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9th November 2017

Dear Ms. Blomfield,

Consultation on proposed Main Modifications to the Council's draft District Plan

The Sussex Branch of the Campaign to Protect Rural England (CPRESx), having participated throughout the draft District Plan examination hearings, makes the following representations in respect of the proposed Main Modifications to the draft District Plan. Our input is intended to assist the Council to achieve a Plan that is sound, legally compliant, effective and transparent.

MM01 - Amendments to DP1: Sustainable Development in Mid Sussex

In the first bullet under the Environmental heading of the Plan Text please add at the end: **“and areas of general open countryside currently providing roosting and hunting sustenance to wildlife of value.”** This gives effect to the provision in NPPF para 17 (bullet 9) that recognises as a core planning principle the multi-functional value of open land. It also provides a reference point for the Council to be able to measure development applications against the yardstick in NPPF para 113 which states: *“Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged.”*

MM02 - Amendments to DP2: Sustainable Economic Development

No comment

MM03 - Amendments to DP3: Town Centre Development

No comment

MM04 - Amendments to DP5: Housing

1. CPRESx has come to the regretful opinion that the evidence does not justify a conclusion that an initial housing target of 876 dpa is sound and deliverable in a manner compatible with the Council's legal

obligation to protect the EU sites on Ashdown Forest in compliance with the mandatory requirements of articles 102 etc. of the Conservation of Habitats & Species Regulations 2010 that development that could significantly impact those sites must be prohibited unless that harm can demonstrably be avoided.

The stand alone appendix to this submission explains our concerns on this issue. Our other comments in this document need to be read in the context of our representations on this core point.

2. Please amend proposed paragraph 3.42 of the Plan Text as indicated here:

“As noted above, the Plan’s housing provision includes a contribution of approximately 1,500 dwellings towards the unmet needs of neighbouring authorities. The strategic allocation at Pease Pottage is [DELETE: “proposed as”] a direct response to those future needs of Crawley Borough Council, and is part of that contribution.” The purpose of this change is to ensure consistency with statements elsewhere as to the Council’s purpose in having granted planning permission for the Pease Pottage site and to ensure that there is no future confusion as to whether that early-delivery site is to be counted towards the District’s delivery of housing to meet Crawley’s upcoming need to which the Plan will commit the Council.

3. In the supporting text please amend the final sentence of the ninth paragraph as indicated here in order to be factually correct:

“The two European sites of interest are [DELETE “is”] on Ashdown Forest, and are [DELETE: “which is”] located in neighbouring Wealden district.

4. In the second paragraph of the Policy Text please explain its intent by amending the following sentence as indicated here:

Thereafter an average of 1,090 dpa will be delivered between 2024/25 and 2030/31, subject to this authority having ascertained that the additional level of development will not adversely affect [DELETE: “there being no further harm to”] the integrity of European Habitat Sites in Ashdown Forest.

MM05 - Amendments to DP5a: Planning to meet Future Housing Need

No comment.

MM06 - Amendments to DP6: Settlement Hierarchy

The problem with simply inserting into the Policy Text an authority here to build up to 9 dwellings in order to boost housing expansion is that this authority cuts right across other Plan policies in DP 10 to DP14 and DP30. Those policies (positively expressed in their own right) nuance the circumstances in which any new development outside existing settlement boundaries would or would not be acceptable. All of those policies are ones which the Planning Inspector expressed himself satisfied with during the draft Plan’s examination. To give two examples: DP30 would only permit affordable homes to be built on rural exception sites; and DP14 (quite rightly) limits new small scale development within the High Weald AONB to cases *“which support the economy and social well-being of the AONB that are compatible with the conservation and enhancement of its natural beauty”*.

So, whilst we recognise the value of the additional language inserted into para 1 of the Policy Text of DP6, we consider it essential to qualify the “up to 9 dwellings” proposition so that it is expressly made to subject to its compatibility in any given case with other Plan policies. Otherwise it would drive a coach and horses through them and undermine all the work that has gone into their careful drafting and soundness approval. We therefore propose adopting language used elsewhere and adding the words **“and is not in**

conflict with other Plan policies” at the end of paragraph 1 after “where the proposed development is for fewer than 10 dwellings”.

MM07 - Amendments to DP7: General Principles for Strategic Development at Burgess Hill

No comment.

