



14 May 2021

Dear Charlotte,

Mid Sussex Local Plan 2014 - Site Allocations Development Plan Document Examination

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

Andrew Black Consulting on behalf of Vanderbilt Homes

I write to submit a hearing statement for Matter 1 of the examination for the Mid Sussex District Council (MSDC) Site Allocations Development Plan Document (SADPD) on behalf of Vanderbilt Homes.

Vanderbilt Homes has an interest in both the Land at Junction of Hurstwood Lane and Colwell Lane, Haywards Heath in addition to Land South of 61 Crawley Down Road, Felbridge. Both sites were previously considered in the SHELAA (ref 508 and 676 respectively) as Available, Achievable and Deliverable. Details of the sites were set out within the regulation 18 and 19 representations.

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?*

No comments to make

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

The District Plan 2014-2031 sets out the housing requirement for the district for the plan period of 16,390 dwellings. This meets the Objectively Assessed Need (OAN) for the district of 14,892 dwellings in full and makes provision for the agreed quantum of unmet housing need for the Northern West Sussex Housing Market Area, to be addressed within Mid Sussex, of 1,498 dwellings.

The District Plan 2014-2031 established a 'stepped' trajectory for housing delivery with an average of 876 dwellings per annum (dpa) between 2014/15 and 2023/24 and thereafter an average of 1,090 dpa between 2024/25 and 2030/31. This represents a significant increase in housing supply compared with historical rates within the district.

The latest data on completions from MSDC was published in *MSDC Housing Land Supply Position Statement* was published in August 2020 (Document H1) and shows a significant shortfall in delivery against the housing requirement since the start of the plan:

Category		Number of Dwellings
Housing Requirement for the full plan period (April 2014 to March 2031)		16,390
Housing Completions (April 2014 to March 2020)		4,917
<i>Completions 2014/15</i>		<i>630</i>
<i>Completions 2015/16</i>		<i>868</i>
<i>Completions 2016/17</i>		<i>912</i>
<i>Completions 2017/18</i>		<i>843</i>
<i>Completions 2018/19</i>		<i>661</i>
<i>Completions 2019/20</i>		<i>1003</i>
Housing Supply (April 2014 to March 2031)	Commitments (including District Plan Allocations)	9,689
	Site Allocations DPD - Allocations	1,764
	Windfalls	504
Total Supply (at 1 April 2019)		16,874

The Housing Delivery Test was introduced in the July 2018 update to the NPPF. The Housing Delivery Test is an annual measurement of housing delivery for each local authority and the first results were published in February 2019 by the Ministry of Housing, Communities and Local Government (MHCLG). Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority's housing requirement over the previous 3 years then it is required to prepare an action plan. Where delivery has fallen below 85% of the housing requirement a 20% buffer should be added to the five year supply of deliverable sites.

The result for Mid Sussex produced in January 2021 was 91%. This result is based on monitoring years 2017-18, 2018-19 and 2019-20.

The Council is therefore required to submit an Action Plan and apply a 5% buffer to supply in line with the requirements of the framework. Looking ahead to next year it is likely that a more significant shortfall will emerge when the higher target is carried over to next year and on the basis that the delivery level stays around the same as it has. Whilst this was clearly not known at the time of submission of the plan for examination, it is a matter which will need to be addressed as part of the examination of the SADPD.

The Site Selection Paper 1 (Assessment of Housing Sites against District Plan Strategy (Examination Document SSP1) sets out how the council undertook a Strategic Housing and Employment Land Availability Assessment (SHELAA) in line with requirements of the NPPF and Planning Practice Guidance. No objections are raised to the process undertaken to the way in which the call for sites was undertaken or the findings of whether the sites were considered as Available, Deliverable or Achievable. However, there are severe failings in the way which the results were used to select sites for inclusion in the Site Allocations DPD and it is this process which is summarised below.

