



Representation Form

Southbourne Parish Neighbourhood Plan Review 2019-2037

The Neighbourhood Planning (General) Regulations 2012 - Regulation 16

Southbourne Parish Council has prepared a Neighbourhood Plan Review. The plan sets out a vision for the future of the parish and planning policies which will be used to determine planning applications locally.

Copies of the Southbourne Parish Neighbourhood Plan Review and supporting documents are available to view on Chichester District Council's website:

<http://www.chichester.gov.uk/neighbourhoodplan>.

All comments must be received by 5:00 pm on 3 June 2021.

There are a number of ways to make your comments:

- Complete this form on your computer and email it to:
neighbourhoodplanning@chichester.gov.uk
- Print this form and post it to us at: **Neighbourhood Planning East Pallant House 1 East Pallant Chichester PO19 1TY**

Use of your personal data

All comments in Part B below will be publicly available and identifiable by name and (where applicable) organisation. Please note that any other personal information included in Part A below will be processed by Chichester District Council in line with the principles and rights set out in the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018, which cover such things as why and for how long we use, keep and look after your personal data.

How to use this form

Please complete Part A in full in order for your representation to be taken into account at the Neighbourhood Plan examination.

Please complete Part B overleaf, identifying to which paragraph your comment relates by completing the appropriate box.

PART A	Your Details
Full Name	Dr Chris Lyons
Address	Tetra Tech Planning The Pavilion, 1st Floor, Botleigh Grange Office Campus, Hedge End, Southampton, Hampshire,
Postcode	SO30 2AF
Telephone	

Email	
Organisation (if applicable)	Tetra Tech Planning
Position (if applicable)	Director
Date	2 June 2021

PART B

To which part of the document does your representation relate?

Paragraph Number	See accompanying letter and legal opinion but mainly para. 5.15 – 5.17; 5.87	Policy Reference:	SB1 SB14
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Do you support, oppose, or wish to comment on this paragraph? (Please tick one answer)

Support Support with modifications Oppose Have Comments

<p>Please give details of your reasons for support/opposition, or make other comments here:</p> <p>See accompanying letter and legal opinion</p> <p style="text-align: right;">(Continue on separate sheet if necessary)</p>

<p>What improvements or modifications would you suggest?</p> <p>See accompanying letter and legal opinion</p> <p style="text-align: right;">(Continue on separate sheet if necessary)</p>
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If you have additional representations feel free to include additional pages. Please make sure any additional pages are clearly labelled/addressed or attached.

Our Ref: 784-B025798

Neighbourhood Planning
Chichester District Council
East Pallant House
1 East Pallant
Chichester
PO19 1TY

2 June 2021

Dear Sirs

RE: OBJECTION TO SOUTHBOURNE PARISH NEIGHBOURHOOD PLAN REVIEW 2019-2037, REG. 16 CONSULTATION

I write on behalf of my clients, Reside Developments Ltd., to object to the Neighbourhood Plan Review. We believe there is much within the Plan to be commended and that it has been written to a high standard but unfortunately, we believe the plan to be fundamentally flawed as it fails the basic conditions of soundness. In particular, we believe that the plan does not meet basic conditions (a), (d) or (e) of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 ("the 1990 Act").

Policy SB1 – Development Within and Outside the Settlement boundaries

We object to this policy. We have attached a full legal opinion by Andrew Parkinson of Landmark Chambers which explains the legal case in detail but in summary, we believe that policy SB1 of the Plan is fundamentally flawed and needs to be rewritten.

Policy SB14 – Biodiversity

We object to the supporting text of this policy as it is written as it recommends a buffer of at least 50m either side of the chalk stream. We consider this to be excessive. We do not believe the 50m figure is justified with any evidence to back it up and this distance is far in excess of what is required as a buffer to Ancient Woodland for example, which by definition is highly sensitive.

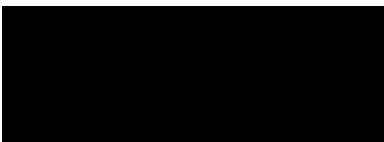
We have read the Sussex Wildlife Trust 'Chalk Rivers & Streams' leaflet that is referenced in the Plan and on p. 6 there is a management guide and it states that the buffer strip should be between 5-20m. The 'evidence base' for the Neighbourhood Plan for policy SB14 includes a Biodiversity note from August 2020 and the 50m buffer is mentioned in paragraph 1.11 but no evidence is given to substantiate the size of 50m.