MM08 - Amendments to DP8: Strategic Allocation to the east of Burgess Hill at Kings Way

No comment

MM09 - Amendments to DP9: Strategic Allocation to the north and north-west of Burgess Hill

No comment

MM10 - Amendments to DP9a: Strategic Allocation to the east of Pease Pottage

No textual comment. It is a matter of record that a principal exceptional circumstance justification for the Council’s decision to grant planning permission for development of this site was to assist Crawley DC with its upcoming unmet need. That rationale must not be forgotten now

MM11 - New policy DP9b: Strategic Allocation to the north of Clayton Mills, Hassocks

We have noted that this allocation is proposed in the context of the Inspector-required increase in the Plan’s overall housing delivery target and the Council’s comparative analysis of the District’s potential strategic site options. We agree that option 2 is the preferable of the two options canvassed in MSDC22 for the reasons given there and also because an increase from 10 to 25 dwellings as an acceptable threshold would involve a long-term change to DP6 to resolve what the Council sees as a short-term problem.

However

- (a) no evidence is provided that the overall impact on Hassocks and its infrastructure capacity has been considered of the cumulative level of development already allowed and now proposed within the community. Only the need for a new primary school is mentioned. This site allocation policy should reference a study of all the village’s infrastructure needs and plan for their provision. Accordingly the Policy Text should include an additional stand-alone paragraph at the end on the lines of: **“The Council will, in conjunction with Hassocks Parish Council, undertake an early study of the village’s infrastructure needs to support the enlarged community envisaged via this Plan, and will take into account the results of that study in the consideration of any strategic development application for this site in accordance with DP18.”**. This would also give force to assurances given at paras 38 and 39 of MSDC22 as to ongoing discussions between the Council and Hassocks PC.
- (b) The Council should publish the evidence justifying the Council’s surprising assumption that a 500 dwelling new settlement will only generate 30 traffic movements at peak hour through the Stonepound Crossroads and the conclusion that it will consequently have no significant impact on the Stonepound Crossroads AQMA so that it can be tested. In any case any deterioration in the air quality at a populated location where the level of pollution already exceeds safe tolerance levels must be regarded as significant: a sound policy must require and plan for a reduction in emission levels to below minimum critical levels, and the requirements of NPPF paras 120 and 124 must be given due weight. We draw to your attention a High Court decision this week that a Council was justified in

rejecting a planning application where developer financial contributions did not demonstrably translate into measurable mitigation of adverse effects on an AQMA. (*Gladman Developments v SSCLG and CPRE Kent* [2017] EWHC 2768 (Amin));

- (c) The anticipated wider traffic impacts on neighbouring communities in Hurstpierpoint, Keymer and Ditchling as well as Burgess Hill should also be made public;
- (d) The supporting text misleadingly implies that there are no environmental or heritage issues associated with development of this site. It appears that no analysis has yet been undertaken as to whether a strategic development on this site could be implemented without harm to the setting of the South Downs National Park or of the two nearby listed heritage assets. In our view the supporting text needs amendment
 - (i) to DELETE the misleading paragraph: “There are no significant environmental designations on-site or in proximity that would be negatively affected by development.” And all the following paragraph beginning “The eastern area of the site”, and
 - (ii) by adding a new sentence in its place on the lines of “In determining any application to develop this site the appropriate weight required by the NPPF will be given to protecting the setting of the South Downs National Park and to any harm it would cause to heritage assets, including the setting of Ockley Manor (Grade II*) and Ockley Manor Barn (Grade II). Prospective developers will be required to take appropriate measures to ensure that harm to their settings is avoided.”

MM12 – Amendments to DP13: New Homes in the Countryside

Add to Policy Text after “The proposed development meets the requirements of Policy DP6 Settlement Hierarchy” the additional words “and of the relevant made Neighbourhood Plan (if any)”.

MM13 – Amendments to DP18: Securing Infrastructure

No comment

MM14 – Amendments to DP19: Transport

1. NPPF para 32 bullet 3 calls for improvements to the traffic network, not merely mitigation of adverse impacts. Accordingly, in order to ensure compliance with para 32 DELETE from the Policy Text, second paragraph, bullet 6, the words: “appropriate mitigation to support new development on” and substitute “opportunities effectively to limit significant impacts of the development through cost effective improvements to be undertaken to”.
2. Please DELETE all of Policy Text second paragraph, bullet 7 (beginning “The scheme avoids severe additional traffic congestion” and substitute: “the residual cumulative impact of all relevant development proposals and commitments on the local and surrounding road network is likely to be severe”. This language more closely follows that in NPPF para 32 and more accurately reflects the fact that what matters is the cumulative severity of all relevant development and not merely the incremental impact of any one development proposal. The suggested language also more clearly requires the Council to take into account (as it should) differing congestion conditions in different parts of the District (such as, for

example, the well known severe conditions on the A22 and A264 in and around East Grinstead which led to a special policy (EG11) in East Grinstead's Neighbourhood Plan).

