

Main Modification 16 - Index by ID Number

ID	ResponseRef	Name	Organisation	On Behalf Of
1700	1700/1/MM16	James & Penny Letchford		
1811	1811/1/MM16	John & Caitriona Capp		
2383	2383/1/MM16	Paul Tucker	Infrastructure First	

1700

Site Allocations DPD: Main Modifications Response

Main Modification: MM16

ID: 17000
Response Ref: 1700/1/MM16
Respondent: James & Penny Letchford
Organisation:
On Behalf Of:

From: penny letchford [REDACTED]
Sent: 24 January 2022 20:07
To: Policy Consultation
Subject: DPD Main Modifications Consultation

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MM16 – Updated Housing Trajectory

The primary objective of the DPD is to meet the residual housing need identified by the District Plan Examination in 2018 and to allocate sufficient housing sites to address the residual need for the district between 2024 and 2031. The 2018 plan would have based in part on the previous large employees based in East Grinstead town centre. Unfortunately, East Grinstead has lost many of its large employees, I know as I have worked for 2 of them (CP Ships and Reed Business). Both of their ex-offices have now been turned into residential flats, so jobs similar have no chance of returning.

With the district losing many of its employees, the local population has had to look wider afield for work. One alternative is to commute from East Grinstead into London on the most overcrowded train line in England and Wales - <https://www.bbc.co.uk/news/uk-england-sussex-40744856>, I quote "The Department for Transport (DfT) data showed 1,366 people typically crammed into 12 carriages designed for 640." That was taken in 2017 and so the numbers have only increased on what is a small branch line with limited capacity.

The only other alternative is to join the traffic exiting north of East Grinstead towards Crawley/Gatwick or via the M23 to London or Brighton for work. This is the reality for a large percentage of the current East Grinstead working residents. Adding a large amount of additional residents to queue to exit East Grinstead for work makes no sense. A bypass has been discussed for a generation but sadly to no avail.

It is obvious that housing must be designed alongside places of work, hospitals, police and schools. It appears that you are pushing for an industrial amount of houses on a green field site on the outskirts of town with no wider plan for the inhabitants.

Lastly, I note that the planned housing is directly underneath Gatwick's easterly take off runway and that the planes start at 5.30AM in the summer, I can assure you that the new inhabitants, especially if they are old and at home all of the time will be extremely disappointed that their quality of home was not planned with their best interests in mind at the outset.

MM22 – SA20 SANG monitoring

After years of building new homes in East Grinstead and converting every last office space into residential flats, it is evident that the quantity of people in East Grinstead has increased greatly. As long term residents and keen visitors across Ashdown Forest the impact of an increased local population on the Forest has been noticeable - from general litter, fly tipping, parking on verges due to overcrowding to wild fires due to disposable BBQs. It strikes us that prior monitoring hasn't happened and it is a relatively pointless exercise to monitor after you have built too many homes than the local area can sustain. For the single reason, you cannot stop people visiting Ashdown Forest once they live close by to one of Southern England's most beautiful natural habitats.

General

Aside the points above, I would ask that the planning department look into what is best for the local school children, the increased pollution from the additional car traffic (potentially 1000+ cars) and building over and through school grounds will detrimentally affect their childhoods from a physical & mental health perspective.



1811

Site Allocations DPD: Main Modifications Response

Main Modification: MM16

ID: 18110
Response Ref: 1811/1/MM16
Respondent: John & Caitriona Capp
Organisation:
On Behalf Of:

From: John F Capp [REDACTED]
Sent: 24 January 2022 16:56
To: Policy Consultation
Subject: DPD Main Modifications Consultation

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Dear Sir/Madam,

The following is a direct copy of 'Infrastructure Firsts' response which I fully support. In my own words the Town has sadly lacked ANY improvement in its infrastructure for many many years. We have lived here for 30 years and watched as the housing has increased in and around the town without any road improvements, increased schooling or medical facilities or little improvement in public transport. We see the nice words in planning applications that 'work will be done with local authorities to improve local facilities', how many have delivered?? Getting around town now can be difficult with regular significant congestion at a number of locations. We have seen the introduction of CPZ's that push the 'parking for the station and shops' problems somewhere else, reduced parking in the town, apartments built with insufficient parking pushing more cars onto street parking elsewhere. Does anyone making these decisions live and experience the congestion the town now suffers? All these new houses will clearly add to the issue significantly and need be 'paused' until infrastructure is improved, please.

Before turning to specific modifications, Infrastructure First are hugely disappointed that the Examiner has not responded to legitimate concerns regarding the severe traffic situation in East Grinstead.

1. Existing traffic issues deemed not relevant
2. Impact on residential streets not considered
3. Cumulative impact not assessed
4. Up to date traffic evidence ignored
5. Committed highway schemes not implemented

1. Existing traffic issues not deemed to be relevant:

The Competent Highway Authorities in West Sussex and Surrey and the District Planning Authorities in Mid Sussex and Tandridge ALL recognise and acknowledge the severe traffic problems in Felbridge and East Grinstead. In particular, that the Felbridge junction is already operating over capacity at peak times of the day. Drivers using the A22 corridor into East Grinstead face significant delays during much of the day due to congestion at the Felbridge, Imberhorne Lane and Lingfield Road junctions ... and this is BEFORE the traffic from the 1,400+ homes already committed in and around East Grinstead start to have an impact on the network. Mid Sussex District Council insist that the serious traffic issues are not a reason to resist further large scale housing close to the main bottlenecks; arguing that the severe congestion is an existing situation. They simply say that the DPD allocations SA19/SA20 will have limited practical impact on the already congested network. The Council's position is untenable for two reasons ...

