

Matter Statement for the Mid Sussex Site Allocations DPD Examination in Public

Matter 1 Legal Requirements



On behalf of Fairfax Acquisitions Ltd.

May 2021



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1.0 Introduction

- 1.1 This Statement responds to questions 1.2 and 1.3 of the Inspector's MIQs, relating to Scope of the Plan and Duty to Cooperate.
- 1.2 This Statement is prepared on behalf of Fairfax Acquisitions Ltd who are promoting land at Clearwaters Farm, Haywards Heath for residential development with multifunctional network links to Haywards Heath.
- 1.3 This Statement complies with the word limit requirements set out in the Inspector's Examination Guidance Note (ID-03). The total word count for this Matter Statement, including all questions answered is 2,822.

2.0 Scope of the Plan (1.2)

Qu (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?*

2.1 The scope of the Site Allocations DPD, (the Plan) is beyond the scope that was set for it by the higher level District Plan. The scope for the Plan is set through two District Plan Policies: DP1 (Sustainable Economic Development) provides for further sites to be allocated within the Plan; supporting text to Policy DP4 (Housing) states that the Plan will allocate non-strategic and strategic sites over 5 No. dwellings *"in order to meet the remaining housing requirement over the rest of the Plan period as reflected in the 'stepped trajectory' of 876dpa until 2023/24 and 1,090dpa thereafter, and with the aim of maintaining a 5 year land supply to meet this requirement."* The Policy itself provides: *The Council commits to commencing preparation of a Site Allocations DPD in 2017 to be adopted in 2020. The DPD will identify further sites which have capacity of 5 or more residential units. The Council will review the District Plan, starting in 2021, with submission to the Secretary of State in 2023.*

2.2 It is evident from this policy that the scope of the Plan was intended to be limited to identifying/allocating employment and housing sites required to meet the minimum targets set out in the District Plan. The District Plan indicates other strategic matters, including housing need, will be dealt with in a review of the District Plan, as per Policy DP4 (Housing) and DP5 (Planning to Meet Future Need). Notwithstanding that the timescales proposed by the District Plan are somewhat behind schedule, the District Plan does not provide an open-ended scope for the Plan to *"set out additional Strategic Policies necessary to deliver sustainable development"* as per Aim iv).

2.3 The District Plan does not provide for the Plan to make new policy that would replace any District Plan Strategic Policy, this could only happen through a review of the District Plan, which is clearly provided for in District Plan Policy DP4. Aim iv) of the Plan is therefore inconsistent with the scope intended for the Plan as set out in the District Plan.

Qu (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?*

2.4 The scope does not, unfortunately, accord with this Judgement. In particular:

Para 31: ...There is nothing in the statutory scheme to prevent the adoption, for example, of a development plan document that is making allocations consistent with an adopted core strategy, simply because the core strategy may require revision or amendment to bring it into line with national policy (paragraphs 61 and 62 of the judgment).

Response: The MSDC Plan is seeking to make revisions/amendments to the higher level strategy i.e., the Council has found the District Plan (core strategy) requires revision and is choosing to make revisions and so the scope is not limited to just making allocations consistent with the District Plan (core strategy).

Para 32: ...[the NPPF] does not require a development plan document which is dealing with the allocation of sites for an amount of housing provision agreed to be necessary to address, also, the question of whether further housing provision will need to be made" (paragraphs 63 to 65).

Response: The Council has, however, chosen to broaden the scope from "dealing with the allocation of sites" to replacing District Plan policies (e.g., SA38) and the provision of new strategic policies for cross-boundary infrastructure (e.g., SA37). This being the case, how is it justified to revisit certain parts of the District Plan, but not others? How can the Inspector establish the true scope of the Plan when it has morphed from what was intended by the District Plan?

