

# Selsey Neighbourhood Plan

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## Interim Conclusions of Independent Examiner

**Prepared by**

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## Examiners Interim Conclusions on Selsey Neighbourhood Plan

1. This is an interim report setting out my provisional findings regarding my examination of the Selsey Neighbourhood Plan. I have previously set out some initial conclusions in my document, "Initial Comments of the Independent Examiner" which I issued on 2<sup>nd</sup> September 2015. This document was used for the basis of the debate that took place at the Public Hearing into the Plan which I conducted on 18<sup>th</sup> November 2015. At this point I would like to place on record my appreciation for the candour and the positive attitude that all parties brought to the discussions. My reflections afterwards were that everyone was constructive in their contributions and appreciated fully the challenges all parties faced, in moving forward.
2. At the hearing we looked at a number of specific areas where I had raised concerns during my initial review of the Plan. In the annexe to the report I will set down in more detail where my concerns lie.
3. As I explained at the introduction to the Hearing Session, the neighbourhood plan legislation restricts me, to come to only three possible recommendations when conducting an examination, namely
  - To recommend that the plan goes to referendum
  - To recommend that the plan goes to referendum, if modified
  - To recommend that the plan does not go forward to referendum
4. During the hearing session, I indicated that in a number of areas where I had fundamental areas of concern, that were leading me to be minded to find that the Plan did not meet Basic Conditions. It is always open to the Examiner to make recommendations as to how the Plan could be modified to ensure that it can meet the Basic Conditions test. However, in this case, my concern is that the overall extent of the changes required go to the heart of the Plan itself. There are major issues with the layout and the organisation of the documentation and its content. In particular, the way the plan is organised is such that content could be readily considered to constitute Plan policy that was not in fact development plan policy. That could mean that users of the document, whether it be landowners, developers, residents, planners and other decision makers will not be totally clear as to what is expected from a planning proposal in terms of how it complies with the Neighbourhood Plan.
5. The Plan document comes in 2 parts – Part 1 is an Audit of the town and Part 2 is entitled *Planning Guidance Design Guide and Key Policies*. In the second Part there is much information that describes the town and how it has developed and what the Plan is trying to achieve in a number of key areas with then a section of specifically numbered policies at the end of the document. Much of the supporting information should be removed from the Neighbourhood Plan but should be in some supporting companion document.
6. I found the general layout of the documentation confusing and difficult to navigate. For example, if I wanted to see what the requirements for the design of new housing in the town, I would find information and expectations in

several parts of the document. Whilst there is no prescription as to how a neighbourhood plan should be organised, there is a requirement that plan policy is clear and unambiguous. Many plans have all the content regarding particular issues in individual chapters which sets out the objectives of the neighbourhood plan, the policy itself, followed by the justification/ evidence to support the policy.

7. Furthermore, it is clear that much of the document has not changed or been updated since an early version of the Plan that had been subject to public consultation. At the hearing it was acknowledged that closer editing may have been carried out to eliminate some of the more obvious examples, but the intention was that the plan being submitted would be close to the original so that residents would have recognised that they had been consulted on. However, it is the Submission Version of the Plan that is before me for examination. There are a number of examples, where the Plan has been overtaken by events, particularly residential allocations that have now been granted consent and indeed in at least one case development is under construction.
8. The issue has arisen in part due to the prolonged period of the Plan's gestation, starting in 2011/12, when the Localism Act was still a Bill as the document still refers to the legislation. It is inevitable that the world does not standstill in the meantime and "that is the lot of the plan maker" but it is incumbent upon the authors to update the Plan to represent the position as it exists at the time of Submission.
9. Another problematic area resulting from the Plan's production period is the fact that in the meantime some Government policy and advice has been changed or issued. Selsey was one of the early adopters of the new neighbourhood planning arrangements, at a time that there was little guidance or policy. Since that time the Government has, published Planning Practice Guidance and issued other Ministerial Statements that give clear advice on preparing neighbourhood plans.
10. One particular area that has been the subject of a major shift in Secretary of State advice and policy, relates to the extent to which neighbourhood planning can address the way that new housing is designed to take account of climate change. It is clear that the issue of addressing sustainability lies at the heart of the Selsey Plan's overall vision to be "at the forefront of setting priorities to alleviate the effects of climate change". That is quite an understandable driver bearing in mind that the sea surrounds Selsey on three sides. However the Government has significantly "moved the goalposts" through the Ministerial Statement made by Eric Pickles MP on 25<sup>th</sup> March 2015 when he stated that "qualifying bodies preparing neighbourhood plans should not set in their .....neighbourhood plans, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings". This has, at a stroke, undermined a large element of the Selsey Neighbourhood Plan.

