

Mid Sussex District Plan 2021-2039

Examination (Stage 1) by Miss Louise Nurser BA (Hons) Dip UP MRTPI

Hearing Statement submitted by WILD (Respondent Number 1191800)

Matter 1: Legal and Procedural Requirements

WILD's response to consultation (Section 6 and Appendix C) raised concerns regarding the Sustainability Appraisal. The late publication of evidence; its quality; and the Council's treatment of responses to consultation have given us additional cause for concern.

We stand by our original submission, but wish to respond further with regard to:

- Specific questions raised by the inspector;
- What changes relating to this Matter would need to be made to make the plan sound.

Question 2

The documentation submitted for the examination was incomplete, and in some cases publication was late. The Level 1 Flood Risk Assessment was not finalised until 11 July 2024 and the Level 2 Assessment was not published until August 2024: neither can have properly informed preparation of the Plan. Transport Study Scenario 6 (Transport Report), which made significant changes to home working assumptions, was not available until August 2024 (Scenario 5 was only published during Reg.19 consultation, with the non-technical summary appearing some days later). An Infrastructure Delivery Plan update is promised but not available: the January version does not allow an assessment of the Council's viability calculations because the costings are incomplete, and it cannot of course take account of the major change from 'predict and provide' to 'monitor and manage' in terms of transport infrastructure. The Brownfield Land Register has been omitted from the bundle listed in the evidence base, although use of brownfield land is named as Option 5 in the SA as a potential spatial strategy, and the NPPF is clear it has an important role in plan making.

We have not been able to assess the Plan as fully as we would wish in consequence, nor could we comment in response to consultation as we would have liked on a number of questions which have now been raised by the inspector. We welcome the opportunity to do so now.

Question 3

We believe the Council's preparation of the Plan has breached three of the six General Principles for Community Involvement which determine whether the Council has carried out a legally adequate consultation. A promise in a Statement of Community Involvement to act in a certain way gives rise to a legitimate expectation that this will be done: R (Majed) v London Borough of Camden [2009] EWCA Civ 1029, [2010] JPL 621:

1. *Be Timely.* Please see our response to question 2. In addition, the submitted Plan also makes reference to work which will be completed at some point in the future but is needed now to assess the soundness of the Plan. The example we give which is relevant to Stage 1 of the examination is the failure to provide guidance on how the 20-minute neighbourhood concept can be applied successfully in rural areas.
2. *Be transparent.* Again, we confine our examples to documents relevant to this stage of the examination. The Sustainability Appraisal is very long, over-complicated, and badly structured. The analysis in our original submission shows how difficult it has been to marshal the relevant evidence to demonstrate its shortcomings: for example, the explanation of the scoring system is separated from its use in assessment, and other factors which turn out to have influenced the scores and judgments are dotted about the document, their significance not formally acknowledged. The Transport Study (Scenario 5) non-technical summary is 32 pages long. But it makes no mention of the crucial point made in the main report (2.7.4) that the available data will not support proper analysis of travel in both urban and rural areas, even though it claims to do so: please see our response to Question 46, first bullet point. This is a fundamental issue in a predominantly rural district. In the Level 2 Strategic Flood Risk Assessment, crucial information - the flood history - is buried in a tiny box on the pro forma which analyses risk by site in Appendix 1. Past performance and the current position are better guides to the future than a predictive model - and yet we can provide evidence that the flood histories are out of date and incomplete. Please see our response to question 53.
3. *Be respectful of others' views.* In Regulation 19 consultation, 1359 comments were made by 1335 respondents. The Council has as a result prepared a schedule running to 31 pages of modifications it thinks should be made. But none of these come from local residents. We understand that in many cases respondents will have struggled with the restrictions which guide submissions at this stage of the planning process. But we are a group who represent local people and in our submission we drew attention to, for example, flaws in the Sustainability Appraisal which the Council should have looked to put right before submission. Instead they were ignored, although some have been raised now as questions by the inspector. We believe the concerns of the local community were simply dismissed out of hand.

Question 5

The Sustainability Appraisal (SA) is not transparent in itself or in its relationship to the Plan as a whole and specifically the site selection process.

The SA fails to demonstrate at all, let alone in a transparent manner, how the SA and SSP1 has influenced the evolution of the plan making process. That is because it hasn't. Rather, what has instead happened is that the Council's mistaken understanding and focus on 20-minute neighbourhoods has resulted in Option 2 being chosen as the preferred option despite it being clear that if all options were treated fairly Option 1 would be preferred. There is no clear line of sight from a declared strategy to the identification and evaluation of a range of reasonable alternative options (in the SA) on the one hand, and the development of criteria deriving from the strategy which can be used to allow differential judgements and a fair appraisal of site allocations (see our response to Question 33). Significantly, the SA fails

to justify the overprovision of housing that Option 2 results in when other options can meet the LHN figure.

