

Horsham District Local Plan 2023-2040

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Examination Webpage:

<https://www.horsham.gov.uk/planning/local-plan/local-plan-examination>

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Examination of the Horsham Local Plan 2023-2040

Dear Ms Howe,

Background and Introduction

1. The Horsham Local Plan 2023-2040 (the Plan) (SD01) was submitted on 26 July 2024. I wrote to Horsham District Council (the Council) on 23 August 2024 seeking clarification when outstanding evidence would be submitted, explaining that the Plan would be examined under the National Planning Policy Framework September 2023 version (referred to hereafter as the NPPF) and drew attention to Matthew Pennycook MP's letter to the Planning Inspectorate dated 30 July 2024¹ (ID2).
2. In September 2024, I issued my Matters, Issues and Questions (MIQs) (ID04) for the Examination and set out a provisional four-week programme of hearing sessions (ID05) to take place between December 2024 and January 2025.
3. When opening the hearing and at the end of the first week of sessions, I explained that I had a number of soundness and legal compliance concerns. I stated that even if I was able to find the Council had met the Duty to Co-operate (DtC), addressing soundness issues could require significant further work which could take much longer than 6 months to complete.

¹ Local Plan examinations: letter to the Chief Executive of the Planning Inspectorate (July 2024)

4. On 16 December 2024, I wrote to the Council (ID06) cancelling the remaining hearing sessions and advising that I would, as soon as possible, put in writing my detailed concerns based on my examination of the Plan so far and in response to the completion of the hearing action points.
5. The relevant action points have all now been completed with the new evidence available on the examination website. This letter therefore sets out my legal compliance concerns in relation to the matters discussed at the hearing sessions and in response to the hearing action points. It does not deal with all matters and issues in the same level of detail as an Inspector's Report.
6. My letter focuses on legal compliance with the DtC because it applies to the plan preparation period and therefore cannot be rectified during the Examination. In it, I explain why I conclude that the Plan has failed the DtC and explain why the Council should withdraw the Plan from Examination.

The Duty to Co-operate

7. Section 33A of the Planning and Compulsory Purchase Act 2004 (PCPA) imposes a duty on the Council to co-operate with other planning authorities and prescribed bodies by engaging constructively, actively and on an ongoing basis in relation to the preparation of a development plan document so far as relating to a strategic matter to maximise the effectiveness of the activity of plan preparation.
8. The PCPA makes clear that sustainable development or use of land that would have a significant impact on at least two planning areas is such a strategic matter.
9. My assessment of DtC compliance is focussed on housing and water supply which are both recognised in the Council's evidence (DC01) as strategic matters.

Housing and Water Supply Contextual Background

10. Horsham District is entirely within the Northern West Sussex Housing Market Area (NWSHMA) which covers the rural districts of Horsham and Mid Sussex and Crawley Borough Council. The rural districts wrap around Crawley's predominantly built-up urban area leaving little space for Crawley to grow within its own administrative boundaries.
11. The Coastal West Sussex Housing Market Area (CWSHMA) overlaps the NWSHMA in the south. Horsham District also forms part of the extensive Gatwick Diamond Economic Area which extends from Croydon, near Gatwick in the north and down the A23 corridor to the south coast.
12. The NWSHMA Assessment 2019 (HO1) endorses the NWSHMA boundary, recognises the overlap with the CWSHMA and notes the growing economic influence of Crawley and Gatwick. It also notes the affordability challenges faced by people wanting to live in the District, noting median house prices in

Horsham at 13.9 times earnings based on 2018 data.