2. Impact on residential streets has not been considered

Firstly the Council ignore the impact of drivers avoiding long queues at junctions by rerouting along residential streets unsuited to through traffic. These routes were not included within the remit of the Strategic Transport Study and therefore not considered. The Competent Highways Authority describes the inevitable increase in rat-running as the result of SA19/20 as 'undesirable'. The Inspector presiding over the appeal for a scheme of 100 houses adjacent to SA20 (APP/D3830/A/10/2142385) was more forthright, in saying that..

"Locally, peak-hour congestion on the A22 leads to the use of Imberhorne Lane as a cutthrough to the B2110 and as part of a rat-run through the Imberhorne Estate to the town centre. The amount of traffic on the lane leads in turn to congestion on it and this, along with rat-running and traffic speeds can only be to the detriment of the safety of local residents and road users."

This was not a recent statement. It was made than 10 years ago when there were nearly 1,800 fewer houses and substantially less traffic on the roads in East Grinstead.

Since that time, the National Planning Policy Framework (NPPF) has been updated to require planning authorities to consider whether impacts on highways safety are acceptable or not. There is no evidence to suggest that the Council

have given ANY consideration to either capacity or safety impacts on parts of the network not covered by their Strategic Transport Study.

3. Cumulative impact has not been assessed

Secondly the Council cannot legitimately dismiss the traffic problems as an existing situation. The National Planning Practice Guidance (NPPG) most up to date advice on Transport Evidence in Plan Making [Paragraph: 03 Reference ID: 54-003-20141010] makes clear that decision makers should “consider the cumulative impacts of existing and proposed development on transport networks.” There are over 8,500 homes committed in the district, many of which are already approved for development. This includes 1,400 in and around East Grinstead alone. None of these have been considered in combination with the allocations in the DPD when assessing the traffic impact. This cannot be correct. A ‘cumulative’ impact is one that increases by successive additions. It is the combined impact of all things added together. Mid Sussex District Council only assess the incremental traffic impact of the DPD site allocations and have therefore not followed the process required by the NPPG. This approach is therefore also in conflict with the 2021 NPPF paragraph 111. It is not sufficient just to assess all the DPD site allocations together ... if ‘cumulative’ is to mean anything at all, its proper interpretation dictates that the DPD allocations need to be assessed TOGETHER with development schemes already in the pipeline. This is the only way to assess the real impact of traffic joining the road network in the future and it is the method prescribed by the NPPG. The Council’s position has striking similarities with the appellant’s case in the Land at Kidnappers Lane Recovered Appeal [APP/B1605/W/14/3001717]. The Appeal Inspector rejected the appellant’s case that the existing situation can be disregarded and reaffirmed that it is the cumulative effect of all expected development which must be taken into account. The Secretary of State agreed with the Appeal Inspector and a legal challenge mounted by the developer was dismissed by the High Court (see Appendix 1 for the salient details). Despite failing to assess the cumulative impact, Mid Sussex District Council confidently say that there is no evidence to demonstrate there would be serious traffic issues in relation to SA19/20. The Council’s own matter statement (msdc-02f-miq-matter-6) describes how the traffic impact of the DPD allocations was assessed on its own and NOT in combination with other committed development. We were greatly encouraged by the Inspector’s question to the Council asking whether “the cumulative impact should be the determining factor in assessing traffic impact?”. The Council’s response reaffirmed the requirement to test a cumulative impact but then described a process in which it wasn’t tested!!

By assigning the very significant quantum of committed development to the Reference Case and comparing the overall traffic impact against the DPD Allocations PLUS the Reference Case; the impact of the committed development was simply factored out of the equation. We were disappointed that the Inspector failed to pick up on this. Notwithstanding the failure to correctly assess the ‘cumulative’ impact, the Council’s Reference Case predicts that all the primary junctions in and around East Grinstead will be operating over capacity. The extent of this over capacity is understated ... not only as the result of baseline junction capacities being under recorded but also due to the committed development tested in the Reference Case NOT being updated to reflect the published commitments to April 2021. There is no obvious justification for this

4. Up to date traffic evidence has been ignored

The Council also, somewhat cynically, refuse to include the most up to date and reliable traffic data for the Felbridge junction in their evidence base. The results from the detailed traffic survey, which they jointly commissioned, were available prior to the regulation 18 consultation and showed that the junction was already significantly over capacity at that time. The Council say that the WSP investigation is still in draft form as no workable junction improvement options have been identified. However this cannot reasonably apply to the underlying traffic survey, which was based on observations at the time and therefore neither sensitive nor work in progress. Surrey Highways, who jointly commissioned the survey have recently released the detailed traffic data into the public domain. In responding to the many calls for the 2018 WSP traffic survey results to be included in the DPD evidence base, the Council simply say in Appendix 9 of the Regulation 22 Summary, that the WSP study is not relevant. A statement that was not reasoned. Once again, we were encouraged by another of the Inspector’s initial questions which asked the Council to explain “the principal conclusions of the WSP study”. In their response (msdc-02f-miq-matter-6), the Council failed to mention the study’s material findings on junction capacity. Instead they said that the WSP study is not required to address the impact of the DPD and therefore of no direct relevance and that no conclusions could be drawn from the study. This is clearly NOT true. Even the most casual observer could conclude that the WSP study found that the Felbridge junction was operating well over capacity as early as 2018. When asked to explain why their calibrated transport model was so wide of the mark when predicting the Felbridge junction baseline capacity, the Council simply say that the SATURN modelling used for the districtwide study had a different purpose to the detailed LINSIG modelling designed for individual junctions. While this must be correct, it must also bring into question the reliability of the model validation.

