



## **PUBLIC EXAMINATION OF MID SUSSEX DISTRICT COUNCIL'S DRAFT SITES ALLOCATION DPD**

### **SUBMISSION BY CPRE SUSSEX AS TO THE SOUNDNESS OF DRAFT POLICY SA25 (Allocation of land west of Selsfield Road, Ardingly)**

#### **Introduction and summary**

1. In this submission CPRE Sussex makes the case that, in order for the SADPD to be sound, the proposed allocation of land west of Selsfield Road, Ardingly for 70 dwellings should be withdrawn.
2. CPRE Sussex considers policy SA25 to be unsound and unsustainably located: it is not justified, and does not accord with national or District Plan policy. In summary, here's why:
  - It is incompatible with national planning policy (CROW Act 2000 Part IV and NPPF para 172) which requires any AONB development to be sustainably located, limited in scope and extent, and be beneficial to the AONB. Major development should be refused other than in circumstances that MSDC accepts do not apply here.
  - The provision of market housing that exceeds local community need, and that local community resources cannot support, is not a more important priority than AONB conservation where alternative sustainable site allocations outside an AONB are available or there is no essential Plan necessity for them to be sited within the High Weald.
  - The basis on which the site's sustainability appraisal was assessed is flawed and does not reflect the evidence underpinning it.
  - A 70 dwelling development of this site has been assessed as having the potential to cause significant adverse effects on the High Weald AONB. Great weight must be given both to that finding of potential harm and to the fact that such development would not meet either DP16 criteria of being small scale or serving to conserve and enhance the AONB.
  - On a fair overall assessment of relevant factors, the development of this allocated site should properly be classified as major development for the purposes of NPPF para 172. MSDC has already acknowledged that, if so classified, development of the site could not meet the exceptional circumstance and public interest tests that are a NPPF precondition to its approvability.
  - Whether or not it would constitute major development, any development proposal for the site would be unsustainable and ought to be rejected as contrary to District Plan policy

DP16 which only permits small scale development there, and then only if it positively conserves and enhances the High Weald AONB. DP16 is consistent with national planning policy and is the key Plan policy by reference to which this planning decision must be made.

- SA25 would also undermine the objectives of, and public trust in, Ardingly's Neighbourhood Plan by delivering houses that are not needed locally and by providing other pressures which that plan does not cater for. As there is no strategic policy in the District Plan to deliver 70 homes in Ardingly, Ardingly's Neighbourhood Plan should take precedence: see NPPF para 30.

### **Spatial strategy considerations**

3. In our separate submission today regarding the soundness of draft policy SAGen, we refer to the statutory protective purposes of the High Weald's designation as an AONB, the NPPF requirement to limit the scale and extent of sustainable development within AONBs and to refuse major development there absent exceptional circumstances and an overriding public interest. We also highlight the acute degree of development pressure that the High Weald is already facing, not least within Mid Sussex. Whilst those points are all vital to our argument as to the unsoundness of the proposed large-scale allocation in SA25, we take our points as read and do not repeat them here.
4. SA25 does not accord with the conclusion of the District Plan examination Inspector (Jonathan Bore) that *"Some settlements lie within the AONB and may be appropriate for modest housing schemes, but there is no evidence that meeting the housing requirement will necessitate major development in the AONB"* (See doc DPD8 at para 53). In our submission the currently proposed SA25 allocation for 70 (presumably mostly market) homes is exactly the kind of inappropriate, unsustainable location that he wanted allocations to avoid for significant development.
5. In fact, when combined with other development in Ardingly that has been permitted since the start of the Plan period, this proposed allocation would involve Ardingly delivering far more housing than Policy DP6 or its own Neighbourhood Plan envisages<sup>1</sup> or considers sustainable for an AONB location with no real sustainable transport options.