13. The adopted Horsham District Planning Framework 2015-2031 (HDC05) requires 800 dwellings per annum (dpa) with the examining Inspector's report (HDC06) explaining 150 dpa would meet about half of the unmet needs arising from Crawley at that time, with the remainder being met in Mid Sussex. Although, 1,201 homes were built in the district in 2015/16, 1,125 in 2017/18 and 1,369 in 2018/19, showing higher annual housing completion rates have historically been achievable.
14. However, in 2020/21 the supply of water to new homes and the effect this may be having on internationally designated habitats began to emerge as an issue.
15. In September 2021 Natural England (NE) published a document titled Natural England's Position Statement for Applications Within the Sussex North Water Supply Zone (SNWSZ) – September 2021 – Interim Approach (CC08). It states all development within the SNWSZ will need to be water neutral defining water neutral or water neutrality as "the use of water in the SNWSZ before the development is the same or lower after the development is in place". This is because at that time it could not be ruled out with any certainty that new development in the SNWSZ would not affect the integrity of internationally designated habitat sites in the Arun Valley due to the need for associated water abstraction at the Hardham/Pulborough borehole.
16. The Council's Habitats Regulations Assessment, November 2023 (SD07) reflects CC08. It notes at paragraph 6.1 that it is ultimately for Southern Water (SW) working with the Environment Agency (EA) to ensure that water abstraction to supply new dwellings from the Hardham/Pulborough borehole does not result in an adverse effect on the integrity of the Arun Valley sites. It also says that until such time that this issue has been resolved strategically, NE has requested that Horsham, and the other local planning authorities within the SNWSZ, provide for water neutrality within their local plans in order to minimise the burden new development places on local water resources and thus minimise the need for SW to abstract water from the Hardham/Pulborough borehole to its full permitted extent as detailed in the relevant abstraction licence and allowed for in the SW Water Resource Management Plan (WRMP).
17. SW are required by section 37A-37D of the Water Industry Act 1991 to prepare a WRMP every five years and review it annually. SW's WRMP 2024 is in preparation and although delayed, is expected to replace the current WRMP, (WRMP 2019) in 2025. WRMP 2024 will be an extensive, detailed plan covering a period of some 50 years looking at how water is supplied and managed in the region. Its finalisation will inevitably inform, if not provide any possible strategic resolution to water neutrality as referred to in SD07. It will inform whether NE can review its position as set out in CC08, in other words NE will need to decide whether water neutrality will continue to be a requirement for new development going forwards.
18. The Councils affected by CC08 have all worked together with NE, the EA and SW to try and develop consistent water neutrality policies for inclusion in local plans. Strategic Policy 9: Water neutrality (Policy SP9) of the submitted Plan

seeks to ensure water neutrality in line with the conclusions of the Council's Habitats Regulations Assessment and in response to CC08.

19. Policy SP9 says water neutrality will be achieved, firstly by water efficient design and then offsetting water use. It explains a local authority led water offsetting scheme will be introduced to bring forward development and infrastructure supported by Local and Neighbourhood Plans.
20. The local authority led offsetting scheme is the Sussex North Offsetting Water Scheme (SNOWS). This has been developed jointly by the affected Council's following recommendations from an extensive jointly commissioned Water Neutrality Study (CC09-CC11). Section 6 of CC11 under "Offsetting Schemes" says that alternative offsetting schemes are "for the commercial market to develop, using market forces to set the cost of offsetting, and drive technology improvements to improve efficiency. This approach would take some time to develop, and the burden on individual developers early in the scheme could be considerable. There is also no certainty that a market led scheme would deliver sufficient and timely offsetting in order to ensure offsetting is in place prior to development in all cases. Significant monitoring by Local Planning Authorities would still be required". It goes on to explain that there is room for developers to find their own offsetting options and any such offsetting would impact on the amount of remaining offsetting required.
21. Thus, whilst CC11 casts doubt over the ability of the private sector to bring forward offsetting schemes it does not preclude them or suggest they would be harmful in any way. There is also nothing substantive in CC09-CC11 which suggests private water supply boreholes as a way in which a developer could demonstrate water neutrality would not be practicable or would lead to significant adverse impacts.
22. HDC31 provided in response to a hearing action point explains that the EA is undertaking work which will among other things look at the effect of private water supply boreholes (individual and cumulatively) in recognition of increasing developer interest. Furthermore, the use of alternative boreholes to supply water are being considered by SW in developing WRMP 2024. However, that work was commissioned by the EA in October 2024 and has not yet been completed. It is not clear to me how the NWSHMA local authorities have been engaged in it or how it is intended to inform the Examination or any possible strategic resolution to the issue of water neutrality.
23. Criterion 4 of Policy SP9 makes it explicitly clear that development proposals are not required to utilise the local authority led offsetting scheme and may bring forward their own schemes to achieve water neutrality without relying on SNOWS in advance of any strategic resolution to the issue of water neutrality.
24. It is therefore clear that in order to meet the water neutrality requirement of CC08 and Policy SP9 a developer can develop their own entirely private water neutrality scheme which could include any combination of private offsetting and/or private supply sources (private water neutrality schemes).

