

Lewis & Co Planning

town planning consultants

MID SUSSEX DISTRICT PLAN 2021 - 2039

MATTER 2: DUTY TO COOPERATE

ON BEHALF OF VISTRY GROUP

SITE: LAND AT MALTHOUSE LANE, BURGESS HILL

SITE REF: 1105/710

RESPONDENT REF: 1191618/1191628

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INTRODUCTION AND SUMMARY

- 1.1 This Matter Statement has been prepared on behalf of Vistry Group who are promoting Land at Malthouse Lane, Burgess Hill (SHELAA ID: 1105) for a major residential-led development comprised of a new neighbourhood of 750 homes. The eastern parcel of the site (Maltings Farm Livery) is also being promoted in isolation for a development of 360 new homes (SHELAA ID: 710).
- 1.2 The site is located within the Brighton and East Sussex Housing Market Area (HMA), Northern West Sussex HMA and the Coastal Urban Area Functional Economic Market Area (FEMA).
- 1.3 The site was identified as a sustainable option for allocation but has not been included as an allocation within the Plan, despite a request from Brighton and Hove City Council (at Regulation 18 stage) for the site to be allocated to assist with their unmet housing needs – see paragraph 6.15 of our Regulation 19 representation.
- 1.4 These Hearing Matter Statements submitted on behalf of Vistry Group individually address select questions under each Matter to be considered at Hearings beginning on 22nd October 2024. These Matters broadly align with relevant sections within our Regulation 19 responses (references 1191618 and 1191628) – including a dedicated Section on Cross Boundary Matters¹.
- 1.5 It is Vistry Group’s position that:
 - The Plan has not been *justified* as the spatial strategy does not seek to address the main strategic planning issues affecting the district in accordance with national policy requirements and has not adequately been informed by the evidence base;
 - The Plan has not been *positively prepared* and is not *effective*, as the Council have made no meaningful efforts to reach agreement with neighbouring areas to assist with their unmet needs (even where these neighbouring authorities have made specific requests of this nature) and does not propose a spatial strategy for the distribution of housing required;

¹ Section 7, Regulation 19 Response on behalf of Vistry Group – Respondent reference 1191618

- The Plan is not *consistent with national policy* as effective co-operation has not occurred in accordance with paragraphs 24 – 27 and 11 (b) of the Framework

1.6 We consider these to be significant shortcomings that render the Plan unsound in its current form as relevant legal requirements have not been met.

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MATTER 2: DUTY TO COOPERATE

ISSUE 1: Whether the Council has complied with the duty to cooperate in the preparation of the Plan?

- 2.1 This statement provides written responses to questions 21, 22, 23, 24, 25, 26, 27, 28 and 29.

Question 21: Have all Statements of Common Ground been provided consistent with the requirement of the Framework and the associated Planning Practice Guidance?

- 2.2 As required through national planning practice guidance², Statements of Common Ground should provide:

“written record of the progress made by strategic policy-making authorities during the process of planning for strategic cross-boundary matters. It documents where effective co-operation is and is not happening throughout the plan-making process, and is a way of demonstrating at examination that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries”

- 2.3 Recording this progress and areas where joint working has been effective is therefore an essential part of any Statement of Common Ground. The examination library suggests 13 individual statements of common ground have been produced with neighbouring local authorities and/or groups of local authorities.
- 2.4 It does not seem that effective joint working has occurred, the Northern West Sussex Statement of Common Ground dated July 2024 (DC3) provides a framework for co-operation but no evidence of any specific progress or outcomes resulting from demonstrable cooperation.
- 2.5 Similarly, the Statement of Common Ground with Brighton and Hove City Council (DC5) contains commitments to identify opportunities to meet unmet need,

² Reference ID: 61-010-20190315 (Revision date 15th March 2019)

continued joint-working to maximise housing delivery and ongoing discussions, but no specific actions for how these cross-boundary priorities will be addressed at any point in the future.