3. In the penultimate paragraph of Policy Text DELETE the words "and viable" in line 1. There is no viability test in NPPF para 35, from which this policy paragraph derives.

MM15 – Amendments to DP21: Communication Infrastructure

No comment

MM16 and MM17 – Amendments to DP24: Character and Design and deletion of DP24a: Housing Density

1. In bullet 9 of the Policy Text after the word "sustainability" DELETE "considerations" and substitute "and biodiversity opportunities". Good building design provides potential opportunities to encourage wildlife (for example by incorporating nest boxes within the eaves fabric or planting space outside the building). In our view the word "opportunities" is more consistent with the positive planning requirements of the NPPF than "considerations".
2. In the last bullet, please add at the end the additional words "having regard to DP28 (Housing Mix), to Neighbourhood Plans and to the appropriate level of housing density for the location of the site. The level of the District's housing land supply will also be given weight." It is important to clarify the main considerations that will determine optimal density for a given site location. An ambition to maximise housing numbers has to be tempered by the imperative of securing a policy compliant housing mix and by the landscape environment in which the site sits. Additionally, in a District Plan that seeks to assert the important role of Neighbourhood Plans, any policy there on appropriate site density should be a material factor. Lastly, we suggest that it is relevant to consider the state of the district's housing land supply, as over-development should properly be resisted when there is no social need for it. As the proposed policy stands those tempering factors appear to be irrelevant. They should not be.

MM18 – Amendments to DP26: Accessibility

No comment

MM19 – Amendments to DP27: Noise, Air and Light Pollution

No comment

MM20 – Amendments to DP28: Housing Mix

Please add a new second paragraph to the Supporting Text on the lines of "The Council will monitor the mix of housing being constructed (both market and affordable housing) against the types and proportions of housing identified from time to time as most required within the District, and will apply its policy of ensuring an appropriate mix of types and sizes of new housing by requiring new development applications to contribute to achieving that overall mix. The Council will aim to publish a Supplementary Planning Document that sets out its housing mix expectations within 18 months of the adoption of this Plan."

Securing the right balance of housing types to meet priority social needs seems to us to be as important a responsibility of the Council as the housing numbers themselves. In our view the Council needs an unambiguous strong, but flexible, policy stick with which to direct developers towards building housing of the kind most needed, with power to refuse permission for new housing of non-priority types if the overall housing balance is getting out of kilter with social need. Without that stick, developers are bound to seek

to develop (larger) housing that offers them the greatest profit, rather than (smaller) housing that best meets social needs. Our suggested new paragraph seeks to boost the Council's power to achieve that social purpose of the NPPF.

Our proposal is also consistent with the Government's expressed intention to require LPAs to disaggregate the housing target by housing type. Paragraph 90 of the current Right Homes in Right Places consultation document provides: *"We are proposing that plan makers should disaggregate this total need into the overall need of each type of housing as part of the plan-making process, before taking into account any constraints or other issues which may prevent them from meeting their overall housing need."*

We have included a suggestion that the Council prepare and publish an SPD that sets out its housing mix expectations in greater detail, perhaps on the lines set out by the South Downs National Park Authority in its draft Local Plan (see policy SD27 on p.126).

We note with some concern that the Council still relies for its information on housing mix on the 2012 HMA. We hope that the Council will update that assessment in the near future, and will publish its findings whether or not the Council adopts our suggestion of incorporating its results into a Housing Mix SPD.

Having noted the last addition to the Policy Text regarding specialist and care home accommodation, our recent experience indicates that the Council needs to be more rigorous in its categorization of what comprises C2 property.