25. This does not mean that any such private water neutrality schemes will be considered to be acceptable or deliverable as they will need to be considered on their merits. However, it does mean that a development proposal which benefits from a private water neutrality scheme would not be prevented from being constructed for any reasons related to water supply or water neutrality.
26. However, SNOWS has not been delivered as originally anticipated. The Council confirms SNOWS may be able to be formally tested and launched between February and March 2025. However, whilst work is ongoing, at the current time it is still not clear as to the amount of offsetting (in the form of credits) it would provide for developers to access without fully understanding the offsetting measures to be detailed in SW's WRMP 2024. The Councils have clearly found establishing their own offsetting arrangements challenging based on the resources available to them. This is understandable, given water supply offsetting has not historically been something they have ever had to consider in any detail.
27. I accept SNOWS, as a co-ordinated local authority led offsetting scheme would have advantages in managing the issue of water neutrality going forwards over un-coordinated developer led private water neutrality schemes designed to supply water to individual developments. I also acknowledge SNOWS was not operational when the Crawley Local Plan was examined and that Plan was found sound and legally compliant. In addition, I note the Council and others are working on more water and habitats related evidence and there are a number of studies in preparation which may inform how water neutrality should be addressed in examining the Plan and when considered alongside SW's emerging WRMP 2024 could be used to inform a strategic resolution to the issue of water neutrality (HDC31, HDC32 and HDC33).
28. I also acknowledge the commentary in the evidence regarding SW and how it engages with developers wishing to develop their own private water neutrality solutions. I note the Frequently Asked Questions document, how this was developed and the information it provides (HDC29a). I also note the challenges identified in bringing forward independent private water supply sources, particularly in securing the necessary consents. However, there is no substantive evidence in any of the documents before the Examination which lead me to believe it is not possible through detailed technical design to secure a private water supply source. This is irrespective of the size of the development that private water supply source is expected to supply.
29. It is also noted, the Council's draft housing trajectory (HDC20 and HDC03) includes sites which identify "On Site Borehole Supply" as the "Water Neutrality Solution", albeit I acknowledge these are relatively small sites.
30. Even so, the fact remains that currently all housing development in Horsham must be demonstrated to be water neutral in line with CC08 before it can be built, and in principle private water neutrality schemes can be used to demonstrate water neutrality. Clearly the deliverability of such private schemes is relevant because of the necessary degree of certainty required. However, the same degree of required certainty applies to SNOWS as an alternative way in which water neutrality may be achieved at some point in the future when the

scheme becomes fully operational. This is all subject to the matter of water neutrality being strategically resolved at some point over the Plan period, possibly as early as 2025.

31. Against all this contextual background, the submitted Plan sets a capacity-based housing requirement of 777 dpa or 13,212 between 2023 and 2040. This would not meet the District's housing need calculated using the standard method, falling short by some 2,377 homes (DCO2).
32. As submitted, the Plan would therefore add to the substantial unmet housing needs in the NWSHMA, which equates to around 7,500 dwellings (DC02) even before accounting for the extent of any shortfall in Horsham or Mid Sussex. The unmet need in the NWSHMA, which mainly arises from Crawley is clearly of a strategic scale which requires a strategic response.
33. The scale of the unmet need arising from Crawley, the limited availability of undeveloped land within Crawley Borough Council's administrative area, the existing housing requirements detailed in the adopted Horsham District Planning Framework 2015-2031 (HDC05) all indicate to me, that the needs of Crawley should continue to be prioritised over meeting any of the substantial unmet housing need arising from the CWSHMA.
34. For the purposes of this letter, I therefore focus on the co-operation which took place between Horsham District Council, Crawley Borough Council and Mid Sussex District Council (referred to collectively as the NWSHMA local authorities) in preparing the Plan. However, I do not need to reach a definitive view on prioritisation for the purposes of this letter, nor do I need to fully assess co-operation between the Council and local authorities within the CWSHMA in any detail. Nevertheless, it is clear that unmet housing need in the CWSHMA is significantly more than that of the NWSHMA.

The Plan Preparation Period

35. The Council published and consulted on a document titled Local Plan Review Issues and Options Employment, Tourism and Sustainable Rural Development between 6 April and 26 May 2018 (CD03), but this did not seek views on any housing or environment related matters which would reasonably be expected to be considered in a Local Plan and instead focussed only on matters related to the District's economy. Between 17 February 2020 and 30 March 2020, the Council undertook a further consultation under regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2017 (Local Planning Regulations) on a partial draft Plan (CD01 supported by CD02) where all relevant matters were considered.
36. The Council then prepared a draft Plan, which was completed in July 2021 (the July 2021 Draft Plan) (SS02) covering the period of 2021 to 2038. This was considered by the Council's cabinet on 15 July 2021 but was not published for consultation under either regulation 18 or regulation 19 of the Local Planning Regulations. Instead, the Council decided more evidence was needed and concluded, without any public consultation that the July 2021 Draft Plan could not be taken forward at that time.

37. Thus, between July 2021 and January 2024, the July 2021 Draft Plan was amended into the Plan which has been submitted for Examination. It was published under regulation 19 of the Local Planning Regulations in January 2024 and submitted for Examination without change, some six months later, along with the representations, on 26 July 2024.
38. The Plan was therefore prepared over a period of some six years between 6 April 2018 and 26 July 2024.