The Council stopped short of addressing this question! We are therefore left to conclude that the Council simply found the WSP findings inconvenient ... in that they undermined the findings of the Strategic Transport Study relied upon to support the DPD. As a consequence of the WSP traffic evidence being ignored, the District Council along with their Competent Highways Authority are liable to be challenged over not properly validating the transport model. We don’t

know whether the obvious flaws in the Strategic Transport Model disguised an otherwise severe impact on the road network in East Grinstead. But without a 'severe impact' the DPD is not required to deliver any highways mitigation ... which in turn means that any developer funded road improvements are 'nice to have' and not an essential condition of SA19/20 going forward. The Strategic Transport Study does however acknowledge that significant mitigation of the A264/A22 would be required to significantly reduce the congestion at the Felbridge junction and that to be fully effective would require land outside the highway boundary. But if, as usually turns out to be the case, there are no practical or cost effective solutions identified or that there is simply insufficient funding to deliver a solution, then the roads will stay as they are and the traffic from SA19/20 will simply add to the unacceptable levels of congestion and rat-running. For both regulation 18 and 19 consultations, West Sussex Highways acknowledged that local junction improvements may not be deliverable and requested the District Council to update the DPD to reflect this. However, these requests were ignored without explanation.

5. Committed highway schemes have not been implemented T

The following committed highway improvements for the Felbridge and Imberhorne junctions are overdue with little prospect of delivery ...

- Synchronisation of signals at Felbridge and Imberhorne Lane junctions were developer funded and a condition of West Sussex Highways withdrawing their highways objection to the Oaks development in 2011 – Surrey Highways have confirmed that the synchronisation has not occurred due to technical difficulties and is likely to be unworkable as the result of flow interruptions due to bus stops, side roads etc.
- Reconfiguration of the Felbridge junction A264 approach arm for both lanes to turn right towards East Grinstead has been used as mitigation for several large schemes – Surrey Highways do not support this scheme and confirmed that it has been tried before but immediately withdrawn due to an unacceptable increase in collisions.
- In the last 10 years, several large schemes have made substantial contributions towards the cost of the Atkins Stage 3 junction improvements to help offset the impact of additional traffic. These highway interventions have been factored into the Council's strategic transport models since 2013, but West Sussex Highways say that there is still no timetable for their implementation.

To ensure that effective traffic mitigation is actually delivered, we respectfully ask the Inspector to consider making it a condition of approving SA19/20.

Appendix 1 - High Court Ruling re: Residual Cumulative Impact

In August 2014, the planning committee for Cheltenham Borough Council refused a planning application by Bovis Homes in respect of a residential development of 650 homes. This was against the advice of planning officers and the local highways authority didn't raise any objections to the scheme.

The decision notice lists unacceptable traffic congestion as one of the reasons for refusal.

Bovis Homes appealed the decision and a public inquiry took place in September 2015. They argued that detailed transport studies showed that the local roads were already severely congested but that the additional traffic wouldn't make things much worse ...

- "there would be limited practical difference in terms of traffic impact on the local road network whether or not the appeal scheme proceeds"
- "The highways network around the site suffers some congestion but the NPPF test is whether the additional impact of a scheme would be severe"
- Shurdington Road is already overloaded. Existing traffic on Shurdington Road would be displaced onto other routes by traffic from the development

The Council employed consultants to review the transport work supporting the scheme and argued that ...

- "In limited time, the review identified faults in the transport analysis. More time would have uncovered more faults. A defensive response to criticism and a lack of transparency engenders suspicion that there is something to hide."
- "Traffic forecasting and modelling was undertaken using the Council's SATURN based model. It is not inherently unreliable but it is a strategic model, outputs from which need to be adjusted to obtain the detail relevant to consideration of this development. There are concerns about its accuracy for this purpose."

The appeal inspector rejected the developer's arguments and in January 2016 gave his reasons ...

- "It is an often-expressed view that development should be expected to do no more than 'wash its own face' and not solve all existing unrelated problems. In relation to transport, that appears to be the view of the appellant, the local authority and the local highway authority."
- "The third bullet of NPPF paragraph 32 refers not to the additional impact of a scheme, as the appellant asserts but to residual "cumulative" effects, implying that it is the cumulative effect of all expected development which must be taken into account, rather than the individual contribution of each development in turn, which is likely to be (as in the present case) marginal."