For the avoidance of doubt, we support the policy itself as the majority of the text is positively written but we believe that the reference to 50m is excessive, not justified, not evidenced, and could end up counterproductive. For example, some development next to the stream corridor could result in improvements to the environment around the stream with the removal of concrete and structures but this excessive buffer will preclude most opportunities.

We would like to end on a positive note as it is unfortunate that the focus is on objections and we are only objecting to two of the twenty two policies. The majority of the Plan is very well written and there are many helpful policies to guide developers i.e. Policy SB4 on Meeting Local Housing Needs contains a helpful summary of housing need within the area. We are also supportive of Policy SB4 on Self-Build and Custom Build Housing which we believe will assist the local housing market and my client is looking to include some self-build housing units on their site in Hambrook. We think it is also a positive that the design policies have looked at individual localities rather than try to apply design codes across the whole area and this is to be supported.

We trust that these objections will be considered.

Yours sincerely,



Dr Chris Lyons

BSc (Hons); Dip. TP; MPhil; PhD (LSE); MRTPI
Head of Southampton Planning
Tetra Tech Planning

IN THE MATTER OF THE SOUTHBOURNE NEIGHBOURHOOD PLAN

OPINION

Introduction and Summary of Conclusions

1. I am instructed on behalf of Reside Developments (“Reside”) and asked to advise in relation to the emerging Southbourne Parish Neighbourhood Plan Review 2019-2037 (“the eNP”), being prepared by Southbourne Parish Council (“SPC”). The eNP is currently undergoing regulation 16 consultation pursuant to the Neighbourhood Planning (General) Regulations 2012 (“the NP Regulations”). The local planning authority is Chichester District Council (“the Council”). The eNP is being brought forward ahead of the Council’s emerging Local Plan Review (2016-2035) (“the emerging Revised Local Plan”).
2. In summary, I conclude that the eNP fails to comply with basic conditions (a), (d) and (e). In particular, paragraph B of Policy SB1 of the eNP was found not to comply with the basic conditions when the current version of the neighbourhood plan was examined. Nothing has changed to lead to a different conclusion on this occasion.

Factual Background

3. Reside has an interest in the Willowbrook Riding Centre, Hambrook Hill South, Hambrook, Chidham, Chichester, West Sussex, PO18 8UJ (“the Site”). The Site falls within the area of the eNP.
4. The Submission Version of the eNP includes the following policy:

“POLICY SB1: DEVELOPMENT WITHIN AND OUTSIDE THE SETTLEMENT BOUNDARIES

- A. *The Neighbourhood Plan will support sustainable development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan.*

B. Development proposals outside the settlement boundaries will be required to conform to development plan policies in respect of the control of development in the countryside. All proposals should avoid the actual or perceived coalescence of the settlements nor should they undermine the distinctive character or qualities of the Chichester Harbour AONB.

C. All proposals will be expected to support the delivery of the Green Infrastructure Network and 'Green Ring' as defined in policy SB13 where they lie within or adjacent to its location."

5. The proposed supporting text states as follows:

"5.15 Settlement boundaries are accepted as an essential tool for the management of development, principally to prevent encroachment of development into the countryside. This policy replaces Policy 1 'Spatial Strategy' of the 'made' Neighbourhood Plan and directs future development in the parish to the established settlements of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham. To accord with the approach adopted by CDC, the policy makes amendments to the Southbourne/Prinsted settlement boundary to include the permissioned land East of Breach Avenue and North of Cooks Lane. The policy also makes amendments to the boundary defined by Policy 1 to correct minor errors.

5.16 The policy also seeks to protect the essential countryside character of the defined settlement gaps between Southbourne, Nutbourne and Hermitage/Lumley/Thornham villages (in Policy 2 of the CLPKP). In addition, by supporting development within settlement boundaries it is consistent with Policy 43 of the CLPKP in respect of the Chichester Harbour AONB, which requires that the natural beauty and distinctive features of the AONB are conserved and enhanced and development does not lead to settlement coalescence.

5.17 The policy also accords with Policies 4, 6 and 20 of the CLPKP in respect of Southbourne village being identified in the settlement hierarchy of the District as being suitable for strategic development."

6. Policy SB2 of the eNP allocates land east of Southbourne village for a green infrastructure led, mixed-use scheme for at least 1,250 homes.

