

Submission by the Sussex Branch of the Campaign to Protect Rural England (CPRESx) in respect of the public examination hearings scheduled for 25th and 26th July 2017 into aspects of the draft Mid Sussex District Plan 2014 – 2031.

This submission addresses agenda item 4 dealing with the Habitats Regulations as they apply to Ashdown Forest sites, and MSDC18(ii).

6th July 2017

1. CPRESx's position is that the evidence and actions of MSDC relating to proposed policies (including the District housing target and DP15) affected by the Habitats Regulations are not compliant with those Regulations and that there is no robust evidence available at present to enable those policies to be found legally sound at the present time. This note briefly amplifies our reasoning.
2. CPRESx has made more detailed representations on these points in the course of this examination and in public consultation on prior iterations of the draft District Plan¹. We ask the Inspector to take all these into account as they are material to MSDC's ability to present for examination a legally sound Plan. CPRESx has repeatedly sought to meet MSDC to seek areas of common ground, but MSDC continues to evade responding to the issues we have repeatedly raised or meeting with us. So, regrettably, no SOCG is possible.
3. MSDC18 sadly offers no proposal that would achieve MSDC's objective of enabling the draft Plan to progress to an early finding of soundness vis a vis policies affected by the Habitats Regulations, and no route to enable it to get there. So MSDC is still not in a position of being able to ascertain that the proposed housing target in its draft Plan and its draft policy DP15 (whether set at 800 dpa or any higher level) will not adversely affect the integrity of the European site as it is required to do by article 102(4) of those Regulations before adopting any development proposal. MSDC fails even to identify much of the essential evidence base needed to put forward policies whose soundness can be tested now against the Regulations and the NPPF generally; not even evidence that justifies its statement in para 7 that "*it may be assumed that the submitted District Plan [presumably that means the plan with an OAN and housing target of 800dpa] may be regarded as sound*", yet alone an unconstrained minimum housing target of up to 1,026 dpa.
4. CPRESx calls on the Inspector:
 - to require MSDC to produce for future examination revised, legally compliant, proposals based on robust cumulative evidence and information within a new HRA that has been coordinated with other affected LPAs and that address all the issues raised below as essential components of sound housing target, settlement allocation and EU site protection policies within the new District Plan;
 - to ask MSDC to consult with us and other interested parties on the development of those proposals as envisaged by article 102(3) of the Regulations, which they have hitherto failed adequately to do;
 - to recommend meanwhile an interim policy consistent with the application of the precautionary principle whereby, at a minimum, new development within 7km of Ashdown Forrest (28.8% of the District) will not be approved by MSDC unless the applicant can prove that it will not harm either site; and
 - to consider recommending approval of the Plan on the basis of an interim precautionary policy pending resolution of the Habitats Regulation aspects, subject to an early selective review of relevant policies and to an acknowledgement that any interim housing target set may have to be reduced if the evidence shows a need to constrain the level of development to ensure compliance with the Regulations.
5. A key lesson of the *Wealden v Lewes* judgement is the need for relevant LPAs to work together to create a common evidence base with consistent policies and avoidance strategies. Disturbingly, that has not happened and is not promised in MSDC18. Indeed para 64 implies the opposite.
6. The main reasons why the evidence base is not robust and does not allow justifiable conclusions to be drawn from it as to the soundness of policies for the District's housing target, settlement hierarchy and DP15 as required by NPPF para 182 are:
 - (i) The whole edifice of the draft Plan's compliance with the Habitats Regulations, including all iterations of the HRA, hangs on the findings of a long out-of-date Screening Report produced for MSDC and a Screening Opinion by Natural England over 10 years ago in July 2007 for MSDC's then proposed new Core Strategy for the period 2011/2026 and on visitor numbers/patterns surveyed in 2008². Inevitably that screening exercise did not assess the potential causes of harm to the sites in the context of either the hugely greater cumulative level of new development since approved and now envisaged, nor of the increased popularity of recreational walking over the last decade. As a result the HRA is unreliable as an identifier of the types and degrees of harm liable adversely to affect the sites or what avoidance measures may be required. MSDC claim to have updated the screening (TC2 para 6.2), but have not said whether it is on a proper cumulative development basis, and have not put any update in evidence for examination.

