



To: Claire Tester
Head of Economic Promotion and Planning
Mid Sussex District Council

Dear Ms Tester

**Mid Sussex District Plan
Duty to Co-operate**

1. Further to the Exploratory Meeting (EM) held on 16 September 2013 and the Hearing Session held on 12 November, I set out below my conclusions with regard to the duty to co-operate (the duty).

Preamble

2. At the hearing session the Council stated that there were inaccuracies in the evidence submitted by Brighton and Hove City Council on behalf of four local planning authorities. Brighton and Hove were not represented at the session and therefore, at my request, Mid Sussex District Council documented the alleged inaccuracies and the documentation¹ was sent to the four objecting authorities (and other interested parties) for their comment. I have taken into account the assertions of the Council, and the responses received, in my consideration of whether or not the duty has been met.
3. The response from the four coastal local planning authorities (submitted by Adur and Worthing Councils) confirms that in their view there are no factual inaccuracies in their statement²; rather there is a difference of opinion between them and Mid Sussex District Council. The response concludes by suggesting that I should take a flexible approach and proceed with the examination 'as this would enable the housing issues to be considered in detail'. Similarly one participant at the hearing session suggested I could adopt some form of sliding scale that would enable me to conclude that, although in his view the Council had not fully met the requirements of the duty, it had made sufficient progress to be deemed acceptable. There is no room for such flexibility in the legislation – either the requirement has been met or it has not and it is on that basis I have considered the evidence.
4. At the EM it was suggested that if the submitted District Plan (DP) (which covers the period up to 2031) were to be found sound, then it should be subject to an early review, which would be based on a thorough assessment of cross-boundary issues. However, the legislation on the duty does not provide for such an approach to be followed.

¹ MSDC - 12

² Ref: 16438-01

Background

5. The National Planning Policy Framework (NPPF) confirms that public bodies have a duty to co-operate on planning issues that cross administrative boundaries, particularly those that relate to strategic priorities, such as the delivery of homes and jobs needed in an area. The duty requires the Council to have engaged constructively, actively and on an on-going basis. Strategic priorities across local boundaries should be properly co-ordinated and clearly reflected in individual local plans. The implication is that local planning authorities should work together to assess the opportunities that exist for the substantiated unmet development requirements of one local authority to be met within the area of one or more nearby local authorities. The NPPF was published over a year before the DP was submitted for examination.
6. For the DP to be found sound it must be positively prepared and effective. This means it must be based on effective joint working on cross-boundary strategic priorities and where appropriate and sustainable, on a strategy which seeks to meet unmet requirements from neighbouring authorities.
7. I have taken into account the fact that there is no duty on local planning authorities to agree to accommodate the needs of a neighbouring authority but if that is the conclusion that has been reached, it must be based on clear and robust evidence and on a proper consideration of all the issues.
8. I believe that the Council understands the responsibility it has in terms of the duty. For example there are references to the duty in a Report to the Council on the Revised Draft District Plan (27th June 2012)³ and in the Agenda for Scrutiny Committee for Planning and Economic Development dated 18th July 2012⁴.
9. In a Report to West Sussex Joint Leaders (which includes Mid Sussex) dated 4 October 2012⁵ it is stated that:
 - there has to be evidence of meaningful cross-boundary working and the early signs are that Inspectors will be expecting to see positive outcomes from this work (para 5.1)
 - there is a need for the relevant authorities to agree which 'larger than local' issues need to be addressed and to agree the mechanisms for co-operation and collaboration. The outcomes of engagement also need to be captured (para 5.2); and
 - the duty cannot be met retrospectively; that is work cannot be undertaken following submission of a local plan to make it legally compliant (para 5.6)
10. Appendix B of that Report (extract from Draft Strategic Priorities Schedule) confirms that, for example in terms of housing provision, Mid

³ Core document EP27(i)

⁴ Core document EP30

⁵ Core document: MSDC-06 (Appendix B)

Sussex should be seeking co-operation with the Councils of Adur, Arun, Crawley, Horsham, Worthing, Brighton and Hove and Lewes and the South Downs National Park Authority. It is Brighton and Hove (on behalf of three other Councils) that has submitted a representation that concludes that Mid Sussex has not met the duty with regards to housing provision (ref: 16438).

