

Emily Clapp

From: Baugh-Jones, Hayden <[REDACTED]>
Sent: 10 February 2025 16:49
To: Berkeley, Simon
Subject: Mid Sussex letter
Attachments: Mid Sussex letter 060225 H.docx

Hi Simon,

Louise has done a re-draft. I have had a gander at it and made a few minor comments (and picked up typos). Overall, I think it's better and more focussed than the previous version, albeit it remains quite lengthy. It could perhaps also be a little more tactful in places.

I'd appreciate your views before I respond to Louise.

Hayden

Hayden Baugh-Jones
Inspector Manager

Local Plans Group 2

Dear Mr Marsh

1. Firstly, I would like to thank you for the way in which your team, together with other participants have engaged and helped me with my examination of the Mid Sussex District Plan 2021-2039 (the Plan). I apologise for the delay in responding.
2. As you are aware I have been appointed by the Secretary of State to examine the Plan, not only in relation to whether it meets the tests of soundness, as set out in the September 2023 version of the National Planning Policy Framework (Framework) but also whether it is legally compliant.
3. In my initial letter of August 7, 2024, I set out that I would examine the Plan in two stages as there were some fundamental issues, including the Duty to Co-operate (DtC), that required testing before I could be confident that I could move to the Stage 2.
4. Following the end of the Stage 1 hearings I asked for various additional pieces of work to be provided to the examination, amongst which I asked that you provide any detailed evidence in relation to the DtC which you had not previously submitted, including copies of relevant agendas and minutes of meetings (AP0013). This was to ensure that you were given every opportunity to demonstrate that you had co-operated with the relevant prescribed bodies and complied with the DtC. I am now in receipt of the this and the other additional work¹ which I requested following the close of the Stage 1 hearing sessions.
5. I am aware that no neighbouring authority nor any other prescribed body has suggested that Mid Sussex had not met the legal duty and that signed Statements of Common Ground have been received relating to all the neighbouring Councils and some, but not all of the prescribed bodies. During the hearing sessions I queried whether this was significant and was told that I should give due weight to this, but that it should not be determinative as it is a matter for my judgment.
6. Unfortunately, in relation to the strategic matter of the unmet housing needs of neighbouring LPAs, I have found the Council has not met

¹ Including the consultation responses to AP-018.

the DtC, in its preparation of the Plan. A failure to meet the DtC is fatal to the progression of a Plan and cannot be rectified following submission.

Duty to Co-operate

Legislation

7. Section 33a of the Planning and Compulsory Purchase Act (P & CPA 2004) sets out the legal obligations incumbent on local planning authorities (lpas), amongst others, with regard to the DtC in relation to the planning of sustainable development.
8. As you are aware as part of my examination of the Plan, I must be content that the lpa has complied with any duty imposed on the authority by S33a of the P & CPA 2004.
9. Mid Sussex District Council (MSDC) is a local planning authority. The duty is not discretionary, and therefore this legal obligation relates to it, in its preparation of development plan documents, and other activities related to their preparation as far as they relate to a strategic matter.
10. The DtC requires that local planning authorities must co-operate in maximising the effectiveness with which activities are undertaken.
11. The DtC requires every person, such as in this case, MSDC, to engage constructively, actively and on an on-going basis in any process, by which means activities, including local plan preparation, is undertaken. This legislation has remained in force throughout the preparation of the plan. As such, MSDC must have complied with it. It also requires MSDC to have regard to the activities of others, as long as they relate to a relevant strategic matter.
12. A strategic matter is defined, amongst other matters, as a use of land that would have a significant impact on at least two planning areas. The matter of unmet housing needs is generally considered to be such a matter.

13. Engagement requires *considering* agreeing joint approaches to undertaking activities. This includes the preparation of joint local development documents under section 28 of the PCP.
14. In undertaking the DtC, the Act requires that regard must be had to the guidance in complying with the DtC provided by the Secretary of State.

The Framework

15. Paragraphs 24- 27 of the Framework, set out how the DtC should be implemented. It stresses the importance of effective and on-going joint working between strategic policy-making authorities and relevant bodies as being integral to a positively prepared and justified strategy. Of particular relevance to the Plan, is that joint working should help to determine whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.
16. It notes that Statements of Common Ground (SoCG) should be prepared and maintained by strategic policy making bodies throughout plan preparation to demonstrate effective and on-going joint working. These should document cross boundary matters which are being addressed throughout the plan preparation process; the progress in co-operation; and be publicly available throughout the plan-making process.

Planning Practice Guidance

17. The Planning Practice Guidance (PPG) sets out the approach to producing SoCG and its content. This is as a means by which it can be demonstrated that a plan is based on effective co-operation, that the lpa sought to produce a strategy based on agreements with other authorities and provides further detail on how the DtC is to be implemented.
18. The PPG explains in detail what is expected to be contained within a SoCG. [See](#) This includes, as appropriate; identifying the key strategic matters to be addressed; governance arrangements; housing

requirements in emerging or adopted plans; how needs are to be distributed or agreeing the distribution of need across the area; a record of agreement or disagreement on key strategic matters, and the process for reaching agreements; any other additional strategic matters; and how the SoCG relates to other relevant SoCG. The SoCG is to be concise and proportionate to the matters addressed, and not to record every interaction.

19. The SoCG are expected to set out the capacity within the strategic policy making areas to meet their own needs; the extent of unmet need; and any agreement or not, on the extent to which these needs are capable of being redistributed. Whilst it is expected that only one SoCG need be produced, it is possible to produce more than one.
20. The SoCG are envisaged to document the activities undertaken in co-operating in addressing strategic cross boundary matters. The PPG sets out a list which is not exhaustive, of what LPAs should document. Namely, working together at the outset of the Plan making process to identify cross-boundary matters that will need addressing; producing or commissioning joint research and evidence; assessing impacts of emerging policies; and preparing joint, or agreed, strategic policies affecting more than one authority area to ensure development is coordinated, such as through the distribution of unmet needs.
21. The geographical area will depend on the strategic matters being planned for, informed by a review of the strategic matters, and early engagement with neighbouring authorities and other stakeholders, based on demonstrable cross boundary relationships. This can include housing market areas and authorities should be pragmatic in determining the areas. The PPG sets out how housing market areas can be defined, including through migration flows and housing search patterns.
22. SoCG are expected to be available throughout the plan making process, including as a minimum, once the area it covers and governance arrangements have been defined, and the matters to be addressed are determined. SoCG should be available when a draft plan has been published.

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23. Authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.

24. The PPG is explicit that inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or do not rely on the inspector to direct them. It also reiterates that the DtC cannot be rectified post submission.

Plan Preparation

25. It is not clear when the review of the Plan began. In your Matter 1 hearing statement², the Plan review is reported as starting in 2020, yet the Council's most recent evidence has the process both beginning in July 2021³ and March 2022⁴. This lack of clarity is significant as the legislation requires ongoing engagement throughout the plan preparation process. As such, it is important to know when this is given the importance of identifying the cross boundary matters which need addressing at the outset of the plan making process.

26. Notwithstanding the inconsistencies in your evidence, I have taken the July 2021 date set out in the chronology accompanying your response to Action Point 13 provided in November 2024, as the starting point for plan preparation. The preparation of the Plan ended at its submission of the Plan on July 10, 2024. Therefore, it is this period which is relevant for my determining MSDC's compliance with the DtC.

Background and context.

27. A Duty to Co-operate Framework was produced in 2015⁵ and is considered by the Council to remain relevant to the Plan. However,

²² MSDC Matter 1: Paragraph 1.5.

³ AP-013 Appendix E.

⁴ AP-013 Appendix A1 page A1-3

⁵ DC2

this has not been updated nor has the Duty to Co-operate Protocol and Checklist been adhered to, consequently, there is no little direct evidence to demonstrate how co-operation has maximised the effectiveness of plan preparation.

28. There are a number of strategic matters such as transport, or habitat considerations where I am confident that, whilst there may be some soundness issues which require addressing, the DtC has been complied with. Similarly, whilst I note that the Council has not provided signed SoCGs with all of the prescribed bodies set out in legislation, I do not consider this to have been determinative in my judgment as to whether the Council has met the DtC.

29. However, the extensive unmet housing needs of neighbouring authorities has historically been a strategic issue in the sub-region that has required active, on-going and constructive engagement, and remains relevant to plan preparation.

30. This is clearly articulated in Policy DP5 of the adopted Mid Sussex District Plan 2014-2031⁶. ~~The examining Inspector for that plan~~ ~~which was inserted by the examining Inspector.~~ ~~It~~ required the Council to undertake a prompt review of the Plan and to work under the 'Duty-to-Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed need for housing across the Housing Market Areas. As such, I am primarily concerned with how the Council has complied with the DtC in relation to housing.

Commented [I2]: Would this read better?

Sub-regional co-operation.

West Sussex Greater Brighton Planning Board

31. Great onus is given to the West Sussex Greater Brighton Planning Board (WSGB) within the submission Plan. It is explicitly mentioned within the emerging Plan within the Background and DtC sections as an important strategic body within the wider sub-region. As written, it appears to be an active vehicle for navigating the DtC and is cited as

⁶ BD1

an example of '*ongoing work*⁷' and is extensively referenced and relied upon within SoCG with individual authorities as well as the Northern West Sussex SoCGs.

32. It was also cited in the DtC Compliance Statement⁸ as one of the formal groupings with which the Council has engaged. I was led to expect that a SoCG with the Board would be submitted to the examination. During the hearings I requested a paper setting out why this had not been provided, given the importance seemingly given to it within the Plan and the Council's hearing statement. This detailed paper⁹ which was signed at officer level some five months after the submission of the Plan dispels the notion that the [WSGGSB](#) could have been a vehicle for cross boundary co-operation during most of the time when the Plan was being prepared. Moreover, it reported that in December 2023 the officers agreed that the group could not support the development of the current wave of local plans in the region¹⁰.
33. This is not surprising given that the last time the Board met was in March 2021¹¹. The Regulation 18 consultation took place over a year later in the following November 2022. Therefore, from March 2021 by which time your most recent evidence suggests Plan making had not even begun¹², the Board had not been an active group. As such, it could not have engaged constructively, actively and on an ongoing basis with Mid Sussex in plan preparation. Consequently, it should not have been relied upon or prayed in aid to demonstrate the compliance of the Plan with the DtC in either the Regulation 18 or Regulation 19 plans or the evidence which has been provided to the examination.
34. My understanding is that work on future strategic planning issues has been '*paused*', albeit this has been for years rather than months, but nonetheless it has not been '*abandoned*' by the Board.

⁷ DP1, pages 10, 11 and 23.

⁸ DC1, paragraph 4.

⁹ AP-011

¹⁰ AP-011 page 9, paragraph 43.

¹¹ AP-013 Appendix A3, page A3-9.

¹² AP-013 Appendix E, page 3.

35. I am aware that West Sussex and Greater Brighton Planning Officers Group met a further three times during this period. However, no minutes¹³ have been provided to demonstrate how, or if at all, these meetings contributed to maximise the effectiveness of plan making with particular relation to the distribution of unmet housing needs.

Gatwick Diamond Board

36. The Council's Chronology of the DtC only mentions the Gatwick Diamond Board twice: once in a DtC meeting in October 2023, prior to Scrutiny Committee's consideration of the consultation Plan and latterly after the Regulation 19 consultation had completed. By this time there was little scope for any change to the strategy of the Plan. There is nothing within the agenda or minutes which have been provided to suggest that the Board played an active role in actively considering unmet needs and the role of Mid Sussex's Plan.

37. Therefore, neither of the two sub-regional bodies has played an active role in influencing plan preparation, including, addressing unmet housing needs within the sub-region.

38. As such, they have not been vehicles to maximise the effectiveness of Plan making. Put simply there has not been a sub-regional body which has taken a strategic overview to help distribute housing within the sub- region so the unmet needs of households can be provided for, so that people have somewhere to live. However, this lack of active wider sub-regional bodies does not obviate the Council from its legal responsibilities in relation to the DtC which I address below.

Outset of plan preparation.

39. The Council met with all neighbouring authorities in the autumn of September 2021, setting out their approach to its call for sites, its housing requirement, and accepted that unmet need from other authorities would be needed to be factored in. At face value the approach seemed consistent with the PPG as further individual meetings were to be scheduled in relation to the DtC and a consultation undertaken on the Site Selection Methodology to be used. This was to be amended on an iterative basis.

¹³ Ditto, page A3-10.

Rest of plan preparation to submission

40. There is little evidence to suggest that this active, constructive engagement continued an on-going basis throughout plan preparation which I explore below.
41. I am aware that a considerable proportion of the SoCG were submitted well after the submission of the Plan and what could reasonably be considered to be in the spirit of the guidance set out in the PPG. Nonetheless, whilst the late production of SoCGs is indicative of the seriousness of the Council's approach to engaging with the DtC, it has not been determinative in my decision relating to its legal obligation.

Co-operation with individual neighbouring authorities.

Crawley.

42. Crawley lies to the northwest of Mid- Sussex and together with Horsham and Mid Sussex form the NWHMA. The Borough has long established difficulties in meeting its own needs due to the constraints of an intensely developed urban settlement with little opportunity for additional growth. Indeed, the Mid Sussex adopted Plan (BD1) attributes an additional housing requirement of 1,498 dwellings to help meet Crawley's unmet needs. Nonetheless, Crawley remains unable to meet all of its own needs. Recently, Crawley's local plan was adopted in 2024. This established that there was an outstanding need from 2023- 2040 for 7,505 dwellings which cannot be catered for within its own boundary. This situation is unlikely to change in the future.
43. Mid Sussex was approached in January 2020 for help in meeting Crawley's needs prior to the plan preparation beginning, and again in April 2023, well before the final version of the Regulation 19 of Mid Sussex's LP was finalised in November 2023, and the Regulation 19 consultation in January 2024. Consequently, the principle of it having substantial unmet needs has been known prior to and throughout the

preparation of Mid Sussex's Plan and indeed is central to the review of the Plan required by Policy DP5 of the adopted Plan.

44. Your Council's response to both formal requests has been to state that it is committed to working with Crawley in a positive manner. However, the first letter stated that any consideration of unmet needs would have to be in the context of Mid Sussex reviewing its own plan and querying whether Crawley had exhausted all opportunities to increase capacity. The second set out how Mid Sussex had shared its Site Selection Methodology (SSM), held briefings to share the initial outcomes of the Site Selection Process, and commissioned an Urban Capacity Study. It also set out the extent of any surplus in capacity. However, it did not take a positive approach to addressing unmet needs, as it was '*not in a position to confirm the total deliverable housing in the District and therefore the amount of housing it may be able to provide to meet unmet need*¹⁴'. This was not the positive engagement required; rather a means to rebuff any request.

45. A SoCG¹⁵ with Crawley was submitted to the examination over two months after the Plan had been submitted and I have not been provided with earlier iterations. This SoCG was provided well after what could be considered a reasonable delay, particularly as the consultation on the Regulation 19 version of the Plan, had taken place at the turn of the year, after which there was little opportunity to influence plan preparation. The SoCG refers to the historic work which has been undertaken prior to the commencement of work on the Plan and the wider Northern West Sussex HMA¹⁶, which I consider below. A number of shared objectives are set out. It is agreed that a '*robust and appropriate SHMA has been completed for each local authority*', and that MSDC has shared and invited comments on the site selection process.

46. Nonetheless, I have interpreted the phrase '*that **each** considers that they are doing the maximum reasonable to meet the housing needs*', in the context of Crawley's Regulation 19 response to DPH1: Housing. Here Crawley set out a number of concerns relating to the

¹⁴ AP-013, Appendix 7, letter of 20 June 2023.

¹⁵ DC6

¹⁶ DC3 and DC4

submission Plan, including a recommendation that, *‘all potential sources of housing supply which might contribute to meeting identified needs are proactively explored...’*¹⁷. This clearly suggests that Crawley did not consider that Mid Sussex was doing the maximum reasonable to meet the unmet housing needs which Policy DP5 envisaged and the DtC requires.

47. Moreover, the SoCG sets out that both authorities will engage with other DtC forums and references future work. Whilst this may be sensible, it is not relevant to the examination of the Plan as the DtC can only relate to activity up to submission.
48. In sum, notwithstanding the examples of cross boundary work which have taken place, such as the co-operation relating to the allocation at Crabbet Park which falls on the boundary between Crawley and MSDC, and whose housing will contribute to MSDC’s housing requirement, I am not convinced that Mid Sussex has engaged constructively, actively and on an ongoing basis during plan preparation to help Crawley with its extensive and widely anticipated, on-going unmet housing needs.
49. Indeed, it has not committed to providing a definitive quantum of housing for Crawley’s needs, rather relying on whatever is left once Mid Sussex’s own needs have been provided for. This is the antithesis to the approach set out in Policy DP5 of the adopted Plan, and reflecting the legislation underpinning the DtC which would require a planned, strategic approach to be taken to wider housing needs.

Horsham

50. To the west of MSDC is Horsham. Historically, with Mid Sussex, it has met Crawley’s unmet housing needs within the [Northern West Sussex Housing Market Area \(NWSHMA\)](#). Following Natural England’s Position Statement, published in late 2021 there are unresolved issues, which do not form part of my examination, relating to water neutrality and housing provision. A small part of the Mid Sussex’s boundary with Horsham falls within the Water Neutrality Zone. However, Horsham is extensively affected, and its position is

¹⁷ Crawley Borough Response to Regulation 19 consultation.

that it cannot meet its own housing needs in full or help meet Crawley's unmet needs.

51. This position would have been evident early in Mid Sussex's plan preparation and there may have been an opportunity for Mid Sussex to work constructively to address some of those needs. Indeed, in August 2022 Horsham wrote to your Council suggesting that if the needs of the HMA could not be met that a further call for sites be made and the methodology be reappraised¹⁸. I am aware whilst any site taken forward as a result of the Regulation 18 and Regulation 19 consultations were considered, no further sites were allocated throughout the plan preparation process.
52. Following a meeting in August 2023, it was not until November 2023 that Horsham formally requested the help of Mid Sussex to cater for the excess 2,275 homes for which it considers that it cannot identify sites without falling foul of the Habitat Regulations. However, by this time the strategy of the Plan had been set, albeit the Regulation 19 consultation had not begun.
53. I note that Mid Sussex did not formally respond to Horsham's request, sent in late November 2023 until early March 2024. This was over three months later and after your Regulation 19 consultation had been completed. By this time there was little opportunity to maximise the effectiveness of plan preparation.
54. Moreover, whilst the letter was full of goodwill and commitment to continuing engagement, citing Mid Sussex's sharing of its SSM and its maximisation of its housing supply, it did not provide any meaningful evidence of what, if anything, Mid Sussex could do to help Horsham. Rather it relied on the imprecise and vague approach to meeting unmet needs within the [Northern West Sussex Housing Market Area \(NWSHMA\)](#) set out within the Housing SoCG which I consider below.

Northern West Sussex Housing Market Area

55. The Northern West Sussex authorities of Horsham, Crawley and Mid Sussex has long been recognised as an established Housing Market

¹⁸ AP-013- Appendix A2.

Area (HMA)¹⁹. They have a long history of working together with a wider remit than housing. However, my examination of the Plan and the DtC in relation to the planning of sustainable development can only relate to the period between the commencement of work on the Plan and its submission in July 2024. A General SoCG²⁰ was signed in July 2024 but received after submission of the Plan.

56. I appreciate that a joint Plan has not been taken forward. In common with my fellow inspectors who examined Crawley's Plan, I consider this to be reasonable in the circumstances of each of the three authorities starting their plan making at significantly different times.

57. Other than the Water Neutrality work²¹, much of the joint activity and evidence bases to which I have been referred, including the At Crawley Study 2009²², predates the commencement of the emerging Mid Sussex plan and the current wider sub-regional issue of unmet housing need.

58. I also note that the three authorities reference working positively together as part of the WSGB and the GDB to demonstrate their compliance with the DtC. However, as already established the WSGB has had a diminished, or indeed no role during the time in which the Plan has been prepared.

59. The three authorities have also signed a specific SoCG relating to housing²³. Again, this leans heavily on historic joint evidence bases such as the Housing Market Appraisals (HMA) which confirm that the three local authorities make up the principle HMA for each authority. This SoCG makes explicit that the DtC remains relevant with an unmet housing need of 8,947 dwellings within the three authorities.

60. However, it does not set out in a convincing manner how their engagement increased the effectiveness of plan making, such as setting a definitive figure for the quantum of housing which Mid Sussex should provide to contribute towards unmet needs.

¹⁹ Para 1.5, H1

²⁰ DC3.

²¹ ENV13.

²² O12.

²³ DC4.

61. The SoCG suggests that at the time of its signing, after the submission of the Plan, that Mid Sussex has a headroom of 1,208 dwellings. However, there is no consideration of how this surplus would be distributed between the two lpas. Nor, has a fixed quantum of development which could be relied upon been set and an explanation of how it would relate to any annual requirement and subsequent monitoring. This is particularly important, given that the oversupply figure is also expected to contribute to the resilience of MSDC's housing supply, were some of the sites within the Plan not to come forward²⁴.
62. This lack of clarity is pertinent as during the plan's preparation the surplus has varied from 302 dwellings at the Regulation 18 consultation (which was purely to ensure resilience for MSDC), to 996 dwellings in relation to the Regulation 19 plan, and finally after submission, within the agreed SoCG, the Councils suggest a headroom of 1,208 dwellings. All these changes have taken place without any additional allocations. Consequently, there must be a significant question mark as to how reliable any potential contribution would be in meeting unmet needs. Moreover, there is an unmet need of 59 pitches from Horsham of Gypsy and Traveller accommodation.
63. Meaningful co-operation has been couched in terms of the difficulties in taking on unmet needs. Much effort has been put to setting out why the unmet pressures cannot be managed, such as the agreement that the authorities have 'worked to explain and understand each other's housing supply position' and that there were no further suitable sites close to the administrative borders. However, the ability to provide homes to meet the needs of neighbouring authorities should not be restricted to sites close to the boundary given the extent of the reach of the HMA within Mid Sussex.
64. In coming to this conclusion, I am aware of the historic Mayfield site proposal²⁵ which would straddle the Horsham and MSDC border, with the majority of the proposed 10,000 homes provided within Horsham District. However, this has not had the support of HDC since before

²⁴ DP1, DPH1.

²⁵ SSP3, site 678.

the beginning of the preparation of MSDC's Plan. Therefore, it has not been actively pursued and has been withdrawn from consideration by the site promoter.

65. I note that each authority references their independence in relation to housing and employment targets and timetables for plan production citing their rights to develop their own plans that fit the specific circumstances of the District/Borough's communities. Clearly, this right is incontrovertible.
66. In sum, it seems from the minutes of the meetings provided²⁶ that there has been a disproportionate onus on the process of providing a signed SoCG for the three Councils, rather than maximising the effectiveness of plan preparation.
67. However, the authorities are agreed that, in theory, any unmet needs within the HMA should have first call on any surplus capacity. Following this, once these needs have been provided for, those of the Coastal West Sussex HMA can be considered, and then those of other adjacent and nearby authorities. Meeting the needs of other neighbouring authorities outside of the priority order would only be acceptable where this can be justified by evidence and considered jointly with the NWS HMA members.
68. Given the quantum of unmet needs in the HMA, at c 9000 dwellings, this would, in principle, make it highly unlikely that any other local authorities would ever be able to benefit from MSDC taking on any of their unmet needs. I note that this approach has previously been tested at examination in relation to Horsham and Mid Sussex's adopted Plan. However, Policy DP5 of the adopted Plan, makes explicit the importance of working to address unmet need in the sub-region.
69. This includes working with all neighbouring authorities: an approach consistent with the legislation which requires a lpa to co-operate with every other person, in maximising the effectiveness of plan preparation, in relation to the planning of sustainable development. Moreover, in the context of the significant unmet needs elsewhere,

²⁶ AP-013, Appendix 2.

which I address below, this position cannot be tenable moving forward, particularly, in the context of no active pan regional responses to the wider unmet housing need.

