

**EXAMINATION OF THE
SEDLESCOME NEIGHBOURHOOD
PLAN**

**Hearing Statement
on behalf of
Rother District Council**

June 2016

Issue 1 – The overall Plan process

1. RDC does not comment on the objections of others to the process, but does wish to make the following two points:
 - a) RDC welcomes the Examiner's consideration of "process issues" in that it enables him (and duly RDC itself) to have specific regard to such criticisms, insofar as they are found to have substance, in his report and recommendations;
 - b) There are deficiencies in the Strategic Environmental Assessment (SEA) on which the SNP relies, specifically with regard to the treatment of Street Farm, Brede Lane as a 'reasonable alternative' to the proposed allocations (which includes its potential to be in addition to those allocations). These are outlined in the Cabinet report attached to the RDC representation (SED-R16-2017-51), with the legal context explained below.
2. The legal context for the SEA process is that it is a 'basic condition'¹ for a NP to not breach and otherwise be compatible with the requirements EU law. This embraces the SEA Directive² which is transposed into UK law by the SEA Regulations, 2004³. Regulation 12(3) of the latter requires that an environmental report be prepared which "... shall identify, describe and evaluate the likely significant effects on the environment of – (a) implementing the plan or programme; and (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme."
3. There is both EU and planning practice guidance on the interpretation of this requirement. EU policy advice⁴ states:

"it is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and public consulted are presented with an accurate picture of what reasonable options there are and why they are not considered the best option. The information provided in Annex I should thus be provided for the alternatives chosen." (my underlining)
4. Planning Practice Guidance advises that 'Reasonable alternatives should be identified and considered at an early stage in the plan making process as the assessment of these should inform the preferred approach.' and that 'This stage should also involve considering ways of mitigating any adverse effects, maximising beneficial effects and ways of monitoring likely significant effects.'⁵ The following paragraph adds: 'Reasonable alternatives are the different realistic options considered while developing the policies in the draft plan.'⁶
5. Therefore, both the presentation and consideration of 'reasonable alternatives' are vital to the proper environmental evaluation of the preferred Plan.
6. For SEA purposes, a development of c15-20 homes at Street Farm site, as identified as a suitable site in the SHLAA, qualifies as a 'reasonable alternative' to meet the housing requirement for Sedlescombe, having regard to SNP's objectives and EU requirements.

¹ See Paragraph 8(2) of Schedule 4B of the 1990 Town and Country Planning Act

² Strategic Environmental Assessment Directive 2001/42/EC

³ Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No 1633)

⁴ 'Implementation of Directive 2001/42 on the assessment of certain plans and programmes on the environment' 5(12)

⁵ Paragraph: 037 Reference ID: 11-037-20150209

⁶ Paragraph: 038 Reference ID: 11-038-20150209

7. However, the Final SEA (paragraphs 8.39 – 8.47) while firstly discounting the Street Farm site as being a reasonable option, then proceeds with an assessment. However, the assessment does not present the whole scheme⁷ and does not fairly present its merits, especially in that it does not take account of the relevant benefits of the proposal. In relation to the latter, it should be noted that the scheme involves the undeveloped land within the site bringing into public control and makes provision for its future maintenance.
8. Therefore, of relevance to the SEA, it is found that the Street Farm site proposal:
 - prevents the extension of development into more open part of the site, thereby meeting the public's concern expressed at SEA para. 8.46 on a permanent basis;
 - provides for the substantial protection and the enhancement of wildlife interest (bearing in mind that there is no control over land management at present);
 - facilitates informal public enjoyment of its environmental assets;
 - would have "*little effect on the landscape and scenic beauty of the wider AONB*"⁸
 - "*.. would be within an essentially enclosed area rather than into the wider open countryside of the Brede Valley or surrounding parts of the AONB.*"⁹
9. Those benefits that arise from public control in particular, should at least be presented as mitigation measures within the SEA.
10. It is concluded that, in terms of the SEA objective of 'Natural and Built Environment', the proposal for the site could be regarded on a par with, if not environmentally preferable to, that for site 4, such that it should be a reasonable option.
11. In the Council's view, the presentation of Street Farm in the SEA can reasonably be regarded as partial and inequitable and, hence, that the resultant SEA of the site fails to fully accord with the EU Directive and related guidance, as highlighted above.
12. It is hoped that, by drawing attention to these issues, the Examiner can consider their significance in preparing his report.
13. The Examiner is invited to consider how his report can both acknowledge and address the failings of the SEA in order to recommend that the SNP can progress, with suitable modifications if necessary.
14. Postscript:
In its own representation, SPC refers to paragraph 45 of the High Court Judgment¹⁰ in relation to the St Ives Neighbourhood Plan which found that alternatives that "*... could be regarded as obvious non-starters by anyone, ..*" could be rejected. However, attention is also drawn to the following paragraphs which state that "*Reasonable alternatives*" have to be seen through that, *environmentally-focused prism.*' (para. 46) and '*A "reasonable alternative" would have been any potentially environmentally-preferable, or environmentally-equal option, which, in the assessment of the Council, would or, sensibly might, achieve that objective.*' (para. 47) Given this, in the light of the above points, it is maintained that the Street Farm proposal warrants due and fair assessment through the SEA.

