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Kathryn Hall
Chief Executive
Mid Sussex District Council

Sent via e-mail

Date:

15 May 2025

Dear Ms Hall

Mid Sussex District Plan 2021 – 2039: complaint

Your letter dated 17 April 2025, addressed to Chief Planning Inspector Richard Schofield, sets out a number of complaints about the conduct of Inspector Louise Nurser in relation to her examination of the Mid Sussex District Plan 2021 – 2039 ('the plan'). This follows the Inspector's letter to the Council dated 4 April 2025 which sets out the Inspector's interim findings which conclude that the Council has not discharged its duty under Section 33A of the Planning and Compulsory Purchase Act 2004, being the Duty to Co-operate ('the DtC'), and could either withdraw the plan or request that the Inspector issues a report to the Council.

Your letter has been passed to me as the Professional Lead for Local Plans. I have given careful consideration to the matters raised in your letter and I have viewed the video footage included within the appendix to it. I am writing to provide the Planning Inspectorate's response.

You have helpfully used a number of headings in your letter. For ease and clarity, I have adopted broadly the same headings in this reply.

The Council has also issued a Pre-Action Protocol for Judicial Review of the Inspector's interim findings. That is being dealt with separately. This letter is intended to be confined solely to the aforementioned letter of complaint.

Issue 1: pre-determined views

Top-down approach

Your complaint on this point is, in essence, that the Inspector had a pre-determined view that the Council should have taken a 'top-down' approach to determining the extent to which unmet housing needs could be accommodated. I do not see any evidence to support this claim.

The Inspector's letter is dealing with a failure to comply with the DtC. The issues here concern engagement and maximising the effectiveness of plan preparation. On my reading of it, the fundamental problem identified in the letter is that there was a failure to explain what amount of housing, if any, the Council envisaged contributing to help address the unmet needs of its neighbours and the effect of that failure in maximising the effectiveness of plan preparation. The Inspector does not say, either in the letter or at the hearing, that a different approach should have been taken.

The site selection evidence

You say that the letter fails to grapple with your case that the approach taken to site selection has maximised the amount of housing possible without adverse impacts and fails to explain what the Council could have done to make the plan more effective in addressing neighbours' unmet needs. I agree that that is broadly correct. But that is not the point.

As I have mentioned above, the Inspector's letter is dealing with a failure to comply with the DtC. The question is one of engagement and maximising the effectiveness of plan preparation. This is distinct from and different to maximising housing provision and the effectiveness of the plan. These are soundness issues rather than DtC issues. The letter does not grapple with them because the Inspector is reaching conclusions on the DtC and not soundness.

Interpretation of Policy DP5

Your primary complaint here is that the Inspector has misunderstood Policy DP5 of the adopted Mid Sussex District Plan 2014 – 2031. I do not agree.

Policy DP5 sets out how the Council will work with neighbouring and other authorities on strategic priorities. The supporting text to that policy says:

"It is recognised, however, that Crawley's Local Plan finishes a year before the Mid Sussex and Horsham plans. There will therefore be housing need generated in Crawley for 2031 which is within the District Plan period, but is not being planned for at present as it has yet to be established or tested. The review of the District Plan (commencing in 2021) will seek to address this need, and any further unmet need arising within the Housing Market Area."

It is therefore right that the Inspector has noted that the extant local plan was adopted on the basis of a review commencing in 2021, and that this review would seek to address the unmet need of the housing market area. That is, quite simply, what the supporting text quoted above says.

You say that the Inspector appears to have interpreted the policy as a commitment or instruction for the Council to address the unmet needs of the wider area in full. I cannot see any basis for this claim. The Inspector does not say that in either the letter or the hearings. Her conclusions on the DtC are not framed around such an interpretation. It seems to me that if she had interpreted it that way, they would have been.

The Inspector clearly did put questions about Policy DP5 in the hearing, some of which you appear to suggest betray confusion on her part. But part of the purpose of hearings is to ensure that all relevant matters are explored and that all concerned, particularly perhaps the Inspector, leave the room with a full and clear understanding of the essential facts and issues involved. She was right to ensure that Policy DP5 was discussed thoroughly at the hearing, and neither her letter generally nor the conclusions reached disclose or even hint at any misunderstanding of it.

Under the heading 'interpretation of Policy DP5' in your letter, you include further paragraphs that criticise the procedure followed by the Inspector and the associated timing. As I understand it, the essence of your complaint here is that the Inspector:

- a) had pre-determined views about the 'top-down' approach;
- b) had found fundamental fault with the site selection process;
- c) had interpreted Policy DP5 as a commitment or instruction to address the needs of the housing market area in full; and that, as a consequence
- d) she could not possibly have found the plan legally compliant and/or sound, and so should have taken early steps to alert the Council, but did not.

I address these points on the basis of that understanding.