70. Nonetheless, I note concerns were raised in early 2023²⁷ by Crawley that, in the absence of an active WGSB, other authorities should be invited to the NWSHMA to, '*demonstrate that the NWS authorities are not just looking inwardly at the NWS HMA but are actively pursuing and awaiting engagement from the Coastal Authorities.*' As far as I am aware this has not been done.

Commented [13]: superscript

71. I have noted that in May 2024 by which time the strategy of the Plan had been established and it was ready to be submitted for examination, that it was suggested that the NWS authorities SoCG be sent to other members of the WSGB so as to, '*proactively prepare and circulate material before Plan submission which is in itself evidence of positive planning and meeting the DtC*²⁸. On the basis that both MSDC and Horsham were about to submit their plans for examination this would not be evidence of ongoing engagement; rather an attempt to retrofit co-operation into the narrative. I am also aware that I have not been provided with any evidence of whether there was formal member on-going engagement in plan preparation.

72. In sum, the housing SoCG suggests that it has not been possible to provide for unmet needs other than through any housing which is surplus to Mid Sussex's needs. This position is vague and is neither consistent with the objectives of the Framework nor those of Policy DP5 of the adopted Plan. Moreover, the SoCG appears to commit to working together to address unmet needs at a future date, citing the Water Neutrality as an issue why needs cannot be met in full. This is something which the PPG counsels against and is not relevant to my consideration of the DtC and the preparations associated with this Plan.

73. Notwithstanding the signed individual SoCGs with Crawley and Horsham, I consider that the DtC has not been met with these two

²⁷ AP-013, Appendix A2 Meeting 5 January 2023.

²⁸ AP-013, Appendix 2 Meeting 23 May 2024

constituent authorities as MSDC has not engaged constrictively, actively and on an on-going basis in plan preparation.

Other Neighbouring Authorities.

74. The latest HMA produced for MSDC is clear that there are in fact two other HMAs which overlap with the district²⁹. In addition, it is clear from the chronology of the DtC activities³⁰ supplied by the Council that that outside of the NWSHMA that MSDC has not actively engaged other than in a cursory manner.

75. MSDC officers met with officers in the South Downs National Park (SDNP) in August 2022 Given its status as a National Park it is severely constrained and lies immediately to the south of the plan area for Mid- Sussex.

76. To its south is Brighton and Hove (B & H), which like Crawley, has very little opportunity to expand. In its case, it is bound by the English Channel to the south and the SDNP to the north.

77. Currently, it has a considerable quantum of unmet needs at 17,000 dwellings, which is even greater than those of Crawley and Horsham, with substantially more likely in the future. It has been known since before the adoption of the extant Mid Sussex Plan³¹ in 2018 that B & H's unmet housing needs are, and will, remain considerable. Notwithstanding the intervening SDNP, B & H consistently ranks as being the local authority from which most people move from into Mid Sussex (1,094)³². This clearly demonstrates the close functional links in the housing market which is recognised within the SHMA and is an indicator of close functional links recognised within the PPG.

78. Notwithstanding the extensive needs of B & H, as set out above the NWSA SoCG³³ prioritises the unmet needs of Horsham and Crawley. This means the unmet needs of B & H, have to all extent and purposes been discounted. As such, irrespective of the acute need

²⁹ H1 Paragraph 1.8.

³⁰ AP-013, Appendix E.

³¹ BD1.

³² REP-42888161-002 Figure 1, source ONS table IM2022-T2b

³³ DC4.

experienced by B & H, there has been no meaningful attempt to maximise the effectiveness of plan preparation in relation to such an important strategic cross boundary issue. An informal request for Mid Sussex to help meet B & H's needs was made in September 2021.

79. I note from the minutes of the NWSA that your Council had concerns that B & H did not have a clear understanding of the extent of its unmet needs and did not agree with the hierarchy set by the three authorities. In this context, where it was self-evident that B & H has extensive unmet needs the lack of a formal request for help in meeting B & H's needs is not surprising.

80. However, even without such a request there does not appear to have been active, constructive and ongoing engagement with B & H, rather your Council had minimal interaction with B & H. It briefed and consulted on the SSM, together with other neighbouring Ipa's in September 2021. In mid-2022 a further meeting took place between the authorities. Its purpose was to, *'Explain the background to the preparation of the District Plan Review; ensure B & H is fully briefed on the plan preparation process and the evidence, and to provide an opportunity to question and understand the work of MSDC...'*³⁴. Again, this approach is not the active constructive engagement to maximise plan preparation, required by the DtC.

81. Moreover, during the meeting B & H set out its concerns, regarding the NWSA's hierarchical approach to unmet needs. As far as I can gather these were dismissed out of hand. B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing.

82. Further meetings were arranged to correspond with the Regulation 18 and 19 consultations. As such, there was little opportunity to shape the Plan outside of the consultation process.

83. Lewes lies to the east of Mid Sussex to the north of [B & Highton and Heve](#) and abuts the southern half of the district. It too is constrained. MSDC officers met with it during the Regulation consultation. Following this, MSDC was written to in February 2024 to request

³⁴ AP013- Appendix A6, meeting of 15 June 2022.

assistance in meeting a potential quantum of unmet need of around 2,675 to 6,628 dwellings to 2040.

84. Wealden completes the eastern boundary of the district and is behind Mid Sussex in its plan preparation. However, it considers that it has a shortfall of 4,071 dwellings and made a formal request again after the Regulation 19 consultation for help in relation to meeting its unmet housing needs. A DtC meeting took place with Wealden in November 2022 by which time the Regulation 18 Plan had begun its committee cycle.
85. Finally, Tandridge lies to the north of Mid Sussex. It has a number of policy constraints and considers that whilst it is at an early stage in Plan preparation that it is unlikely to be able to meet all its needs.
86. Additional requests that your Council provide for others' unmet needs have been received during the plan preparation from Worthing, Elmbridge, Hastings, Chichester, and Epsom and Ewell.
87. In sum, MSDC is surrounded by local authorities who either have an undefined or defined quantum of unmet housing needs and these needs are significant³⁵.

Conclusion

88. Crawley, [B & H Brighton and Hove](#) and other neighbouring authorities have long acknowledged significant and extensive unmet housing needs which were recognised by the previous Inspector. Moreover, other neighbouring local authorities such as Horsham have grappled with issues of Water Neutrality and potential impacts on their ability to meet their own and other's needs.
89. The review of the adopted Plan³⁶ envisaged under Policy DP5 was to ensure that additional sites could come forward in sufficient time to contribute to the sub-region's unmet housing need. This process was to be planned effectively and strategically. Clearly, it would have been an easier task for the Council if one of the wider sub-regional

³⁵ H5 paragraph 40.

³⁶ BD1

organisations actively took the lead in addressing unmet needs. However, this was not the case. Nor has any evidence been provided of co-operation at Member level.

90. Nonetheless, your officers will have been aware of this unmet need and the Council's legal obligations, well before the significant milestones in the preparation of the Plan. Consequently, in the absence of the two more geographically diverse groups taking an active role, the onus on Mid Sussex was made even greater to ensure that it addressed its legal obligations in relation to the DtC. These obligations are not discretionary. Moreover, as long as S33a of the Planning and Compulsory Purchase Act remains in force, they are required to be complied with in order for a development plan to be able to progress.
91. The obligation to maximise the effectiveness of plan preparation in addressing the real, on-going, established, and deep-seated issue of unmet needs, with the concomitant social and economic impacts of not providing homes remains. It is indisputably a difficult task given the environmental constraints within MSDC. Nonetheless, as the PPG is clear, it is not appropriate to defer addressing potentially unpopular decisions. As such, it was incumbent on the Council to wrestle even harder in relation to unmet needs.
92. In considering this obligation, I am aware that Mid Sussex has its own constraints, such as the North Downs National Landscape, the setting of the South Downs National Park and the limitations to development relating to the Ashdown Forest SPA/SAC and that the water neutrality issue effects a relatively small strip of land on the western edge of Mid Sussex.
93. Therefore, in the context of the quantum of unmet needs where requests have been made to Mid Sussex to help (c 30,000 dwellings over and above its LHN) it would be unreasonable to suggest that it could or would take a significant proportion of the unmet needs of its neighbours.
94. Moreover, it is long established that the DtC does not necessarily require a duty to agree. However, the Council should have evidenced

that it had undertaken all it could to maximise the effectiveness of plan preparation.

95. In my judgment, it is far from clear that at the outset and throughout the preparation of the Plan that a constructive and on-going approach to maximising the effectiveness of plan making was taken. In other words, there is no convincing evidence that the plan preparation was approached with an open mind in respect of taking the unmet needs of neighbouring authorities and that work on common areas of interest has been diligently undertaken by the Council for the mutual benefit of the District and neighbouring authorities.

Commented [I4]: Think you need something like this here

96. In conclusion, I consider that the Council has not undertaken constructive engagement with neighbouring authorities on an ongoing basis. The absence of such engagement means the submitted plan has not been shaped by an adequate consideration of the strategic issue of housing, nor has the Council adequately engaged with neighbouring authorities to assist in their plan-making processes. Had it done so, and maximised the effectiveness of plan preparation, the overarching development strategy of the submitted Plan, including the amount and location of development could well have been different.

97. In sum, I appreciate that the contents of this letter will be a disappointment to you. However, a failure to meet the DtC is a matter which cannot be rectified. Consequently, I would ask that you consider your position and whether you will withdraw the Plan or ask that I write a report, whose contents are likely to be very similar to this letter.

98. I have asked that the Programme Officer posts a copy of this letter on the website. However, I am not inviting comment from other examination participants.

Yours Sincerely
Louise Nurser

INSPECTOR

Emily Clapp

From: Berkeley, Simon [REDACTED]
Sent: 17 February 2025 15:52
To: Nurser, Louise
Cc: Baugh-Jones, Hayden
Subject: Mid Sussex letter
Attachments: Mid Sussex letter 060225 H.docx

Hi Louise

I've read your draft letter to Mid Sussex. I think you're right to follow the path you have – from what you've said, it does appear to me that they have failed the DtC.

I've made some suggestions and comments on the attached tracked changes draft. Nothing earth-shattering! Have a look and see what you think. I have commented that the first five pages (or thereabouts) are taken up setting out in detail what the legislation and national policy/guidance says. I don't think this is necessary and could be deleted or trimmed down significantly – but, at this stage, it's all about remaining as safe as possible from challenge, and this doesn't cause a problem in that regard. Plus, I think issuing the letter expediently is a priority now. So I'll leave you to ponder that!

Hope that helps. Any queries, do give me a shout. 😊

S

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DPC:76616c646f72



Dear Mr Marsh

1. Firstly, I would like to thank you for the way in which your team, together with other participants have engaged and helped me with my examination of the Mid Sussex District Plan 2021-2039 (the Plan). I apologise for the delay in responding.
2. As you are aware I have been appointed by the Secretary of State to examine the Plan, not only in relation to whether it meets the tests of soundness, as set out in the September 2023 version of the National Planning Policy Framework (Framework) but also whether it is legally compliant.
3. In my initial letter of August 7, 2024, I set out that I would examine the Plan in two stages as there were some fundamental issues, including the Duty to Co-operate (DtC), that required testing before I could be confident that I could move to the Stage 2 hearings.
4. Following the end of the Stage 1 hearings I asked for various additional pieces of work to be provided to the examination. This included, amongst which I asked that you provide any detailed evidence in relation to the DtC which you had not previously submitted, including copies of relevant agendas and minutes of meetings (AP0013). This was to ensure that you were given every opportunity to demonstrate that you had co-operated with the relevant prescribed bodies and complied with the DtC. I am now in receipt of the this and the other additional work¹ ~~which I requested following the close of the Stage 1 hearing sessions.~~
5. I am aware that no neighbouring authority nor any other prescribed body has suggested that Mid Sussex had not met the legal duty. I also note and that signed Statements of Common Ground have been received relating to all the neighbouring Councils and some, ~~but although~~ not all, of the prescribed bodies. ~~During the hearing sessions I queried whether this was significant and was told that I should give due weight to this, but that it should not be determinative as it is a matter for my judgment.~~

¹ Including the consultation responses to AP-018.

6. ~~Nevertheless. Unfortunately,~~ in relation to the strategic matter of the unmet housing needs of neighbouring LPAs, I have now concluded that found the Council has not met the DtC, in its preparation of the Plan. A failure to meet the DtC is fatal to the progression of a Plan and cannot be rectified following submission.

Duty to Co-operate

Legislation

7. Section 33a of the Planning and Compulsory Purchase Act (P & CPA 2004) sets out the legal obligations ~~incumbent~~ on local planning authorities (lpas), amongst others, with regard to the DtC in relation to the planning of sustainable development.

8. As you are aware as part of my examination of the Plan, I must be content that the lpa has complied with any duty imposed on the authority by S33a of the P & CPA 2004.

~~9. Mid Sussex District Council (MSDC) is a local planning authority. The duty is not discretionary, and therefore this legal obligation relates to it, in its preparation of development plan documents, and other activities related to their preparation as far as they relate to a strategic matter.~~

~~10.9.~~ The DtC requires that local planning authorities must co-operate in maximising the effectiveness with which activities are undertaken.

~~11.10.~~ The DtC ~~It also~~ requires every person, such as in this case, MSDC, to engage constructively, actively and on an on-going basis in any process, by which means activities, including local plan preparation, is undertaken. This legislation has remained in force throughout the preparation of the plan. As such, MSDC must have complied with it. It also requires MSDC to have regard to the activities of others, as long as they relate to a relevant strategic matter.

~~12.11.~~ A strategic matter is defined, amongst other matters, as a use of land that would have a significant impact on at least two

Commented [SB1]: I'm making some changes to the way the headings/sub-headings are formatted just as a suggestion - with the aim of making it easier to understand exactly where one (the reader) is in terms of what's being dealt with - if you see what I mean.

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planning areas. ~~The matter of unmet housing needs is generally considered to be such a matter.~~

Commented [SB2]: Maybe delete from here as this is picked up under the Framework section below.

~~43.12.~~ Engagement requires *considering* agreeing joint approaches to undertaking activities. This includes the preparation of joint local development documents under section 28 of the PCP.

~~44.13.~~ In undertaking the DtC, the Act requires that regard must be had to the guidance in complying with the DtC provided by the Secretary of State. This guidance is set out in the Framework and the Planning Practice Guidance.

The Framework

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~~45.14.~~ Paragraphs 24- 27 of the Framework, set out how the DtC should be implemented. It stresses the importance of effective and on-going joint working between strategic policy-making authorities and relevant bodies as being integral to a positively prepared and justified strategy. Of particular relevance to the Plan, is that joint working should help to determine whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

~~46.15.~~ It notes that Statements of Common Ground (SoCG) should be prepared and maintained by strategic policy making bodies throughout plan preparation to demonstrate effective and on-going joint working. These should document cross boundary matters which are being addressed throughout the plan preparation process; the progress in co-operation; and be publicly available throughout the plan-making process.

Planning Practice Guidance

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~~47.16.~~ The Planning Practice Guidance (PPG) sets out the approach to producing SoCG and its content. This is as a means by which it can be demonstrated that a plan is based on effective co-operation, that the lpa sought to produce a strategy based on

Commented [SB3]: Small point - you switch between caps and lower case with this acronym - better to choose one and stick to it.

agreements with other authorities and provides further detail on how the DtC is to be implemented.

~~18.~~17. The PPG explains in detail what is expected to be contained within a SoCG. ~~See~~This includes, as appropriate; identifying the key strategic matters to be addressed; governance arrangements; housing requirements in emerging or adopted plans; how needs are to be distributed or agreeing the distribution of need across the area; a record of agreement or disagreement on key strategic matters, and the process for reaching agreements; any other additional strategic matters; and how the SoCG relates to other relevant SoCG. The SoCG is to be concise and proportionate to the matters addressed, and not to record every interaction.

~~19.~~18. The SoCG are expected to set out the capacity within the strategic policy making areas to meet their own needs; the extent of unmet need; and any agreement or not, on the extent to which these needs are capable of being redistributed. Whilst it is expected that only one SoCG need be produced, it is possible to produce more than one.

~~20.~~19. The SoCG are envisaged to document the activities undertaken in co-operating in addressing strategic cross boundary matters. The PPG sets out a list which is not exhaustive, of what LPAs should document. Namely, working together at the outset of the Plan making process to identify cross-boundary matters that will need addressing; producing or commissioning joint research and evidence; assessing impacts of emerging policies; and preparing joint, or agreed, strategic policies affecting more than one authority area to ensure development is coordinated, such as through the distribution of unmet needs.

~~21.~~20. The geographical area will depend on the strategic matters being planned for, informed by a review of the strategic matters, and early engagement with neighbouring authorities and other stakeholders, based on demonstrable cross boundary relationships. This can include housing market areas and authorities should be pragmatic in determining the areas. The PPG sets out how housing market areas can be defined, including through migration flows and housing search patterns.

22-21. SoCG are expected to be available throughout the plan making process, including as a minimum, once the area it covers and governance arrangements have been defined, and the matters to be addressed are determined. SoCG should be available when a draft plan has been published.

Commented [I4]: Not sure I understand this first sentence

23-22. Authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.

Commented [SB5]: A general point: up to this point the letter is basically setting out in meticulous detail what the legislation and national policy/guidance say. It's not a problem (in terms of challenge) but I don't think it's necessary. Ideally this could be deleted - but I recognise the pressure to get the letter out asap, so in that context I'll leave it to you.

24-23. The PPG is explicit that inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or do not rely on the inspector to direct them. It also reiterates that the DtC cannot be rectified post submission.

Plan Preparation

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25-24. It is not clear when the review of the Plan began. In your Matter 1 hearing statement², the Plan review is reported as starting in 2020, yet the Council's most recent evidence has the process both beginning in July 2021³ and March 2022⁴. This lack of clarity is significant as the legislation requires ongoing engagement throughout the plan preparation process. As such, it is important to know when this is given the importance of identifying the cross boundary matters which need addressing at the outset of the plan making process.

26-25. Notwithstanding the inconsistencies in your evidence, I have taken the July 2021 date set out in the chronology accompanying your response to Action Point 13 provided in November 2024, as the starting point for plan preparation. The preparation of the Plan ended at its submission of the Plan on July 10, 2024. Therefore, it is this

²² MSDC Matter 1: Paragraph 1.5.

³ AP-013 Appendix E.

⁴ AP-013 Appendix A1 page A1-3

period which is relevant for my determining MSDC's compliance with the DtC.

Background and context-

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~~27-26.~~ A Duty to Co-operate Framework was produced in 2015⁵ and is considered by the Council to remain relevant to the Plan. However, this has not been updated nor has the **Duty to Co-operate Protocol and Checklist** been adhered to. ~~to, to, c~~ Consequently, there is no little direct evidence to demonstrate how co-operation has maximised the effectiveness of plan preparation.

Commented [SB6]: I'm not sure what these things are - but so long as the lpa is aware (presumably there will be), that's probably not an issue.

~~28-27.~~ There are a number of strategic matters such as transport, or habitat considerations where I am confident that, whilst there may be some soundness issues which require addressing, the DtC has been complied with. Similarly, whilst I note that the Council has not provided signed SoCGs with all of the prescribed bodies set out in legislation, I do not consider this to have been determinative in my judgment as to whether the Council has met the DtC.

~~29-28.~~ However, the extensive unmet housing needs of neighbouring authorities has historically been a strategic issue in the sub-region that has required active, on-going and constructive engagement, and remains relevant to plan preparation.

~~30-29.~~ This is clearly articulated in Policy DP5 of the adopted Mid Sussex District Plan 2014-2031⁶. [The examining Inspector for that plan](#) ~~This which was inserted by the examining Inspector. It~~ required the Council to undertake a prompt review of the Plan and to work under the 'Duty-to-Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed need for housing across the Housing Market Areas. As such, I am primarily concerned with how the Council has complied with the DtC in relation to housing.

Commented [I7]: Would this read better?

Commented [SB8]: Maybe add a v brief para after the sub-regional heading saying something like: There are some (two?) bodies in the sub-region with which the LPA could, theoretically, have engaged under the DtC as a means of engaging with neighbouring local authorities. The issue here is whether the LPA did that and, if not, whether the necessary engagement was undertaken directly with the neighbouring local authorities.

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Sub-regional co-operation-

⁵ DC2

⁶ BD1

West Sussex Greater Brighton Planning Board

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~~34~~30. Great onus is given to the West Sussex Greater Brighton Planning Board (WSGB) within the submission Plan. It is explicitly mentioned within the emerging Plan within the Background and DtC sections as an important strategic body within the wider sub-region. As written, it appears to be an active vehicle for navigating the DtC and is cited as an example of 'ongoing work'⁷ and is extensively referenced and relied upon within SoCG with individual authorities as well as the Northern West Sussex SoCGs.

~~32~~31. It was also cited in the DtC Compliance Statement⁸ as one of the formal groupings with which the Council has engaged. I was led to expect that a SoCG with the Board would be submitted to the examination. During the hearings I requested a paper setting out why this had not been provided, given the importance seemingly given to it within the Plan and the Council's hearing statement. This detailed paper⁹ which was signed at officer level some five months after the submission of the Plan dispels the notion that the ~~WSGGSB~~ could have been a vehicle for cross boundary co-operation during most of the time when the Plan was being prepared. Moreover, it reported that in December 2023 the officers agreed that the group could not support the development of the current wave of local plans in the region¹⁰.

Commented [SB9]: Is that the Board's officers? If so, might assist to clarify.

~~33~~32. This is not surprising given that the last time the Board met was in March 2021¹¹. The Regulation 18 consultation took place over a year later in the following November 2022. Therefore, from March 2021 by which time your most recent evidence suggests Plan making had not even begun¹², the Board had not been an active group. As such, it could not have engaged constructively, actively and on an ongoing basis with Mid Sussex in plan preparation. Consequently, it should not have been relied upon or prayed in aid to demonstrate the compliance of the Plan with the DtC in either the Regulation 18 or

Commented [SB10]: Should this be the other way around - that Mid Sussex could not have engaged with the Board ... given that it's the Ipas compliance with the DtC that we're talking about here.

⁷ DP1, pages 10, 11 and 23.

⁸ DC1, paragraph 4.

⁹ AP-011

¹⁰ AP-011 page 9, paragraph 43.

¹¹ AP-013 Appendix A3, page A3-9.

¹² AP-013 Appendix E, page 3.

Regulation 19 plans or the evidence which has been provided to the examination.

~~34.~~33. My understanding is that work on future strategic planning issues has been '*paused*', albeit this has been for years rather than months, but nonetheless it has not been '*abandoned*' by the Board.

~~35.~~34. I am aware that West Sussex and Greater Brighton Planning Officers Group met a further three times during this period. However, no minutes¹³ have been provided to demonstrate how, or if at all, these meetings contributed to ~~maximise~~maximising the effectiveness of plan making with particular relation to the distribution of unmet housing needs.

Gatwick Diamond Board

~~36.~~ The Council's Chronology of the DtC only mentions the Gatwick Diamond Board twice: once in a DtC meeting in October 2023, prior to Scrutiny Committee's consideration of the consultation Plan and latterly after the Regulation 19 consultation had completed. By this time there was little scope for any change to the strategy of the Plan. There is nothing within the agenda or minutes which have been provided to suggest that the Board played an active role in proactively considering unmet needs and the role of Mid Sussex's Plan.

Overall

~~37.~~Therefore Given the above, it is clear that neither of the two sub-regional bodies has played an active role in influencing plan preparation, including, ~~addressing~~ addressing unmet housing needs within the sub-region.