### **Site sustainability assessment is flawed**

6. MSDC's site assessment process, and its accompanying sustainability appraisal, is unsound:
  - It wrongly treats this potential large site within the High Weald on an equal footing with sites outside the AONB, rather than as a last resort option. It wrongly attributes no greater weight to the site's AONB status than to other 15 sustainability factors assessed, contrary to NPPF/NPPG requirements. Its conclusion that it performs relatively well against the Sustainability Appraisal framework demonstrates that the framework methodology itself is flawed. Its conclusion is not justified.
  - it fails to give effect to the public policy objective of CROW Act cl 82/NPPF para 172 and of DP16 of diverting larger new development away from AONBs;
  - it does not demonstrate that it has taken adequate (or any) heed of the requirements of NPPF paras 170 and 171 that planning policies should protect and enhance valued landscapes in

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<sup>1</sup> See Regulation 19 submission by Ardingly Parish Council (ID714) dated 28 September 2020.

a manner commensurate with their statutory status, and to focus allocations on areas of lesser environmental value. In practice the NPPF expects decisions on allocating sites within AONBs to be landscape led<sup>2</sup>, which MSDC’s sustainability appraisal of SA25, unsupported by any independent LVIA, is not<sup>3</sup>;

- it fails to have regard to the finding of the District Plan examiner that *“there is no evidence that meeting the housing requirement will necessitate major development in the AONB”* (see para 4 above);
- it materially misrepresents the evidential conclusion that there is a “moderate potential for significant adverse impacts” as “moderate impact”<sup>4</sup>;
- It applies the wrong criterion in measuring the sustainability of the site by reference to the negative criterion of (claimed) absence of potential significant harm to natural beauty of the High Weald. MSDC tell you that *“Twenty-three sites were rejected due to the high impact on the AONB following the detailed site assessment [SSP3]. This approach is consistent with the NPPF and ensured that only the sites that would not have a significant adverse impact on the special characteristics of the AONB were allocated”* and that *“Through the site selection and Sustainability Appraisal processes, the Council is satisfied that only sites with a low or medium impact on the AONB have been chosen, those assessed as having high impact were rejected.”* (MSDC response to Inspector’s initial questions at para 2.3). That absence of potentially significant harm test is not the appropriate basis for allocation. Both the NPPF and DP16 itself<sup>5</sup> require that the High Weald should be positively conserved and enhanced by any permitted development<sup>6</sup>, and the NPPF requires “great weight” to be given any adverse impact of any AONB development proposal on its conservation and enhancement. If harm could be caused, the public policy purpose of AONB conservation policy, and affording it the highest status of protection, imposes a strong presumption that an allocation or planning application should be rejected. The evidence in respect of the SA25 allocation is that it could significantly harm, not make a positive contribution to conserving and enhancing, the High Weald. MSDC has applied the wrong tests and has not given its own evidence the great weight required;
- The appraisal does not offer evidence that other no less sustainable settlements could be found outside the AONB compatible with Policy DP6.

8. The High Court decision in **Monkhill v SSHCLG [2019] EWHC 1993** reinforces our view. In that case the judge ruled that, where the first sentence of NPPF para 172 applies and the potential for harm is identified, (i) the NPPF para 11(d) presumption in favour of development is not triggered and (ii) that is a sufficient freestanding reason to refuse planning permission within an AONB whether or not the development qualifies as a major development and even in a district, unlike Mid Sussex, with a 5 year housing supply shortfall.

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<sup>2</sup> Landscape-led planning is also a core objective of the High Weald Design Guide: see <http://www.highweald.org/look-after/planning/design-guide.html>.

<sup>3</sup> It is not sufficient for MSDC to rely (if it seeks to) on an LVIA prepared for the site promoter.

<sup>4</sup> See para 14.4 below.

<sup>5</sup> DP16 states that development within Mid Sussex’s part of the High Weald *“will only be permitted where it conserves or enhances natural beauty and has regard to the High Weald AONB Management Plan”*.

<sup>6</sup> See *South Lakeland District Council v. Secretary of State for the Environment* [1992] 2AC 141.

9. If a planning application for 70 houses on the Ardingly site were to be submitted MSDC, acting rationally, would be bound to refuse that application as incompatible with its District Plan's countryside and AONB protection policies. Whether or not a 70 home development is also a "major development" in para 172 terms (and we argue below that it is), the conclusion has been the same, namely that no planning application to develop the site to the extent proposed in draft policy SA25 is consistent with MSDC's adopted Plan policies or capable of approval.

