

# Lewis & Co Planning

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## **MID SUSSEX DISTRICT PLAN 2021 - 2039** **MATTER 1: LEGAL AND PROCEDURAL REQUIREMENTS**

**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 These Hearing Matter Statements submitted on behalf of Vistry Group individually address select questions under each Matter to be considered at Hearings beginning on 22<sup>nd</sup> October 2024. These Matters broadly align with relevant sections within our Regulation 19 responses (references 1191618 and 1191628).
- 1.3 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 the accompanying Sustainability Appraisal does not demonstrate that the proposals in the plan are the most appropriate when considered against reasonable alternatives;
  - 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 the spatial strategy that would deliver the best sustainability outcomes;
  - The Plan is not *consistent with national policy* as it fails to deliver a sufficient supply of homes as required under paragraphs 11, 35 and 61 of the Framework
- 1.4 We consider these to be significant shortcomings that render the Plan unsound in its current form as relevant legal requirements have not been met.

# **MATTER 1 – LEGAL AND PROCEDURAL REQUIREMENTS**

**ON BEHALF OF VISTRY GROUP**

SITE: LAND AT MALTHOUSE LANE, BURGESS HILL

SITE REFERENCE: 1105/710

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# MATTER 1: LEGAL AND PROCEDURAL REQUIREMENTS

**ISSUE 1: Whether the Plan has been prepared in line with the relevant legal requirements and procedural matters?**

2.1 This statement provides written responses to questions 1, 5, 7, 8, 16 and 17.

*Question 1: Has the Plan been prepared in accordance with the Local Development Scheme in terms of its form, scope, and timing?*

2.2 It is noteworthy that the Local Development Scheme published in June 2019 (Ref P4) stated:

*“The Mid Sussex District Plan 2014 – 2031 also includes a commitment (Development Policy 5: Planning to Meet Future Housing Need) to undertake a review of the District Plan commencing in 2021, with submission to the Secretary of State in 2023. This is to ensure future-housing need across the wider sub-region is planned for appropriately”*

2.3 As will be considered under further Matters and Issues through the Examination, the Plan makes no provision for housing needs across the wider sub-region, contrary to the stated intent above.

*Question 5. Has the plan been subject to Sustainability Appraisal (SA), including a report on the published plan, which demonstrates, in a transparent manner, how the SA and Site Selection Methodology (SSP1) have influenced the evolution of the plan making process. For example, could I be directed to where the sites have been ranked against each other as referenced in paragraph 36 of SSP1? What if anything is the cut off threshold? Have the requirements for Strategic Environmental Assessment been met?*

2.4 Vistry Group raised concerns with the Sustainability Appraisal at the Regulation 18 consultation stage, and the lack of transparency around the scores applied to the sites (both pre- and post- mitigation) and the reasoning behind these scores.

2.5 Inconsistencies were identified in the scoring applied to sites, including:

- Some sites scoring poorly on access to educational and community facilities in the post-mitigation scenarios, even though these were proposed onsite;
- Scores relating to the setting of the National Park not reflecting the relative proximity/visibility of sites;
- Scores relating to flood risk being comparatively more negative on sites where areas of flood risk affected a lower proportion of the overall area

2.6 Whilst many of these scores were reconsidered at Regulation 19 stage, and further commentary is provided within the updated Sustainability Appraisal, these updated assessments do not appear to have resulted in any meaningful changes to the site allocations within the Plan and therefore it is not clear how this process has influenced the evolution of the submitted District Plan.

2.7 For reasons detailed below, the Sustainability Appraisal does not demonstrate that the proposals within the Plan are the most appropriate, as required under planning practice guidance<sup>1</sup>.

*7. Have all reasonable alternatives been considered in terms of spatial strategy, policies, and sites including increases in density or housing numbers?*

2.8 The Sustainability Appraisal only considers five main spatial options for delivering growth. Appendix A of the Sustainability Appraisal shows that options 4 (focusing development in the three Category One settlements) and 5 (prioritising development on brownfield land) were rejected due to the lack of available sites to deliver the District's housing needs in full.

2.9 However, these Options 4 and 5 scored significantly higher against the identified sustainability objectives than Option 2 (the option taken forward as the spatial

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<sup>1</sup> Paragraph: 022 Reference ID: 11-022-20140306 (Revision Date 6<sup>th</sup> March 2014)

strategy for the Plan). The two options were shown to achieve better sustainability outcomes against nearly all objectives including health and wellbeing, education, community and crime, flood and surface water, natural resources, biodiversity and geodiversity, landscape, climate change and transport, energy and waste, economic regeneration and economic growth.

