetting Water Scheme (SNOWS). Under this scheme, once operational, developers will be able to 'buy in' to SNOWS to offset water use and demonstrate water neutrality. The Inspector's letter indicates that SNOWS may be in a position to be tested and launched this month (March 2025).

The position and engagement between Regulation 19 and submission

- A draft Plan was published for consultation under Regulation 19 in January 2024. The submitted Plan is the same as this draft. It sets a housing requirement for Horsham of 777 dpa, against a LHN of 911 dpa. It does not meet Horsham's housing need or include any contribution towards Crawley's unmet need. The new village proposed in July 2021 is not proposed for allocation.
- Strategic Policy 9 of the Regulation 19 draft Plan requires all development to demonstrate water neutrality, either through the use of SNOWS or an independent scheme.
- A number of representations made under Regulation 19 promoting sites not allocated in the Plan include evidence to show that the sites concerned can provide their own independent water neutrality schemes. One such representation is from the promoter of the new village. This is backed up by correspondence from Natural England's Discretionary Advice Service which says the solution proposed "is suitable to avoid adding to the risk of adverse effects on the integrity of the Arun Valley sites".
- The Inspector considers that sites that could provide independent water neutrality schemes should have been discussed under the DtC in an effort to meet Horsham's need and contribute to addressing Crawley's unmet need, particularly given that SNOWS was not operational when the Plan was submitted, it was known that it would not be ready to use as a means of demonstrating water neutrality for some time and given that Strategic Policy 9 allows this approach. There is no substantive evidence that such discussions took place.
- The Inspector also consider that there should have been DtC discussions about the changes to the Plan's spatial strategy since the July 2021 draft, to consider market capacity and the role of strategic scale developments. There are no records of any substantive discussions of this kind.
- The Inspector ultimately concludes that there is a gap in co-operation between January 2024 and July 2024, and that the DtC has therefore not been met.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

We recommend that the letters are issued to the two Councils without delay.

Emily Clapp

From: Berkeley, Simon <[REDACTED]>
Sent: 04 April 2025 09:33
To: PSMatthewPennycook
Cc: Arthur Young; John Romanski; Sara Lewis; Andrew Langley; Ben Jones; Ed Francis; Gabi Wydrzynska; Plans Briefing; Phillips, Rebecca (Inspector); Graham Stallwood (PINS)
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hi again Gabe

I've chased the team liaising with the Inspectors. The letter to Mid Sussex has just been sent. The team are still trying to get in touch with the Inspector for Horsham.

Best regards
Simon

OFFICIAL

From: PSMatthewPennycook <[REDACTED]>
Sent: 04 April 2025 09:25
To: Berkeley, Simon <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Stallwood, Graham <[REDACTED]>; PSMatthewPennycook <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hi Simon,

Many thanks for confirming.

Do you have an approximate time these letters will be sent today? If not, would you mind confirming on the chain once they have been sent?

With best wishes,
Gabe



Ministry of Housing,
Communities &
Local Government

Gabe Allason ([REDACTED])
Private Secretary to Matthew Pennycook MP
Minister of State for Housing and Planning
[REDACTED]

OFFICIAL

From: Berkeley, Simon <[REDACTED]>
Sent: 04 April 2025 09:09
To: PSMatthewPennycook <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski
<[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew
Langley <[REDACTED]>; Ben Jones <[REDACTED]>;
Ed Francis <[REDACTED]>; Gabi Wydrzynska
<[REDACTED]>; Plans Briefing <[REDACTED]>;
Phillips, Rebecca (Inspector) <[REDACTED]>; Graham
Stallwood (PINS) <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

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Hi Gabe – many thanks for this. I have made arrangements for these letters to be sent to the local authorities today.

Best regards
Simon

OFFICIAL

From: PSMatthewPennycook <[REDACTED]>
Sent: 03 April 2025 16:11
To: Berkeley, Simon <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski
<[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew
Langley <[REDACTED]>; Ben Jones <[REDACTED]>;
Ed Francis <[REDACTED]>; Gabi Wydrzynska
<[REDACTED]>; Plans Briefing <[REDACTED]>;
Phillips, Rebecca (Inspector) <[REDACTED]>; Stallwood,
Graham <[REDACTED]>; PSMatthewPennycook
<[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hello Simon,

Many thanks for sending this through.

The Minister agrees that the letters be issued to the LPAs as soon as possible.

Please can you let us know when these will be sent?

With best wishes,
Gabe



Ministry of Housing,
Communities &
Local Government

Gabe Allason ()
Private Secretary to Matthew Pennycook MP
Minister of State for Housing and Planning

OFFICIAL

From: Berkeley, Simon ()
Sent: 02 April 2025 12:36
To: PSMatthewPennycook <()>
Cc: Arthur Young <()>; John Romanski
<()>; Sara Lewis <()>; Andrew
Langley <()>; Ben Jones <()>;
Ed Francis <()>; Gabi Wydrzynska
<()>; Plans Briefing <()>
Phillips, Rebecca (Inspector) <()>; Graham
Stallwood (PINS) <()>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

Hello Gabe/Holly

Just chasing for an update on this. I'm hopeful for a readout ahead of Easter recess if possible – both local authorities have been pressing us here at PINS and also MHLCG colleagues.

Many thanks and kind regards

Simon Berkeley
Professional Lead for Local Plans
The Planning Inspectorate

From: Berkeley, Simon
Sent: 26 March 2025 16:25
To: 'PSMatthewPennycook@' <()>
Cc: Arthur Young <()>; John Romanski <()>;
Sara Lewis <()>; Andrew Langley <()>; Ben Jones
<()>; Ed Francis <()>; Gabi Wydrzynska
<()>; Plans Briefing <()>; Phillips, Rebecca
(Inspector) <()>; Stallwood, Graham
<()>
Subject: Mid Sussex and Horsham Local Plans - urgent

Dear Gabe/Holly

Please see attached Inspectors' letters on a for information basis that the Inspectors intend to send to Mid Sussex and Horsham regarding their emerging Local Plans. A brief summary note is also attached, and the position is summarised below. Are you content for these letters to be issued by the Inspectors?

Many thanks and kind regards

Summary

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the Duty to Co-operate (DtC) and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this "*cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part*".
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.
- Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

We recommend that the letters are issued to the two Councils without delay.

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