MM21 – Amendments to DP29: Affordable Housing

No comment

MM22 – Amendments to DP30: Rural Exception Sites

Whilst acknowledging the statement within the Policy Text that rural exception site development will normally be local community led, we consider that this expectation should be supported by (i) adding a new sub-paragraph vi) on the lines of *"it is consistent with DP6 (Settlement Hierarchy) and with the development locational policies in any relevant Neighbourhood Plan"* and (ii) that the second bullet of the second paragraph should be amended by DELETING *"and v)"* and substituting *"," v) and vi)"*. These changes would reinforce the role of neighbourhood plans and local community involvement in the application of DP30.

MM23 – Amendments to DP31: Gypsies, Travellers and Travelling Showpeople

No comment

MM24 – Amendments to DP32: Listed Buildings and Other Heritage Assets

No comment

MM25 – Amendments to DP33: Conservation Areas

No comment

MM26 – Deletion of DP35: Archaeological Sites

No comment

MM27 and MM28 – Amendments to DP37: Biodiversity and deletion of DP38: Green Infrastructure

1. We support the comments and suggestions off the Sussex Wildlife Trust in respect of these proposed changes. In particular we agree with SWT that the deletion of DP38, albeit encouraged by the Inspector, is not necessary to secure the Plan's soundness and, in our view, is incompatible with the encouragement given to LPAs by NPPF para 114 to *"set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure"*.
2. We consider misguided the deletion of the references within former DP38 to the Burgess Hill Green Circle. The role of that important town "lung" and wildlife corridor needs specially recognised protection by specific policy reference either within DP38 if restored as suggested above or, failing that, in DP37. We ask that those references be reinstated in full and that the corridor be shown on the appropriate Plan map. Doing so would give effect to NPPF para 117 (bullet 2) which provides that planning policies should identify and map wildlife corridors.
3. Please insert the following additional words at the end of, but as part of, the (new) fourth bullet: **"with due consideration given to the inevitable adverse impact and ecological damage resulting from the residents of nearby development."**

MM29 – Amendments to DP39: Sustainable Design and Construction

Please consider adding the following sentence at the end of the second bullet of the Policy Text: **"The Council will assume viability and feasibility of both affordable and market homes unless evidence from the developer at the time of application for full planning permission clearly demonstrates otherwise."**. The purpose of this proposed addition is self-evident.

MM30 – Amendments to DP40: Renewable Energy Schemes

No comment

MM31 – Amendments to DP41: Flood Risk and Drainage

No comment

MM32 – Amendments to Chapter 5: Implementation and Monitoring of the District Plan

1. Transparency is crucial to the maintenance of public confidence in the planning process, as well as to the monitoring of effective implementation of the Plan. Unfortunately the District has a history of delayed publication of monitoring reports on its current Local Plan including the annual and 5 year status of development consents and completions. This final round of consultation provides an opportunity for the Council to address the importance of operating transparently by incorporating an undertaking to use its best efforts to publish a full annual Plan monitoring report, including annual and 5 year planning consent/completion data, no later than the date on which it publishes its annual financial and activity report.
2. We are disappointed that proposed new para 5.2 does not include a promise to work with other organisations that can add value to the planning process especially in relation to the sustainability and environmental aspects: bodies than can provide balance and expertise to process of developing strategic plans (including SPDs) and individual planning applications. We ask you to demonstrate the Council's professed inclusiveness by supplementing para 5.2 as suggested here.

If you have any questions about any of this input from CPRESx, or would like to discuss it, please feel free to e-mail or telephone me.

Yours sincerely,

Michael A. Brown

On behalf of The Campaign to Protect Rural England, Sussex Branch CIO

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APPENDIX – Supplementary representations by CPRE Sussex regarding MM04 etc

