



## MID SUSSEX DISTRICT COUNCIL DRAFT SITES ALLOCATION DPD PUBLIC EXAMINATION

### Post Hearing Action point AP2 - Response from CPRE Sussex to document MSDC-04.

1. CPRE Sussex has the following comment on the District Council's post-hearing document MSDC-04 which responds to the Inspector's request at AP2 for "A note [from MSDC] on the appropriateness of policies SA34-SA38 in what is in effect a Part 2 Plan". Our comment is limited to MSDC's response regarding their draft policy AP38 (Air Pollution"). References below to the NPPF are to the recently changed 2021 version.
2. CPRE Sussex does not take issue with the appropriateness of MSDC's decision to update its air pollution policy (DP29) within the Sites Allocation DPD for the reasons given by MSDC, namely to ensure development proposals, including those within the DPD, do not cause further harm as set out in District Plan Policy DP4, including but not limited to the Ashdown Forest SAC/SPA, and the fact that the level of development within the District will have to be stepped up during the second half of the District Plan period in order to deliver the Plan's overall housing target.
3. Additionally, we note that NPPF para 186 provides 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."* In our view that adds weight to the case that MSDC makes for including an updated sound air pollution policy within the SADPD.
4. We note and agree with MSDC's statement within MSDC-04 that "Policy SA38 is relevant for all development (not just the proposed site allocations) as any air quality impacts should be considered". That is no more than the Government's 2019 Clean Air Strategy and the NPPF require.
5. What CPRE Sussex challenges is the soundness of draft policy SA38 which we argued in our prior submissions fails (as does its predecessor) to satisfy even the basic minimum requirements of the NPPF paras 174, 185 and 186 (formerly paras 170, 180 and 181), yet alone the more robust needs of a positive, effective policy in an area that vitally affects human health and environmental wellbeing, as a positively prepared policy must do.
6. We refer you to our written pre-hearing submission in respect of SA38 (Document Ref M4-689 Matter 4.3). We identify there what the NPPF's minimum requirements are, against which policy soundness should be assessed, as being 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.

The recently adopted 2021 version of the NPPF does not include any changes to the NPPF's air quality requirements.

7. In our oral evidence at the examination hearings on 15<sup>th</sup> June we provided the following examples of the way in which SA38 falls short:
- It doesn't tell you clearly what pollutants get monitored; it is concerning that doc MSDC 02d para 3.6 doesn't even mention the harm from ingesting small particulate matter shed by passing vehicle tyres on busy roads as something to be monitored;
  - It doesn't tell you the criteria by which pollutants are monitored and assessed;
  - Apart from the sole AQMA at Stone Pounds Crossroads and Ashdown Forest for nitrogen deposition monitoring purposes, it doesn't tell you where, if anywhere, monitoring for pollutants should occur. The clear implication from MSDC's answers to your questions is that air quality in the rest of the District is overlooked or, at best, gets short shrift;
  - It doesn't tell you how regularly monitoring should take place;
  - It doesn't tell you how the Council will be proactive in seeking to improve the District's air quality per NPPF para 186, or even what the Council will do if minimum thresholds of air quality unacceptability are exceeded.

We append for ease of reference Mr. Brown's notes of CPRE Sussex's evidence to the public examination.

8. The Inspector will note that the requirements for the test of Plan soundness set out in para 35d) of the July 2021 have been amended so as to require consistency with national policy to take into account relevant statements of planning policy other than just the NPPF itself. The Government's 2019 Clean Air Strategy is such a relevant policy statement. Proposed policy SA38 makes no reference to that strategy and does not have regard to its requirements.
9. At the Inspector's request (Post hearing matter AP20) CPRE Sussex has presented an alternative air quality policy framework which seeks to meet both the requirements of the NPPF and the wider public health and environmental improvement needs for a robust anti-air pollution policy. See our draft and commentary on it at ref: REP-0689-005. (In the light of the change to NPPF para 35d) our draft would now need to make reference to the Clean Air Strategy).
10. Adopting a sound air quality policy now should be a priority objective for MSDC. A sound and positively prepared policy is core to the Council's strategy in an area that vitally affects the health and well-being of all the District's residents and visitors, as well as the animal and plant life that makes up its biodiversity. There is overwhelming scientific evidence that air pollution shortens human life and is a killer. That evidence has been accepted by Government through its 2019 Clean Air Strategy document. Whilst we note that MSDC say that they will be undertaking further air quality assessment work as part of the 2023 District Plan Review (is that in itself a tacit admission that SA38 is inadequate?) the scientific evidence of harm from, for example, small particulate emissions, already exists, and time is of the essence. SA38 has to be made sound now, and must be positively prepared now, to meet the District's needs based on today's science. If any further upgrade is required as part of the Plan Review e.g. to reflect the air quality sections of what will then hopefully be the Environment Act 2021, so be it. But that Review should not be used as an

excuse to avoid action now to ensure that SA38 itself is sound, which, as drafted, it would not be in our view.