• “Whilst I can agree therefore, that the development should not need to solve all existing unrelated transport problems, the existing or future “in any event” situation on the highway network, is not an Response to DPD Main Modifications Consultation Paul Tucker for Infrastructure First (ID 2383) Page 6 of 9 23 January 2022
unrelated problem which evaluation of the proposed development should ignore. It is a related problem which is highly pertinent to the evaluation of the current appeal proposal.”
Due to the strategic nature of the Bovis Homes scheme, the Secretary of State intervened ... upholding the view of the appeal inspector and dismissing the appeal in May 2016.

In his judgement he agreed with the Inspector’s analysis of highways issues ...

• Overall, he agrees with the Inspector that, taking account of the measures which are included in the s106 agreement, the residual cumulative effects of development proposed would increase demand for use of sections of the highway network which are already operating at over-capacity levels, contributing to a severe impact on a wider area of Cheltenham as traffic is displaced, contrary to both adopted and emerging policies. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

• The Secretary of State concludes that granting permission for the appeal scheme would be contrary to the development plan overall due to the severe residual cumulative transport impacts.

Bovis Homes challenged the validity of the Secretary of State’s decision on a misinterpretation of ‘Residual Cumulative Impact’ and applied to High Court to overturn it.

In September 2016, Mr Justice Holgate presided over a hearing to consider whether there was a case to answer.

He was not persuaded that the Inspector and Secretary of State erred in law by taking into account of the existing highway situation when resolving the paragraph 32 NPPF questions. In particular, the Judge noted that it would be open to a decision taker to rationally conclude that a given development could wash its own face in highway impact terms, but due to existing over capacity, the residual cumulative impacts of the development could be severe.

• “The conclusions of the Inspector and the Secretary of State adverse to the Bovis proposal rested on the third bullet point of NPPF paragraph 32, the second half of which is the relevant provision. It reads: “Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

• “He recorded in paragraph 221 the view of Bovis Homes and also the local authority and the County Council, that the development should be expected to do no more than “wash its own face” and not solve all existing unrelated problems. He contrasted that with the position of third parties pointing out that the existing situation into which the development would be placed is already not suitable in terms of highway capacity and that the future situation would be far worse, and therefore even less acceptable, as a location for the development of 650 dwellings.”

• “Taking up the third bullet point of NPPF paragraph 32, the Inspector pointed out in paragraph 223 of his report that the Framework refers not simply to the additional impact of the scheme, as had been asserted by the appellants, but to residual “cumulative” effects, implying that it is the cumulative effect of all expected development which must be taken into account in context rather than just the Response to DPD Main Modifications Consultation Paul Tucker for Infrastructure First (ID 2383)

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individual contribution of each development in turn which is likely to be, as in the present case, marginal.”

• “In view of his earlier reasoning there was no need for the Inspector to rely in addition upon circular 2/2013, but it did serve to emphasise that the existing levels of congestion were relevant, and not irrelevant as some parties had contended, to determining whether there would be severe residual cumulative impacts in breach of paragraph 32 of the NPPF if the proposed development were to go ahead.”

• “Furthermore, and in any event, it is also plain from paragraphs 14 and 32 of the Secretary of State’s decision letter that he correctly applied the “severe residual cumulative impact” test in the NPPF and not any different test. It cannot be said that the decision-maker has misinterpreted paragraph 32 of the NPPF. Nor can it be said that in using his judgment regarding the application of that test, he has misapplied it in such a way as to be open to challenge on public law grounds”

The High Court rejected the challenge and in doing so made an important ruling on the correct interpretation of the National Planning Policy’s meaning of residual cumulative impacts of development.

<https://www.bailii.org/ew/cases/EWHC/Admin/2016/2952.html>

MM16 – Updated Housing Trajectory

The primary objective of the DPD is to meet the residual housing need identified by the District Plan Examination in 2018 and to allocate sufficient housing sites to address the residual need for the district between 2024 and 2031.

The regulation 18 version of the DPD confirms the residual need to be 1,507 homes ...

“2.25 The revised housing supply figures set out in Table 2.3, illustrates that following consideration

for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 1,507 dwellings as at April 2019.”

The regulation 19 version of the DPD shows that the residual need had reduced by 227 ...

2.29 The revised housing supply figures set out in Table 2.3, illustrates that following consideration for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 1,280 dwellings as at 1st April 2020.

And the latest main modifications version of the DPD shows the residual need had fallen by a further 483 ...

2.29 The revised housing supply figures set out in Table 2.3, illustrates that following consideration for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 797 dwellings as at 1st April 2021.

So in the two years it has taken to progress the DPD to the Main Modification stage, the number of houses it set out to allocate has officially reduced by very nearly half, from 1,507 to 797 homes.

Response to DPD Main Modifications Consultation Paul Tucker for Infrastructure First (ID 2383)

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This excludes the new homes approved in the 10 months since April 2021.

Of course there is no justification for ignoring these latest approvals in the latest version of the DPD as the Council will be fully aware of them. Using the information published on the Council’s website we have reviewed the planning approvals since April 2021 and excluded those already included in the published list of housing commitments (MSDC-06b).

We have calculated the up to date residual need is now around 400 homes ... which leaves us with the very probable conclusion that the uplifted trajectory will be fully met by 2024/25 without needing to allocate any further schemes in the DPD.