Para 38: ... 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 properly to judge "whether or not, within that scope and within what it has set out to do", it is "sound" (section 20(5)(b)). His assessment will require him to ask himself, among other things, whether the local planning authority has had regard to national policy (section 19(2)(a)) and to "any other local development document which has been adopted by the authority" (section 19(2)(h)). (emphasis added)

Response: The District Plan does make clear the purpose of the Plan: "*The DPD will identify further sites which have capacity of 5 or more residential units.*" (DP4); and for employment : "*Allocating further sites within the Site Allocations DPD*". The fact that the District Plan explicitly sets out that a review of the District Plan will follow the adoption of the Site Allocations DPD helps to confirm the intended limited scope of the Plan was solely to provide allocations to meet the requirement set out by the District Plan. Additionally, para 39 of the Oxted Judgment is useful here:

Para 39: ...It "supports" the core strategy. It does not substitute for the policies of the core strategy an amended or new strategy. That is not what it had to do, nor what it could have done. Its explicit purpose is to provide what it describes as "a set of detailed planning policies to be applied locally in the assessment and determination of planning applications over the plan period", to replace the remaining saved policies of the 2001 local plan (paragraph 1.4), and to provide the "detailed policies" to complement the "strategic policies" in the core strategy (paragraph 1.8). (emphasis added)

Response: The Council appears to take the concept of complementary policies as adding to the strategic policies, rather than providing the detail for the higher level strategy: "...the District Plan policies are complemented by five additional strategic policies. These policies help to ensure that the Development Plan supports the delivery of sustainable development when considered as a whole."(p5 of the Plan). This statement would appear to widen the scope without limitation and without justification in relation to the scope the District Plan has set for the Plan. The District Plan does not provide for the Plan to add to or amend its policies or strategy by making new additional strategic policies intended to sit alongside it. The true scope of the Plan is not therefore entirely clear, neither is it entirely consistent with the higher level District Plan.

As referenced in our Regulation 19 consultation response, the Council describes the Plan as a 'daughter document', indeed the subsequently produced *Introduction to the Sites DPD Topic Paper 3*, appears to have left out the word 'strategic' in its replication of Aim iv), which here reads: "*to set out additional policies necessary to deliver sustainable development*" (para 1.3) and the role of the Plan is described as follows:

"The role of the Sites DPD is therefore a 'daughter' document to the District Plan. It is the role of the District Plan to establish the spatial strategy and strategic policies. The Sites DPD has therefore been prepared with the purpose of meeting the strategy set out in the District Plan."(Para 1.4 TP3) (emphasis added)

If this is a true daughter document, then the policies should directly flow from the existing strategic policies in the District Plan, i.e., they should implement the District Plan policies by providing further detail. This does not, however, address the reality that the Plan does in fact contain new strategic policies under Aim iv) "*to set out additional Strategic Policies...*", five in total, including one designed to replace part of one of the District Plan policies; they do not flow from higher level policy in the District Plan. What remains unclear is what the scope is for introducing new strategic policies in the Plan, how this was arrived at and why it doesn't extend to, for example, the allocation of a cross boundary site.

Qu 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?*

2.5 The Council refers to the development policies within the Plan as 'strategic policies' (para 3.2) and intends for SA38 Air Quality to replace part of District Plan Policy DP29 Noise, Air and Light Pollution. We would not dispute they are strategic in nature. Policy SA37 Burgess Hill/ Haywards Heath Multifunctional Network is strategic and has cross boundary implications for delivery with links in Lewes District. This is confirmed by the Statement of Common Ground with Lewes District and East Sussex County Council, which states:

"Policy SA37 safeguards land to support the delivery of the multi-functional (walking/ cycling/ equestrian) network between Burgess Hill and Haywards Heath. The precise route will be informed by detailed design work. There is the potential for some of this route to be within Lewes District and Mid Sussex District Council welcome the opportunity to work with East Sussex County Council (and Lewes District Council) to consider and progress this further."

2.6 In turning to the second part of the question, we would argue that, yes, this does set a precedent; for without a clear pre-determined scope for the new strategic policies they appear to deviate from the original remit set within the District Plan and considering they introduce new Duty to Cooperate matters, how can it be justified that other strategic matters should/could not be included? There is no consistency in the Council's approach, it would appear that the Council is picking and choosing on the hoof what additional strategic matters it includes. The District Plan itself did not attempt to meet, neither does it necessarily intend to review, housing need outside the housing market area it defined i.e., Northern West Sussex. So, the mechanism within the District Plan to review future housing need does not necessarily serve the Council's neighbouring authority to the east

(Lewes District). A new strategic allocation policy in the Plan making a reserve site allocation on the Mid Sussex and Lewes district border, contingent upon the Lewes District Council's allocation of the cross boundary side of the site, would not be in breach of the District Plan's commitment to review future housing need, it would not be 'revisiting the housing requirements' and it would meet the definition of Aim iv) strategic policy necessary to deliver sustainable development. This is particularly pertinent as this cross boundary site (Clearwaters Farm) can deliver parts of SA37 Multifunctional Network. Such a proposal would additionally provide flexibility for the housing supply and be compatible under Aim i) to allocate sufficient housing sites. Moreover, this would fulfil the requirements of the Duty to Cooperate, which have become more widely applicable to the Plan through the inclusion of the additional strategic policies.