1. Reluctantly CPRESx concludes that the evidence still does not justify a conclusion that an initial housing target of 876 dpa is sound and deliverable in a manner compatible with the Council's legal obligation to protect the EU sites on Ashdown Forest in compliance with the mandatory requirements of articles 102 etc. of the Conservation of Habitats & Species Regulations 2010. This requires that development that could significantly impact those sites must be prohibited unless that harm can demonstrably be avoided. It has been known from a decade-old scoping report that the potential exists for the Plan and other development proposals around the two sites to affect them adversely and significantly by reason of traffic-induced nitrogen deposition and eutrophication (that has exceeded critical levels for a number of years), and by reason of increased visitor disturbance.
2. The latest evidence contradicts the Council's conclusion that the nitrogen deposition and eutrophication problems for the SAC is insignificant enough (based on a housing target of 876 dpa) to permit that level of development to occur, or that visitor disturbance of the SPA will be avoided by the mitigation measures proposed in the Plan. The earlier evidence, such as it was, submitted by the Council to the Planning Inspectorate, and challenged by CPRE Sussex, was not tested in the course of the Plan's examination. CPRE Sussex has been warning the Council for at least five years that its proposed Plan, in its various iterations, would (if adopted) breach the Habitats Regulations, and that the purported evidence relied on by the Council to support its Plan policies is not robust.
3. The Council is legally bound under the Habitats Regulations to "*exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.*" (Regulation 9(i) as amended) Adopting a Plan that is legally non-compliant would expose the Council to the real risk of judicial review proceedings based on the Aarhus Convention that could significantly delay the implementation of the new Plan, as it could impinge on the housing target proposed in the Plan and the distribution of new housing around the District as well as DP15 (Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)).
4. We recognise that NPPF para 158 calls for planning evidence to be proportionate (albeit without explaining what that term is meant to mean). We express concerns below as to the quality of evidence that has been put forward on the Council's behalf, the correct interpretation of that evidence, and the absence of other evidence that is, in our view, needed for a robust conclusion as to whether a policy complies with the law. Such evidence must necessarily be proportionate.

Nitrogen Pollution

5. As regards the new October 2017 Air Quality Assessment by Ove Arup, when one cuts through all its jargon and acronyms, what can be deduced from that report is that
 - NO_x levels above 20 kg of nitrogen oxides per hectare per annum are likely to have significant adverse impacts on the protected SAC habitats; NO_x levels of between 10 kg and 20 kg N/ha/yr may potentially do so but the science is uncertain; and that regulatory controls are accordingly set by reference to those maximum and minimum critical level standards (para 2.1.2);

- current background levels of NO_x eutrophication affecting SAC woodland environments exceed the higher 20 kg N/ha/yr critical level at which harm is likely by between 113% and 121% (para 5.2.1 bullet 1, and Table 8);
 - current background levels of NO_x eutrophication affecting SAC heathland environments (for whose protection the SAC is primarily designated) exceed the lower 10 kg N/ha/yr critical level at which harm may be occurring by between 143% and 160%, thereby triggering the application of the precautionary principle by reason of the scientific uncertainty (para 5.2.1 bullet 2, and Table 8);
 - at the end of the Plan period (without even taking account of the proposed 214 dpa future step-up in the housing target) minimal change is predicted to the background maximum and minimum critical threshold levels (para 5.2.2), which will therefore continue to be exceeded by a wide margin. This conclusion involves assuming that the traffic modelling relied on by Arup is itself sound and will be compatible with updated guidance on this issue awaited from Natural England;
 - inadequate analysis has been undertaken of the impact of NO₂ emissions along roadsides where nitrogen depositions will be highest and their impact on protected habitats alongside the roads crossing the SAC will be most significant, and none of the diffusion tube monitoring sites is actually within the SAC (Figure 3).
6. The September 2017 Habitats Appropriate Assessment Report by Urban Edge Consulting (UEC) predates the Arup report, so it is unclear whether its conclusions even take Arup's report into account. UEC's Assessment:
- uses the same data as Arup in relation to excess NO_x deposition levels, but also reports (which Arup does not) that the maximum acceptable critical loads for acid deposition from nitrogen oxides on the SAC's heathlands (a separate issue from eutrophication that results in acidification of soil and water courses and spreading of more widespread heathland degradation) are exceeded by between 137% and 150% (table 5.2);
 - reaches the same conclusion as Arup that *"The critical load for nitrogen deposition and acid (nitrogen (N) or sulphur (S)) deposition is already exceeded in parts of Ashdown Forest; Table 5.2 presents information on background critical load exceedances for these key pollutants on qualifying habitat types at a selection of grid references across the Forest close to the road network"* (para 5.3.2)
 - points out that heathland habitat degradation is a contributing factor in the decline in populations of SPA-protected Dartford warblers (para 4.3.3); and
 - notes that *"The parameters for any assessment of traffic impact are now unclear"* (para 5.4.9) following the High Court decision in *Wealden District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 351 (Admin)*.
7. These reports have been produced without waiting for, and hence without regard to, new advice on cumulative traffic pollution measurement methodology promised from Natural England following the Wealden judgement.
8. The reports rely for their conclusion that the Habitats Regulations will be complied with on the ground that new Plan policy MM04 will not (on their own limited calculations) significantly exacerbate the current NO_x deposition levels (and may slightly reduce them in some spots by the end of the Plan period). But that is a specious conclusion. It is specious because:
- the whole purpose of the Natura 2000 regime is to ensure a harm-free environment for designated rare habitats and birds, and so to prioritize their conservation over new development that could harm