However, the main modification version of the DPD still allocates schemes for a total of 1,704 homes. This represents an official oversupply of 907 as at April 2021 ... and using up to date figures, an oversupply nearer to 1,300.

Despite the Council’s position stated during the public hearings that they do not accept the need for a buffer due to the robustness of their housing commitments; some level of oversupply is clearly prudent.

Tests of soundness require the Plan to be proportionate and justified. We don’t believe that a fourfold oversupply meets these tests ... especially as there are very legitimate arguments which bring into question the sustainability of the 750 homes allocated at SA19/SA20.

MM22 – SA20 SANG monitoring

First of all it is worth reiterating that the residual housing need identified at the examination of the District Plan was made conditional on there being no further harm to the integrity of European Habitat Sites in Ashdown Forest. This was clearly stated in paragraph 65 of the Inspector’s final report dated 12th March 2018. The Council have not presented any evidence to demonstrate that allocations in the DPD would not result in further harm to the Ashdown Forest SPA.

Main Modification MM22 adds wording relating to SANG provision and mitigation by adding a requirement for regular monitoring of the proposed SANG. However, The District Council are already committed to monitoring the effectiveness of their SANG mitigation under DP17 ... and therefore MM22 is somewhat superfluous.

Of course, committing to regular SANG monitoring doesn’t mean that it will happen. Despite a similar commitment to regular monitor the existing Ashplatts Wood SANG, no monitoring had been undertaken since becoming operational in 2015. Although the latest Habitats Regulation Assessment (HRA) says that visitor surveys have now been undertaken following the examination hearings in June.

One of the Council’s post-hearing actions was to demonstrate the effectiveness of their existing SANG mitigation; but their response (MSDC13) was far from compelling and presented no evidence to show that the Ashplatts Wood SANG had been successful in reducing visitor pressure on the Ashdown Forest SPA.

The Council clearly believe that SANG effectiveness is a forgone conclusion.

Response to DPD Main Modifications Consultation Paul Tucker for Infrastructure First (ID 2383)

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We submitted our own response (REP2383-010) highlighting the lack of evidence in the Council’s post-hearing written submission and we are disappointed that our concerns have been apparently dismissed.

A further commitment to regularly monitor the proposed SANG as set out in the MM22 is clearly welcome; but what if monitoring shows that the SANG isn’t successful in reducing visitor pressure from new development?

The Habitats legislation is clear that decision makers are required to apply the precautionary principle in evaluating adverse impacts on a protected site. In simple terms this means that it is ‘better to be safe than sorry’. This surely mandates that approval of sites SA19/20 should depend upon the results of the visitor surveys carried out in June.

The Council have currently no evidence to demonstrate the success of their Ashdown Forest mitigation strategy and it would be premature to allocate SA19/20 prior to the forthcoming publication of the evidence provided by these visitor studies.

Indeed the approval of large scale housing within the accepted zone of influence with no evidence to support the HRA claim that adverse impacts can be ruled out is potentially open to legal challenge.

Yours faithfully

John & Caitriona Capp



2383

Site Allocations DPD: Main Modifications Response

Main Modification: MM16

ID: 23830
Response Ref: 2383/1/MM16
Respondent: Paul Tucker
Organisation: Infrastructure First
On Behalf Of:

[REDACTED]

From: Paul Tucker [REDACTED]
Sent: 23 January 2022 15:30
To: Policy Consultation
Cc: [REDACTED]
Subject: Main Modifications Submission from InfrastructureFirst (Repondent ID 2383)
Attachments: IFG Representation - Main Modifications DPD Consultation.docx

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Please find our submission in relation to the DPD main modifications consultation. We respectfully request that it is passed on to the Examiner in full.

Paul Tucker
On behalf of InfrastructureFirst

Before turning to specific modifications, Infrastructure First are hugely disappointed that the Examiner has not responded to legitimate concerns regarding the severe traffic situation in East Grinstead.

1. Existing traffic issues deemed not relevant
2. Impact on residential streets not considered
3. Cumulative impact not assessed
4. Up to date traffic evidence ignored
5. Committed highway schemes not implemented

1. Existing traffic issues not deemed to be relevant

The Competent Highway Authorities in West Sussex and Surrey and the District Planning Authorities in Mid Sussex and Tandridge ALL recognise and acknowledge the severe traffic problems in Felbridge and East Grinstead. In particular, that the Felbridge junction is already operating over capacity at peak times of the day.

Drivers using the A22 corridor into East Grinstead face significant delays during much of the day due to congestion at the Felbridge, Imberhorne Lane and Lingfield Road junctions ... and this is BEFORE the traffic from the 1,400+ homes already committed in and around East Grinstead start to have an impact on the network.

Mid Sussex District Council insist that the serious traffic issues are not a reason to resist further large scale housing close to the main bottlenecks; arguing that the severe congestion is an existing situation. They simply say that the DPD allocations SA19/SA20 will have limited practical impact on the already congested network.

The Council's position is untenable for two reasons ...

2. Impact on residential streets has not been considered

Firstly the Council ignore the impact of drivers avoiding long queues at junctions by rerouting along residential streets unsuited to through traffic. These routes were not included within the remit of the Strategic Transport Study and therefore not considered. The Competent Highways Authority describes the inevitable increase in rat-running as the result of SA19/20 as 'undesirable'.