In terms of the two cited documents themselves, please see our original submission with regard to the Sustainability Appraisal (Appendix C), and our comments under transparency in our answer to Question 3 above. All the errors and inconsistencies we have identified in the SA have the same effect, which is to reduce the number of reasonable alternative options and bolster the case for the preferred option. The simplest explanation for the shortcomings we identified in the SA is that the appraisal has been influenced by the 'answer' - the preferred option - rather than the other way round.

Where the site selection methodology is concerned, please see our response to Question 36. There is no ranking of sites against each other. The sites have been assessed against the criteria independently, but what is missing here is a workable definition of what would constitute sustainability, informed among other things by criteria derived from the 20-minute neighbourhood concept, if the Council wishes to pursue that as a central plank of its spatial strategy. Because of this failure to identify such a guide, there is no 'cut off' - a line drawn below which other sites failed to warrant inclusion in the Plan.

Table 3-1 of the SA refers to the stages of the SA/SEA process and where in the SA the relevant requirement is said to have been met. Numerous requirements are not met within the SA but instead the SA Scoping Report, an entirely separate document. That is a breach of Schedule 2 to the [Environmental Assessment of Plans and Programmes Regulations 2004](#). Moreover, these requirements have not been met – most notably:

- Requirements (a)-(e) are not met in the SA but instead the Scoping Report;
- The approach to reasonable alternatives is unlawful; and,
- The non-technical summary is inadequate (see answer to question 6 below).

Question 6

The non-technical summary of the SA is concise, but it is not a summary of the appraisal and its main findings. Instead it acts as a preface, explaining what an SA is, the process followed, and the objectives used. It does not describe the reasonable options examined, the outcome of the appraisal or a description of the preferred option, supported by the key points of evidence. Anyone wishing to understand the findings of the appraisal would need to read the main report.

We stand by our original submission which showed that the scoring methodology within the SA was not consistent, coherent and accurate. We are concerned that the appraisal is dominated by the weight of the 'housing' criterion. If 'reasonable' is interpreted as 'having the potential to achieve the LHN' and applied as a criterion for an option to be included in the SA, then the housing measure can be dropped in scoring and the SA can appraise reasonable alternatives against the social, economic and environmental dimensions which is its intended purpose. Using the Council's approach to scoring, only one option survives the appraisal tests. But we define other reasonable alternative options in our response to Question 7.

Question 7

In simple terms, the SA's approach to reasonable alternatives is unlawful. Whilst the SA has identified alternatives, it has failed to fairly and properly assess each of them against the objectives of the SA. Accordingly, the SA fails to undertake "a reasoned evaluative process of the environmental impact of plans or proposals" (Heard v. Broadland DC [2012] Env LR 23 para. 70) and has failed to assess the preferred option and alternatives to the same level of detail (Heard paragraph 71). Further or alternatively, it follows that the SA has failed to provide adequate reasoning in relation to either its selection or assessment of reasonable alternatives and in particular the selection of a preferred option. As a result of this, no adequate assessment of reasonable alternatives has been carried out which necessarily renders the SA unlawful. This is addressed in our answers to question 7 and 8.

Our focus in this answer is on spatial strategy and policies, on the basis that they should form the frame for the assessment of sites and, subject to what we say below, that frame would lead to the identification of reasonable alternative sites. We submit that the Council has not considered all reasonable alternatives, including increases in density or housing numbers. Taking spatial strategy first, we stand by our original submission which showed that the Council included 3 options in the SA which it knew to be unreasonable.

In terms of reasonable options which were not considered, we note the following:

- Option 1 (focus on the three main towns with proportionate development in existing settlements) is effectively dismissed without evidence in the Plan's main narrative (Pages 32,37) on the grounds that it will be insufficient. However, the Council concedes that this option has the potential to meet the LHN in the Sustainability Appraisal.
- There is no reason why combinations of approaches cannot be considered as reasonable alternatives, provided that they are coherent in themselves; have the potential to achieve the LHN; and are distinctive. (The SA refused to allow combinations, imposing a rigid definition of options in the assessment, before allowing it in the case of options 1 & 2, which lacks coherence and proportionate evidence)
- We therefore consider option 1 is a reasonable alternative in its own right. In addition, an option which combines option 1 with a greater focus on urban development in larger settlements (ie not just the three main towns) and the use of brownfield sites, including those in National Landscapes, should be considered.
- We also suggest an option which combines option 1 with consideration of where 20-minute neighbourhoods could be developed. This is different to the current option 2, because this would require *all* existing settlements to be considered in the light of a consolidated 20-minute neighbourhood policy (see below)
- All of these options would increase density, make more efficient use of land and mitigate infrastructure pressures

It follows that the Council have failed to select reasonable alternatives to assess. Moreover, the Council has failed to provide any, let alone adequate, reasoning in relation to these and the options considered.