11. The Town Council in its response to my Initial Comments dated 12<sup>th</sup> October 2015 acknowledged that the Secretary of State's had changed significantly but offered a robust rebuttal: -

"There comes a time where we must say that "this is our plan" and whilst we accept that policy may change around it, at the point of writing it has to be "our Plan" If we were to keep pace with every change that has taken place and will take place, it would cost of tens of £thousands and would be a hotchpot of ideas rather than a vision dealing with key issues and setting out usable policies"
12. Whilst I may personally share some of the Town Council's frustration nevertheless the legislation is clear that one of the tests of the Basic Conditions is to address the question has it been prepared "having regard to national policy and advice contained in guidance issued by the Secretary of State.". it is against the Secretary of State's advice at the time of the examination that is the benchmark rather than what was the advice at the time the earlier versions of the Plan were being written.
13. It is the conflict with Secretary of State policy and advice that leads to my continued concern that the plan as submitted does not pass all the tests to meet the Basic Conditions.
14. I have given much thought as to whether it would be possible for me to make recommendations to bring the Plan into line with Government advice. The extent of the required rearrangement of the document, the deletion of much of the policy and the guidance that lays at the heart of what the plan is seeking to achieve, plus the necessary updating of the Plan, goes to my mind, well beyond what it is possible for an examiner to undertake. Furthermore, the Plan that would emerge would bear no resemblance to the Plan that the Town Council had prepared and had consulted widely upon with its residents and other groups.
15. At the Hearing, I indicated that having heard the discussion, my conclusion at that time had not changed, namely that the Plan could not be said to meet the Basic Conditions and I trust that the parties at the hearing could at least understand the basis for my conclusions
16. During the discussion the Town Council representatives indicated that they wished to reflect on my conclusions and decide if and how they as a Town Council wished to respond and indeed decide whether to proceed with the Neighbourhood Plan. I therefore offered to prepare an interim report rather than complete my final examination report, which was likely to conclude that the plan in its present form should not proceed to referendum.
17. I need to make it clear and for the avoidance of doubt that this interim report does not represent the conclusion of my examination. I can understand the Town Council's anxiety that I do not formally make my final recommendation before the Town Council as a whole had the opportunity to consider its options. Essentially the options open to it are to produce an amended version of the Plan or take a decision not to proceed with a neighbourhood plan,

which would have implications for the future level of receipt of CIL moneys. At the hearing I did respond by saying that it would not be appropriate to radically change the Plan without the plan going through the necessary stages of public consultation as laid out in the Neighbourhood Plan Regulations, in effect going back to the Regulation 14 stage.

