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MID SUSSEX DISTRICT PLAN EXAMINATION

Hearing Statement: Matter 2

CLIENT: Catesby Strategic Land Ltd
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DHA/32600

Kent

01622 776226

Gatwick

01293 221320

London

020 3005 9725

DHA Planning Ltd. Registered in England Registered Number: 2683290

Email: info@dhaplanning.co.uk

Web: www.dhaplanning.co.uk

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1 MATTER 2: DUTY TO COOPERATE

1.1 INTRODUCTION

1.1.1 This Hearing Statement has been prepared on behalf of Catesby Strategic Land in response to the examination on the Mid Sussex District Plan (MSDP).

1.1.2 Catesby Strategic Land controls 'Land at Lunce's Hill, Haywards Heath' and is promoting the Site for allocation as part of the MSDP process. The Site comprises a cross-boundary site which is also being promoted within the emerging Lewes Local Plan, with total capacity for approximately 135 dwellings.

1.2 ISSUE 1: WHETHER THE COUNCIL HAS COMPLIED WITH THE DUTY TO COOPERATE IN THE PREPARATION OF THE PLAN?

Qu. 21:

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

1.1.3 No comment- for the Council to advise. It is however noted that a Statement of Common Ground (SoCG) has not been submitted between Mid Sussex District Council (MSDC) and the West Sussex and Greater Brighton Strategic Planning Board. The Duty to Cooperate (DtC) Compliance Statement prepared by MSDC (July 2024) to inform the examination confirms that this is being prepared (para. 13). We have not seen a copy of this and does not appear to be available within the examination library.

Qu. 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?

1.1.4 This is a question for the Council to answer. However, it would be appropriate to expand this question to ask, if all relevant consultees, including the Prescribed Bodies, have been engaged, has that engagement "maximised the effectiveness" of preparing the Plan? If not, the Plan must be at risk of failing the legal test imposed by Section 33A of the Planning and Compulsory Planning Act 2004. For reasons set out below we do not consider this to be the case.

Qu. 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?

1.1.1 No comment – for the Council to advise.

Qu. 24:

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

- 1.1.2 No. It is not considered that MSDC has engaged actively and on an ongoing basis with Lewes District Council (LDC). It is unclear how often the authorities have met; this information has not been included within either the SoCG between the two parties nor the DtC Compliance Statement prepared by MSDC. However, the language used in the DtC Compliance Statement suggests this engagement has been limited, especially when compared to statements made about discussions with other authorities. Within the DtC Compliance Statement, MSDC states (para. 23, own emphasis added):

*"The Council **invited** Lewes to feed into the early stages of developing the Plan's evidence base, specifically the draft site selection methodology. Lewes also **attended focussed joint authority meetings** to engage in the emerging **Transport evidence**, led by Mid Sussex District Council".*

- 1.1.3 This indicates that discussions on the provision of housing have not taken place (using the word invited, rather than taken place), and are certainly not ongoing. Indeed, the only meetings referenced relate to transport evidence.
- 1.1.4 We note in the signed SoCG between MSDC and LDC (signed 12 August 2024, after submission of the Local Plan) that LDC will not have enough suitable land available to meet its housing need; with a shortfall anticipated between 2,675 and 6,628 homes (page 5). LDC wrote to MSDC to request assistance on 7 February 2024; MSDC's response is unclear.
- 1.1.5 Whilst MSDC does set out in the Signed SoCG that it has assessed its ability to accommodate housing development and has considered all sustainable sites within the District which are included within the examination plan, it does not provide a clear response, or evidence of an exchange with LDC, to advise that it has considered this request and provided reasons for not being able to do so.
- 1.1.6 Indeed, if it had, we would have expected discussions to have taken place between LDC and MSDC on the potential suitability of our client's site at Lunce's Hill; something that has not happened. This site is currently being considered unsuitable by LDC due to "cross district issues"; the specific issue that the DtC seeks to address. It is evident that these two authorities have not engaged as they are required to do by Section 33A of the Planning and Compulsory Purchase Act 2004 in the preparation of this Plan.

Qu. 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?

