

Matter 1 - Legal Requirements, Scope of the Local Plan and Duty to Co-operate

1.1 Legal Requirements:

(i) Does the Site Allocations Development Plan Document (which I will refer to as the Plan from now on) meet all its legal requirements (e.g. in relation to the Local Development Scheme; Statement of Community Involvement; and the Town and Country Planning (Local Planning) (England) Regulations 201 (as amended (2)? Are there any other legal compliance issues?

(ii) Has the Council followed due process in its preparation of the Plan, including the process of site selection and public involvement?

1.2 Scope of this part of the Local Plan

Summary of the scope of the Plan: The main aims on page 4, paragraphs (i) to (iv), make clear reference to the Spatial Strategy in the adopted District Plan, which provide for the delivery of around 543 jobs per annum from several sources, including a new science and technology park and several smaller employment allocations. The Plan also provides for a minimum requirement of 16,390 homes between 2014 and 2031 (equating to 876 dwellings per annum (dpa) until 2023/24, increasing to 1,090 dpa from 2011-2029). The Spatial Strategy distributes new development based on a sustainable hierarchy of settlement types, with the employment and housing over the plan period focused on the largest settlement, Burgess Hill, and to a lesser extent in the other towns, Haywards Heath and East Grinstead, and smaller amounts in the villages. The Spatial Strategy makes additional strategic allocations at Hassocks in the south of the District, close to Brighton and at Pease Pottage, in the north of the District, close to Crawley, having regard to the housing needs of these two urban areas. The District Plan also aims to conserve and enhance the environment, including in the High Weald Area of Outstanding Natural Beauty (AONB), the Ashdown Forest 7km Zone of Influence and the setting of the South Downs National Park (SDNP), bearing in mind that the National Park is a separate local planning authority.

(i) Is the scope of the Plan in line with the main aims and strategy of the District Plan as set out above, including as set out in the Executive Summary and in particular in relation to its four main aims which are set out on page 4 of the submitted Plan?

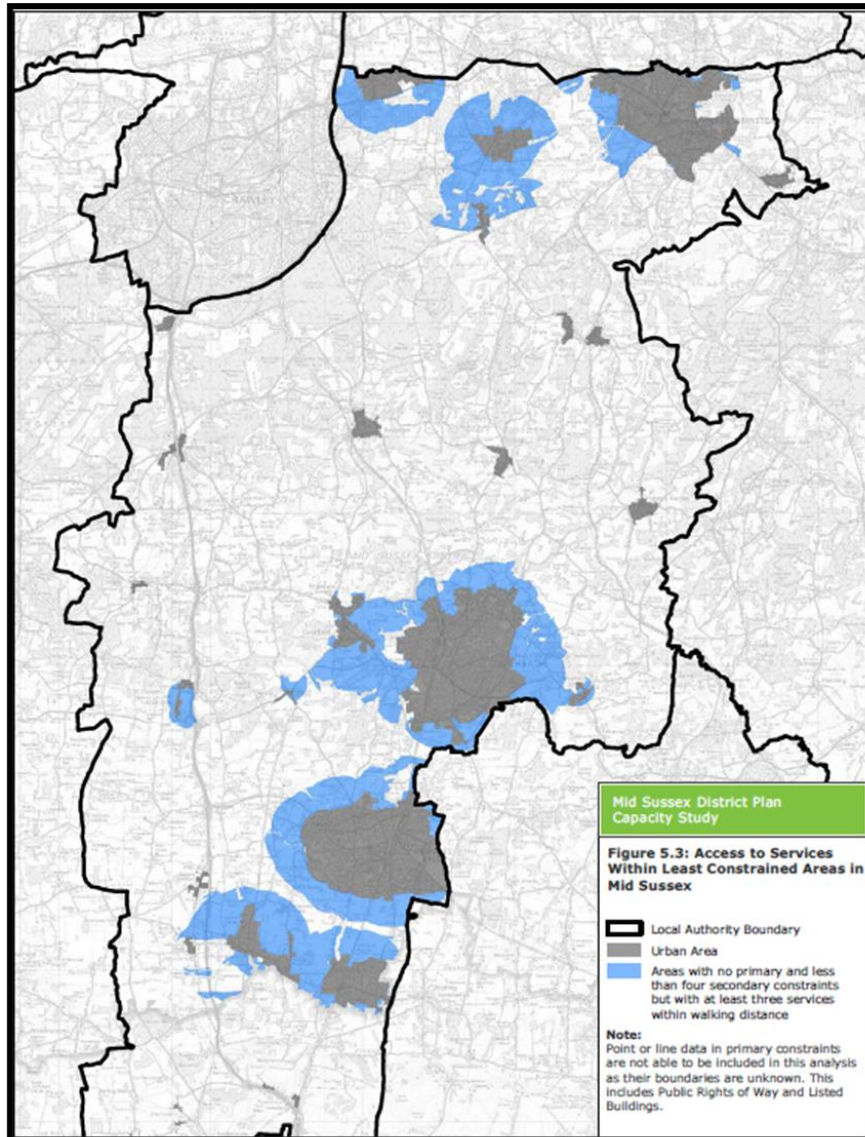
1.2.1 We do not believe the scope of the Site Allocations DPD does reflect the aims and strategy of the District Plan.

