

Public Examination of housing policies in the draft Mid Sussex DC District Plan – 29.11.2016

Statement of issues of soundness re proposed housing policies in that Plan to be raised by the Campaign to Protect Rural England, Sussex Branch CIO (“CPRE”)

1. Introduction

- 1.1 CPRE recognises that the Government is using the planning system as a tool to further its laudable policy to boost house building, economic prosperity and biodiversity enhancement [NPPF para 9]. But that policy is a measured policy; one that requires the balancing of pros and cons, and testing proposed local strategic plan policies for their compliance with laws, regulations and the NPPF, and to ensure that they are sustainable [NPPF paras 14, 151 etc], realistic [NPPF 154] and sound based on tests in the NPPF [para 182]. The system is not about maximizing housebuilding anywhere and at any cost.
- 1.2 We make no challenge to the Council’s methodology for calculating its objectively assessed housing need (OAN).
- 1.3 We do say, however, that whatever the District’s housing requirement may be, development is only sustainable if it is in the right place, and that a plan is only sound if its policies take proper account of the district’s capacity to absorb development growth, and of factors that constrain that capacity. Infrastructure constraints also have to be recognised [NPPF para 162]. In CPRE’s opinion environmental and other constraints make MSDC’s housing requirement undeliverable.
- 1.4 MSDC’s new Plan has failed to give effect to the environmental constraints on development identified in its own June 2014 LUC report entitled “Capacity of Mid Sussex District to Accommodate Development” (“LUC Capacity Report”). In particular it has given inadequate weight to the constraints imposed by NPPF paras 115-116 and the laws to which those paragraphs give effect vis a vis the High Weald AONB (not least in its proposed last-minute allocation for housing etc. of the Hardriding Farm site at Pease Pottage) and the two EU designated sites on Ashdown Forest. This failure by MSDC affects the soundness and deliverability of its 5 year housing target as well as the soundness of the settlement hierarchy in policies DP5/6, and policy DP15 (Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)), with knock-on effects to other aspects of the Plan.
- 1.5 As a result, these parts of the Plan fail the para 182 tests of soundness because they are not consistent with achieving sustainable development; they cannot be justified as the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence; they propose a housing target which highly unlikely to be deliverable over its period; and they are not in accordance with NPPF policies.

2. The 5 year housing target (Policy DP5)

- 2.1 It is our contention here that MSDC proposes to set itself a 5 year housing target that is unrealistic and which it is highly unlikely to prove deliverable, thus failing the effectiveness requirement for a sound Plan.
- 2.2 MSDC was set a housing delivery target in the South East Plan that it has never been able to come anywhere near achieving - even during the period since 2012 during which it has operated subject to the strictures of NPPF para 14 by reason of its housing delivery shortfall. Even the application of para 14 has been wholly insufficient to boost delivery numbers consistently to the level needed to achieve MSDC’s target.

- 2.3 Its annual average delivery record in the 5 years ended March 2016 was 676 dwellings; the longer term average is lower. This shortfall cannot be attributed to an unusually high number of application rejections by MSDC. Last year, in which 868 dwellings were completed, was the first and only year in which MSDC has ever achieved its annual delivery target. We speculate that this “one off” is achievement may be explicable, and demonstrable as non-repeatable, by the kicking-in of the extension of the permitted development regime to office/shop conversions to flats. Moreover, latest Government statistics demonstrate that the rate of new housebuilding falls far short of the Government’s 200,000 dpa target¹. There is scant evidence that MSDC can achieve, yet alone exceed, its proposed target consistently throughout the Plan’s life whilst conserving and enhancing the environment and biodiversity as the NPPF requires it to do on a properly balanced basis.
- 2.4 In considering the new draft Plan, the Council proposes to set itself a target of delivering 800 dpa. In order to meet that target and catch up on its backlog rather than fall further behind, we are aware of estimates that it would need to build up to 1,750 homes in each of the next 5 years just to stop itself falling back into default in its housing supply delivery²:

5 year target	4,000			
Existing shortfall	3,284			
20% buffer	<u>1,457</u>			
5 year total	8,741	÷ 5	=	1,749 dpa

- 2.5 The last 20 years track record of MSDC in delivering new housing, including the last 5 years during which it has been required by NPPF para 14 to approve most new development proposals, offers no reason to believe that the new draft Plan proposes to set a housing delivery target that is realistically achievable. That is a target which is foolhardy rather than aspirational.³ It is not effective within the soundness definition at NPPF para 182.
- 2.6 CPRE is not aware of any study that demonstrates that the setting of a higher housing target in a newly adopted Local Plan results in practice in an increase in the number of new housing starts thereafter.

3. Environmental Constraints on the level of new development

- 3.1 The most material reason for MSDC’s inability to meet a high housing delivery target is the District’s low landscape capacity for new development. This has limited MSDC’s scope for SHLAA site designation and requires the Council, adhering to the NPPF, to reject a number of larger individual development applications. The current target has been shown by experience to be undeliverable for this reason.
- 3.2 CPRE’s contention is that the Plan is also unsound because MSDC has failed to give proper weight to the evidence in the June 2014 LUC Capacity Report and to those provisions in the NPPF concerned with the conservation and enhancement of the natural environment, principally paras 109 - 119. It is remarkable how little reliance is placed on the LUC Capacity Report in MSDC’s Sustainability Appraisal.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547818/House_Building_Release_June_Qtr_2016.pdf

² Assumes Sedgfield method of catching up on its existing backlog and that the buffer requirement also applies to that backlog. The Liverpool methodology would afford a modicum of relief, but still not provide a realistically deliverable target.

³ “Local Plans should be aspirational but realistic. ...” – NPPF para 154. “Plans should be deliverable.” NPPF para 173.

- 3.3 The 800 dpa housing target fails to reflect the implications of the key conclusion in the LUC Capacity Study that “*Mid Sussex District is heavily constrained by environmental designations and its attractive countryside and high quality landscape character in particular. Almost two thirds of the District is covered by primary level constraints, i.e. areas that are afforded the highest protection under national policy. In the remaining parts of the District, very few areas (only 4% of the District) are not also covered by one or more secondary constraints (still sensitive but have less weight applied to them in national policy) or not already built upon. Only those areas in close proximity to the main settlements have more than three services within walking distance and are therefore likely to be more sustainable locations for new development. Most of the areas around the main settlements are also constrained by at least one secondary constraint.*” It is with good reason that that para 2.1 of the draft Plan rightly describes Mid Sussex as a rural district.
- 3.4 The LUC Capacity Report identifies that nearly 55% of the Plan area⁴ is within the High Weald AONB. National public policy, where NPPF paras 115 – 116 reflect s.82 etc of the Countryside & Rights of Way Act 2000 (“the CROW Act”), effectively establishes a strong presumption against new development, particularly major development, within or affecting the setting of AONBs and national parks. Other parts of the District have other international, national and local environmental, scientific or heritage designations which, in varying degrees, raise the bar by which the sustainability of site allocations and planning applications must be judged.
- 3.5 One must also respect the fact that landscape character assessments will inhibit the suitability for development of some individual valued landscapes (see NPPF para 109) that carry no special environmental designation. So in some places will infrastructure deficiencies and air and water quality issues⁵. These NPPF-recognised constraints will necessarily continue to inhibit MSDC’s ability to find sustainable sites for future development or allocation.
- 3.6 The undesignated Low Weald area west of the A23 is particularly unsuited for anything other than small scale development because of its remoteness and the absence of local infrastructure, as the LUC Capacity Study demonstrates. Developer Mayfields’ scheme for a 10,000 home market town there straddling the Mid Sussex and Horsham district border is demonstrably unsustainable, a view substantially endorsed by the Inspector of the Horsham District Plan who rejected the scheme as a way to meet Horsham’s current housing needs. There is zero public authority or local community support for Mayfield’s scheme. CPRE fully supports MSDC’s decision not to take forward the possibility of allocating the area for development purposes. We note that there is a general legal principle⁶ that where an issue of this kind has previously been the subject of a finding of fact or judgment by an expert independent tribunal in a related context, the decision-maker must take into account and give appropriate respect to the conclusions of that tribunal. Given that principle, we would not expect the Inspector to give credence to arguments that the Horsham Inspector’s conclusions should effectively be re-examined de novo in the present Plan examination. A market town in the area proposed by Mayfield is an environmental and infrastructure deficit non-starter, and needs to be acknowledged as such for the sake of long-blighted local communities and strategic planning clarity. NPPF para 157 gives MSDC that power to say no.
- 3.7 The NPPF specifically permits planning authorities to adopt plans that preclude development in areas of special designation and elsewhere where development is “inappropriate” (NPPF para 157) – unsustainable development in the wrong place. It accepts that, even though planning authorities must be looking for positive solutions to a housing shortage, it may not always be sound to put forward a strategic plan that will meet in full a district’s housing needs. That is happening in a number of neighbouring districts/boroughs and elsewhere in the country. It is not a mark of shame or failure.

⁴ The Plan area excludes the 10% of Mid Sussex district that is within the South Downs National Park.

⁵ See para 5.9(viii) below re air quality and Sustainability Appraisal Submission Report – August 2016, para 3.65 re water quality.

⁶ See **R v Warwickshire County Council ex parte Powergen Plc** (1998) 75 P&CR 89

- 3.8 Inevitably developers argue for higher housing numbers. But in so doing they willfully ignore both the NPPF requirements for environmental protection and enhancement as a core part of a sustainable plan development process, and the evidence that Mid Sussex lacks the capacity for unconstrained development.
- 3.9 In response to the Inspector's question 6.1 as to whether the market can deliver the requirement set out in the draft Plan, our views are
- not everywhere that developers/builders would like to develop is suitable for development – Thakeham Homes's proposal to develop 600 dwellings at Hardriding Farm (see section 4 below) and Mayfields market town concept in the Wineham area (see para 3.6) being obvious examples);
 - sustainable brownfield should be prioritised over greenfield sites; and
 - a more effective system would either measure an LPA's delivery against its housing target by reference to permissions granted (included permitted development), or it would require developers to use those permissions promptly. As matters stand, the system does not put an LPA in control of the delivery of its set target, and it does not incentivise developers to help an LPA to meet its target.
- 3.10 CPRE's case is that MSDC has failed to give appropriate weight to the major environmental constraints that exist in Mid Sussex in setting a housing delivery target, rendering its housing development target unrealistic, unsustainable and undeliverable. MSDC's draft Plan wrongly treats significant environmental and biodiversity considerations as subservient to meeting the District's OAN. The NPPF in its definition of sustainability (para 7) does not: Para 47 makes it clear that MSDC should "*use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework*". It is not consistent with the NPPF to ignore environmental or other constraints that require development to be restricted (see the last paragraph of para 14 as interpreted by the courts⁷).

4. Hardriding Harm, Pease Pottage proposed site allocation (Policy DP9A)

- 4.1 A prime example of the inappropriateness of MSDC's housing target is its last minute proposed allocation for 600 homes and a hospice of a site within the High Weald AONB at Hardriding Farm, Pease Pottage. This is a site that 6 months earlier MSDC had described in the SHLAA as "very unsuitable" for development on account of its AONB location and its isolation. MSDC has only increased its proposed housing target in the last year in an attempt to demonstrate its good neighbourliness to Crawley DC in line with the NPPF duty to co-operate requirements. And it thinks that it can only deliver on that offer to Crawley DC by allocating this AONB site. It is more than ironical that Crawley DC has formally objected to the proposed development of this site and that West Crawley County Local Committee have also voiced serious concerns as to its suitability.
- 4.2 It is fundamentally flawed logic to think that offering overflow housing to a neighbouring authority in order to demonstrate co-operation with it amounts to an exceptional circumstance for the purpose of NPPF para 116 that justifies overriding MSDC's statutory duty to conserve and enhance the High Weald's natural beauty. That is not in the public interest either. MSDC has failed to undertake much of the rigorous assessments and analyses necessary to justify the allocation of this site. And it has failed to make a convincing case that there are exceptional circumstances to justify overriding the presumption that major development within an AONB is to be refused so that its statutory right to protection is honoured, yet alone that development here would be in the public interest: the CROW

⁷ See in particular **Forest of Dean District Council v DCLG and Gladman Developments Ltd** [2016] EWHC 421 (Admin)

Act does not disapply a planning authority's obligation to conserve and enhance the High Weald AONB if it has a housing shortage.

- 4.3 We refer the Inspector to CPRE's detailed objections to this allocation proposal and (separately) to the Thakeham Homes's application for planning permission for the site, in our letters dated 9th January 2016 (especially section 4 beginning on p.8) and 12th February 2016. For convenience, copies of those letters are appended to this memorandum.
- 4.4 Properly applied, the NPPF would not permit this site to be developed, and its proposed allocation is not consistent with achieving sustainable development. DP9A is therefore not a sound policy and should be deleted. Deleting it necessitates reducing MSDC's proposed housing target in DP5 with other consequential amendments.
- 4.5 For the avoidance of doubt, let us be clear that withdrawing the allocation of the Pease Pottage site would not justify alternative allocations of other sites currently assessed as unsuitable for development. A conclusion that development of one site is unsustainable does not render alternative locations more sustainable.