Co-operation between April 2018 and July 2021

39. At the regulation 18 stage of Plan making, the Council did not appear to be aware of any significant issues associated with water neutrality and housing delivery because in February 2020 it consulted on a district housing requirement of between 1,000 and 1,400 dpa, a significant increase in the 800 dpa requirement detailed in the adopted plan (CD01). This was clearly intended to allow the District's housing need to be met and contributions to continue to be made towards unmet housing needs outside of the District boundary, particularly those arising from Crawley.
40. Crawley Borough Council responded to the Council's consultation saying that there would be an unmet need for housing in Crawley of 5,925 homes between 2020-2035 based on their own draft Local Plan and associated evidence. They said they "anticipated this outstanding amount will be considered through the review of the Mid Sussex District Plan, such that Mid Sussex and Horsham would both contribute equally to meeting unmet needs arising from Crawley, as agreed in the current Local Plans" (HDC29).
41. Between Spring 2020 and July 2021, the July 2021 Draft Plan was prepared based on a housing requirement of 1,100 dpa. The Council say at that time, it was felt 193 dpa would contribute towards known unmet needs arising from Crawley. Based on the evidence before me, I find it reasonable to conclude, that the NWSHMA local authorities all felt this approach would ensure the housing needs of the NWSHMA would be met in full at that time (HDC29). The annual requirement 1,100 dpa would have also included a small contribution of 20 dpa towards the unmet needs of the CWSHMA.
42. The July 2021 Draft Plan was based on a draft spatial strategy which involved extensions to existing settlements and the construction of a new village through strategic allocation, Buck Barn HA5 (Strategic Allocation HA5). It was expected this would deliver at least 2,100 homes by 2038 although it was recognised in the draft plan that "in total, the new community has been promoted for some 3,000 to 3,500 homes". Paragraph 6.26 also notes Strategic Allocation HA5 was located on the A272 and A24 corridors with good road connections providing links to both the northern settlements within the Gatwick Diamond, and connections to the south coast.
43. Although, the July 2021 Draft Plan, and its spatial strategy was not publicly consulted on, it was highly relevant to any DtC co-operation which occurred up to July 2021. However, I cannot see any substantive evidence which records the co-operation which took place under the DtC up to July 2021 where any

relevant local authority or prescribed body raised any significant specific concerns with regard to the Council's draft spatial strategy or Strategic Allocation HA5. It seems to me, on the basis of the evidence, that neither were discussed in any great detail between the NWSHMA local authorities between April 2018 and July 2021.

44. The Council say the completion of the Gatwick Sub-Regional Water Cycle Study 2020 (CC05) was when they first began to understand the issue of water neutrality. However, the NWSHMA local authorities were also clearly developing their knowledge and understanding of the issue when its water neutrality evidence (CC09) was first commissioned in early 2021. The Council also commissioned a Horsham Local Plan Water Neutrality Technical Note which was completed in March 2021 (CC12).
45. The July 2021 Draft Plan also stated "that much of the South East has now been designated as an 'area of serious water stress' by the EA, with demand for water exceeding supply. Water in Horsham District is supplied from abstraction at Hardham (located in the South Downs National Park), and over abstraction will lead to the loss of integrity of the Arun Valley sites". It also stated that "in order to ensure that water supplies can be maintained, and the environment be protected, the Council propose that all new housing should meet a tighter level of water efficiency and provide measures that contribute to the aim of water neutrality, and as a minimum, does not increase demand for water over existing levels."
46. I accept the Council's understanding of water neutrality as a strategic matter has clearly grown over time. I also accept NE's position was confirmed when CC08 was published in September 2021 effectively placing an embargo on development in the District, unless it can demonstrate water neutrality. However, in my view, the Council clearly had a reasonable level of knowledge of the issues associated with water supply and habitats back in July 2021 when it prepared a draft plan based on a spatial strategy which would meet the housing needs of the District and make a significant contribution towards meeting unmet needs in the NWSHMA, particularly those arising from Crawley.

Co-operation between July 2021 and January 2024

47. The Council amended the July 2021 Draft Plan between July 2021 and January 2024 into the submitted Plan which includes a much lower annual housing requirement of 777 dpa equating to 13,212 homes over the plan period which would not meet the District's housing need or make any contribution towards any known unmet needs arising from elsewhere. The Council's Local Development Scheme September 2023 (SP03) shows the Council expected at that time, that the Plan would be submitted for Examination in June 2024.
48. The housing requirement in the submitted Plan would be delivered through a spatial strategy which relies only on extensions to existing settlements. The submitted Plan does not make any reference to a new settlement anywhere in the District. The reasons the Council gives for the changes to its housing requirement and spatial strategy can be summarised as the capacity of the Horsham District housing market to absorb new development and water neutrality.