18. The examination currently stands adjourned and from my viewpoint, there are 2 options available. I can continue my examination and produce my report with the likely recommendation that the Plan does not meet Basic Conditions and should not proceed to referendum. Alternatively, I believe that it would be open to the Town Council to request to the Local Planning Authority that it no longer wished for the plan in its current form to proceed to examination and that it intends to produce a new version of the Plan which will then be the subject of a new round of pre submission consultation. In that scenario my examination of the current plan would cease. At the Hearing the representatives of the Local Planning Authority expressed their willingness to work closely with the Town Council on the redrafting of the policies and the restructuring of the documentation.
19. One advantage would be that by that time Chichester DC could be in a position to have its CIL scheme in place which will also address my concerns that some of the contribution policies do not pass the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations.
20. To conclude this part of my report, I appreciate that my conclusions will come as a major disappointment to the Town Council and the working group who have put a lot of hard work and commitment into producing the Plan. Many of the issues that I have identified fall outside the control of the Town Council. The preparation of an Interim Report is an unusual approach but I hope that it is helpful in helping the Qualifying Body to come to a view on how it wishes to proceed.
21. I therefore look to the Town Council to respond to me in due course and indicate whether it wishes me to proceed with the completion of my examination or whether it intends to tell the Local Planning Authority that it wishes to withdraw the current version of the Neighbourhood Plan.

John Slater BA(Hons), DMS, MRTPI.

7<sup>th</sup> December 2105

## **ANNEX: THE BASIS OF INTERIM CONCLUSIONS**

### **Neighbourhood Plan policies should be restricted to the” Use and Development of Land”**

The Neighbourhood Plan does include a section at the end entitled Non Planning Objectives but there is much material in the main body of the Plan document that relates to matters which go beyond the “use and development of land”. Some whole sections of the Plan cover non planning matters such as the Chapter entitled Community Safety – Police, Ambulance, Fire and Wardens. To give some further examples, I would point to support for Youth Dreams, comments regarding enhanced civil enforcement in areas with restricted access, parking fees, policies for the lobbying for public transport services. Government policy as set out in the Planning Practice Guidance is that such matters should ideally be in a companion document or annex and certainly be clearly identified as non planning policies

### **Structure of the Document**

Again the national guidance is that policies in the Plan are clear and unambiguous and should be drafted with such clarity that a decision maker can apply them consistently and with confidence when determining planning applications. Policies should be concise, precise and supported by appropriate evidence. I found the whole document to be a confusing mixture of background information, guidance and policy. Users of the Plan, when referring to the document would not be clear as to what policies and elements of the document are relevant to their planning application. Much of the document contains text that readers will quite reasonably assume as being statements of policy. I will give some examples below to illustrate the point

“development will be expected to incorporate, where feasible, low carbon energy generation and distribution by these means- or connect to nearby networks where there is available capacity for this to be viable”

“therefore, well designed “cottage’ or terraced two up two down type housing should be included in new development”

“new development immediately on the coastline must be positioned so that the primary living space has clear views of the sea”

‘every roof should be covered with photovoltaic panels and/ or passive water heating units”

“smaller brownfield sites in the town can be used as permanent/ static traveller sites

In part the confusion comes from the structure of the document, where matters are covered in earlier parts of the document which is separate from the section that

deals with the policy. Users of the Plan should not be faced with any ambiguity in understanding what they are required to comply with in terms of the policy section's requirement or whether they are meant to respond to the guidance and aspirations that are being promoted in the earlier part of the Plan. For example, much of the document is headed Local Design and Planning Policy, when the actual policies are contained at the end of the document. There is much text which purports to Guidance contained in the main body of the document but which is then not reflected in the policy and this displays a lack of clarity. A fundamental restructure of the Plan would look to bring all information as to a particular topic together so that everything the plan has to say about a particular issue is contained in that section and then there is no ambiguity as to what is and what purports to be policy statements and the supporting text.

### **Status of Some Plans**

There is no map that shows the full extent of the area covered by the Neighbourhood Plan policy. Equally the status of a number of the Plans is ambiguous. For example the Land Use Plan 2012 is not a just a reflection of existing land use, which maybe a useful background document as part of the Plan's evidence base, but some of the indications are that there are brownfield and green field sites *with development potential*. It is not clear if this is a reflection of planning policy or part of the site selection criteria. It then also includes a site which is an employment allocation. I heard at the Hearing that the land to the rear of the employment allocation should also have been designated as an employment allocation rather than as greenfield site with development potential which was a cartographical error. However, the owner of that land would be prejudiced by a change to reflect that mistake. Similarly, it is not appropriate for a neighbourhood plan to be showing a possible conservation area boundary change as it would cause confusion as to whether conservation area policies apply. That falls outside the remit of a neighbourhood plan.

