

CPRE Sussex evidence on environmental constraints on MSDC's ability to allow development under the draft District Plan – 13 January 2017

1. Introduction

- 1.1 After 5 days of evidence on the mechanics of how to calculate the district's housing need, and how many of nearby District's 35,000 home shortfall should be welcomed into Mid Sussex, anyone in the gallery who has survived that ordeal is bound to be thinking that spatial planning policy is a theoretical, formulaic exercise whose sole purpose is to see how to cram as many houses as possible into Mid Sussex.
- 1.2 Round this table, we know that it isn't. That calculating housing need, as defined in the planning rules, is a required stand-alone part of the larger exercise of determining what the District's housing target should be. And that target involves balancing housing need against other factors, including environmental ones, that overall go to ensuring that the final Plan is sustainable and deliverable.
- 1.3 It also involves moving away from mathematical calculations to value judgements because there are no convenient NPPG formulae for valuing the absolute or relative importance of the countryside as part of the three legged sustainability stool. And at the end of this examination process a value judgement will have to be made because there can be no doubt at all that Mid Sussex cannot absorb the development that would be required to give everyone in the South Coast SMA and the Horsham/Crawley/Mid Sussex SMA a home. A line is going to have to be drawn, and I am conscious that is a value judgement for MSDC based on sound evidence.
- 1.4 Constraints come in two principal forms:
- infrastructure constraints which CPRE is not particularly qualified on and which I don't intend to address, but which must not be overlooked; and
 - environmental constraints, on which I want to focus attention because CPRE is critical in a number of respects with MSDC's approach to that aspect.
- 1.5 Whilst the language of today is constraints, CPRE prefers to think positively in terms of planning to protect the countryside. Positive planning for countryside and biodiversity conservation and enhancement is as core a part of the required planning process under the NPPF as building houses.
- 1.6 Over the last 5 days I don't think anyone has mentioned the "Countryside" word even once. It is not the job of those sitting to my left to look up from their new estate layout plans or balance sheets and peer out of the window and concern themselves with how to develop positive policies for that part of a sustainable district Plan. Greenery is not really their thing. But today the countryside needs to take centre stage in the context of how the Plan properly balances the undoubted need for more new homes with environmental enhancement.
- 1.7 As I explained yesterday, I would like to look at MSDC's approach to constraints under the following headings:
- the context within which environmental constraints should, in CPRE's view, be considered in respect of our district;
 - Habitats Regulations constraints on development within the north east sector of the District resulting from the fact that there are two EU protected sites on Ashdown Forest, where I am afraid that MSDC has its head in the sand – it is barely mentioned in MSDC5;
 - the implications of the High Weald's status as a designated area of outstanding natural beauty; and
 - other countryside areas within the District, particularly the Low Weald.
- 1.8 I will not be discussing individual sites, though when we come later to talk about how to test MSDC's SHLAA assessment approach by reference to some sample sites, CPRE will want to be able to comment on those sites.

2. Context

- 2.1 Mid Sussex is a largely rural District. It is a special place because of that. Which makes it an attractive place to live (with the consequential demand pressures); and an attractive place to visit, with the significant tourist economy that depends on its rurality.
- 2.2 MSDC's whole vision and objectives for their Plan, set out in chapter 2, are predicated on the rural nature of the District; and that chapter of their plan has not come in for material criticism.
- 2.3 Unless the whole underlying ethos of their Plan is to be scrapped, and local people can be persuaded to accept that Mid Sussex is to become an urbanised district with just patchy pockets of countryside – and there is no mandate for such a fundamental change – the new District Plan must continue and value and celebrate the district's rural heritage, and make most of the opportunities (economic, heritage, biodiversity, cultural, human wellbeing etc) that the district's rural character offers. It would be a signal of the Plan's failure if the district finds itself dropping down the Halifax Quality of life Index mentioned in para 2.1 of the draft Plan.
- 2.4 The value judgements that are required to effect a fair balance between housing and environmental considerations – and hence the extent to which new development may need to be constrained – are ones that must recognise the statutory and regulatory protection afforded to the countryside, and the quality of the evidence as to the impact of a development proposal on the countryside and biodiversity, the likely effectiveness of any mitigation and enhancement opportunities and the quality of the housing scheme itself.
- 2.5 CPRE challenges MSDC's approach to that balancing exercise, the one that has led it to conclude that up to 800dpa can be absorbed within the district. Our criticism is partly based on a challenge to the quality of the evidence on which they seek to rely, and partly on what we say is an unlawfully cavalier approach to their statutory responsibility to protect specially designated areas of the District. We are also concerned that they have too often lost the will to stand up and be counted for their assessments of a site's unsustainability.

