

Matter 2 - Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA)

2.1 Is the Plan supported by the SA and HRA?

2.1.1 Yes

2.2 What evidence is there that the SA has influenced the Plan and/or undertaken a full assessment of realistic alternatives?

2.2.1 Para 2.8 of TP3 advises that the SA of the Site Allocations DPD focusses on the reasonable alternative options to meet the strategy and residual requirements set out within the District Plan. It also makes it clear that the Site Allocations DPD is a daughter document to the District Plan, with the aim of meeting the residual housing and employment needs; that the District Plan was accompanied by a SA which appraised reasonable alternatives for housing supply, housing requirement and strategy; and that as the overall requirement and strategy were 'set' within the District Plan, it is not the role of the Site Allocations DPD SA to re-assess alternative approaches.

2.2.2 However 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 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, which may ultimately mean looking at the merits of an increased housing requirement rather than the minimum figure provided for in policy DP4.

2.2.3 In addition to the above its clear from the proposed sustainability objectives set out at para 5.6 of the SA (SUS1) that one of the key sustainability objectives of the plan is *'to ensure that everyone has the opportunity to live in a home suitable for their needs and which they can afford'*.

2.2.4 In the context of the above we note that Para 3.10 of the SA indicates that lower quartile house prices to earnings were 13.82 in 2017¹

2.2.5 ONS in their ratio of median house price to median gross annual workplace-based earnings by local authority district, England and Wales, 1997 to 2020 suggest that the ratio of median house price to median gross annual workplace-based earnings in Mid Sussex has increased from 8.75 in 2010 to 11.23 in 2015 and 12.62 in 2020² . Table

¹ ONS House price to workplace-based earnings ratio –March 2021- table 6c suggests this figure is 13.19 not 13.82.

² See table 5c – ONS House price to workplace-based earnings ratio - March 2020- <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/ratioofhousepricetoworkplacebasedearningslowerquartileandmedian>

6c suggests that the ratio of lower quartile house price to lower quartile gross annual workplace-based earnings in Mid Sussex was 12.72 in 2020. Affordability is thus a major issue in Mid Sussex. As such and given the proposed sustainability objectives set out at para 5.6 of the SA it seems somewhat perverse that MSDC have not looked to assess the impact of delivering a higher housing figure as the delivery of more housing will help to address this issue.

- 2.2.6 As set out in para 3.19 of the SA, the District Plan examination concluded that there should be an increase in housebuilding above demographic trends to increase supply with the intention of improving affordability. The Site Allocations DPD has the opportunity to continue this positive approach and should in our opinion if it is to demonstrate compliance with national government guidance. Our position in this regard is heightened by the fact that we all know the housing requirement will be increasing in the Local Plan Review given the standard methodology³.
- 2.2.7 Whilst we appreciate a higher housing figure would have required new HRA and AA, given the districts relationship with the Ashdown Forest SAC, this should not in itself have been an impediment to assessing the effects of a higher housing delivery target through the SA. In addition, it is clear from the District Plan that *'As part of the preparation of the Site Allocations DPD, the Council will need to undertake further Habitats Regulations Assessment of identified housing sites for the rest of the plan period.'*
- 2.2.8 In addition to our concerns about the reasonable alternatives to the level of housing assessed in the SA of the Site Allocations DPD, we are also concerned about the way in which the SA and Site Selection Paper (SSP3) went about assessing the proposed sites and the spatial distribution of said sites.
- 2.2.9 Section 6 of the SA explains how the Site Allocations DPD has taken the residual housing requirement as its base, adapted the spatial distribution strategy to reflect the suitability of the sites put forward through the call for sites/ assessed through the SHELAA process, and established the final set of sites to be taken forward for consideration. To this end we note that whilst the SHELAA reviewed 253 sites, 94 were ruled out at stage 1, and a further 108 at stage 2, leaving just 51 sites to be reviewed at stage 3 and through the SA process. The SA also explains that these 51 sites yielded some 3,930 dwellings against what is said to be a requirement for 1,280. Table 15 goes on to differentiate between the 51 sites in terms of their performance against the SA objectives, and in so doing identifies 20 sites that yielded 1,424 dwellings that performed well, 19 sites that yielded 805 dwellings that performed badly and 12 sites that yielded 1,536 dwellings that were marginal.
- 2.2.10 In considering reasonable alternatives we note that the SA accepted the 20 (constant) sites that were to be allocated, and provided for some 1,424 dwellings, and tested these as a group (defined as option A), against 2 additional options; one included the land south of Folders Lane and east of Keymer Road + land South of 96 Folders Lane Burgess Hill to take the total number of dwellings to 1,764 (option B);