1.2.2 In the first instance we do not believe the Site Allocations DPD only has to plan for what MSDC consider to be the remaining residual housing requirement. Policy DP4 of the District Plan is clear that the housing requirement is a minimum. In addition, the preamble to policy DP4 makes it clear that the Site Allocations DPD will allocate non-strategic and strategic sites in order to meet the remaining housing requirement over the rest of the Plan period, with the aim of maintaining a 5 year land supply to meet this requirement. If the housing requirement is a minimum and if the Site Allocations DPD is in part predicated on supplying sufficient land to ensure MSDC can meet their 5 year HLS target then it was in our opinion both incumbent upon MSDC in preparing the Site Allocations DPD to review the extent to which the current strategic allocations would meet the housing needs across the plan period and if there was a shortfall, the extent to which additional allocations may be needed, and

open to them to look to deliver a higher housing figure if they felt it appropriate to do so whilst still reflecting the spatial distribution strategy set out in the District Plan, and conserving environmentally sensitive areas.

- 1.2.3 In the context of the above, we have in our reps on matter 3 highlighted the fact that we believe there to be a shortfall in provision arising from delivery rates anticipated from the strategic allocations, and a need to encompass a buffer to address non delivery/ lower delivery rates than anticipated. This in our opinion results in the need for the Site Allocations DPD to provide for 3,608 dwellings, some 1,844 more than provided for in the Site Allocations DPD at present. This would increase the overall housing requirement in DP4 to 18,234; would protect the 5year HLS and would ensure the minimum requirement is met. It is only 11.25% more than the minimum requirement and given the findings of the SHELAA and the LUC report 'Capacity of Mid Sussex District to Accommodate Development' (2014)¹, which was part of the evidence base for the District Plan, is in our opinion capable of being accommodated without harming the local environment, and in a manner that reflects the spatial distribution strategy of policy DP4.
- 1.2.4 In the context of the above we note that the LUC's report indicates in Figure 4.2: Constraints to Development in Mid Sussex (Primary and Secondary) and Figure 4.3: Constraints to Development in Mid Sussex (Graded by Number of Secondary Constraints) that parts of Crawley Down, a category 2 settlement, lie in the least constrained parts of the district. This includes the land west of Turners Hill Road (SHELAA sites 688 and 1002) which Wates have an interest in. Figure 5.3: Access to Services Within Least Constrained Areas in Mid Sussex, shows Crawley Down along with the category 2 settlements of Hurstpierpoint and Hassocks to be in areas with 'no primary and less than four secondary constraints but with at least three services within walking distance'. See extract below.

¹ <https://www.midsussex.gov.uk/media/2485/mid-sussex-capacity-study.pdf>



1.2.5 Notwithstanding the above only 1 site – for 50 dwellings (SA22), is allocated in Crawley Down. This seems irrational when other sites have been promoted and the Site Allocations DPD is showing a deficit in the Category 2 settlements that has led to an increase in growth in the category 1 settlements. Whilst we appreciate MSDC feel there are reasons why other sites were not suitable for development, our comments on matter 2, and our reps on the Reg 19 Plan explain why in our opinion the site selection process was not as robust and objective as it should have been. The discrepancies between the way in which sites 688/ 1002 and other sites were assessed in SSP3 and thus deemed appropriate for consideration in the SA being totally unjustified and reminding us of the debate at the LP examination, where, in his interim findings², the LP Inspector, when commenting upon the SHLLA states:

² ID11 - 20 February 2017

<https://www.midsussex.gov.uk/media/2892/id11-inspectors-interim-letter-housing-20-feb-17.pdf>