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Since that time, the National Planning Policy Framework (NPPF) has been updated to require planning authorities to consider whether impacts on highways safety are acceptable or not. There is no evidence to suggest that the Council have given ANY consideration to either capacity or safety impacts on parts of the network not covered by their Strategic Transport Study.

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Secondly the Council cannot legitimately dismiss the traffic problems as an existing situation. The National Planning Practice Guidance (NPPG) most up to date advice on Transport Evidence in Plan Making [Paragraph: 03 Reference ID: 54-003-20141010] makes clear that decision makers should "*consider the cumulative impacts of existing and proposed development on transport networks.*"

There are over 8,500 homes committed in the district, many of which are already approved for development. This includes 1,400 in and around East Grinstead alone. None of these have been considered in combination with the allocations in the DPD when assessing the traffic impact.

This cannot be correct.

A 'cumulative' impact is one that increases by successive additions. It is the combined impact of all things added together.

Mid Sussex District Council only assess the incremental traffic impact of the DPD site allocations and have therefore not followed the process required by the NPPG. This approach is therefore also in conflict with the 2021 NPPF paragraph 111.

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The Secretary of State agreed with the Appeal Inspector and a legal challenge mounted by the developer was dismissed by the High Court (see Appendix 1 for the salient details).

Despite failing to assess the cumulative impact, Mid Sussex District Council confidently say that there is no evidence to demonstrate there would be serious traffic issues in relation to SA19/20.

The Council's own matter statement (msdc-02f-miq-matter-6) describes how the traffic impact of the DPD allocations was assessed on its own and NOT in combination with other committed development. We were greatly encouraged by the Inspector's question to the Council asking whether "the cumulative impact should be the determining factor in assessing traffic impact?". The Council's response reaffirmed the requirement to test a cumulative impact but then described a process in which it wasn't tested!!

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the overall traffic impact against the DPD Allocations PLUS the Reference Case; the impact of the committed development was simply factored out of the equation.

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The Council also, somewhat cynically, refuse to include the most up to date and reliable traffic data for the Felbridge junction in their evidence base. The results from the detailed traffic survey, which they jointly commissioned, were available prior to the regulation 18 consultation and showed that the junction was already significantly over capacity at that time.

The Council say that the WSP investigation is still in draft form as no workable junction improvement options have been identified. However this cannot reasonably apply to the underlying traffic survey, which was based on observations at the time and therefore neither sensitive nor work in progress. Surrey Highways, who jointly commissioned the survey have recently released the detailed traffic data into the public domain.

In responding to the many calls for the 2018 WSP traffic survey results to be included in the DPD evidence base, the Council simply say in Appendix 9 of the Regulation 22 Summary, that the WSP study is not relevant.

A statement that was not reasoned.

Once again, we were encouraged by another of the Inspector's initial questions which asked the Council to explain "the principal conclusions of the WSP study". In their response (msdc-02f-miq-matter-6), the Council failed to mention the study's material findings on junction capacity. Instead they said that the WSP study is not required to address the impact of the DPD and therefore of no direct relevance and that no conclusions could be drawn from the study.

This is clearly NOT true.

Even the most casual observer could conclude that the WSP study found that the Felbridge junction was operating well over capacity as early as 2018.

When asked to explain why their calibrated transport model was so wide of the mark when predicting the Felbridge junction baseline capacity, the Council simply say that the SATURN modelling used for the district-wide study had a different purpose to the detailed LINSIG modelling designed for individual junctions. While this must be correct, it must also bring into question the reliability of the model validation.

The Council stopped short of addressing this question!

We are therefore left to conclude that the Council simply found the WSP findings inconvenient ... in that they undermined the findings of the Strategic Transport Study relied upon to support the DPD.

As a consequence of the WSP traffic evidence being ignored, the District Council along with their Competent Highways Authority are liable to be challenged over not properly validating the transport model.

We don't know whether the obvious flaws in the Strategic Transport Model disguised an otherwise severe impact on the road network in East Grinstead. But without a 'severe impact' the DPD is not required to deliver any highways mitigation ... which in turn means that any developer funded road improvements are 'nice to have' and not an essential condition of SA19/20 going forward.

The Strategic Transport Study does however acknowledge that significant mitigation of the A264/A22 would be required to significantly reduce the congestion at the Felbridge junction and that to be fully effective would require land outside the highway boundary.

But if, as usually turns out to be the case, there are no practical or cost effective solutions identified or that there is simply insufficient funding to deliver a solution, then the roads will stay as they are and the traffic from SA19/20 will simply add to the unacceptable levels of congestion and rat-running.

For both regulation 18 and 19 consultations, West Sussex Highways acknowledged that local junction improvements may not be deliverable and requested the District Council to update the DPD to reflect this.

However, these requests were ignored without explanation.

5. Committed highway schemes have not been implemented

The following committed highway improvements for the Felbridge and Imberhorne junctions are overdue with little prospect of delivery ...