3. The Ashdown Forest EU Sites and the application of the Habitats Regulations

- 3.1 Mid Sussex takes the line that the Habitats Regulations do not restrict in any way the amount of new housing that it can allow in the proximity of the two EU sites on its boundary so long as the developers provide sufficient neighbouring SANGS at a rate of 8 ha per 1,000 population increase, and NO₂ levels across the forest are monitored.
- 3.2 We say that there is **no** evidential support to justify the Council's conclusion that this policy is supportable as a solution to the Habitats Regulations requirement that development must be avoided if, when considered in combination with other development proposals, it would harm, or should be presumed likely to harm the protected birds and habitats.
- 3.3 That bald requirement derives, in the context of plan making, from paras 102 – 104 of the Regulations. It is an absolute requirement. It is not even part of a para 14 balancing assessment of pros and cons – see NPPF para 119.
- 3.4 CPRE has been seeking unsuccessfully to engage with the Council for over 4 years over our concerns at the absence of robust evidence as to harm from development or the effectiveness of the required avoidance measures that have to be in place before development is permissible.
- 3.5 We start with a failure to assess properly what harm development proposals would be likely to cause to the sites. The HRA has relied on a scoping report undertaken in 2007 and 2008, and never updated. That scoping report identified the potential for two types of harm: namely disturbance to protected ground-nesting nightjars and to Dartford warblers from rising visitor levels and nitrogen oxide deposition from traffic crossing the forest. But that scoping report had absolutely no idea how much development would be likely to occur in the years after it was undertaken and running, in Mid Sussex's case to 2031. If you go back to the very first iteration draft of the HRA I think you will find that an assumption was made that between 200 and 500 houses would be built within the affected

area of Mid Sussex. Even then there was no attempt to fulfil the HRA's cumulative impact assessment requirements by taking into account future development in other neighbouring authority districts. CPRE has looked in vain for evidence as to what is the cumulative volume of growth already permitted or allocated since the scoping assessment and proposed new development under the various authorities' new Plans. Unless the impact is assessed on the basis of that cumulative number, one simply cannot know the nature and level of harm liable to be caused. That evidence does not exist. Is it not possible, for example, that the protected heathland habitats in the SAC will be disturbed by increasing visitors as well as the SPA protected birds; is it not possible that the birds as well as the habitats might be exposed to harm from NO₂ emissions? So we don't even get to first base of reliably identifying the harm that has to be avoided. We only know that, even with very modest development way below that which has already occurred, there is likely to be some harm. The scoping report needs urgent updating.

- 3.6 We don't get to second base either. Second base requires MSDC to assess whether identified harm can be avoided and, if so, what is the most appropriate effective way to do so. MSDC has fallen into the Wealden trap of going straight to SANGS mitigation, based on generic advice from Natural England, without considering objectively whether SANGS would work to avoid harm to the Ashdown Forest sites or whether there are better ways to achieve that. SANGS are not even claimed by MSDC to be a way to avoid harm, only to mitigate it, ignoring the language of the regulations which insist on avoidance. In this respect too, the Council's proposals fail the second NPPF para 182 test of soundness which requires that the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence.
- 3.7 Nor do we get to third base, which requires evidence that the avoidance measure must be effective to avoid the envisaged harm: in this case increasing visitor disturbance. A SANG will only be effective if it can be shown that people who would otherwise visit Ashdown Forest will instead be diverted onto the SANGs and will walk their dogs there rather than on the forest. No evidence at all has been put forward as to how many people a SANGS in the town will redirect away from the forest. A SANG may or may not work elsewhere, but there is no evidence at all that it will work here in Mid Sussex. Nor can you assume that it is likely to work. Anyone who lives in or around East Grinstead can walk out of their home and into the countryside on a whole ring of public footpaths stretching out from the town in every direction. They don't need a SANG to find somewhere to stretch their legs or air the dog. And yet, as the visitor survey found, lots of people like to get in their cars and travel up to 5 miles, often more, to walk on the Forest. They value Ashdown Forest for the unique open, historic area that it is. They want to walk on the Forest, and they chose to do so in large numbers. I have been one of them. As the adjacent population grows, and as trends to get out and exercise increasingly bear results, more people will want to use the forest, and SANGS be damned. MSDC: show me the evidence that I am wrong and that SANGS are sufficiently effective diverters of Forest users to avoid harm to the sites.
- 3.8 Even if a SANG were an effective avoidance mechanism, it is CPRE's case that Mid Sussex has let itself down on its maths, and has exaggerated by a factor of about 3 the number of new homes for which a given area of SANGS would compensate. Its 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 leads it to considerably underestimating the discount required for existing walkers. In representations to the Council back in October 2015 I provided a comparative calculation based on the East Court SANG which showed the different calculations and how the discrepancy arose. Once again I have been unable to get any indication from MSDC whether they accept that their calculation is wrong or explaining why it is my maths that is faulty.
- 3.9 As to the diesel emissions harming the SAC along the roads crossing the forest, I am happy to direct you to my written statement of 29th November 2016 this is probably a point better pursued at the next stage in the context of the Ashdown Forest policy in the draft Plan. I am content simply to point out that MSDC's confidence (going back to 2014) that they have the evidence to support their policy for dealing with the harm that those emissions cause is not a confidence shared by Wealden DC, grappling with the self-same problem, and who have delayed consultation on this part of their new Plan because they say they still don't have the evidence to prepare their policy.