- 2.6 The lack of progress on these important cross-boundary issues should also be considered in the context of Policy DP5 (Planning to Meet Future Housing Need) of the adopted District Plan (2018). At the time, the text for the policy made it clear that the District Council was *“taking steps, with its neighbouring authorities and those in the sub-region, to address the issue”* of unmet housing needs. Despite this, the Statements of Common Ground suggest that cooperation on this fundamental strategic planning issue for the sub-region over the last six years has resulted in no material steps/actions or progress.
- 2.7 These documents fail to identify specific areas of progress or outcomes achieved that demonstrate *“effective joint work”* across local authority boundaries, as required by paragraph 26 of the NPPF and Planning Practice Guidance. The Council’s record on these issues since the adoption of the current District Plan does not suggest that cooperation has been *“effective”*.
- 2.8 Paragraph 26 describes effective joint working as being *“integral to the production of a positively prepared and justified strategy”*. The effectiveness of this joint working should be evident through meaningful outcomes, and not simply points of discussion and agreement.
- 2.9 The Statements provide no details on the distribution of needs across the area, as no such arrangements have occurred, and also provide no agreed process for how this will occur in the future, contrary to Planning Practice Guidance³.
- 2.10 On this basis, it is Vistry Group’s view that the submitted Statements of Common Ground do not meet the expectations of national policies and guidance.

³ Reference ID: 61-011-20190315 (Revision Date 15th March 2019)

Question 22. Has the Council co-operated with the relevant local planning authorities, and appropriate prescribed bodies, in the planning of sustainable development relevant to cross boundary strategic matters? If so, who has the Council engaged with, how, why, and when, with particular reference to the ability to influence plan making and the production of joint evidence and meeting unmet needs?

- 2.11 As described above, the statements of common ground make references to meeting the unmet needs of neighbouring authorities but provide no steps to do so. Engagement with neighbours has not been sufficiently meaningful to deliver appropriate outcomes for residents.
- 2.12 Neighbouring local authorities responded to the Council's public consultation with specific requests for solutions to help address cross-boundary issues, including housing delivery. At Regulation 18 stage, Brighton and Hove City Council strongly urged⁴ the District Council to take a positive approach to supporting the delivery of omission sites within and adjoining the Brighton and East Sussex/Coastal Sussex Housing Market Area, including the Land at Malthouse Lane site.
- 2.13 Despite these specific requests and suggested actions, the Council's Statement of Consultation from Regulation 18 (Document C3) makes no reference to these representations and does not seek to address them. Furthermore, Brighton and Hove City Council's comments on the District Plan Strategy are summarised (by Mid Sussex DC) as "*Support approach for identifying development potential*"⁵. Similarly, the Council's formal response to comments from Brighton and Hove City Council and Crawley Borough Council on Policy DH1 (Housing) within the Statement of Consultation ignore all references to their unmet needs⁶.
- 2.14 At Regulation 19 stage Crawley Borough Council also urged⁷ the District Council to "*proactively explore*" all potential sources of housing supply and potential mitigation of identified constraints, particularly for sites that "*narrowly fall short of being judged suitable at stages 2(c) and 3*" of the Site Selection Process. Horsham District Council requested⁸ amendments to Policy DPH1 (Housing) to make clear

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⁵ Page 68, Statement of Consultation (Regulation 18) (Document reference C3)

⁶ Page 127, Statement of Consultation (Regulation 18) (Document reference C3)

⁷ Regulation 19 Response ID: 1189681 (Crawley Borough Council), dated 23rd February 2024

⁸ Page 3, Regulation 19 Response ID: 1190711 (Crawley Borough Council), dated 23rd February 2024

that every effort is made to maximise the contribution to the Northern West Sussex Housing Market Area (HMA) during the Plan period, “*to ensure that the soundness test of positively prepared is met*”.

- 2.15 The comments from neighbouring authorities in relation to specific omission sites and a review of stage 2 (c) and 3 omission sites are also not referenced within Appendix 5 (Response to Omission Sites) of the Site Selection Conclusions Paper (2024)⁹.
- 2.16 As a result, the cooperation described within the submitted Duty to Cooperate Statement and Statements of Common Ground has not meaningfully influenced plan-making. The Council does not appear to have purposefully revisited its omission sites (or allocated any new sites for development) between Regulation 18 and Regulation 19 stages, despite direct requests from neighbouring authorities for these to be reconsidered (including with reference to specific sites).
- 2.17 Furthermore, objections to the housing strategy and overall soundness of the Plan from neighbouring authorities, including Crawley Borough Council, have not prompted any meaningful amendments to the Plan prior to submission.
- 2.18 None of these matters are directly addressed within the submitted Duty to Cooperate Statement of Compliance (July 2024)¹⁰ and the Council have not demonstrated progress on the primary cross-boundary issue of housing.