11. We respectfully invite the Inspector to

- endorse in his conclusions the appropriateness of MSDC's wish to include an updated sound air quality policy within the SADPD;
- conclude that SA38 as drafted is not positively prepared and does not meet legal and NPPF requirements;
- require that modifications be made to draft policy SA38 that have regard to, if not adopt, CPRE Sussex's proposals; and
- discourage MSDC from deferring the adoption of a sound air quality policy until their District Plan review is completed, examined and adopted, as this will leave the District without having a sound air quality policy until late 2023 at the earliest, in a policy area of profound importance to the health and wellbeing of everyone living in or visiting the District and its natural environment.

### **CPRE Sussex, the Sussex Countryside Charity**

[www.cpresussex.org.uk](http://www.cpresussex.org.uk)

8<sup>th</sup> September 2021

### **Appendix**

#### **Notes for CPRE Sussex oral presentation by Michael Brown to the public examination on 15 June 2021 of Mid Sussex DC's draft Sites Allocation Development Plan Document on the unsoundness of the District Plan's proposed air quality policy SA38.**

Sir, the substance of what I wanted to say on behalf of CPRE Sussex in relation to SA38 I have said in our written submission last month [Document Ref M4-689 Matter 4.3].

I agree with the Council that a sound air quality policy is necessary to support the District Plan to deliver its objectives and to maintain it as a sound plan. I also agree with them that their DP29 policy within the existing District Plan doesn't cut the mustard, something we argued at the time.

Given that the Council accepts that their current policy isn't good enough, and that their revised proposals have been the subject of two rounds of public consultation, I cannot see how there can be any prejudice in proceeding now to its examination.

The key points that I want to flag now, sir, are these:

DP38 doesn't meet the standards required by NPPF paras 170, 180 and 181<sup>1</sup>; and it doesn't work: read draft policy SA38 and the Air Quality and Emissions Mitigation Guidance for Sussex to which it refers, and you won't find what the policy is:

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<sup>1</sup> References in this appendix to NPPF paras 170, 180 and 181 should now be read as to paras 174, 185 and 186 respectively of the 2021 updated version of the NPPF.

- It doesn't tell you clearly what pollutants get monitored; it is concerning that doc MSDC 02d para 3.6 doesn't even mention the harm from ingesting small particulate matter shed by passing vehicle tyres on busy roads as something to be monitored;
- It doesn't tell you what the criteria by which pollutants are monitored and assessed;
- Apart from the sole AQMA at Stone Pounds Crossroads and Ashdown Forest for nitrogen deposition monitoring purposes, it doesn't tell you where, if anywhere, monitoring for pollutants should occur. The clear implication from MSDC's answers to your questions is that air quality in the rest of the District is overlooked or, at best, gets short shrift;
- It doesn't tell you how regularly monitoring should take place;
- It doesn't tell you how the Council will be proactive in seeking to improve the District's air quality per NPPF para 181, or even what the Council will do if minimum thresholds of air quality unacceptability are exceeded.

Mid Sussex may be a rural authority; but that does not make the importance of good and improving air quality any less important; nor is it immune to the risk of air pollution; and a complacent air quality policy has no place in any authority's local plan. Firm, clear policy is essential not only for the sake of human health and well-being; but for the health of our biodiversity, and to reduce global warming. A policy that is proportionate, certainly, but proportionate to the gravity of those risks.

It isn't good enough that the Council apparently relies solely on the 2010 Air Quality Standards Regulations that take no account of later science, e.g. re small particulate harm to health, and that the courts have repeatedly and consistently told us are not up to scratch as regulatory standards. The DPD does not even mention the Government's Clean Air Strategy published in January 2019.

It isn't good enough that the Council doesn't look at air quality holistically and cumulatively across the District, but instead takes the line that the only area of poor air quality that they seem to think exists is the one AQMA. The main town centres and well-known road traffic hotspots are seemingly not areas where an air quality assessment appears from the second paragraph of the policy to be required. There is no mention at all of assessing the impacts of overflying into and out of nearby Gatwick Airport. Maybe monitoring is happening; but, if it is, it won't be happening as a matter of SA38 policy.

Nor is it good enough that developers should be able to mark their own homework for major development on-site air quality impacts.

Lastly, a policy whose suitability is measured in the sustainability appraisal only against the alternative of leaving matters as they are, when the Council has already decided that an upgrade is needed, is not a proper appraisal of options at all, and fails the "justified" test of soundness!

I commend to you CPRE's written submission explains more fully why the proposed policy DP38 fails to meet the prescriptive requirements of the NPPF and is simply not sufficient or justified to be sound as a matter of law.

If it turns out that other major modifications are required to this draft SADPD, I see no reason why SA38 cannot be reworked and made sound at the same time as part of the revision exercise. Otherwise, let it be done as an integral part of the District Plan review and come forward for examination in that review process.