them significantly. When harm to a Natura 2000 site is demonstrated to be occurring (as the two reports demonstrate is the case on the Ashdown Forest SAC) steps have to be taken to avoid that harm. Maintenance of the harmful status quo, which is essentially what Arup is predicting for the new Plan, is not legitimate. So applying a test based on the fact that the situation will not significantly deteriorate further is a false test;

- by measuring significance by reference to the degree of change in the predicted future levels of NO_x pollution against current levels (their 1% test) they are misapplying the requirement of regulation 102 of the Habitats Regulations. This requires measurement of the degree of harm, not the degree of change. And significant harm is self-evident from the fact that critical background measurement levels of NO_x pollution are exceeded, as the Arup and UEC reports both concede. Any new development that maintains that excess involves a breach of the Regulations;
 - the reports ignore NPPF paras 120 and 124. The latter requires that *“Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants ...”*. The draft Plan, as it is proposed to be modified, would breach these NPPF planning requirements as well as the Habitats Regulations;
 - in summary, the reports amount to no more than an assertion that it is okay to continue the known significant harm to the SAC because it won’t get worse (or much better). Inconveniently, that is irreconcilable with the Council’s clear regulatory duty to avoid adverse impacts on the SAC.
9. It is also a material failing of the two reports that neither even considers the potential impact of the SAC’s air quality problems on the SPA. There is an intimate inter-connection between habitat degradation and the health of bird populations. UEC explains the pollution impacts at section 5.3 of its report, but only in the context of the protected habitats not the protected birds, despite the inter-dependence of the two. UEC’s answers in paras 7.2 and 7.3 fly in the face of both UEC’s own conclusions, and Arup’s, that levels of acid deposition from nitrogen oxides and NO_x eutrophication exceed critical levels at which degradation of habitats, and acidification of soil and watercourses, on which the protected bird species depend is occurring. Nor has the possibility been addressed of NO₂ pollution – a killer of humans – having a direct effect on birds. These are material gaps in the evidence base.
 10. It is significant that Wealden DC, grappling with the same air quality issue, is taking a different and more measured approach to assessing its impacts using its own data. It has not concluded that there will be no adverse effects on the ecological integrity of the SAC or SPA. We note that Wealden DC is still maintaining its interim policy, based on the need to protect the SAC, of not accepting larger scale development in its vicinity, and is continuing to work on finding a positive planning solution that addresses the need to remediate the existing serious harm to the protected SAC habitats. The level of intra-District co-ordination that this situation, and the NPPF’s duty to co-operate provisions (inc. NPPF para 182 bullet 3), both demand does not seem to be occurring.
 11. Irrespective of the regulatory position, it is depressing that the LPAs surrounding Ashdown Forest are not making common cause in a collaborative effort to find a single common policy solution to the challenge of remediating, conserving and enhancing Ashdown Forest. Only a single unified cross-boundary approach can resolve its air quality problem.

Visitor disturbance

12. CPRESx has repeatedly asserted in its representations to the Council over the last 5 years and at the Plan

examination that the method by which the Council has assessed the measure of harm to the Ashdown Forest SPA from increasing visitor numbers identified by the 2007/8 scoping report

- is based on out of date and insufficient data in the scoping report (2007/8) itself and vis a vis housing numbers (2008/9), visitor behaviour (2008 to 2010) and impact on protected bird species (2007); data collected in an era when expectations as to the level of housing growth and increasing visitor numbers was far, far lower,
- fails properly to implement the regulatory requirement for an assessment of potentially significant adverse impacts to the SPA based on a cumulative assessment of all relevant development plans and proposals affecting the SPA as a whole, as opposed just to the Mid Sussex slice of it, since the 2007/8 scoping report,
- fails appropriately to consider whether the identified potential for harm to the SPA can be avoided as the regulations require and, if so, the most appropriate way to do so,
- fails to assess whether the use in this case of a generic SANG or other mitigation measures will in practice achieve the unlikely but essential reduction in visitor numbers to the SPA required to achieve their sole purpose of avoiding significant harm to it,
- mis-calculates, and thereby exaggerates by a factor of three, the compensatory effect of a SANG in terms of any reduction in visitor numbers.