~~35.~~

~~38.~~36. As such, they have not been vehicles to maximise the effectiveness of Plan making. Put simply there has not been a sub-regional body which has taken a strategic overview to help distribute housing within the sub-region so the unmet needs of households can be provided for, ~~so that people have somewhere to live.~~ However, this lack of active wider sub-regional bodies does not

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¹³ Ditto, page A3-10.

obviate the Council from its legal responsibilities in relation to the DtC which I address below. The question then, essentially, is what steps the LPA took to discharge those responsibilities directly with neighbouring local authorities. I turn now to consider this

Co-operation with neighbouring local authorities

Outset of plan preparation-

~~39-37.~~ The Council met with all neighbouring authorities in the autumn of September 2021, setting out their approach to its call for sites, its housing requirement, and accepted that unmet need from other authorities would be needed to be factored in. At face value the approach seemed consistent with the PPG as further individual meetings were to be scheduled in relation to the DtC and a consultation undertaken on the Site Selection Methodology to be used. This was to be amended on an iterative basis.

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Rest of plan preparation to submission

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~~40-38.~~ There is little evidence to suggest that this active, constructive engagement continued on an on-going basis throughout plan preparation which I explore below.

~~41.~~ I am aware that a considerable proportion of the SoCG were submitted well after the submission of the Plan and what could reasonably be considered to be in the spirit of the guidance set out in the PPG. Nonetheless, whilst the late production of SoCGs is indicative of the seriousness of the Council's approach to engaging with the DtC, it has not been determinative in my decision relating to its legal obligation.

~~39. Co-operation with individual neighbouring authorities.~~

~~Crawley-~~

~~42-40.~~ Crawley lies to the northwest of Mid- Sussex and together with Horsham and Mid Sussex form the NWHMA. The Borough has

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long established difficulties in meeting its own needs due to the constraints of an intensely developed urban settlement with little opportunity for additional growth. Indeed, the Mid Sussex adopted Plan (BD1) attributes an additional housing requirement of 1,498 dwellings to help meet Crawley's unmet needs. Nonetheless, Crawley remains unable to meet all of its own needs. ~~Recently,~~ Crawley's local plan was adopted in 2024. This established that there was an outstanding need from 2023- 2040 for 7,505 dwellings which cannot be catered for within its own boundary. This situation is unlikely to change in the future.

~~43.41.~~ Mid Sussex was formally approached in January 2020 for help in meeting Crawley's needs prior to the plan preparation beginning, and again in April 2023, well before the ~~final version of the~~ Regulation 19 draft of Mid Sussex's LP was finalised in November 2023, and the Regulation 19 consultation itself in January 2024. Consequently, the principle of it having substantial unmet needs has been known prior to and throughout the preparation of Mid Sussex's Plan and indeed is central to the review of the Plan required by Policy DP5 of the adopted Plan.

~~44.42.~~ Your Council's response to both formal requests has been to state that it is committed to working with Crawley in a positive manner. However, the first letter stated that any consideration of unmet needs would have to be in the context of Mid Sussex reviewing its own plan and querying whether Crawley had exhausted all opportunities to increase capacity. The second set out how Mid Sussex had shared its Site Selection Methodology (SSM), held briefings to share the initial outcomes of the Site Selection Process, and commissioned an Urban Capacity Study. It also set out the extent of any surplus in capacity. However, it did not take a positive approach to addressing unmet needs, as it was '*not in a position to confirm the total deliverable housing in the District and therefore the amount of housing it may be able to provide to meet unmet need*¹⁴'. This was not the positive engagement required; rather a means to rebuff any request.

Commented [SB16]: I wonder if this is quite the right thing to say? Is the point here that that was the end of co-operation with Crawley - no further, ongoing or constructive engagement was undertaken once the potential capacity to assist was known, such that Crawley's approach was, in effect, ignored? If so, might be better to put it that way.

¹⁴ AP-013, Appendix 7, letter of 20 June 2023.

45.43. A SoCG¹⁵ with Crawley was submitted to the examination over two months after the Plan had been submitted and I have not been provided with earlier iterations. This SoCG was provided well after what could be considered a reasonable delay, particularly as the consultation on the Regulation 19 version of the Plan, had taken place at the turn of the year, after which there was little opportunity to influence plan preparation. The SoCG refers to the historic work which has been undertaken prior to the commencement of work on the Plan and the wider Northern West Sussex HMA¹⁶, which I consider below. A number of shared objectives are set out. It is agreed that a *'robust and appropriate SHMA has been completed for each local authority'*, and that MSDC has shared and invited comments on the site selection process.

46.44. Nonetheless, I have interpreted the phrase *'that **each** considers that they are doing the maximum reasonable to meet the housing needs'*, in the context of Crawley's Regulation 19 response to DPH1: Housing. Here Crawley set out a number of concerns relating to the submission Plan, including a recommendation that, *'all potential sources of housing supply which might contribute to meeting identified needs are proactively explored...'*¹⁷. This clearly suggests that Crawley did not consider that Mid Sussex was doing the maximum reasonable to meet the unmet housing needs which Policy DP5 envisaged and the DtC requires.

47.45. Moreover, the SoCG sets out that both authorities will engage with other DtC forums and references future work. Whilst this may be sensible, it is not relevant to the examination of the Plan as the DtC ~~can~~ only relates to activity up to submission.

48.46. In sum, notwithstanding the examples of cross boundary work which have taken place, such as the co-operation relating to the allocation at Crabbet Park which falls on the boundary between Crawley and MSDC, and whose housing will contribute to MSDC's housing requirement, I am not convinced that Mid Sussex has engaged constructively, actively and on an ongoing basis during plan

¹⁵ DC6

¹⁶ DC3 and DC4

¹⁷ Crawley Borough Response to Regulation 19 consultation.

preparation to help Crawley with its extensive and widely anticipated, on-going unmet housing needs.

~~49.47.~~ Indeed, the LPA ~~#~~ has not committed to providing a definitive quantum of housing for Crawley's needs, ~~rather~~ instead relying on whatever is left once Mid Sussex's own needs have been provided for. This is the antithesis to the approach set out in Policy DP5 of the adopted Plan, and reflecting the legislation underpinning the DtC which would require a planned, strategic approach to be taken to wider housing needs.

Commented [SB17]: I'd delete this - the policy isn't really the point, better to focus on the legislation (and ref the policy after, perhaps?)

Horsham

~~50.48.~~ To the west of MSDC is Horsham. Historically, with Mid Sussex, it has met Crawley's unmet housing needs within the Northern West Sussex Housing Market Area (NWSHMA). Following Natural England's Position Statement, published in late 2021 there are unresolved issues, which do not form part of my examination, relating to water neutrality and housing provision. A small part of the Mid Sussex's boundary with Horsham falls within the Water Neutrality Zone. However, Horsham is extensively affected, and its position is that it cannot meet its own housing needs in full or help meet Crawley's unmet needs.

~~51.49.~~ This position would have been evident early in Mid Sussex's plan preparation and there may have been an opportunity for Mid Sussex to work constructively to address some of those needs. Indeed, in August 2022 Horsham wrote to your Council suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology be reappraised¹⁸. I am aware whilst any site taken forward as a result of the Regulation 18 and Regulation 19 consultations were considered, no further sites were allocated throughout the plan preparation process.

~~52.50.~~ Following a meeting in August 2023, it was not until November 2023 that Horsham formally requested the help of Mid Sussex to cater for the excess 2,275 homes for which it considers that it cannot identify sites without falling foul of the Habitat

¹⁸ AP-013- Appendix A2.

Regulations. However, by this time the strategy of the Plan had been set, albeit the Regulation 19 consultation had not begun.

~~53.51.~~ I note that Mid Sussex did not formally respond to Horsham's request, sent in late November 2023 until early March 2024. This was over three months later and after your Regulation 19 consultation had been completed. By this time there was little opportunity to maximise the effectiveness of plan preparation.

~~54.52.~~ Moreover, whilst the letter was full of goodwill and commitment to continuing engagement, citing Mid Sussex's sharing of its SSM and its maximisation of its housing supply, it did not provide any meaningful evidence of what, if anything, Mid Sussex could do to help Horsham. Rather it relied on the imprecise and vague approach to meeting unmet needs within the ~~Northern West Sussex Housing Market Area (NWSHMA)~~ set out within the Housing SoCG which I consider below.

Northern West Sussex Housing Market Area

~~55.53.~~ The Northern West Sussex authorities of Horsham, Crawley and Mid Sussex have~~s~~ long been recognised as an established Housing Market Area (HMA)¹⁹. They have a long history of working together with a wider remit than housing. However, my examination of the Plan and the DtC in relation to the planning of sustainable development can only relate to the period between the commencement of work on the Plan and its submission in July 2024. A General SoCG²⁰ was signed in July 2024 but received after submission of the Plan.

~~56.54.~~ I appreciate that a joint Plan has not been taken forward. In common with my fellow inspectors who examined Crawley's Plan, I consider this to be reasonable in the circumstances of each of the three authorities starting their plan making at significantly different times.

~~57.55.~~ Other than the Water Neutrality work²¹, much of the joint activity and evidence bases to which I have been referred, including

¹⁹ Para 1.5, H1

²⁰ DC3.

²¹ ENV13.

the At Crawley Study 2009²², predates the commencement of the emerging Mid Sussex plan and the emergence of the current wider sub-regional issue of unmet housing need.

Commented [SB18]: The Plan?

~~58-56.~~ I also note that the three authorities reference working positively together as part of the WSGB and the GDB to demonstrate their compliance with the DtC. However, as already established the WSGB has had a diminished, or indeed no role during the time in which the Plan has been prepared.

Commented [SB19]: Not sure what this is

~~59-57.~~ The three authorities have also signed a specific SoCG relating to housing²³. Again, this leans heavily on historic joint evidence bases such as the Housing Market Appraisals (HMA) which confirm that the three local authorities make up the principle HMA for each authority. This SoCG makes explicit that the DtC remains relevant with an unmet housing need of 8,947 dwellings within the three authorities.

~~60-58.~~ However, it does not set out in a convincing manner how their engagement increased the effectiveness of plan making, such as setting a definitive figure for or even a range of, the quantum of housing which Mid Sussex should provide to contribute towards unmet needs.

~~61-59.~~ The SoCG suggests that at the time of its signing, after the submission of the Plan, that Mid Sussex has a headroom of 1,208 dwellings. However, there is no consideration of how this surplus would be distributed between the two lpas. Nor, has a fixed quantum of development which could be relied upon been set and an explanation of how it would relate to any annual requirement and subsequent monitoring. This is particularly important, given that the oversupply figure is also expected to contribute to the resilience of MSDC's own housing supply, to be drawn on by MSDC in the event that were some of the sites within the Plan do not to come forward²⁴.

~~62-60.~~ This lack of clarity is pertinent as during the Pplan's preparation the surplus has varied from 302 dwellings at the

²² O12.

²³ DC4.

²⁴ DP1, DPH1.

Regulation 18 consultation (which was purely to ensure resilience for MSDC), to 996 dwellings in relation to the Regulation 19 plan, and finally after submission, within the agreed SoCG, the Councils suggest a headroom of 1,208 dwellings. All these changes have taken place without any additional allocations. Consequently, there must be a significant question mark as to how reliable any potential contribution would be in meeting unmet needs. Moreover, there is an unmet need of 59 pitches from Horsham of Gypsy and Traveller accommodation.

~~63-61.~~ Meaningful co-operation has been couched in terms of the difficulties in taking on unmet needs. Much effort has been put to setting out why the unmet pressures cannot be managed, such as the agreement that the authorities have 'worked to explain and understand each other's housing supply position' and that there were no further suitable sites close to the administrative borders. However, the ability to provide homes to meet the needs of neighbouring authorities should not be restricted to sites close to the boundary given the extent of the reach of the HMA within Mid Sussex.

~~64-62.~~ In coming to this conclusion, I am aware of the historic Mayfield site proposal²⁵ which would straddle the Horsham and MSDC border, with the majority of the proposed 10,000 homes provided within Horsham District. However, this has not had the support of HDC since before the beginning of the preparation of MSDC's Plan. Therefore, it has not been actively pursued and has been withdrawn from consideration by the site promoter.

Commented [SB20]: Not sure how this para is relevant?

~~65-63.~~ I note that each authority references their independence in relation to housing and employment targets and timetables for plan production citing their rights to develop their own plans that fit the specific circumstances of the District/Borough's communities. Clearly, this right is incontrovertible.

Commented [SB21]: Again, not sure how relevant?

~~66-64.~~ In sum, it seems from the minutes of the meetings provided²⁶ that there has been a disproportionate onus on the process of

²⁵ SSP3, site 678.

²⁶ AP-013, Appendix 2.

providing a signed SoCG for the three Councils, rather than maximising the effectiveness of plan preparation.

67-65. However, the authorities are agreed that, in theory, any unmet needs within the HMA should have first call on any surplus capacity. Following this, once these needs have been provided for, those of the Coastal West Sussex HMA can be considered, and then those of other adjacent and nearby authorities. Meeting the needs of other neighbouring authorities outside of the priority order would only be acceptable where this can be justified by evidence and considered jointly with the NWS HMA members.

68-66. Given the quantum of unmet needs in the HMA, at c 9000 dwellings, this would, in principle, make it highly unlikely that any other local authorities would ever be able to benefit from MSDC taking on any of their unmet needs. I note that this approach has previously been tested at examination in relation to Horsham and Mid Sussex's adopted Plan. However, Policy DP5 of the adopted Plan, makes explicit the importance of working to address unmet need in the sub-region.

69-67. This includes working with all neighbouring authorities: an approach consistent with the legislation which requires a lpa to co-operate with every other person, in maximising the effectiveness of plan preparation, in relation to the planning of sustainable development. Moreover, in the context of the significant unmet needs elsewhere, which I address below, this position cannot be tenable moving forward, particularly, in the context of no active pan regional responses to the wider unmet housing need.

70-68. Nonetheless, I note concerns were raised in early 2023²⁷ by Crawley that, in the absence of an active WGSB, other authorities should be invited to the NWSHMA to, 'demonstrate that the NWS authorities are not just looking inwardly at the NWS HMA but are actively pursuing and awaiting engagement from the Coastal Authorities.' As far as I am aware this has not been done.

Commented [SB22]: Practice?

Commented [SB23]: In the wider sub-region, including beyond the HMA?

Commented [SB24]: Is this a ref to Policy DP5?

Commented [SB25]: I'd go careful here - you're assessing whether the DtC has been met, not whether lpas should be actually agreeing to address unmet needs.

Commented [SB26R25]: And this sentence appears to be about the future - which is not what you're looking at.

Commented [I27]: superscript

²⁷ AP-013, Appendix A2 Meeting 5 January 2023.

71-69. I have noted that in May 2024, by which time the strategy of the Plan had been established and it was ready to be submitted for examination, ~~that~~ it was suggested that the NWS authorities SoCG be sent to other members of the WSGB so as to, '*proactively prepare and circulate material before Plan submission which is in itself evidence of positive planning and meeting the DtC*'²⁸. On the basis that both MSDC and Horsham were about to submit their plans for examination this would not be evidence of ongoing engagement; rather an attempt to retrofit co-operation into the narrative. I am also aware that I have not been provided with any evidence of whether there was formal member on-going engagement in plan preparation.

Commented [S828]: A nice phrase and you're probably right - but ... co-operation runs up to submission. Maybe something like: ... Given that both MSDC and Horsham were about to submit their plans for examination, it is difficult to see how this amounts to engagement of any meaningful sort. Rather, it seems to me that it was an attempt to focus the collective narrative around performance in relation to the DtC. That is not, in and of itself, co-operation under the Duty.

72-70. In sum, the housing SoCG suggests that it has not been possible to provide for unmet needs other than through any housing which is surplus to Mid Sussex's needs. This position is vague and is neither consistent with the objectives of the Framework nor those of Policy DP5 of the adopted Plan. Moreover, the SoCG appears to commit to working together to address unmet needs at a future date, citing the ~~w~~Water ~~n~~Neutrality as a ~~reason~~ ~~issue~~ why needs cannot be met in full. This is something which the PPG counsels against and is not relevant to my consideration of the DtC and the preparations associated with this Plan.

73-71. Notwithstanding the signed individual SoCGs with Crawley and Horsham, I consider that the DtC has not been met with these two constituent authorities as MSDC has not engaged constructively, actively and on an on-going basis in plan preparation.

~~Other Neighbouring Authorities:~~

74-72. The latest HMA produced for MSDC is clear that there are in fact two other HMAs which overlap with the district²⁹. In addition, it is clear from the chronology of the DtC activities³⁰ supplied by the Council that that outside of the NWSHMA that MSDC has not actively engaged other than in a cursory manner.

²⁸ AP-013, Appendix 2 Meeting 23 May 2024

²⁹ H1 Paragraph 1.8.

³⁰ AP-013, Appendix E.

~~75-73.~~ MSDC officers met with officers in the South Downs National Park (SDNP) in August 2022. Given its status as a National Park it is severely constrained and lies immediately to the south of the plan area for Mid- Sussex.

~~76-74.~~ To its south is Brighton and Hove (B & H), which like Crawley, has very little opportunity to expand. In its case, it is bound by the English Channel to the south and the SDNP to the north.

~~77-75.~~ Currently, it has a considerable quantum of unmet needs at 17,000 dwellings, which is even greater than those of Crawley and Horsham, with substantially more likely in the future. It has been known since before the adoption of the extant Mid Sussex Plan³¹ in 2018 that B & H's unmet housing needs are, and will, remain considerable. Notwithstanding the intervening SDNP, B & H consistently ranks as being the local authority from which most people move from into Mid Sussex (1,094)³². This clearly demonstrates the close functional links in the housing market which is recognised within the SHMA and is an indicator of close functional links recognised within the PPG.

~~78-76.~~ Notwithstanding the extensive needs of B & H, as set out above the NWSA SoCG³³ prioritises the unmet needs of Horsham and Crawley. This means the unmet needs of B & H, have to all extent, intents and purposes been discounted. As such, irrespective of the acute need experienced by B & H, there has been no meaningful attempt to maximise the effectiveness of plan preparation in relation to such an important strategic cross boundary issue. An informal request for Mid Sussex to help meet B & H's needs was made in September 2021.

~~79-77.~~ I note from the minutes of the NWSA that your Council had concerns that B & H did not have a clear understanding of the extent of its unmet needs and did not agree with the hierarchy set by the three authorities. In this context, where it was self-evident that B & H has extensive unmet needs the lack of a formal request for help in meeting B & H's needs is not surprising.

Commented [SB29]: That's the phrase, isn't it?

Commented [SB30]: Should this be opening sentence of next para?

Commented [SB31]: Not sure what the difference is between a formal and informal request? Does it matter?

³¹ BD1.

³² REP-42888161-002 Figure 1, source ONS table IM2022-T2b

³³ DC4.

~~80-78.~~ However, even without such a request there does not appear to have been active, constructive and ongoing engagement with B & H, rather your Council had minimal interaction with B & H. It briefed and consulted on the SSM, together with other neighbouring lpa's in September 2021. In mid-2022 a further meeting took place between the authorities. Its purpose was to, *'Explain the background to the preparation of the District Plan Review; ensure B & H is fully briefed on the plan preparation process and the evidence, and to provide an opportunity to question and understand the work of MSDC...'*³⁴. Again, this approach is not the active constructive engagement to maximise plan preparation, required by the DtC.

~~84-79.~~ Moreover, during the meeting B & H set out its concerns, regarding the NWSA's hierarchical approach to unmet needs. B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing. As far as I can gather these points were dismissed out of hand. ~~B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing.~~

Commented [SB32]: Without constructive dialogue or any otherwise meaningful exploration of the issues, maybe? Out of hand seems a bit harsh ...

~~82-80.~~ Further meetings were arranged to correspond with the Regulation 18 and 19 consultations. As such, there was little opportunity to shape the Plan outside of the consultation process.

Commented [SB33]: Not sure this is true re Reg 18.

~~83-81.~~ Lewes lies to the east of Mid Sussex to the north of B & Highton and Hove and abuts the southern half of the district. It too is constrained. MSDC officers met with it during the Regulation consultation. Following this, Lewes wrote to MSDC ~~was written to~~ in February 2024 to request assistance in meeting a potential quantum of unmet need of around-between 2,675 and ~~to~~ 6,628 dwellings to 2040.

Commented [SB34]: I think you need to say what MSDC did in response to the request ... otherwise it's left hanging.

~~84-82.~~ Wealden completes the eastern boundary of the district and is behind Mid Sussex in its plan preparation. However, it considers that it has a shortfall of 4,071 dwellings and made a formal request again after the Regulation 19 consultation for help in relation to meeting its unmet housing needs. A DtC meeting took place with

³⁴ AP013- Appendix A6, meeting of 15 June 2022.

Wealden in November 2022 by which time the Regulation 18 Plan had begun its committee cycle.

Commented [SB35]: As with Lewes, this is inconclusive - I can't tell whether this is part of the shortcoming or not.

~~85-83.~~ Finally, Tandridge lies to the north of Mid Sussex. It has a number of policy constraints and considers that whilst it is at an early stage in Plan preparation that it is unlikely to be able to meet all its needs.

Commented [SB36]: Not sure how this fits in with Dtc failure. If it doesn't, is there any need to mention it? Wasn't Tandridge's LP at examination for much of Mid Sussex's plan preparation?

~~86-84.~~ Additional requests that your Council provide for others' unmet needs have been received during the plan preparation from Worthing, Elmbridge, Hastings, Chichester, and Epsom and Ewell.

Commented [SB37]: Again ... so what? What has MSDC done/not done about it?

~~87-85.~~ In sum, MSDC is surrounded by local authorities who either have an undefined or defined quantum of unmet housing needs and these needs are significant³⁵.

Commented [SB38]: As above

Conclusion

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~~88-86.~~ Crawley, ~~B & H Brighton and Hove~~ and other neighbouring authorities have long acknowledged significant and extensive unmet housing needs. ~~Indeed, these which~~ were recognised by the previous Inspector. Moreover, other neighbouring local authorities such as Horsham have grappled with issues of ~~w~~Water ~~n~~Neutrality and potential impacts on their ability to meet their own and other's needs.

~~89-87.~~ The review of the adopted Plan³⁶ envisaged under Policy DP5 was to ensure that additional sites could come forward in sufficient time to contribute to the sub-region's unmet housing need. This process was to be planned effectively and strategically. Clearly, it would have been an easier task for the Council if one of the wider sub-regional organisations actively took the lead in addressing unmet needs. However, this was not the case. ~~Nor has any evidence been provided of co-operation at Member level.~~

Commented [SB39]: This feels slightly out of place in this para - maybe move elsewhere?

~~90-88.~~ Nonetheless, your officers will have been aware of this unmet need and the Council's legal obligations, well before the

³⁵ H5 paragraph 40.

³⁶ BD1

significant milestones in the preparation of the Plan. Consequently, in the absence of the two more geographically diverse groups taking an active role, the onus on Mid Sussex was made even greater to ensure that it addressed its legal obligations in relation to the DtC. These obligations are not discretionary. Moreover, as long as S33a of the Planning and Compulsory Purchase Act remains in force, they are required to be complied with in order for a development plan to be able to progress.

Commented [SB40]: Do you mean the sub-regional groups?

Commented [SB41]: Hmm - I'd go careful here - it almost sounds like you're saying the legal onus was made greater, which isn't the case - it's just that in practical terms the inactivity of the sub-regional groups meant that MSDC needed to co-operate directly with each local authority directly.

Commented [SB42]: That seems redundant, why say it? I'd suggest deleting the last sentence here.

91-89. The obligation to maximise the effectiveness of plan preparation in addressing the real, on-going, established, and deep-seated issue of unmet needs, with the concomitant social and economic impacts of not providing homes remains. It is indisputably a difficult task given the environmental constraints within MSDC. Nonetheless, as the PPG is clear, it is not appropriate to defer addressing potentially unpopular decisions. As such, it was incumbent on the Council to wrestle even harder in relation to unmet needs.

Commented [SB43]: Again, go careful. It sounds like you're saying MSDC should have agreed to plan to meet those unmet needs, but the DtC is not a duty to agree - the point is that there is a very significant amount of unmet need in the sub-region, including in the HMAs within which the district lies, and the Council has not co-operated in an ongoing etc way - I'd stick to the words used in the Act, I think.