Processes Undertaken

11. The Council did not establish a robust framework within which 'co-operation' could be monitored – for example in terms of frequency, issues to be addressed, outcomes to be anticipated and bodies to be involved. Rather than follow the advice in the Report referred to in paragraph 9 above, regarding agreeing 'the mechanisms', the Council appears to have taken a rather ad hoc approach and relied on existing established meetings to give consideration to the duty. The Council argued that there is no specific requirement in the legislation to take a structured approach, and that is correct. However, the Council needs to demonstrate co-operation, co-ordination and continuous engagement and one way this may be achieved is through a more transparent process that can be appropriately managed and monitored.
12. In a Report to the Scrutiny Sub Committee for Planning and Economic Development (5th March 2013) entitled 'Housing Numbers for the District Plan' (EP31), paragraph 28 confirms that 'discussions with neighbouring authorities need to continue over the next few months to clarify their positions and agree mechanisms for addressing cross-boundary issues where practical and consistent with the strategy and objectives of the District Plan'.
13. Firstly there is no record of any significant 'mechanisms' having been agreed prior to the submission of the DP and secondly the officer appears to be precluding any discussions if they relate to issues that might conflict with the Council's strategy and objectives of self-containment. Neither of these factors add weight to the Council's contention that it has met the duty.
14. Although I have not tested the evidence in the updated Housing Market Assessment (October 2012) I do consider that it represents a level of joint working between Mid Sussex, Crawley and Horsham. And there are other examples of where these three local planning authorities have co-operated. However, no similar approach has been taken towards the Sussex Coastal local planning authorities. I acknowledge that there are two different housing market areas involved but, as the Council agreed, the boundaries of such areas cannot necessarily be considered to be discrete.
15. One of the 'Next Steps'⁶ in the Sussex Coast HMA Partners Housing Study (Duty to Co-operate), which was published in May 2013, was 'to consider with adjoining authorities longer-term development options, potentially

⁶ Paragraph 6.55

working jointly with other authorities within Northern West Sussex'. I am told by Brighton and Hove City Council⁷ that a meeting took place in August 2013 at which Mid Sussex was present and at which it was confirmed that a Duty to Co-operate Agreement would be prepared. However, this is too late in the process to have any consequences for the content of the submitted DP.

Has Engagement been Constructive?

16. There has been engagement between nearby local planning authorities but there is little evidence that the Council has approached the matter in a helpful and positive way. Meetings have been held and doubtless appropriate issues have been discussed but it needs to be demonstrated that appropriate conclusions have been drawn at those meetings and that the Councils have acted on those conclusions. It is inevitable that there will be difficult issues to address. An example is the situation regarding the proposed Memorandum of Understanding between Mid Sussex and Lewes Councils, which was drafted over 18 months ago but which has not been signed. This does not indicate that a constructive approach has been adopted.

Has Engagement been Active?

17. The Council prepared Appendix D of MSDC/06 (a list of meetings) but it is difficult to draw conclusions regarding the effectiveness of these meetings because any 'outcomes' that are recorded are succinct. However, it is clear that meetings between Mid Sussex and Lewes have taken place since March 2010 and with Brighton and Hove (and other coastal authorities) since June 2012. At the meeting on 18th June 2012 I am told that the 'constraints of each authority' were discussed, so although I have not been given any Minutes, I consider it likely that the issues of accommodating objectively assessed housing need were addressed. This would tie in with the formal request from Brighton and Hove City Council dated September 2012 for Mid Sussex to consider meeting some of its housing need⁸.
18. With regard to that request Brighton and Hove notified Mid Sussex that such a request would be forthcoming at an officer meeting on 6 September 2012 but the recorded outcome of that meeting in MSDC - 06 (Appendix D) was 'agreement to meet again'. There is reference to a meeting on 7 December 2012, which discussed the potential for a Statement of Common Ground but no such Statement had been agreed at the time the DP was submitted.
19. The evidence indicates that a number of local planning authorities in the area will be unable to meet their objectively assessed housing needs in a sustainable way. Whilst I understand it is not always easy to take an active approach in terms of considering the needs of other local planning authorities and also that localism has a role to play in any deliberations,

⁷ Statement 16438 -01

⁸ Appendix B of EP31

those factors should not be seen as a reason to take a back seat and rely on others to seek solutions to cross-boundary problems.

20. A wide range of interested parties have been consulted by the District Council but it is worth recording that in Appendix E of MSDC - 06 under policy DP5 – Housing, the bodies listed by Mid Sussex as being ‘involved in co-operation’ do not include Brighton and Hove or any of the other coastal authorities.