### **Why a 70 dwelling development on site SA25 would constitute major development**

10. At Regulation 18 stage, SA25 proposed a 100 dwelling allocation, but then (applying the criteria in footnote 55) assessed such an allocation as involving major development for NPPF para 172 purposes (see TP1) and has replaced that proposal with one for 70 dwellings, which it has assessed as not involving major development.
11. For reasons given in paras 12 - 15 below, in our view the only rational conclusion would be that any such development here must be treated as a major development for NPPF para 172 and footnote 55 purposes. MSDC's contrary conclusion defies common sense, is irrational and could be unlawfully inconsistent with other "major development" determinations by MSDC. We urge the Inspector to form his own opinion.
12. Whilst our case that SA25 is unsound does not depend on that conclusion, it would put the nail into the coffin of its soundness, because MSDC has accepted CPRE's previous submission that this AONB site cannot be allocated for major development as the exceptional circumstance and public interest tests required to approve major development pursuant to an allocation here would not be satisfied.
13. A comparison of the regulation 18 stage assessment of the 100 dwelling allocation proposal and the regulation 19 stage assessment of the current 70 dwelling proposal in document TP1 shows that both options have exactly the same moderate potential to create a significant adverse impact on the AONB's purposes, and that the only rationale offered by MSDC for its changed opinion is based on an the impact on Ardingly's settlement pattern of what amounts to a 3% reduction in the growth of the village housing stock, a point which we address below. The regulation 19 assessment does not explain why that 3% reduction is significant, and does not suggest any other reason for its changed conclusion.
14. Applying the considerations listed in NPPF footnote 55, a 70 dwelling development on the site should on a common sense basis be treated in its local context as a "major" development for para 172 purposes having regard to the following factors:

#### **14.1 Nature of development:**

- Allocation for a commercial housing development of 70 homes on a large site outside a modest category 3 settlement boundary within the High Weald AONB, that is likely to comprise at least 70% market housing, with promised, but limited, enhancements to an existing recreation facility. The housing would exceed the number of dwellings required to meet Ardingly's needs and would be sited beyond the area identified in Ardingly's Neighbourhood Plan as suitable for development to meet those needs.

#### 14.2 **Scale of development:**

- As a 70 dwelling allocation, it far exceeds the number needed to meet Ardingly's own residual housing needs as established in its Neighbourhood Plan and defies the District Plan Inspector's recommendation that AONB locations should only be approved for "modest housing schemes". It is also inconsistent with NPPF para 77: *"In rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs."*
- Needed affordable housing would only come at the cost of 49 market houses that are not a local priority. Sustainable locations away from the AONB for such market housing are available.
- A 70 dwelling development would represent an 18% increase in Ardingly's overall built-up area, and a 15% increase in the number of houses there. On any basis that is substantial. It would change the long-term pattern of development within the village adversely and irrevocably. The impact is even greater one includes other recent local development and/or accepts that Ardingly should be viewed for planning purposes as constituting two communities based on their different historical development.
- The 70 dwelling proposal involves a very inefficient use of such a large site.<sup>7</sup>
- Incompatibility with NPPF para 84 (Impact on local roads and limited opportunity to increase locational sustainability): Local shops, services and employment opportunities available within Ardingly are very limited. Apart from the baker, there are no local shops or services in the village to benefit from any increased residential expenditure.

#### 14.3 **Setting of development:**

- It is a greenfield, not a brownfield, site and unsupported by an independent LVIA.
- It is located outside the built up village boundary in open countryside. Its topography on a prominent flat, open plot near the top of the escarpment make it an exposed location on which the development would be widely visible, including from adjacent PROWs.
- The erosion of the separation between the original Saxon centre and the later medieval one is part of the character of the settlement and its historic settlement pattern. This includes how the settlement relates to the immediate landscape context. The site is north-east of the nearby Butchers Field for which planning permission was refused on appeal in 2014 on grounds of harm to the historic pattern and character of Ardingly as a settlement and harm to the High Weald AONB<sup>8</sup>. This site involves similar considerations.
- The village has significant heritage assets: two conservation areas and 47 listed buildings: there is potential for any development to cause them (or some of them) at least limited

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<sup>7</sup> There appears to be some confusion over the area to be allocated. The regulation 18 and 19 draft SADPDs (and supporting evidence documents such as TP1) both record the gross site area proposed for allocation as the same, namely 5.17ha. However the accompanying site map shows a smaller area proposed for allocation at regulation 19 stage.

<sup>8</sup> PINS Reference APP/D3830/A/12/2172335.

harm, harm to which great weight would have to be given. The significance of any such impact will need to be addressed.