Commented [SB44]: And I'd go careful here too - again it sounds like the lpa was under some additional legal burden to try harder to meet unmet needs.

92-90. In considering this obligation, I am aware that Mid Sussex has its own constraints, such as the North Downs National Landscape, the setting of the South Downs National Park and the limitations to development relating to the Ashdown Forest SPA/SAC and that the water neutrality issue effects a relatively small strip of land on the western edge of Mid Sussex. The shortcoming here is not that the Plan fails to contribute sufficiently to meeting the significant unmet needs of the wider area. The DtC imposes no obligation to agree. Rather, the failure here is that the Council has not considered the requests of its neighbours – namely [list authorities concerned] – in a constructive, active and ongoing way. The Council has, consequently, not maximised the effectiveness of plan preparation.

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Commented [SB45]: I have suggested adding this here and deleting the following few paras. This is simply to get to the point more quickly. See if you think essential points are still covered and nothing vital missed, but I would stick to the concision approach. I do think, though, that you need to be clear about precisely which local authorities the DtC failure relates to ... I wasn't sure from the paras above about Lewes and the others where I've made comments.

~~93. Therefore, in the context of the quantum of unmet needs where requests have been made to Mid Sussex to help (c 30,000 dwellings over and above its LHN) it would be unreasonable to suggest that it could or would take a significant proportion of the unmet needs of its neighbours.~~

~~94. Moreover, it is long established that the DtC does not necessarily require a duty to agree. However, the Council should have evidenced that it had undertaken all it could to maximise the effectiveness of plan preparation.~~

~~95. In my judgment, it is far from clear that at the outset and throughout the preparation of the Plan that a constructive and on-going approach to maximising the effectiveness of plan making was taken. In other words, there is no convincing evidence that the plan preparation was approached with an open mind in respect of taking the unmet needs of neighbouring authorities and that work on common areas of interest has been diligently undertaken by the Council for the mutual benefit of the District and neighbouring authorities.~~

Commented [I46]: Think you need something like this here

~~96. In conclusion, I consider that the Council has not undertaken constructive engagement with neighbouring authorities on an ongoing basis. The absence of such engagement means the submitted plan has not been shaped by an adequate consideration of the strategic issue of housing, nor has the Council adequately engaged with neighbouring authorities to assist in their plan-making processes. Had it done so, and maximised the effectiveness of plan preparation, the overarching development strategy of the submitted Plan, including the amount and location of development could well have been different.~~

~~97.91. In sum, I appreciate that the contents of this letter will be a disappointment to you. However, a failure to meet the DtC is a matter which cannot be rectified. As such, there are two options open to the Council, either to withdraw the Plan from examination or to ask that Consequently, I would ask that you consider your position and whether you will withdraw the Plan or ask that I write a report of my conclusions. I should say that the latter would involve further expense, and that the contents of the report would, whose contents are likely to be very similar to this letter.~~

Commented [SB47]: I think I would ask the Ipa to reply letting you know when you could expect their decision re withdrawal or report.

~~98.92. I have asked that the Programme Officer posts a copy of this letter on the website. However, I am not inviting comment from other examination participants.~~

Commented [SB48]: Either the Council or other examination participants on the content of this letter?

Yours Sincerely

Louise Nurser

INSPECTOR

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DPC:76616c646f72



From: [McClellan, Lee](#)
To: [Local Plans Updates](#)
Cc: [Davies, Stephen](#); [Berkeley, Simon](#); [Monks, Claire](#); [Giles, Matthew](#); [Summers, Louie](#); [Hussain, Nabiha](#)
Subject: Inspector Letter - Mid Sussex
Date: 19 February 2025 09:48:48
Attachments: [MSDC DfC 18.02.25.1824.docx](#)

Hi all

Please see the attached letter that the Inspector wishes to send to the council. This will go out on Friday unless we hear from you to say otherwise

Many thanks

Lee

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Examination of the Mid Sussex District Plan 2021-2039

Inspector: Louise Nurser BA (Hons), MA, Dip UP MRTPI
Programme Officer: Charlotte Glancy
email: bankssolutionsuk@gmail.com Phone: 07519 628064

Dear Mr Marsh

Mid Sussex District Plan 2021-2039: Stage 1 Findings

1. Firstly, I would like to thank you for the way in which your team, together with other participants have engaged and helped me with my examination of the Mid Sussex District Plan 2021-2039 (the Plan). I apologise for the delay in responding.
2. As you are aware I have been appointed by the Secretary of State to examine the Plan, not only in relation to whether it meets the tests of soundness, as set out in the September 2023 version of the National Planning Policy Framework (Framework) but also whether it is legally compliant.
3. In my initial letter of August 7, 2024, I set out that I would examine the Plan in two stages as there were some fundamental issues, including the Duty to Co-operate (DtC), that required testing before I could be confident that I could move to the Stage 2 hearings.
4. Following the end of the Stage 1 hearings I asked for various additional pieces of work to be provided to the examination. This included any detailed evidence in relation to the DtC which you had not previously submitted, such as copies of relevant agendas and minutes of meetings (AP0013). This was to ensure that you were given every opportunity to demonstrate that you had co-operated with the relevant prescribed bodies and complied with the DtC. I am now in receipt of this and the other additional work¹.

¹ Including the consultation responses to AP-018.

5. I am aware that no neighbouring authority nor any other prescribed body has suggested that Mid Sussex had not met the legal duty. I also note that signed Statements of Common Ground have been received relating to all the neighbouring Councils and some, although not all, of the prescribed bodies.
6. Nevertheless, in relation to the strategic matter of the unmet housing needs of neighbouring local planning authorities (LPAs), I have now concluded that the Council has not met the DtC, in its preparation of the Plan. A failure to meet the DtC is fatal to the progression of a Plan and cannot be rectified following submission.

Legislation

7. Section 33a of the Planning and Compulsory Purchase Act (P & CPA 2004) sets out the legal obligations on LPAs, amongst others, with regard to the DtC in relation to the planning of sustainable development.
8. As you are aware, as part of my examination of the Plan, I must be content that the LPA has complied with any duty imposed on the authority by S33a of the P & CPA 2004.
9. The DtC requires that local planning authorities must co-operate in maximising the effectiveness with which activities are undertaken.
10. It also requires every person, such as in this case, Mid Sussex District Council (MSDC), to engage constructively, actively and on an on-going basis in any process, by which means activities, including local plan preparation, is undertaken. This legislation has remained in force throughout the preparation of the plan. As such, MSDC must have complied with it. It also requires MSDC to have regard to the activities of others, as long as they relate to a relevant strategic matter.
11. A strategic matter is defined, amongst other matters, as a use of land that would have a significant impact on at least two planning areas.

12. Engagement requires *considering* agreeing joint approaches to undertaking activities. This includes the preparation of joint local development documents under section 28 of the PCP.
13. In undertaking the DtC, the Act requires that regard must be had to the guidance in complying with the DtC provided by the Secretary of State. This guidance is set out in the Framework and the Planning Practice Guidance (PPG).
14. Authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.
15. The PPG is explicit that inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or do not rely on the inspector to direct them. It also reiterates that the DtC cannot be rectified post submission.

Plan Preparation

16. It is not clear when the review of the Plan began. In your Matter 1 hearing statement², the Plan review is reported as starting in 2020, yet the Council's most recent evidence has the process both beginning in July 2021³ and March 2022⁴. This lack of clarity is significant as the legislation requires ongoing engagement throughout the plan preparation process. As such, it is important to know when this is, given the importance of identifying the cross boundary matters which need addressing at the outset of the plan making process.
17. Notwithstanding the inconsistencies in your evidence, I have taken the July 2021 date set out in the chronology accompanying your response to Action Point 13 provided in November 2024, as the starting point for plan preparation. The preparation of the Plan ended at its submission of the Plan on July 10, 2024. Therefore, it is this

²² MSDC Matter 1: Paragraph 1.5.

³ AP-013 Appendix E.

⁴ AP-013 Appendix A1 page A1-3

period which is relevant for my determining MSDC's compliance with the DtC.

Background and Context

18. A Duty to Co-operate Framework was produced in 2015⁵ and is considered by the Council to remain relevant to the Plan. However, this has not been updated nor has the Duty to Co-operate Protocol and Checklist been adhered to. Consequently, there is little direct evidence to demonstrate how co-operation has maximised the effectiveness of plan preparation.
19. There are a number of strategic matters such as transport, or habitat considerations where I am confident that, whilst there may be some soundness issues which require addressing, the DtC has been complied with. Similarly, whilst I note that the Council has not provided signed Statements of Common Grounds (SoCGs) with all of the prescribed bodies set out in legislation, I do not consider this to have been determinative in my judgment as to whether the Council has met the DtC.
20. However, the extensive unmet housing needs of neighbouring authorities has historically been a strategic issue in the sub-region that has required active, on-going and constructive engagement, and remains relevant to plan preparation.
21. This is clearly articulated in Policy DP5 of the adopted Mid Sussex District Plan 2014-2031⁶. The examining Inspector for that plan required the Council to undertake a prompt review of the Plan and to work under the 'Duty-to-Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed need for housing across the Housing Market Areas. As such, I am primarily concerned with how the Council has complied with the DtC in relation to housing.

⁵ DC2

⁶ BD1

Sub-regional Co-operation

22. There are two bodies in the wider sub-region with which the LPA could, theoretically, have worked, under the DtC, as a means of engaging with neighbouring local authorities. The issue here is whether the LPA did that, and if not, whether the necessary constructive, active and on-going engagement took place with neighbouring authorities in relation to local plan preparation.

West Sussex Greater Brighton Planning Board

23. Great onus is given to the West Sussex Greater Brighton Planning Board (WSGB) within the submission Plan. It is explicitly mentioned within the emerging Plan within the Background and DtC sections as an important strategic body within the wider sub-region. As written, it appears to be an active vehicle for navigating the DtC and is cited as an example of '*ongoing work*⁷' and is extensively referenced and relied upon within SoCG with individual authorities as well as the Northern West Sussex SoCGs.

24. It was also cited in the DtC Compliance Statement⁸ as one of the formal groupings with which the Council has engaged. I was led to expect that a SoCG with the Board would be submitted to the examination. During the hearings I requested a paper setting out why this had not been provided, given the importance seemingly given to it within the Plan and the Council's hearing statement. This detailed paper⁹ which was signed at officer level some five months after the submission of the Plan dispels the notion that the WSGB could have been a vehicle for cross boundary co-operation during most of the time when the Plan was being prepared. Moreover, it reported that in December 2023 the officers of the constituent authorities agreed that the group could not support the development of the current wave of local plans in the region¹⁰.

25. This is not surprising given that the last time the Board met was in March 2021¹¹. The Regulation 18 consultation took place over a year

⁷ DP1, pages 10, 11 and 23.

⁸ DC1, paragraph 4.

⁹ AP-011

¹⁰ AP-011 page 9, paragraph 43.

¹¹ AP-013 Appendix A3, page A3-9.

later in the following November 2022. Therefore, from March 2021 by which time your most recent evidence suggests Plan making had not even begun¹², the Board had not been an active group. As such, MSDC could not have engaged constructively, actively and on an ongoing basis with the WSGB in plan preparation. Consequently, it should not have been relied upon or prayed in aid to demonstrate the compliance of the Plan with the DtC in either the Regulation 18 or Regulation 19 plans or the evidence which has been provided to the examination.

26. My understanding is that work on future strategic planning issues has been '*paused*', albeit this has been for years rather than months, but nonetheless it has not been '*abandoned*' by the Board.

27. I am aware that West Sussex and Greater Brighton Planning Officers Group met a further three times during this period. However, no minutes¹³ have been provided to demonstrate how, or if at all, these meetings contributed to maximising the effectiveness of plan making with particular reference to the distribution of unmet housing needs.

Gatwick Diamond Board

28. The Council's Chronology of the DtC only mentions the Gatwick Diamond Board (GDB) twice: once in a DtC meeting in October 2023, prior to Scrutiny Committee's consideration of the consultation Plan and latterly after the Regulation 19 consultation had been completed. By this time there was little scope for any change to the strategy of the Plan. There is nothing within the agenda or minutes which have been provided to suggest that the Board played an active role in proactively considering unmet needs and the role of Mid Sussex's Plan.

Overall

29. Given the above, it is clear that neither of the two sub-regional bodies has played an active role in influencing plan preparation, including addressing unmet housing needs within the sub-region.

¹² AP-013 Appendix E, page 3.

¹³ Ditto, page A3-10.

30. As such, they have not been vehicles to maximise the effectiveness of Plan making. Put simply there has not been a sub-regional body which has taken a strategic overview to help distribute housing within the sub-region so the unmet needs of households can be addressed. However, this lack of active wider sub-regional bodies does not obviate the Council from its legal responsibilities in relation to the DtC. The question then, essentially, is what steps the LPA took to discharge those responsibilities directly with neighbouring local authorities. I turn now to consider this.

Co-operation with Neighbouring Local Authorities

Outset of plan preparation

31. The Council met with all neighbouring authorities in the autumn of September 2021, setting out their approach to its call for sites, its housing requirement, and accepted that unmet need from other authorities would be needed to be factored in. At face value the approach seemed consistent with the PPG as further individual meetings were to be scheduled in relation to the DtC and a consultation undertaken on the Site Selection Methodology to be used. This was to be amended on an iterative basis.

Rest of plan preparation to submission

32. There is little evidence to suggest that this active, constructive engagement continued on an on-going basis throughout plan preparation which I explore below.

33. I am aware that a considerable proportion of the SoCG were submitted well after the submission of the Plan and what could reasonably be considered to be in the spirit of the guidance set out in the PPG. Nonetheless, whilst the late production of SoCGs is indicative of the seriousness of the Council's approach to engaging with the DtC, it has not been determinative in my decision relating to its legal obligation.

Crawley

34. Crawley lies to the northwest of Mid- Sussex and together with Horsham and Mid Sussex form the Northern West Sussex Housing Market Area (NWSHMA). The Borough has long established difficulties in meeting its own needs due to the constraints of an intensely developed urban settlement with little opportunity for additional growth. Indeed, the Mid Sussex adopted Plan (BD1) attributes an additional housing requirement of 1,498 dwellings to help meet Crawley's unmet needs. Nonetheless, Crawley remains unable to meet all of its own needs. Crawley's local plan was adopted in 2024. This established that there was an outstanding need from 2023- 2040 for 7,505 dwellings which cannot be catered for within its own boundary. This situation is unlikely to change in the future.
35. Mid Sussex was formally approached in January 2020 for help in meeting Crawley's needs prior to the plan preparation beginning, and again in April 2023, well before the Regulation 19 draft of Mid Sussex's LP was finalised in November 2023, and the Regulation 19 consultation itself in January 2024. Consequently, the principle of it having substantial unmet needs has been known prior to and throughout the preparation of Mid Sussex's Plan and indeed is central to the review of the Plan required by Policy DP5 of the adopted Plan.
36. Your Council's response to both formal requests has been to state that it is committed to working with Crawley in a positive manner. However, the first letter stated that any consideration of unmet needs would have to be in the context of Mid Sussex reviewing its own plan and querying whether Crawley had exhausted all opportunities to increase capacity. The second set out how Mid Sussex had shared its Site Selection Methodology (SSM), held briefings to share the initial outcomes of the Site Selection Process, and commissioned an Urban Capacity Study. It also set out the extent of any surplus in capacity. However, it did not take a positive approach to addressing unmet needs, as it was *'not in a position to confirm the total*

*deliverable housing in the District and therefore the amount of housing it may be able to provide to meet unmet need*¹⁴.

37. Following this letter, there were further joint NWSHMA DtC meetings, which I address below, and which were primarily focused on procedural issues. However, there were no further individual meetings between the two Councils after May 2023 and submission in July 2024¹⁵. In the context of Crawley's demonstrable substantial unmet needs, and that no further allocations were brought forward after the Regulation 18 consultation in late 2022, it appears that Crawley's needs were, in effect, ignored in the absence of ongoing and constructive engagement.
38. A SoCG¹⁶ with Crawley was submitted to the examination over two months after the Plan had been submitted and I have not been provided with earlier iterations. This SoCG was provided well after what could be considered a reasonable delay, particularly as the consultation on the Regulation 19 version of the Plan, had taken place at the turn of the year, after which there was little opportunity to influence plan preparation. The SoCG refers to the historic work which has been undertaken prior to the commencement of work on the Plan and the wider NWSHMA¹⁷, which I consider below. A number of shared objectives are set out. It is agreed that a *'robust and appropriate SHMA has been completed for each local authority'*, and that MSDC has shared and invited comments on the site selection process.
39. Nonetheless, I have interpreted the phrase *'that **each** considers that they are doing the maximum reasonable to meet the housing needs'*, in the context of Crawley's Regulation 19 response to DPH1: Housing. Here Crawley set out a number of concerns relating to the submission Plan, including a recommendation that, *'all potential sources of housing supply which might contribute to meeting identified needs are proactively explored...'*¹⁸. This clearly suggests that Crawley did not consider that Mid Sussex was doing the

¹⁴ AP-013, Appendix 7, letter of 20 June 2023.

¹⁵ AP-013, Appendix E.

¹⁶ DC6

¹⁷ DC3 and DC4

¹⁸ Crawley Borough Response to Regulation 19 consultation.

maximum reasonable to meet the unmet housing needs which Policy DP5 envisaged and the DtC requires.

40. Moreover, the SoCG sets out that both authorities will engage with other DtC forums and references future work. Whilst this may be sensible, it is not relevant to the examination of the Plan as the DtC only relates to activity up to submission.
41. In sum, notwithstanding the examples of cross boundary work which have taken place, such as the co-operation relating to the allocation at Crabbet Park which falls on the boundary between Crawley and MSDC, and whose housing will contribute to MSDC's housing requirement, I am not convinced that Mid Sussex has engaged constructively, actively and on an ongoing basis during plan preparation to help Crawley with its extensive and widely anticipated, on-going unmet housing needs.
42. Indeed, the LPA has not committed to providing a definitive quantum of housing for Crawley's needs, instead relying on whatever is left once Mid Sussex's own needs have been provided for. This is the antithesis to the approach of the Framework which would require a planned, strategic approach to be taken to wider housing needs, which reflects the legislation underpinning the DtC, and is advocated in Policy DP5 of the adopted Plan.

Horsham

43. To the west of MSDC is Horsham. Historically, with Mid Sussex, it has met Crawley's unmet housing needs within the NWSHMA. Following Natural England's Position Statement, published in late 2021 there are unresolved issues, which do not form part of my examination, relating to water neutrality and housing provision. A small part of Mid Sussex's boundary with Horsham falls within the Water Neutrality Zone. However, Horsham is extensively affected, and its position is that it cannot meet its own housing needs in full or help meet Crawley's unmet needs.
44. This position would have been evident early in Mid Sussex's plan preparation and there may have been an opportunity for Mid Sussex to work constructively to address some of those needs. Indeed, in

August 2022 Horsham wrote to your Council suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology be reappraised¹⁹. I am aware whilst any site taken forward as a result of the Regulation 18 and Regulation 19 consultations were considered, no further sites were allocated throughout the plan preparation process.

45. Following a meeting in August 2023, it was not until November 2023 that Horsham formally requested the help of Mid Sussex to cater for the excess 2,275 homes for which it considers that it cannot identify sites without falling foul of the Habitat Regulations. However, by this time the strategy of the Plan had been set, albeit the Regulation 19 consultation had not begun.

46. I note that Mid Sussex did not formally respond to Horsham's request, sent in late November 2023 until early March 2024. This was over three months later and after your Regulation 19 consultation had been completed. By this time there was little opportunity to maximise the effectiveness of plan preparation.

47. Moreover, whilst the letter was full of goodwill and commitment to continuing engagement, citing Mid Sussex's sharing of its SSM and its maximisation of its housing supply, it did not provide any meaningful evidence of what, if anything, Mid Sussex could do to help Horsham. Rather it relied on the imprecise and vague approach to meeting unmet needs within the NWSHMA set out within the Housing SoCG which I consider below. As such, I do not consider that MSDC engaged in the active, constructive and ongoing way, as required by the legislation, so as to maximise the effectiveness of plan preparation.

Northern West Sussex Housing Market Area

48. The Northern West Sussex authorities of Horsham, Crawley and Mid Sussex have long been recognised as an established Housing Market Area (HMA)²⁰. They have a long history of working together with a wider remit than housing. However, my examination of the Plan and the DtC in relation to the planning of sustainable

¹⁹ AP-013- Appendix A2.

²⁰ Para 1.5, H1

development can only relate to the period between the commencement of work on the Plan and its submission in July 2024. A General SoCG²¹ was signed in July 2024 but received after submission of the Plan.

49. I appreciate that a joint Plan has not been taken forward. In common with my fellow inspectors who examined Crawley's Plan, I consider this to be reasonable in the circumstances of each of the three authorities starting their plan making at significantly different times.

50. Other than the Water Neutrality work²², much of the joint activity and evidence bases to which I have been referred, including the *At Crawley Study 2009*²³, predates the preparation of the current Plan and the present wider sub-regional issue of unmet housing need.

51. I also note that the three authorities reference working positively together as part of the WSGB and the GDB to demonstrate their compliance with the DtC. However, as already established, both the GDB and WSGB have had a diminished, or indeed no role during the time in which the Plan has been prepared.

52. The three authorities have also signed a specific SoCG relating to housing²⁴. Again, this leans heavily on historic joint evidence bases such as the Housing Market Appraisals (HMA) which confirm that the three local authorities make up the principle HMA for each authority. This SoCG makes explicit that the DtC remains relevant with an unmet housing need of 8,947 dwellings within the three authorities.

53. However, it does not set out in a convincing manner how their engagement increased the effectiveness of plan making, such as setting a definitive figure for, or even a range of, the quantum of housing which Mid Sussex should provide to contribute towards unmet needs.

54. The SoCG suggests that at the time of its signing, after the submission of the Plan, that Mid Sussex had a headroom of 1,208 dwellings. However, there is no consideration of how this surplus

²¹ DC3.

²² ENV13.

²³ O12.

²⁴ DC4.

would be distributed between the two LPAs. Nor has a fixed quantum of development which could be relied upon been set and an explanation of how it would relate to any annual requirement and subsequent monitoring. This is particularly important, given that the oversupply figure is also expected to contribute to the resilience of MSDC's own housing supply, to be drawn on by MSDC in the event that some of the sites within the Plan do not to come forward²⁵.

55. This lack of clarity is pertinent as during the Plan's preparation the surplus has varied from 302 dwellings at the Regulation 18 consultation (which was purely to ensure resilience for MSDC), to 996 dwellings in relation to the Regulation 19 plan, and finally after submission, within the agreed SoCG, the Councils suggest a headroom of 1,208 dwellings. All these changes have taken place without any additional allocations. Consequently, there must be a significant question mark as to how reliable any potential contribution would be in meeting unmet needs. Moreover, there is an unmet need of 59 pitches from Horsham of Gypsy and Traveller accommodation.
56. Meaningful co-operation has been couched in terms of the difficulties in taking on unmet needs. Much effort has been put to setting out why the unmet pressures cannot be managed, such as the agreement that the authorities have 'worked to explain and understand each other's housing supply position' and that there were no further suitable sites close to the administrative borders. However, the ability to provide homes to meet the needs of neighbouring authorities should not be restricted to sites close to the boundary given the extent of the reach of the HMA within Mid Sussex.
57. In sum, it seems from the minutes of the meetings provided²⁶ that there has been a disproportionate onus on the process of providing a signed SoCG for the three Councils, rather than maximising the effectiveness of plan preparation.
58. The authorities are agreed that, in theory, any unmet needs within the HMA should have first call on any surplus capacity. Following this, once these needs have been provided for, those of the Coastal West Sussex HMA can be considered, and then those of other

²⁵ DP1, DPH1.

²⁶ AP-013, Appendix 2.

adjacent and nearby authorities. Meeting the needs of other neighbouring authorities outside of the priority order would only be acceptable where this can be justified by evidence and considered jointly with the NWSHMA members.