Question 23. Specifically, in relation to Mid Sussex Council, what are the matters of cross boundary strategic significance which require co-operation, and how have these matters been identified?

and Question 24. In considering such matters, including the timing, has the Council co-operated with those identified above, constructively, actively, and on an on-going collaborative basis throughout the preparation of the submission plan?

- 2.19 The issue of housing delivery is the cross-boundary issue of primary significance given the inability of all neighbouring authorities to meet their own housing needs.

⁹ Appendix 5, Site Selection Conclusions Paper (2024) (Document reference SSP3)

¹⁰ Mid Sussex District Plan 2021-2039: Duty to Cooperate Statement of Compliance (July 2024) (Document reference DC1)

This position has become more challenging in recent years due to the constraints within Horsham district as a result of water neutrality requirements.

- 2.20 The evidence submitted by the District Council alongside the District Plan indicates that cooperation on this matter has largely been limited to information-sharing, with no meaningful actions agreed to determine the appropriate distribution of development needs across the subregion.
- 2.21 Cooperation has not resulted in any effective outcomes to resolve (or make progress on) the issues identified through this process. There is no evidence that the Council has meaningfully considered requests to proactively explore how sites rejected at Stages 2 (c) and 3 of the Site Selection Process can be unlocked for development, and no new allocations have been included within the Plan during the course of Plan preparation.

25. I am aware of a number of cross boundary groupings which involve Mid Sussex on a sub-regional level as set out in the various Statements of Common Ground. As a consequence of the Council's legal duty to co-operate, how has the effectiveness of plan-making activities relating to the identified strategic matters been maximised to enable deliverable, effective policies? In doing so, has joint working on areas of common interest been undertaken for the mutual benefit of Mid Sussex Council and its neighbouring authorities with tangible outputs?

- 2.22 As set out above, there have been no tangible outputs on key issues resulting from cross-boundary strategic planning.
- 2.23 Neighbouring authorities have communicated the scale and extent of their unmet needs to Mid Sussex District Council during the Plan preparation process. Despite this, the submission District Plan does not seek to meet the unmet needs of any specific neighbouring authority or consider the impacts of doing so.
- 2.24 A residual figure within Policy DPH1 (Housing) to meet the needs of neighbouring areas is also referenced as a contingency for the non-delivery of other allocated sites. Our evidence submitted at Regulation 19 stage also highlights the poor evidential basis for the significant increase in windfall delivery anticipated within the Housing strategy, and therefore it is considered highly likely that this contingency figure identified by Mid Sussex will be depended upon to meet their own needs

rather than the needs of neighbouring authorities. As a consequence, neighbouring authorities cannot rely on this figure in the preparation of their own plans, making this output functionally meaningless for them.

Question 26. Has Mid Sussex Council been diligent in making every effort to meet cross boundary strategic priorities, including addressing potential unmet development needs arising from neighbouring authorities as referenced in Policy DP5 of the Mid Sussex District Plan 2014-2031 and as requested by neighbouring authorities?

- 2.25 The District Plan's housing strategy and site selection process has not been meaningfully revisited since the initial publication of the Regulation 18 plan.
- 2.26 Appendix 5 of the Council's Site Selection Conclusions Paper shows that new sites (or new evidence) were submitted in relation to a total of 55 sites across the District between the production of the Regulation 18 draft and Regulation 19 draft, including site 1105 (Land at Malthouse Lane). Despite this, the Council have made no changes to the list of sites proposed for allocation.
- 2.27 This points to a wider failure to objectively and proactively consider the public consultation responses and submissions by neighbouring authorities, site promoters and stakeholders in preparing the submission plan.
- 2.28 As described above, neighbouring authorities including Brighton and Hove City Council and Crawley Borough Council have urged Mid Sussex to robustly re-assess sites rejected at Stages 2 (c) and 3 of the Site Selection Process, and to explore whether issues identified within the site assessments can be mitigated against or addressed. No detailed reconsideration of these sites appears to have been undertaken.

Question 27. Notwithstanding the Housing Needs Statement of Common Ground (SoCG) (DC4), signed by the Northern West Sussex authorities, what is the rationale for the prioritisation of meeting the unmet needs of the Northern West Sussex HMA over those of the unmet needs of other relevant HMAs?