5. Constraints on development around Ashdown Forest (DP5, DP6 and DP15)

- 5.1 We appreciate that the Inspector wishes to address habitat protection issues at a later hearing. Nonetheless we need to record here the bones of our concerns as to the soundness of MSDC's approach to dealing with the regulation of EU protected sites: it is a core part of our case that MSDC has failed to give proper recognition to this issue and that it acts as a material environmental constraint on MSDC's ability to deliver housing growth in the northern part of the district. We leave it to the Inspector to decide how and when to address this issue.
- 5.2 Ashdown Forest contains a Special Protection Area (SPA) and Special Area of Conservation (SAC), both of which receive the same EU-level protection via the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations").
- 5.3 The Habitats Regulations make environmental conservation of these two EU protected sites the overriding planning consideration. Paras 102-104 of those regulations require an assessment of whether planning proposals, cumulatively considered, are likely to have a significant effect on a protected site. A planning authority may only agree to the plan or project "*after having ascertained that it will not adversely affect the integrity of the European site*". If it is not clear whether development would have an adverse effect, the Council must apply the precautionary principle, i.e. that harm must be assumed in the absence of clear evidence to the contrary.
- 5.4 The Habitats Regulations expressly require that the impact assessment must take account of other relevant plans or projects which, in combination, could have a significant cumulative adverse effect on an EU site. This necessitates a holistic assessment of the overall impact in the round across all planning areas surrounding a site, and looking at the overall development impact of all their plans and proposals. As we explained in our representations this is not what is happening: each authority is only looking at its own segment of the pie and is formulating separate plans and policies applying different evidence. That is a wholly flawed approach that does not achieve what the Habitats Regulations require and precludes a reliable assessment of the combined impact of development proposals on the Ashdown Forest sites.
- 5.5 The Regulations make EU site protection THE paramount planning consideration, not part of a balancing exercise, by prohibiting all new development where the integrity of a site would be affected unless the harm that has been identified or must be assumed can be avoided - which is why NPPF para

119 uniquely disapples the presumption in favour of sustainable development in cases to which the 2010 Regulations apply. Where harm to EU protected sites is involved, the normal planning balancing exercise simply does not apply if the avoidance of harm to them would be compromised.

- 5.6 It has become conventional wisdom, supported (we accept) by Natural England, that the challenge of permitting development close to EU protected sites can be simply overcome by providing sufficient nearby compensating suitable areas of natural green space (“SANGS”). As a result MSDC’s proposed policy DP15 effectively puts no limit at all on the level of development around the sites so long as “sufficient” SANGS are provided and levels of vehicle exhaust emissions are monitored.
- 5.7 The cozy assumption that DP15 is effective to satisfy the Habitats Regulations requirement that development, cumulatively considered, will not “adversely affect the integrity” of Ashdown Forest’s SPA and SAC is fundamentally flawed, and based on no credible evidence. Proposed policy DP15 is unsound.
- 5.8 Moreover, correctly applied, it is likely that the Habitats Regulations would require the level of development within a zone of influence around Ashdown Forest to be restricted to a level that would add to the impracticability of MSDC being able to deliver the level of housing proposed by 800dpa housing target in DP5, giving further reason for the unsoundness of that policy. It also raises a question as to the soundness of the judgements made in DP6 (Settlement Hierarchy) as to the sustainability and categorisation of communities close to Ashdown Forest to accept the levels of new development implied by their categorisation there.
- 5.9 CPRE has made detailed representations to MSDC on this issue in its submissions dated 23rd July and 12th October 2015. We refer the Inspector to those representations (which we have extracted and enclosed with this memorandum) for a detailed explanation of our argument (Attachment 3). The skeleton of our submissions is this:
- (i) As explained at para 5.4 above, the Habitats Regulations requirement is not met for a cumulative impact assessment that takes into account all development plans and proposals around the EU sites that may adversely impact those sites. Each planning district is “doing its own thing” and relying on different evidence. Thus MSDC effectively determined the substance of its proposed DP15 policy 3 years ago (and is already seeking to implement it). By contrast, Wealden DC has said that it cannot yet determine what its policy should be and only last week announced a delay in the publication of its draft plan because it did not yet have the development impact evidence base required to determine its equivalent policy for the protection of the EU sites.
 - (ii) The nature and degree of harm caused by development on and around the two EU sites has never been properly assessed, and is unknown. It is nowhere stated what assumptions are being made about the level of development to be assessed, or whether the considerable development that has already occurred since the scoping report nearly nine years ago identified disturbance to protected birds from increasing visitor levels and diesel vehicle emissions as potential problems. One is left to assume that MSDC’s HRA is only addressing future development, and only future development within Mid Sussex. Without knowing what the true overall nature and level of harm to the two sites will be it is impossible to demonstrate how that harm will be avoided.
 - (iii) The studies on which MSDC’s Habitats Regulations Assessment and the DP15 Sustainability Appraisal Appendix (collectively the HRA) rely were conducted nearly 9 years ago and are long out of date. So the HRA fails the NPPF requirement for evidence to be up to date.⁸ Such

⁸ Para 165 provides that “*Planning policies and decisions should be based on up-to-date information about the natural environment and other characteristics of the area A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors.*”. Para 192 states that “*The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Environmental Impact Assessment, Habitats Regulations Assessment and Flood Risk Assessment).*

assessments of individual development proposals as have taken place since then have only been on an individual, incremental basis, with no cumulative impact assessment.

- (iv) Because MSDCs HRA is based on information that is out of date and incomplete, it seriously under-estimates the level of the local population increase and toxic traffic effects, and hence their impact on the two sites. It patently fails the requirements of NPPF paras 165 and 192. No conclusion in the HRA as to the nature and degree of harm to the EU sites, or how it can all be avoided, can be considered to be sound or robust given these fundamental input defects;
- (v) MSDC's obligation is only to permit development where identified or assumed harm to the EU sites can be avoided or eliminated. The HRA and DP15 only consider measures to "mitigate" (i.e. lessen the severity or gravity of) harm that has been identified (albeit on a wholly inadequate assessment).⁹ To comply with legal requirements the purpose and effect of DP15 must be to avoid the harm, not merely to lessen it;
- (vi) MSDC, like Wealden DC before it, has failed properly to consider reasonable alternative ways of meeting its obligation only to permit development that will avoid adversely impact on the EU sites. Consideration only of zonal mitigation, backed by SANGS, rather than other potentially more effective avoidance measures, is unjustified¹⁰. MSDC has not considered, as it should have done, other reasonable, viable alternative non-zonal avoidance measures to eliminate the risk of harm to the sites, nor any explanation for excluding other options. There has, for example, been no consideration at all as to whether there is a limit on visitor growth that is compatible with protection of the EU sites and of capping the aggregate amount of development within a zone beyond 400 metres of the EU sites' boundaries at a level which would not result in harm to the sites; no reason is given for not doing so;
- (vii) Not one scintilla of evidence has been provided by MSDC to support DP15's implicit assumption that the creation of SANGS and/or monitoring of visitors will be effective in practice to achieve the required purpose of diverting sufficient visitors to Ashdown Forest to eliminate the disturbance to protected birds that is required by the Regulations, and is inherently very unlikely to do so. MSDC does not even identify the degree to which DP15's "mitigation" objective is expected to lessen the impact of additional visitors, without which even that inadequate mitigation purpose cannot be measured, nor can the effectiveness of its future delivery be monitored. The latest Sustainability Appraisal Addendum includes no analysis even of the effectiveness of the zonal options considered to achieve their necessary legal purpose of eliminating harm to the two EU sites, and hence does not even purport to address that fundamental sustainability purpose;
- (viii) Governmental authorities have long underplayed the seriousness of harm from NO² emissions, and have long set air quality measurement standards that the courts have twice judged to be illegally slack.¹¹ Even so, NO² emissions within the SAC have been measured as being at critical levels that far exceed maximum permitted tolerance limits.¹² So MSDC is wrong to have screened out potential atmospheric pollution and related health implications (including the potential for harm to

⁹ The Oxford English Dictionary provides the following as synonyms for "mitigate": "alleviate, reduce, diminish, lessen, weaken, lighten, attenuate, take the edge off, allay, ease, assuage, palliate, relieve, tone down." "Mitigate is not a synonym for avoid".

¹⁰ **Ashdown Forest Economic Development LLP v Wealden DC [2015] EWCA Civ 681** (Court of Appeal) Note the statement by Richards LJ at para 48 that "*I do not accept that anything turns on the advice of Natural England that any net increase in dwelling numbers within a 7 km zone would "require" the provision of SANGs. In my view, this cannot be read as advice that the 7 km zone was the only option available.*" The Wealden decision does not endorse the principle of a zonal or SANGS-based policy.

¹¹ **ClientEarth) v Sec of State for the Environment, Food and Rural Affairs [2015] UKSC 28** and **ClientEarth No2 v Sec of State for the Environment, Food and Rural Affairs (2016) EWHC 2740** (Admin).

¹² The May 2013 version of the HRA identified that traffic related acid deposition and eutrophication by nitrogen deposition were both at critical levels that far exceed maximum permitted tolerance limits - in the case of acid deposition by between 481% and 1,570%. This was made clear in the May 2013 version of the Habitats Regulations assessment at para 5.1.6. Table 5.1 of the March 2015 version (based on 2012 data, thus predating the May 2013 HRA version) masks that conclusion.

protected bird species) at this stage as insignificant, and it is wrong of DP15 not to contain a positive policy aimed at protecting both the SAC and SPA by reducing traffic-caused No^x pollution across Ashdown Forest to a level that complies with EU limits irrespective of whatever development growth may occur in the vicinity over the life of the Plan. Nor is there any up to date analysis of the potential significance of NO^x implications on the health of the two sites' bird, plant and fauna. There is no joined up co-ordination between MSDC and other authorities around Ashdown Forest despite the requirement for cumulative impact on the two EU sites to be assessed. It is significant that Wealden DC admits that it has not yet got sufficient evidence to develop a sound policy on this issue.

- (ix) MSDC has overstated the number of new homes within its proposed 7km zone of influence for which a SANGS could "compensate" by a factor of 3. We demonstrate in the appendix to our July 2015 representations that its maths is wrong. Even if SANGS were the right solution MSDC would need three times as much SANGS as it is assuming.

5.10 As a result, the Sustainability Appraisal Addendum and the Habitats Regulations Assessments to which it refers do not provide the necessary robust evidence to justify policy DP15. That draft policy is therefore necessarily unsound; indeed, as we have long argued, it is fundamentally flawed. It is not for CPRE to say what the most appropriate policy should be, not least because the evidence is missing.

5.11 If the Inspector were to accept CPRE's case that draft policy DP15 permitting uncapped levels of development around Ashdown Forest subject to delivery of compensating SANGS and pollution monitoring is unsound, it would follow that it is unsafe to assume that MSDC can deliver the level of housing growth within the zone of influence around Ashdown Forest that would be required for MSDC to deliver sustainably its proposed 800 dpa housing target in DP5. Or to justify its settlement hierarchy policy in DP6 as regards towns and villages within the zone of influence. It is our case that there is no good and up to date evidence to justify the soundness or deliverability of either policy, or DP15, and that DP15 does not comply with the Habitats Regulations.

5.12 CPRE is frustrated that MSDC has repeatedly declined to discuss CPRE's long-standing concerns on this issue with us. We have no idea how it answers them.

6. Conclusion

6.1 If Mid Sussex's new local plan is to reflect "the vision and aspirations of local people" (in the phraseology of NPPF para 150) it must be a plan that is realistically deliverable by the District Council over its life. This draft Plan, with its unrealistic housing target, is not a reliably deliverable plan. We urge the Inspector to save MSDC from itself and not to allow the Plan to set a replacement housing target that is as similarly unrealistic and undeliverable as its current, demonstrably unachievable one. No public good is achieved by squeezing MSDC into a position whereby the likelihood is that within a short space of time the Council's new local plan, so agonisingly long in the making, becomes as out of date as the current one.

6.2 CPRE will be happy to try to answer during the hearings any questions that the Inspector may have on the subject matter of this memorandum.

Michael A. Brown on behalf of the Campaign to Protect Rural England, Sussex Branch CIO
7th November 2016



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9th January 2016

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Dear Claire,

MID SUSSEX DISTRICT COUNCIL DRAFT DISTRICT PLAN: NOVEMBER 2015 FOCUSED AMENDMENTS CONSULTATION

This letter is the formal response of the Campaign to Protect Rural England, Sussex Branch CIO (CPRE Sussex) to the Mid Sussex District Council (MSDC) public consultation on focussed amendments of November 2015 to the pre-submission draft of its proposed District Plan.

CPRE Sussex works to promote and encourage the improvement, protection and preservation of the countryside and biodiversity of Sussex's towns and villages, and to improve the well-being of its rural communities.

CPRE actively supports the need for our local villages and towns to remain economically vibrant and self-sustaining, and supports the development of a strategic plan that will encourage sustainable growth and development, including boosting housing numbers, that is sensitively planned for its environment, and of good quality: a plan that recognises the District's largely rural character and which meets local need within the environmental and infrastructure constraints of the District's geography and economy.

RESPONSE SUMMARY

CPRE Sussex is concerned that MSDC has been panicked into its last minute proposal substantially to increase its housing target and to allocate a new strategic site in Pease Pottage. It has produced no robust evidence to justify this change and has failed to undertake a proper analysis of the implications of its proposals. The evidence actually is that the proposed changes are unsustainable, undeliverable and ineffective, and that the District lacks the capacity to absorb the level of housing proposed. The proposals are inconsistent with the National Planning Policy Framework (NPPF) and fail all the tests required of a sound Plan. CPRE Sussex is equally disturbed at the unsustainability of MSDC's proposed new housing density policy DP24A.

We make a number of suggestions to strengthen other proposed policy changes, including extending the same broadened protection of the South Downs National Park to the High Weald AONB and to increase the robustness of policy DP39 on Sustainable Design & Construction.

A. HOUSING TARGET

Objectively Assessed Housing Need (OAHN) and Capacity

In our previous submissions we queried the already high calculation of the District's OAHN, and argued that, irrespective of that OAHN, the District lacks the capacity sustainably to commit to a building programme that satisfied that OAHN, and that the draft Plan lacks any real rural spatial strategy. These last minute proposed changes to the draft Plan considerably increase our concerns.