Section 3 of SSP1 outlines the Site Selection Process in line with the District Plan Strategy and Section 4 sets out the requirement for these sites to conform with the Spatial Distribution of Housing as set out in the District Plan.

Paragraph 4.4 of SSP1 sets out the following:

Sites allocated for development in the Site Allocations DPD will fit the pattern of growth set out in DP4 and DP6. Therefore sites that are of a scale that are much larger than the existing settlement, or that would result in development of a scale that would greatly exceed the indicative housing requirement for that settlement will not be considered further at this stage.

A fundamental guiding principle of site selection process appears to be the table within policy DP6 of the adopted District Plan which sets out *minimum residual requirements* for each settlement in each category of the hierarchy (*accounting for commitments and completions*). It is accepted that some areas such as Haywards Heath have seen a high degree of housing growth over recent years, however the strategy of closely following this table has led the council to seek to displace housing growth to areas lower down in the settlement hierarchy and/or to areas of further impact such as the AONB and SDNP.

This approach is further exacerbated by the subsequent approach taken in assessing where the housing growth would take place - this is set out in paragraph 2.10 of the Site Selection Paper 2 (Methodology for Site Selection) (Examination Document SSP2) which states:

In the event that one settlement category cannot meet its requirement, any shortfall will need to be met in the next settlement category in the hierarchy. For example, if there are not sufficient suitable, available and developable sites to deliver the 838 dwellings in category 2 (as required by DP4: Housing), the residual amount will then be passed down to the settlements within category 3, and so on. If, having been through the site assessment process, there are still insufficient sites to satisfy the settlement category requirement, it will be necessary to repeat the process. This will involve looking again at sites that had previously been excluded or perform negatively and seeking opportunities to overcome potential constraints and barriers to development, in order to reassess them against the criteria.

This approach contradicts the advice set out in the Planning Practice Guidance which sets out *what happens if the assessment indicates that there are insufficient sites / broad locations to meet needs* as follows:

When preparing strategic policies, it may be concluded that insufficient sites / broad locations have been identified to meet objectively assessed needs, including the identified local housing need.

In the first instance, strategic policy-making authorities will need to revisit their assessment, for example to carry out a further call for sites, or changing assumptions about the development potential of particular sites to ensure these make the most efficient use of land. This may include applying a range of densities that reflect the accessibility and potential of different areas, especially for sites in town and city centres, and other locations that are well served by public transport.

If insufficient land remains, then it will be necessary to investigate how this shortfall can best be planned for. If there is clear evidence that strategic policies cannot meet the needs of the area, factoring in the constraints, it will be important to establish how needs might be met in adjoining areas through the process of preparing statements of common ground, and in accordance with the duty to cooperate. If following this, needs cannot be met then the plan-making authority will have to demonstrate the reasons why as part of the plan examination.

Paragraph: 025 Reference ID: 3-025-20190722

Revision date: 22 07 2019

Effectively the council automatically and incorrectly went to the next level(s) in the settlement hierarchy when insufficient sites were found rather than relooking at changing assumptions or parameters which were being considered.

Site Selection Paper 3: Housing (Examination Document SSP3) further sets out the weighting criteria that was used in the selection of sites from the SHELAA. Paragraph 3.4.5 sets out that that any sites which scored a very negative score in part 1 of the considerations as set out below were not considered further.

1. Planning constraints	2. Deliverability considerations	3. Sustainability/accessibility
<ul style="list-style-type: none"> • AONB 	<ul style="list-style-type: none"> • Highways/Strategic Road Network 	<ul style="list-style-type: none"> • Education – primary schools
<ul style="list-style-type: none"> • Flood risk 	<ul style="list-style-type: none"> • Local Road Network 	<ul style="list-style-type: none"> • Education – secondary schools
<ul style="list-style-type: none"> • Ancient woodland 	<ul style="list-style-type: none"> • Developability 	<ul style="list-style-type: none"> • Health – GP distance to surgery
<ul style="list-style-type: none"> • SSSI/Local Wildlife Sites/Local Nature Reserves 	<ul style="list-style-type: none"> • Infrastructure 	<ul style="list-style-type: none"> • Distance to town centre services
<ul style="list-style-type: none"> • Heritage – listed building 		<ul style="list-style-type: none"> • Public transport
<ul style="list-style-type: none"> • Heritage – conservation area 		
<ul style="list-style-type: none"> • Archaeology 		
<ul style="list-style-type: none"> • Landscape capacity/suitability (excluding AONB sites) 		
<ul style="list-style-type: none"> • Trees/TPOs 		