49. The Council confirmed at the hearing that the figure of 777 dpa is derived from the Horsham Housing Delivery Study September 2020 (HO2) and the Horsham Housing Delivery Study Update November 2023 (HO3), taking into account the capacity of the housing industry to build new homes in the District against the background of delayed delivery associated with water neutrality. Whilst the DtC evidence shows this study was shared with the NWSHMA local authorities, it was commissioned by Horsham District Council independently and the DtC evidence does not indicate that any substantive discussions took place on its findings.
50. The Sustainability Appraisal evidence completed in December 2023 (SD03a) states “the potential for both water efficiency and offsetting are finite, which may constrain the amount of development possible in an area”. Paragraph 6.31 of SD03a draws on CC11 completed in November 2022 and considers based on the WRMP how much housing growth can be theoretically delivered across the SNWRZ. It notes that if growth identified in relevant Local Plans (at different stages of preparation) is to be delivered, further offsetting beyond measures identified by SW are necessary.
51. Paragraph 6.52 of SD03a, says in summary, that the conclusions of the sustainability appraisal work undertaken up to July 2021 needed to be revisited because housing delivery during the early years of the plan period had been delayed and due to the limited availability of off-setting credits only a lower amount of development could come forward than that identified in the July 2021 Draft Plan. It considers on page 119 in summary, the provision of a new settlement to be less sustainable than growth options which extended settlements. However, in making this comment there is no reference to strategic scale development proposals and the opportunities to support a range of land uses and new infrastructure in the context of the significant scale of unmet needs in the NWSHMA.
52. Paragraph 7.7 of SD03a clearly explains that water neutrality was not considered in the appraisal of large and small sites in SD03b-d, but has been considered in SD03a. However, it goes on to confirm, that the Council retained a neutral impact against the relevant objective (referred to as SA11: Water Resources) because it affects all sites equally. However, as I have explained above, subject to an appropriate level of assessment, in principle a housing development that is supported by a private water neutrality scheme could, subject to detailed assessment, be developed now and would not be constrained by water neutrality whereas SNOWS as an alternative is not fully operational.
53. There is no substantive evidence before the examination, that indicates the principle of developments which rely on private water neutrality schemes and their ability to support development in advance of SNOWS or WRMP 2024 had been considered by the Council or the NWSHMA local authorities between July 2021 and January 2024 in any substantive detail. Such consideration would have needed to be in the context of their ability to address or at least contribute towards addressing known unmet needs during this period. Given the substantial unmet housing needs in the NWSHMA at this time, it was incumbent on the Councils in the HMA to consider the potential of private water

neutrality schemes, as part of the strategy for meeting some, if not all, of the unmet need. Consideration under the DtC does not mean such sites should be included in the Plan.

54. HDC29a provided in response to a hearing action point explains at paragraph 21 that the Council had an open mind to alternatives to SNOWS but had no compelling evidence which indicated resources should be diverted towards considering them in detail. It shows between July 2022 and March 2023 meetings and correspondence occurred between the Council, the Water Neutrality Project Manager, NE, the EA and SW. Whilst concerns related to the technical delivery of alternatives to SNOWS are clearly identified this does not show that subject to further evidence and achieving the necessary consents any of the alternatives could not be definitively delivered.
55. Furthermore, there are no records of any substantive detailed discussions between the NWSHMA local authorities relating to the Council's reasons for amending its spatial strategy between July 2021 and January 2024. Such discussions would have required some detailed consideration of the Council's evidence on market capacity and would have required some detailed consideration on the role of strategic scale developments in principle in addressing the acute need for housing in the area.
56. Because SNOWS had not progressed and there was no strategic resolution as envisaged by the Council's Habitats Regulations Assessment and CC08 between July 2021 and January 2024, any sites, especially a strategic scale site which relied only on a private water neutrality scheme was clearly a possible way in which some housing need could be met. It was therefore relevant to any co-operation on strategic matters of housing and water supply that occurred between July 2021 and January 2024 and required detailed consideration by all NWSHMA local authorities in the context of unmet housing needs.
57. I also heard at the hearing, that in July 2023 Horsham District Council held a developer day which was attended by the site proponents of Strategic Allocation HA5. They indicated at that event that they had evidence to demonstrate the development of their site would benefit from a private water neutrality scheme. It is not clear to me, how the Council used or shared any evidence gathered through this event in preparing the Plan or in its discussions with neighbouring authorities around meeting its unmet housing needs and those of the NWSHMA more widely.
58. All the NWSHMA local authorities knew between July 2021 and January 2024 that water neutrality could not be strategically resolved until at least 2025 because they fully engaged in the consultation on WRMP 2024. It was also widely known that the Council intended to submit its Plan before 2025 as indicated in its Local Development Scheme, at a time when all NWSHMA Authorities would have known SNOWS would not be operational.
59. Thus, before amending its housing requirement and spatial strategy for reasons relating to market capacity and water neutrality between July 2021 and January

2024, the Council should have fully explored all other options with its neighbours in the context of their knowledge of the unmet housing needs at that time.