### **Some of the document needs updating**

There are numerous examples where the plan has not been updated since originally drafted, for example it consistently refers to the Localism Bill, reference to Medmerry "should be completed by mid 2013", "discussions are on going regarding use of Academy playfield for junior football", " WSCC are preparing a report re use of Seal School for football and cricket". A very material update that has not been made is that the plan referred to housing need, by reference to persons on the housing register, being 448 in 2013 the figure now stands at 127. Other editing errors include the need to introduce a number into the text of Policy TAW01 dealing with the allocation for the temporary agricultural workers' accommodation.

The submission plan should provide information as to the fact that planning consents have been granted for a number of the housing allocation sites. The status of the allocations then changes to becoming commitments that will deliver the housing needs for the town as set by the now adopted Chichester Local Plan- Key Policies.

## **The Submission Version does not reflect that Government policy has Changed**

Much of the Plan is dedicated to ensuring that new development is built to the highest possible standards of environmental and energy efficiency. The plan contains much detailed guidance as to how this is to be achieved and a number of the requirements are enshrined with the design policies. However, since the Ministerial Statement of 25<sup>th</sup> March it is not possible for neighbourhood plans to include any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This renders much of the text of the plan irrelevant and can no longer be incorporated in a neighbourhood plan. Therefore, planning requirements relating to new development incorporating energy efficiency features, use of photovoltaics, grey water plumbing, ground source heat pumps, triple glazing and requiring all front and back doors to have entrance porches have to be deleted from the plan.

The requirement for all applications to be accompanied by a Crime Impact Statement cannot be a neighbourhood plan policy. The requirement for applications to be accompanied by particular documents is secured by their inclusion as local list requirements on what is required to make a valid planning application.

## **Thawscroft**

It is clear that the planning status of that land has changed over the lifetime of the plan and it has now been withdrawn as an allocation, although the site does appear as a site with development potential and it is described as a site that the flooding situation may be assessed during the lifetime of the plan. The plan includes a map that does not show the extent of the development land as it includes land with a local nature designation. My view is that it is not appropriate to allocate any site for residential development if it falls within Flood Zone 3. The sequential tests set out in the NPPF indicate that sites falling in Flood Zone 1 should be developed in preference to areas liable to flooding. There was a useful discussion at the hearing about whether I should allocate just that part of the site that lays outside flood Zones 2 and 3. It would be possible to include the gardens and open space in the areas on the edge of the flood zone. I also believe that the settlement boundary can contain the whole site if the site were to come forward as it is a sustainable location for new housing should the flooding objection be removed. This is a matter that the Town Council may consider helpful in looking forward.

## **Policy Not Justified by Evidence**

The NPPF requires that policy must be justified by evidence and in some areas I do not consider that the Plan has made the case in a sufficiently robust manner. My main concern is that the requirement for residential schemes of above a single unit being required to contribute to highway improvements, has not been justified. It may well be that the need for the policy will disappear once CIL is introduced which would allow the parish to direct some of its receipts to the highway and other infrastructure

improvements without having to pass the tests of Regulation 122 of the CIL Regulations 2010

### **Meeting the Legislative tests**

There are a number of areas where the Plan does not meet the requirements of Localism Act and the Regulations. These are, it includes policies which deal with waste matters, which are classed as excluded development and which cannot be included in a neighbourhood plan as County Matters. It could be argued that it seeks to deal with matters outside the Plan area in that it makes comments regarding the A27 highway improvements. Finally, it is not explicit as to the Plan period, which I understand from the Inquiry is to tie in with the Local Plan. However, I must stress these issues could have been dealt with as modifications that I could have recommended if the Plan were to move forward in my examination. I merely bring them to the attention of the Town Council