However, this still enabled consideration of the sites which carried a negative weight in one, or many of the constraints, in part 1. The exact weighting used in the scoring of impacts on the other criteria remains very ambiguous and requires further explanation. It would appear that positive scores for sustainability / accessibility to services have been given lower weight than those for planning constraints. This is compounded by the approach to aligning the delivery of housing in line with that as set out in policy DP6 of the District Plan.

Despite the weighting of constraints through the site selection methodology, a significant number of the allocated sites are still located within, or close to, the High Weald AONB. This suggests that the weighting to the scoring of sites as part of the site selection process was not in fact applied as suggested within the methodology.

Paragraph 172 sets out the significant protection which should be afforded to the AONB in planning terms and states that (with emphasis added):

Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) *the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*

- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and**
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

It is part b of paragraph 172 that is of particular importance in this instance. It is not considered that MSDC has considered how sites outside of the AONB could be used to meet the identified residual housing requirement. It is only sites which have a 'significant negative impact' on the AONB which have been discarded rather than others which still continue to have moderate harm (alongside other landscape harm). It would appear that sites have been selected because of their conformity to the spatial strategy and hierarchy without the proper application of the 'great weight' required to protect the AONB.

The approach of allocating sites within the AONB as opposed to 'outside the designated area' should have been tested through a robust analysis of reasonable alternatives within the Sustainability Appraisal. The failure to do this adequately is a matter of soundness and it is considered that the Sites DPD fails the tests within the NPPF on this basis alone.

In addition to AONB, several of the allocations within the DPD are in close proximity to heritage assets. Paragraph 193 of the framework sets out the approach to heritage assets as follows:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

In many instances the council themselves suggest that the development of housing on the sites is likely to have 'less than significant harm' on the heritage assets in question. Paragraph 196 of the framework sets out the approach which should be taken in this instance:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable

It is not considered that the harm caused to heritage assets has been adequately assessed within the Sustainability Appraisal for many of the proposed sites and further consideration is required of the sites in this regard. This would include assessing sites which would not have an impact on heritage assets through a robust application of reasonable alternatives within the Sustainability Appraisal.

Overall, it is not considered that the council has followed due process in the selection of sites for the Site Allocations DPD. The council is under a duty, as established by paragraph 16 of the NPPF to prepare a plan *with the objective of contributing to the achievement of sustainable development*. As established by footnote 10 of the framework this is a legal requirement of local planning authorities exercising their plan-making functions under section 39 (2) of the Planning and Compulsory Purchase Act 2004.

It is not considered that the council has taken an approach to the selection of sites in line with this requirement.

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?***

As set out under other matters statements it is not considered that the housing sites allocated will address the residual requirement due to matters of deliverability of the individual sites as allocated.

As also set out, the methodology adopted by the council has not led to the selection of sites which will enable the strategic policies to deliver sustainable development.

The proposed Sites DPD does not therefore comply with four main aims as set out on page 4 of the submitted 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]).***

No comments

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

This policy sets out the broad requirements for all sites within the SADPD. It is noted though that there is a high bar to the development of sites within, or near to, the High Weald AONB which is the correct approach to take.

However, in adopting to a strategy which seeks to allocate a high proportion of sites within or near to the AONB, the council is setting up an unnecessary conflict development management terms when it comes to the determination of planning applications on these allocated sites. This is equally the case of the allocations in close proximity to heritage assets.