- Synchronisation of signals at Felbridge and Imberhorne Lane junctions were developer funded and a condition of West Sussex Highways withdrawing their highways objection to the Oaks development in 2011 – Surrey Highways have confirmed that the synchronisation has not occurred due to technical difficulties and is likely to be unworkable as the result of flow interruptions due to bus stops, side roads etc.
- Reconfiguration of the Felbridge junction A264 approach arm for both lanes to turn right towards East Grinstead has been used as mitigation for several large schemes – Surrey Highways do not support this scheme and confirmed that it has been tried before but immediately withdrawn due to an unacceptable increase in collisions.
- In the last 10 years, several large schemes have made substantial contributions towards the cost of the Atkins Stage 3 junction improvements to help offset the impact of additional traffic. These highway interventions have been factored into the Council's strategic transport models since 2013, but West Sussex Highways say that there is still no timetable for their implementation.

To ensure that effective traffic mitigation is actually delivered, we respectfully ask the Inspector to consider making it a condition of approving SA19/20.

Appendix 1 - High Court Ruling re: Residual Cumulative Impact

In August 2014, the planning committee for Cheltenham Borough Council refused a planning application by Bovis Homes in respect of a residential development of 650 homes. This was against the advice of planning officers and the local highways authority didn't raise any objections to the scheme.

The decision notice lists unacceptable traffic congestion as one of the reasons for refusal.

Bovis Homes appealed the decision and a public inquiry took place in September 2015. They argued that detailed transport studies showed that the local roads were already severely congested but that the additional traffic wouldn't make things much worse ...

- *"there would be limited practical difference in terms of traffic impact on the local road network whether or not the appeal scheme proceeds"*
- *"The highways network around the site suffers some congestion but the NPPF test is whether the additional impact of a scheme would be severe"*
- *Shurdington Road is already overloaded. Existing traffic on Shurdington Road would be displaced onto other routes by traffic from the development*

The Council employed consultants to review the transport work supporting the scheme and argued that ...

- *"In limited time, the review identified faults in the transport analysis. More time would have uncovered more faults. A defensive response to criticism and a lack of transparency engenders suspicion that there is something to hide."*
- *"Traffic forecasting and modelling was undertaken using the Council's SATURN based model. It is not inherently unreliable but it is a strategic model, outputs from which need to be adjusted to obtain the detail relevant to consideration of this development. There are concerns about its accuracy for this purpose."*

The appeal inspector rejected the developer's arguments and in January 2016 gave his reasons ...

- *"It is an often-expressed view that development should be expected to do no more than 'wash its own face' and not solve all existing unrelated problems. In relation to transport, that appears to be the view of the appellant, the local authority and the local highway authority."*
- *"The third bullet of NPPF paragraph 32 refers not to the additional impact of a scheme, as the appellant asserts but to residual "cumulative" effects, implying that it is the cumulative effect of all expected development which must be taken into account, rather than the individual contribution of each development in turn, which is likely to be (as in the present case) marginal."*
- *"Whilst I can agree therefore, that the development should not need to solve all existing unrelated transport problems, the existing or future "in any event" situation on the highway network, is not an unrelated problem which evaluation of the proposed development should ignore. It is a related problem which is highly pertinent to the evaluation of the current appeal proposal."*

Due to the strategic nature of the Bovis Homes scheme, the Secretary of State intervened ... upholding the view of the appeal inspector and dismissing the appeal in May 2016.

In his judgement he agreed with the Inspector's analysis of highways issues ...

- *Overall, he agrees with the Inspector that, taking account of the measures which are included in the s106 agreement, the residual cumulative effects of development proposed would increase demand for use of sections of the highway network which are already operating at over-capacity levels, contributing to a severe impact on a wider area of Cheltenham as traffic is displaced, contrary to both adopted and emerging policies. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*
- *The Secretary of State concludes that granting permission for the appeal scheme would be contrary to the development plan overall due to the severe residual cumulative transport impacts.*

Bovis Homes challenged the validity of the Secretary of State's decision on a misinterpretation of 'Residual Cumulative Impact' and applied to High Court to overturn it.

In September 2016, Mr Justice Holgate presided over a hearing to consider whether there was a case to answer.

He was not persuaded that the Inspector and Secretary of State erred in law by taking into account of the existing highway situation when resolving the paragraph 32 NPPF questions. In particular, the Judge noted that it would be open to a decision taker to rationally conclude that a given development could wash its own face in highway impact terms, but due to existing over capacity, the residual cumulative impacts of the development could be severe.

- *"The conclusions of the Inspector and the Secretary of State adverse to the Bovis proposal rested on the third bullet point of NPPF paragraph 32, the second half of which is the relevant provision. It reads: "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."*
- *"He recorded in paragraph 221 the view of Bovis Homes and also the local authority and the County Council, that the development should be expected to do no more than "wash its own face" and not solve all existing unrelated problems. He contrasted that with the position of third parties pointing out that the existing situation into which the development would be placed is already not suitable in terms of highway capacity and that the future situation would be far worse, and therefore even less acceptable, as a location for the development of 650 dwellings."*
- *"Taking up the third bullet point of NPPF paragraph 32, the Inspector pointed out in paragraph 223 of his report that the Framework refers not simply to the additional impact of the scheme, as had been asserted by the appellants, but to residual "cumulative" effects, implying that it is the cumulative effect of all expected development which must be taken into account in context rather than just the individual contribution of each development in turn which is likely to be, as in the present case, marginal."*

- *"In view of his earlier reasoning there was no need for the Inspector to rely in addition upon circular 2/2013, but it did serve to emphasise that the existing levels of congestion were relevant, and not irrelevant as some parties had contended, to determining whether there would be severe residual cumulative impacts in breach of paragraph 32 of the NPPF if the proposed development were to go ahead."*
- *"Furthermore, and in any event, it is also plain from paragraphs 14 and 32 of the Secretary of State's decision letter that he correctly applied the "severe residual cumulative impact" test in the NPPF and not any different test. It cannot be said that the decision-maker has misinterpreted paragraph 32 of the NPPF. Nor can it be said that in using his judgment regarding the application of that test, he has misapplied it in such a way as to be open to challenge on public law grounds"*

The High Court rejected the challenge and in doing so made an important ruling on the correct interpretation of the National Planning Policy's meaning of residual cumulative impacts of development.