In terms of policies, it is inappropriate, given the importance of the 20-minute neighbourhood concept to the Plan, that this is effectively limited to policy DT1 and occasional references in other policies. The Council should draw together the characteristics of the concept into a single policy which can be used to inform both the appraisal of reasonable options and criteria for site selection. However, we wish to emphasise that such a policy should be evidence based rather than speculative, and cover all the dimensions of the concept covered in the TCPA guide, including 'complete, compact and connected', and the criteria for success.

We also suggest the relevant policies should be redrafted to encourage use of 'grey' sites in National Landscapes. There is no policy which takes forward the principle of effective use of land. This should be included as a criterion in site selection.

There is no evidence that the Council has assessed all sites in terms of their potential for growth and sustainability, providing transparency in its approach to ranking. Rather, density has been artificially constrained: if a site has the potential for more dwellings but the settlement does not 'need' them, then the site is not considered.

Question 8

Please see our original submission, which demonstrates that the reasonable alternatives were not considered on a like for like basis. As outlined in our answer to question 5, this failure has resulted in Option 2 being unlawfully selected as the preferred option. The evidence provided to support options is not consistent. We have only assertions to justify the claim that the 2018 spatial strategy is no longer appropriate. No evidence is provided in support of 20-minute neighbourhoods in rural locations and, in any event, if the Council wish to rely on rural 20-minute neighbourhoods (notwithstanding the dearth of policy or evidence to support this) then it is plainly incumbent upon the Council to consider all possible locations given the self-justifying nature of the Council's approach (given intensive development in any isolated area will, according to the Council, create a 20-minute neighbourhood – which itself underscores the illegality of this approach) . Option 3 was never a reasonable alternative. No significant evidence is provided for Option 5: although the Council has a Brownfield Land Register dated 2022, it has not been posted on the examination website.

Please see our hearing statements on Matters 3 (Transport) and 5 (Flood Risk). It is clear that evidence relating to transport and flood risk are relevant to a proper assessment of options and sites through the SA, and if this evidence has been used, it has been applied retrospectively, rather than positively as the plan was being prepared. However, we demonstrate that concerns regarding the quality of this evidence and the manner of its application need to be resolved before these studies can be used properly.

In relation to this Matter, what changes would need to be made to ensure the Plan is legally compliant and sound?

In light of our answers above and our detailed submissions already made, we consider the SA is unlawful. Unfortunately, we do not consider this can be remedied as part of the examination process. In our view, given the fundamental failings of the SA the Council need to restart the SA process to ensure that the Plan is informed by a legally correct sustainability appraisal. At present, it is simply not possible to reasonably conclude that there has been an adequate consideration of reasonable alternatives that has led to Option 2 being selected as the preferred option.

That being said, the below points represent the changes that we consider need to be made to ensure the Plan is capable of being found legally compliant and sound:

- The flood risk assessments and transport reports will need to be revised and if necessary redone - please see our responses under those Matter headings
- The Infrastructure Development Plan should be updated to provide full costs, and describe how infrastructure delivery will be coordinated and managed effectively
- In parallel with the other work we cite below, the SA would need to be revised in the light of the transport and flood studies to ensure reasonable alternative options are appraised properly, and site allocations (both individually and when taken together in one masterplan) are scored correctly
- Non-technical summaries for Flood Risk, Transport and the Sustainability Appraisal should be prepared which properly summarise the content and conclusions of the more detailed work, and enable the reader to navigate the main document easily
- The Brownfield Register should be posted on the examination website and the Council should demonstrate how it has been considered positively in plan making
- The SA requires significant additional work. The structure of the document should be simplified and clarified so that relevant material is juxtaposed. This will improve transparency. Options which have no reasonable prospect of meeting the LHN should be omitted, unless they provide such a prospect in combination with another option in a way which is coherent, distinctive and evidence based. If this is done it is, in our view, possible to generate at least three options. The housing metric, which is meaningless as currently defined and should not be the focus of the SA can therefore be dropped. The scoring definitions should be simplified and clarified and applied consistently
- The site selection methodology will need to be updated and sites reviewed in the light of these changes
- A 20-minute neighbourhood policy should be prepared, drawing on available evidence of where such neighbourhoods are in existence