For reasons I have set out above, I do not agree with your complaints in relation to points a) and c), and the claim you make in relation to b) is not relevant to the Inspector's conclusions on the DtC. There is nothing in these points, nor anything else, to indicate that the Inspector went into the hearings having already reached conclusions which would inevitably mean that she would find the plan to be not legally compliant or unsound. Indeed, the time spent by the Inspector on these issues at the hearings and the rigour applied to those discussions strongly suggest the opposite. So too, in part at least, does the lapse of time between the hearings being completed and the issuing of the Inspector's letter. Finding non-compliance with the DtC is not a conclusion any Inspector reaches lightly. Such a conclusion requires considerable thought and time.

Issue 2: conduct at the hearings

As I have already mentioned, I have both read your letter and viewed the accompanying video footage of the hearing sessions. Indeed, in the latter exercise, to understand the context and the Inspector's conduct more broadly, I have watched a significant proportion of the hearing sessions.

Excluding participants/preventing the Council from responding to points raised

Local plan hearings are focussed on the matters, issues and questions specified by the Inspector. They are wholly driven by the Inspector, who has a clear 'inquisitorial burden' to discharge through the process. Put simply, that means it is the Inspector's duty to ensure that all issues s/he considers to be capable of being relevant to legal compliance and/or soundness are rigorously tested at the hearings.

I note from the video footage that the Inspector did, from time to time, cut in when others were speaking. However, it seems to me that this was generally when either the contributor had misunderstood the precise point under discussion or had otherwise veered away from it. It is necessary for the efficient running of the hearing for Inspectors to do this – indeed, it is the duty of Inspectors at local plan hearing to drive the proceedings – and in my judgement the Inspector did this in a polite and reasonable fashion. Throughout the hearings she frequently gave participants the opportunity to raise any further points, and I am content that the hearings were delivered in a fair and non-prejudicial fashion.

You say that the Inspector was reluctant to allow the Council's Counsel to deliver the Council's opening statement. I agree that he should have been allowed to do this, and I am pleased to note that he was.

In opening, the Inspector referred to a number of “legal eagles” in the room and said “I’m sure they need no reminding that they are mere mortals in the context of the examination”. It is standard practice for Inspectors to remind Counsel and other lawyers about the nature of local plan hearings – that it is a discussion rather than more formal cross examination – to discourage attempts to undertake the latter. It seems to me that those lawyers present would have been well aware that this was what she was alluding to. That she delivered the message in a light-hearted way may well have helped to put others less used to the formality of such proceedings at ease. In short, there is nothing wrong with the approach the Inspector has taken here, and I cannot see that it has led to participants being excluded in any way.

If the Council, or any other participants, had felt this way then they could have raised this with the Inspector, via the Programme Officer. So far as I am aware, no concerns of this sort were brought to the Inspector’s attention during the hearings.

Critical of the Council

All Inspectors do fully appreciate the amount of work and effort required to get a local plan to the point of examination, and I recognise your Council’s good track record in that respect. However, that is not a relevant factor for an Inspector conducting an examination, where conclusions can only be reached on the basis of the legal compliance and soundness of the plan they are examining.

From the video footage, it seems to me that the Inspector was not intending to leave officers feeling that they were in the wrong or being told off, or somehow being held to a higher standard than other neighbouring authorities. The Inspector does make reference to the timing of evidence being submitted to her and the examination at large on a number of occasions. But, for any examination to run as smoothly as possible, it is necessary for the relevant evidence to be produced and provided in good time. Whilst I note you say that at the time the plan was submitted the Planning Inspectorate was informed of the dates certain documents would be produced, it was nonetheless right for the Inspector to raise the issue. Had the examination continued the late production of further evidence could have led to delays. That would have been in nobody’s best interest, particularly that of the Council.

I note your view about the public manner in which the Inspector referred to the timing of documents being submitted. But local plan examinations are held in an open and public forum, and transparency is essential to the public trust in the process. Given this, I consider that the Inspector was correct to deal with the matter at the hearings. Moreover, the general message about timeliness in submitting documents is one for all participants to heed, so it is right that she made that clear to all concerned.

Mis-representing the Council’s views

Your letter says that the Inspector regularly sought to conclude discussions by summarising back to the Council its position. I agree with you that this is a reasonable approach. Your complaint here is that this was undertaken in a pejorative way such that the summary was often inaccurate, came across as impatient and belied a pre-determined view of the Council’s work. I think your point about the pejorative manner misconstrues the purpose of the device being employed by the Inspector. It seems to me that her approach of summarising is not solely to confirm that she has understood matters correctly, but is also a way of simplifying complicated issues so that all participants or

observers can fully understand them (if they have not). Although some detail or nuance might be lost in the exercise, this strikes me as a reasonable and worthy endeavour.

You suggest that if the Inspector had not taken this approach of summarising the Council's position about the DtC, then her conclusions might be different. I am not clear how. As I understand it, notwithstanding the issue concerning Policy DP5 considered above, you do not claim that the conclusions in the Inspector's letter stem from any misrepresentation of the Council's stance.

