

Your ref:
Our ref: DM/6.3aSED
Please ask Mr Marlow
for: 01424 787635
Direct dial no: 28th November 2013
Date:



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Dear Pauline

Sedlescombe Neighbourhood Plan: Strategic Environmental Assessment

Further to your letter dated 13th November and our meeting on 19th November, I have since taken further legal advice and considered the points made by Neil (including the practice at Wealden). In the light of this, as well as our own interpretation of The Environmental Assessment of Plans and Programmes Regulations 2004, I would advise as follows on the need for a Strategic Environmental Assessment:

In the opinion of the Local Planning Authority, the Sedlescombe Neighbourhood Development Plan (SDNP) is likely to have significant effects on the environment and, hence, that a SEA should be undertaken.

I have set out the reasoning below in relation to the criteria for determining the likely significance of effects, as contained in Schedule 1 of the above Regulations.

- The SDNP will set a framework for future development over a 15 year period across Sedlescombe Parish, especially by the allocation (and non-allocation) of sites
- The SDNP will form part of the 'development plan' and thereby exert a direct and substantial influence over development proposals coming forward in the period
- The SDNP has a key role in integrating social, economic and environmental considerations in meeting its obligation to contribute to the achievement of sustainable development
- The SDNP needs to consider a number of nationally or locally important environmental factors, notably:
 - the area is wholly within the High Weald AONB, which enjoys the highest status of protection in relation to landscape and scenic beauty
 - there are many key features of the AONB within the Parish
 - there is a swathe of land along the course of the R Brede and its tributaries within Flood Zone 2, including the southern fringes of the village
 - the Brede Valley is also a Site of Nature Conservation Importance, as is the Powdermill Reservoir, Brede High Woods & Hurst Wood Complex in the north-east of the Parish

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- there is a significant coverage of Ancient Woodland across the Parish
 - There are a range of Biodiversity Action Plan Habitats, notably different types of woodland (which overlaps the Ancient Woodland)
 - There is a Groundwater Source Protection Zone bordering the village to the south-east
 - The historic core of the village is a Conservation Area, with many Listed Buildings, as well as being an Archaeologically Sensitive Area
- The potential effects can be characterised as follows:
 - subject to the location of development, the probability of effects is in some respects high (e.g. AONB), while in some cases, where environmental issues bear upon the village and its immediate environs, it could be moderate/high and in other respects is likely to be low, having regard to the relatively limited scale required
 - the duration of any impacts will be long-lived by virtue of the “life” of new building
 - there is the potential for the cumulative effects to be more significant than from individual developments, again subject to the location of development
 - trans-boundary effects may arise, but are expected to be minimal
 - risks to human health are negligible, while relevant agencies will have the ability to advise in respect of specific proposals
 - the amount of land directly affected by likely development will be a relatively low proportion of the area of the Parish (1,264 hectares)
 - a number of the environmental qualities are vulnerable to new development, to varying degrees
 - the AONB is not only a national designation but is especially sensitive to new development; hence, the effects could be significant subject to location, etc.

In conclusion, whilst it is acknowledged that neither the area of the Plan nor the scale of development envisaged are large scale, taking into account the context and the range of potential effects, and applying the precautionary principle, it is considered that an SEA of the SDNP is required.

From our recent meeting, it appeared that your consultant, Neil Homer, has come to a similar view.

There is no doubt that there is confusion about the responsibilities for SEA. I have since been in touch with Neil indicating the references I gave at the meeting. In essence, the advice I have received is that it is the responsibility of the Parish Council to screen for an SEA at this point, as well as to undertake the Environmental Report. However, the LPA has to be satisfied that EU requirements have been met before accepting a Neighbourhood Plan and conducting the Referendum.

Therefore, and in line with the National Planning Practice Guidance, this advice is provided to indicate how the LPA may consider the question of compliance with SEA requirements when it has to formally so at that time. I hope this is helpful.

To assist you, I have included the key statutory references and the contact details at the consultation bodies (which we have not done in coming to this initial opinion).

I hope this assists but please contact me if you have any queries.



Tel: (01424) 787000 (Customer Services)

Regards



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Key legal references and interpretation:

The Localism Act 2011:

S38A states: a “qualifying body” may initiate the process of requiring an LPA to make a neighbourhood plan

(“qualifying body” is defined in s61E (6)A as a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development order to act in relation to a neighbourhood area as a result of section 61F.)

Schedule 9 Part 2 -inserts s38A PCPA 2004:

(4)A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—

(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and

(b)if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held.

(6)The authority *are not to be subject to the duty under subsection (4)(a)* if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998) (my emphasis)

Thus, under ss(6) above - a neighbourhood plan may (should) be rejected if there is no compliance with SEA/EIA/HRA.

Environmental Assessment of Plans and Programmes Regulations 2004

Under s9 of Part 2 of the Regs (SI 2004 1633), the responsible authority has the job of determining whether a plan is likely to have significant environmental effects.

The “responsible authority” is defined in s2 of the Regs as

“(a) the authority by which or on whose behalf it is prepared; and

(b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps; “



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