Planning Framework

7. The current development plan, in so far as is relevant, includes the adopted Chichester Local Plan: Key Policies 2014-2029 ("the Local Plan") and the Southbourne Neighbourhood Plan, made in 2015 ("the NP"). The purpose of the eNP is to update and replace some of the policies of the NP, as explained at paragraph 1.3 of the proposed supporting text to the eNP:

“The purpose of the Review is to replace or update some of the policies of the made Neighbourhood Plan, adopted by CDC on the 15 December 2015, and to include new policies that will be used to determine planning applications in the area in the period to 2037. Given the combination of these policies are considered by the Parish Council to ‘change the nature of the plan’ and its desire to put the new policies to referendum anyway, it has decided to carry out this Review in the form of a partial replacement Plan rather than by making modifications to the made Plan.”

8. The existing planning framework is set out below.

Local Plan

9. Policy 2 “sets out the settlement hierarchy” and that it “indicates the scale and type of development that will be provided in the different settlements”. The relevant parts of Policy 2 are:

"Development Strategy and Settlement Hierarchy

The development strategy identifies the locations where sustainable development, infrastructure and facilities will be accommodated which in terms of scale, function and character support the role of the settlements outlined below. ...

...

Settlement Hubs ...

New development to meet identified local needs will reinforce the role of the Settlement Hubs as centres providing a range of homes, workplaces, social and community facilities (See Policies 18, 20, 23 and 24). ...

Strategic development locations are identified at:

...

- *Southbourne, Selsey and East Wittering/Bracklesham in the form of medium-scale extensions (See Policies 20 and 23-24).*

...

Service Villages ...

Outside of Chichester city and the Settlement Hubs, the Service Villages will be the focus for new development and facilities.

Provision will be made for the following:

- *Small scale housing developments consistent with the indicative housing numbers set out in Policy 5 ...*

...

Settlement Boundaries

There is a presumption in favour of sustainable development within the Settlement Boundaries which will be reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans ...

Rest of the Plan Area: Small villages, hamlets, scattered development and countryside Development in the Rest of the Plan Area outside the settlements listed above is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45-46."

10. Chapter 7 explains that 630 homes are to be delivered on “strategic sites to be identified at the settlement hubs of East Wittering/Bracklesham, Selsey and Southbourne” under Policies 20, 23 and 24, and 860 “to be brought forward on parish housing sites” under Policy 5 (paragraph 7.12). The “approximate” number of homes indicated for “Southbourne village” as one of the “Strategic Allocations” under Policy 20 is 300. Policy 5 states that “[small] scale housing sites will be identified to address the specific needs of local communities in accordance with the indicative parish housing numbers set out below”, and that “[suitable] sites will be identified in neighbourhood plans or in a Site Allocation DPD ...”. The “indicative” housing number for “Southbourne (excluding Southbourne village)”, excluding strategic housing allocations, is 50.

11. Finally, Policy 45 states, under the heading “Development in the Countryside”:

"Within the countryside, outside Settlement Boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements.

Planning permission will be granted for sustainable development in the countryside where it can be demonstrated that all the following criteria have been met:

- 1. The proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement;*
- 2. The proposal is complementary to and does not prejudice any viable agricultural operations on a farm and other existing viable uses; and*
- 3. Proposals requiring a countryside setting, for example agricultural buildings, ensure that their scale, siting, design and materials would have a minimal impact on the landscape and rural character of the area."*

The NP

12. Policy 1 of the existing NP, "Development within the Settlement Boundaries", states:

“The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan.”

13. Policy 2, “*Housing Site Allocations*”, allocates four sites for development in the plan period, for a total of 350 dwellings, three of them in Southbourne village, the fourth at Nutbourne West.

14. The submission draft of Policy 1 of the NP had contained an additional sentence, which said as follows: “*[development] proposals outside the Settlement Boundary will be required to conform to development plan policy in respect of the control of development in the countryside*”. It will be noted that this sentence is identical to the first part of paragraph B of Policy SB1 of the eNP. The Examiner into the NP recommended the deletion of that sentence for reasons that I consider in more detail below.

Emerging Revised Local Plan

15. The Council is currently preparing its emerging Revised Local Plan. The Preferred Approach was published in December 2018. So far as is relevant:

- (1) It sets a housing target of 12,350 dwellings to be delivered in the period 2016-2035: see Policy S4.