59. Given the quantum of unmet needs in the HMA, at c 9000 dwellings, this would, in practice, make it highly unlikely that any other local authorities would ever be able to benefit from MSDC taking on any of their unmet needs. I note that this approach has previously been tested at examination in relation to Horsham and Mid Sussex's adopted Plan. However, Policy DP5 of the adopted Plan, makes explicit the importance of working to address unmet need in the wider sub-region.
60. This policy includes working with all neighbouring authorities: an approach consistent with the legislation which requires a LPA to co-operate with every other person, in maximising the effectiveness of plan preparation, in relation to the planning of sustainable development.
61. Nonetheless, I note concerns were raised in early 2023²⁷ by Crawley that, in the absence of an active WGSB, other authorities should be invited to the NWSHMA to, '*demonstrate that the NWS authorities are not just looking inwardly at the NWSHMA but are actively pursuing and awaiting engagement from the Coastal Authorities.*' As far as I am aware this has not been done.
62. I have noted that in May 2024, by which time the strategy of the Plan had been established and it was ready to be submitted for examination, it was suggested that the NWS authorities SoCG be sent to other members of the WGSB so as to, '*proactively prepare and circulate material before Plan submission which is in itself evidence of positive planning and meeting the DtC*'²⁸. Given that both MSDC and Horsham were about to submit their plans for examination, it is difficult to see how this amounts to engagement of any meaningful sort. Rather, it seems to me that it was an attempt to focus the collective narrative around performance in relation to the DtC. That is not, in and of itself, co-operation under the Duty. I am

²⁷ AP-013, Appendix A2 Meeting 5 January 2023.

²⁸ AP-013, Appendix 2 Meeting 23 May 2024

also aware that I have not been provided with any evidence of whether there was formal member on-going engagement in plan preparation.

63. In sum, the housing SoCG suggests that it has not been possible to provide for unmet needs other than through any housing which is surplus to Mid Sussex's needs. This position is vague and is neither consistent with the objectives of the Framework nor those of Policy DP5 of the adopted Plan. Moreover, the SoCG appears to commit to working together to address unmet needs at a future date, citing water neutrality as a reason why needs cannot be met in full. This is something which the PPG counsels against and is not relevant to my consideration of the DtC and the preparations associated with this Plan.

64. Notwithstanding the signed individual SoCGs with Crawley and Horsham, I consider that the DtC has not been met with these two constituent authorities as MSDC has not engaged constrictively, actively and on an on-going basis in plan preparation.

Other Neighbouring Authorities

65. The latest HMA produced for MSDC is clear that there are in fact two other HMAs which overlap with the district²⁹. In addition, it is clear from the chronology of the DtC activities³⁰ supplied by the Council that outside of the NWSHMA that MSDC has not actively engaged with other LPAs other than in a very cursory manner.

66. MSDC officers met with officers in the South Downs National Park (SDNP) in August 2022. Given its status as a National Park it is severely constrained and lies immediately to the south of the plan area for Mid- Sussex.

67. To its south is Brighton and Hove (B & H), which like Crawley, has very little opportunity to expand. In its case, it is bound by the English Channel to the south and the SDNP to the north.

²⁹ H1 Paragraph 1.8.

³⁰ AP-013, Appendix E.

68. Currently, it has a considerable quantum of unmet needs at 17,000 dwellings, which is even greater than those of Crawley and Horsham, with substantially more likely in the future. It has been known since before the adoption of the extant Mid Sussex Plan³¹ in 2018 that B & H's unmet housing needs are, and will, remain considerable. Notwithstanding the intervening SDNP, B & H consistently ranks as being the local authority from which most people move into Mid Sussex (1,094)³². This clearly demonstrates the close functional links in the housing market which is recognised within the HMA and is an indicator of close functional links recognised within the PPG.
69. Notwithstanding the extensive needs of B & H, as set out above the NWSA SoCG³³ prioritises the unmet needs of Horsham and Crawley. This means the unmet needs of B & H, have to all intents and purposes been discounted. As such, irrespective of the acute need experienced by B & H, there has been no meaningful attempt to maximise the effectiveness of plan preparation in relation to such an important strategic cross boundary issue.
70. An informal request for Mid Sussex to help meet B & H's needs was made in September 2021³⁴. I note from the minutes of the NWSHMA that your Council had concerns that B & H did not have a clear understanding of the extent of its unmet needs and did not agree with the hierarchy set by the three authorities.
71. However, there does not appear to have been active, constructive and ongoing engagement with B & H, rather your Council had minimal interaction with B & H. It briefed and consulted on the SSM, together with other neighbouring LPAs in September 2021. In mid-2022 a further meeting took place between the authorities. Discussion took place relating to the Mayfield site, which was shared between Horsham and MSDC, but which was not taken forward. However, the meeting's main purpose was to, *'Explain the background to the preparation of the District Plan Review; ensure B & H is fully briefed on the plan preparation process and the evidence, and to provide an opportunity to question and understand the work of*

³¹ BD1.

³² REP-42888161-002 Figure 1, source ONS table IM2022-T2b

³³ DC4.

³⁴ AP013- Appendix E.

*MSDC...*³⁵. Again, this approach is not the active constructive engagement to maximise plan preparation required by the DtC.

72. Moreover, during the meeting B & H set out its concerns, regarding the NWSHMA's hierarchical approach to unmet needs. B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing. As far as I can gather these points were dismissed without constructive dialogue or any otherwise meaningful exploration of the issues.

73. A further meeting took place in December 2022 in relation to the Regulation 18 consultation. However, it is clear that it was a means to ensure B & H could question and understand the Plan, rather than to engage in its preparation. Similarly, the meeting immediately prior to the Regulation 19 consultation gave little opportunity to shape plan preparation, with the Council making explicit that the strategy had not changed since Regulation 18, and that once MSDC had met its own needs it would prioritise those of the NWSHMA.

74. As such, MSDC's approach to B & H has not been that of active, on-going constructive engagement.

75. Lewes lies to the east of Mid Sussex to the north of B & H and abuts the southern half of the district. It too is constrained. MSDC officers met with it during the Regulation consultation. Following this, Lewes wrote to MSDC in February 2024 to request assistance in meeting a potential quantum of unmet need of between 2,675 and 6,628 dwellings to 2040. MSDC responded that the NWSA authorities have an agreed Statement of Common Ground which states that any over-supply will be prioritised for this HMA. Therefore, given the level of unmet need arising in the NWSHMA and the over-supply proposed within the submission draft District Plan, this Council will not be able to contribute towards unmet needs arising in Lewes district³⁶. Nonetheless, given the timing of this I have not considered the Council's response to be critical in terms of the DtC.

76. Wealden completes the eastern boundary of the district. Other than the original briefing on the plan at the beginning of plan preparation

³⁵ AP013- Appendix A6, meeting of 15 June 2022.

³⁶ AP013- Appendix 7.

in September 2021, individual meetings took place in November 2022 and 2023 as part of the formal consultation process. It considers that it has a shortfall of 4,071 dwellings and made a formal request in April 2024 for help in meeting its unmet housing needs. However, in its response MSDC made clear that it needs to prioritise the NWS area and therefore is unable to contribute towards helping to meet Wealden's unmet needs³⁷. It also referenced the work of the WSGB, which as set out above has not been active during the preparation of the Plan. However, given the lateness of the request in relation to MSDC's plan preparation, it is something which does not impact on its compliance with the DtC.

77. Finally, Tandridge lies to the north of Mid Sussex and has many policy constraints and is unlikely to meet its own needs. However, it is at a very early stage in plan making.

78. In sum, MSDC is surrounded by local authorities who either have an undefined or defined quantum of unmet housing needs and these needs are significant³⁸.

Conclusion

79. Crawley, B & H and other neighbouring authorities have long acknowledged significant and extensive unmet housing needs. Indeed, these were recognised by the previous Inspector. Moreover, other neighbouring local authorities such as Horsham have grappled with issues of water neutrality and potential impacts on their ability to meet their own and other's needs.

80. The review of the adopted Plan³⁹ envisaged under Policy DP5 was to ensure that additional sites could come forward in sufficient time to contribute to the sub-region's unmet housing need. This process was to be planned effectively and strategically. Clearly, it would have been an easier task for the Council if one of the wider sub-regional organisations actively took the lead in addressing unmet needs. However, this was not the case during the preparation of the plan.

³⁷ AP013- Appendix 7.

³⁸ H5 paragraph 40.

³⁹ BD1

81. Nonetheless, your officers will have been aware of this considerable unmet need and the Council's legal obligations, well before the significant milestones in the preparation of the Plan. Consequently, in practical terms the lack of active engagement by the two sub-regional groups has meant that in practice, MSDC needed to co-operate with its neighbours directly to ensure that it addressed its legal obligations in relation to the DtC. These obligations are not discretionary.
82. The Council has an obligation to maximise the effectiveness of plan preparation in a wider sub region where there are significant unmet needs. It has not provided the evidence to demonstrate that it has engaged constructively, in an active and on-going way to do so.
83. In considering this obligation, I am aware that Mid Sussex has its own constraints, such as the North Downs National Landscape, the setting of the South Downs National Park and the limitations to development relating to the Ashdown Forest SPA/SAC and that the water neutrality issue affects a relatively small strip of land on the western edge of Mid Sussex. Nevertheless, the presence of constraints does not obviate the necessity for MSDC to explore the possibilities of doing more to help address the unmet needs of the wider sub- region. The failure here is that the Council has not adequately *considered* the requests of its neighbours – namely Crawley, Horsham and Brighton and Hove, in a constructive, active and ongoing way. The Council has, consequently, not maximised the effectiveness of plan preparation.
84. I appreciate that the contents of this letter will be a disappointment to you. However, a failure to meet the DtC is a matter which cannot be rectified. As such, there are two options open to the Council, either to withdraw the Plan from examination or to ask that I write a report of my conclusions. I should say that the latter would involve further expense, and that the contents of the report would likely be very similar to this letter.
85. I would ask that you let me know via the Programme Officer when I should expect a response as to whether you are intending to withdraw the Plan or ask that I write a report. I have asked that the Programme Officer posts a copy of this letter on the website.

However, I am not inviting comment on the contents of this letter either from the Council or other examination participants.

Yours Sincerely

Louise Nurser

INSPECTOR

18 February 2025

Emily Clapp

From: Davies, Stephen <[REDACTED]>
Sent: 21 March 2025 11:38
To: Ben Jones
Cc: Monks, Claire
Subject: RE: Contribution required for case TO2025/07036 by 5pm on 24th March

OFFICIAL

OK thanks Ben, we will just tell Mid Sussex that the letter is with yourselves

OFFICIAL

From: Ben Jones <[REDACTED]>
Sent: 21 March 2025 10:56
To: Davies, Stephen <[REDACTED]>
Cc: Monks, Claire <[REDACTED]>; Ben Jones <[REDACTED]>
Subject: RE: Contribution required for case TO2025/07036 by 5pm on 24th March

OFFICIAL

Hi Steve

Sorry I thought I'd come back on this. There's nothing we can contribute as we're not holding it. It's with Simon while he finalises the Horsham advice for the minister.



Ministry of Housing,
Communities &
Local Government

Ben Jones ([REDACTED])
Team Leader - Local Plan Delivery
Ministry of Housing, Communities & Local Government
Planning Directorate
| gov.uk/mhclg | @mhclg

OFFICIAL

From: Davies, Stephen <[REDACTED]>
Sent: 21 March 2025 09:11
To: Ben Jones <[REDACTED]>
Cc: Monks, Claire <[REDACTED]>
Subject: FW: Contribution required for case TO2025/07036 by 5pm on 24th March
Importance: High

Hi Ben

I think you said you were going to respond/contribute to the letter addressed to Joanna Averley.

Thanks

Steve

From: Davies, Stephen
Sent: 05 March 2025 13:23
To: Ben Jones <[REDACTED]>
Subject: FW: Contribution required for case TO2025/07036 by 5pm on 24th March
Importance: High

From: Monks, Claire <[REDACTED]>
Sent: 05 March 2025 12:59
To: Davies, Stephen <[REDACTED]>
Subject: FW: Contribution required for case TO2025/07036 by 5pm on 24th March
Importance: High

Steve

Mid Sussex have put in a complaint about the delay to the examination and not hearing anything from the Insp since the hearings in October. I think this is one where the letter is stuck with MHCLG. Can you advise on how you want me to respond to this.

Thanks
Claire

From: PINS Ministerial Correspondence <[REDACTED]>
Sent: 05 March 2025 11:16
To: Monks, Claire <[REDACTED]>
Subject: FW: Contribution required for case TO2025/07036 by 5pm on 24th March

Hi Claire

Please find the below correspondence which relates to Mis Sussex Local plan, if you could send a drafted response in the attached template I would be grateful. Please let me know ASAP if this doesn't sit with you or needs a response from different team.

Kind regards
Harini
[REDACTED]

From: Public Correspondence Team <[REDACTED]>
Sent: 04 March 2025 12:06
To: PINS Ministerial Correspondence <[REDACTED]>
Cc: [REDACTED]
Subject: Contribution required for case TO2025/07036 by 5pm on 24th March

IMPORTANT: when you respond please 'reply all' to ensure the email will be copied to eCase.

Dear colleague,

We have received the attached correspondence regarding:

Mid Sussex Local Plan

Can you please draft a fully cleared response using the attached template and return it to us by replying all on this email by 5pm on 24th March. We will issue the letter for you.

If this is for someone else in your team, please forward it to them for them to action. If your team is not responsible for this policy area, please inform us within 24 hours, and suggest a team that may be better placed to draft the response.

PLEASE NOTE - It is your responsibility to obtain any necessary clearance from within your team for your draft response before returning it to Public Correspondence Team.

Please get back to us if you have any questions.

Kind regards,

Harry

Correspondence Unit

Ministry of Housing, Communities & Local Government

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Emily Clapp

From: Davies, Stephen <[REDACTED]>
Sent: 24 March 2025 09:37
To: Ben Jones
Subject: FW: Mid Sussex District Plan Examination

Ben

This is the email that went out to Mid Sussex drafted by Simon

Steve

From: McClean, Lee
Sent: 07 March 2025 10:49
To: chiefexecutiveoffice@midsussex.gov.uk
Subject: Mid Sussex District Plan Examination

Dear Ms Holmes

Thank you for your letter to the Chief Planning Inspector, Richard Schofield, dated 28 January. I apologise for the delay in responding.

I can confirm that the Inspector has written a letter to your Council. That letter has been sent to MHCLG on a for information basis in advance of it being sent to you. This is in line with the procedure set out in the letter from the (then) Secretary of State for Housing, Communities and Local Government, the Rt Hon James Brokenshire MP, to the Chief Executive of PINS, dated 18 June 2019. That letter can be found in full here: [Local Plan examinations: letter to the Chief Executive of the Planning Inspectorate](#).

I hope that explains the current position. If you have any queries then please do come back to me and I will do all I can to assist

Many thanks

Lee

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DPC:76616c646f72



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From: [Berkeley, Simon](#)
To: "PSMatthewPennycook@
Cc: [Arthur Young](#); [John Romanski](#); [Sara Lewis](#); [Andrew Langley](#); [Ben Jones](#); [Ed Francis](#); [Gabi Wydrzynska](#); [Plans Briefing](#); [Phillips, Rebecca \(Inspector\)](#); [Stallwood, Graham](#)
Subject: Mid Sussex and Horsham Local Plans - urgent
Attachments: [Mid Sussex and Horsham Post Hearings Letters PINS Protocol Note March 2025 .docx](#)
[MSDC DtC 18 02 25 1824.docx](#)
[Inspectors Hearings Interim Findings Letter 120325.docx](#)

Dear Gabe/Holly

Please see attached Inspectors' letters on a for information basis that the Inspectors intend to send to Mid Sussex and Horsham regarding their emerging Local Plans. A brief summary note is also attached, and the position is summarised below. Are you content for these letters to be issued by the Inspectors?

Many thanks and kind regards

Simon Berkeley
Professional Lead for Local Plans
The Planning Inspectorate

Summary

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the Duty to Co-operate (DtC) and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this "*cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part*".
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.

Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

-

We recommend that the letters are issued to the two Councils without delay.

PINS Inspectors' letters: Mid Sussex and Horsham Local Plans**March 2025****Summary**

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Mid Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the DtC and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any specified amount of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this *"cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part"*.
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.
- Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.
- The Mid Sussex and Horsham Inspectors are writing to the Councils recommending that the Plans should be withdrawn.

ContextCrawley

- The Local Plan was adopted in October 2024 with a housing requirement of 5,330 over the 2023 to 2040 plan period.
- The Plan identifies an unmet housing need of 7,505 dwellings over the plan period.

Mid Sussex

- The current Local Plan was adopted in March 2018.
- The emerging plan was submitted for examination in July 2024 with a proposed housing requirement of 19,620 over the 2021 to 2039 plan period (1,090 dpa).
- 2024 LHN: 1,039 dpa
- NPPF LHN: 1,356 dpa
- 2023 HDT: 142%

Horsham

- The current Local Plan was adopted in November 2015.
- The emerging Local Plan was submitted for examination in July 2024 with a proposed housing requirement of 13,212 over the 2023 to 2040 plan period (777 dpa).
- 2024 LHN: 15,487 (911 dpa)
- NPPF LHN: 1,357 dpa
- 2023 HDT: 62%

MPs

- Andrew Griffith (Cons) (Arundel and South Downs)
- John Milne (Lib Dem) (Horsham)
- Mimms Davies (Cons) (East Grinstead and Uckfield)
- Alison Bennett (Lib Dem) (Mid Sussex)

DtC background

Crawley

- The adopted Crawley Local Plan sets out the expectation that its unmet housing need (7,505 dwellings) will need to be considered through DtC discussions as part of the Local Plan Reviews for the other authorities within the Housing Market Area (primarily Horsham and Mid Sussex).
- The Plan notes that the “*adopted Local Plans for Horsham and Mid Sussex districts had anticipated to provide an additional 3,000 dwellings above their objectively assessed housing needs, in order to meet Crawley’s unmet need. However, through the Local Plan Reviews this figure is likely to change, particularly as the Standard Method increases their own housing requirements to above their current adopted Plan commitments*”.

Mid Sussex

- The Council met with all neighbouring authorities in the Autumn of September 2021, setting out its approach to housing, and accepted that unmet need from other authorities would need to be factored in.
- On submission, the Plan’s housing requirement was 19,620 dwellings with a proposed supply of 20,616. The Council’s stance is that the difference – 996 dwellings – would contribute to the “resilience” of the Plan (in terms of meeting the needs of Mid Sussex) and “unmet need” in the housing market area in general.

Engagement with sub-regional planning groups

- There are two sub-regional planning groups that cover Mid Sussex – the West Sussex Greater Brighton Planning Board (WSGBPB) and the Gatwick Diamond Board.
- The Council referenced WSGBPB as an active vehicle for navigating the DtC. It last met in March 2021, before the commencement of plan-making.
- In relation to the Gatwick Diamond Board, the Inspector notes that this body is only mentioned twice in the Council’s evidence relevant to the DtC.
- The Inspector concludes that these groups have not played an active role under the DtC.

Engagement with Crawley

- Crawley has made several formal requests for Mid Sussex to contribute to meeting its unmet housing need, in January 2020 (before the commencement of plan-making), and in April 2023 (before the Regulation 19 draft Plan was finalised). Crawley’s response to the Regulation 19 consultation reiterated that there was a significant outstanding issue of unmet housing need.
- The Inspector’s letter notes that Mid Sussex and Crawley have been involved in wider housing market area DtC meetings, but these were primarily focussed on procedural issues. Whilst the two Councils did meet twice, the Inspector concludes that “Crawley’s needs were, in effect, ignored in the absence of ongoing and constructive engagement”.

Engagement with Horsham

- The Inspector also has concerns in relation to engagement with Horsham. Horsham wrote to Mid Sussex in August 2022 suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology reappraised. Horsham formally requested that Mid Sussex contribute to Horsham’s emerging unmet housing need in November 2023. Mid Sussex did not reply until March 2024, and undertook its Regulation 19 consultation in the meantime. The Inspector considers that the reply did not say anything meaningful about what, if anything, Mid Sussex could do to assist. The Inspector’s letter concludes that Mid Sussex did not engage with Horsham in the active and ongoing way prescribed under the DtC.

Engagement with Brighton and Hove

- Mid Sussex is also partly within the Coastal West Sussex housing market area. This includes Brighton and Hove, which is constrained by the South Downs National Park to the north and the English Channel to the south. Evidence to the examination puts Brighton and Hove’s unmet housing need at 17,000 dwellings.
- Brighton and Hove made a request for Mid Sussex to contribute to meeting its unmet housing need in September 2021. The Inspector’s letter says that Mid Sussex had “minimal interaction” with Brighton and Hove, and that their points were “dismissed without constructive dialogue or any otherwise meaningful

exploration of the issues". It concludes that plan preparation has not been maximised and that consequently the DtC has not been met.

Horsham

The position and engagement between Regulations 18 and 19

- Regulation 18 consultation took place between February and March 2020. At that point in time, Crawley anticipated equal contributions from both Horsham and Mid Sussex towards addressing its unmet housing need (estimated at that time to be 5,925 homes). The Regulation 18 draft Plan proposed a housing requirement of between 1,000 and 1,400 dpa, exceeding the LHN figure of 965 dpa. This could have contributed towards meeting Crawley's needs.
- A draft Plan was prepared in July 2021 based on a housing requirement of 1,100 dpa. The spatial strategy included a new village of at least 2,100 homes. This draft of the Plan was not consulted on. The Inspector cannot find any evidence of this draft Plan being considered "in any great detail" under the DtC.
- Natural England published a position statement in September 2021 setting out that all development within the Sussex North Water Supply Zone, which includes Horsham, will need to be water neutral. This is to avoid harm to the integrity of internationally and nationally designated nature sites in the Arun Valley.
- Work began on a joint local authority-led initiative, the Sussex North Offsetting Water Scheme (SNOWS). Under this scheme, once operational, developers will be able to 'buy in' to SNOWS to offset water use and demonstrate water neutrality. The Inspector's letter indicates that SNOWS may be in a position to be tested and launched this month (March 2025).

The position and engagement between Regulation 19 and submission

- A draft Plan was published for consultation under Regulation 19 in January 2024. The submitted Plan is the same as this draft. It sets a housing requirement for Horsham of 777 dpa, against a LHN of 911 dpa. It does not meet Horsham's housing need or include any contribution towards Crawley's unmet need. The new village proposed in July 2021 is not proposed for allocation.
- Strategic Policy 9 of the Regulation 19 draft Plan requires all development to demonstrate water neutrality, either through the use of SNOWS or an independent scheme.
- A number of representations made under Regulation 19 promoting sites not allocated in the Plan include evidence to show that the sites concerned can provide their own independent water neutrality schemes. One such representation is from the promoter of the new village. This is backed up by correspondence from Natural England's Discretionary Advice Service which says the solution proposed "is suitable to avoid adding to the risk of adverse effects on the integrity of the Arun Valley sites".
- The Inspector considers that sites that could provide independent water neutrality schemes should have been discussed under the DtC in an effort to meet Horsham's need and contribute to addressing Crawley's unmet need, particularly given that SNOWS was not operational when the Plan was submitted, it was known that it would not be ready to use as a means of demonstrating water neutrality for some time and given that Strategic Policy 9 allows this approach. There is no substantive evidence that such discussions took place.
- The Inspector also consider that there should have been DtC discussions about the changes to the Plan's spatial strategy since the July 2021 draft, to consider market capacity and the role of strategic scale developments. There are no records of any substantive discussions of this kind.
- The Inspector ultimately concludes that there is a gap in co-operation between January 2024 and July 2024, and that the DtC has therefore not been met.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

We recommend that the letters are issued to the two Councils without delay.