13. CPRESx's submission to the Plan examination (Examination Library Ref: 14982/FH (CPRE Statement 2: http://www.midsussex.gov.uk/media/79656/14982_cpre-sussex-msdc18ii.pdf) and our earlier representations to the Council referred to in it fully explain our concerns.
14. The Council has never refuted CPRESx's concerns. Nor has it ever explained why it disagrees with them. It has simply ignored them. The respective merits of the opposing positions on this core issue were not tested by the Inspector in the course of the draft Plan's examination, as is its purpose. So the soundness of the HR Assessment as a basis for those Plan's policies that are dependent on compliance with the Habitats Regulations has not been examined in public; and any future finding by the Planning Inspector that this aspect of the Plan is sound must be seen in the context of that procedural vulnerability.
15. The latest UEC Assessment Report on the main modifications is little more than a rehash of prior iterations in its earlier drafts going back to 2013. There is no new quantitative analysis in sections 6 and 7 of the cumulative impacts of additional visitor disturbance on Ashdown Forest if the Plan's main modifications are adopted. We are not even told what assumptions are made as to the cumulative level of development and projected visitor increase being modeled.
16. Its conclusions in paras 7.2 and 7.3 that "*there will be no adverse effects on the ecological integrity*" of the Ashdown Forest SAC and SPA are based on subjective answers to a short set of simplistic questions that do not address core issues (see para 12 above), and are not evidence based or justified within the Report text in any way. Were the answers true, there would be no need for SANGS or other avoidance measures. Given that mitigation is viewed by the Council as necessary, the Appropriate Assessment should have addressed its appropriateness and effectiveness in the specific context of the Ashdown Forest SPA to stop harmful human and canine disturbance of the protected birds there; but it does not. It must, for example, be relevant to examine whether a given SANG proposal is likely to work in practice to achieve the level of visitor redirection away from the Forest that is necessary to achieve its purpose, but no such evidence has been gathered by survey or other means. It is not enough simply to assume without testing that a SANG solution used in different circumstances and in a different location will operate in the same way around Ashdown Forest that visitors go out of their way to visit for its own special qualities. The effectiveness of

the Council's avoidance proposals is unsupported by any evidence at all.

17. Nor does the Council appear to have grasped the nettle of correctly measuring the compensatory effect of a SANG. If CPRESx's previous representations are right that the basis of computation used grossly exaggerates it, then it throws doubt on the Council's whole SANGs strategy in DP15. Has CPRESx's point even been looked into?

Conclusions

18. **The only proper conclusion from the two reports is that the current Local Plan has demonstrably failed to prevent significant NOx harm to the SAC, and that the new Plan will do nothing to rectify that harm based on a housing target of 876dpa as proposed in MM04, the housing distribution hierarchy proposals in MM06 and DP15¹. It is wholly insufficient that, in the words of UEC (para 5.8.1) "*It can be concluded that the District Plan will not result in adverse effects on the conservation objectives of the Ashdown Forest SAC.*" Not making the existing significant harm worse is NOT the point, nor is it the purpose of the Habitats Regulations. The point of the Habitats Regulations is that it requires the Council to plan for restoration of the sites to a level where their conservation objectives are met and the harm avoided; but there is no Plan policy designed to achieve it.**
19. **Nor does UEC's Appropriate Assessment contain the evidential underpinning needed to justify its conclusion that "*there will be no adverse effects on the ecological integrity*" of the SAC and SPA as regards either pollution or visitor disturbance, to support the housing target. Such evidence as it does provide implies the opposite conclusion.**
20. **All in all the Arup and UEC Reports woefully fail to provide the robust evidence required to demonstrate that the Plan policies will enable the Council to avoid continuation of significant adverse impacts to the Ashdown Forest SAC and SPA, as the Council is legally obliged to do. This makes the Plan unsound.**

¹ The UEC Report, paras 5.1.1 and 6.1.1, identify 11 policies (DPs 2, 3, 5, 5A, 8, 9, 9A, 9B, 13, 30 and 31) that are liable to be affected by one or both of the atmospheric pollution and visitor disturbance impacts identified in the scoping report. To that list must be added DP15 (Ashdown Forest SAC/SPA).