

# Hellingly Neighbourhood Development Plan 2018 -2028

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## Initial Comments of the Independent Examiner

**Prepared by**

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**John Slater Planning Ltd**

**18<sup>th</sup> July 2019**

## Introductory Remarks

1. As you will be aware, I have been appointed to carry out the examination of the Hellingly Neighbourhood Plan. I have carried out my initial review of the Plan and the accompanying documents that I have been sent. I visited the parish of Hellingly, and the surrounding countryside on the 1<sup>st</sup> and 2<sup>nd</sup> July 2019. I also visited the neighbouring town, Hailsham on the same visit as I am also examining their neighbourhood plan.
2. My preliminary view is that I should be able to deal with the examination of this Plan by the consideration of the written material only, but that will, to a large extent, depend upon the responses I receive to this note. I therefore do still have to reserve the right to call for a public hearing, if I consider that it will assist my examination and indeed that may well be required to enable me to fully explore some issues raised in this note. I will confirm my conclusions on that matter when I receive all the responses.
3. I have set out the following questions, as I need to test that the plan can be used with consistency and with confidence by all decision makers. I also need to be satisfied that the plan policies are based on proportionate evidence and the policies align with the strategic policies for the area, as well as meet the legislative requirements.

## Wealden Local Plan

4. I am conscious that the draft Wealden Local Plan is making a number of strategic allocations within the Hellingly neighbourhood area. I would like to be able to properly assess the impact of the neighbourhood plan policies on the proposed housing allocations. It would be helpful if the housing allocations from the Local Plan could be superimposed upon Maps 1, 2, 3, 7 and 8. I would specifically request that the plans should be at as large a scale as possible. It may be necessary for the Parish Council to work closely with the District Council in preparing these plans. It would also aid my understanding if the District Council could indicate upon a single plan which of the development allocations in Hailsham North 1, have planning permission or a resolution to approve, which have pre-commencement conditions discharged so that a commencement could be made and which sites have development commenced.
5. I would like to understand from the District Council, the likely timescale for the local plan examination and the possible adoption of the Local Plan. I understand that the Local Plan Examination is to recommence in the coming weeks and the Inspector will shortly thereafter make a decision whether the second stage of the examination should continue. I would be interested in the LPA's view of the implications for the neighbourhood plan if the Inspector recommended that the Local Plan Examination should not continue. I am

asking this question, as I need to be considering how much weight to be giving to policies in the emerging local plan.

### **Policy HNDPE – Habitat Regulations**

6. I understand that this policy has been inserted at the request of the LPA in view of the non-adopted status of the Local Plan and to comply with Habitat Regulation Assessment requirements. I have a number of questions as to the thresholds as to how and when this policy should be applied, as it appears to relate to *all* development. I would be particularly interested in hearing the views of the LPA as to how the policy would be applied in practice, but I would equally be interested in the views of the Parish Council.
7. Is the requirement for information to be accompanied with any proposals to allow the District Council as competent authority to complete or just screen for a full Habitat Assessment? Would that information be required for say domestic extensions or proposals that did not result in additional traffic movements? Is the information already required to be submitted with a planning application, as set down in the Local Validation Checklist and is that not the appropriate vehicle to identify the information required to accompany a planning application.

### **Policy HNDP1 Area of Locally Valued Landscape**

8. I need to be satisfied that the areas designated has been based on objective evidence. The policy refers to the “inherent visual qualities and distinctive character of the area”. Can the Parish Council outline the basis for its assessment of why the area is different to the remainder of the plan and also articulate why it has used chosen a different boundary to that set out in the Wealden Character Areas. I would expect to see the key characteristics of the valued landscape being set out, in the same way that the emerging local plan does, in terms of describing the different areas, in order to justify a higher level of landscape protection for this area compared to the remainder of the rural areas in the parish. Is such a policy, designed “to protect the visual qualities and distinctive character” justified, if part of the reason for its designation is not based on its landscape value but its role as a rural lung for Hailsham?
9. Could the LPA confirm whether the requirement to submit a landscape assessment is also set out in the Local Validation Checklist?
10. Please can the Parish Council identify the “public vantage points” with long distance views of the South Downs, on a map.