Has Engagement been On-going?

21. Co-operation should start with the ‘initial thinking’ (NPPF paragraph 181) and evidence of effective co-operation should be demonstrated at the time the Local Plan is submitted. There has been much recent activity in terms of demonstrating that co-operation has occurred but little evidence that this principle was embedded in the Council’s approach during the earlier stages. For example, between the Council publishing the draft DP for consultation in November 2011 and the submission of the DP in July 2013 there are a number of instances when the issue of co-operation has been raised. However, there is no indication in the submitted plan that serious consideration has been given to the concerns that were voiced. The opportunity was there for the Council to conclusively demonstrate, one way or the other, that it had considered the concerns of nearby local planning authorities and drawn appropriate conclusions. However, there are no significant references in the DP to any cross-boundary issues. The meetings that have been held could not accurately be described as frequent and the evidence does not demonstrate that consideration of cross-boundary issues has been taking place from ‘initial thinking’.

Has Engagement been Collaborative?

22. I have considered all the evidence submitted but my attention was drawn by the Council to what it described as three examples of collaborative engagement⁹.
23. The **Gatwick Diamond Local Strategic Statement and Memorandum of Understanding** (EP20 and EP21) are dated March 2012 and I was told they are currently under review. The Memorandum is a brief document which broadly establishes the objectives of joint working in the Gatwick Diamond. It commits the local planning authorities to developing and implementing ‘a programme for jointly addressing strategic planning and development issues’ but I have seen no such programme.
24. The **Northern West Sussex Position Statement**¹⁰ indicates that consideration is being given by Mid Sussex Council to issues of concern in Crawley and Horsham. However, the Statement is dated September 2013, so has been agreed following submission of the District Plan. The document acknowledges (in the paragraph numbered 6.17) that the local plans being prepared by the three Councils ‘will not fully meet objectively

⁹ MSDC - 08 (under 1.1)

¹⁰ MSDC - 02

assessed housing needs' and in paragraph 6.15 it is confirmed that technical joint working on housing requirements and discussions on housing delivery will continue. The issue has therefore not been satisfactorily resolved. Crawley is one of three Councils that has informally indicated that it may request Mid Sussex to consider accommodating some of its unmet housing needs (paragraph 7 of EP31).

25. The third example cited is the **Statement of Common Ground** between the Council, Brighton and Hove, Lewes, all the West Sussex local planning authorities, Eastbourne and Wealden Councils. However, the copy attached to the Council's statement only has one signatory (Mid Sussex) and it is dated 21 October 2013 – well after submission of the District Plan.
26. Other documentation submitted includes a draft Memorandum of Understanding between Mid Sussex and Lewes Councils dated 26th April 2012 but this has not been progressed and in my opinion provides an indication that the commitment to the duty is not being appropriately fulfilled and that collaboration is currently failing. With regard to Adur and Worthing it is stated¹¹ that since January 2012, when Mid Sussex was alerted to likely capacity constraints, no 'joint approach on housing provision' has taken place.
27. My broad conclusion with regards to the evidence submitted by the Council is that it demonstrates that although mechanisms are being put in place to engender co-operation, these should have been available earlier in the plan making process, thus ensuring that the DP is truly based on a collaborative process. I accept that it is inevitable that different Councils will be at different stages in terms of plan preparation but that is not the case with all the nearby Councils (e.g. Brighton and Hove) and I would have expected more robust evidence of collaborative engagement. No joint committees have been established specifically to address the Duty to Co-operate and no joint planning policies are currently proposed. At the time of submission no Memoranda of Understanding had been signed. This reflects a lack of positivity and commitment to joint working.
28. In response to the request from Brighton and Hove in September 2012 for joint consideration of the issues (Appendix B of EP31) the Council states that until work on producing evidence for the DP has been completed 'we will be unable to respond to your request'. It seems to me that this would have been an appropriate time for the Council to have engaged with nearby local planning authorities, before decisions on the submission version of the DP had to be made. This would have contributed to the evidence that the Council was collecting and would have demonstrated collaborative working for mutual benefit.

Has Engagement been Diligent?