60. This required detailed consideration of whether any sites were available or could be made available which may not be constrained for water neutrality reasons. DtC engagement between the NWSHMA local authorities during this period, should have also involved some detailed consideration as to whether it was appropriate or not to delay the submission of the Plan in light of what all NWSHMA local authorities knew at that time with regard to the likelihood of a strategic resolution to the issue of water neutrality.

Co-operation between January 2024 and July 2024

61. The Plan was published under regulation 19 of the Local Planning Regulations in January 2024 and submitted for examination in July 2024.
62. Crawley Borough Council responded to the regulation 19 consultation clearly setting out their unmet need of around 7,500 dwellings². Mid Sussex District Council³ responded noting the unmet need in Horsham District and said in summary that they were content that Horsham District Council was maximising housing supply at this time given the constraints imposed by water neutrality. However, they also commented that water neutrality is a temporary position and urged Horsham District Council to “take every opportunity to increase housing supply should opportunities (which are consistent with achieving water neutrality) present themselves within the plan period”.
63. Between January and February 2024, the Council received numerous regulation 19 representations from developers promoting omission sites objecting to the Plan. These are all detailed in the Council’s Consultation Statement (SD12). Some of those sites claimed to benefit from private water neutrality schemes. It is not necessary or appropriate for me to deal with all these representations in detail. However, I use the representations made by the proponents of a site which was, until July 2021, being proposed by the Council as a strategic allocation as an example (Strategic Allocation HA5).
64. Those representations⁴ object to the Plan for soundness and legal compliance reasons and were supported by a number of technical reports covering a range of issues including a “Water resources Report” and a “Water Neutrality Technical Note” dated February 2024. With reference to meetings with the EA, NE and SW the representations conclude, in the developers view, that their site benefits from a private water neutrality scheme. The evidence shows utilisation of NE’s Discretionary Advice Service in the summer/autumn of 2022 and in a letter dated 3 January 2023, NE say “subject to the applicant being able to obtain all the relevant permissions from the EA, the solution proposed is suitable to avoid adding to the risk of adverse effect on the integrity of the Arun

² SD12 (Rep ID:1194005)

³ SD12 (Rep ID:1198343)

⁴ SD12 (Rep ID:1192082)

Valley sites". The evidence suggests a strategic scale site could be water neutral without needing to rely on any form of public offsetting, any credits or any strategic resolution to the issues of water neutrality. Furthermore, the representations include details of meetings held with NE and the EA on 11 January 2024 and with SW on 9 February 2024 where neither the EA, NE nor SW indicated that the developer's private water neutrality scheme as detailed at that time could not be implemented, would not achieve its aims based on the information available or that it would lead to any significant adverse impacts.

65. In response the Council says in summary in evidence provided after the Plan was submitted, that the private water neutrality scheme and associated evidence provided at the regulation 19 stage relating to Strategic Allocation HA5 can only be regarded as conceptual and cannot be regarded as deliverable nor capable of providing the necessary level of reasonable certainty (HDC29a). Paragraph 8 of HDC29a states "It was the Council's judgement that submission of a Plan which included such a strategic site, but which lacked evidence of delivery based on a feasible water neutrality scheme would not have been sound". In reaching that judgement HDC29a shows the Water Neutrality Project Manager met with the EA in February 2024, where the EA raised brief concerns with regard to the specific details of the proposed private water neutrality scheme. It also shows a record of correspondence between the Council and SW in June 2024, but this does not detail any definitive conclusions.
66. I accept that any proposal which utilises a private supply borehole must also secure any necessary consents including water abstraction licences from the EA if it exceeds the relevant thresholds. I also acknowledge detailed and extensive further work would be required to bring forward a water neutral strategic scale new settlement in the District. Furthermore, I also accept that clearly, following detailed work to secure all necessary consents, any private water neutrality scheme could ultimately be found to be undeliverable.
67. However, just because the Council felt a strategic scale site lacked evidence of delivery based on a feasible water neutrality scheme would not have been found sound by an Inspector in Examining the Plan does not mean it was not necessary for it to be discussed in some detail under the DtC with the other NWSHMA local authorities against the background of what was known about unmet housing needs at that time. Or indeed, that an alternative strategy for meeting some, or all, of the District's unmet need which included sites which may benefit from private water neutrality schemes should not have been discussed in detail.
68. I note the Water Neutrality Policy Group met four times between January 2024 and July 2024 but were focussed on progressing SNOWS. HDC29a shows the regulation 19 representations where only discussed generally at those meetings, without any specific reference to any private water neutrality schemes which have been purported to exist by site proponents or any recognition of unmet housing needs.
69. Whilst meeting records do show that the Council's regulation 19 consultation responses were discussed generally at relevant forums, there is no substantive evidence which explicitly shows any record of a new settlement in Horsham or