Horsham District Local Plan 2023-2040

Examination Inspector: L Fleming BSc (Hons) MRTPI IHBC

Programme Officer: K Trueman

programmeofficer@horsham.gov.uk

Examination Webpage:

<https://www.horsham.gov.uk/planning/local-plan/local-plan-examination>

12 March 2025

Examination of the Horsham Local Plan 2023-2040

Dear Ms Howe,

Background and Introduction

1. The Horsham Local Plan 2023-2040 (the Plan) (SD01) was submitted on 26 July 2024. I wrote to Horsham District Council (the Council) on 23 August 2024 seeking clarification when outstanding evidence would be submitted, explaining that the Plan would be examined under the National Planning Policy Framework September 2023 version (referred to hereafter as the NPPF) and drew attention to Matthew Pennycook MP's letter to the Planning Inspectorate dated 30 July 2024¹ (ID2).
2. In September 2024, I issued my Matters, Issues and Questions (MIQs) (ID04) for the Examination and set out a provisional four-week programme of hearing sessions (ID05) to take place between December 2024 and January 2025.
3. When opening the hearing and at the end of the first week of sessions, I explained that I had a number of soundness and legal compliance concerns. I stated that even if I was able to find the Council had met the Duty to Co-operate (DtC), addressing soundness issues could require significant further work which could take much longer than 6 months to complete.

¹ Local Plan examinations: letter to the Chief Executive of the Planning Inspectorate (July 2024)

4. On 16 December 2024, I wrote to the Council (ID06) cancelling the remaining hearing sessions and advising that I would, as soon as possible, put in writing my detailed concerns based on my examination of the Plan so far and in response to the completion of the hearing action points.
5. The relevant action points have all now been completed with the new evidence available on the examination website. This letter therefore sets out my legal compliance concerns in relation to the matters discussed at the hearing sessions and in response to the hearing action points. It does not deal with all matters and issues in the same level of detail as an Inspector's Report.
6. My letter focuses on legal compliance with the DtC because it applies to the plan preparation period and therefore cannot be rectified during the Examination. In it, I explain why I conclude that the Plan has failed the DtC and explain why the Council should withdraw the Plan from Examination.

The Duty to Co-operate

7. Section 33A of the Planning and Compulsory Purchase Act 2004 (PCPA) imposes a duty on the Council to co-operate with other planning authorities and prescribed bodies by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation.
8. The PCPA makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter.
9. My assessment of DtC compliance is focussed on housing and water supply which are both recognised in the Council's evidence (DC01) as strategic matters.

Housing and Water Supply Contextual Background

10. Horsham District is entirely within the Northern West Sussex Housing Market Area (NWSHMA) which covers the rural districts of Horsham and Mid Sussex and Crawley Borough Council. The rural districts wrap around Crawley's predominantly built-up urban area leaving little space for Crawley to grow within its own administrative boundaries.
11. The Coastal West Sussex Housing Market Area (CWSHMA) overlaps the NWSHMA in the south. Horsham District also forms part of the extensive Gatwick Diamond Economic Area which extends from Croydon, near Gatwick in the north and down the A23 corridor to the south coast.
12. The NWSHMA Assessment 2019 (HO1) endorses the NWSHMA boundary, recognises the overlap with the CWSHMA and notes the growing economic influence of Crawley and Gatwick. It also notes the affordability challenges faced by people wanting to live in the District, noting median house prices in

Horsham at 13.9 times earnings based on 2018 data.

13. The adopted Horsham District Planning Framework 2015-2031 (HDC05) requires 800 dwellings per annum (dpa) with the examining Inspector's report (HDC06) explaining 150 dpa would meet about half of the unmet needs arising from Crawley at that time, with the remainder being met in Mid Sussex. Although, 1,201 homes were built in the district in 2015/16, 1,125 in 2017/18 and 1,369 in 2018/19, showing higher annual housing completion rates have historically been achievable.
14. However, in 2020/21 the supply of water to new homes and the effect this may be having on internationally designated habitats began to emerge as an issue.
15. In September 2021 Natural England (NE) published a document titled Natural England's Position Statement for Applications Within the Sussex North Water Supply Zone (SNWSZ) – September 2021 – Interim Approach (CC08). It states all development within the SNWSZ will need to be water neutral defining water neutral or water neutrality as "the use of water in the SNWSZ before the development is the same or lower after the development is in place". This is because at that time it could not be ruled out with any certainty that new development in the SNWSZ would not affect the integrity of internationally designated habitat sites in the Arun Valley due to the need for associated water abstraction at the Hardham/Pulborough borehole.
16. The Council's Habitats Regulations Assessment, November 2023 (SD07) reflects CC08. It notes at paragraph 6.1 that it is ultimately for Southern Water (SW) working with the Environment Agency (EA) to ensure that water abstraction to supply new dwellings from the Hardham/Pulborough borehole does not result in an adverse effect on the integrity of the Arun Valley sites. It also says that until such time that this issue has been resolved strategically, NE has requested that Horsham, and the other local planning authorities within the SNWSZ, provide for water neutrality within their local plans in order to minimise the burden new development places on local water resources and thus minimise the need for SW to abstract water from the Hardham/Pulborough borehole to its full permitted extent as detailed in the relevant abstraction licence and allowed for in the SW Water Resource Management Plan (WRMP).
17. SW are required by section 37A-37D of the Water Industry Act 1991 to prepare a WRMP every five years and review it annually. SW's WRMP 2024 is in preparation and although delayed, is expected to replace the current WRMP, (WRMP 2019) in 2025. WRMP 2024 will be an extensive, detailed plan covering a period of some 50 years looking at how water is supplied and managed in the region. Its finalisation will inevitably inform, if not provide any possible strategic resolution to water neutrality as referred to in SD07. It will inform whether NE can review its position as set out in CC08, in other words NE will need to decide whether water neutrality will continue to be a requirement for new development going forwards.
18. The Councils affected by CC08 have all worked together with NE, the EA and SW to try and develop consistent water neutrality policies for inclusion in local plans. Strategic Policy 9: Water neutrality (Policy SP9) of the submitted Plan

seeks to ensure water neutrality in line with the conclusions of the Council's Habitats Regulations Assessment and in response to CC08.

19. Policy SP9 says water neutrality will be achieved, firstly by water efficient design and then offsetting water use. It explains a local authority led water offsetting scheme will be introduced to bring forward development and infrastructure supported by Local and Neighbourhood Plans.
20. The local authority led offsetting scheme is the Sussex North Offsetting Water Scheme (SNOWS). This has been developed jointly by the affected Council's following recommendations from an extensive jointly commissioned Water Neutrality Study (CC09-CC11). Section 6 of CC11 under "Offsetting Schemes" says that alternative offsetting schemes are "for the commercial market to develop, using market forces to set the cost of offsetting, and drive technology improvements to improve efficiency. This approach would take some time to develop, and the burden on individual developers early in the scheme could be considerable. There is also no certainty that a market led scheme would deliver sufficient and timely offsetting in order to ensure offsetting is in place prior to development in all cases. Significant monitoring by Local Planning Authorities would still be required". It goes on to explain that there is room for developers to find their own offsetting options and any such offsetting would impact on the amount of remaining offsetting required.
21. Thus, whilst CC11 casts doubt over the ability of the private sector to bring forward offsetting schemes it does not preclude them or suggest they would be harmful in any way. There is also nothing substantive in CC09-CC11 which suggests private water supply boreholes as a way in which a developer could demonstrate water neutrality would not be practicable or would lead to significant adverse impacts.
22. HDC31 provided in response to a hearing action point explains that the EA is undertaking work which will among other things look at the effect of private water supply boreholes (individual and cumulatively) in recognition of increasing developer interest. Furthermore, the use of alternative boreholes to supply water are being considered by SW in developing WRMP 2024. However, that work was commissioned by the EA in October 2024 and has not yet been completed. It is not clear to me how the NWSHMA local authorities have been engaged in it or how it is intended to inform the Examination or any possible strategic resolution to the issue of water neutrality.
23. Criterion 4 of Policy SP9 makes it explicitly clear that development proposals are not required to utilise the local authority led offsetting scheme and may bring forward their own schemes to achieve water neutrality without relying on SNOWS in advance of any strategic resolution to the issue of water neutrality.
24. It is therefore clear that in order to meet the water neutrality requirement of CC08 and Policy SP9 a developer can develop their own entirely private water neutrality scheme which could include any combination of private offsetting and/or private supply sources (private water neutrality schemes).

25. This does not mean that any such private water neutrality schemes will be considered to be acceptable or deliverable as they will need to be considered on their merits. However, it does mean that a development proposal which benefits from a private water neutrality scheme would not be prevented from being constructed for any reasons related to water supply or water neutrality.
26. However, SNOWS has not been delivered as originally anticipated. The Council confirms SNOWS may be able to be formally tested and launched between February and March 2025. However, whilst work is ongoing, at the current time it is still not clear as to the amount of offsetting (in the form of credits) it would provide for developers to access without fully understanding the offsetting measures to be detailed in SW's WRMP 2024. The Councils have clearly found establishing their own offsetting arrangements challenging based on the resources available to them. This is understandable, given water supply offsetting has not historically been something they have ever had to consider in any detail.
27. I accept SNOWS, as a co-ordinated local authority led offsetting scheme would have advantages in managing the issue of water neutrality going forwards over un-coordinated developer led private water neutrality schemes designed to supply water to individual developments. I also acknowledge SNOWS was not operational when the Crawley Local Plan was examined and that Plan was found sound and legally compliant. In addition, I note the Council and others are working on more water and habitats related evidence and there are a number of studies in preparation which may inform how water neutrality should be addressed in examining the Plan and when considered alongside SW's emerging WRMP 2024 could be used to inform a strategic resolution to the issue of water neutrality (HDC31, HDC32 and HDC33).
28. I also acknowledge the commentary in the evidence regarding SW and how it engages with developers wishing to develop their own private water neutrality solutions. I note the Frequently Asked Questions document, how this was developed and the information it provides (HDC29a). I also note the challenges identified in bringing forward independent private water supply sources, particularly in securing the necessary consents. However, there is no substantive evidence in any of the documents before the Examination which lead me to believe it is not possible through detailed technical design to secure a private water supply source. This is irrespective of the size of the development that private water supply source is expected to supply.
29. It is also noted, the Council's draft housing trajectory (HDC20 and HDC03) includes sites which identify "On Site Borehole Supply" as the "Water Neutrality Solution", albeit I acknowledge these are relatively small sites.
30. Even so, the fact remains that currently all housing development in Horsham must be demonstrated to be water neutral in line with CC08 before it can be built, and in principle private water neutrality schemes can be used to demonstrate water neutrality. Clearly the deliverability of such private schemes is relevant because of the necessary degree of certainty required. However, the same degree of required certainty applies to SNOWS as an alternative way in which water neutrality may be achieved at some point in the future when the

scheme becomes fully operational. This is all subject to the matter of water neutrality being strategically resolved at some point over the Plan period, possibly as early as 2025.

31. Against all this contextual background, the submitted Plan sets a capacity-based housing requirement of 777 dpa or 13,212 between 2023 and 2040. This would not meet the District's housing need calculated using the standard method, falling short by some 2,377 homes (DCO2).
32. As submitted, the Plan would therefore add to the substantial unmet housing needs in the NWSHMA, which equates to around 7,500 dwellings (DC02) even before accounting for the extent of any shortfall in Horsham or Mid Sussex. The unmet need in the NWSHMA, which mainly arises from Crawley is clearly of a strategic scale which requires a strategic response.
33. The scale of the unmet need arising from Crawley, the limited availability of undeveloped land within Crawley Borough Council's administrative area, the existing housing requirements detailed in the adopted Horsham District Planning Framework 2015-2031 (HDC05) all indicate to me, that the needs of Crawley should continue to be prioritised over meeting any of the substantial unmet housing need arising from the CWSHMA.
34. For the purposes of this letter, I therefore focus on the co-operation which took place between Horsham District Council, Crawley Borough Council and Mid Sussex District Council (referred to collectively as the NWSHMA local authorities) in preparing the Plan. However, I do not need to reach a definitive view on prioritisation for the purposes of this letter, nor do I need to fully assess co-operation between the Council and local authorities within the CWSHMA in any detail. Nevertheless, it is clear that unmet housing need in the CWSHMA is significantly more than that of the NWSHMA.

The Plan Preparation Period

35. The Council published and consulted on a document titled Local Plan Review Issues and Options Employment, Tourism and Sustainable Rural Development between 6 April and 26 May 2018 (CD03), but this did not seek views on any housing or environment related matters which would reasonably be expected to be considered in a Local Plan and instead focussed only on matters related to the District's economy. Between 17 February 2020 and 30 March 2020, the Council undertook a further consultation under regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2017 (Local Planning Regulations) on a partial draft Plan (CD01 supported by CD02) where all relevant matters were considered.
36. The Council then prepared a draft Plan, which was completed in July 2021 (the July 2021 Draft Plan) (SS02) covering the period of 2021 to 2038. This was considered by the Council's cabinet on 15 July 2021 but was not published for consultation under either regulation 18 or regulation 19 of the Local Planning Regulations. Instead, the Council decided more evidence was needed and concluded, without any public consultation that the July 2021 Draft Plan could not be taken forward at that time.

37. Thus, between July 2021 and January 2024, the July 2021 Draft Plan was amended into the Plan which has been submitted for Examination. It was published under regulation 19 of the Local Planning Regulations in January 2024 and submitted for Examination without change, some six months later, along with the representations, on 26 July 2024.
38. The Plan was therefore prepared over a period of some six years between 6 April 2018 and 26 July 2024.

Co-operation between April 2018 and July 2021

39. At the regulation 18 stage of Plan making, the Council did not appear to be aware of any significant issues associated with water neutrality and housing delivery because in February 2020 it consulted on a district housing requirement of between 1,000 and 1,400 dpa, a significant increase in the 800 dpa requirement detailed in the adopted plan (CD01). This was clearly intended to allow the District's housing need to be met and contributions to continue to be made towards unmet housing needs outside of the District boundary, particularly those arising from Crawley.
40. Crawley Borough Council responded to the Council's consultation saying that there would be an unmet need for housing in Crawley of 5,925 homes between 2020-2035 based on their own draft Local Plan and associated evidence. They said they "anticipated this outstanding amount will be considered through the review of the Mid Sussex District Plan, such that Mid Sussex and Horsham would both contribute equally to meeting unmet needs arising from Crawley, as agreed in the current Local Plans" (HDC29).
41. Between Spring 2020 and July 2021, the July 2021 Draft Plan was prepared based on a housing requirement of 1,100 dpa. The Council say at that time, it was felt 193 dpa would contribute towards known unmet needs arising from Crawley. Based on the evidence before me, I find it reasonable to conclude, that the NWSHMA local authorities all felt this approach would ensure the housing needs of the NWSHMA would be met in full at that time (HDC29). The annual requirement 1,100 dpa would have also included a small contribution of 20 dpa towards the unmet needs of the CWSHMA.
42. The July 2021 Draft Plan was based on a draft spatial strategy which involved extensions to existing settlements and the construction of a new village through strategic allocation, Buck Barn HA5 (Strategic Allocation HA5). It was expected this would deliver at least 2,100 homes by 2038 although it was recognised in the draft plan that "in total, the new community has been promoted for some 3,000 to 3,500 homes". Paragraph 6.26 also notes Strategic Allocation HA5 was located on the A272 and A24 corridors with good road connections providing links to both the northern settlements within the Gatwick Diamond, and connections to the south coast.
43. Although, the July 2021 Draft Plan, and its spatial strategy was not publicly consulted on, it was highly relevant to any DtC co-operation which occurred up to July 2021. However, I cannot see any substantive evidence which records the co-operation which took place under the DtC up to July 2021 where any

relevant local authority or prescribed body raised any significant specific concerns with regard to the Council's draft spatial strategy or Strategic Allocation HA5. It seems to me, on the basis of the evidence, that neither were discussed in any great detail between the NWSHMA local authorities between April 2018 and July 2021.

44. The Council say the completion of the Gatwick Sub-Regional Water Cycle Study 2020 (CC05) was when they first began to understand the issue of water neutrality. However, the NWSHMA local authorities were also clearly developing their knowledge and understanding of the issue when its water neutrality evidence (CC09) was first commissioned in early 2021. The Council also commissioned a Horsham Local Plan Water Neutrality Technical Note which was completed in March 2021 (CC12).
45. The July 2021 Draft Plan also stated "that much of the South East has now been designated as an 'area of serious water stress' by the EA, with demand for water exceeding supply. Water in Horsham District is supplied from abstraction at Hardham (located in the South Downs National Park), and over abstraction will lead to the loss of integrity of the Arun Valley sites". It also stated that "in order to ensure that water supplies can be maintained, and the environment be protected, the Council propose that all new housing should meet a tighter level of water efficiency and provide measures that contribute to the aim of water neutrality, and as a minimum, does not increase demand for water over existing levels."
46. I accept the Council's understanding of water neutrality as a strategic matter has clearly grown over time. I also accept NE's position was confirmed when CC08 was published in September 2021 effectively placing an embargo on development in the District, unless it can demonstrate water neutrality. However, in my view, the Council clearly had a reasonable level of knowledge of the issues associated with water supply and habitats back in July 2021 when it prepared a draft plan based on a spatial strategy which would meet the housing needs of the District and make a significant contribution towards meeting unmet needs in the NWSHMA, particularly those arising from Crawley.

Co-operation between July 2021 and January 2024

47. The Council amended the July 2021 Draft Plan between July 2021 and January 2024 into the submitted Plan which includes a much lower annual housing requirement of 777 dpa equating to 13,212 homes over the plan period which would not meet the District's housing need or make any contribution towards any known unmet needs arising from elsewhere. The Council's Local Development Scheme September 2023 (SP03) shows the Council expected at that time, that the Plan would be submitted for Examination in June 2024.
48. The housing requirement in the submitted Plan would be delivered through a spatial strategy which relies only on extensions to existing settlements. The submitted Plan does not make any reference to a new settlement anywhere in the District. The reasons the Council gives for the changes to its housing requirement and spatial strategy can be summarised as the capacity of the Horsham District housing market to absorb new development and water neutrality.

49. The Council confirmed at the hearing that the figure of 777 dpa is derived from the Horsham Housing Delivery Study September 2020 (HO2) and the Horsham Housing Delivery Study Update November 2023 (HO3), taking into account the capacity of the housing industry to build new homes in the District against the background of delayed delivery associated with water neutrality. Whilst the DtC evidence shows this study was shared with the NWSHMA local authorities, it was commissioned by Horsham District Council independently and the DtC evidence does not indicate that any substantive discussions took place on its findings.
50. The Sustainability Appraisal evidence completed in December 2023 (SD03a) states “the potential for both water efficiency and offsetting are finite, which may constrain the amount of development possible in an area”. Paragraph 6.31 of SD03a draws on CC11 completed in November 2022 and considers based on the WRMP how much housing growth can be theoretically delivered across the SNWRZ. It notes that if growth identified in relevant Local Plans (at different stages of preparation) is to be delivered, further offsetting beyond measures identified by SW are necessary.
51. Paragraph 6.52 of SD03a, says in summary, that the conclusions of the sustainability appraisal work undertaken up to July 2021 needed to be revisited because housing delivery during the early years of the plan period had been delayed and due to the limited availability of off-setting credits only a lower amount of development could come forward than that identified in the July 2021 Draft Plan. It considers on page 119 in summary, the provision of a new settlement to be less sustainable than growth options which extended settlements. However, in making this comment there is no reference to strategic scale development proposals and the opportunities to support a range of land uses and new infrastructure in the context of the significant scale of unmet needs in the NWSHMA.
52. Paragraph 7.7 of SD03a clearly explains that water neutrality was not considered in the appraisal of large and small sites in SD03b-d, but has been considered in SD03a. However, it goes on to confirm, that the Council retained a neutral impact against the relevant objective (referred to as SA11: Water Resources) because it affects all sites equally. However, as I have explained above, subject to an appropriate level of assessment, in principle a housing development that is supported by a private water neutrality scheme could, subject to detailed assessment, be developed now and would not be constrained by water neutrality whereas SNOWS as an alternative is not fully operational.
53. There is no substantive evidence before the examination, that indicates the principle of developments which rely on private water neutrality schemes and their ability to support development in advance of SNOWS or WRMP 2024 had been considered by the Council or the NWSHMA local authorities between July 2021 and January 2024 in any substantive detail. Such consideration would have needed to be in the context of their ability to address or at least contribute towards addressing known unmet needs during this period. Given the substantial unmet housing needs in the NWSHMA at this time, it was incumbent on the Councils in the HMA to consider the potential of private

neutrality schemes, as part of the strategy for meeting some, if not all, of the unmet need. Consideration under the DtC does not mean such sites should be included in the Plan.

54. HDC29a provided in response to a hearing action point explains at paragraph 21 that the Council had an open mind to alternatives to SNOWS but had no compelling evidence which indicated resources should be diverted towards considering them in detail. It shows between July 2022 and March 2023 meetings and correspondence occurred between the Council, the Water Neutrality Project Manager, NE, the EA and SW. Whilst concerns related to the technical delivery of alternatives to SNOWS are clearly identified this does not show that subject to further evidence and achieving the necessary consents any of the alternatives could not be definitively delivered.
55. Furthermore, there are no records of any substantive detailed discussions between the NWSHMA local authorities relating to the Council's reasons for amending its spatial strategy between July 2021 and January 2024. Such discussions would have required some detailed consideration of the Council's evidence on market capacity and would have required some detailed consideration on the role of strategic scale developments in principle in addressing the acute need for housing in the area.
56. Because SNOWS had not progressed and there was no strategic resolution as envisaged by the Council's Habitats Regulations Assessment and CC08 between July 2021 and January 2024, any sites, especially a strategic scale site which relied only on a private water neutrality scheme was clearly a possible way in which some housing need could be met. It was therefore relevant to any co-operation on strategic matters of housing and water supply that occurred between July 2021 and January 2024 and required detailed consideration by all NWSHMA local authorities in the context of unmet housing needs.
57. I also heard at the hearing, that in July 2023 Horsham District Council held a developer day which was attended by the site proponents of Strategic Allocation HA5. They indicated at that event that they had evidence to demonstrate the development of their site would benefit from a private water neutrality scheme. It is not clear to me, how the Council used or shared any evidence gathered through this event in preparing the Plan or in its discussions with neighbouring authorities around meeting its unmet housing needs and those of the NWSHMA more widely.
58. All the NWSHMA local authorities knew between July 2021 and January 2024 that water neutrality could not be strategically resolved until at least 2025 because they fully engaged in the consultation on WRMP 2024. It was also widely known that the Council intended to submit its Plan before 2025 as indicated in its Local Development Scheme, at a time when all NWSHMA Authorities would have known SNOWS would not be operational.
59. Thus, before amending its housing requirement and spatial strategy for reasons relating to market capacity and water neutrality between July 2021 and January

2024, the Council should have fully explored all other options with its neighbours in the context of their knowledge of the unmet housing needs at that time.

60. This required detailed consideration of whether any sites were available or could be made available which may not be constrained for water neutrality reasons. DtC engagement between the NWSHMA local authorities during this period, should have also involved some detailed consideration as to whether it was appropriate or not to delay the submission of the Plan in light of what all NWSHMA local authorities knew at that time with regard to the likelihood of a strategic resolution to the issue of water neutrality.