- 2.10 Despite these findings, the District Council have not changed course from their Regulation 18 spatial strategy (which only considered Options 1 and 2 within the accompanying Sustainability Appraisal).
- 2.11 At a minimum the Council should have assessed any blended options that would have maximised delivery within locations that scored highest against the sustainability objectives (i.e. the District's most sustainable settlements and brownfield land). The lack of suitable sites could have been subject to further scrutiny and/or supplemented with additional sites as required (including sites that could deliver new services in less sustainable settlements).
- 2.12 Instead, the Sustainability Appraisal process has not prompted any shift in the overall spatial strategy and the Plan has not demonstrably evolved to reflect this evidence.
- 2.13 Additionally, no options have been directly appraised in consideration of meeting the unmet development needs of neighbouring authorities. As a result, no consideration has been given to the likely impacts of failing to address the unmet needs of neighbouring authorities on the social and economic wellbeing of residents.
- 2.14 Mid Sussex district is located within two housing market areas (Northern West Sussex HMA and Brighton and East Sussex HMA) and there are significant and known unmet housing needs across both HMAs. As a comparison, the adopted District Plan directly appraised options for higher housing delivery numbers and was supported by an evidence base document entitled "*Sustainability Assessment of Cross-Boundary Options for the Mid Sussex District Plan*", which assessed the potential for assisting six neighbouring authorities in meeting their unmet needs for housing and employment land.
- 2.15 The consequences of failing to address the housing supply issues within the functional housing and economic areas are likely to be severe, impacting on the

affordability of housing for all residents. Worsening affordability will likely also have secondary impacts on the cost of living, local economy and quality of life for residents across the functional housing market area, including within Mid Sussex.

- 2.16 These matters form key aspects of social and economic sustainability, two of the three pillars of sustainable development as defined within the NPPF. It is therefore critical that the impacts of failing to address the unmet needs of neighbouring authorities are considered within the Sustainability Appraisal and meaningfully inform the spatial strategy.
- 2.17 The Sustainability Appraisal does consider an alternative option to the approach within Policy DPH1 (Housing), which shows that the delivery of higher levels of growth will deliver positive improvements against the identified sustainability objectives<sup>2</sup>. However, despite this, this option has not been brought forward through the Plan and the reasons for this area not detailed within the Sustainability Appraisal itself.
- 2.18 On this basis, the Sustainability Appraisal does not demonstrate that the proposals in the Plan are the most appropriate and deliver the best outcomes when assessed against the sustainability objectives, or how the findings of the Sustainability Appraisal have meaningfully informed the Plan itself.

*8. Have these reasonable alternatives, been considered on a like for like basis? Is the evidence on which the scenarios are predicated consistent and available from the Examination website? What is the significance if any, to the robustness of the SA, of the publication of additional evidence, such as transport and flood risk evidence after the Plan was submitted? Are there any policies, or strategies, where there were no reasonable alternative options to consider? If so, what is the justification?*

- 2.19 The assessments within the Sustainability Appraisal are inconsistent with the findings of evidence base documents that have been published since the end of the Regulation 19 consultation.

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<sup>2</sup> Appendix B.12 Housing, Mid Sussex District Plan (Regulation 19) Sustainability Appraisal (November 2023) JBA Consulting (Document Reference DP7)



2.20 The publication/submission of these evidence base documents following the Regulation 19 consultation has not allowed these contradictory findings to be addressed within representations made and it is not clear how the evidence could have informed the plan-making process.

*16. Does the Plan include all relevant strategic policies to address the Council's priorities and adequately set out an overall strategy for development as required by paragraphs 20-23 of the National Planning Policy Framework (the Framework)? Specifically, please set out how each of the individual categories set out within criteria 20 a) to 20 d) are justified by up to date and proportionate evidence and, where this has been supplied by developers, the extent to which it should be relied upon?*

2.21 As will be addressed under Matter 6, the Plan does not look far enough ahead to ensure compliance with paragraph 22 of the National Planning Policy Framework (NPPF). The Plan period will therefore need to be extended, and additional sites will need to be considered to ensure that the additional development needs of the district will be met over this extended period.