3.0 Duty to Cooperate (1.3)

Qu (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?*

3.1 The DTC is applicable to the Plan because the Plan is dealing with strategic matters, including strategic sites with cross boundary impacts (e.g., traffic impacts on the highway network in Lewes District). The Plan is making policy for cross-boundary infrastructure projects in SA37 Multifunctional Network and SA36 Wivelsfield Railway Station. As the scope for the additional strategic policies is not defined by the higher level plan and has not been limited or justified by reference to any particular policy hook, the DTC requirements should be considered in full, particularly for Lewes District where these new strategic policies have implications and because there is an opportunity to address cross-boundary housing that is not otherwise captured by the District Plan commitment to review future housing needs.

3.2 The DTC requires the Council in producing its Plan to have regard to the activities of neighbouring authorities and to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation relating to strategic cross-boundary matters. The opportunity to demonstrate cooperation through the allocation of a cross-boundary site that can help deliver Policy SA37 Multifunctional Network and support housing needs in Lewes and Mid Sussex has been identified through the Regulation 19 consultation response to the Plan. The allocation within the Plan of Clearwaters Farm would unlock approximately 250 dwellings in Lewes District, which would be highly significant for Lewes District Council (LDC). The timing of an allocation within the Plan would enable LDC to assess the Clearwaters land within Lewes District as a reasonable alternative within its emerging Local Plan. This is because both accesses identified for the site are within Mid Sussex and so support and cooperation from MSDC is required soonest. As explained within the Regulation 19 submission Lewes' housing need has risen sharply this year and their land supply has fallen to 2.5 years. LDC need assistance now, rather than at some point in the future and given that the opportunity to assist LDC in a way that fits within the aims and strategic focus of the Plan has been identified, this should not have been ignored and therefore MSDC has not adequately discharged the DTC in preparing the Plan.

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

3.3 The Plan does not satisfy the DTC in relation to planning for the longer term growth of neighbouring areas. As it was clearly stated to be a strategic plan, an opportunity to support the longer term growth of its neighbouring area and LDC was put forward through the Regulation 19 consultation on the Plan and this has not been responded to. Reliance on the District Plan's commitment for a review of future housing need (Policy DP5), which prioritises the North West Sussex HMA and highlights Brighton's unmet need, provides no commitment or assurance to LDC of cooperation on cross-boundary sites. To put off what can be achieved now in respect of safeguarding LDC's ability to bring forward critically needed housing in a sustainable location does not satisfy the DTC in relation to planning for the longer term growth of neighbouring areas. As the scope of the Plan has not been limited to non-strategic matters and contained to purely implementing the District Plan, it is not truly a 'daughter document' and it fails to meet the requirements of the DTC as a strategic plan.

4.0 Conclusion

- 4.1 The scope of the plan is not in accordance with the higher level District Plan, neither does it accord with the Court of Appeal Judgement of Oxted Residential Ltd v Tandridge District Council, such that Inspector cannot readily establish the true scope. It has widened its remit to include a host of new strategic matters without due justification or limit and consequently fails to be a 'daughter document' to the District Plan as intended. Within its identified strategic nature, it subsequently fails to properly consider and respond to strategic matters put forward through the Regulation 19 consultation whereby it ignores an opportunity to support its neighbouring authority LDC through recognising the potential for a cross-boundary housing site that would also help to deliver one of its own strategic policies i.e., SA37 Multifunctional network.
- 4.2 This failure to deliver on the intended scope for the Plan, or properly define the new scope (with an appropriate plan timeline) and a failure of the DTC means that the Plan cannot reasonably go forward until these fundamental matters are resolved.

By Tondra Thom BSc, MSc, AssocRTPI

For and on Behalf of Parker Dann Ltd on Behalf of Fairfax Acquisitions Ltd.