any other omission sites which claimed to benefit from a private water neutrality scheme being discussed in any significant detail between all NWSHMA local authorities in the context of unmet housing needs. There is also no record of the principle of private water neutrality schemes being discussed as a means by which water neutral homes could be built in the NWSHMA or Horsham District at that time in the context of the scale of unmet housing needs.

70. In my assessment, the Council and the other NWSHMA local authorities all knew between January 2024 and July 2024 that SNOWS was not fully operational and would not be for some time after the Plan was submitted. They all also knew WRMP 2024 would not be in place and NE would be unable to review its position as set out in CC08 at least until further work had been completed some time after the Council intended to submit its Plan.
71. Horsham District Council were clearly not obliged to explicitly discuss every detailed regulation 19 representation it received with all of the NWSHMA authorities. It was for the Council to make an assessment of the representations and initiate co-operation on any information received further to its legal requirement to meet the DtC and having regard to the relevant strategic matters on which co-operation is required.
72. If the reason for the Council not actively initiating detailed discussion on any of these points is because, the Horsham District housing market could not absorb any more development than detailed in the submitted Plan, this ought to have also been explicitly discussed in detail at that time in light of the regulation 19 consultation responses. There is no substantive evidence to suggest this was done in any detail at any of the relevant DtC forums.
73. Thus, between February 2024 and July 2024, all of the NWSHMA local authorities clearly knew the Plan would not meet its own need for housing and would add to known substantial unmet housing needs in the NWSHMA. However, it was only the Council that had the opportunity to consider the representations it received in response to its consultation on the Plan under Regulation 19 of the Local Planning Regulations in any detail unless it explicitly drew attention to any of them before the Plan was submitted for Examination.
74. In my assessment, at the very least, for engagement to be constructive, active and ongoing between February 2024 and July 2024 on the strategic matters of housing and water supply, the ability to deliver any water neutral development without needing to rely on SNOWS or a strategic resolution to water neutrality should have been considered in some detail by all the relevant NWSHMA local authorities before the Plan was submitted.
75. This is because, such schemes could be a way in which the effectiveness of the Plan in meeting housing needs could be maximised. Indeed, Mid Sussex District Council clearly suggested in its regulation 19 consultation response, that Horsham District Council take every opportunity to increase housing supply should opportunities (which are consistent with achieving water neutrality) present themselves within the plan period.
76. For the Council's to have considered such information in sufficient detail the evidence should include a detailed written record, possibly through an update

to the relevant statements of common ground, which explains why the regulation 19 version of the Plan remains sound and legally compliant in light of the representations it received in response to its regulation 19 consultation. Such a record of engagement should explain the detailed discussion that took place and explain the key areas of agreement and disagreement.

77. Ultimately once all NWSHMA local authorities had considered the issues, Horsham District Council would then be required to explain why it felt it still was appropriate to submit the Plan for Examination without amending it in light of the regulation 19 responses prior to submission.
78. I can find no substantive evidence to demonstrate that this type of detailed engagement occurred between the NWSHMA local authorities between January 2024 and July 2024.

Conclusions on the Duty to Co-operate

79. Between April 2018 and July 2021 the Council's draft Plan would have met Horsham District Council's housing need and continued historical contributions towards unmet need from elsewhere, particularly that arising from Crawley.
80. Strategic Allocation HA5 was proposed by the Council in July 2021 as a strategic site allocation policy seeking to address strategic priorities in line with the requirements of Section 19 (1B-E) of the PCPA as an integral part of a spatial strategy which would have not only met the District's housing needs but would have allowed significant contributions to be made towards unmet housing needs which existed beyond the Horsham District boundary.
81. This is sufficient to demonstrate to me that up until July 2021 the Council felt a strategic scale new settlement as part of a spatial strategy which also included extensions to existing settlements was a possible way in which the needs of the NWSHMA could be met.
82. There is no substantive evidence to suggest any of the NWSHMA local authorities had raised any significant concerns with regard to the Council's proposed spatial strategy up to July 2021. However, between July 2021 and January 2024 the Council amended its draft Plan, reducing the housing requirement based on a spatial strategy which relies only on extensions to existing settlements. The Plan consulted on under regulation 19 and submitted in July 2024 does not make any reference to a new settlement anywhere in the District. The reasons the Council gives for the changes to its spatial strategy and reduced housing requirement can be summarised as the capacity of the Horsham District housing market to absorb new development and water neutrality.
83. Between January 2024 and July 2024 all the NWSHMA local authorities would have known that SNOWS would not be operational, and the issue of water neutrality could not be resolved strategically until at some point in 2025 at the earliest. All the NWSHMA local authorities would have also been aware that the Council intended to submit its Plan for examination when it did as it broadly reflected the timetable detailed in its Local Development Scheme published in 2023.