2.22 It is also Vistry Group's view that the Plan does not provide a clear strategy to bring sufficient land forward to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. The Plan is therefore in conflict with paragraph 23 of the NPPF.

2.23 The NPPF defines the presumption in favour of sustainable development at paragraph 11, and sections (a) and (b) are relevant to plan-making. This includes, as a minimum, planning for local housing needs "*as well as any needs that cannot be met within neighbouring areas*".

2.24 Neighbouring authorities have communicated the scale and extent of their unmet needs to Mid Sussex District Council during the Plan preparation process. For example, the agreed Statement of Common Ground between Mid Sussex District Council and Brighton and Hove City Council<sup>3</sup> confirms a shortfall of 17,000 new

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<sup>3</sup> Statement of Common Ground: MSDC and Brighton & Hove City Council (July 2024) (Document Reference DC5)

homes due to the lack of available land within Brighton and Hove. Similar requests were received from other local authorities.

- 2.25 Brighton and Hove City Council made specific requests to Mid Sussex District Council through the Regulation 18 consultation for sites to be considered based on their potential to help reduce identified housing and employment land shortfalls in Brighton and Hove, naming the Land at Malthouse Lane site (reference 1105) specifically within their consultation response (Comment ID 13256372/1847/7):

*“The Site Selection Paper appears to indicate that there may be scope to overcome the constraints and deliverability issues for at least some of these sites (this particularly applies to the Malthouse Lane site where it is stated that it could be brought forward in conjunction with the proposed West of Burgess Hill allocation). Following on from our comments above, BHCC would strongly urge the District Council to take a positive approach to supporting these developments if it can be demonstrated that the identified constraints to delivery can be overcome.”*

- 2.26 Despite this, the submission District Plan does not seek to meet the unmet needs of Brighton and Hove and the reasons for this have not been adequately justified against the requirements of paragraph 11 (b) of the NPPF.

- 2.27 A total of 49 sites were identified as suitable for allocation under Stage 2 of the site selection process, with an estimated yield of 14,654 dwellings. Despite this, only 26 sites have been allocated with an estimated yield of 6,687 dwellings.

- 2.28 The reasons for these sites being rejected at Stage 3 do not align with the tests at Paragraph 11 (b), nor has the Council sought to make this case. For example, Vistry Group’s site (Land at Malthouse Lane – ref 1105) has been rejected on the basis that *“the Council does not have sufficient evidence to have confidence this site is deliverable in combination with DPSC1”*<sup>4</sup>. There are no impacts associated with the site on *“areas or assets of particular importance”* (11 (b) (i)) or adverse impacts that *“significantly and demonstrably outweigh the benefits”* (11 (b) (i)) of allocating this site to meet unmet needs of neighbours.

- 2.29 Instead, the Site Selection section of the topic paper explains that sites were rejected at Stage 3 of the site selection process for reasons including being

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<sup>4</sup> Page 26, Appendix 4, District Plan 2021 - 2039: Site Selection Conclusions Paper (July 2024)

inconsistent with "*the spatial strategy established within the submission draft District Plan*"<sup>5</sup>.

2.30 The minimum number of homes required has therefore been determined by the spatial strategy itself, which is based on four key principles, none of which relate to the unmet needs of neighbours or are clearly tied to the tests within paragraph 11 (b) of the NPPF. On this basis we do not consider the Plan to provide a strategy that aligns with the requirements of paragraph 23 of the NPPF and the presumption in favour of sustainable development.

*17. Has the Council had regard to the specific matters set out in S19 of the 2004 Act (as amended) and Regulation 10?*

2.31 For the reasons set out above and in accompanying Matters Statements, we do not consider the Council to have had regard to national policies and advice contained in guidance issued by the Secretary of State, as required under Section 19 (2) (a) of the Planning and Compulsory Purchase Act 2004.

2.32 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 the accompanying Sustainability Appraisal does not demonstrate that the proposals in the plan are the most appropriate when considered against reasonable alternatives;
- 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 the spatial strategy that would deliver the best sustainability outcomes;
- The Plan is not *consistent with national policy* as it fails to deliver a sufficient supply of homes as required under paragraphs 11, 35 and 61 of the Framework

*End*

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<sup>5</sup> Paragraph 58, *Housing Need and Requirement Topic Paper (HN RTP) (H5)*