29. No in-depth analysis of the issues facing the local planning authorities in the area has been undertaken and no robust assessment of how those

¹¹ Statement 16438 - 01

issues should be addressed has been prepared. The lack of commitment to seeking a way forward is demonstrated by the lack of progress on the Memorandum of Understanding between Mid Sussex and Lewes Councils. Therefore in terms of fulfilling the duty I would describe the foundations upon which the approach of the District Council is based, as at best, shaky.

Has Engagement been of Mutual Benefit (the broad outcomes)?

30. Clearly the answer to this question must be no, because there are objections to Mid Sussex's approach from four nearby local planning authorities. Mutual benefit has not been sought yet alone achieved. As I have intimated elsewhere, it may not be possible to achieve a high level of mutual benefit but if that is the case then the evidence has to be available to demonstrate that at least the achievement of mutual benefit has been sought.
31. The DP does include a table entitled strategic objectives (page 9), but they appear to be based on a concept of self-sufficiency and there is no reference to any cross-boundary issues. At the hearing session the Council confirmed that it considers the strategic priorities of the area to include housing, employment, infrastructure provision and habitats protection. However, the DP makes few references to any cross boundary issues (e.g. paragraph 1.4 and policy DP14) and is silent on the accommodation of wider housing needs. Consequently it can be concluded that strategic housing priorities across boundaries are not properly addressed or co-ordinated and that any engagement has not been of mutual benefit.

Housing Need

32. One of the main strategic priorities is to meet housing need and Mid Sussex forms part of the Housing Market Area that also encompasses Crawley and Horsham, but it is clear that there are some links to other nearby housing markets, for example those relating to a number of Sussex coastal authorities. This is not disputed by Mid Sussex. It is therefore appropriate that consideration is given to the housing needs of all nearby local planning authorities.

Housing Need in Mid Sussex

33. The Council's evidence, which has not been subject to examination, indicates that if it were to follow recent population trends then about 8,200 dwellings would be required in Mid Sussex over the plan period. However, in order to engender economic growth, the Council is proposing to provide about 10,600 dwellings.
34. If it is accepted that the 10,600 dwellings exceeds the full objectively assessed need, then that is to be supported. However, that 'excess' in housing provision is to meet the objectives of the District itself and its purpose is not to meet the needs of nearby local planning authorities who are unable to meet their needs within their own area. The District Plan

confirms in paragraph 3.10 that the 10,600 figure 'is considered best to reflect the needs and aspirations of Mid Sussex'.

Housing Need in Nearby Local Authority Areas

35. The Coastal West Sussex Strategic Planning Board (which represents Brighton and Hove, Adur, Arun, Chichester, Lewes, Worthing and the South Downs National Park) published, in May 2013, a Housing Study (Duty to Co-operate)¹². I am unable to give full weight to the conclusions included within this Study because I have not tested the evidence on which it is based. However, I have no reason to doubt that it provides a reasonably justified indication of the situation because it pulls together evidence from a range of other studies. This Study suggests that housing delivery over the period to 2031, across the Coastal Housing Market Area, is likely to be at least 20% below objectively assessed needs – equivalent to at least 495 dwellings a year. In Brighton and Hove, for example, there could be a shortfall of about 4,700 dwellings over the plan period. On the assumption that the Study is at least partly reflective of the current situation there are local planning authorities, for example Brighton and Hove, who are unlikely to be able to meet their objectively assessed housing need within their own boundary in a sustainable way.
36. The Council argued that it hasn't been clearly demonstrated by Brighton and Hove, for example, that it could not accommodate a higher level of housing development than is currently being proposed¹³. I cannot draw a conclusion one way or the other because I have not seen all the evidence but similarly the District Council does not appear to have made a robust assessment of the situation which it could have undertaken if it had collaborated with Brighton and Hove to seek an outcome of mutual benefit to all parties.
37. I have given very careful consideration to the Report to Scrutiny Committee for Planning and Economic Development (5th March 2013) entitled 'Housing Numbers for the District Plan'¹⁴. One of the purposes of the Report was to enable Members to consider the approaches made by other local authorities to accommodate some of their unmet housing needs (in particular Brighton and Hove City Council).
38. The Report refers only to two previously considered strategic sites, at Sayers Common (New Town) and Crabbet Park. These were considered when the Council was assessing ways to accommodate the 17,100 dwellings required by the former South East Plan. It is clear that detailed consideration has been given to these two sites and the conclusions that are made in the Report appear at face value to be reasonable. However, the Report describes consideration of these two sites as 'a starting point', implying that other options may be available. However, there is no reference to any other potential strategic sites being assessed.

