

Email correspondence between SOFLAG and Councillor Neville Walker, Chair, Scrutiny Committee for Planning, Housing & Economic Growth, 6 – 15 March 2020

15 March 2020

Dear Councillor Walker,

Thank you for your email dated 11 March responding to our email of 6 March.

Unfortunately you are mistaken in your response as your four points contain two factual errors and other significant issues. We are concerned that you are either already aware of but disregarding them, or you may have been misled in advice you have received. We would welcome your response to our explanation below:

1. Factual error: We informed MSDC of missing responses on 22 January and these were not uploaded until 28 January, six days later not the same day. We would be grateful to receive your confirmation on this as the point is important. The upload took place after the Scrutiny Committee meeting and we again make the point that critical information was withheld from the members of that committee. You state a paper copy (of the missing responses including the detailed SOFLAG submission) was 'provided' to members. This is not the case. Most members would have been unaware of the need to go to the Members Room to consult the one and only printed copy, as they would have been unaware that the information was missing from the online versions with which they had been provided.
2. We are fully aware of the reasons MSDC gave for refusing our FOI request. MSDC also attempted to use an exclusion to withhold information relating to planning (housing windfall sites) in 2018. The ICO ruled against MSDC then (7 May 2019) and we expect it to do this again. MSDC Planning cannot keep hiding information from the public that doesn't suit its narrative. The more MSDC attempt to prevent access to these documents the bigger the suspicion is that they have something to hide about the probity of the process regarding Haywards Heath Golf Course. Refusing to release the working group notes only increases the doubts.
3. Factual error: In the 1257 page November 2019 Regulation 18 Consultation Report the responses we listed from Horsham and Wealden District Councils were listed as "object", along with all the others. As highlighted at the Scrutiny Committee on 11 March, Mr Marsh's statement to the January committee was clearly wrong and misleading.
4. Using MSDC's own site selection criteria Haywards Heath Golf Course is more suitable and no SUBSTANTIAL reason has been given for rejecting it. The fact that a planning application has now been submitted is not a reason for precluding it from inclusion in the selected sites.

Kind regards

SOFLAG

On 11 March 2020 at 15:09 [Neville Walker \(Cllr\)](#) wrote:

Dear SOFLAG,

Thank you for your email dated 6th March. In response to each of your points raised, in turn, I advise as follows:

1. Critical responses omitted from consultation report:

It is this Council's view that all the representations have been presented to Members.

Once officers were made aware of a technical error with the detailed online Consultation Report a revised version was uploaded the same day. However, the paper copy provided to Members did not include this error and the two submissions referred to by SOFLAG were available.

In addition, the report to the Scrutiny Committee on 22nd January 2020 included a summary of the broad themes and issues, which included the two submissions referred to by SOFLAG.

The summary of comments on sites SA12 and SA13 on pages 26-28 of the report to Scrutiny on 22nd January 2020 also included the responses referred to by SOFLAG.

2. Refusal of requests for transparency around site selection:

The Site Selection Process is transparent and is clearly set out in paragraphs 12–31 of the report to Scrutiny Committee for Housing, Planning and Economic Growth on 11th September 2019.

The Folders Lane and Haywards Heath golf course sites were assessed against the agreed Site Selection criteria, with the assessment conclusions published in Site Selection Paper 3: Housing which is available on the Council's website at www.midsussex.gov.uk/SitesDPD.

Paragraphs 19 and 20 and Table 2, on page 4 of the report to Scrutiny on 11th September 2019, explain that, as a result of the Site Selection findings, the Folders Lane and Golf Course sites were included in a shortlist of 47 sites for further assessment.

The Sustainability Appraisal assessed these 47 sites and three reasonable alternatives were considered – (1) 20 constant sites, (2) 20 constant sites plus Folders Lane, and (3) 20 constant sites plus Haywards Heath Golf Club.

Paragraph 28, on page 6 of the report to Scrutiny on 11th September 2019, concludes that, on balance, Option 2 performed better overall and was therefore included in the draft Sites DPD for the purposes of public consultation. This decision is evidenced and transparent.

In an FOI (96201) dated 15th November 2019, the Council confirmed the reasons it is unable to make the notes of the Working Group public. An extract from the FOI response is as follows:

With regard to working group papers, the Council is entitled to apply an exemption if it believes one exists. In this particular case the Council believes that the Exemption 'Section 36 (2) (c) - disclosure of the information would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs', applies. This exemption is subject to the public interest test. In this particular case it is considered that the public interest in releasing the information does not outweigh the public interest in withholding the information. The working group need to have a safe space in which to debate issues and reach decisions away from external interference and distraction.

3. Opposition from other local authorities

Paragraph 25 of the report to Scrutiny on 22nd January 2020 correctly identifies the status of responses outlined in your question from neighbouring Councils and Town and Parish Councils. However officers have revisited the responses from Horsham and Wealden District Councils and notes that these responses have been categorised as neutral and should have been identified as objections.

However, details of the objections are outlined in the Committee report and so categorisation of the representation does not bear any relevance to the approach taken by the Council when considering the representation.

4. Sites SA12 & SA13 v Haywards Heath Golf Club

The Scrutiny Committee in September considered the options and so agreed to the option containing sites SA 12 and 13.