<https://www.bailii.org/ew/cases/EWHC/Admin/2016/2952.html>

MM16 – Updated Housing Trajectory

The primary objective of the DPD is to meet the residual housing need identified by the District Plan Examination in 2018 and to allocate sufficient housing sites to address the residual need for the district between 2024 and 2031.

The regulation 18 version of the DPD confirms the residual need to be 1,507 homes ...

"2.25 The revised housing supply figures set out in Table 2.3, illustrates that following consideration for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 1,507 dwellings as at April 2019."

The regulation 19 version of the DPD shows that the residual need had reduced by 227 ...

2.29 The revised housing supply figures set out in Table 2.3, illustrates that following consideration for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 1,280 dwellings as at 1st April 2020.

And the latest main modifications version of the DPD shows the residual need had fallen by a further 483 ...

2.29 The revised housing supply figures set out in Table 2.3, illustrates that following consideration for updated completion, commitments and windfall figures that the residual currently necessary to fully meet the district housing requirement is 797 dwellings as at 1st April 2021.

So in the two years it has taken to progress the DPD to the Main Modification stage, the number of houses it set out to allocate has officially reduced by very nearly half, from 1,507 to 797 homes.

This excludes the new homes approved in the 10 months since April 2021.

Of course there is no justification for ignoring these latest approvals in the latest version of the DPD as the Council will be fully aware of them. Using the information published on the Council's website we have reviewed the planning approvals since April 2021 and excluded those already included in the published list of housing commitments (MSDC-06b).

We have calculated the up to date residual need is now around 400 homes ... which leaves us with the very probable conclusion that the uplifted trajectory will be fully met by 2024/25 without needing to allocate any further schemes in the DPD.

However, the main modification version of the DPD still allocates schemes for a total of 1,704 homes. This represents an official oversupply of 907 as at April 2021 ... and using up to date figures, an oversupply nearer to 1,300.

Despite the Council's position stated during the public hearings that they do not accept the need for a buffer due to the robustness of their housing commitments; some level of oversupply is clearly prudent.

Tests of soundness require the Plan to be proportionate and justified. We don't believe that a fourfold oversupply meets these tests ... especially as there are very legitimate arguments which bring into question the sustainability of the 750 homes allocated at SA19/SA20.

MM22 – SA20 SANG monitoring

First of all it is worth reiterating that the residual housing need identified at the examination of the District Plan was made conditional on there being no further harm to the integrity of European Habitat Sites in Ashdown Forest. This was clearly stated in paragraph 65 of the Inspector's final report dated 12th March 2018.

The Council have not presented any evidence to demonstrate that allocations in the DPD would not result in further harm to the Ashdown Forest SPA.

Main Modification MM22 adds wording relating to SANG provision and mitigation by adding a requirement for regular monitoring of the proposed SANG. However, The District Council are already committed to monitoring the effectiveness of their SANG mitigation under DP17 ... and therefore MM22 is somewhat superfluous.

Of course, committing to regular SANG monitoring doesn't mean that it will happen. Despite a similar commitment to regular monitor the existing Ashplats Wood SANG, no monitoring had been undertaken since becoming operational in 2015. Although the latest Habitats Regulation Assessment (HRA) says that visitor surveys have now been undertaken following the examination hearings in June.

One of the Council's post-hearing actions was to demonstrate the effectiveness of their existing SANG mitigation; but their response (MSDC13) was far from compelling and presented no evidence to show that the Ashplats Wood SANG had been successful in reducing visitor pressure on the Ashdown Forest SPA.

The Council clearly believe that SANG effectiveness is a forgone conclusion.

We submitted our own response (REP2383-010) highlighting the lack of evidence in the Council's post-hearing written submission and we are disappointed that our concerns have been apparently dismissed.

A further commitment to regularly monitor the proposed SANG as set out in the MM22 is clearly welcome; but what if monitoring shows that the SANG isn't successful in reducing visitor pressure from new development?

The Habitats legislation is clear that decision makers are required to apply the precautionary principle in evaluating adverse impacts on a protected site. In simple terms this means that it is 'better to be safe than sorry'. This surely mandates that approval of sites SA19/20 should depend upon the results of the visitor surveys carried out in June.

The Council have currently no evidence to demonstrate the success of their Ashdown Forest mitigation strategy and it would be premature to allocate SA19/20 prior to the forthcoming publication of the evidence provided by these visitor studies.

Indeed the approval of large scale housing within the accepted zone of influence with no evidence to support the HRA claim that adverse impacts can be ruled out is potentially open to legal challenge.