³ The housing requirement in DP4 increases from 876 to 1,090dpa in 2024/25 and the LPA review will need to address the standard methodology figure of circa 1,110dpa.

and the other included the land at Haywards Heath Golf Club to take the total number of dwellings to 2,054 (option C). The SA concludes at para 6.52 that:

'Following the assessment of all reasonable alternative options for site selection, the preferred option is option B. Although option A would meet residual housing need, option B proposes a sufficient buffer to allow for non-delivery, therefore provides more certainty that the housing need could be met. Whilst option C also proposes a sufficient buffer, it is at the expense of negative impacts arising on environmental objectives. The level of development within option C is approximately 50% above the residual housing need, the positives of delivering an excess of this amount within the Site Allocations DPD is outweighed by the negative environmental impacts associated with it.'

- 2.2.11 Whilst we would question the assumptions made in table 20 of the SA when concluding on options A, B and C, we also believe that whilst option C was rejected by the SA, other larger sites, especially in category 2 settlements that reached site selection stage 3, such as the land west of Turners Hill Road, Crawley Down should have been considered further in terms of reasonable alternatives and that both the SA and SSP3 are lacking in their explanation as to what was and was not included in the selection process and why it was/ was not included – in essence the SA decision making and scoring process is not robust, justified, or transparent.
- 2.2.12 Whilst Topic Paper 3 (TP3) looks to address this in sections 6 and 7 it too is cursory in its approach as to why sites that made it to site selection phase 3 were then excluded from further consideration. Table 7 in identifying broad reasons for exclusion does not provide any indication as to whether the issues raised were considered in the context of potential mitigation and the promoters position on the findings of the assessment process. Whilst paras 7.9 and 7.10 of TP3 suggest an opportunity was provided for site promoters to respond to the initial findings, and that the council made updates accordingly, all we can do is say that we know that matters we raised with MSDC – both quantitative and qualitative - were not corrected in the subsequent site selection paper. Thus, whilst MSDC's position in the SA and SSP is that whilst some mitigation may have been possible for those sites they chose to exclude, the 47 remaining sites were better performing so were taken forward, the rationale is not transparent and contradicts our own experience. It also brings to mind the criticism levelled at MSDC during the District Plan Examination when, in one of his interim letters (ID11) Inspector Bore raised concerns about the 'Limitations of the Sustainability Appraisal', 'The SHLAA and the 'Site and Land Identification' process. We believe the same issues arise from the manner in which MSDC have undertaken the site selection and SA process for the Site Allocations DPD and believe this needs to be rectified if the plan is to be justified, effective, positively prepared and sound.
- 2.2.13 Having regard to the above we note that the LUC's report 'Capacity of Mid Sussex District to Accommodate Development' (2014), scores the land west of Turners Hill Road, Crawley Down as having 'medium landscape capacity'. Which is defined as indicating 'that there is the potential for limited smaller-scale development to be located in some parts of the character area, so long as there is regard for existing features and sensitivities within the landscape'. The 2014 LUC report gave Area 45,

within which the Haywards Heath Golf Course⁴, is located the same landscape capacity, which it retains in Site Selection Paper 3, unlike the land west of Turners Hill Road, Crawley Down which has been down graded to low - medium⁵. It is not clear why, given the fact the site selection papers relate back to the LUC capacity study, some areas have seen their capacity revised, and others have not. Either the council are relying on the findings of the LUC report or not, and if the latter they need to explain the rationale behind the revised scoring system they are now using.