3.10 In summary, the degree to which the Habitats Regulations, properly applied, constrain development in the north east sector of the District is unknown. Up to date, cumulative, evidence as to the nature and extent of harm that new development and diesel emissions have caused and would cause does not exist. Nor do we have robust evidence as to whether that harm can be avoided effectively and if so how. In the absence of that evidence we do not know whether MSDC is correct in its assumption that unlimited housing growth there is compatible with the law; or if not, at what level of growth, the harm reaches a point of unavoidable harm or whether that level has already been reached. We see that as a major problem, and one we wish the Council had been willing to work with us to resolve so that we weren't having to raise it now.

4. High Weald AONB

4.1 AONBs and National Parks have been given substantially the same level of statutory protection for their landscape and natural beauty. Parliament has recognised that they are natural treasures that need strong protection against development and degradation of their natural relative wildness. NPPF para 115 describes them as requiring the highest status of protection.

4.2 CPRE is deeply concerned that MSDC would like to be able to treat the High Weald AONB as a reserve area for allocation and development to help them to meet their housing target. Which implies that it will be okay to set a housing target that requires the use of the High Weald to meet that target. Any such approach is absolutely **not** what AONB designation is for, and it would not be a proper basis for a sound plan.

4.3 I make the point because the evidence shows that MSDC does see the High Weald as the most convenient and viable location to top up its housing to meet its target.

4.4 Pease Pottage is spilt milk, and I am not here to cry on your shoulder over that misguided decision. But, to make my point, it needs to be said that the decision was taken in the hope of impressing you ahead of these hearings, but it was made in the face of strong advice from Natural England that the exceptional circumstances test in NPPF para 116 was not met; equally clear advice from the High Weald AONB Unit that the development would significantly harm the High Weald; and a statement from Crawley DC that they did not need that site. And it was taken in respect of a site that MSDC whose suitability for allocation it was not prepared to expose to public examination in this forum.

4.5 CPRE's concern is exacerbated by the remarks in MSDC⁵ that the Council would permit cumulatively significant development on multiple High Weald AONB sites if their housing target was set at a level higher than 800 dpa. If a mindset were justified that the High Weald is an acceptable place to build just in order to boost housing numbers or to prevent a council falling into deficit, AONB designation to protect it from development would be wholly meaningless, not just for the High Weald but, given nation-wide housing pressures, for all or most of England's 34 AONBs. That is an illegitimate approach in terms of the CROW Act that sets out the Council's responsibilities vis a vis AONBs and NPPF paras 115-116. The "need for development" factor in para 116 should not be read as allowing an authority with a housing problem to solve that problem within the AONB by ignoring their statutory responsibility to conserve and enhance the High Weald.

4.6 Yes, for major development, para 116 requires case by case analysis of whether there are exceptional circumstances and – as a separate exercise – whether there is a public interest imperative. But an AONB does not suddenly become a generally more sustainable location to build just because a planning authority has a particular housing need. The starting assumption surely has to be that development is not possible, other than small scale development and, potentially, on any brownfield sites within the High Weald. If the NPPF is properly applied it will be a pretty rare site that, on its own facts, passes the two para 116 tests. And that is how it should be.