- (2) Southbourne is a “*settlement hub*”: see Policy S2. Outside of the settlement boundary of Southbourne is the “*Rest of the Plan area*” where development “*will be restricted to that which requires a countryside location, meets essential local rural needs or supports rural diversification*”: see supporting text at paragraph 4.15.

- (3) This is reflected in the Development Strategy in Policy S3, which makes a strategic allocation in Southbourne in Policy AL13. In addition, non-strategic provision is made for small scale housing developments consistent with the indicative housing numbers set out in Policy S5.

- (4) For Southbourne, Policy S5 sets out that no homes are intended to come forward on small scale housing sites in Southbourne in the plan period.

(5) Policy AL13, sets out that a strategic allocation of 1,250 dwellings is proposed to be
“allocated for development in the revised Southbourne Neighbourhood Plan for a mixed-use form of development to include a minimum of 1,250 dwellings, along with land to be allocated for employment and community uses...”

(6) Finally, Policy S24 – *“Countryside”* sets out as follows:

“Outside settlement boundaries as defined on the policies map, development will be permitted in the countryside provided that:

- 1. It conserves and, where possible, enhances the key features and qualities of the rural and landscape character of the countryside setting;*
- 2. It is of an appropriate scale, siting and design that is unlikely to cause unacceptable harm to the appearance of the countryside; and*
- 3. It requires a countryside location or meets an essential local need, as provided for in Policies DM21 and DM22.*

Defined settlement boundaries may be altered by a development plan document and/or a neighbourhood plan.”

Analysis

16. By paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990 (“the 1990 Act”), the Examiner into the eNP must consider whether the proposal meets the *“basic conditions”* as set out in paragraph 8(2). These are as follows – with emphasis added:

“(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order

(d) the making of the order contributes to the achievement of sustainable development

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.”

17. In my opinion, Policy SB1 of the eNP as currently drafted fails to meet basic conditions (a) and (d).

18. The starting point is that the National Planning Policy Framework (“the NPPF”) makes a distinction between strategic policies and non-strategic policies. As the Planning Practice Guidance (“PPG”) section on Plan Making puts it at paragraph 1: *“The development plan for an area is made up of the combination of strategic policies (which address the priorities for an area) and non-strategic policies (which deal with more detailed matters).”*

19. The NPPF is clear that whilst a Local Plan may include both strategic and non-strategic matters, a neighbourhood plan should contain just non-strategic policies. The Glossary to the NPPF refers to *“non-strategic policies”* as being those *“contained in a neighbourhood plan”*. The distinction between Local Plans, which can contain both strategic and non-strategic policies, and neighbourhood plans which can only include non-strategic policies, is clear from paragraphs 17 and 18 of the NPPF. These state as follows:

17. The development plan must include strategic policies to address each local planning authority’s priorities for the development and use of land in its area¹¹. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

- a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or*
- b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred.*

18. Policies to address non-strategic matters should be included in local plans that contain both strategic and non-strategic policies, and/or in local or neighbourhood plans that contain just non-strategic policies.

20. Strategic policies are defined in paragraph 20 of the NPPF and include policies which set out the *“overall strategy for the pattern, scale and quality of development”*. Non-strategic policies are defined in paragraph 28 as follows:

“Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.”

21. There can be no doubt the acceptability of development outside of the settlement boundaries drawn in the eNP is a strategic matter. That is because it concerns the “*overall strategy for the pattern, scale and quality of development*”: see paragraph 20 of the NPPF. It is therefore a matter that should be addressed through the strategic policies of the Local Plan. Indeed, it is addressed through those policies. Policy 45 of the Local Plan sets out the circumstances when such development will be acceptable outside of settlement boundaries.
22. By requiring development proposals outside of settlement boundaries “*to conform to development plan policies in respect of the control of development in the countryside*” Policy SB1 is attempting to address a strategic matter, which is already addressed at the appropriate tier in the development plan: i.e. through Policy 45 of the Local Plan. This is inconsistent with the division between strategic and non-strategic plan-making envisaged by the NPPF, with the Local Plan addressing strategic matters and the neighbourhood plan addressing non-strategic matters.
23. Not only that, but it results in a duplication of policies in so far as development outside the settlement boundary is concerned. If Policy SB1 is not amended, development outside of settlement boundaries in the area of the eNP would be subject to both Policy SB1 of the eNP and Policy 45 of the Local Plan. The effect of both policies would be identical: any application which accorded with Policy 45 would comply with Policy SB1; any application which failed to comply with Policy 45 would fail to comply with Policy SB1. This is contrary to paragraph 16(f) of the NPPF which makes clear that plans should avoid “*unnecessary duplication of policies that apply to a particular area*”.
24. For all of these reasons, Policy SB1 of the eNP should be amended to remove the first sentence of paragraph B.
25. Indeed, I note that same sentence was removed by the Examiner into the NP. The submission version of that plan had the same policy wording as the first sentence of Paragraph B of emerging Policy SB1. It was deleted by the Examiner for reasons set out at paragraph 5.9 of the Examiner’s Report:

“5.9 To the extent that over the life of the Plan proposals might come forward for development outside the settlement boundaries, it would not be appropriate for the Plan to require such proposals to conform to development plan policy in the countryside. That

responsibility should be for Chichester District Council to determine through its development plan policies. For this reason, I have indicated that if this policy is to be retained, the final sentence of the draft policy should be removed, as indicated below. In the explanatory text, the policy should therefore encourage, rather than direct development, within the established settlements within the parish. The recommended revision to the policy is shown in Appendix 1.”

26. The previous Examiner therefore found that the first sentence of paragraph B of Policy SB1 failed to meet the basic conditions for the same reasons that I have set out above at paragraphs 17-23. The Examiner’s reasoning has previously been endorsed by the Council. The Council’s “Decision Statement” confirmed that it accepted the recommendations made by the Examiner, including the modification to Policy SB1. Importantly, the Council could only have done this if it accepted that the modification was “*need[ed] to be made to secure that the draft order meets the basic conditions...*”: see paragraph 12(6) of Schedule 4B to the 1990 Act.

27. Given the clear finding made by the previous Examiner, and subsequently endorsed by the Council, it would be necessary to give reasons for reaching a different outcome on this occasion: see North Wiltshire DC v Secretary of State for the Environment (1993) 65 P. & C.R. 137. I cannot conceive of any reason for reaching a different decision. The 2012 NPPF was materially similar to the current version of the NPPF in the distinction made between strategic and non-strategic plan making: see paragraphs 184-185 of the 2012 NPPF. Paragraph 16(f) of the NPPF, which makes clear that plans should avoid “*unnecessary duplication of policies that apply to a particular area*”, was not included in the 2012 version of the NPPF which, if anything, strengthens the argument for deleting the relevant sentence.

28. Not only this, but the conclusions of the previous Examiner have recently been endorsed by the Court of Appeal. The NP was considered in the case of Chichester DC v Secretary of State for Housing, Communities and Local Government [2019] EWCA Civ 1640. In that case, Lindblom LJ stated as follows (at paragraphs 41-42) – with emphasis added:

“41 ...No policy in the neighbourhood plan replicates Policy 45 or provides any different approach to proposals for development outside settlement boundaries. There was no need to include such a policy in the neighbourhood plan, and it would have been inappropriate to do so. As Mr. Garvey submitted, if a stricter – or more liberal – policy for development outside settlement boundaries had been inserted in that plan, it would have upset the

carefully formulated policies for such proposals already in place in the recently adopted local plan. It would have clashed with local plan Policies 2 and 45.

42. This, therefore, is not one of those cases in which a complete set of development plan policies for housing development is to be found in a single document. The strategy for housing development in Southbourne is undoubtedly complete. It does not lack any necessary policy. It contains a suite of policies covering the full range of locations where housing development might be allocated or proposed. But it is not all in one document. It is deliberately split between two. It spans the local plan and the neighbourhood plan, which went through their statutory processes at the same time, and relate to the same plan period. Neither plan on its own constitutes the entire development plan strategy for housing development in Southbourne. Together, however, as two elements, they compose the full strategy. They are mutually dependent parts of a single, comprehensive whole, complementing each other. The positive part of the strategy, which sets the plan's approach to the allocation of sites for housing development, includes Policies 5 and 20 of the local plan, which are translated to the neighbourhood level in Policies 1 and 2 of the neighbourhood plan. The restrictive part is in Policies 2 and 45 of the local plan, limiting development in the "countryside" outside settlement boundaries – which have no counterpart in the neighbourhood plan. As the examiner discerned in the neighbourhood plan process, the local plan conferred on the neighbourhood plan the opportunity to make allocations and to revise the settlement boundary, while the neighbourhood plan left squarely with the local plan the task of framing a development control policy for unallocated sites outside the settlement boundaries – which is what it did in Policies 2 and 45.”