We recognise that the NPPF aims significantly to boost the supply of housing, and that it requires Mid Sussex's new District Plan to be based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development. Equally, though, the NPPF accepts in para 14 that an LPA's OAHN need not be met in full where "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole". In the context of NPPF par 47, meeting or exceeding Mid Sussex's OAHN would not be sound or consistent with the NPPF policies if forcing it to do so would result in the NPPF's countryside and designated area protection policies being overridden and in unachievable, unsustainable development requirements being imposed. MSDC has not heeded this aspect of the NPPF's requirements.

The NPPF requires a two stage process of determining an appropriate housing target for a District – firstly, determining its OAHN, and then determining whether there are capacity or other constraints identified in NPPF para 14 which necessitate setting a lower housing target than its OAHN. This two step approach has been endorsed by the Courts¹, which have recognised that national park and AONB protection in line with NPPF paras 115-116 may indeed constitute just such a constraint.

The potential for countryside factors to act as a constraint on development planning has also been expressly recognised by the then Minister of State for Housing & Planning (Brandon Lewis MP) in his letter 27th March 2015 letter to the Chief Executive of the Planning Inspectorate². In that letter he makes reference to a number of recent planning appeal decisions in which harm to landscape character has been an important consideration in the appeal being dismissed. His letter says: "*These cases are a reminder of one of the twelve core principles at paragraph 17 of the National Planning Policy Framework – that plans and decisions should take into account the different roles and character of different areas, and recognise the intrinsic character and beauty of the countryside – to ensure that development is suitable for the local context.*" and "*These cases also reflect the wider emphasis on delivering sustainable outcomes at the heart of the Framework, which means taking full account of the environmental as well as the economic and social dimensions of development proposals.*"

Hastings, Reigate & Banstead, East Hampshire, Dacorum and East Cambridgeshire are all examples of local planning authorities where the application of this two stage approach has resulted in their recent local plans being adopted and/or passing examination with annual housing targets set at levels below their OAHN.

¹ *St Albans CC v Hunston Properties Ltd* [2013] EWCA Civ 1610 and *Solihull Metropolitan Borough Council v Gallagher Estates Ltd* [2014] EWCA Civ 1610 (both Court of Appeal decisions).

² <https://www.gov.uk/government/publications/letter-to-the-chief-executive-of-the-planning-inspectorate>

In our previous representations³, which should be read in conjunction with this letter, we made the case that Mid Sussex is subject to material capacity constraints that require the new District Plan to set a housing requirement target below the then assessed but, in our view, overestimated, OAHN. It must be borne in mind that Mid Sussex is a largely rural district and that LUC's Capacity Study evidence commissioned by MSDC concluded that the capacity for anything more than small-scale development in rural areas of the District is heavily constrained. The District has an unusually high proportion of specially protected countryside: 60% of the land area is within the High Weald AONB and South Downs National Park; it abuts two EU protected sites on Ashdown Forest; nearly 16% of the land area is covered in ancient woodland; there are 50 Sites of Nature Conservation Importance and 13 Sites of Special Scientific Interest (mostly within the High Weald AONB).

Revised Plan proposals re Chapter 3, paras 3.10 -3.18 (Meeting Housing Needs), 3.28, 3.39 (Duty to Co-operate), DP5 (Housing) and DP9A (Pease Pottage Strategic Site)

MSDC has been panicked into this last minute proposal substantially to increase its housing target, but it has produced no robust evidence to justify this change and has failed to undertake a proper analysis of the implications of its proposals. The evidence actually is that the proposed changes are unsustainable, undeliverable and ineffective. The proposals are inconsistent with the National Planning Policy Framework (NPPF) and fail all the tests required of a sound Plan. We use this opportunity to explain why CPRE Sussex

1. sees no justification for the upwards re-calculation of Mid Sussex's own OAHN to 695 dpa;
2. believes that a ne housing target of 800 dpa is unsustainable, unachievable and unsound; and
3. disagrees with the proposition, made now for the first time, that Mid Sussex has the additional capacity to meet part of the capacity shortfall of neighbouring LPAs, and disagrees with the suitability of the proposed new allocation of the Hardriding Farm strategic site to enable the accommodation of additional housing to meet excess housing needs of Crawley BC.

As proposed, this policy and DP24A re housing density would together fundamentally and for ever change the rural character of Mid Sussex. The Council has no public mandate to do that. The Council should withdraw these ill-considered, deeply damaging, unsound proposals and think again. It should set a housing requirement target that properly reflects the constraints that preclude it from sustainably delivering its objectively assessed housing need.

There needs to be a recognition that the planning system is not merely an instrument for delivering lots of new housing. Planning has a variety of purposes, and it cannot be confined to the single aim of building as much stuff as possible as quickly as possible irrespective of the wider social and environmental consequences inherent in promoting sustainable development.

1. Why the re-calculation of Mid Sussex's own OAHN to 695 dpa is unjustified.

Our opinion remains that Mid Sussex's HEDNA conclusions, proposed in the June 2015 consultation draft, are based on inflated and unreliable assumptions as to genuine housing need, and hence excessive.

In deciding further to increase that proposed OAHN from the 627 dpa figure it arrived at nine months ago, MSDC notes the implications of the examinations of Crawley's and Horsham's new local plans, but fails to explain why it has abandoned the position previously adopted that no adjustment to the OAHN was

³ Dated 17th June 2013, 15th January 2015, 23rd July 2015 and 12th October 2015.

required on account of “other factors” when the Inspector of Crawley’s new plan has accepted that no such adjustment is required in their case. It is simply not the case that, as claimed by MSDC, Mid Sussex has similar demographics to Horsham – see section 3 below.

2. Why a proposed housing target of 800 dpa is unsustainable, unachievable and unsound

In June this year MSDC issued as a core part of its evidence base a sustainability appraisal that reported (at p.80) that a housing target of 650 dpa (option (c)) represented “*the ‘tipping point’ in sustainability terms between acceptability and unacceptability when weighing up whether positive impacts on social and economic objectives outweigh any negative impacts on environmental objectives. Option (c) meets housing need at the same time as not having a demonstrable negative impact on the environment compared to [other higher] options.*” That Sustainability Appraisal goes on to say “*Whilst options (d) and (e) [higher housing targets] would also achieve this, it is questionable as to whether these options are deliverable – the SHLAA indicates that there may not be enough suitable sites to achieve this, this is reflected in the more negative scores under the environmental objectives. In order to achieve these levels of growth, it would mean allocating less suitable/unsuitable sites to meet the housing provision. This would have knock-on effects on environmental objectives such as those concerned with biodiversity, protecting the countryside, road congestion and water quality.*”

MSDC now plans to increase its delivery target for new housing built over the period of the Plan from 11,050 (650 dpa) to 13,600 (800 dpa). With absolutely no new supporting justification at all, it provides an update to that appraisal which simply and conveniently substitutes 800 dpa in place of 650 dpa as being that sustainability tipping point. The credibility of the new Sustainability Appraisal vis a vis its latest proposals is not assisted by the frequency, rapidity and degree in which it changes them without supporting justification and having previously argued forcefully that its earlier conclusions were sound.

CPRE has consistently argued in our representations that the District simply does not have the capacity to absorb the target levels of new housing that the Council was proposing, even before this latest change proposed to its District Plan, and that any policy which failed to recognise that capacity constraint would be unsound in terms of NPPF para 182.

As MSDC’s own June Sustainability Appraisal itself admits (see quotes above), an unrealistic housing target forces MSDC to allocate for development wholly unsuitable sites without proper regard to their sustainability. That generates a vicious circle whereby, over time, more and more inappropriate locations have to be set aside to feed the need to demonstrate theoretical deliverability of the target, with no actual assurance that the building target will in fact be met. That is amply demonstrated by MSDC’s new volte-face proposal to allocate what it has hitherto regarded as a very unsuitable site at Hardriding Farm, Pease Pottage and by its admission that it will almost certainly need to expand its site allocations from 2019 - i.e. to reverse its view on the unsuitability of other excluded strategic sites. This shows the patent unsustainability of an 800 dpa target.

A Plan that would commit the Council to see at least 800 new dwellings built every year would be an undeliverable Plan set up to fail. It is inevitable that, sooner rather than later, the Council would again find itself in default on meeting its target, with the consequential return to the current disastrous position where the local council has no significant control, and local people have no real say, over where and what type of development is to occur within Mid Sussex.

We submit that it is a responsibility of Council members, or failing them, of the Planning Inspectorate to ensure that such an inevitability is not pre-ordained.

We calculate that MSDC has delivered an annual average of 493 net completions over the last decade; or 532 pa in the last 5 years to March 2015 – a period during which it mostly operated under the NPPF para 49 cosh. This is way, way short of the 800 dpa now promised, a target level that has never been achieved in

any single year in MSDC's history. This history offers nothing remotely to suggest that MSDC can suddenly, and consistently, start to deliver 800 new homes every year and make up the last two years' delivery backlog.

The Council's problem in meeting their housing target is made even worse by three factors that are outside of their control, namely

- the fact that their delivery target is not calculated by reference to the number of planning permissions granted (or suitable sites available for development); and hence their delivery against target is at the whim of developers' willingness to seek permissions on suitable sites and then not to hoard those permissions as they commonly do.⁴ It is not necessarily in developers' interest to assist a council to achieve its target;
- the NPPF requirement that any existing backlog in housing delivery from the start date of the Plan must be made up and included within the ongoing delivery target – normally (but not always) within the next 5 years. Given that the Council has a significant shortfall in housing delivery, this adds to the pressure on the Council to set an unachievable forward target;
- the NPPF para 47 rule that the Council must identify enough deliverable development sites to provide a 20% buffer margin over and above its 5 year housing target in order to ensure choice and competition in the market for land. The Council's calculation that it can deliver 4,978 dwellings in plan years 1 – 5 (SHLAA main report, table 3) only satisfies the NPPF test by a whisker and then only if virtually every existing identified development is actually built, and on time, something which simply does not happen in practice.

We note that the latest Sustainability Appraisal update admits that “*Any housing provision over approximately 800dpa would require the development of every non-strategic size site within the SHLAA to be developed, or the development of more strategic size sites (of which there are limited suitable sites to choose from in the SHLAA)*”. Given the reality that not all SHLAA sites will be developed and the requirement for a 20% buffer of developable housing, this statement appears to evidence that an 800 dpa target is incompatible with NPPF para 47 even before the backlog is taken into account.

Even if development within the District were not constrained by environmental and sustainability considerations – which it is – and even if the newly proposed Pease Pottage site was suitable for allocation – which it is not (see below) – the Council is proposing a Plan which sets a housing delivery target on which it cannot in practice deliver. The SHLAA process, read together with the Capacity Study, amply demonstrates that there is not the land available to meet such a huge target or buffer.

The Plan and its examination should focus on the number of houses that can reasonably be expected to get built sustainably⁵, not on how to release more and more land for developers to landbank.

In summary MSDC's proposed new housing delivery policy is unsound in terms of NPPF para 182:

⁴ According to the Guardian on 31 December 2015, the 9 largest UK housebuilders have landbanked enough land to build over 600,000 houses – four times the number of new homes built in the last year: <http://www.theguardian.com/society/2015/dec/30/revealed-housebuilders-sitting-on-450000-plots-of-undeveloped-land>

⁵ CPRE's report and recommendations “*Getting Houses Built: How to Accelerate the Delivery of New Housing*” (June 2015) supplements our evidence on this point: <http://www.cpre.org.uk/resources/housing-and-planning/housing/item/3976-getting-houses-built?highlight=WyJnZXRoYW5nIiwid2dldHRpbmciLCJob3VzZXMiLCJidWlsdCIsImdldHRpbmcgaG91c2VzIiwzZ2V0dGluZyBob3VzZXMgYnVpbHQiLCJob3VzZXMgYnVpbHQiXQ==>

- it is not positively prepared, because the evidence shows that the policy is not consistent with achieving sustainable development. That evidence includes the Sustainability Appraisal conclusion that the level of housing required exceeds the tipping point on sustainability; the LUC Capacity Study conclusion that there are serious environmental and other constraints on anything other than small scale development outside the District's 3 main towns; the conclusions of the SHLAA process as to the availability of suitable locations for development; and our own previous representations regarding capacity constraints imposed by, inter alia, the need to comply with the Habitats Regulations as they affect the area around the two EU protected sites on Ashdown Forest;
- it is not justified, as the alternative strategy has not been addressed of setting a housing target that recognises the environmental and other capacity constraints to ensure the NPPF's objective of delivering sustainable development;
- it is not effective, as it is patently unrealistic (see NPPF para 154) and undeliverable; and
- it is inconsistent with national policy, both in terms of para 47, and because the consideration of the second stage of the process for setting a housing target required by the NPPF has been ignored i.e. whether there are any adverse impacts of meeting the OAHN which would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in the NPPF which indicate that development should be restricted. Demonstrably there are.

Since most of the District's Neighbourhood Plans have either been adopted or are well advanced, and they are based on lower assessments of local housing need, these major proposed late changes to the District Plan could lead to a situation which NPPF para 155 says should be avoided, whereby the District Plan and Neighbourhood Plans would no longer reflect an agreed set of priorities for the District's development. They could also conflict with the requirement in para 184 that "*Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies*".

3. *Why CPRE Sussex disagrees with the proposition that Mid Sussex has the capacity to meet part of the capacity shortfall of neighbouring LPAs.*

Mid Sussex District lacks the environmental capacity to accommodate its own housing needs, yet alone to set an additional housing target aimed at assisting the overspill housing needs of Crawley BC or other adjacent authorities.