- (ii) MSDC18 ignores the wider implications of the *Wealden v Lewes* judgement in terms of the need to assess and avoid the cumulative impact of development growth throughout the Districts on visitor numbers to the SPA (and, potentially the SAC). This is probably a much more significant issue for the Plan than air quality. In order to comply with the Regulations it also needs to take account of all development approved since the 2007/8 screening exercise as this has never been done, with only incremental growth having hitherto been looked at by Natural England. In the absence of a current, robust, screening exercise, it would be no answer (even if correct) that MSDC is adopting similar policies to neighbouring LPAs. A new screening exercise addressing cumulative development and air quality impacts, followed by an updated HRA, are required to be Habitats Regulations compliant.
 - (iii) CPRESx knows of no reliable estimates of the overall cumulative level of relevant past and potential development around the two sites that need to be considered in combination. The HRA and Sustainability Assessment both avoid that crucial issue and ignore the “in combination” impact in reaching their conclusions. Those conclusions in any case take no account of the large proposed increase in the housing target recommended by MSDC’s Inspector³. MSDC admit that they merely “assume” soundness (MSDC18, para 7), but cannot evidence that leap of faith. This all needs rectifying in a new HRA after the fresh screening report is issued.
 - (iv) MSDC’s claim (MSDC18 para 7, bullet 3) that, as regards the impact of NO² emissions, it “has always adopted an in combination methodology through the use of the West Sussex County Strategic Transport Model” is surely unfounded. The two sites are in East Sussex. Much of the polluting traffic will come from/go towards that direction, by-passing West Sussex. More significantly, MSDC has not worked with other authorities to aggregate data, and the Natural England impact methodology used by MSDC (and others) has been criticised by the Court.
 - (v) As the evidence is that maximum NO² tolerances are exceeded, to be sound any air quality policy must work to reduce those impacts, not merely to mitigate their future exacerbation. [MSDC claim this to be new evidence. It is not. It was identified in the 2013 iteration of their HRA at para 5.1.6].
 - (vi) MSDC has failed appropriately to consider whether the draft Plan offers the most appropriate strategy to avoid identified or necessarily presumed adverse impacts, when considered against the reasonable alternatives, a key test of soundness required by NPPF para 182. CPRESx has called for a constraint on the level of new development around Ashdown Forest to be considered as potentially the most appropriate sustainable option to achieve the overriding national policy objective of conserving the two sites.
 - (vii) MSDC has never presented any evidence that a SANG and/or a dog walking code will be effective to avoid the identified harm resulting from increasing visitor numbers to the SPA. Throughout the MSDC section of the 7km zone of influence there are multiple more local public footpaths and other walking locations. Nearly all visitors to Ashdown Forest elect to go out of their way to go there, so it is unlikely that they will be deterred from doing so by the creation of a nearby SANG.
 - (viii) MSDC has not responded to CPRE’s case that it has miscalculated the compensatory effect of a SANG (MSDC’s methodology is described in TC2 paras 8.12 - 8.24) with the result that MSDC exaggerates the number of new homes that a given area of SANG would allow by a factor of three. Their error lies in applying without justification a different baseline for calculating the SANG area needed to accommodate new residents (8 ha per 1,000 additional population) from the baseline used to assess the discount needed for existing users of a SANG site (8ha per 1,000 walkers)⁴.
7. Until there is a sufficient evidence base, and the appropriate avoidance strategy has been publicly examined, it is CPRESx’s submission that the application of the precautionary principle requires an interim policy whereby at least new development within 7km of Ashdown Forest (28.8% of the District) will not be approved by MSDC unless the applicant can prove that it will not harm either site. This is a somewhat narrower version of an interim policy being applied by Wealden DC. MSDC18 offers no new interim policy whilst development applications continue to be considered. We urge the Inspector to make a recommendation accordingly. This may enable the Plan to be adopted subject to an early selective review and examination of relevant policies.

Submitted on behalf of the Campaign to Protect Rural England, Sussex Branch CIO – 6 July 2017.

Footnotes:

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- ¹ Copies of our representations to MSDC of 13th June 2013, 23 July, 12th October 2015 and 9th January 2016 can be provided. Our previous submissions to the Public Examination are all on the Examination page of MSDC's website.
 - ² Neither the July 2007 screening report or opinion is included in the examination documents library. The visitor survey is included amongst the unreferenced background documents.
 - ³ CPRESx estimates that there may be about 2,110 dwellings in Mid Sussex alone. We estimate that, between 2008 – 2013, 813 dwellings within MSDSC's sector of the 7km zone were approved: we have taken the 2,816 approved District-wide new housing figure for the period from MSDC2 para 10.4.2 table and multiplied it by 28.85%, being the proportion of the District within the 7km zone: i.e. 813 dwellings. For the period 2014 – 2031 we have used the 1,106 figure at para 6.5.3 of the October 2015 HRA (which assumed an 800dpa target) and scaled it up by 938/800 to 1,297. $813 + 1,297 = 2,110$ dwellings within the zone, i.e. a population increase within the Mid Sussex section of the 7km zone of approx. 5,000.
 - ⁴ A fully worked example of the two different bases of calculation that highlights the discrepancy and MSDC's error was appended to our 23 July 2015 representations to MSDC on their pre-submission draft of the District Plan.