### **Policy HNDP2 Local Green Space**

11. How is the possibility of LGS being lost, if it meets the criterion in i) “where the land no longer has any visual, recreational, amenity or ecological value” be consistent with the NPPF requirement that the designation “should be capable of enduring beyond the end of the plan period”?

12. If a particular area has been identified as being so “demonstrably special to the local community” to warrant designation as LGS, how is it appropriate to allow an applicant to offer “an area of equivalent value (size and/ or interest)” be provided in compensation?

#### **Policy HNDP 3 Areas of Critical Flood and Drainage Concern**

13. I need to be understand the relationship between the areas of Critical Flood and Drainage Concern shown in the neighbourhood plan and the Environment Agency’s Flood Zones 2 and 3. Can the two areas be superimposed upon each other on a single plan, so that I can understand the additional area where there is the need for applicants to adopt a strategic approach from any sought of flooding and if necessary, the need for the exception test to be applied. Are the additional areas included because they have all be subject to surface water flooding events?
14. I particularly need to consider whether the proposed Flood Control Zones has any impact on the sites allocated in the emerging Local Plan and whether the information informing the neighbourhood plan was available to the strategic planning or whether this is more up to date information than would have been considered by the Local Plan’s SFRA. I would be grateful if the District Council could provide me with a copy of that document.
15. I need to be clear as to the inter relationship between the neighbourhood plan policy which appears to allow a presumption in favour of development in a flood risk area if “other public benefits clearly outweigh the risk of flooding” with the policies set out in paragraphs 155 and 165 of the NPPF. Should the requirements to install SUDS be clear that it is intended to deal with surface water flooding only?

#### **Policy HNDP 4**

16. Should the requirement not to flood adjoining land differentiate between flooding other properties, or just other land, which is actually the function of a flood plain? Are the requirements to submit a Flood Risk Assessment set out in the Local Validation Checklist?
17. Should the presumption against land raise be restricted to land in Flood Zones 2 and 3 or any development site within the plan area? What is the justification for the policy in terms of areas not liable to flood. Should the policy be requiring the agreement of the Lead Flood Authority and the Pevensy and Cuckmore Management Board or should the decision be left to the LPA or the inspector at appeal having regard to the comments of the consultee bodies?

#### **Policy HNDP 5 Green and Blue Infrastructure**

18. Should what is meant by “green and blue infrastructure” be defined in the plan? Is the policy in i) referring to an ecological survey and should it be carried out within 2 years of the submission of the application? Do the

requirements recognise the hierarchy of sites, as referred to in para 171 of the NPPF and how does the threshold of being “protected” by all development proposals relate to the threshold of “significant harm” set out in paragraph 175 of the Framework? Would the expectations of the policy include all planning applications within the designated areas, such as domestic extensions or should there be a threshold relating to its impact on the green and blue assets?

#### **Policy HNBP 6 Biodiversity**

19. Does the requirement to provide up to date ecological information including cumulative impacts, apply to *all* development, even changes of use or domestic extensions or does it apply to development within the green and blue infrastructure areas and how does it relate to the information required to be submitted by the Local Validation Checklist? How does the requirement in criterion i) relate to the requirement included in criterion iv)?

#### **Policy HNBP 7 Rural Economy**

20. What is the justification for business development that takes place in the countryside having to provide “economic, social and environmental benefits locally” as such a requirement appears to go beyond the national policies set out in paragraphs 83 and 84 of the NPPF?

#### **Policy HNBP 8 Isolated New Dwellings**

21. What is the local justification for a higher test of need, than is set out in paragraph 79a) of the NPPF? Why is there a need for a financial and functional test in this particular part of East Sussex, a test which has now disappeared from national guidance? How would a decision maker assess the appropriateness of the scale of dwelling, when it could relate to the numbers of members of an essential worker’s family, irrespective of the “nature of and investment on the agricultural or local enterprise”?

#### **Policy HNBP9 Housing Types**

22. How would a decision maker know whether a development is providing a “*high percentage*” of homes for the elderly and starter homes. Is reference to starter homes, seeking to influence the mix of any affordable housing provided on a site?

#### **Policy HNBP 10 Sustainable transport**

23. In view of the links with Policy HNDPE, can the LPA advise me what would normally be expected, in terms of electric vehicle charging points? Is it a specialist form of equipment, such as a dedicated EV charging wall box or just access to a three-pin plug?