There is no objective justification for the proposition that Mid Sussex has sufficient suitable development land to accommodate part of the overspill housing needs of Crawley Borough Council (or any other neighbouring LPA) as well as Mid Sussex's own needs. That proposition is put forward now for the first time and flies in the face of its considered conclusions only 6 months ago that it only just had site capacity to meet Mid Sussex's own OAHN (as calculated at that time).

TABLE 1: Comparative demographics of Horsham and Mid Sussex

	Mid Sussex	Horsham
Total population (2014)	143,000	134,000
Total Land Area (Source: Wikipedia)	334 km ²	530 km ²
Overall population density	428 per km ²	253 per km ²

Land area/percentage that is designated as AONB or National Park (Source SDNPA/HWAONB Unit)	201.0 km² (60.2%) [163.6 km ² AONB, 37.4 km ² SDNP]	130.3 km² (24.6%) [36.0 km ² AONB, 94.3 km ² SDNP]
Population density in undesignated areas	1,075 per km²	335 per km²

Misguidedly it is expressly based on the assumption that Mid Sussex District has similar demographics to Horsham⁶ and can accommodate a similar number of Crawley’s overspill as has reluctantly been endorsed by Horsham in the new Plan Framework. That crucial assumption is plainly wrong: Table 1 above vividly demonstrates material differences in the two Districts’ respective protected land designations and population densities: Mid Sussex’s undesignated areas are three times as densely populated as Horsham’s⁷.

The number of houses to be offered to help Crawley meet its OAHN has no better logic than that it is similar to the number that Horsham has agreed to accommodate, and is not based on any separate consideration by MSDC of Mid Sussex’s capacity to do likewise. No explanation is even offered as to why the evidence published in relation to MSDC’s June 2105 pre-submission draft that demonstrated its required co-operation with neighbouring LPAs – without that draft offering to accommodate Crawley’s housing overspill - is now considered unreliable as evidence.

The commitment to provide 105 dpa to meet Crawley’s needs appears to survive for the whole 17 year life of the District Plan i.e. 1,785 dwellings in total. The allocation of a new site for 600 houses would only meet that commitment for about 5 years (and presumably not much, if at all, before the end of the Plan’s first 5 year period). Nothing is said about how the overall commitment to build a further 1,200 homes for Crawley BC would be honoured, and we query how that is compatible with the third bullet of NPPF para 47.

4. Why CPRE disagrees with the proposed Hardriding Farm strategic site allocation

We are especially concerned that MSDC’s proposal in new policy DP9A to commit to building an extra 105 homes p.a. for current Crawley residents is based on a proposed allocation of a site comprising 250 acres of land within the High Weald AONB for up to 600 houses, a hospice and a primary school. This same site was rejected less than 6 months ago in the course of the SHLAA process as being “very unsuitable” for development. It is every bit as disturbing that a full planning application has been submitted for this site whilst public consultation on the principle of its allocation is ongoing, and before its allocation (if pursued as a proposal by MSDC) has been considered as part of the District Plan’s examination, or the adoption of the Plan.

Underlying the proposition that Crawley’s excess housing needs should be accommodated in Mid Sussex within the High Weald AONB is the necessary assumption that this AONB location is a suitable and sustainable location for major development, and more suitable and sustainable to meet that need than all

⁶ See Planning Officer’s report to MSDC Council for its 11 November 2015 meeting, para 15.

⁷ The population densities shown for the parts of each District outside the High Weald and South Downs National Park will slightly exaggerate reality because the figures assume (in the absence of reliable data) that no-one lives within them, but that does not prejudice the comparative conclusion.

the sites within Crawley Borough that have been considered and rejected for development in the same way as the Pease Pottage site has hitherto been rejected by MSDC. There is no evidence presented that any analysis has been undertaken (as required by NPPF para 116) to test this implied assumption.

So far as we can see, allocation of this site is proposed without the new infrastructure requirements and deliverability involved required by NPPF para 177 being assessed, and without the environmental or ecological assessment of the impact of development of this site required by NPPF paras 165-167. [The general habitats regulation assessment evidence based on a 2007/8 screening exercise is wholly insufficient for this purpose, not least because it takes no account of the level of development proposed in the current draft District Plan]. In our view no determination as to the sustainability of this site for housing allocation can properly be made without the NPPF required evidence base to support its suitability.

Moreover, apart from World Heritage and EU designated sites, NPPF para 115 affords AONBs “*the highest status of protection in relation to landscape and scenic beauty*” and requires LPAs to have regard to that special status and to give great weight to conserving its landscape and scenic beauty. At the same time, the general presumption in favour of sustainable development is expressly disapplied in respect of AONBs.

The Council does not appear to have addressed the proposed allocation in the proper way with these considerations in mind. On the contrary, the Council seems to have treated this site in the same way as any other undesignated land, and to have entirely disregarded the purpose for which it has been specially designated, and the great weight that has to be given to that purpose. AONB designation appears to be regarded as a nuisance by the Council rather than, as it should be, as a reason to conserve it. It is not for the Council to take it upon itself to decide that the site does not merit its statutory AONB designation and, in effect, to override it by allowing a major development on it despite the inevitable and permanent harm that it will cause to the AONB. The proposition that all other hitherto rejected sites within Crawley - none of which enjoys the same level of legal protection as the Hardriding Farm site⁸ - are more worthy of protection is not demonstrated and, properly analysed, is highly unlikely to be justified since none enjoys the level of protection afforded to the High Weald AONB.

It can be no part of Mid Sussex’s duty to co-operate with neighbouring LPAs in relation to housing to sacrifice AONB land that has been statutorily designated for its special landscape qualities, especially when there is no evidence that this proposed site is more sustainable (less unsustainable?) than others in Crawley.

We fail to understand on what objective basis a site rated by the Council in its detailed SHLAA analysis less than 6 months ago as “very unsuitable” on account of its isolated location within a statutorily designated area of outstanding natural beauty can now be deemed suitable for pre-appropriation for up to 600 houses, and without a shred of new evidence as to its sustainability.

The Council appears to have ignored its primary responsibility under the Countryside & Rights of Way Act 2000 to “take all such action as appears to them expedient for accomplishment of the purpose of conserving and enhancing” the natural beauty of the High Weald AONB, and to start its analysis by assuming that its conservation is its paramount in the absence of exceptional circumstances by giving great weight to its conservation. There is nothing to suggest that MSDC has weighed up the broad criteria that determine the locality’s special features as identified in s.99 of the Natural Environment & Rural Communities Act 2006 and Government Agency guidance which make it clear that a designated area’s special qualities are not overridden by virtue of human intervention.

MSDC has also proposed the allocation without assessing how the local area’s flora, fauna and geological

⁸ Crawley itself has only a tiny sliver of the AONB (less than 0.5km²) and none of the SDNP within its borough.

and physiographical features can be conserved as required by s.92 of the 2000 Act. Moreover it appears to have paid no regard at all to its own Management Plan for the AONB (as required by National Planning Policy Guidance) despite citing it as evidence supporting policy DP9A. How for example is the proposed concreting over of Hardriding Farm compatible with the Management Plan's objectives (SO3 and FH1) of enhancing the already threatened agricultural quality of the High Weald and of securing already vulnerable agriculturally productive use of its fields?

The siting of a large estate at Pease Pottage would also blatantly drive a coach and horses through the countryside protection and restricted rural development policies in MSDC's own draft plan. None of the draft Plan's criteria for allowing even small-scale development at this location apply here. This strategic site proposal makes a complete mockery of the whole Plan. Moreover it would fly in the face of one of the fundamental tenets that have governed strategic town and country planning ever since the second world war by promoting haphazard, isolated new development sprawl into open (and in this case heavily protected) countryside.

Hardriding Farm is an isolated, rural site making residents car-dependent, as the SHLAA analysis itself acknowledges. It lies at some distance across the M23 from Crawley, and with no existing local facilities or services other than those of a small motorway service station which is wholly unsuited⁹ to meet the needs or safety of nearly 1,500 new residents mingling with off-motorway traffic, much of it of a heavy lorry kind in a large, often congested, car and lorry park. We refer you to the two attached photos taken on 2 December 2015.



⁹ We note that the service station offers 15 unmonitored gaming machines, three fast food outlets and a WH Smith selling a large range of confectionary. Its single food store offers a limited range of packaged products, and few everyday household items.



The location offers no cohesive link with Crawley and lies beyond the M23 motorway that defines Crawley's eastern and south eastern boundary. It is miles from all Crawley's central hub services with only an hourly bus service. No information is offered in the latest consultation document as to how the upper school, medical, social or other local needs of its residents would be met, or what sustainable transport services would be made available to them. On all these counts the development is plainly not sustainable in NPPF terms.

Selection for substantial development of what MSDC admits is an isolated rural site also directly contravenes NPPF para 55, which tells LPAs to avoid new isolated homes in the countryside other than in identified exceptional circumstances, none of which apply in this case.

Development of this allocated site would undoubtedly be a major development for the purpose of NPPF para 116. At 250 acres, it would have a extremely significant adverse impact on the local area, both within the AONB and on Pease Pottage and Handcross. Opportunity to mitigate that harm is nowhere described and is likely to be very limited, especially given its very large scale and proposed high housing density.

Any major development of this site would fail the "exceptional circumstances" and "public interest" tests in NPPF para 116.

Whilst co-operation with neighbouring authorities is a legal and NPPF requirement, it cannot by itself amount to an exceptional circumstance: one which justifies allowing unsustainable development or tearing up the NPPF rules (para 7 et al) that specify the balancing factors which determine when a development is sustainable. An unsuitable and environmentally precious site in Mid Sussex does not suddenly become a sustainable one by virtue of Crawley having insufficient sustainable sites of its own to meet its own housing needs. Moreover, as explained above, the allocation proposal fails the second exceptional circumstances test in para 116 that "the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way" as its sustainability has not been established and its relative

unsuitability compared to other sites in Crawley has not been assessed. Nor has the number of proposed new dwellings (or their excessive proposed density) been justified as anything other than arbitrary.

As to the public interest requirement of para 116, this is a separate and additional test that has to be considered independently of the exceptional circumstances test. It has not been considered at all by MSDC, who make out no case as to why the allocation of the Hardriding Farm would be in the public interest. It is not. The need to boost the national housing stock cannot amount to a public interest justification: if it did, it would trump other considerations in every case. Overcoming Crawley's shortage of developable sites is a consideration in the exceptional circumstances test and is discussed in the previous paragraph: it should not be double-counted when considering public interest.

The public interest does not require the sacrifice of the major environmental benefits that led to the site being part of the AONB - and hence to the statutory protection that it enjoys - on the social altar of providing new housing: the NPPF requires a balancing of economic, social and environmental considerations: the public interest lies in protecting special countryside that has been identified as meriting AONB status and in respecting that balancing act. The public interest does not lie in overriding that balancing act by permitting development that is unsustainable on normal planning and environmental considerations.

If it were the case that a shortage of housing land in one's own District or in a neighbouring District qualified either an exceptional circumstance for the purpose of NPPF para 116 or satisfied the public interest test to justify overriding the statutory protection enjoyed by all land designated as an area of outstanding natural beauty, then no part of the High Weald AONB (or indeed the South Downs National Park) would be exempt from allocation for housing. That would render their designated status meaningless.

We note that the Government has advised that, in the case of Green Belt land, the single issue of unmet housing demand is unlikely to outweigh harm to the green belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt¹⁰, and that this guidance has been followed in planning appeals¹¹. If that is true of green belt land, it must be even more true in relation to areas of outstanding natural beauty which are entitled to an even greater degree of statutory and NPPF protection. So we do not accept the Council's argument that meeting Crawley's housing need (the sole reason offered for this proposed allocation) amounts to an exceptional circumstance that justifies overriding the Council's duty under NPPF para 116 to refuse major development of this AONB site, or as a public interest reason to do so.

Nor do we accept the logic of requiring part of the AONB to be converted to hospice use, however much a new hospice may be required somewhere within Crawley. It is certainly not part of the infrastructure needed to support the proposed new adjacent housing estate. No evidence is offered that there are no more suitable sites to locate it if one is needed. Considered on its own, an application to build a hospice within the AONB is highly unlikely to comply with local Plan policies affecting the High Weald AONB or

¹⁰ Ministerial Statement 1 July 2013: "*The Secretary of State wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt.*"

¹¹ See, for example PINS Ref: APP/M1595/V/14/2214081 (Thurrock Council).

national planning policy. It is not an appropriate form of planning gain to justify the other components of any housing development scheme on this land.

5. Other serious adverse implications of the proposed new strategic site allocation

If your Council can make such a fundamental U-turn in relation to suitability for large scale development of the Hardriding Farm site and without any new evidence, how does it expect to be able to justify its stance at the EiP vis a vis other assessed sites that it deemed to be unsuitable for development during the SHLAA process? The Council knows that developers intend to challenge those other site by site determinations. The Council seriously risks losing all control over the SHLAA process and the opening up of a Pandora's box of new sites with all the blighting and other consequences that follow from that. It is setting itself up as the sole grouse on the moors to be shot at by particularly well armed and experienced marksmen on the first day of the shooting season.

The position would be made even worse if the allocation of new greenfield strategic sites in MSDC's District Plan were to become caught by legislation currently being debated in Parliament to implement the Government's proposals to extend its Planning Permission in Principle regime to greenfield residential development, as this could further significantly limit the Council's ability to control the development of the Hardriding Farm strategic site and any others that emerge from the EiP process. It could make it harder for the Council to ensure that the right type of housing is built to meet the most pressing identified need, and the quality of that housing.

If contrary to our views expressed here, the Hardriding Farm site were to become an allocated site, Policy DP9A should be more specific as to the types of housing, especially starter and other affordable homes, for which it is intended in order to meet greatest need, rather than simply falling back on the standard 30% affordable homes rubric. We would also wish to see the Council specifically aim to set tougher than minimal design, energy efficiency and biodiversity protection policies, reflecting the sensitivity of such a large site within the High Weald AONB and our comments below.

