

# Appendix B

**From: Robert Eggleston, [Address Redacted]**

**To: Kathryn Hall and Tom Clark, CEO & Head of Regulatory Services, MSDC**

**FOR YOUR URGENT ATTENTION**

Kathryn Hall  
Chief Executive  
Mid-Sussex District Council  
Oaklands  
Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

**By email only to: [kathryn.hall@midsussex.gov.uk](mailto:kathryn.hall@midsussex.gov.uk)**

18 July 2022.

Dear Kathryn

**Letter of Claim (sent pursuant to the Practice Direction on Pre-Action Conduct)**

**In the proposed matter of: Robert Eggleston and others v Mid Sussex District Council (“the Council”)**

This letter is being sent in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the Pre-action PD) contained in the Civil Procedure Rules (CPR). In particular, I refer you to paragraphs 13 to 16 of the Pre-action PD concerning the Court's powers to impose sanctions for failing to comply with its provisions. Ignoring this letter may lead to proceedings being commenced against the Council and may increase its liability for costs.

Along with the South of Folders Lane Action Group (SOFLAG), I have sought the advice of Dr Ashley Bowes of Cornerstone Barristers for the purposes of preparing this letter of claim

**Background**

On 29 June 2022, the Council adopted the Mid Sussex Site Allocations Development Plan Document (“the DPD”) by a resolution of its Full Council.

I participated in the consultations upon, and examination of, that DPD via my membership of South of Folders Lane Action Group (“SOFLAG”). Along with many residents, who may also be party to this claim, I had particular concerns with policies SA12 and SA13 and responded to the main modifications consultation via SOFLAG and in my personal capacity. Representations were also made by several local authorities.

**Issues**

I am aggrieved by the decision to adopt the DPD because the decision to adopt was outside the Council’s powers.

Particularly, in breach of the obligation at **Regulation 8(2) Environmental Assessment of Plans and Programmes Regulations (SI 2004/1633)**, the Council adopted the DPD without taking account of the

environmental report prepared under those regulations or the opinions expressed in response to that report.

The report to the Council on 29 June 2022 did not append a copy of environmental report or consultation responses received in connection with the July 2020 version of the report or the addendum report dated November 2021, nor did it contain a summary of its contents or the consultation responses which had been received.

The report did not list the environmental report and consultation responses expressly as “background papers”. The report simply explained that the “full evidence base, examination library and examination documents” were available via a link on p.23 of the Council Report. At the time of the meeting, that link ([www.midsussex.gov.uk/SitesDPD](http://www.midsussex.gov.uk/SitesDPD)) did not go through to a webpage including the final environmental report and consultation responses. The final environmental report was only uploaded to that page on 7 July 2022.

Background papers are required to be listed by **s.100D(1) Local Government Act 1972** and defined by **s.100D(5)** as those documents which:

*“(a) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and*

*(b) have, in his opinion, been relied on to a material extent in preparing the report.”*

Given the legal obligation to expressly list such documents, it is notable that the environmental report and consultation responses to it were not expressly noted as being “background papers”.

In any event, members are not to be taken to have considered a background document unless they are expressly told to read it, a link to the documents is not sufficient for that inference to be properly drawn, see: **R(Hunt) v North Somerset Council** [2013] EWCA Civ 1320 *per* Rimmer LJ at [83]-[84].

The final environmental report did not even appear to be publicly available prior to the meeting and only appeared on the Council’s website (together with the adoption statement) **after** the 29 June meeting, when the website page was updated on 7 July 2022.

The report to Council on 22 July 2020 (which sought approval to conduct a Regulation 19 consultation and thereafter submit the DPD) only contained the non-technical summary of the environmental report and did not (nor could not) summarise the responses to it because that consultation had yet to be conducted.

It follows that the Council acted outside the powers of the Act and a potential claim under s.113 brought on that basis is likely to be successful.

It is impossible to say whether the decision to adopt would, necessarily, have been the same had the legal requirements been complied with. The Regulations presuppose the prescribed information is considered and, therefore, there is no realistic prospect of a Judge assuming it would have made no difference to the outcome.

I acknowledge that the Court has a range of remedies should it identify an error of law in the adoption of a document such as the DPD.

The most appropriate remedy here would be an order quashing the decision of the Council to adopt the DPD on 29 June 2022 and an order remitting the DPD to Full Council to reconsider the question of

adoption, ensuring that the necessary information prescribed at **Regulation 8(3) of the 2004 Regulations** was before members.

Moreover, it would be inappropriate for the DPD to guide the determination of development management decisions in the meantime and so it would also be appropriate for the Court to grant an interim order, suspending the operation of the DPD until it has been lawfully adopted.

### **Action you are expected to take**

In accordance with paragraph 6(b) Practice Direction on Pre-Action Conduct, I (and my co-claimants) expect a response in a reasonable time. Given the clear-cut nature of the error of law, the short time limit within which a claim must be filed and the pragmatic steps I propose to remedy the situation, I expect a response by **29 July 2022**.

I invite the Council to indicate that it will consent to an order:

- Quashing the decision to adopt the DPD on 29 June 2022.
- Remitting the decision to adopt the DPD back to Full Council.
- Suspending the operation of the DPD in the meantime.
- Paying my reasonable costs of bringing the claim.

If the Council do not so consent, I shall proceed to issue a claim under s.113 and seek the interim relief I have indicated. It may take many months before such a claim reaches a final hearing and further time before a judgment is handed-down. It will also incur the Council significant expense and disrupt the delivery of sustainable development in the District. For those reasons, I invite the Council to accept my proposed course of action as a practical means of ensuring the DPD is lawfully adopted and taxpayers' money is preserved.

I reserve the right to draw attention to this letter and in particular, the offer of a way forward, if you decline to accede to my suggestion and the Court is called upon to assess the principle and level of costs.

### **Costs**

I invite you to confirm in writing that the subject matter of the claim would fall within the scope of the Aarhus Convention and, accordingly, this would be an "Aarhus Convention Claim" for the purposes of Part VII CPR 45.

### **Interested Parties**

A copy of this letter is being sent to the owners of the land comprising the largest allocations in the DPD (SA12 and SA13):

- Jones Homes Limited 5 Cornfield Terrace, Eastbourne, East Sussex, BN21 4NN.
- Persimmon Homes Limited Persimmon House, Fulford, York, YO19 4FE.
- Thakeham Homes Limited Thakeham House, Summers Place, Stane Street, Billingshurst, West Sussex, England, England, RH14 9GN.

Should you consider there are other Interested Parties to whom a copy of this letter should be sent, please do let me know and I will arrange the same.

### **Alternative dispute resolution**

As the Council is presently *functus officio* I do not consider this matter is amenable to ADR, however I have proposed a pragmatic and cost-effective way forward to remedy the legal defect.

### **Address for the supply and service of court documents**

I am in the process of engaging a solicitor to administer the claim but in the meantime, please direct correspondence to me at:

Robert Eggleston

[Address Redacted]

Email [Email-Address Redacted]

**Proposed reply date**

In accordance with paragraph 6(b) Practice Direction on Pre-Action Conduct, I respectfully request a response by **1600 on 29 July 2022.**

Yours sincerely

**Robert Eggleston**