- 1.1.7 MSDC appears to rely heavily on the sub-regional grouping of the “Northern West Sussex” Authorities. This is understandable to an extent given the evidence as set out in the Council’s Strategic Housing Market Assessment indicates this is the district’s principal housing market area.
- 1.1.8 However, parts of the District are located in other housing market areas and we are concerned that the needs of these housing market areas, which are relevant to the wider regional approach which DtC provision seeks to facilitate, has not been considered.
- 1.1.9 For example, reference is made within the DtC Statement to the West Sussex and Greater Brighton Strategic Planning Board. This was formed to identify and manage strategic planning issues within the area and to support better integration and alignment of strategic spatial and investment priorities. It was initially made up of the coastal West Sussex local planning authorities together with Brighton & Hove City Council and Lewes District Council but was expanded to include the authorities within the Northern West Sussex HMA (Mid Sussex, Crawley and Horsham).
- 1.1.10 This board appears to have the remit to help coordinate strategic planning across this region and help align the provision of housing across the different authority areas, all subject to their unique constraints and opportunities. It appears to be the principal mechanism outside of the Northern West Sussex Authority group to consider the delivery of housing in the other housing market areas.
- 1.1.11 We note, however, that to date, a SoCG has not been prepared, notwithstanding that the DtC Compliance Statement prepared by MSDC indicates that this is to follow (Para. 13). There is no evidence submitted as to how this board has contributed to DtC discussions, and as such it has not been effective in contributing towards plan making and ensuring the duty to cooperate has been adhered to. In our firm view this is required to ensure the needs of those authorities outside of the Northern West Sussex Housing Area have their needs considered.

Qu. 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?

- 1.1.12 No. Whilst it is applaudable that Mid Sussex is meeting its housing needs, with a buffer, it is clear from the Duty to Cooperate evidence that the Council is not planning positively to assist with unmet needs from elsewhere. In the SoCG between MSDC and LDC, the following is stated:

“The District Plan provides an oversupply of 996 dwellings, adding resilience to housing delivery in Mid Sussex, should any commitments not be delivered as expected”.

- 1.1.13 The Council is applying a buffer to its own need, which may allow for some of under delivery of sites.
- 1.1.14 As identified in our response to Qu. 24, LDC wrote to MSDC asking if it could meet its development needs in February 2024. There is no evidence of a response to this, or any evidence through the Sustainability Appraisal that the Council has properly considered whether it could do.
- 1.1.15 If this process had been done, it would be reasonable to believe that our client's site at Lunce's Hill would have been considered further for residential allocation given its strategic location between both Mid Sussex and Lewes, and its sustainable location on the edge of Haywards Heath (a Category 1 settlement).

Qu. 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?

- 1.1.16 MSDC contends that if it has surplus housing provision set out in the Plan this will prioritise meeting the housing need of the Northern West Sussex HMA in the first instance (SoCG between MSDC and LDC, page 6, point 7). This is no doubt reflective of the evidence which advises that the majority of the district is within this HMA.
- 1.1.17 However, that should not preclude housing need being met in other housing market areas that the District also covers. In addition to the District's own housing pressures, part of the DtC involves considering whether neighbouring authorities' unmet housing need can be accommodated. The south of the district overlaps with the Sussex Coast Housing Market Area 'HMA' which comprises a group of seven severely constrained local planning authorities, restricted in their capacity to accommodate development by both the South Downs National Park and their proximity to the coast. The housing need in the urban areas, in particular in Brighton & Hove with a depleted supply of available urban sites is well-documented, whilst authorities such as Lewes are restricted by the location of principal settlements within the National Park.
- 1.1.18 Where authorities are unable to meet their need in full, MSDC has a duty to explore whether it can accommodate some of the overspill of the Sussex Coast's unmet need; and we would ascertain this should not just relate to housing within its principal housing market area.
- 1.1.19 Given the availability of suitable land for housing is severely depleted and/or constrained within a shared Housing Market Area, it would be expected given the proximity the border to Lewes District in Haywards Heath that the potential for cross-boundary sites in the strategic location southeast of Haywards Heath would be explored by both authorities in the preparation of both emerging Local Plans in order to reach an agreement as to how housing capacity might reasonably be maximised. It is unclear why the provision of housing to meet the needs of this market area are not considered appropriate or a priority. There are sites, as outlined in this Statement, that can provide sustainable development options and help meet the needs of Lewes District and it is a failure of this Plan that these options have not been fully considered.

- 1.1.20 Whilst the Council states that it is aware of the housing need position of the neighbouring authorities, it is not at this stage clear the extent to which the ability of MSDC to either assist or meet the unmet needs of neighbours has been explored.

Qu. 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?