'The SHLAA rejects a number of sites on the basis of availability, transport access, sewerage, landscape capacity, heritage assets, ancient woodland and so on. These are important issues but what the analysis does not do is to consider the extent to which they might be resolved or mitigated through highways and footway improvements, sewerage infrastructure, selective development of parts of sites, the incorporation of green buffers and other measures. In some cases the absence of evidence counts against a site without any further assessment. I have no doubt from the site exercise carried out for the hearing on 8 February that there are sites rejected through the SHLAA process which, through their characteristics or location, might remain unacceptable. But other representors have given examples where relatively minor infrastructure or mitigation measures, different site boundaries or developable areas, might enable sites to come forward, and have cited other examples where identified constraints in the SHLAA have not proved obstacles to the subsequent allocation of sites, or to the grant of planning permission. There are some constraints in certain localities, such as sewerage and highway capacity, which may be partially dependent on the programmes of other bodies to resolve. But housing provision is a government priority and should be reflected in the programmes of other public bodies. It is also the case that both site-related development contributions and CIL will assist in future in addressing such constraints'

1.2.6 As a category 2 settlement we believe that Crawley Down could accommodate more growth without prejudice to the local environment and find it somewhat counter intuitive that the Site Allocations DPD looks to allocate more development in less sustainable and more environmentally constrained areas, including sites within the AONB, in category 3 settlements³, than it does in the more sustainable and less constrained category 2 settlements. Not only is there nothing in the evidence base that justifies this approach, but the approach itself is in our opinion contrary to the spatial distribution strategy and environmental protection policies of the District Plan.

(ii) Does the scope of the Plan accord with the Court of Appeal (COA) Judgment of Oxted Residential Ltd v Tandridge District Council (EWCA Civ 414; 29 April 2016)? This COA Judgment is in the Examination Library, and the paragraphs that I would particularly like to draw attention to are: 28, 31, 32 and 38. The third sentence of paragraph 38 states: An Inspector conducting an examination must establish the true scope of the development plan document he is dealing with, and what it is setting out to do. Only then will he be able to properly judge "whether or not, within the scope and within what it has set out to do", it is "sound" (Section 20(5)(b) [of the 2004 Act]).

1.2.7 As we do not believe the scope of the Site Allocations DPD reflects the aims and strategy of the District Plan, there are subtle differences with the COA Judgment of Oxted Residential Ltd v Tandridge District Council. In this instance p30 of the District Plan is clear in that the aim of the Site Allocations DPD is not just to meet the remaining housing requirement over the rest of the plan period, BUT to maintain a 5 year land supply to meet this requirement. The issue is not as in the case of Oxted

³ The 'Major Development in the High Weald AONB Topic Paper' (July 2020) (TP1) indicates at figure 6 that 6 of the 22 housing site allocations fall within the AONB. These provide a total of 218 dwellings (12.36%) of the number of dwellings to be allocated through the Site Allocations DPD (we further note that MSDC01) corrects TP1 as only 35 dwellings are proposed on SA27 taking the total to 188 (10.6%). Whilst not commenting upon the individual merits of these sites, it is of note that all 6 sites are also in category 3 settlements.

Residential Ltd v TDC whether in assessing the LPP2, or in this case the Site Allocations DPD, the OAHN should be revisited, that we accept is not for the Site Allocations DPD as a daughter document, but whether the plan does as a minimum accommodate the residual housing requirement and provide for a 5 year HLS upon adoption and thereafter as required by the District Plan. Given our response to matter 3 we do not believe the Site Allocations DPD does provide for a 5 year HLS upon adoption and thereafter as required by the District Plan, thus additional sites need to be allocated to rectify this issue and ensure compliance with the aims and strategy of the District Plan. If they are not then the Site Allocations DPD does not accord with its parent plan, the District Plan, and cannot be said to be sound.

- 1.2.8 In the context of the above we note that Inspector Bore in his report on the district Plan (ref DPD8) states at para 376 that: *'The Council's evidence, based on information as of 21 July 2017, indicated that there was 5.2 years' supply of housing. However, the calculation of supply in a strategic plan in which some of the allocations will be made in a subsequent plan or in neighbourhood plans is not an exact science, and there are inevitable uncertainties about start dates, delivery rates and the developability of sites in the 5 year supply schedule. Should the supply fall below 5 years at any time the Council would be less able to direct development through the plan-led system. It is therefore very important that the plan has resilience should, for example, one of the sites takes longer to start or is slower to deliver, and to this end this plan, and the forthcoming Site Allocations DPD, need to ensure not only that a 5 year supply of housing exists at present, but that a rolling 5 year housing supply can be maintained in the future.'* My emphasis.
- 1.2.9 Para 3.31 (p 20) of the District Plan also acknowledges that: *'In addition to the housing provision in Neighbourhood Plans, the District Council will produce its own Site Allocations DPD for the District. Such a document has been programmed into the Local Development Scheme to ensure its implementation to maintain a five-year supply of housing land.'*
- 1.2.10 The scope of the Site Allocations DPD has in our opinion to go beyond point (i) as set out on p4 on the Site Allocations DPD, to include the provision of a rolling 5 year HLS. It is these points that together form the true housing scope of the Site Allocations DPD, and it is this that this examination has to test, to establish if the plan is sound.