- Development would involve the loss of agricultural land including at least 5 acres of recreational green space permissively used by villagers, contrary to DP24. It is also used on occasion for parking for visitors to the South of England Showground. Its conversion to housing begs the question as to what replacement overflow showground parking would be provided away from the village.

#### **14.4 *The potential for significant adverse impact on the purposes for which the High Weald AONB has been designated:***

- Footnote 55 guides LPAs towards treating as major developments those that could have a serious adverse impact on an AONB. That is the what the evidence in this case (at both regulation 18 and 19 stages) says: “it is considered that the potential for a significant adverse impact on AONB purposes is moderate”<sup>9</sup>. The summary “Moderate Impact” conclusion in the Sustainability Appraisal thus misrepresents the evidence on which it is based. A moderate risk of significant adverse impact is not moderate impact.
  - Any development that fails to conserve and enhance the High Weald’s natural beauty is likely to be contrary to national and Plan policy whatever the degree of significance of the identified harm, and would justify rejection of a planning application (*Monkhill v SSHCLG*).
  - Any development would extend light pollution further out into the countryside, thereby harming the dark skies objectives of the High Weald’s Management Plan in an open location otherwise ideal for sky watching (see also NPPF para 180(c)).
15. MSDC’s view that the reduction in the allocation scale from 100 to 70 dwellings removes its “major development” status smacks of opportunism. It is not objectively justified. Whilst each site has to be considered on its own facts, MSDC is legally required to act consistently in its planning decisions.<sup>10</sup> The treatment of this site as non-major is incompatible with other MSDC decisions to treat sites as small as 22 dwellings (DM/20/0799), 32 dwellings (Appeal Ref: APP/D3830/W/20/3261311) 36 dwellings (DM/15/1511) and 38 dwellings (DM/17/4913) as involving major development for para 172 purposes. Nor has the modest reduction in the number of dwellings led to a different conclusion as to the significance of its impacts.

### **Other Considerations**

16. The location is incompatible with NPPF Ch 9 (Promoting Sustainable Transport), especially NPPF para 103, making such a significant development there unsustainable. It is remote from all public transport infrastructure. The only public transport option being an occasional route 272 daytime-only bus service. In reality, new residents would be utterly car dependent to access most

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<sup>9</sup> See SADPD Major Development in the High Weald Topic Paper: Major Development Assessment for Regulation 19 purposes (Doc TP1), at p.49. This Topic Paper provides the evidential basis for the summary Sustainability Appraisal for this site. The comparisons between the regulation 18 and regulation 19 assessments for the Selsfield Road Site (SA25) appear at pages 37 - 49.

<sup>10</sup> *DLA Delivery Ltd v Baroness Cumberlege of Newick* [2018] EWCA Civ 1305.

necessary services from elsewhere.<sup>11</sup> The increase in population of, say, 160 people, would also be liable to put noticeable additional pressures on nearby services, on the B2028 - which already is regularly jammed through the village - and on side roads.

17. Opportunity to enhance sustainable modes of transport beyond the village itself is very limited.
18. Given the absence of local shops (other than a baker) or services (secondary public schooling, postal, medical, dental, library etc), any section 106 payments required to enhance those non-local services would be spent elsewhere, and not directly benefit Ardingly itself. This reduces still further the already limited economic and social benefits of any development of this site.
19. The allocation appears incompatible with DP12/NPPF para 170 requirements that it contribute to and enhance the natural and local environment.
20. We note that the would-be developer is threatening to withhold provision of a 15 space drop off area for the primary school and a new scout hut unless it is allowed to build 100 houses.<sup>12</sup>

### **Conclusion**

21. For these reasons, the proposed allocation in SA25 for a 70 home development is unsustainably located and excessive. It is not justified; and it is not consistent with national or District Plan policy. It should be withdrawn.

12th May 2021

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<sup>11</sup> New larger-scale developments should only be built where there are existing sustainable transport options, as recommended in See 2019 Transport for New Homes' 2020 report on Garden Villages and Garden Towns which concluded that most new settlements are currently planned in "the wrong locations, [...] lack local facilities and their streets are designed around car use. Funding for walking, cycling and public transport is missing". This recommendation was specifically endorsed by the Climate Change Committee (see <https://www.theccc.org.uk/publication/local-authorities-and-the-sixth-carbon-budget/>, p.35).

<sup>12</sup> Charterhouse Community Land community newsletter, April 2021, p2.