- 1.1.21 As noted above, we do not consider that the provision of housing has been adequately considered on a cross-boundary basis. MSDC has not engaged proactively with all adjoining authorities, including LDC, and considered whether it can meet its housing needs. It has not sought to fully explore the allocation of sites which cross Lewes' boundary. It is not clear whether LDC and MSDC have met, nor has MSDC formally responded to LDC's request to meet some of its unmet need.
- 1.1.22 In the context of our client's site at Land at Lunce's Hill, the site falls partially within the boundaries of Mid Sussex. The site was brought to the Council's attention during the Regulation 19 draft Local Plan consultation (and Reg. 18 for the LDC Local Plan) in which concerns with regard to the DtC were raised. There is very significant unmet housing need across Sussex, including lack of five-year housing supply across East Sussex, and adopted Plans in Brighton & Hove, Crawley and Worthing which fail to meet local housing needs in full. It was therefore anticipated that the Council would be expected to provide further detail on the DtC, and an uplift to the housing requirement, within the next iteration of the District Plan Review and, given the nature of the opportunity presented on the land at Lunce's Hill, we would have welcomed a meeting with policy officers at the earliest opportunity.
- 1.1.23 Concerningly, there has not been any subsequent engagement in relation Land at Lunce's Hill which has been assessed as unsuitable within the LDC Land Availability Assessment partly in relation to the cross-boundary constraints. Such matters should easily have been resolved if the engagement required by the DtC has been taking place and indeed, alongside unmet need, it is the specific intention of the DtC to address such matters.
- 1.1.24 It is therefore reasonably assumed that engagement between the two planning authorities has not taken place to agree a strategy in which to ensure the sustainable delivery of the strategic location southeast of Haywards Heath. This represents a significant missed opportunity to maximise the housing capacity of both authorities, and which appears to stem largely from an apparent lack of cross boundary engagement. We therefore have serious outstanding concerns as to whether the DtC has been satisfactorily discharged in relation to meeting unmet housing needs and given the record of recent failed Plans in similar circumstances in the southeast, there are significant questions about the legality of a plan which fails to adequately address the DtC.

Qu. 29:

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

- 1.1.25 No. We do not consider that MSDC has discharged the requirement of the NPPF in terms of maintaining effective cooperation in the preparation of the Plan. Specifically, it has not demonstrated effective and on-going joint working with other strategic policy making authorities, specifically LDC, to produce a positively prepared and justified strategy (NPPF para. 26).
- 1.1.26 In order to demonstrate effective and ongoing working, para. 27 of the NPPF makes clear that SoCG should be produced and made publicly available throughout the plan making process to provide transparency. As noted in our Representations to the Regulation 19 Local Plan consultation, a SoCG with LDC had not been signed, or made available until after submission of the Plan. This does not provide confidence that the two authorities have worked positively to facilitate a sound or lawful plan making process.
- 1.1.27 We raised concern in our Regulation 19 representations that at that time no SoCG had been published within the MSDC's Local Plan Evidence Base and there was limited information, particularly in regard to the engagement by MSDC with neighbouring LDC in relation to strategic issues. Even now, with the Statements published, there is inadequate information available to determine whether cross-boundary issues, namely housing need in the context of the limited capacity of Lewes District to meet its own needs have been properly addressed and no evidence suggesting MSDC have engaged constructively, actively and on an ongoing basis with LDC.
- 1.1.28 It is extremely concerning that still no strategy has been set out to accommodate unmet need from nearby authorities which is a core requirement to the production of positively prepared and justified strategies. In addition to unmet need, it is also established that the DtC serves a clear purpose in facilitating the delivery of cross-boundary sites, such as that of our client's. Where suitable opportunities exist to maximise the development capacity of a constrained district by jointly promoting cross-boundary sites, the DtC provides a platform upon which to undertake engagement exercise in this regard.
- 1.1.29 Furthermore, it is clear that the new Labour Government is placing great emphasis on cooperation between authorities and setting a firm direction of travel. In her letter dated 30th July to all Local Authority leaders, Angela Rayner confirmed that:
- "First, in addition to the continued operation of the duty to cooperate in the current system, we are strengthening the position in the NPPF on cooperation between authorities, in order to ensure that the right engagement is occurring on the sharing of unmet housing need and other strategic issues where plans are being progressed in the short-term".*
- 1.1.30 Given the lack of evidence setting out that this has been completed, we have serious concerns in regard to the ability of the Council to demonstrate that it has satisfactorily discharged the DtC and the extent to which the Plan is positively prepared.