⁷ Either as part of the 2014 planning application or the subsequent, then outstanding, application submitted on 05 July 2016 (see Issue 3 comments), well before the SEA, dated September 2016

⁸ Planning appeal Inspector's Report paragraph 194

⁹ Planning appeal Inspector's Report paragraph 185

¹⁰ Mr Justice Hickinbottom, EWHC 2817

Issue 2 – Access and visual amenity in relation to policies 4, 7, 8 and 9

a) Policies 4, 7 and 8 – Sites on the northern edge of the village

15. These three sites are all shown on the 'Proposals Map Inset A' to gain access from a similar location just north of the Village Hall.
16. The SNP does not require a shared access for the adjacent sites 7 and 8, as it is not a requirement of the Highway Authority (although is "preferred"¹¹), but would require traffic calming. The policy also encourages 'comprehensive development, which is taken to include provision of a single access, of these sites. This is entirely appropriate given the inevitable proximity of accesses and is strongly supported by RDC.

b) Policy 9 – Land at Balcombe Green

17. The background to this policy is that the extended gardens of properties fronting Balcombe Green are not within the development boundary for Sedlescombe contained in the saved Rother District Local Plan, 2006. RDC felt that the gardens form part of the main confines of the village in this locality, especially as the boundary with the field to the north is marked by a strong tree line. Hence, it recommended a modification to the earlier SNP, to which the Examiner commented:

*'I note that Rother District Council has proposed minor amendments to the settlement boundary, to "demonstrate a more positive approach to potential growth." Taking all of the above into account, this strikes me as a sensible approach for future consideration.'*¹²

18. The current SNP goes further and includes a policy expressing 'support' for the principle of a development of '**approximately 8 dwellings**', accessed from Orchard Way. It is stated not to be an 'allocation' as "*.. it is known that this requires the use of third party land and that the site is in more than one ownership.*"
19. Hence, there is a major doubt about whether there is a reasonable prospect that it is available and could viably be developed in the plan period, as required by the NPPF paragraph 47. Therefore, RDC agrees that this site should not be an allocation for the purposes of assessing housing provision.
20. In relation to the acknowledged constraints set out in paragraph 100 of the supporting text, the Council's Tree Officer, having visited the site, accepts that there is some development potential, but has not seen a requisite arboricultural survey. Nor is there any further justification of the scale of residential development in the supporting Final Site Assessments report. Indeed, it does not include this particular policy proposal.
21. The potential biodiversity value of the trees on site is emphasised by the County Ecologist (see representation SED-R16-2017-38)
22. Hence, it is not considered appropriate, in the interests of sustainable development or conformity with LPCS policy EN5 to protect biodiversity and greenspace, to set a figure on the capacity at this point.

¹¹ See SNP Final Site Assessments Report, September 2016, page 83

¹² [Report of the Examiner](#), Mr N McGurk dated January 2015; page 15

23. Hence, it is recommended that a modification be made to remove the number of dwellings from the policy and replace it with '**housing**', so that the policy begins:

'Housing development proposals on Land at Balcombe Green, as shown on the Proposal Map, will be supported, provided that the scheme:

...'

24. This would be compatible with its inclusion within the development boundary.

Postscript:

25. On p4 of its 'Addendum to the Basic Conditions Statement', SPC advises that the introduction of a policy for Balcombe Green was "*at the behest of the District Council*". This is not the case. As indicated above, RDC simply suggested its inclusion in the development boundary. While the above suggested policy amendment seeks to work with the grain of the Submission SNP, it is noted that SPC adds that "*However, if the examiner considers that this policy does not meet the basic conditions and recommends its deletion, then the Parish Council will have no objection to that modification.*"
26. In the light of this, it is anticipated that, given RDC's stated position, it is anticipated that it also would not be averse to the deletion of Policy 9.