CPRE SUSSEX COMMENTS ON OTHER POLICY AMENDMENT PROPOSALS

1. DP7 – DP9 (Strategic Site developments)

Are not the additional strategic development delivery criteria added to DP7 equally appropriate to be added to all designated strategic sites in the Plan document?

2. DP14 (High Weald AONB) and DP16 (Setting of the South Downs National Park)

We welcome the detailed policy wording changes proposed in DP16.

The last paragraph of DP14 was inserted at CPRE's suggestion earlier this year to reflect the fact that the AONBs, and their setting, merit equivalent protection for their scenic beauty to that rightly afforded to national parks: it has never been the legislative intention that AONBs should be poor cousins to national parks in terms of protection. On that premise we call for changes to be made to the last paragraph of DP14 that track the improvements now being proposed to DP16.

This request has heightened practical importance because the proposed new regulations restricting fracking in or under AONBs and National Parks will not ban deeper (over 1,200m) lateral drilling under AONBs or National Parks from sites outside them. Given that the potential for commercial quantities of shale oil beneath the Weald has been identified, the issue of what kind of development that affects the setting of the High Weald AONB should, or should not, be permitted could well become a material and contentious issue. The absence of a logic for differences in the District Plan between the protection it

affords to the setting of the South Downs National Park on the one hand and of the High Weald AONB would become apparent unless equivalent changes are made.

3. DP19 (Transport)

One of the bullets in DP19 has been amended to refer to the special qualities of the South Downs National Park as a particular consideration in the context of the cumulative impacts of development on road safety and congestion. The new addition should also refer to the special qualities of the High Weald AONB, which is actually within the Plan area and is entitled to similar levels of protection.

4. DP24A (Housing density)

CPRE fully supports sensitively maximising the habitable use of town centre, commuter hub and other brownfield sites. Appropriately done, this can serve the Plan policy's appropriate prioritisation of focussing development away from greenfield sites.

We are however shocked at the levels of density proposed in this policy DP24A, and query their compatibility with meeting the objectives set out in DP24. We assume that this policy DP24A is motivated principally by a paucity of suitable developable sites to enable MSDC to meet the (in our view unachievable) housing target that it proposes to set itself.

It is of concern that the Council offers no explanation of what a 70 dph level in town centres means in practice in terms of the types of housing it envisages, how that would meet social needs, nor its compatibility with the character of our District's three market towns. Nor does its "analysis of densities achieved" evidence base appear on its website.

We have found no Government guidance within either the current NPPF or NPPG on appropriate development density levels. We do note that the Government is currently consulting on possible changes to the NPPF, and that para 18 of the consultation document describes an ambition to increase average housing density at transport hubs from 35 dph to 40 dph. Whilst DP24A makes no reference to commuter hubs, on the premise that they will be in the town centres DP24A is proposing a density of 70 dph, double the current average density level for similar areas, and a density only appropriate in an inner city context.

In trying to benchmark MSDC's proposal, we have also looked at the Town & Country Planning Association's Policy Statement on Housing Density¹² which concludes as follows:

6.1 In short, the TCPA believes that in the matter of housing, environmental considerations do not necessarily justify over-riding public preferences. It takes the view that widespread imposition of very high residential densities (of, say, 60 dwellings per hectare or higher) would inflict high social, economic, and environmental costs on communities and create places that appeal only to a small minority of households. Nevertheless, it accepts that very low densities, meaning houses built at less than about 20 per hectare, generally fail to create a recognisably 'urban' context for community life. Variety of provision, between these extremes, is the way forward, with most homes designed to meet majority needs and aspirations, in the 30 to 40 DPH range.

6.2 The TCPA is confident that if the stimulus of a single target figure is needed, one around 35 DPH would be acceptable, whether in a major greenfield development or in piecemeal infilling and redevelopment, without compromising the hopes and expectations of today's households. But it emphasises that many variations above and below this figure will have to be adopted as circumstances require."

¹² <http://www.tcpa.org.uk/data/files/densities.pdf>

Wherever people chose to live they are entitled to space, privacy, open green space and access to nature on their doorsteps. Cramming people into too little space carries the serious risk of creating significant social problems associated with over-crowding, especially if local residents have no cause to take pride in their homes and surroundings and few readily available outlets for their recreation. That would not be sustainable living in the context of medium sized market towns. We have found nothing that suggests that the density levels proposed in DP24A would result in sustainable development in the context of Mid Sussex district, especially as the Plan policies do not purposefully address the fundamentals of effective urban design on which the Urban Design Compendium (cited as evidence by the Council) is itself premised. We also note that the UDC itself makes no recommendations of density levels for equivalent type of location.

Our views are as follows:

- This policy arrives very late to the ball, unadorned by even a fig leaf of evidence to support its practicability, suitability or deliverability; nor as to how it ties in with identified spread of affordable and market housing need;
- Density objectives should be expressly subservient to the proposed development being able to achieve the Plan's character, design and other building form criteria, as the opposite could otherwise all too easily happen;
- DP24A needs expressly to recognise that urban developments must be compatible with the towns' existing characters, and must provide residents with sufficient immediate access to sufficient natural green space (something not covered by either DP24 or DP24A);
- We query whether, even within Burgess Hill, a density level exceeding 50 dph is sensible and sustainable;
- A sweeping density level of 45 dph for all strategic sites is nonsense (and in the case of Pease Pottage incompatible with the 30 dph proposed in policy DP9A, a density which itself ignores the considerable sensitivity of a huge site within the High Weald AONB);
- No minimum density level should be set for rural sites: appropriate density levels will be very dependent on locality, landscape and other factors, and must be determined on a case by case basis, as at present.

DP24A reflects a problem caused by an unrealistic housing target. Its solution lies in reducing that target to one that is achievable and sustainable, not in over-intensive housing density or in threatening to allocate yet more greenfield sites to meet that misguided target.

5. DP39 (Sustainable Design and Construction)

CPRE Sussex believes strongly in the 'right development in the right places' and a key component of this is good design. This goes beyond the architecture and form of a development and includes the cultural connections between people and places and the landscape, as well as the social wellbeing of communities. The elements which define the landscape and built character should inform the design process from an early stage. This should consider both the local environment of a site as well as the character and functions of the wider landscape.

Development should:

- complement positive local character and reinforce local distinctiveness including architectural appearance, scale, culture, and the context and circumstances of a site;
- be safe, inclusive, accessible and well integrated
- take into account the objectives of the local community, for example through a village/town design statement within a neighbourhood development plan
- fit in with how an area functions;
- be sustainable in relation to location, construction, materials, minimising the use of resources, any environmental mitigation or enhancements, and creating sustainable communities where people want to live and work; and
- be durable and adaptable to change.

Achieving high-quality design is a core principle of the NPPF, as outlined in paragraph 17. Paragraph 56 also places 'great importance' on the design of the built environment and that it should contribute positively to making places better for people. It also states that good design is indivisible from good planning and is a key aspect of sustainable development. Paragraph 57 states that it's important to plan positively for the achievement of high-quality and inclusive design for all development. Paragraph 59 states that authorities should consider using design codes where they could deliver high-quality outcomes. However, design policies should avoid unnecessary prescription.

A model example of what CPRE Sussex considers to be a good sustainable building policy is in Brighton & Hove's draft Plan currently in examination: see <http://www.brighton-hove.gov.uk/sites/brightonhove.gov.uk/files/CP8%20Sustainable%20Buildings%20including%20Further%20Modifications%20November%202015.pdf>.

CPRE Sussex recognises that MSDC has taken a proactive approach to encouraging sustainable design within the District, as demonstrated by the 2015 Mid Sussex Design Awards (<http://www.midsussex.gov.uk/designawards>.) The Council clearly has aspirations to promote exemplar design within the District, as Councillor Andrew MacNaughton, Mid Sussex District Council Cabinet Member for Planning states; *"It's all too easy for modern developers to follow existing templates and create new buildings that just look the same. We want to encourage the architects that work on projects in Mid Sussex to be bolder and more creative, because top class architectural design really enhances the character of our beautiful District."*

In recognition of this aspiration, CPRE Sussex believes that DP39 could be strengthened to tighten the energy efficiency standards required and provide more detail relating to areas of sustainable design which should be addressed in all new development. The ministerial statement in March 2015 on the setting of technical standards within new dwellings allows energy performance standards to be set within Local Plans until the commencement of amendments to the Planning and Energy Act 2008. CPRE Sussex would like to see the addition of a requirement of energy performance standards equivalent to the Code for Sustainable Homes level 4, until the need for this requirement is superseded by Amendments to the Act.

Policy DP39 should also be tightened to state that all development proposals must be accompanied by a Sustainability Statement within the design and access statement which demonstrates how the following aspects of sustainable design and construction have been incorporated:

- Energy Efficiency and consumption: New development must achieve energy efficiency performance standards at level 4 of the Code for Sustainable Homes or the equivalent national technical standard
 - Passive solar gain and maximising natural daylight: The siting, orientation and internal layout to provide light and heat can significantly affect energy demand, and reduce energy bills and create attractive living/working environments such as reducing overshadowing. The proposed

layout can also increase opportunities for solar panels (for example, south facing roofs). Internal layouts can be designed so as to maximise solar gain to the most used rooms.

- Thermal mass: Materials with a high thermal mass can regulate heat fluctuations in buildings.
 - Heat loss: Heat loss should be minimised to maximise efficiency. This can be achieved through insulation and glazing.
 - Natural ventilation: Anticipated summer temperatures may require greater protection from overheating. Natural ventilation should be used in favour of mechanical systems which can have a high energy demand.
 - Green and brown roofs: These can help to regulate the temperature of a building, remove CO₂ and other pollutants from the atmosphere and reduce any heat island effect.
- Water Efficiency (in accordance with DP42)
 - Rain water harvesting: This can be as simple as a water butt to systems supplying toilets and outside taps.
 - Grey water recycling.
 - Black water recycling (more feasible on larger schemes)
 - Efficient fixtures and fittings.
 - New landscaping which is less water dependant and more resilient to climate change. As well as providing a green corridor and connectivity to the landscape to enhance biodiversity, this can regulate climate around a development (for example, heat island effect), provide shelter from the wind and so reduce heat loss. It can also provide shade to avoid over heating and the need for artificial cooling.
 - Sustainable Urban Drainage can reduce the risks of flooding and can be used in all types and scales of development. Providing more permeable surfaces in development can also reduce surface water run off or the need for drainage works to carry water off site. Flood resilience and resistance measures.
 - Flood Resilience and Resistance: buildings can become more resilient to reduce the consequences of flooding and facilitate a recovery from any effects. This can be achieved through floor levels, appropriate materials, the layout of buildings, siting fixtures and electrical controls higher than normal.
 - Storage facilities: the use of composting bins and convenient cycle storage.
 - Noise, air and light pollution: these can be addressed through, site layout, travel planning, internal layouts, level of car parking, landscaping, energy efficiency and lighting only, where necessary.
 - Materials: using responsibly sourced and recycled materials can make a major contribution to sustainable development by slowing down the demand for non-renewable resources. This can also limit site waste.

Major non-residential development should, in CPRE Sussex's view, be required to meet BREEAM 'excellent' standard.

Paragraph 96 of the NPPF outlines the need to increase the use and supply of renewable and low carbon energy whilst ensuring that adverse impacts including landscape impacts are satisfactorily addressed. This paragraph also highlights that communities have a responsibility to contribute to energy generation from renewable or low carbon sources, such as community-led initiatives through neighbourhood planning. It recognises that renewable energy at all scales helps to cut greenhouse gas emissions. The Mid Sussex

Local Plan should more actively encourage community renewable schemes. The current policy statements will otherwise be largely ignored by developers.

6. DP42 (Water Infrastructure and the Water Environment)

CPRE Sussex strongly supports this policy. The evidence base clearly demonstrates the need for water efficiency measures above and beyond building regulations.

Yours faithfully,

Michael A Brown

On behalf of Campaign to Protect Rural England, Sussex Branch CIO

The following extracts are taken from representations made by the Campaign to Protect Rural England, Sussex Branch CIO (CPRESx) in July and October 2015 in response to public consultation by Mid Sussex District Council (MSDC) on its draft District Plan (and proposed amendments to it). The extracts explain why CPRESx considers that the proper application of the Habitats Regulations to the protection of two EU protected sites on nearby Ashdown Forest would constrain the level of development permissible within Mid Sussex, and around East Grinstead in particular, and why draft policies within MSDC's draft District Plan are unsound because they fail properly to apply those regulations. The extracts below form part of a broader response by CPRESx to the draft Plan consultation.

1. Extract from CPRESx letter dated 23 July 2015

“EU protected sites on Ashdown Forest

The Habitats Regulations 2010¹ make environmental conservation of the two EU protected sites on Ashdown Forest the paramount planning consideration. Paras 102-104 of those regulations require an assessment of whether planning proposals are likely to have a significant effect on a protected site. That assessment that must consider the cumulative impact of other plans or projects. A planning authority may only agree to the plan or project “*after having ascertained that it will not adversely affect the integrity of the European site*”. If it is not clear whether development would have an adverse effect, the Council must apply the precautionary principle, i.e. that harm must be assumed in the absence of clear evidence to the contrary. The Regulations make EU site protection THE paramount planning consideration, not part of a balancing exercise, by prohibiting development where the integrity of a site would be affected unless the harm that has been identified or must be assumed can be avoided - which is why NPPF para 119 disapplies the presumption in favour of sustainable development in cases to which the 2010 Regulations apply.