4.7 The obligation on MSDC to protect the High Weald's natural beauty, and the fact that the High Weald occupies 55% of the Plan area is a very significant constraint on MSDC's ability to meet its own, or anyone else's, housing need. All the more so to the extent that the high weald overlaps with the Ashdown Forest EU sites' zone of influence.

- 4.8 Just a quick postscript re Pease Pottage whilst I remember it. Given that it has happened, and that its primary purpose is to help meet Crawley's unmet housing needs, I trust that the final District Plan will credit the 600 houses involved against any target that the Plan may set to assist its neighbouring authorities, and that it won't get lost sight of in the mix.

5 The Low Weald and other countryside areas

- 5.1 There is a great danger that those parts of the District that are outside the main town settlements and that don't enjoy high level environmental protection designation are all fair game for large scale building in a District that is under pressure to meet its, and others' housing needs.
- 5.2 Of course MSDC is required by NPPF para 14 to seek opportunities to meet its development needs, and individual site assessments are needed on a case by case basis.
- 5.3 But one cannot cast aside the evidence of the thorough study undertaken by LUC as to the District's capacity to absorb more housing (I refer to their 2007 and 2014 capacity studies at ref: EP47) which tells us that the rural parts of the district has low capacity to absorb anything more than a small number of new housing.
- 5.4 One cannot ignore the value long put by the planning system on maintaining effective segregation of individual communities and preventing ever-expanding sprawl.
- 5.5 And a lot of the countryside is made up of valued landscape and/or biodiversity hotspots that NPPF para 109 expects to see protected and enhanced. Some of it has archeological or heritage or other significance.
- 5.6 The last DCLG Minister, Brandon Lewis felt impelled to write to the Chief Executive of the Planning Inspectorate in March 2015 to remind the Planning Inspectorate that landscape character is an important material consideration. I quote: *"I have become aware of several recent appeal cases in which harm to landscape character has been an important consideration in the appeal being dismissed. These cases are a reminder of one of the twelve core principles at paragraph 17 of the NPPF 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. While National Parks, the Broads, AONBs and Heritage Coasts quite rightly enjoy the highest degree of protection, outside of these designated areas the impact of development on the landscape can be an important material consideration."*
- 5.7 So I caution strongly against making any broad brush assumption that the Mid Sussex countryside is available as a developers' pleasure ground when one looks at the district's capacity to absorb new development, whether housing or otherwise.

6 Summing up

- 6.1 The annual target set for Mid Sussex to achieve in its new Plan in terms of new housing delivery will, of necessity draw a line somewhere between what Mid Sussex and its neighbours need and what it can realistically deliver. A value judgement will have to be made, whether by you or by the Council using the best available evidence and recognising the legal, environmental and other constraints that affect the developability much of the district.
- 6.2 It seems patent to CPRE that some of the numbers being suggested by the Forum and Mayfield as to the NPPG calculated number representing local need – whether that calculation is accurately reflective of the real world is another matter – set a deliverability challenge for the Council that it would have no hope at all of meeting. And the absurdity of the challenge that they seek to set is only exacerbated when one factors in their call for Mid Sussex – sitting here at the back of the Plan approval queue – to pick up the surplus needs of so many other authorities with humungous unmet needs of their own as though Mid Sussex was the dumping ground of the South Coast.
- 6.3 At CPRE we don't think that the evidence even exists that MSDC could deliver on its own 800 dpa target. Our written representations to the Council and our 29 November submission to you explain

why that is, and I hope that today's fleshing out of that evidence has been helpful in understanding where CPRE has been coming from.

- 6.4 It is an inconvenient fact, but a fact nonetheless, that there are very real and very substantial environmental constraints (some set by legislation, some by the NPPF, and some based on sustainability evidence) that limit this district's capacity for housing growth, that have bedevilled its historic ability to meet its target, and that must be reflected in the new Plan's housing target if we are to avoid the catastrophe of another failing plan.
- 6.5 Isn't it pertinent to ask the question as to why it is that, year after year, MSDC has only been able to deliver a fraction of the number of houses that it now wants to commit to during a period much of which it has been subject to the NPPF para 14 cosh of the presumption that development proposals are sustainable and must be permitted; and what is so different about the new piece of paper that will suddenly and magically enable it reliably to achieve, year after year, housing delivery levels that it has never ever achieved even once in the last 20 years. That seems to us to be a vital sanity check needed before the new target is finalised.