Co-operation between January 2024 and July 2024

61. The Plan was published under regulation 19 of the Local Planning Regulations in January 2024 and submitted for examination in July 2024.
62. Crawley Borough Council responded to the regulation 19 consultation clearly setting out their unmet need of around 7,500 dwellings². Mid Sussex District Council³ responded noting the unmet need in Horsham District and said in summary that they were content that Horsham District Council was maximising housing supply at this time given the constraints imposed by water neutrality. However, they also commented that water neutrality is a temporary position and urged Horsham District Council to “take every opportunity to increase housing supply should opportunities (which are consistent with achieving water neutrality) present themselves within the plan period”.
63. Between January and February 2024, the Council received numerous regulation 19 representations from developers promoting omission sites objecting to the Plan. These are all detailed in the Council’s Consultation Statement (SD12). Some of those sites claimed to benefit from private water neutrality schemes. It is not necessary or appropriate for me to deal with all these representations in detail. However, I use the representations made by the proponents of a site which was, until July 2021, being proposed by the Council as a strategic allocation as an example (Strategic Allocation HA5).
64. Those representations⁴ object to the Plan for soundness and legal compliance reasons and were supported by a number of technical reports covering a range of issues including a “Water resources Report” and a “Water Neutrality Technical Note” dated February 2024. With reference to meetings with the EA, NE and SW the representations conclude, in the developers view, that their site benefits from a private water neutrality scheme. The evidence shows utilisation of NE’s Discretionary Advice Service in the summer/autumn of 2022 and in a letter dated 3 January 2023, NE say “subject to the applicant being able to obtain all the relevant permissions from the EA, the solution proposed is suitable to avoid adding to the risk of adverse effect on the integrity of the Arun

² SD12 (Rep ID:1194005)

³ SD12 (Rep ID:1198343)

⁴ SD12 (Rep ID:1192082)

Valley sites". The evidence suggests a strategic scale site could be water neutral without needing to rely on any form of public offsetting, any credits or any strategic resolution to the issues of water neutrality. Furthermore, the representations include details of meetings held with NE and the EA on 11 January 2024 and with SW on 9 February 2024 where neither the EA, NE nor SW indicated that the developer's private water neutrality scheme as detailed at that time could not be implemented, would not achieve its aims based on the information available or that it would lead to any significant adverse impacts.

65. In response the Council says in summary in evidence provided after the Plan was submitted, that the private water neutrality scheme and associated evidence provided at the regulation 19 stage relating to Strategic Allocation HA5 can only be regarded as conceptual and cannot be regarded as deliverable nor capable of providing the necessary level of reasonable certainty (HDC29a). Paragraph 8 of HDC29a states "It was the Council's judgement that submission of a Plan which included such a strategic site, but which lacked evidence of delivery based on a feasible water neutrality scheme would not have been sound". In reaching that judgement HDC29a shows the Water Neutrality Project Manager met with the EA in February 2024, where the EA raised brief concerns with regard to the specific details of the proposed private water neutrality scheme. It also shows a record of correspondence between the Council and SW in June 2024, but this does not detail any definitive conclusions.
66. I accept that any proposal which utilises a private supply borehole must also secure any necessary consents including water abstraction licences from the EA if it exceeds the relevant thresholds. I also acknowledge detailed and extensive further work would be required to bring forward a water neutral strategic scale new settlement in the District. Furthermore, I also accept that clearly, following detailed work to secure all necessary consents, any private water neutrality scheme could ultimately be found to be undeliverable.
67. However, just because the Council felt a strategic scale site lacked evidence of delivery based on a feasible water neutrality scheme would not have been found sound by an Inspector in Examining the Plan does not mean it was not necessary for it to be discussed in some detail under the DtC with the other NWSHMA local authorities against the background of what was known about unmet housing needs at that time. Or indeed, that an alternative strategy for meeting some, or all, of the District's unmet need which included sites which may benefit from private water neutrality schemes should not have been discussed in detail.
68. I note the Water Neutrality Policy Group met four times between January 2024 and July 2024 but were focussed on progressing SNOWS. HDC29a shows the regulation 19 representations where only discussed generally at those meetings, without any specific reference to any private water neutrality schemes which have been purported to exist by site proponents or any recognition of unmet housing needs.
69. Whilst meeting records do show that the Council's regulation 19 consultation responses were discussed generally at relevant forums, there is no substantive evidence which explicitly shows any record of a new settlement in Horsham or

any other omission sites which claimed to benefit from a private water neutrality scheme being discussed in any significant detail between all NWSHMA local authorities in the context of unmet housing needs. There is also no record of the principle of private water neutrality schemes being discussed as a means by which water neutral homes could be built in the NWSHMA or Horsham district at that time in the context of the scale of unmet housing needs.

70. In my assessment, the Council and the other NWSHMA local authorities all knew between January 2024 and July 2024 that SNOWS was not fully operational and would not be for some time after the Plan was submitted. They all also knew WRMP 2024 would not be in place and NE would be unable to review its position as set out in CC08 at least until further work had been completed some time after the Council intended to submit its Plan.
71. Horsham District Council were clearly not obliged to explicitly discuss every detailed regulation 19 representation it received with all of the NWSHMA authorities. It was for the Council to make an assessment of the representations and initiate co-operation on any information received further to its legal requirement to meet the DtC and having regard to the relevant strategic matters on which co-operation is required.
72. If the reason for the Council not actively initiating detailed discussion on any of these points is because, the Horsham District housing market could not absorb any more development than detailed in the submitted Plan, this ought to have also been explicitly discussed in detail at that time in light of the regulation 19 consultation responses. There is no substantive evidence to suggest this was done in any detail at any of the relevant DtC forums.
73. Thus, between February 2024 and July 2024, all of the NWSHMA local authorities clearly knew the Plan would not meet its own need for housing and would add to known substantial unmet housing needs in the NWSHMA. However, it was only the Council that had the opportunity to consider the representations it received in response to its consultation on the Plan under Regulation 19 of the Local Planning Regulations in any detail unless it explicitly drew attention to any of them before the Plan was submitted for Examination.
74. In my assessment, at the very least, for engagement to be constructive, active and ongoing between February 2024 and July 2024 on the strategic matters of housing and water supply, the ability to deliver any water neutral development without needing to rely on SNOWS or a strategic resolution to water neutrality should have been considered in some detail by all the relevant NWSHMA local authorities before the Plan was submitted.
75. This is because, such schemes could be a way in which the effectiveness of the Plan in meeting housing needs could be maximised. Indeed, Mid Sussex District Council clearly suggested in its regulation 19 consultation response, that Horsham District Council take every opportunity to increase housing supply should opportunities (which are consistent with achieving water neutrality) present themselves within the plan period.
76. For the Council's to have considered such information in sufficient detail the evidence should include a detailed written record, possibly through an update

to the relevant statements of common ground, which explains why the regulation 19 version of the Plan remains sound and legally compliant in light of the representations it received in response to its regulation 19 consultation. Such a record of engagement should explain the detailed discussion that took place and explain the key areas of agreement and disagreement.

77. Ultimately once all NWSHMA local authorities had considered the issues, Horsham District Council would then be required to explain why it felt it still was appropriate to submit the Plan for Examination without amending it in light of the regulation 19 responses prior to submission.
78. I can find no substantive evidence to demonstrate that this type of detailed engagement occurred between the NWSHMA local authorities between January 2024 and July 2024.

Conclusions on the Duty to Co-operate

79. Between April 2018 and July 2021 the Council's draft Plan would have met Horsham District Council's housing need and continued historical contributions towards unmet need from elsewhere, particularly that arising from Crawley.
80. Strategic Allocation HA5 was proposed by the Council in July 2021 as a strategic site allocation policy seeking to address strategic priorities in line with the requirements of Section 19 (1B-E) of the PCPA as an integral part of a spatial strategy which would have not only met the District's housing needs but would have allowed significant contributions to be made towards unmet housing needs which existed beyond the Horsham District boundary.
81. This is sufficient to demonstrate to me that up until July 2021 the Council felt a strategic scale new settlement as part of a spatial strategy which also included extensions to existing settlements was a possible way in which the needs of the NWSHMA could be met.
82. There is no substantive evidence to suggest any of the NWSHMA local authorities had raised any significant concerns with regard to the Council's proposed spatial strategy up to July 2021. However, between July 2021 and January 2024 the Council amended its draft Plan, reducing the housing requirement based on a spatial strategy which relies only on extensions to existing settlements. The Plan consulted on under regulation 19 and submitted in July 2024 does not make any reference to a new settlement anywhere in the District. The reasons the Council gives for the changes to its spatial strategy and reduced housing requirement can be summarised as the capacity of the Horsham District housing market to absorb new development and water neutrality.
83. Between January 2024 and July 2024 all the NWSHMA local authorities would have known that SNOWS would not be operational, and the issue of water neutrality could not be resolved strategically until at some point in 2025 at the earliest. All the NWSHMA local authorities would have also been aware that the Council intended to submit its Plan for examination when it did as it broadly reflected the timetable detailed in its Local Development Scheme published in 2023.

84. Thus, notwithstanding their deliverability or developability any sites claiming to rely on a private water neutrality solution were a possible way in which more housing than that which had already been identified in the Plan could be built in Horsham District. They were therefore a possible solution to meeting at least some of the substantial unmet housing need in the NWSHMA which was fully understood at the time.
85. For the Council's DtC engagement to be constructive between January 2024 and July 2024, in my assessment, it was incumbent on the Council to explicitly communicate the relevant evidence it received at the regulation 19 stage and discuss it in the context of the unmet housing needs identified at that time. This should have been done in some detail through an appropriate forum where all NWSHMA local authorities were able to fully engage and certainly before the Council submitted the Plan for Examination.
86. This did not appear to happen in any meaningful way, instead there are only records of general discussions on the regulation 19 representations between the relevant local authorities, there is no record of what exactly was discussed or whether those discussions led to any agreed outcomes, common ground or uncommon ground.
87. At that time it was still unclear when SNOWS could become fully operational. Thus, SNOWS could not be used to demonstrate water neutrality or the deliverability or developability of any site allocated in the Plan for housing in line with paragraph 68 of the NPPF with any more certainty than a housing proposal which relies on a private water neutrality scheme.
88. Therefore, a general discussion on the regulation 19 responses would not have been sufficient for the NWSHMA local authorities to fully understand the evidence the Council received on private water neutrality schemes or how such schemes may be able to assist in meeting some, or all, of the District's unmet housing needs.
89. Thus, the engagement that took place between the regulation 19 and submission stages of plan preparation between the NWSHMA local authorities was not constructive or active. As such, there is clearly a gap in co-operation between January 2024 and July 2024 such that the co-operation, under the DtC over the plan preparation period cannot be reasonably regarded as ongoing.
90. Whilst I recognise the extreme difficulties faced by the Council in developing the Plan and co-operating on its preparation, I am led to no other conclusion other than to find the DtC has not been met in this case. As the Council will be aware, and as I indicated at the hearing, this cannot be fixed during the Examination because plan preparation ended when the Plan was submitted.

Soundness Concerns

91. Although I have concluded the DtC has not been met, I also have significant soundness concerns in relation to the Plan's housing requirements and spatial strategy based on the discussions held at the hearing sessions and all the evidence before the Examination at this time. Nevertheless, I do not go into any further detail on these soundness concerns in this letter, other than is

necessary to provide detail in respect of the contextual background to my assessment of compliance with the DtC.

Overall Conclusion and Recommendation

92. As I outlined at the hearing sessions already undertaken, I understand how much resource has been invested into preparing the Plan. I fully recognise the supply of water to new homes has been a major issue which the Council has been required to grapple with but cannot control.
93. The Council's affected by water neutrality should be commended for their efforts in trying to develop a local authority led water supply offsetting scheme. However, this has clearly proved more challenging and resource demanding than originally anticipated.
94. It is also my view, that the supply of water as a constraint to much needed new homes for people to live in the area, should have been addressed by bodies other than the Council long before now, especially given CC08 was issued in 2021. Because, it hasn't, the circumstances upon which the Council has had to prepare the Plan have been extremely challenging, with significant Council time and resources needing to be directed at assessing and understanding issues associated with the supply of water to new homes. This is not usually an issue that local plan's need to be concerned with in any extensive detail given the responsibilities of statutory water undertakers.
95. However, even so, under the circumstances I have outlined above, I can only recommend that the Council withdraw the Plan under S22 of the PCPA and focus its resources on rapidly preparing a new Local Plan. In doing so the Council could utilise much of the good and comprehensive work already undertaken before components of the evidence base become out of date.
96. If the Council do not wish to withdraw the Plan, the Council could choose to receive my report on the examination of the Plan so far. This will conclude the Plan is not legally compliant. For me to prepare a report, it would involve additional time and cost to the Council with resources inevitably directed away from preparing a new Plan.
97. I appreciate the Council will need some time to consider the contents of this letter and to decide on a response. However, I ask the Council to provide an early indication of when they are likely to be able to respond fully to this letter. I do not require a response to this letter from representors at this time.

L Fleming

INSPECTOR



Examination of the Mid Sussex District Plan 2021-2039

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Dear Mr Marsh

Mid Sussex District Plan 2021-2039: Stage 1 Findings

1. Firstly, I would like to thank you for the way in which your team, together with other participants have engaged and helped me with my examination of the Mid Sussex District Plan 2021-2039 (the Plan). I apologise for the delay in responding.
2. As you are aware I have been appointed by the Secretary of State to examine the Plan, not only in relation to whether it meets the tests of soundness, as set out in the September 2023 version of the National Planning Policy Framework (Framework) but also whether it is legally compliant.
3. In my initial letter of August 7, 2024, I set out that I would examine the Plan in two stages as there were some fundamental issues, including the Duty to Co-operate (DtC), that required testing before I could be confident that I could move to the Stage 2 hearings.
4. Following the end of the Stage 1 hearings I asked for various additional pieces of work to be provided to the examination. This included any detailed evidence in relation to the DtC which you had not previously submitted, such as copies of relevant agendas and minutes of meetings (AP0013). This was to ensure that you were given every opportunity to demonstrate that you had co-operated with the relevant prescribed bodies and complied with the DtC. I am now in receipt of this and the other additional work¹.

¹ Including the consultation responses to AP-018.

5. I am aware that no neighbouring authority nor any other prescribed body has suggested that Mid Sussex had not met the legal duty. I also note that signed Statements of Common Ground have been received relating to all the neighbouring Councils and some, although not all, of the prescribed bodies.
6. Nevertheless, in relation to the strategic matter of the unmet housing needs of neighbouring local planning authorities (LPAs), I have now concluded that the Council has not met the DtC, in its preparation of the Plan. A failure to meet the DtC is fatal to the progression of a Plan and cannot be rectified following submission.

Legislation

7. Section 33a of the Planning and Compulsory Purchase Act (P & CPA 2004) sets out the legal obligations on LPAs, amongst others, with regard to the DtC in relation to the planning of sustainable development.
8. As you are aware, as part of my examination of the Plan, I must be content that the LPA has complied with any duty imposed on the authority by S33a of the P & CPA 2004.
9. The DtC requires that local planning authorities must co-operate in maximising the effectiveness with which activities are undertaken.
10. It also requires every person, such as in this case, Mid Sussex District Council (MSDC), to engage constructively, actively and on an on-going basis in any process, by which means activities, including local plan preparation, is undertaken. This legislation has remained in force throughout the preparation of the plan. As such, MSDC must have complied with it. It also requires MSDC to have regard to the activities of others, as long as they relate to a relevant strategic matter.
11. A strategic matter is defined, amongst other matters, as a use of land that would have a significant impact on at least two planning areas.

12. Engagement requires *considering* agreeing joint approaches to undertaking activities. This includes the preparation of joint local development documents under section 28 of the PCP.
13. In undertaking the DtC, the Act requires that regard must be had to the guidance in complying with the DtC provided by the Secretary of State. This guidance is set out in the Framework and the Planning Practice Guidance (PPG).
14. Authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.
15. The PPG is explicit that inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or do not rely on the inspector to direct them. It also reiterates that the DtC cannot be rectified post submission.

Plan Preparation

16. It is not clear when the review of the Plan began. In your Matter 1 hearing statement², the Plan review is reported as starting in 2020, yet the Council's most recent evidence has the process both beginning in July 2021³ and March 2022⁴. This lack of clarity is significant as the legislation requires ongoing engagement throughout the plan preparation process. As such, it is important to know when this is, given the importance of identifying the cross boundary matters which need addressing at the outset of the plan making process.
17. Notwithstanding the inconsistencies in your evidence, I have taken the July 2021 date set out in the chronology accompanying your response to Action Point 13 provided in November 2024, as the starting point for plan preparation. The preparation of the Plan ended at its submission of the Plan on July 10, 2024. Therefore, it is this

²² MSDC Matter 1: Paragraph 1.5.

³ AP-013 Appendix E.

⁴ AP-013 Appendix A1 page A1-3

period which is relevant for my determining MSDC's compliance with the DtC.

Background and Context

18. A Duty to Co-operate Framework was produced in 2015⁵ and is considered by the Council to remain relevant to the Plan. However, this has not been updated nor has the Duty to Co-operate Protocol and Checklist been adhered to. Consequently, there is little direct evidence to demonstrate how co-operation has maximised the effectiveness of plan preparation.
19. There are a number of strategic matters such as transport, or habitat considerations where I am confident that, whilst there may be some soundness issues which require addressing, the DtC has been complied with. Similarly, whilst I note that the Council has not provided signed Statements of Common Grounds (SoCGs) with all of the prescribed bodies set out in legislation, I do not consider this to have been determinative in my judgment as to whether the Council has met the DtC.
20. However, the extensive unmet housing needs of neighbouring authorities has historically been a strategic issue in the sub-region that has required active, on-going and constructive engagement, and remains relevant to plan preparation.
21. This is clearly articulated in Policy DP5 of the adopted Mid Sussex District Plan 2014-2031⁶. The examining Inspector for that plan required the Council to undertake a prompt review of the Plan and to work under the 'Duty-to-Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed need for housing across the Housing Market Areas. As such, I am primarily concerned with how the Council has complied with the DtC in relation to housing.

⁵ DC2

⁶ BD1

Sub-regional Co-operation

22. There are two bodies in the wider sub-region with which the LPA could, theoretically, have worked, under the DtC, as a means of engaging with neighbouring local authorities. The issue here is whether the LPA did that, and if not, whether the necessary constructive, active and on-going engagement took place with neighbouring authorities in relation to local plan preparation.

West Sussex Greater Brighton Planning Board

23. Great onus is given to the West Sussex Greater Brighton Planning Board (WSGB) within the submission Plan. It is explicitly mentioned within the emerging Plan within the Background and DtC sections as an important strategic body within the wider sub-region. As written, it appears to be an active vehicle for navigating the DtC and is cited as an example of '*ongoing work*⁷' and is extensively referenced and relied upon within SoCG with individual authorities as well as the Northern West Sussex SoCGs.

24. It was also cited in the DtC Compliance Statement⁸ as one of the formal groupings with which the Council has engaged. I was led to expect that a SoCG with the Board would be submitted to the examination. During the hearings I requested a paper setting out why this had not been provided, given the importance seemingly given to it within the Plan and the Council's hearing statement. This detailed paper⁹ which was signed at officer level some five months after the submission of the Plan dispels the notion that the WSGB could have been a vehicle for cross boundary co-operation during most of the time when the Plan was being prepared. Moreover, it reported that in December 2023 the officers of the constituent authorities agreed that the group could not support the development of the current wave of local plans in the region¹⁰.

25. This is not surprising given that the last time the Board met was in March 2021¹¹. The Regulation 18 consultation took place over a year

⁷ DP1, pages 10, 11 and 23.

⁸ DC1, paragraph 4.

⁹ AP-011

¹⁰ AP-011 page 9, paragraph 43.

¹¹ AP-013 Appendix A3, page A3-9.

later in the following November 2022. Therefore, from March 2021 by which time your most recent evidence suggests Plan making had not even begun¹², the Board had not been an active group. As such, MSDC could not have engaged constructively, actively and on an ongoing basis with the WSGB in plan preparation. Consequently, it should not have been relied upon or prayed in aid to demonstrate the compliance of the Plan with the DtC in either the Regulation 18 or Regulation 19 plans or the evidence which has been provided to the examination.

26. My understanding is that work on future strategic planning issues has been '*paused*', albeit this has been for years rather than months, but nonetheless it has not been '*abandoned*' by the Board.

27. I am aware that West Sussex and Greater Brighton Planning Officers Group met a further three times during this period. However, no minutes¹³ have been provided to demonstrate how, or if at all, these meetings contributed to maximising the effectiveness of plan making with particular reference to the distribution of unmet housing needs.

Gatwick Diamond Board

28. The Council's Chronology of the DtC only mentions the Gatwick Diamond Board (GDB) twice: once in a DtC meeting in October 2023, prior to Scrutiny Committee's consideration of the consultation Plan and latterly after the Regulation 19 consultation had been completed. By this time there was little scope for any change to the strategy of the Plan. There is nothing within the agenda or minutes which have been provided to suggest that the Board played an active role in proactively considering unmet needs and the role of Mid Sussex's Plan.

Overall

29. Given the above, it is clear that neither of the two sub-regional bodies has played an active role in influencing plan preparation, including addressing unmet housing needs within the sub-region.

¹² AP-013 Appendix E, page 3.

¹³ Ditto, page A3-10.

30. As such, they have not been vehicles to maximise the effectiveness of Plan making. Put simply there has not been a sub-regional body which has taken a strategic overview to help distribute housing within the sub-region so the unmet needs of households can be addressed. However, this lack of active wider sub-regional bodies does not obviate the Council from its legal responsibilities in relation to the DtC. The question then, essentially, is what steps the LPA took to discharge those responsibilities directly with neighbouring local authorities. I turn now to consider this.

Co-operation with Neighbouring Local Authorities

Outset of plan preparation

31. The Council met with all neighbouring authorities in the autumn of September 2021, setting out their approach to its call for sites, its housing requirement, and accepted that unmet need from other authorities would be needed to be factored in. At face value the approach seemed consistent with the PPG as further individual meetings were to be scheduled in relation to the DtC and a consultation undertaken on the Site Selection Methodology to be used. This was to be amended on an iterative basis.

Rest of plan preparation to submission

32. There is little evidence to suggest that this active, constructive engagement continued on an on-going basis throughout plan preparation which I explore below.

33. I am aware that a considerable proportion of the SoCG were submitted well after the submission of the Plan and what could reasonably be considered to be in the spirit of the guidance set out in the PPG. Nonetheless, whilst the late production of SoCGs is indicative of the seriousness of the Council's approach to engaging with the DtC, it has not been determinative in my decision relating to its legal obligation.

Crawley

34. Crawley lies to the northwest of Mid- Sussex and together with Horsham and Mid Sussex form the Northern West Sussex Housing Market Area (NWSHMA). The Borough has long established difficulties in meeting its own needs due to the constraints of an intensely developed urban settlement with little opportunity for additional growth. Indeed, the Mid Sussex adopted Plan (BD1) attributes an additional housing requirement of 1,498 dwellings to help meet Crawley's unmet needs. Nonetheless, Crawley remains unable to meet all of its own needs. Crawley's local plan was adopted in 2024. This established that there was an outstanding need from 2023- 2040 for 7,505 dwellings which cannot be catered for within its own boundary. This situation is unlikely to change in the future.
35. Mid Sussex was formally approached in January 2020 for help in meeting Crawley's needs prior to the plan preparation beginning, and again in April 2023, well before the Regulation 19 draft of Mid Sussex's LP was finalised in November 2023, and the Regulation 19 consultation itself in January 2024. Consequently, the principle of it having substantial unmet needs has been known prior to and throughout the preparation of Mid Sussex's Plan and indeed is central to the review of the Plan required by Policy DP5 of the adopted Plan.
36. Your Council's response to both formal requests has been to state that it is committed to working with Crawley in a positive manner. However, the first letter stated that any consideration of unmet needs would have to be in the context of Mid Sussex reviewing its own plan and querying whether Crawley had exhausted all opportunities to increase capacity. The second set out how Mid Sussex had shared its Site Selection Methodology (SSM), held briefings to share the initial outcomes of the Site Selection Process, and commissioned an Urban Capacity Study. It also set out the extent of any surplus in capacity. However, it did not take a positive approach to addressing unmet needs, as it was *'not in a position to confirm the total*

*deliverable housing in the District and therefore the amount of housing it may be able to provide to meet unmet need*¹⁴.