It is CPRE Sussex's case that the draft Plan is unsound to the extent that it fails to recognise the extent to which the 2010 Regulations constrain the ability to permit future development around the EU sites' boundary. The proposed Plan fails to give proper recognition of the extent to which the correct application of the Regulation constrains the District's capacity to absorb new development to meet its objectively assessed housing need and neighbouring district overspill, or its spatial policies for new development growth within a “zone of influence” around the Sites. Policy DP15 is unsound, and other plan paragraphs and policies dealing with housing delivery and spatial allocation of housing are unjustified to the extent that they fail to take sufficient account of that constraint and are unsupported by reliable current evidence. Our objections break down into three core points:

- (i) The Council is not justified in relying on its Habitats Regulations Assessment (**HRA**) or Sustainability Appraisal (June 2015) (**SA**) (or their predecessor versions) in developing its policy permitting unconstrained development within 7km of the EU Sites' boundaries for the following reasons:
 - (a) as the HRA depends on 2007/8 scoping work that is long out of date, the HRA fails the NPPF para 158 requirement for up to date evidence on which Council policy for future development around the two EU sites can safely rely;
 - (b) the HRA does not comply with the Habitats Regulations requirement for a cumulative impact assessment that considers all plans and projects liable to affect the protected sites since the scoping work was carried out and projected under the new District Plan. The one-by-one incremental assessments by the Council and Natural England (as was) of individual developments allowed since 2008 do not amount to the regulatory-required cumulative assessment of the considerable development permitted since 2008
 - (c) because the scoping assessment did not project the considerable level of future housing growth within the zone after 2008, the HRA and SA significantly underestimate the extent and degree of harm that development permitted and projected since 2008 is liable to cause. Population growth within the 7km zone between 2008 and 2031 could well be 10,000+/- people. Whilst the 2007/8 scoping and the HRA both identified already increasing visitor disturbance to the SPA from new development within 7km of the EU sites' boundaries, and traffic-caused nitrogen deposition to the SAC habitats, as potentially significant impacts on the sites, the actual harm to which they are

¹ Conservation of Habitats and Species Regulations 2010.

exposed is liable to be far more significant in extent and degree when the overall degree of development permitted and proposed within the zone is factored in; and

- (d) conclusions drawn from the evidence reported in the HRA are not even justified by the incomplete evidence presented. For example, as regards the traffic pollution implications, a “monitor-only” policy is not supported by the HRA’s own evidence as to the major degree to which critical levels of nitrogen deposition on the EU sites are exceeded, and it also fails to consider the potential implications for human and protected bird health of the April 2015 Supreme Court decision² that UK Government standards on acceptable levels of NO₂ emissions fail to comply with mandatory EU rules despite the HRA identifying that NO₂ levels there considerably exceed those current lax UK standards.
- (ii) The Council has also failed in its regulatory duty under the SEA Regulations 2004³ to consider whether even the harm already identified can be avoided by adopting a reasonable alternative policy to ensure the effective the protection of the two EU Sites on Ashdown Forest. The Council’s SANGS mitigation policy is in effect one that would allow unconstrained levels of development around the EU Sites (beyond a 400 metre buffer zone) so long as “sufficient” SANGS is made available to accommodate the population increase (at a rate of 8ha per 1,000 new people). This is the only option that has been considered. But it is not the only available option to avoid identified harm. And it is not an option that is most likely to be effective to achieve it’s required purpose in this case.

We note that this concern vis a vis the policy adopted as part of its new Core Strategy by Wealden DC in respect of the same two EU sites has just been expressed by the Court of Appeal⁴. Whilst that case leaves the advice from Natural England on which Wealden and Mid Sussex have been relying as discredited, it inevitably leaves open the question of what might be the most appropriate policy to meet the regulatory imperative of avoiding harm to individual EU protected sites, as that will be a matter of fact and evidence on a case by case basis. There is no evidence as to the options or as to the pros and cons of each.

Whilst CPRE Sussex does not challenge the evidence that new development within a radius of 7km of the boundaries of the EU sites can lead to a harmful increase in visitor numbers at those sites, we note that the Council has not considered whether using the Plan policies to set a limit on the overall level of development growth that should be permitted within an identified zone of influence would be the most effective and sustainable option for avoiding harm to the sites.

A policy of this kind would be a perfectly reasonable policy and add certainty to the strategic planning process. The evidence might show it to be the only effective policy once a full current Habitats Regulations assessment has been conducted. Such a policy would be entirely consistent with the NPPF. Paras 14 and 119 expressly accept that, in plan making, avoidance measures taken in compliance with the Habitats Regulations may legitimately constrain an LPA’s ability to meet its objectively assessed housing need. Para 182 accepts that a Plan is positively prepared even if does not meet objectively assessed need or unmet requirements from neighbouring authorities where, as in this situation, it is not reasonable to do so or unsustainable. Adjacent Wealden is an example of a district which has had its new Core Strategy found to be sound with a housing requirement well below that of the full OAN for the district based on the constraints of the High Weald AONB and Ashdown Forest.

- (iii) Our third point relates to the inappropriateness of its SANGS/SAMM policy. It is a mitigation rather than an avoidance strategy at all and, as such, should not be considered unless no realistic avoidance strategy is available. Moreover, In deciding to pursue its proposed SANGS/SAMM strategy to mitigate increased disturbance to the SAC from visitors (without regard to any avoidance alternative) the Council has not produced a shred of evidence that this strategy is the most appropriate way to avoid harm to the EU sites, or that a SANGS/SAMM policy would even be effective sufficiently to mitigate even the visitor disturbance harm that has been identified.

² *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28

³ Environmental Assessment of Plans and Programmes Regulations 2004. See particularly para 12(2).

⁴ *Ashdown Forest Economic Development Llp v Secretary of State for Communities & Local Government, Wealden DC and South Downs National Park Authority* [2015] EWHC 406 (Admin).

Whilst, in principle, a SANGS can be an effective way to mitigate visitor disturbance, that is true only if (a) a proper and up to date Habitats Regulations Assessment has been carried out that identifies the nature and degree of significant adverse effects from planned development, (b) there is no viable way to avoid those effects, (c) the mitigation strategy can be demonstrated to be effective and (d) there is no other more appropriate avoidance policy. The Council is not justified in applying a generic solution that has been adopted for different situations without evaluation of its likely effectiveness in this case to achieve its purpose of diverting visitors and their dogs away from the Ashdown Forest sites. There is a strong case for anticipating that it will be ineffective here, given that the evidence shows an enthusiasm amongst local residents to go well out of their way specifically to visit Ashdown Forest for the sake of the views and habitats that they can enjoy there and nowhere else.

Even if a SANGS solution were the best alternative for avoiding harm to the EU Sites there are insufficient confidently deliverable SANGS sites within the District to meet the Council's mitigation objectives that would make policy DP15 deliverable:

- Firstly, the Council cannot simply ignore the need for a SANG to absorb extensive, unmitigated, development that has already occurred within the 7km zone since increased visitor disturbance was identified as a problem in 2007/8 (nearly 1,500 houses in Mid Sussex alone between 2008 and 2014);
- Secondly, the Council appears to us to have significantly miscalculated the amount of new development that a SANG could "absorb". It's methodology (deriving ultimately from Natural England, as was) uses a different methodology to calculate the SANG area needed to accommodate new residents (8 ha per 1,000 additional population) from the methodology it uses to assess the discount needed for existing users of a SANG site (8ha per 1,000 walkers). This considerably underestimates the discount required. For example, the proposed East Court SANGS, even if the optimal solution, would only "compensate for" about 550 additional houses within the 7km zone – barely one third of the new homes for which permission has already been granted by the Council since the increased visitor harm was identified in 2008 - not the 1,698 houses that the Council's new draft Plan and the Settlement Sustainability Review assume. We illustrate the comparative calculations in an appendix at the end of this letter.

We are concerned that the Council may similarly under-estimate the effect of the need to discount for existing users at other potential SANGS sites.

It is for these summarised reasons that we consider that Policy DP15 is unsound in terms of NPPF para 182, and other plan paragraphs and policies dealing with housing delivery and spatial allocation of housing are also unjustified to the extent that they fail to take sufficient account of the constraint imposed by the need to comply with the Habitats Regulations, and are unsupported by reliable current evidence. Further evidence and assessment is required in order for the most appropriate effective avoidance policy within the Plan to be determined and consulted on.

We would intend to provide a memorandum that details these objections more fully for the purposes of the public examination of the Plan, and after consideration of the implications of the recent Court of Appeal decision concerning Wealden District's equivalent of DP15.

We note the conclusion of the Council's Housing and Economic Development Needs Assessment Update (para 4.15) and Sustainability Appraisal that an annual housing delivery target of 650 homes p.a. represents a tipping point above which housing growth within the District becomes unsustainable and housing becomes undeliverable. This is a conclusion reached on the premise that (assuming delivery of sufficient SANGS) there is no constraint on the number of houses that can be built around the EU sites. For the reasons given here, that is an unevidenced and probably false premise. It is our view that, having regard to environmental and infrastructure constraints, the sustainable, deliverable, housing target is lower than the 650 homes p.a. tipping point discussed in the HEDNA. If we are correct in that view, it would follow that the District's ability to offer surplus housing sites to meet excess needs of other authorities is less than the Council's Housing Provision Paper concludes." [Note: MSDC has since decided to increase its proposed annual housebuilding target to 805 homes p.a.]

.....

"The proposed new settlement hierarchy policy DP6 (which is newly introduced into the draft Plan and has not been the subject of previous public consultation) fails adequately to address our previously expressed

spatial strategy concerns. It ignores core evidence and legal constraints. As such it cannot be justified and is unsound. DP6 is unsound in the following respects:

DP6 is infected by the unsoundness of policy DP15. The evidence base supporting the spatial allocation of housing is not justified with respect to the degree of constraint imposed on development in the north eastern part of the District by reason of the regulatory requirement to ensure that any significant risk of harm to the two EU protected sites on Ashdown Forest is avoided. Accordingly that constraint is not given sufficient weight in the settlement hierarchy set out in DP6 or in the Council's Settlement Sustainability Review on which it currently relies for its evidence. It is significant that chapter 4 of the Settlement Sustainability Review makes no reference to the proximity of the EU Sites as constraining factors affecting the hierarchy of settlements proposed in policy DP6, thereby rendering that policy unsound to the extent that it fails to take account of the Habitats Regulations constraint."

2. Extract from CPRESx letter dated 12th October 2015

"Mid Sussex District Plan 2014-2031 Pre-submission Consultation: Supplementary Sustainability Appraisal re draft Policy DP15.

The following representations by the Campaign to Protect Rural England, Sussex Branch CIO (CPRE Sussex) supplement those made on the pre-submission draft of Mid Sussex District Council's draft District Plan by a letter dated 23rd July 2015. This further submission should be read in conjunction with that earlier letter, which deals in more detail with our concerns on draft Policy DP15 and on its wider implications vis a vis the environmental constraint that the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") impose on the ability of MSDC to deliver new housing in Mid Sussex.

The Habitats Regulations, and the underlying EU Directives involved, exist for the purpose of ensuring that all material risk of harm to designated birds, and to fauna and flora, on EU protected sites is eliminated⁵. Under paras 102 – 104 a planning authority may only agree to a plan or project "*after having ascertained that it will not adversely affect the integrity of the European site*". So development that would risk such harm cannot be permitted (absent a public interest imperative that has no relevance here).

The Regulations allow for no compromise on that clear principle in the plan making process. That is why NPPF paragraphs 14 and 119 expressly provide that environmental constraints imposed by compliance with the Birds and Habitats Directives, where relevant, override the normal duty on an LPA to plan sustainably and to meet its objectively assessed District housing needs. NPPF para 182 goes on to require Planning Inspectors to ensure that a Local Plans "*has been prepared in accordance with ... legal and procedural requirements and whether it is sound*".

The required screening process undertaken as long ago as 2007/8 and subsequent EIA assessment identified that significant harm would result from further local development around the two EU sites on Ashdown Forest (not only in Mid Sussex) and disturbance caused by an increase in the number of visitors likely to visit the sites. Additional potential hazard to the sites (particularly the SAC) from traffic caused nitrogen (NO_x) pollution has been screened out, albeit wrongly in our view as explained below.

It is a function of Mid Sussex's new District Plan to ensure that properly assessed harm to the two EU sites is eliminated by including a policy that demonstrably meets the regulatory imperative of avoiding that harm. That is what policy DP15 ought to do. As CPRE Sussex has repeatedly argued in its representations on the various iterations of the draft Plan⁶, it fails, along with the HRA evidence base (including the Sustainability Appraisal Addendum) on which it relies.

⁵ "Eliminate" is the word consistently used by the judge to describe the purpose of para 102 of the Habitats Regulations in the Court of Appeal decision in Ashdown Forest Economic Development LLP v Wealden DC 2105 EWCA Civ 68 - see paras 28, 34, 45 and 47.

⁶ See, most recently, our 23 July 2015 representations on the pre-submission draft of the District Plan.