2.2.14 Whilst we comment further on the way in which landscape capacity and impacts were considered in the site selection process in section 3 of our reps on the Reg 19 Plan, we would here like to highlight the fact that para 3.4.13 of SSP3 advises that mitigation to address the reason for exclusion was either unavailable or unnecessary in light of more sustainable alternative sites being available. SSP3 goes on to suggest on p49 that site 688 was not considered further following detailed assessment as it was a *'Large site in relation to the housing requirement of the settlement. Potential yield is 300 in relation to a need of 18. Considered that there are more suitable sites available to meet this need.'*

2.2.15 No consideration was, we note, given to the site being developed on a gradual basis, but subject to an overarching masterplan⁶. Furthermore, the rational for not taking the site forward seems somewhat perverse when other sites of a comparable or greater size have been taken forward as allocations in the Site Allocations DPD⁷. In addition, giving the recent context of permissions nearby, there is a clear acceptance of this location being suitable for development and an obvious direction of travel for more housing in Crawley Down.

2.2.16 We also note that on p49 of SSP3, Site 1002 is *'not considered further following detailed site assessment'* because: *'Ancient woodland on eastern boundary with significant buffer extending into the site.'* The sites relationship with ancient woodland is however only seen as a partial issue in the detailed site appraisal, wherein it states: *'Front Wood ancient woodland forms the entire eastern boundary and intersects with the site's southern extent. 15m buffer extends into the site.'*

2.2.17 As demonstrated in the illustrative layout submitted with our Reg 18 reps, the site is capable of being developed so as to accommodate 30 – 50 dwellings with no infringement into the 15m buffer to the ancient woodland that lies adjacent to/ within the site. Again, we note that when assessing the Hayward Heath Golf Club, which also abuts/ contains areas of ancient woodland, SSP3 did not see this as an impediment to development.

2.2.18 Having regard to the above we believe that the land west of Turners Hill Road, Crawley Down was unfairly deleted from consideration within the SA at site selection

⁴ SHLAA site 503 and reasonable alternatives option c in the SA.

⁵ NB it was medium in the April 2019 assessment.

⁶ A copy of the masterplan enclosed with the reg 19 reps is attached for ease.

⁷ 300 dwellings on land south of Folders Lane and east of Keymer Road Burgess Hill – SA13

200 dwellings at The Brow and St. Wilfrid's School Burgess Hill – SA16

200 dwellings on Land South of Crawley Down Rd East Grinstead – SA19

550 dwellings on Land South and West of Imberhorne Upper School East Grinstead – SA20

stage 3 and that it should have been a reasonable alternative to those that were assessed, especially as it is not in the AONB, the whole of site 1002 and the vast majority of site 688 is beyond the 7km zone of influence of the Ashdown Forest SPA, and is not as environmentally sensitive as some sites such as the land at Haywards Heath Golf Club which was taken to stage 3 – albeit not allocated through the SA process