A planning application is a separate process to the site allocation process. Planning applications are considered against the policies in the District Plan.

Kind regards,

Councillor Neville Walker

Chairman of Scrutiny for Planning, Housing and Economic Growth

From: info@soflag.co.uk <info@soflag.co.uk>

Sent: 06 March 2020 17:14

To: Neville Walker (Cllr) <neville.walker@midsussex.gov.uk>

Subject: 11 March Scrutiny Committee - Site Selection process already unsound?

Dear Councillor

Scrutiny Committee for Housing, Planning & Economic Growth: 11 March 2020

I am writing to you on behalf of the South of Folders Lane Action Group (SOFLAG) and its over 1,000 supporters about the Site Selection DPD consultation process. In particular, the selection of sites SA12 and SA13, to the south of Folders Lane, in Burgess Hill.

The site selection process has only been through the first consultation stage, and we have serious concerns about the process so far which could mean you are prevented from making a fully informed decision.

These are detailed below, and we ask you to raise them for scrutiny at your meeting on 11 March.

1. Critical Responses Omitted from Consultation Report :

When the Site Selection Consultation Report was published on the MSDC website in advance of your last Scrutiny Committee Meeting on 22nd January, both the SOFLAG and the Broadlands Residents Association's responses, were missing.

These two comprehensive responses were both highly critical of Sites SA12/13 and would have provided Councillors with important evidence explaining why these sites are unsuitable.

When we pointed this out to MSDC staff, we were assured it was an oversight and the 57 missing pages were added to the online document – but on 27th January ie after the Scrutiny Committee. We were told that these pages were not missing from the one hard copy available for Councillors in the Members Room, but how many Councillors would have been able to consult the thousand pages of this one copy before the meeting?

Councillors would not have known that the online version was missing these two submissions and therefore the Scrutiny Committee had been scrutinising an incomplete document.

It was missing important information which was critical of the site selection process and which highlighted reasons why the decision to include Sites SA12 and SA13 was incorrect. To exclude this from the online report, even if an "oversight", suggests the process is, from the start, biased in favour of including Sites SA12 & SA 13. This makes this stage of the Site Selection DPD process unsound.

We have attached to this email copies of these two previously missing submissions for your information.

2. Refusal of requests for transparency around site selection:

SOFLAG has been trying to establish why the fields south of Folders Lane were preferred to Haywards Heath Golf Course. The Golf Course site seemed to perform better against the selection criteria. It also delivered a higher number of houses distributed more evenly across the district.

We have asked via a Freedom of Information request to see the notes from the Working Group which made that decision. However, MSDC have twice refused our request. We have now escalated this to the Information Commissioner and are awaiting the decision. This is not the first time that MSDC refusal to release information relating to Planning has been brought to the ICO. In May 2019 for example, MSDC lost a case relating to disclosure of figures around windfall developments when the Commissioner said in his judgement:

"Whilst the council argues that individuals without the necessary experience may misunderstand the information this argument does not outweigh the public interest in the public having the ability to, where necessary, ask questions of the council" (ICO ref FER0804951)

SOFLAG believes that the site selection process so far has not been transparent and is therefore unsound.

3. Opposition from other local authorities

We are concerned the Minutes of your meeting of 22nd January include a very misleading statement from Andrew Marsh, Business Unit Leader for Planning Policy, about the site selections. He said in the meeting (as was reported in the Minutes):

"Objections were predominantly from residents to the proposed sites" [and there were] "indeed no objections from neighbouring authorities"

However, we believe this implies, wrongly, that there is no opposition from any councils or statutory consultation authorities. This is not the case.

In fact, strong objections to sites SA12 / 13 were made by:

- Burgess Hill Town Council
- Haywards Heath Town Council
- Lewes & Eastbourne Borough Council
- Hassocks Parish Council
- Ditchling Parish Council
- South Downs National Park

In addition, the following also had various objections:

- Wealden District Council objected to SA20 / SA26
- Horsham District Council & West Sussex County Council are listed as objecting to SA9
- Felbridge Parish Council & East Grinstead Town Council

4. Sites SA12 & SA13 v Haywards Heath Golf Club

We remain at a loss to understand why SA12 & SA13 were selected ahead of Haywards Heath Golf Club, and the refusal by MSDC officers to answer our FOI request as detailed above raises more questions than it answers.

A planning application for the Golf Club has now been submitted (DM20/0559). This would allow MSDC to proceed without delay with Option 3, providing more homes and a more robust 5 year housing land supply buffer than Option 2. It would also alleviate concerns about maintaining housing targets in the immediate future. Housing would also be distributed more evenly across the district – Burgess Hill already has a strategic allocation of over 3000 in the District Plan compared to zero for Haywards Heath.

Attached is a table comparing the sites. You can see clearly that the man-made Golf Club site is more suitable and sustainable than the fields south of Folders Lane.

At the Scrutiny Committee on 11 March you have the opportunity to rectify this and recommend that the Site Selection change to Option 3.

Thank you for reading this email and attached documents. We hope these facts will enable you to fully scrutinise the sites and reassure our supporters that this process is indeed 'sound'.

If you have any questions, please get in touch.

Yours faithfully

SOFLAG