It fails for a number of reasons:

(1) The underlying data which informs the Habitats Regulations Assessment and the DP15 Sustainability Appraisal Appendix (collectively the HRA) is out of date and deficient. It seriously underestimates the level of the local population increase and toxic traffic effects, and hence their impact on the two sites. Our 23 July 2015 representations explain this point in fuller detail. No conclusion in the HRA as to the nature and degree of harm to the EU sites, or how it can all be avoided, can be considered to be sound or robust given these fundamental input defects;

(2) The Sustainability Appraisal Addendum only considers zonal restrictions within Mid Sussex on new development with the aim of “mitigating” the harm of increasing visitor numbers attributable to future new local housing. Proposed DP15 policy amounts to one of allowing unrestricted levels of new development within the zone of influence around the sites (beyond 400m) so long as sufficient compensatory SANGS are in place. The Council has a duty to consider all reasonable alternatives. Consideration only of zonal mitigation, backed by SANGS, rather than other potentially more effective avoidance measures is unjustified⁷. The Council has not considered, as it should have done, other reasonable, viable alternative non-zonal avoidance measures to eliminate the risk of harm to the sites, nor any explanation for excluding other options. There has, for example, been no consideration at all as to whether there is a limit on visitor growth that is compatible with protection of the EU sites and of capping the aggregate amount of development within a zone beyond 400 metres of the EU sites’ boundaries at a level which would not result in harm to the sites; no reason is given for not doing so;

(3) The LPA’s regulatory obligation (backed up by the NPPF) in these circumstances is to eliminate harm to the EU sites before permitting development. The HRA and DP15 only consider measures to “mitigate” (i.e. lessen the severity or gravity of) the harm. To comply with legal requirements the purpose and effect of DP15 must be to avoid the harm, not merely to lessen it;

(4) Not one scintilla of evidence has been provided by the Council to support DP15’s implicit assumption that the creation of SANGS and/or monitoring of visitors will be effective in practice to achieve the required purpose of diverting sufficient visitors to Ashdown Forest to eliminate the disturbance to protected birds that is required by the Regulations⁸, and it seems to us inherently very unlikely to do so. The latest Sustainability Appraisal Addendum includes no analysis even of the effectiveness of the zonal options considered to achieve their necessary legal purpose of eliminating harm to the two EU sites, and hence does not even purport to address that fundamental sustainability purpose⁹;

(5) There been no up to date analysis of the potential significance of NO_x implications on the health of the two sites’ bird, plant and fauna, especially in the context of the Supreme Court’s May 2013 and April 2015 decisions in *R (on the application of ClientEarth) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs*¹⁰ in which it was held that the UK Government’s NO_x air quality acceptability limits breach mandatory EU benchmarks in the Air Quality Directive¹¹, and require urgent updating. The May 2013 version of the HRA identified that traffic related acid deposition and eutrophication by nitrogen deposition were both at critical levels that far exceed maximum permitted tolerance limits - in the case of acid

⁷ Note the statement by Richards LJ at para 48 of the Court of Appeal judgment in *Ashdown Forest Economic Development LLP v Wealden DC* that “I do not accept that anything turns on the advice of Natural England that any net increase in dwelling numbers within a 7 km zone would “require” the provision of SANGS. In my view, this cannot be read as advice that the 7 km zone was the only option available.” The Wealden decision does not endorse the principle of a zonal or SANGS-based policy.

⁸ The Council does not even identify the degree to which DP15’s “mitigation” objective is expected to lessen the impact of additional visitors, without which even that inadequate mitigation purpose cannot be measured, nor can the effectiveness of its future delivery be monitored.

⁹ Our 23 July 2015 representations point out that the Council has, in our view, made a material mathematical miscalculation of the “compensatory effect” of the number of houses that East Court and potentially other SANGS sites could accommodate.

¹⁰ [2015] UKSC 28.

¹¹ Whilst the Air Quality Directive relates to impact on human health, NO₂ and other toxic emissions could have equivalent harmful implications for birds, and for other fauna and flora as well as to visitors to both the SAC and SPA.

deposition by between 481% and 1,570%¹²; there is no current evidence of subsequent significant improvement. Those critical benchmark levels that have been so badly exceeded on Ashdown Forest have themselves been held to be seriously inadequate by reference to the Air Quality Directive. If we correctly understand the information, it means that there is a significant NO_x acid pollution issue for the SAC right now caused by traffic exhaust emissions. There is the additional unexplored possibility of harm to protected SPA birds and other fauna from NO₂ inhalation: NO₂ emissions have recently been estimated to cause thousands of human deaths in the UK¹³. No consideration appears to have been given to the possibility that excessive NO₂ emissions might equally harm wildlife (including protected bird species). Without evidence of absence of harm to wildlife from NO_x and other air pollutants a precautionary approach is required. Accordingly it is wrong to have screened out potential atmospheric pollution and related health implications at this stage as insignificant, and wrong of DP15 not to contain a positive policy aimed at protecting both the SAC and SPA by reducing traffic-caused NO_x pollution across Ashdown Forest to a level that complies with EU limits irrespective of whatever development growth may occur in the vicinity over the life of the Plan.

We do not challenge the evidence that development within 7km of the EU Sites' boundaries could have a significant impact on those sites. However the Sustainability Appraisal Addendum and the Habitats Regulations Assessments to which it refers do not provide the necessary robust evidence to justify policy DP15. That draft policy is therefore necessarily unsound; indeed, as we have long argued, it is fundamentally flawed. As explained in our 23rd July 2015 submission, the flaws in the Habitats Regulations and related sustainability analysis have other ramifications for the Plan's settlement hierarchy and other policy proposals. In particular they support the contention that we make elsewhere in our submission that the District lacks the capacity to absorb the number of houses that the Council proposes to target for building over the Plan's life.

3. Misconceived methodology for calculating the “compensatory” effect of a SANG

MSDC appears to us to have significantly miscalculated the amount of new development that a SANG could “absorb”. Its methodology (deriving ultimately from Natural England, as was) is explained in detail in a Council paper issued in October 2014. It uses a different methodology to calculate the SANG area needed to accommodate new residents (8 ha per 1,000 additional population) from the methodology it uses to assess the discount needed for existing users of a SANG site (8ha per 1,000 walkers). This considerably underestimates the discount required. For example, the proposed East Court SANGS, even if the optimal solution, would only “compensate for” about 550 additional houses within the 7km zone – barely one third of the new homes for which permission has already been granted by the Council since the increased visitor harm was identified in 2008 - not the 1,698 houses that the Council's new draft Plan and the Settlement Sustainability Review assume. We illustrate the comparative calculations in an appendix below.

We are concerned that the Council may similarly under-estimate the effect of the need to discount for existing users at other potential SANGS sites.

Appendix: SANGS capacity calculation for proposed East Court SANGS

Assumptions:

Gross useable SANGS area (net of sports pitches):	36.6 ha.
Need (Natural England guideline figure)	8 ha per 1,000 population
Household size (MSDC figure)	2.44 people
Number of visitors using the site per day (MSDC estimate)	432
Proportion of current population who use the site (CPRE estimate)	1 in between 7 and 8, say 7.5.

MSDC calculation (quoted extract from October 2014 Council document):

“East Court & Ashplats Wood is already accessible to the public and the existing visitor use should also be discounted from the SANG area and capacity. A visitor survey of Ashplats Wood has been conducted by

¹² This was made clear in the May 2013 version of the Habitats Regulations assessment at para 5.1.6. Table 5.1 of the March 2015 version (based on 2012 data, thus predating the May 2013 HRA version) masks that conclusion.

¹³ An official Government estimate of UK deaths from NO₂ emissions is due next year.

Ecology Solutions (published July 2013) on behalf of the applicant for a planning application for 74 dwellings at land south of the Old Convent, St. Michael’s Road, East Grinstead (12/01588/FUL). This visitor survey calculated that there were 159,231 visits to East Court & Ashplats Wood per year and an average visitor would visit 369 times per year. This means 432 visitors are using the site and based on the 8Ha per 1,000 net increase in population standard, the study concluded that the existing visitor use equates to 3.45Ha.

Total Site Area	Less Formal Visitor Use	Less Existing for SANG	Area Available	% of Total Site Area
40.8 Ha	4.2 Ha	3.45 Ha	33.15 Ha	81%

The area available for a SANG as shown above is 33.15Ha. Using the 8Ha per 1,000 population standard, East Court & Ashplats Wood has capacity for an additional 4,143 population.

Dividing this population figure by average household size (2.44 residents per household, Census 2011), this calculates that East Court & Ashplats Wood can act as a SANG for up to 1,698 dwellings.

Work has commenced on two sites for residential development that due to their proximity are likely to increase visitor numbers at East Court & Ashplats Wood and so the number of dwellings expected to be built on these sites should also be deducted from the capacity figure. Development of a further 117 dwellings on land to the north of Ashplats Wood at Ashplats House has commenced, with existing footpaths connected to the development, and permission has been granted for 74 dwellings at an allocated site on land south of the Old Convent. Both applications seek to use East Court & Ashplats Wood as alternative open space for future residents and so the sum total of 191 dwellings is deducted from the remaining capacity.

With this discount taken into account, there is a residual capacity at East Court & Ashplats Wood of 1,507 dwellings.

Based on an occupancy of 2.44 residents per household, the residual capacity is an additional population of 3,677 people.”

CPRE calculation:

Before discounting for existing use, and applying the assumed need of 8 ha per 1,000 people and a 2.44 person household size, a 36.6ha site would provide capacity for 4,575 people or 1,875 new homes.

A discount has to be made for existing users, based on the assumptions that 1 in 7.5 of the current population already use the East Court site, and that the site receives an average of 432 visitors per day. That produces a relevant population of 3,240 (432 x 7.5). Now apply that 8ha per 1,000 to that population of 3,240 and you get a discount factor of 8 x (3,240/1000) = 25.9ha. That reduces the area available to accommodate a further population increase to 10.7ha (36.6ha – 25.9ha). Based on an assumed need for 8ha per 1,000 population, a 10.7ha SANGS could accommodate a 1,338 population increase (10.7/8 x 1,000), equivalent to 548 new houses.



It is a matter for regret that we have been unsuccessful in our attempts to persuade your Council to engage with us to identify any factual errors in our input or to explain why you disagree with us.



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12th February 2016

Sent by e-mail to steve.ashdown@midsussex.gov.uk

Dear Mr Ashdown,

Ref: DM/15/4711 Land at Hardriding Farm, East Of Brighton Road, Pease Pottage, West Sussex

I am writing on behalf of the Sussex branch of the Campaign to Protect Rural England (CPRE), a charity dedicated to the promoting the improvement, protection and sustainability of the countryside of Sussex and its towns and villages. CPRE supports the need for our local villages and towns to remain economically vibrant and self-sustaining, and recognises the need for appropriate, sustainable growth and development so long as it is sensitively planned for its environment, of good quality, and meets a local need.

On 9th January we submitted our comments on the latest focused amendments to the Council's draft District Plan, including the proposal to allocate this AONB site as suitable for the kind of development through the District Plan once it is adopted. We object to that allocation proposal for reasons explained in our 9th January representations. We also made representations that it is unsustainable for the Council to propose to build 105 houses p.a. to meet the excess housing needs of Crawley BC, and that the allocation of the Hardriding Farm site towards meeting this target was therefore unnecessary and inappropriate.

1. Determination of this application now would be premature

We note that this planning application has a determination deadline of 23 February, before the draft Plan's public examination and adoption.

In our opinion your Council would place itself in an impossible position in purporting to determine this planning application ahead of the District Plan's examination. Your Council is suddenly sponsoring the allocation of a major new site as part of that Plan in a very controversial location – a site that is not currently allocated as a developable strategic site in the Council's adopted development plans, and which your Council's current SHLAA assessment has determined to be "very unsuitable" for development. None of the evidence as to the claimed need to support Crawley BC by meeting part of their housing supply deficit or as to the appropriateness of the new Plan policy 9A, or as to the site's sudden suitability for development despite the SHLAA evidence to the contrary, has been tested in public examination. Ahead of that examination, your Council simply cannot properly assume the justifiability of its new policy proposal or rely on whatever data it uses to base its allocation proposal on – to do so

would amount to your marking your own examination paper at a time when that draft plan can carry little weight in planning terms¹. Your Council would need to provide an independent justification for the need for the extra housing proposed – and since that justification depends on the Council’s proposed assistance to Crawley BC rather than meeting Mid Sussex’s own needs – the appropriateness of that co-operation. It would also need to obtain and justify a whole range of robust evidence on a wide range of issues.

Surely this is a case where the NPPG on premature planning decisions (para 014 Reference ID: 21b-014-20140306) applies on the basis that “ a) *the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan ...;* and b) *the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*” Your new District Plan is about to be submitted to the Planning Inspectorate for examination.

We note that even Crawley BC considers that this application is premature and that it would be inappropriate to approve it ahead of the draft District Plan’s examination.

If your Council were nonetheless determined to try to decide this application ahead of the draft District Plan’s examination and the Inspector’s report on it, we would like to make the following points.

2. Absence of need

The Council has justified its proposal to allocate this site for development by reference to its expectation that the Planning Inspectorate, at the draft District Plan’s public examination, will require your Council to match Horsham DC’s decision to include an allowance of 105 dpa within its overall new housing target to meet the excess housing needs of Crawley BC. No other rationale has been put forward by your Council to support development at Hardriding Farm.

That rationale is untested in public examination and is objectively unjustified for reasons explained in detail in our 9th January response to the draft Plan’s latest round of consultation to which we refer you. Moreover, the District lacks the capacity sustainably to absorb the level of housing proposed in the draft Plan whether on this or other sites within Mid Sussex.

The need for this development (including the hospice and primary school facility) here and now is not supported by evidence. It would be patently foolish to predetermine the outcome of the draft District Plan’s public examination by approving now such a large development proposal in such a sensitive location.