37. Following this letter, there were further joint NWSHMA DtC meetings, which I address below, and which were primarily focused on procedural issues. However, there were no further individual meetings between the two Councils after May 2023 and submission in July 2024¹⁵. In the context of Crawley's demonstrable substantial unmet needs, and that no further allocations were brought forward after the Regulation 18 consultation in late 2022, it appears that Crawley's needs were, in effect, ignored in the absence of ongoing and constructive engagement.
38. A SoCG¹⁶ with Crawley was submitted to the examination over two months after the Plan had been submitted and I have not been provided with earlier iterations. This SoCG was provided well after what could be considered a reasonable delay, particularly as the consultation on the Regulation 19 version of the Plan, had taken place at the turn of the year, after which there was little opportunity to influence plan preparation. The SoCG refers to the historic work which has been undertaken prior to the commencement of work on the Plan and the wider NWSHMA¹⁷, which I consider below. A number of shared objectives are set out. It is agreed that a *'robust and appropriate SHMA has been completed for each local authority'*, and that MSDC has shared and invited comments on the site selection process.
39. Nonetheless, I have interpreted the phrase *'that **each** considers that they are doing the maximum reasonable to meet the housing needs'*, in the context of Crawley's Regulation 19 response to DPH1: Housing. Here Crawley set out a number of concerns relating to the submission Plan, including a recommendation that, *'all potential sources of housing supply which might contribute to meeting identified needs are proactively explored...'*¹⁸. This clearly suggests that Crawley did not consider that Mid Sussex was doing the

¹⁴ AP-013, Appendix 7, letter of 20 June 2023.

¹⁵ AP-013, Appendix E.

¹⁶ DC6

¹⁷ DC3 and DC4

¹⁸ Crawley Borough Response to Regulation 19 consultation.

maximum reasonable to meet the unmet housing needs which Policy DP5 envisaged and the DtC requires.

40. Moreover, the SoCG sets out that both authorities will engage with other DtC forums and references future work. Whilst this may be sensible, it is not relevant to the examination of the Plan as the DtC only relates to activity up to submission.
41. In sum, notwithstanding the examples of cross boundary work which have taken place, such as the co-operation relating to the allocation at Crabbet Park which falls on the boundary between Crawley and MSDC, and whose housing will contribute to MSDC's housing requirement, I am not convinced that Mid Sussex has engaged constructively, actively and on an ongoing basis during plan preparation to help Crawley with its extensive and widely anticipated, on-going unmet housing needs.
42. Indeed, the LPA has not committed to providing a definitive quantum of housing for Crawley's needs, instead relying on whatever is left once Mid Sussex's own needs have been provided for. This is the antithesis to the approach of the Framework which would require a planned, strategic approach to be taken to wider housing needs, which reflects the legislation underpinning the DtC, and is advocated in Policy DP5 of the adopted Plan.

Horsham

43. To the west of MSDC is Horsham. Historically, with Mid Sussex, it has met Crawley's unmet housing needs within the NWSHMA. Following Natural England's Position Statement, published in late 2021 there are unresolved issues, which do not form part of my examination, relating to water neutrality and housing provision. A small part of Mid Sussex's boundary with Horsham falls within the Water Neutrality Zone. However, Horsham is extensively affected, and its position is that it cannot meet its own housing needs in full or help meet Crawley's unmet needs.
44. This position would have been evident early in Mid Sussex's plan preparation and there may have been an opportunity for Mid Sussex to work constructively to address some of those needs. Indeed, in

August 2022 Horsham wrote to your Council suggesting that if the needs of the HMA could not be met that a further call for sites should be made and the methodology be reappraised¹⁹. I am aware whilst any site taken forward as a result of the Regulation 18 and Regulation 19 consultations were considered, no further sites were allocated throughout the plan preparation process.

45. Following a meeting in August 2023, it was not until November 2023 that Horsham formally requested the help of Mid Sussex to cater for the excess 2,275 homes for which it considers that it cannot identify sites without falling foul of the Habitat Regulations. However, by this time the strategy of the Plan had been set, albeit the Regulation 19 consultation had not begun.

46. I note that Mid Sussex did not formally respond to Horsham's request, sent in late November 2023 until early March 2024. This was over three months later and after your Regulation 19 consultation had been completed. By this time there was little opportunity to maximise the effectiveness of plan preparation.

47. Moreover, whilst the letter was full of goodwill and commitment to continuing engagement, citing Mid Sussex's sharing of its SSM and its maximisation of its housing supply, it did not provide any meaningful evidence of what, if anything, Mid Sussex could do to help Horsham. Rather it relied on the imprecise and vague approach to meeting unmet needs within the NWSHMA set out within the Housing SoCG which I consider below. As such, I do not consider that MSDC engaged in the active, constructive and ongoing way, as required by the legislation, so as to maximise the effectiveness of plan preparation.

Northern West Sussex Housing Market Area

48. The Northern West Sussex authorities of Horsham, Crawley and Mid Sussex have long been recognised as an established Housing Market Area (HMA)²⁰. They have a long history of working together with a wider remit than housing. However, my examination of the Plan and the DtC in relation to the planning of sustainable

¹⁹ AP-013- Appendix A2.

²⁰ Para 1.5, H1

development can only relate to the period between the commencement of work on the Plan and its submission in July 2024. A General SoCG²¹ was signed in July 2024 but received after submission of the Plan.

49. I appreciate that a joint Plan has not been taken forward. In common with my fellow inspectors who examined Crawley's Plan, I consider this to be reasonable in the circumstances of each of the three authorities starting their plan making at significantly different times.

50. Other than the Water Neutrality work²², much of the joint activity and evidence bases to which I have been referred, including the *At Crawley Study 2009*²³, predates the preparation of the current Plan and the present wider sub-regional issue of unmet housing need.

51. I also note that the three authorities reference working positively together as part of the WSGB and the GDB to demonstrate their compliance with the DtC. However, as already established, both the GDB and WSGB have had a diminished, or indeed no role during the time in which the Plan has been prepared.

52. The three authorities have also signed a specific SoCG relating to housing²⁴. Again, this leans heavily on historic joint evidence bases such as the Housing Market Appraisals (HMA) which confirm that the three local authorities make up the principle HMA for each authority. This SoCG makes explicit that the DtC remains relevant with an unmet housing need of 8,947 dwellings within the three authorities.

53. However, it does not set out in a convincing manner how their engagement increased the effectiveness of plan making, such as setting a definitive figure for, or even a range of, the quantum of housing which Mid Sussex should provide to contribute towards unmet needs.

54. The SoCG suggests that at the time of its signing, after the submission of the Plan, that Mid Sussex had a headroom of 1,208 dwellings. However, there is no consideration of how this surplus

²¹ DC3.

²² ENV13.

²³ O12.

²⁴ DC4.

would be distributed between the two LPAs. Nor has a fixed quantum of development which could be relied upon been set and an explanation of how it would relate to any annual requirement and subsequent monitoring. This is particularly important, given that the oversupply figure is also expected to contribute to the resilience of MSDC's own housing supply, to be drawn on by MSDC in the event that some of the sites within the Plan do not to come forward²⁵.

55. This lack of clarity is pertinent as during the Plan's preparation the surplus has varied from 302 dwellings at the Regulation 18 consultation (which was purely to ensure resilience for MSDC), to 996 dwellings in relation to the Regulation 19 plan, and finally after submission, within the agreed SoCG, the Councils suggest a headroom of 1,208 dwellings. All these changes have taken place without any additional allocations. Consequently, there must be a significant question mark as to how reliable any potential contribution would be in meeting unmet needs. Moreover, there is an unmet need of 59 pitches from Horsham of Gypsy and Traveller accommodation.
56. Meaningful co-operation has been couched in terms of the difficulties in taking on unmet needs. Much effort has been put to setting out why the unmet pressures cannot be managed, such as the agreement that the authorities have 'worked to explain and understand each other's housing supply position' and that there were no further suitable sites close to the administrative borders. However, the ability to provide homes to meet the needs of neighbouring authorities should not be restricted to sites close to the boundary given the extent of the reach of the HMA within Mid Sussex.
57. In sum, it seems from the minutes of the meetings provided²⁶ that there has been a disproportionate onus on the process of providing a signed SoCG for the three Councils, rather than maximising the effectiveness of plan preparation.
58. The authorities are agreed that, in theory, any unmet needs within the HMA should have first call on any surplus capacity. Following this, once these needs have been provided for, those of the Coastal West Sussex HMA can be considered, and then those of other

²⁵ DP1, DPH1.

²⁶ AP-013, Appendix 2.

adjacent and nearby authorities. Meeting the needs of other neighbouring authorities outside of the priority order would only be acceptable where this can be justified by evidence and considered jointly with the NWSHMA members.

59. Given the quantum of unmet needs in the HMA, at c 9000 dwellings, this would, in practice, make it highly unlikely that any other local authorities would ever be able to benefit from MSDC taking on any of their unmet needs. I note that this approach has previously been tested at examination in relation to Horsham and Mid Sussex's adopted Plan. However, Policy DP5 of the adopted Plan, makes explicit the importance of working to address unmet need in the wider sub-region.
60. This policy includes working with all neighbouring authorities: an approach consistent with the legislation which requires a LPA to co-operate with every other person, in maximising the effectiveness of plan preparation, in relation to the planning of sustainable development.
61. Nonetheless, I note concerns were raised in early 2023²⁷ by Crawley that, in the absence of an active WGSB, other authorities should be invited to the NWSHMA to, '*demonstrate that the NWS authorities are not just looking inwardly at the NWSHMA but are actively pursuing and awaiting engagement from the Coastal Authorities.*' As far as I am aware this has not been done.
62. I have noted that in May 2024, by which time the strategy of the Plan had been established and it was ready to be submitted for examination, it was suggested that the NWS authorities SoCG be sent to other members of the WGSB so as to, '*proactively prepare and circulate material before Plan submission which is in itself evidence of positive planning and meeting the DtC*'²⁸. Given that both MSDC and Horsham were about to submit their plans for examination, it is difficult to see how this amounts to engagement of any meaningful sort. Rather, it seems to me that it was an attempt to focus the collective narrative around performance in relation to the DtC. That is not, in and of itself, co-operation under the Duty. I am

²⁷ AP-013, Appendix A2 Meeting 5 January 2023.

²⁸ AP-013, Appendix 2 Meeting 23 May 2024

also aware that I have not been provided with any evidence of whether there was formal member on-going engagement in plan preparation.

63. In sum, the housing SoCG suggests that it has not been possible to provide for unmet needs other than through any housing which is surplus to Mid Sussex's needs. This position is vague and is neither consistent with the objectives of the Framework nor those of Policy DP5 of the adopted Plan. Moreover, the SoCG appears to commit to working together to address unmet needs at a future date, citing water neutrality as a reason why needs cannot be met in full. This is something which the PPG counsels against and is not relevant to my consideration of the DtC and the preparations associated with this Plan.

64. Notwithstanding the signed individual SoCGs with Crawley and Horsham, I consider that the DtC has not been met with these two constituent authorities as MSDC has not engaged constrictively, actively and on an on-going basis in plan preparation.

Other Neighbouring Authorities

65. The latest HMA produced for MSDC is clear that there are in fact two other HMAs which overlap with the district²⁹. In addition, it is clear from the chronology of the DtC activities³⁰ supplied by the Council that outside of the NWSHMA that MSDC has not actively engaged with other LPAs other than in a very cursory manner.

66. MSDC officers met with officers in the South Downs National Park (SDNP) in August 2022. Given its status as a National Park it is severely constrained and lies immediately to the south of the plan area for Mid- Sussex.

67. To its south is Brighton and Hove (B & H), which like Crawley, has very little opportunity to expand. In its case, it is bound by the English Channel to the south and the SDNP to the north.

²⁹ H1 Paragraph 1.8.

³⁰ AP-013, Appendix E.

68. Currently, it has a considerable quantum of unmet needs at 17,000 dwellings, which is even greater than those of Crawley and Horsham, with substantially more likely in the future. It has been known since before the adoption of the extant Mid Sussex Plan³¹ in 2018 that B & H's unmet housing needs are, and will, remain considerable. Notwithstanding the intervening SDNP, B & H consistently ranks as being the local authority from which most people move into Mid Sussex (1,094)³². This clearly demonstrates the close functional links in the housing market which is recognised within the HMA and is an indicator of close functional links recognised within the PPG.
69. Notwithstanding the extensive needs of B & H, as set out above the NWSA SoCG³³ prioritises the unmet needs of Horsham and Crawley. This means the unmet needs of B & H, have to all intents and purposes been discounted. As such, irrespective of the acute need experienced by B & H, there has been no meaningful attempt to maximise the effectiveness of plan preparation in relation to such an important strategic cross boundary issue.
70. An informal request for Mid Sussex to help meet B & H's needs was made in September 2021³⁴. I note from the minutes of the NWSHMA that your Council had concerns that B & H did not have a clear understanding of the extent of its unmet needs and did not agree with the hierarchy set by the three authorities.
71. However, there does not appear to have been active, constructive and ongoing engagement with B & H, rather your Council had minimal interaction with B & H. It briefed and consulted on the SSM, together with other neighbouring LPAs in September 2021. In mid-2022 a further meeting took place between the authorities. Discussion took place relating to the Mayfield site, which was shared between Horsham and MSDC, but which was not taken forward. However, the meeting's main purpose was to, *'Explain the background to the preparation of the District Plan Review; ensure B & H is fully briefed on the plan preparation process and the evidence, and to provide an opportunity to question and understand the work of*

³¹ BD1.

³² REP-42888161-002 Figure 1, source ONS table IM2022-T2b

³³ DC4.

³⁴ AP013- Appendix E.

*MSDC...*³⁵. Again, this approach is not the active constructive engagement to maximise plan preparation required by the DtC.

72. Moreover, during the meeting B & H set out its concerns, regarding the NWSHMA's hierarchical approach to unmet needs. B & H also expressed concerns as to whether all options were being explored to optimise the potential for housing. As far as I can gather these points were dismissed without constructive dialogue or any otherwise meaningful exploration of the issues.
73. A further meeting took place in December 2022 in relation to the Regulation 18 consultation. However, it is clear that it was a means to ensure B & H could question and understand the Plan, rather than to engage in its preparation. Similarly, the meeting immediately prior to the Regulation 19 consultation gave little opportunity to shape plan preparation, with the Council making explicit that the strategy had not changed since Regulation 18, and that once MSDC had met its own needs it would prioritise those of the NWSHMA.
74. As such, MSDC's approach to B & H has not been that of active, on-going constructive engagement.
75. Lewes lies to the east of Mid Sussex to the north of B & H and abuts the southern half of the district. It too is constrained. MSDC officers met with it during the Regulation consultation. Following this, Lewes wrote to MSDC in February 2024 to request assistance in meeting a potential quantum of unmet need of between 2,675 and 6,628 dwellings to 2040. MSDC responded that the NWSA authorities have an agreed Statement of Common Ground which states that any over-supply will be prioritised for this HMA. Therefore, given the level of unmet need arising in the NWSHMA and the over-supply proposed within the submission draft District Plan, this Council will not be able to contribute towards unmet needs arising in Lewes district³⁶. Nonetheless, given the timing of this I have not considered the Council's response to be critical in terms of the DtC.
76. Wealden completes the eastern boundary of the district. Other than the original briefing on the plan at the beginning of plan preparation

³⁵ AP013- Appendix A6, meeting of 15 June 2022.

³⁶ AP013- Appendix 7.

in September 2021, individual meetings took place in November 2022 and 2023 as part of the formal consultation process. It considers that it has a shortfall of 4,071 dwellings and made a formal request in April 2024 for help in meeting its unmet housing needs. However, in its response MSDC made clear that it needs to prioritise the NWS area and therefore is unable to contribute towards helping to meet Wealden's unmet needs³⁷. It also referenced the work of the WSGB, which as set out above has not been active during the preparation of the Plan. However, given the lateness of the request in relation to MSDC's plan preparation, it is something which does not impact on its compliance with the DtC.

77. Finally, Tandridge lies to the north of Mid Sussex and has many policy constraints and is unlikely to meet its own needs. However, it is at a very early stage in plan making.

78. In sum, MSDC is surrounded by local authorities who either have an undefined or defined quantum of unmet housing needs and these needs are significant³⁸.

Conclusion

79. Crawley, B & H and other neighbouring authorities have long acknowledged significant and extensive unmet housing needs. Indeed, these were recognised by the previous Inspector. Moreover, other neighbouring local authorities such as Horsham have grappled with issues of water neutrality and potential impacts on their ability to meet their own and other's needs.

80. The review of the adopted Plan³⁹ envisaged under Policy DP5 was to ensure that additional sites could come forward in sufficient time to contribute to the sub-region's unmet housing need. This process was to be planned effectively and strategically. Clearly, it would have been an easier task for the Council if one of the wider sub-regional organisations actively took the lead in addressing unmet needs. However, this was not the case during the preparation of the plan.

³⁷ AP013- Appendix 7.

³⁸ H5 paragraph 40.

³⁹ BD1

81. Nonetheless, your officers will have been aware of this considerable unmet need and the Council's legal obligations, well before the significant milestones in the preparation of the Plan. Consequently, in practical terms the lack of active engagement by the two sub-regional groups has meant that in practice, MSDC needed to co-operate with its neighbours directly to ensure that it addressed its legal obligations in relation to the DtC. These obligations are not discretionary.
82. The Council has an obligation to maximise the effectiveness of plan preparation in a wider sub region where there are significant unmet needs. It has not provided the evidence to demonstrate that it has engaged constructively, in an active and on-going way to do so.
83. In considering this obligation, I am aware that Mid Sussex has its own constraints, such as the North Downs National Landscape, the setting of the South Downs National Park and the limitations to development relating to the Ashdown Forest SPA/SAC and that the water neutrality issue affects a relatively small strip of land on the western edge of Mid Sussex. Nevertheless, the presence of constraints does not obviate the necessity for MSDC to explore the possibilities of doing more to help address the unmet needs of the wider sub- region. The failure here is that the Council has not adequately *considered* the requests of its neighbours – namely Crawley, Horsham and Brighton and Hove, in a constructive, active and ongoing way. The Council has, consequently, not maximised the effectiveness of plan preparation.
84. I appreciate that the contents of this letter will be a disappointment to you. However, a failure to meet the DtC is a matter which cannot be rectified. As such, there are two options open to the Council, either to withdraw the Plan from examination or to ask that I write a report of my conclusions. I should say that the latter would involve further expense, and that the contents of the report would likely be very similar to this letter.
85. I would ask that you let me know via the Programme Officer when I should expect a response as to whether you are intending to withdraw the Plan or ask that I write a report. I have asked that the Programme Officer posts a copy of this letter on the website.

However, I am not inviting comment on the contents of this letter either from the Council or other examination participants.

Yours Sincerely

Louise Nurser

INSPECTOR

18 February 2025

Emily Clapp

From: Berkeley, Simon <[REDACTED]>
Sent: 04 April 2025 09:33
To: PSMatthewPennycook
Cc: Arthur Young; John Romanski; Sara Lewis; Andrew Langley; Ben Jones; Ed Francis; Gabi Wydrzynska; Plans Briefing; Phillips, Rebecca (Inspector); Graham Stallwood (PINS)
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hi again Gabe

I've chased the team liaising with the Inspectors. The letter to Mid Sussex has just been sent. The team are still trying to get in touch with the Inspector for Horsham.

Best regards

Simon

OFFICIAL

From: PSMatthewPennycook <[REDACTED]>
Sent: 04 April 2025 09:25
To: Berkeley, Simon <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Stallwood, Graham <[REDACTED]>; PSMatthewPennycook <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hi Simon,

Many thanks for confirming.

Do you have an approximate time these letters will be sent today? If not, would you mind confirming on the chain once they have been sent?

With best wishes,

Gabe



Ministry of Housing,
Communities &
Local Government

Gabe Allason ([REDACTED])
Private Secretary to Matthew Pennycook MP
Minister of State for Housing and Planning

OFFICIAL

From: Berkeley, Simon <[REDACTED]>
Sent: 04 April 2025 09:09
To: PSMatthewPennycook <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Graham Stallwood (PINS) <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

You don't often get email from [REDACTED]. [Learn why this is important](#)

OFFICIAL

Hi Gabe – many thanks for this. I have made arrangements for these letters to be sent to the local authorities today.

Best regards
Simon

OFFICIAL

From: PSMatthewPennycook <[REDACTED]>
Sent: 03 April 2025 16:11
To: Berkeley, Simon <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Stallwood, Graham <[REDACTED]>; PSMatthewPennycook <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

OFFICIAL

Hello Simon,

Many thanks for sending this through.

The Minister agrees that the letters be issued to the LPAs as soon as possible.

Please can you let us know when these will be sent?

With best wishes,
Gabe



Ministry of Housing,
Communities &
Local Government

Gabe Allason ([REDACTED])
Private Secretary to Matthew Pennycook MP
Minister of State for Housing and Planning

OFFICIAL

From: Berkeley, Simon <[REDACTED]>
Sent: 02 April 2025 12:36
To: PSMatthewPennycook <[REDACTED]>
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Graham Stallwood (PINS) <[REDACTED]>
Subject: RE: Mid Sussex and Horsham Local Plans - urgent

Hello Gabe/Holly

Just chasing for an update on this. I'm hopeful for a readout ahead of Easter recess if possible – both local authorities have been pressing us here at PINS and also MHLCG colleagues.

Many thanks and kind regards

Simon Berkeley
Professional Lead for Local Plans
The Planning Inspectorate

From: Berkeley, Simon
Sent: 26 March 2025 16:25
To: 'PSMatthewPennycook@[REDACTED]'
Cc: Arthur Young <[REDACTED]>; John Romanski <[REDACTED]>; Sara Lewis <[REDACTED]>; Andrew Langley <[REDACTED]>; Ben Jones <[REDACTED]>; Ed Francis <[REDACTED]>; Gabi Wydrzynska <[REDACTED]>; Plans Briefing <[REDACTED]>; Phillips, Rebecca (Inspector) <[REDACTED]>; Stallwood, Graham <[REDACTED]>
Subject: Mid Sussex and Horsham Local Plans - urgent

Dear Gabe/Holly

Please see attached Inspectors' letters on a for information basis that the Inspectors intend to send to Mid Sussex and Horsham regarding their emerging Local Plans. A brief summary note is also attached, and the position is summarised below. Are you content for these letters to be issued by the Inspectors?

Many thanks and kind regards

Simon Berkeley
Professional Lead for Local Plans
The Planning Inspectorate

Summary

- Section 33a of the Planning and Compulsory Purchase Act sets out the legal obligations on local planning authorities with regard to the Duty to Co-operate (DtC). They must co-operate with neighbouring authorities, among others, in maximising the effectiveness of plan preparation, and are required to engage with them constructively, actively and on an ongoing basis until the plan is submitted for examination.
- Engagement is the key legal requirement. The DtC does not demand agreement between those concerned.
- Sussex, Horsham and Crawley are identified within the same housing market area.
- The Crawley Local Plan was adopted last year on the basis that the unmet housing needs of Crawley would be considered through the Duty to Co-operate (DtC) and anticipated that this would lead to contributions to that unmet need from Mid Sussex and Horsham.
- Mid Sussex and Horsham had not committed to accommodating any of the unmet housing need. The Inspectors examining Crawley's Plan concluded that this "*cautiousness of ... authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part*".
- The Mid Sussex and Horsham local plan examinations are running concurrently. The Inspectors examining them have considered the extent to which those two local authorities have engaged with Crawley under the DtC with the aim of assisting. In both cases the Inspectors conclude that the DtC has not been met.
- In the Mid Sussex examination, the Inspector also concludes that the DtC has not been met in relation to co-operation with Horsham and Brighton and Hove with regard to unmet housing need.
- Taking all of the Inspectors' conclusions together, they consider that Crawley did what was required under the DtC in asking for assistance in addressing its unmet need, whereas neither Mid Sussex nor Horsham engaged as required in considering whether they could assist.

Next steps

- Following examination hearings, the Inspectors examining the Mid Sussex and Horsham Local Plans are intending to write to the Councils to set out that they consider that the DtC has not been met and the plans are therefore not legally compliant. Both Inspectors are recommending that the plan they are examining should therefore be withdrawn.

We recommend that the letters are issued to the two Councils without delay.

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