Issue 3 – The designation of land at Street Farm, Brede Lane under Policy 11

27. RDC made a representation (see SED-R16-2017-51) in relation to Policy 11 relating to Street Farm, Brede Lane. It proposes that the eastern part of the site should be included within the development boundary for Sedlescombe in the event of the grant of planning permission on the land, this amendment to be accompanied by a revised Local Green Space (LGS) designation. The proposed development boundary is set out in the Council's representation and reproduced at Map 1 attached for convenience.
28. Subsequent to publication of the Submission SNP, planning permission was granted (ref RR/2016/1837/P) on 17th May 2017, following the signing of a s106 Agreement, for 16 dwellings substantially situated to the rear of existing housing fronting Brede Lane, with the balance of the land (amounting to some 3.4 hectares, equivalent to three-quarters of the total area) being transferred to a public body, most to be retained permanently as open space and the western part being made available to the adjoining Primary School for additional outdoor space. It is understood that a copy of the Decision Notice and accompanying s106 Agreement are contained in the Hearing Bundle
29. This modification is sought to ensure that the SNP contributes to the achievement of sustainable development.¹³
30. In respect of this position, the following points are made:
 - a) The development under RR/2016/1837/P has been approved by the Local Planning Authority as constituting sustainable development
 - b) Insofar as the role of a settlement 'development boundary' is to provide a clear demarcation between areas where development is acceptable in principle (see LPCS Policy OSS2) and where it is not, it follows that it should be up-to-date and reflect the approved extent of development. It is otherwise out-of-date before it is published and would tend to undermine the application of CS Policy OSS4.
 - c) While the planning permission provides for the permanent use of the major, undeveloped, part of the site as public open space and outdoor school space, arguably obviating the need for designation of this land as LGS, it would provide a clear policy position as to its enduring nature. This would respond appropriately to the issue expressed at para 8.46 of the SEA that *'the local community perceive there to be a greater risk of future extension of the scheme to cover a grater area ...'*
 - d) The approved scheme secures key objectives sought by many local people - namely the creation of public access, maintenance and enhancement of biodiversity interest and retention of the substantially undeveloped frontage of this section of Brede Lane - that LGS designation alone would not.
 - e) Moreover, establishing public control over the management of the open space strengthens the case for LGS designation of that area. Reference is made to NPPF paragraphs 76 and 77. The latter requires regard to *its 'beauty, historic significance, recreational value (including as a playing field), tranquility or richness of its wildlife'*. As noted above, several of these attributes are enhanced by the proposal.

¹³ In accordance with Paragraph 8(2)(d) of Schedule 4B of the 1990 Town and Country Planning Act

- f) RDC has not made representations on whether the whole site constitutes a 'substantial tract of land', although in response to representations from SPC, it did take legal advice on the previous Examiner's conclusion that it did, as well as reviewing the evidence put forward by SPC at the time. This found that his conclusion was justified and appropriate and that a legal challenge was unlikely to be successful.
 - g) Question marks remain as to whether this site has received objective and equal treatment through both the SNP and the SEA – see accompanying Summary Statement under Issue 1: Overall Plan Process.
 - h) It is further noted that the Final Site Assessments Report also highlights the contribution of the site to the character of the High Weald AONB. However, as the information on historic field boundaries provided by the High Weald AONB Unit shows, this field is not surrounded by historic boundaries that would mark it out as being of intrinsic value to AONB character. Also, as noted in relation to Issue 1 above, the Inspector conducting the inquiry into an earlier scheme concluded that the development (them of 18 homes) would have "*little effect on the landscape and scenic beauty of the wider AONB*" and would be "*within an essentially enclosed area rather than into the wider open countryside of the Brede Valley or surrounding parts of the AONB.*"
31. SPC's own representation on the SNP appears to accept that it is now appropriate to redraw the development boundary and allocate the excluded area as LGS. It states:

"Should the Secretary of State choose not to call in the application and the consent is then issued, the Plan may be amended accordingly, prior to its referendum through the processes set out in the regulations." (from SED-R16-2017-52, paragraph 4)

Postscript:

- 32. SPC's 'Addendum to the Basic Conditions Statement' appears to change the above-stated position to one where a development boundary amendment should await the outcome of its proposed Judicial Review.
- 33. The fact remains that planning permission exists; furthermore, RDC firmly believes that its decision was properly arrived at and that the proposal, in its entirety, constitutes sustainable development.
- 34. Given this and the above points, the Examiner is accordingly asked to recommend the amendments to both the development boundary and the LGS designation – which go hand in hand – as set out in its representation.
- 35. SPC has submitted information about other NPs which have larger areas of LGS. However, the circumstances of those designations are not known and may well differ from those here.