3. The basis for reaching a determination of this application

Even if there is a need for this additional housing - which CPRE disputes – it seems to us that that it needs to be determined, on evidence, that the scheme meets each of the following requirements:

- that it is sustainable; and
- that there are no more suitable sites for development (insofar as it additional housing is established to be necessary). This is an exercise that, inter alia, requires comparing the Hardriding Farm site with other sites in Crawley BC that have hitherto been rejected for housing; and

¹ See the recent Secretary of State redetermination of the Kingsland Laines planning appeal ref: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499119/16-02-10_DL_IR_Kingsland_Laines_2189451.pdf

- that extraordinary requirements exist sufficient to justify overriding your Council's statutory obligation under s.85 of the Countryside & Rights of Way Act (the **CROW Act**) to conserve and protect the High Weald AONB, and the requirement in NPPF para 116 to refuse planning permission in the absence of such extraordinary circumstances; and
- that (also in accordance with NPPF) it is in the public interest to override the strong presumption against development within the High Weald, this being a separate test from the extraordinary circumstances test and requiring different ground to justify it; and
- that it has assessed how the local area's flora, fauna and geological and physiographical features can be conserved notwithstanding the development as required by s.92 of the CROW Act; and
- that the nature and degree of harm that the development would cause to the AONB can be avoided or suitably and sufficiently mitigated;
- that proper regard has been had to the development scheme's compatibility with the fulfilment of your own (and other) Councils' Management Plan for the High Weald; and
- that the scheme is compatible with other provisions of the NPPF and (insofar as they are aligned with the NPPF) with the Council's own Local Plan; and
- that the scheme would be consistent with the Council's draft District Plan proposals for development within the countryside.

4. **The evidence needed for a determination**

Considerable evidence will be needed to support any decision to approve the application and, if it is to be robust evidence, much of it needs to be obtained independently of the applicants. We are extremely sceptical as to whether that robust evidence base will ever exist. Amongst the matters on which evidence will, in our view, be needed will be (in no particular order):

- a full environmental and ecological impact assessment as required by NPPF paras 165-167 and the EU-derived Regulations; one that also takes into account the cumulative development that has taken place and is proposed in the relevant vicinity. For a number of reasons recited in detail in CPRE's representations on the draft District Plan we do not consider that reliance can be placed on the deficient Habitats Regulations Assessment that forms part of the evidence base for the draft District Plan;
- a rigorous comparative analysis as required by NPPF para 116² of the comparative suitability of alternative potential site options, including sites within Crawley Borough, before approval of Hardriding Farm is even considered;
- evidence to justify whatever argument is advanced that sufficient extraordinary circumstances exist to override the Council's general legal duty to conserve the High Weald and the presumption that development should be refused within an area of outstanding natural beauty;
- evidence to justify whatever argument is advanced that this development is also in the public interest;
- the evidence listed in the High Weald AONB Unit's 15th January letter that would enable them, as your experts on the protection of the High Weald and the implementation of your Management Plan for it, to advise that the harm to the High Weald that they have already told

² *"Consideration of such applications should include an assessment of the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way"*

you would be caused to the AONB if this development were to be given the go ahead can be avoided or sufficiently mitigated;

- an assessment of the scheme's infrastructure and traffic implications, and their deliverability, as required by NPPF paras 162 and 177.

5. The non-sustainability of the site

We fail to understand on what objective basis a rural site rated by the Council in its detailed SHLAA analysis less than 6 months ago as "very unsuitable" on account of its isolated location within a statutorily designated area of outstanding natural beauty could now be deemed suitable for a development for, inter alia, up to 600 houses. The controversial District Plan proposal to allocate the site has been put forward without a shred of new evidence as to its sustainability and no weight should be given to that proposal.

Development of this site would directly contravene NPPF para 55, which tells LPAs to avoid new isolated homes in the countryside other than in identified exceptional circumstances, none of which apply in this case.

Locationally, the site is an isolated, rural one. It offers no cohesive link with Crawley and lies beyond the M23 motorway that defines Crawley's eastern and south eastern boundary. It is miles from all Crawley's central hub services with only an hourly bus service. There are no local facilities at all other than those available at the nearby motorway service station, which are unsuitable³ and unsafe⁴ even for basic everyday household shopping needs. No on-site secondary school, medical, social, cultural or other local facilities exist or are proposed. Residents would be largely car-dependant, as your own latest SHLAA asserts, subject only to any improved available bus service. The development would be likely to result in seriously damaging traffic problems along the local rural roads in and around Pease Pottage and Handcross, and within the local part of the AONB.

As such, development at Hardriding Farm would be incompatible with NPPF para 34, which provides that "*Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.*" The environmental impact of the traffic increase also needs assessing.

We note that Natural England, in their 4th February submission, has seriously criticised the quality and conclusions of the applicants' Landscape and Visual Impact Assessment of the site. We share their concerns on this very important aspect of the application.

Alongside landscape objections, the scheme would also see the loss for agricultural purposes of a significant proportion of the District's limited high quality agricultural land, with no consideration having been given to alternative site possibilities contrary to NPPF para 112.

The density of the housing proposed is grossly excessive for an isolated development in a very sensitive location. Our 9th January letter to your Council regarding its proposed new housing density policy in its draft District Plan addresses this concern in greater detail.

We contest the logic of requiring part of the AONB to be converted to care home use, however much such a new facility may be required somewhere within Crawley. It is certainly not part of the infrastructure needed to support the proposed new adjacent housing estate. No evidence is offered that there are no more suitable sites to locate it if one is needed. Considered on its own, an application to

³ The service station offers 15 unmonitored gaming machines, three fast food outlets and a WH Smith selling a large range of confectionary. Its single food store offers a limited range of packaged products, and few everyday household items.

⁴ By reason of the large, heavily used heavy vehicle and car park directly attached to the service station.

build a hospice or care home within the AONB is highly unlikely to comply with local Plan policies affecting the High Weald AONB or national planning policy. A large additional building generating additional traffic and infrastructure needs is not an appropriate form of planning gain to justify the other components of any housing development scheme on this land.

6. Incompatibility with conservation of the High Weald AONB

We are concerned that, in the context of the District Plan proposal to allocate this site, the Council appears to not to have given the proper weight to prioritising the conservation of the AONB. On the contrary, the Council seems to have treated this site in the same way as any other undesignated land, and to have entirely disregarded the purpose for which it has been specially designated, and the great weight that has to be given to that purpose. AONB designation appears to be regarded as a nuisance by the Council rather than, as it should be, as a reason to conserve it.

Parliament has determined that all of the High Weald AONB merits special statutory protection on account of its scenic beauty. It is not for the Council to take it upon itself to decide that the site does not merit its statutory AONB designation – it does not have the power to do so - and, in effect, to override it by allowing a major development on it despite the inevitable and permanent harm that it will cause to the AONB.

The Council cannot ignore its primary responsibility under the CROW Act to “take all such action as appears to them expedient for accomplishment of the purpose of conserving and enhancing” the natural beauty of the High Weald AONB, and to start its analysis by assuming that its conservation is its paramount in the absence of exceptional circumstances by giving great weight to its conservation. There is nothing to suggest that MSDC has weighed up the broad criteria that determine the locality’s special features as identified in s.99 of the Natural Environment & Rural Communities Act 2006 and Government Agency guidance which make it clear that a designated area’s special qualities are not overridden by virtue of human intervention.

If proper weight is not given to the AONB’s conservation and enhancement of the AONB, the Council exposes itself to legal challenge.

In any event this part of the draft District Plan has no consensus as to its appropriateness, and can be given no material weight in determining this application ahead of the new District Plan’s adoption.

We have had the opportunity to read the AONB Unit’s 15th January opinion that this development has the potential to cause significant harm to the AONB, and the advice they have given as to the evidence that it would be necessary to obtain in order for the impact to be properly assessed. We agree with Natural England that the views of the AONB Unit need to be given great weight.

Whilst the AONB Director’s letter refers to the evidence that would be needed in order to establish whether the scheme’s adverse impacts on the AONB would outweigh the development’s benefits, that is not in fact the test by which the NPPF requires the development proposal to be assessed. As you will know, in the case of major development within an AONB, the NPPF disapplies the presumption in favour of sustainable development and para 116 expressly requires the application to be refused unless there exceptional circumstances as defined in para 116 apply and, as a separate and additional requirement, the scheme can be demonstrated to be in the public interest.

So the only issues that arise are whether there are exceptional circumstances sufficient to override the requirement for refusal and, if so, whether the additional demonstrable public interest test is satisfied.

In our opinion there are no exceptional circumstances. The development is not intended to alleviate the District’s own housing supply shortfall (measured against the old South East Plan target), but apparently is intended to fulfil the Council’s aim via its draft District Plan to assist the excess housing needs of Crawley BC.

Whilst co-operation with neighbouring authorities is a legal and NPPF requirement, it cannot by itself amount to an exceptional circumstance: one which justifies allowing unsustainable development or tearing up the NPPF rules (para 7 et al) that specify the balancing factors which determine when a development is sustainable. An unsuitable and environmentally precious site in Mid Sussex does not suddenly become a sustainable one by virtue of Crawley having insufficient sustainable sites of its own to meet its own housing needs. It can be no part of Mid Sussex's duty to co-operate with neighbouring LPAs in relation to housing to sacrifice AONB land that has been statutorily designated for its special landscape qualities, especially when there is no evidence that this proposed site is more sustainable (less unsustainable?) than others in Crawley. Moreover the appropriateness and sustainability of offering to meet some of Crawley BC's unmet housing needs has not been assessed in public examination and will be challenged there by CPRE, and potentially others.

Moreover the proposal fails the second exceptional circumstances test in para 116 in that "the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way" as its sustainability has not been established and its relative unsuitability compared to other sites has not been assessed. As explained above, a rigorous comparative analysis is required of alternative potential site options, including sites within Crawley Borough, before approval of Hardriding Farm is even considered. The proposition that all other hitherto rejected sites within Crawley - none of which enjoys the same level of legal protection as the Hardriding Farm site - are more worthy of protection from development is not demonstrated and, properly analysed, is highly unlikely to be justified since none enjoys the level of protection afforded to the High Weald AONB.

We note that the Government has advised that, in the case of Green Belt land, the single issue of unmet housing demand is unlikely to outweigh harm to the green belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt⁵, and that this guidance has been followed in planning appeals⁶. If that is true of green belt land, it must be even more true in relation to areas of outstanding natural beauty which are entitled to an even greater degree of statutory and NPPF protection. On that basis the argument that meeting Crawley's housing need (the sole reason offered for this proposed allocation) amounts to an exceptional circumstance that justifies overriding the Council's duty under NPPF para 116 to refuse major development of this AONB site, or as a public interest reason to do so.

MSDC is, in our view, required to assess how the local area's flora, fauna and geological and physiographical features can be conserved as required by s.92 of the CROW Act. Moreover it appears to have paid no regard at all to its own Management Plan for the AONB (as required by National Planning Policy Guidance) despite citing it as evidence supporting policy DP9A. How for example is the proposed concreting over of Hardriding Farm compatible with the Management Plan's objectives (SO3 and FH1) of enhancing the already threatened agricultural quality of the High Weald and of securing already vulnerable agriculturally productive use of its fields?

The 2014 planning appeal decision involving an AONB site at Handcross (Ref: APP/D3830/A/13/2198213) affords no precedent: the site was very much smaller, was not isolated from Handcross village where local on-hand infrastructure facilities were deemed to be sufficient and available, and the Planning Inspector did not even address the NPPF para 116 requirement for the development to be in the public interest.

⁵ Ministerial Statement 1 July 2013: "*The Secretary of State wishes to make clear that, in considering planning applications, although each case will depend on its facts, he considers that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt.*"

⁶ See, for example PINS Ref: APP/M1595/V/14/2214081 (Thurrock Council).

7. Current Development Plan and NPPF considerations

This rural strategic site is not allocated or reserved for potential development in the District's current Local Plan; nor identified as suitable for development in Slaugham Parish's draft neighbourhood plan. Under the current Local Plan it sits within the strategic gap between Crawley and Pease Pottage that the Plan considers requires protection for its countryside value.

We do not see how major development can be allowed to occur in such an environmentally sensitive rural site in the face of its non-allocation for development and a less than one year old SHLAA that rated it as very unsuitable for development. The proposal flies in the face of the Local Plan policy on development in the countryside (policy C1) and the key core evidence for the new District Plan.

It is important to note that the proposal also conflicts with the NPPF: the conflict has been noted above with para 55 which requires development in rural areas to be confined to what is required to meet local development needs and expressly states that "*Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances*" listed in that paragraph, none of which applies here. As Local Plan policy C1 and NPPF para 55 are consistent they both deserve to be given significant weight.

The scheme also flouts paras 114 and 115 which require local planning authorities to "*plan positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure*", and requires them to give "*Great weight to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty*". Fulfillment of these obligations is incompatible with approving this application, which you have already been advised will cause harm to the High Weald AONB.

The siting of a large estate at Pease Pottage would also blatantly drive a coach and horses through the countryside protection and restricted rural development policies in both MSDC's current Local plan and its draft plan. None of the draft Plan's criteria for allowing even small-scale development at this location apply here. This strategic site proposal makes a complete mockery of these Plans.

Moreover it would fly in the face of one of the fundamental tenets that have governed strategic town and country planning ever since the second world war by promoting haphazard, isolated new development sprawl into open (and in this case heavily protected) countryside

8. Conclusion

CPRE considers that no determination of this planning application should be made until after the draft District Plan has been publicly examined and reported on by the Planning Inspector. The application is dependent on untested and controversial proposals within the draft Plan to use this site to accommodate the excess housing needs of Crawley BC residents.

Whenever the application is considered by your Council, an extensive, independent, and robust evidence base would be needed to justify any decision to grant planning permission.

We consider that there are no grounds on which the Council would be able to justify this application having regard to its duty to protect the High Weald, the potential for more suitable sites elsewhere, the exceptional circumstance/public interest tests in NPPF para 116; and the limited migration possibilities for a development of this magnitude given the harm that you have been advised would be caused to the AONB locally.

In any event the proposal is not sustainable, and it is plainly incompatible with the Council's policies on restricting development in the countryside, with NPPF para 55 and with other NPPF policies.

For the reasons given in this letter and prior correspondence with your Council referred to in this letter we firmly believe that any major development at Hardriding Farm should be strongly resisted by your Council.

Yours sincerely,

Michael A. Brown

on behalf of the Campaign to Protect Rural England, Sussex Branch CIO.