



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

SUBMISSION BY CPRE SUSSEX AS TO THE SOUNDNESS OF DRAFT POLICY SA38.

1. CPRE Sussex applauds MSDC for recognising that its District Plan DP29 policy on air quality requires strengthening. However its proposed new policy SA38 does not achieve the necessary soundness standard. In this submission CPRE Sussex argues that MSDC's draft Air Quality policy SA38 needs further strengthening in order for that policy to be sound. As it stands it is neither positively prepared nor justified.
2. SA38 fails to address the five NPPF component requirements of a sound air quality policy regulating human health and wellbeing, or Mid Sussex's precious natural environment, or to recognise national policy aimed at improving air quality and reducing greenhouse gas emissions.
3. The key NPPF provisions governing air quality are paras 170, 180 and 181. These are set out in the Appendix below. They must be read in the context of the NPPF requirement for development to be sustainable and sustainably located, with human health and wellbeing, and environmental enhancement being core planning priorities. They must also be read in the context of the underlying legislation, particularly the Environment Act 1995, and the Air Quality Standards Regulations 2010 and other relevant regulations made under that Act.
4. These 3 NPPF paragraphs require, in a development planning context, that good air quality must be realised in respect of
 - (i) any site development impacts themselves; and
 - (ii) the potential sensitivity of the wider area to impacts that could arise from the development; and
 - (iii) cumulative air quality impacts of development; and
 - (iv) any likely effects of pollution on health, living conditions and the natural environment; and
 - (v) opportunities to improve air quality.

Para 181 also says that *"So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications."*

5. The soundness of SA38 as a strategic plan-making policy has to be assessed against these five NPPF criteria. In order to be sound SA38 must contain appropriate policy that positively addresses each of these 5 aspects required by the NPPF.
6. As it is hard to discern from the wording of SA38 just what MSDC's air quality policy is, or the extent to which it mirrors national policy as set out in the Air Quality Standards Regulations 2010, we challenge the Council to justify how SA38 satisfies each component requirement of an NPPF compliant air quality policy. We are concerned that the policy itself should, but doesn't,

identify its principal components and required actions are, and that these should not be hidden away in other documents (some not even mentioned in SA38), none of which forms part of the evidence base for SA38, none of which has the status of policy or been the subject of independent review, and any of which could be withdrawn or changed at whim. We look at each component in turn.

7. (i) *Site development impacts*: We consider that MSDC takes a practical approach to deciding when an air quality impact assessment is appropriate in respect of the development site works and site use themselves. We are not clear, though, from the Air Quality and Emissions Mitigation Guidance for Sussex (there is a 2020 version)¹ how the Council will evaluate the developer's self-assessment or (in appropriate cases) determine the priority options for impact mitigation from the suite of measures offered there. Nor as to how mitigation proposed would be costed or its effectiveness measured². As a matter of policy, redesign to eliminate impacts should normally be preferred to damage-limitation options. The policy status of the suite of unprioritised mitigation measures listed at table 2 of the Guidance needs to be made clear.
8. (ii) and (iii) *Wider area and cumulative impacts*: Whilst some wider area air quality impacts are, as SA38 says, principally traffic-related, greenhouse gas emissions such as CO² and methane are no less important and are also a product of development, inter alia. And the 2010 Regulations identify a number of other pollutants whose air quality impact require measuring and monitoring.
9. SA38, with its emphasis on individual developer site-related actions, signally fails to recognise that air pollution is caused throughout the District as a result of cumulative development here. These wider area impacts cannot be related back to individual development proposals. They are cumulative impacts exacerbated by the Plan's objectives of population growth, increasing economic prosperity and the aggregate level of new residential and commercial development. The District Plan/SADPD purpose of delivering a minimum of 16,390 new homes and additional employment land could increase the vehicle population using the District's roads by an additional 25,000 (+/-) vehicles. We are therefore concerned at the emphasis on site by site Air Quality Assessments (sensible as they are) without a wider area impact assessment.
10. Whilst SA38 includes policy to monitor NO² emissions around the Stonepound, Hassocks AQMA and as they may affect the EU designated sites on Ashdown Forest in Wealden district, and there are indications that air quality monitoring takes place elsewhere, we can discern no clear Plan policy in SA38 as to what has to be monitored, where or how often in order to assess the cumulative impact across Mid Sussex. Where does the policy require the regular District-wide measurement and monitoring by the Council itself, especially of all common traffic bottlenecks and of the numerous environmentally sensitive areas within the District? Bottleneck