¹² See representation 16438

¹³ Local Plan Examination is currently in progress

¹⁴ Core Document EP31

39. 'Other Site Proposals', which are described as 'less strategic', are not specified and it is suggested that these should be considered as part of the Neighbourhood Plans process. The role that such sites could play in accommodating unmet needs appears to have been given little re-consideration following the request from Brighton and Hove. At the hearing session the Council confirmed that some of these sites could be categorised as strategic.
40. The Council states, in MSDC – 11, that the reason the Explanatory Notes and the Brighton and Hove Committee Report were not specifically put before Mid Sussex Members was because 'they do not add anything to the Mid Sussex Report'. I disagree. The Explanatory Notes refer to the tight constraints around the urban area of Brighton and Hove and indicate that it is the City Council's assessment that it can accommodate about 11,315 dwellings over its plan period, whereas the requirement falls between 15,800 and 19,400 dwellings. I can find no references to such matters in the Report of the Head of Economic Promotion and Planning entitled 'Housing Numbers for the District Plan'. There is, however, a comment that other authorities such as Crawley, Adur and Lewes have indicated that they may make such requests in future (paragraph 7). In light of this existing and potential future pressure on Mid Sussex, I would have expected a more robust defence of the Council's position and a clearer explanation of that position in the DP itself.

The Effectiveness of the District Plan

41. To be effective the DP must be based on effective joint working on cross-boundary strategic priorities (for example housing provision). I understand the conclusions that the Council has drawn with regard to accommodating additional growth but those findings do not appear to be based on collaborative working or effective co-operation with other bodies. It may be that the Council's conclusions are correct but on the evidence before me I am unable to confirm that Mid Sussex District Council has given adequate consideration to helping meet the development needs of other nearby local planning authorities.
42. I have taken into account all the submissions on the matter (a comparatively high number) but in particular that the nearby Councils of Brighton and Hove, Lewes, Worthing and Adur (jointly) all consider that the duty has not been met by Mid Sussex. Although the Councils of Horsham and Crawley consider that the duty has been met from their perspective, there is no opportunity for a Council to be selective over which of its 'neighbours' it co-operates with. I am also mindful that Crawley, Lewes and Adur Councils have said that they may request Mid Sussex to meet some of their housing need¹⁵.

Conclusion and the Way Forward

43. The evidence does not enable me to conclude that prior to the submission of the DP, Mid Sussex District Council gave satisfactory consideration to

¹⁵ Core document EP31 (para 7)

meeting the unmet development needs (in particular in terms of housing) of nearby local planning authorities. The requirements of paragraphs 178 to 181 of the National Planning Policy Framework have not been met. Therefore **it is with regret that I must conclude that the Duty to Co-operate has not been met.** As the Plan has not been based on effective joint working on strategic priorities and because currently there is insufficient evidence to demonstrate that the DP has been positively prepared, there is also the risk that the Plan could be found to be not sound.

44. There is evidence of some co-operation between the Council and nearby local planning authorities following the submission of the DP but these meetings are too late to be effective because the outcomes of this co-operation (which I would describe as being at an early stage) have not been embedded as an integral element in the plan making process. Nevertheless it does demonstrate a more robust commitment to meaningful engagement and in the months to come there is the potential for significant progress to be made.
45. It must be emphasised that this does not mean that Mid Sussex should be expected to accommodate additional growth – that is not necessarily the case. What it does mean is that the Council should give detailed and rigorous consideration to the development needs of nearby authorities and draw robust conclusions with regards to whether or not any of those needs could be met in a sustainable way within the District, bearing in mind the environmental and other constraints that exist.
46. I understand that this is not the conclusion that the Council would have wanted and that there may be consequences in terms of the Council being unable to meet its 5 year housing land supply requirement. Nevertheless this cannot outweigh the need for effective joint working. I must advise the Council to withdraw the Plan, undertake a more rigorous assessment of cross-boundary issues and in so-doing ensure that it meets the requirements of the Duty to Co-operate, carry out the necessary consultation and re-submit the Plan as soon as possible.
47. This also means that the Mid Sussex Community Infrastructure Levy: Draft Charging Schedule will have to be withdrawn because there will be no up-to-date relevant Plan for the area.

Yours sincerely

David Hogger
Inspector

2nd December 2013