Where conflict exists, the likelihood of applications taking longer in determination or even being refused is increased. This places significant risk on the delivery of those sites in line with the housing trajectory being advanced by the council.

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?

The NPPF is clear on the difference between ‘Strategic’ and ‘Non-Strategic’ Policies. Paragraph 21 of the NPPF states that:

Plans should make explicit which policies are strategic policies. These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.

Paragraph 22 of the NPPF goes on to state:

Strategic policies should look ahead over a minimum 15-year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.

The policies set out within SA34 to SA38 are clearly ‘Strategic’ in nature and the Council should therefore demonstrate that they have looked to the long term in their preparation.

It is considered that the inclusion of such policies does indeed represent an opportunity to consider other longer term strategic issues such as the provision of housing into the future, after the end of the plan period. It also represents an opportunity to revisit the restrictions the council has placed around the delivery of additional housing in the upper parts of the settlement hierarchy which have been erroneously restricted due to a strict following of what is set out within policy DP6 of the adopted district plan.

Revisiting the housing requirements for these areas would enable the council to take a far more sustainable approach to the provision of housing within the district across the lifetime of the plan and avoid the requirement for directing housing to less sustainable areas or those with impacts on matters such as the AONB or SDNP.

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

The adopted District Plan sets out the strategy for Neighbourhood Plans within the District and sets out the individual role of Neighbourhood Plans in meeting the residual housing need within the borough.

The District has a number of Neighbourhood Plans which have allocated sites and delivered against these requirements as set out below.

Neighbourhood Plan	Date Adopted
Albourne	September 2016
Ansty and Staplefield	February 2017
Ardingly	March 2015
Ashurst	June 2016
Balcome	September 2016
Bolney	September 2016
Burgess Hill	January 2016
Crawley Down	January 2016
Cuckfield	October 2014
East Grinstead	November 2016
Hassocks	June 2020
Haywards Heath	December 2016
Hurstpierpoint and Sayers Common	March 2015
Lindfield and Lindfield Rural	March 2016
Slaugham	September 2019
Turners Hill	March 2016
Twineham	March 2016
West Hoathly	April 2015

Of the plans adopted, the vast majority in the District are now five years old, and in some cases older. In the case of Burgess Hill, Haywards Heath and East Grinstead these are all at top of the settlement hierarchy and it is considered that there is the basis to consider additional allocations in these areas in line with the high degree of sustainability for these locations.

Paragraph 30 of the NPPF sets out the following in relation to Neighbourhood Plans:

Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbouring area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

The Planning Practice Guidance goes on to set out the criteria by which Neighbourhood Plans should be updated as follows:

There is no timeframe within which neighbourhood plans are required to be reviewed or updated. However, when other policies in the development plan are updated, this may mean that existing neighbourhood plan policies become out-of-date, for example where they conflict with a strategic policy or where they are superseded by other local policies. This does not necessarily mean that the whole neighbourhood plan becomes out-of-date, but only those policies which are superseded by other development plan policies.

Paragraph: 099 Reference ID: 41-099-20190509

Revision date: 09 05 2019

It is considered that there is justification for additional allocations within the district, over and above the housing figures set out in policy DP6, in order to conform with the requirement to achieve a sustainable form of development for the district.

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?***

No comments

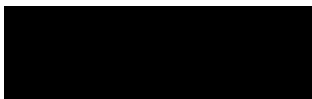
- ii) In particular, does the Plan satisfy the DTC in relation to planning for the longer-term growth of neighbouring areas?***

No comments

Vanderbilt Homes will make representations to the inspector as part of the examination process that additional allocations are required in order to make the SADPD sound. The sites at Haywards Heath and Felbridge are both considered to represent significant opportunities to strengthen the housing supply for the district, in light of significant issues with several of the allocated sites.

The allocation of these sites for residential development would wholly comply with the requirement to promote sustainable development in the district.

Yours Sincerely



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