¹ <https://www.midsussex.gov.uk/media/4637/sussex-aq-guidance-v1-2020.pdf>

² Developer contributions that cannot be shown to translate into actual measures likely to reduce the use of private petrol and diesel vehicles and hence reduce the forecast NO₂ emissions ... cannot constitute acceptable mitigation (**Secretary of State for Communities and Local Government v Wealden District Council** [2017] EWCA Civ 39 at para 51). That is also true unless it can be demonstrated that proposed financial contributions would produce practical mitigation sufficient to overcome the likely effects of the development on local air quality (**Gladman Developments Ltd v SCLG and CPRE Kent** [2017] EWHC 2768 (Admin) at para 52).

examples (in no particular order) would include, but certainly not be limited to rush-hour congestion on

- the A22 and A264 north of East Grinstead and Felbridge (SA19 and SA20 sites);
- the A272 through Haywards Heath and the roads around Haywards Heath's station and supermarkets;
- the B2028 across the High Weald AONB through Lindfield and Ardingly; and at the Turners Hill crossroads;
- the widened A2300 link road from the A23 into Burgess Hill, especially in the light of the Northern Arc/Freeks Farm, proposed Science/Technology Park and other local developments as they come on stream;
- Folders Lane, Burgess Hill and other nearby roads to the south of the town, especially if sites SA12 and SA13 were to become allocated.

A number of these already well-known congested routes are close to sites allocated, or proposed to be allocated, for development; and the rural AONB sites (e.g. Ardingly, Turners Hill, and also Horsted Keynes) would not be located sustainably from a public transport availability standpoint.

11. SA38 makes no reference at all to the need for this NPPF required wider area air pollution assessment (other than in connection with the Hassocks AQMA and Ashdown Forest) or for a cumulative impact assessment, assessments which only MSDC could undertake.
12. *(iv) Likely effects of pollution on health, living conditions and the natural environment:* At worst, air pollution is a proven killer. It certainly harms human health and the nature on which we all depend. Small particulate matter is the worst common offender. Vehicle usage, including tyre degradation, is a major cause; and the switch towards electric vehicles will not eliminate that cause.
13. We would have regarded it as essential that the evidence base should make clear what pollutants are to be monitored, maximum levels for each pollutant before avoidance or mitigation action must be taken, and where and how regularly monitoring is required; and that this evidence base itself should be referenced in SA38 and its adequacy examined. No such evidence base is presented.
14. With regard to fine particulate emissions (PM2.5 and below) we call on MSDC to take a robust approach to setting threshold measurements, and to ensure that it is monitored wherever there is heavy traffic usage. There is growing incontrovertible evidence that these are especially harmful to humans³ and can kill. The coroner who concluded that air pollution was the causative effect of the death of nine-year-old Ella Kissi-Debrah has issued a recent report that highlights the serious inadequacy and ineffectiveness of the Government's upper threshold limit for PM2.5 monitoring purposes. This demonstrates the need for SA38, in order to be justified, to be clear where (and how often) fine particulate pollution should be measured, what its measurement

³ See for example the evidence mentioned in this recent article:
<https://www.theguardian.com/environment/2021/may/03/air-pollution-spikes-may-impair-older-mens-thinking-study-finds>.

criteria are for different pollutants and to base those criteria on best current scientific data, not on Regulations that are over a decade old.