84. Thus, notwithstanding their deliverability or developability any sites claiming to rely on a private water neutrality solution were a possible way in which more housing than that which had already been identified in the Plan could be built in Horsham District. They were therefore a possible solution to meeting at least some of the substantial unmet housing need in the NWSHMA which was fully understood at the time.
85. For the Council's DtC engagement to be constructive between January 2024 and July 2024, in my assessment, it was incumbent on the Council to explicitly communicate the relevant evidence it received at the regulation 19 stage and discuss it in the context of the unmet housing needs identified at that time. This should have been done in some detail through an appropriate forum where all NWSHMA local authorities were able to fully engage and certainly before the Council submitted the Plan for Examination.
86. This did not appear to happen in any meaningful way, instead there are only records of general discussions on the regulation 19 representations between the relevant local authorities, there is no record of what exactly was discussed or whether those discussions led to any agreed outcomes, common ground or uncommon ground.
87. At that time it was still unclear when SNOWS could become fully operational. Thus, SNOWS could not be used to demonstrate water neutrality or the deliverability or developability of any site allocated in the Plan for housing in line with paragraph 68 of the NPPF with any more certainty than a housing proposal which relies on a private water neutrality scheme.
88. Therefore, a general discussion on the regulation 19 responses would not have been sufficient for the NWSHMA local authorities to fully understand the evidence the Council received on private water neutrality schemes or how such schemes may be able to assist in meeting some, or all, of the District's unmet housing needs.
89. Thus, the engagement that took place between the regulation 19 and submission stages of plan preparation between the NWSHMA local authorities was not constructive or active. As such, there is clearly a gap in co-operation between January 2024 and July 2024 such that the co-operation, under the DtC over the plan preparation period cannot be reasonably regarded as ongoing.
90. Whilst I recognise the extreme difficulties faced by the Council in developing the Plan and co-operating on its preparation, I am led to no other conclusion other than to find the DtC has not been met in this case. As the Council will be aware, and as I indicated at the hearing, this cannot be fixed during the Examination because plan preparation ended when the Plan was submitted.

Soundness Concerns

91. Although I have concluded the DtC has not been met, I also have significant soundness concerns in relation to the Plan's housing requirements and spatial strategy based on the discussions held at the hearing sessions and all the evidence before the Examination at this time. Nevertheless, I do not go into any further detail on these soundness concerns in this letter, other than is

necessary to provide detail in respect of the contextual background to my assessment of compliance with the DtC.

Overall Conclusion and Recommendation

92. As I outlined at the hearing sessions already undertaken, I understand how much resource has been invested into preparing the Plan. I fully recognise the supply of water to new homes has been a major issue which the Council has been required to grapple with but cannot control.
93. The Council's affected by water neutrality should be commended for their efforts in trying to develop a local authority led water supply offsetting scheme. However, this has clearly proved more challenging and resource demanding than originally anticipated.
94. It is also my view, that the supply of water as a constraint to much needed new homes for people to live in the area, should have been addressed by bodies other than the Council long before now, especially given CC08 was issued in 2021. Because, it hasn't, the circumstances upon which the Council has had to prepare the Plan have been extremely challenging, with significant Council time and resources needing to be directed at assessing and understanding issues associated with the supply of water to new homes. This is not usually an issue that local plan's need to be concerned with in any extensive detail given the responsibilities of statutory water undertakers.
95. However, even so, under the circumstances I have outlined above, I can only recommend that the Council withdraw the Plan under S22 of the PCPA and focus its resources on rapidly preparing a new Local Plan. In doing so the Council could utilise much of the good and comprehensive work already undertaken before components of the evidence base become out of date.
96. If the Council do not wish to withdraw the Plan, the Council could choose to receive my report on the examination of the Plan so far. This will conclude the Plan is not legally compliant. For me to prepare a report, it would involve additional time and cost to the Council with resources inevitably directed away from preparing a new Plan.
97. I appreciate the Council will need some time to consider the contents of this letter and to decide on a response. However, I ask the Council to provide an early indication of when they are likely to be able to respond fully to this letter. I do not require a response to this letter from representors at this time.

L Fleming

INSPECTOR