- 2.2.19 In addition to the above, whilst TP3 suggests at para 7.27 that following the application of the Site Selection methodology, *'sites have been allocated consistently with the overall District Plan strategy'*; and that *'In particular, where insufficient sites have been identified at any particular tier to meet the indicative number given in the supporting text to DP6, allocations have been made at settlements in the more sustainable Category 1'* we do not believe that insufficient sites were promoted in the category 2 and 3 settlements such that additional site had to be allocated in category 1 settlements, nor do we believe does the SA assess the implications of this strategy.
- 2.2.20 In the context of the above, we note that appendix 4 of the SA in assessing the housing site appraisals does not at Crawley Down assess any reasonable alternatives to the selected site despite various other sites being promoted and reaching stage 3 of the assessment process. All it is doing is assess the 51 sites that made it through the stage 3 site assessment process. If there was an issue with housing delivery in the category 2 settlements surely the other category 2 sites that had made it to stage 3 should have been assessed again to see if they would be better placed to meet the category 2 needs rather than redirecting the supply to the category 1 settlements?
- 2.2.21 If as MSDC suggest the Site Allocations DPD is predicated on the spatial strategy set out at policy DP4 of the District Plan, then they should look to reflect the Spatial Distribution of Housing Requirement contained therein – they cannot say the housing requirement is a fixed, but we will change the spatial distribution of the housing requirement as we see fit. Instead, they should have reviewed the sites being promoted in the category 2 and 3 settlements and seeking to establish if the concerns they had about these sites could be mitigated before then looking to amend the spatial distribution itself. In looking to amend the spatial distribution strategy and reduce the level of growth in certain category 2 and 3 settlements the Site Allocations DPD is in effect prejudicing the District Plans objective to maintain town and village centres that are vibrant, attractive, and successful and that meet the needs of the community; and to support a strong and diverse rural economy in the villages and the countryside. If additional housing is not promoted in some of these areas then their vitality and viability will suffer – the SA does not assess this, which is a grave failing in our opinion. As the District Plan was predicated on a specific spatial distribution strategy any variance from this needs to be SA'd in the daughter document, and the implications tested against the aims and objectives of the District Plan. The SA of the Site Allocations DPD does not do this and as such the spatial distribution strategy of the Site Allocations DPD cannot be said to be justified or to support the aims and objectives of the District Plan.
- 2.2.22 Overall its clear from the SA that no consideration was given to providing for anything over and above the residual housing 'requirement' as MSDC saw it i.e. no

assessment of the social, economic, or environmental effects of providing say double that which was required to meet the minimum residual requirement. Providing for circa 3,600 as suggested in our reps on matter 3, rather than the 1,764 promoted in the Site Allocations DPD would both assist MSDC in their HLS and help address the affordability issue that exists in the district. Furthermore, it is clear from the SHELLA that sufficient sites were put forward, and that many were discounted for questionable reasons; and clear, as set out in our reps on the Reg 19 Plan, that some of the category 2 settlements are both less constrained and more sustainable than other areas, and thus capable of delivering more if MSDC chose to adopt such an approach. If nothing else, testing this option would demonstrate a positive approach to the plan making process. As things stand, the SA has not tested any reasonable alternatives to that required to meet what MSDC consider to be the residual requirement, whilst actively deviating from the spatial distribution strategy proposed in policy DP4 of the District Plan.

2.2.23 Given the above, and as MSDC have a history of under delivery⁸, failure to assess the merits of allocating more housing through the Site Allocations DPD suggests to us a plan that is not positively prepared and is thus contrary to national government guidance.

2.2.24 As set out above, a higher number of allocations would help protect the council against any failure to meet the adopted development plan target and help with their 5yr housing land supply. It would also ease the transition between the housing requirement set out in the adopted plan and that which will be generated by the Standard Methodology in the Local Plan Review.

2.2.25 Given the lead in time for a Local Plan Review and the fact MSDC had the opportunity, within the Site Allocations DPD to review their housing provision and protect themselves against speculative development in the future, it was in our opinion foolhardy that the Site Allocations DPD did not assess the merits of delivering more houses to address future needs. The failure of the SA to even contemplate this possibility demonstrates a plan that is not positively prepared and is thus unsound.

2.3 Do any adverse effects identified in the SA require significant mitigation, and how does the Plan address these issues? Has appropriate account been taken of the recent People Over Wind & Sweetman v. Coillte Teoranta (C-323/17) Judgment in the ECJ (often referred to as the Sweetman 2 Judgment)?

No comment

⁸ Para 4.3 of the MSDC: 5 Year HLS Statement (Dec 2020) is clear in its acceptance of MSDC's failure to meet its housing requirement in 4 of the past 6 yrs.

| | 2014/2015 | 2015/2016 | 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 | Total |
|--------------------|-----------|-----------|-----------|-----------|-----------|-----------|-------|
| Requirement | 876 | 876 | 876 | 876 | 876 | 876 | 5256 |
| Completions | 630 | 868 | 912 | 843 | 661 | 1003 | 4917 |
| Shortfall | -246 | -8 | +36 | -33 | -215 | +127 | -339 |