15. Our concerns over the inadequacy of current policy are highlighted by the report in the Council's 2020 Air Quality Annual Statement where it is reported that *"Following last year's annual review of monitoring locations, one of the new sites the Council decided to monitor, MSAQ29 in London Road, East Grinstead is showing an exceedance (44.1ug/m3). This does raise potential concerns and we have already increased our monitoring sites in this area to get a clearer understanding of local exposure. Additionally, the Council is researching locations for the possible installation of a real time monitor close by. The situation is complicated by the nearest residential facades being at first floor level, higher than the monitoring site, so we have taken steps to address this for next year's report."* Nothing in this report suggests that MSDC has (i) checked the health of affected residents, or (ii) considered possible fine particle harm, or (iii) undertaken effective mitigation action. This seems to demonstrate a failure of policy to ensure a robust, proactive response, and we see nothing in SA38 that would require better.
16. As to environmental impacts, Mid Sussex is a largely rural district with very high environmental quality and many designated sites for their environmental and/or scientific value. The Capacity Study undertaken for the Council as part of the evidence base for the District Plan⁴ concluded that almost two thirds of the District is covered by primary level constraints, i.e. areas that are afforded the highest protection under national policy and that only 4% of the District is not covered by a primary or secondary constraint. Notwithstanding that, the impact of air pollution on the District's rural natural environment is not mentioned in SA38 (other than in respect of Ashdown Forest, which lies outside the District). So we ask what the Council's NPPF-required policy is on measurement and monitoring our District's natural environment, and how those measures can be incorporated into SA38 and be demonstrated as likely to be effective and therefore sound.
17. SA38 references the Council's Air Quality Action Plan. However this Action Plan is not a District-wide action plan – it is limited to the Hassocks AQMA established in 2012, is limited to ongoing monitoring of the high NO² levels at the Stonepound Crossroads there. Despite its name, this so-called Action Plan involves no human impacts testing for local residents, no monitoring for small particulate matter pollution, and no positive action to reduce the NO² levels since the AQMA was established.
18. Nor does SA38 make any reference at all to air quality in the context of greenhouse gas emissions and mitigation of global warming. Air quality and climate change are intimately connected. No consideration appears to have been given to the role that an effective air quality policy should play in fighting climate change, a key part of the NPPF requirement for policy that seeks to improve air quality for the benefit of human health, living conditions and our natural environment. That omission too renders SA38 unsound.
19. (v) *Improving air quality*: It seems to be policy to defer remedial action to reduce air pollution until critical pollution threshold levels are reached. If the NPPF para 181 stipulation that *"Opportunities to improve air quality or mitigate impacts should be identified, such as through*

⁴ <https://www.midsussex.gov.uk/planning-building/evidence-supporting-documents/>

traffic and travel management,..." is to have any meaning, the expectation must surely be that MSDC should take proactive steps to reduce raised air pollution levels, wherever they occur, in order to avoid hazard to people and nature. They should not wait, as SA38 seems to imply, until emergency AQMA or other mitigation measures are forced on it. On this count too SA38 is unsound either by reason of having an inadequate policy to improve air quality, or no proactive policy to do so at all.

20. Should not a sound air quality policy, in addressing policy to improve its quality, give attention to (or cross reference suitable policies elsewhere) the recommendations of the Committee on Climate Change in their Land Use: Policies for a net zero UK Report⁵, including locational sustainability for non-car transport, to plans for tree protection and woodland planting (not just on development sites) to absorb CO²?
21. *Monitoring Framework (Appendix B)*: We would invite the Inspector to consider whether the proposed, extremely limited, monitoring framework proposals for SA38 suffice to constitute a functional monitoring regime to demonstrate that the policy is delivering effectively. We fear not.
22. Our own conclusion is that SA38 substitutes platitude for policy. We do not question that MSDC does monitor air quality – its Annual Air Quality Statements show that it does. But that activity does not appear to be happening because of, or by reference to, any discernible public Plan policy. Such policy as there may be in SA38 does not reflect the requirements of the NPPF for an effective, proactive air quality measuring, monitoring and improvement policy. As a result SA38 offers no assurance that the District Plan will be effective to safeguard human health or our local natural environment, or help to reduce global warming.
23. For these reasons, draft policy SA38 requires significant strengthening if it is to be compliant with national policy and to be justified. Our regulation 19 representation in respect of SA38 suggested amendments to that draft policy. Whilst we now think that suggestion needs further improvement (and we can offer further suggestions), we hope that it provides a starting point for a sound air quality policy.
24. In our view MSDC does not have the option of withdrawing their proposal and reverting to DP29 given that they themselves have recognised its inadequacy by bringing forward their proposed amendment.

14th May 2021

⁵ <https://www.theccc.org.uk/publication/land-use-policies-for-a-net-zero-uk/> (January 2020).

APPENDIX – KEY NPPF PROVISIONS RELEVANT TO AIR QUALITY

170. Planning policies and decisions should contribute to and enhance the natural and local environment by:
- (e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; ...
180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
181. Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.
- 183.⁶ The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

⁶ Note that NPPF para 183 (set out for completeness in the Appendix) is not relevant to air quality policy or its application in planning applications: see *Gladman Developments Ltd v SSCLG et al* [2017] EWHC 2768 (Admin) at paras 43-48 (which concerned the similarly worded predecessor paragraph of the original NPPF).