## Character Areas

24. Can I be sent a plan on an OS base map showing the boundaries of the 4 Character Areas?

## Policy HV1

25. How would a decision maker decide whether a development proposal represents an “*unnecessary and inappropriate incursion*” in terms of impact on the pattern of development of the settlement? Could it be that “warranted and justified development” could be allowed to erode the rural character or should the policy be worded that development that erodes the rural character will not be allowed?

## Policy HV2 – Specific Design Criteria Hellingly Village

26. This question is relevant to a number of policies. How would a decision maker know whether a planning application was being presented with “Standard designs”?

## Use of Recommendations

27. Whilst I acknowledge the caveats set out in paragraphs 120 and 121 of the Plan, I am concerned that some of the “recommendations” verge into the area of planning policy. The legislation defines a neighbourhood development plan “as a plan which sets out policies (however expressed) in relation to the development and use of land”. Furthermore, the Secretary of State’s published advice states in the Planning Practice Guidance “Wider community aspirations than those relating to the development and use of land if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annexe) and should make clear in the document that they will not form part of the statutory development plan”. The purpose of a neighbourhood plan policy is to be used to help determine a planning application. It is not a document to be used to lobby on future planning proposals, in the guise of a development plan.
28. My concerns centre on the fact that some of the “Recommendations” actually deal with matters that are directly related to the use and development of land. It could be argued that their inclusion within the development plan would give them some status and raise expectations due to them being included in a neighbourhood development plan. In particular Recommendation 3 – HVR3 could be seen as articulating a policy which would be a relevant to the determination of a planning application.
29. I would also refer to Recommendation LHD R1 which is effectively a representation in a development plan document in respect of a future development plan allocation. Similarly, weight may be given to the comments in Recommendation 3 – LHD R3 covers a topic that would be very pertinent to the future determination of a planning application.

30. My reading of Secretary of State advice is that policies relevant to the development or use of plan should be included as planning policy in the neighbourhood plan or where it does not relate to policies to be used in the determination of a planning application, then it should be in a separate document or annexe, dealing with non-planning matters. I would be particularly interested in the Parish Council's response to my concern that the boundaries as to what is a non-policy issue, is being stretched too far in respect of matters where the plan is seeking to influence the Local Planning Authority on land use matters.

### **Policy PR1**

31. I can appreciate the relevance of this policy for say a major residential development, but is it reasonable for every application to demonstrate now it would support the provision of local facilities. What is expected – is it a financial contribution and would such an obligation meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations as repeated in Paragraph 56 of the 2019 NPPF?
32. If the development is acceptable in principle within the Character Area, how would an applicant demonstrate how his / her scheme would support the parkland setting – surely the requirement is that the development should not adversely impact on the parkland setting of the site?
33. Can the views shown on Appendix PR 03 be differentiated to show which of them correspond to the particular category of view as set out in criteria i) to iv), which the policy seeks to protect.

### **Policy RP2 - Specific Design Criteria – Roebuck Park**

34. Is the reference to “dwellings” intended to differentiate between flats and houses so that the restriction to 2 storeys only related to houses, as I noted on my site visit, there are already a number of 4 storey blocks of flats within the development and are indeed shown in photographs within the Character Assessment? What is the actual expectation regarding “true attics” – is it intended to prevent roof lights or dormer windows with a roof space and what is the justification for this?

### **Regulation 16 Comments**

35. I would like to offer the Parish Council the opportunity to respond to any comments made in the representations submitted at the Regulation 16 stage. I have noted that there were not any comments by Wealden District Council and I again offer the ability the LPA to send me any comments that it would wish me to consider as part of my examination, either on any of the above points or on other matters beyond the direct questions that I have raised in this note

### Concluding Remarks

36. I am sending this note direct to Hellingly PC, as well as Wealden District Council. I would request that all parties' responses should be sent to me by 5 pm on **8<sup>th</sup> August 2019**. I will then decide whether I need to call for a public hearing based on the responses I receive.
37. I will be grateful, if a copy of this note and any subsequent response is placed on the appropriate neighbourhood plan website.

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Independent Examiner to the Hellingly Neighbourhood Development Plan.

18<sup>th</sup> July 2019