(iii) Does policy SA GEN adequately set out the general principles for the Site Allocations that are made in this Plan?

No comment

(iv) Policies SA34 to SA38 are termed 'development policies' in the Plan; can they be considered to be strategic in nature, and if so, does that in any way set a precedent or even a requirement for the Plan to deal with other strategic issues, such as housing provision?

- 1.2.11 The SA and TP3 tie policy SA34 back to policy DP1 of the District Plan and policy SA38 back to policy DP29 of the District Plan. Whilst neither could in our opinion be

said to be strategic in nature, we would question whether SA38 is truly tied to DP29, or just a new development management policy that has evolved as a result of work that has been undertaken since the adoption of the District Plan, such as the MSDC 2018 Air Quality Action Plan.

- 1.2.12 Turning to policies SA35, 36 and 37, whilst SA36 and 37 in looking to support the expansion and upgrade of Wivelsfield Railway station, and the delivery of a dedicated multifunctional network providing walking, cycling and equestrian links between Burgess Hill and Haywards Heath may not be truly 'strategic' in nature, policy SA35 in looking to Safeguard Land for Strategic Highway Improvements, is by its very title a strategic policy, and the location of the junctions specified on the A22, A264 and A23 all appear to be related to the strategic allocations at East Grinstead and Burgess Hill. Whilst the SA at p81 tries to link this policy back to policy DP21 of the District Plan we note that policy DP21 is concerned with development supporting the objectives of the West Sussex Transport Plan 2011-2026. As para 8.1.1 of the SA suggests that these 'generic' policies *'have been identified as a result of monitoring District Plan policies, or as supplementary to the proposed housing and employment allocations to facilitate delivery'* (My emphasis); and para 11.5 of TP3 indicates that policy SA35 *'seeks to ensure that land is safeguarded to support the delivery of strategic transport schemes identified by West Sussex County Council that will be necessary to support planned growth across the district, including development set out in the District Plan 2014-2031'* it could, as noted in question iv, be possible that by including what is in effect a strategic policy (SA35) in the Site Allocations DPD, MSDC are setting a precedent or even a requirement for the Plan to deal with other strategic issues, such as housing provision. If, as we suspect, and the SA suggests on p81 these works are required to facilitate the proposed allocations in East Grinstead and Burgess Hill the associated developments would be better cross referencing to said works and the Site Allocations DPD updated accordingly. MSDC really need to explain the rationale behind these policies – especially SA35, so that a more considered response can be made to them, and their implications.
- 1.2.13 In the context of the above we note that the SA on p82 suggests that policy SA35 (the proposed Safeguard Land for Strategic Highway Improvements) has no cross boundary impacts – yet one of the safeguarded junctions is the A22 Felbridge junction which is right on the boundary of MSDC and TDC / West Sussex and Surrey County Councils. A point acknowledged in the SOCG between MSDC and TDC (DC13) which identifies these works as 'Strategic Planning Issues'; and para 3.15 of the Site Allocations DPD which indicates that: *'These upgrades are necessary to increase capacity and improve highway safety within Mid Sussex and support planned growth in Tandridge and are being developed in partnership with West Sussex and Surrey County Councils.'*
- 1.2.14 Overall, whilst policies SA34, 36, 37 and 38 could be argued not to be strategic, policy SA35 clearly is. This has implications for the plan per se and MSDC would be better placed linking these highway works to the specific allocations that trigger them.

(v) Does the Plan keep within its remit in relation the 'made' and emerging Neighbourhood Plans within the Plan Area?

No comment

1.3 Duty to Cooperate (DTC):

(i) Is the DTC, which covers some strategic matters, therefore applicable to this Plan, as a 'Part 2' Plan, and if so, has the Council adequately discharged the DTC in preparing the Plan?

(ii) In particular, does the Plan satisfy the DTC in relation to planning for the longer-term growth of neighbouring areas?

No comment