Conduct generally

You cite a number of comments made by the Inspector during the hearings as exhibiting poor conduct, for example saying that she had "switched off" whilst the Council's Counsel was responding to a question, that she is "not a morning person" and in one instance that she "needs some food". Local plan hearings are formal events. Because of this, their importance, their technical nature and differences of strongly held opinions, they can become both intense and difficult to follow. There is nothing wrong with a sprinkling of levity to lighten proceedings. It seems to me that that is the approach the Inspector has taken here and should not be regarded as unprofessional in any way.

I note that, having stated that she would not be considering 'omission sites', the Inspector on a few occasions did just that, particularly when discussing sustainability appraisal. I do not see that as a 'rowing back' on her position or any kind of conduct shortcoming. The Inspector was using particular omission sites as examples, sometimes very obviously selected randomly and 'off the cuff', to explore and/or illustrate particular points being made about the robustness of evidence underpinning the plan rather than directly considering the omission sites themselves. Those are two quite different exercises. In my experience, taking such an approach to the consideration of sustainability appraisal in particular is almost entirely inevitable.

Structure of hearings

I understand that the Inspector did not provide agendas for the hearing sessions. Whilst these can be helpful, they are not mandatory, and it is for the Inspector to decide how the hearings should be structured. In this case the Inspector followed her published matters, issues and questions. That is a common and reasonable approach for an Inspector to take.

You indicate that the direction of some questioning was unexpected and made it difficult for the Council in terms of having experts present and being unaware of the position of other participants. It is not unusual for hearings to take an unforeseen turn. Part of their purpose is to explore with rigour the evidence and participants' views about it. This can frequently involve 'digging beneath the surface' of points made in hearing statements and elsewhere, and can lead the discussion away from the predictable.

As I understand it, the Inspector has allowed the Council to provide post-hearing notes to clarify material points. That, in my view, is the correct process to follow where there is any doubt in an Inspector's mind that they may not have understood the argument being made, or where further opportunity to clarify points is otherwise necessary.

I note your point that the Inspector rarely referred to document reference numbers. You do not suggest that you could not understand which documents were under discussion, and I consequently do not understand why this might be a conduct issue.

Issue 3: timescales for reaching decisions

The examination hearings closed on Thursday 31 October 2024. The Inspector's letter to you was dated and sent on 4 April 2025. I agree that this is a significant period of time and is longer than I would reasonably expect.

Following the close of the hearings, it fell to the Inspector to consider all she had read and heard, reach conclusions and articulate them in order to set out the way forward. Ultimately, in the event, the task for her was to prepare the letter to you.

As I have said above, Inspectors do not lightly conclude that a local plan has failed the DtC. It requires significant thought and contemplation, which takes time. Once the Inspector had concluded her deliberations, she drafted a letter. This was then scrutinised through the Planning Inspectorate's quality assurance process. Her letter was subsequently sent to colleagues at the Ministry of Housing, Communities and Local Government (MHCLG) on a for information basis. The requirement for this step is set out in a letter from the (then) Secretary of State for Housing, Communities and Local Government, the Rt Hon James Brokenshire MP, to the Chief Executive of the Planning Inspectorate, dated 18 June 2019. That letter can be found in full here: [Local Plan examinations: letter to the Chief Executive of the Planning Inspectorate](#). Of relevance here, it says:

"The Planning Inspectorate will share all post-hearing advice letters, letters containing interim findings, and any other letters which raise soundness or significant legal compliance issues, as well as fact check reports, with my department on a for information basis, at least 48 hours in advance of them being sent to the Local Planning Authority."

The Inspector's letter was sent to MHCLG on 19 February 2025. Correspondence by return the same day requested that the letter not be issued. The Minister, Matthew Pennycook, requested to be briefed on the content of the Inspector's letter. The Private Secretary to Matthew Pennycook confirmed on 3 April 2025 that the Minister agreed that the letter should be issued to the Council as soon as possible. As you are aware, the Inspector issued it the following day.

Overall, although the delay in the Inspector's letter being issued to the Council has been unfortunate, that is largely a consequence of matters beyond the Inspector's control. In my view, the issue here is not one that relates to the Inspector's conduct, and it would be unfair for me to find that she had failed in this regard.

Nevertheless, I recognise that that is small comfort to the Council. For my part, I can only apologise for the delay that has occurred in issuing the Inspector's letter to you. I have since been working with colleagues at MHCLG on reviewing internal processes to ensure that this situation does not re-occur.

Conclusion

In conclusion, as a result of my review, for the reasons set out above I am satisfied that there is no evidence of misconduct or bias by Louise Nurser. She is an experienced Inspector who was and is aware of the need to demonstrate natural justice, to be fair to all parties and to undertake the examination in accordance with the Planning Inspectorate's Code of Conduct and the Civil Service Code.

I therefore decline your request and Louise Nurser will remain the Inspector appointed to the examination of the plan.

Yours sincerely

Simon Berkeley

Professional Lead for Local Plans