- 2.29 This position appears to be based on historical precedent and the ability of the three local planning authorities to jointly meet the needs of the Northern West Sussex HMA at the time. There has been no formal review of this system of prioritisation as part of the District Plan Review by Mid Sussex District Council.
- 2.30 There is no reasonable basis for this prioritisation of one Housing Market Area over another. Mid Sussex is functionally part of both HMAs and the majority of existing and proposed allocations within the district would be delivered within the Brighton and East Sussex HMA.
- 2.31 The decision to prioritise the housing needs of the Northern West Sussex HMA within this Plan was clearly taken jointly by Crawley Borough Council, Horsham District Council and Mid Sussex District Council and without the agreement of Brighton and Hove City Council.
- 2.32 The adopted District Plan 2014 – 2031 included the provision of 1,498 new homes to assist in meeting the unmet needs of Crawley. No such assistance has been provided to Brighton and Hove despite their significantly greater housing needs, and no other local authority has been able to assist Brighton and Hove in meeting their housing needs since the adoption of the City Plan – Part One in 2016.
- 2.33 As a result, Brighton and Hove have a shortfall of circa 17,000 new homes, and this figure is expected to rise – according to the Statement of Common Ground between the two authorities (Document DC5).
- 2.34 In addition to having the highest levels of unmet need (a shortfall of 1,668 homes per annum), Brighton and Hove is the single highest contributor of internal migration to Mid Sussex, accounting for 1,094 new arrivals into the district from other local authority areas¹¹ according to the latest Government data (see Figure 1 below).

¹¹ Table IM2022-T2b (Moves within the UK during the year ending June 2022), Office for National Statistics (ONS)

Figure 1: Moves within the UK during the year, including origin and destination, ending June 2022 (ONS Table IM2022-T2b)

Origin - Local Authority Area (Sussex only)	Destination – Local Authority Area	Total residents
Adur	Mid Sussex	99
Arun	Mid Sussex	118
Brighton and Hove	Mid Sussex	1,094
Chichester	Mid Sussex	68
Crawley	Mid Sussex	839
Eastbourne	Mid Sussex	94
Hastings	Mid Sussex	10
Horsham	Mid Sussex	640
Lewes	Mid Sussex	396
Rother	Mid Sussex	52
Wealden	Mid Sussex	364
Worthing	Mid Sussex	120

2.35 Due to its coastal location, Brighton and Hove is also geographically restricted and borders only three Councils (Mid Sussex, Adur and Lewes) that could assist with meeting these needs. In comparison, Horsham district is bordered by seven other Councils, and Crawley five. There is therefore no objective basis on which the needs of the Northern West Sussex HMA are prioritised over the Brighton and East Sussex HMA.

Question 28. Are there strategic matters which have not been adequately considered on a cross boundary basis? If so, what are they and how is this the case?

2.36 The issue of housing delivery across the sub-region is the primary cross-boundary issue for the district and affordability issues affect the housing market area/s as a whole and are not constrained to local authority boundaries - so worsening

affordability within the HMA will impact on the living standards of the district's own residents

Question 29. Specifically, has the Duty to Co-operate been discharged in a manner consistent with Paragraphs 24- 27 of the Framework?

2.37 The purpose of the cooperation required under the Duty to Cooperate is to plan how strategic, cross-boundary issues will be addressed and planned for. Failure to deliver meaningful plans for addressing these issues will result in adverse impacts for Mid Sussex and surrounding authority areas and constitute a failure of the District Plan to deliver sustainable development that meets the needs of residents.

2.38 It is therefore our view that cooperation has not been effective and the requirements of the duty to cooperate have not been met in accordance with paragraphs 24 – 27 of the NPPF.

2.39 For these reasons the Plan cannot be found 'sound' in its current form as:

- The Plan has not been *justified* as the spatial strategy does not seek to address the main strategic planning issues affecting the district in accordance with national policy requirements and has not adequately been informed by the evidence base;
- The Plan has not been *positively prepared* and is not *effective*, as the Council have made no meaningful efforts to reach agreement with neighbouring areas to assist with their unmet needs (even where these neighbouring authorities have made specific requests of this nature) and does not propose a spatial strategy for the distribution of housing required;
- The Plan is not *consistent with national policy* as effective co-operation has not occurred in accordance with paragraphs 24 – 27 and 11 (b) of the Framework