29. The conclusion of Lindblom LJ that there was “no need” to include a policy duplicating Policy 45 of the Local Plan in the NP and that “it would have been inappropriate to do so” provides clear evidence that the conclusion reached by the previous Examiner was sound.

30. For all of these reasons, as before, Policy SB1 should be amended to delete the first sentence of paragraph B.

31. There are other reasons why this amendment is necessary to ensure that the eNP meets the basic conditions.

32. The effect of Policy SB2 is to set a cap on development, because the only housing development that can come forward in Southbourne in the plan period is that within the settlement boundary (see Paragraph A of emerging Policy SB1) and that permitted by the strategic allocation in Policy SB2. This is contrary to the basic conditions:

(1) Paragraph 11(a) of the NPPF requires that plans should “be sufficiently flexible to adapt to rapid change”. In Woodcock Holdings v SSCLG [2015] EWHC 1173 (Admin),

Holgate J quashed a decision of the Secretary of State refusing planning permission, on the basis that (inter alia) he had failed to appreciate that the emerging Hurstpierpoint and Sayers Common 2031 Neighbourhood Plan (with which it was said the development was in conflict) would not pass examination. That was because it proposed a “cap” on development in the plan area of 30-40 dwellings. As he put it at paragraph 126:

... the Secretary of State should have appreciated from the BDW case (as well as from the Claimant's post-inquiry representations) that policy H4 would not satisfy the requirement in the “basic condition” to have regard to the NPPF, and in particular the need for “flexibility” and “to plan positively for growth”, unless it was amended so as to remove the cap limiting new housing in the village to 30 — 40 dwellings...

(2) In light of this, Holgate J held that it was incumbent on the Examiner to consider whether the ENP, which limits the amount of development to be delivered in an area, complied with the core requirements of the NPPF to (i) meet the housing needs of an area (ii) to do so with “flexibility” and (iii) to “plan positively for growth”: see Woodcock Holdings at para. 126. Further, in Woodcock Holdings, Holgate J held that the need for flexibility in Neighbourhood Plan housing supply policies “has all the more force” in a situation where (as here) a neighbourhood plan is proceeding in advance of an up to date NPPF compliant plan (at para. 127).

(3) Similarly, in BDW Trading v Cheshire West and Chester [2014] EWHC 1470 (Admin), one of the reasons that the examiner’s decision to approve the Tattenhall Neighbourhood Plan survived challenge was because he found that the draft plan did not intend to limit the overall level of growth in the area; and he required an amendment to be made to the plan to ensure that it did not do so: see BDW at para. 36.

33. Finally, if the first sentence of Paragraph B of Policy SB1 of the eNP is not removed, this would prohibit sustainable development outside of settlement boundaries in Southbourne. The Council has recently prepared an Interim Position Statement for Housing (“IPS”) to help guide development in the Local Plan area until the Local Plan Review is adopted. This “draws together adopted and emerging Local Plan policies to outline the types of new residential development that the council would support for the area.” The purpose is explained at paragraph 2.3 as follows:

“The intention is for the Council to be able to guide development to appropriate and sustainable locations using this document to assist in the consideration of planning applications. It will help to ensure that housing proposals that may be submitted in advance of the Local Plan Review are assessed in a consistent manner against national and local planning policies, with the aim of ensuring that the most appropriate development comes forward in the most suitable locations.”

34. Paragraph 6.2 states as follows:

“To provide clarity for applicants and other parties, the following criteria set out what the Council considers good quality development in the Chichester Local Plan area, with reference to adopted and emerging Local Plan and made Neighbourhood Plan policy and evidence.

1. The site boundary in whole or in part is contiguous with an identified settlement boundary as approved in the adopted development plan (i.e. at least one boundary must adjoin the settlement boundary or be immediately adjacent to it).”

35. As such, in circumstances where the Council does not have a 5YHLS, it does not consider that development outside of settlement boundaries is necessarily inconsistent with sustainable development, provided that at least one boundary adjoins the settlement boundary or is immediately adjacent to it (and the other criteria in paragraph 6.2, which fall outside the scope of Policy SB1 are met). The approach taken by the eNP is therefore inconsistent with the Council’s approach to what amounts to sustainable development at present.

36. For all of these reasons, the first sentence of Paragraph B of Policy SB1 should be removed from the eNP as it fails to comply with basic conditions (a) and (d).

37. Basic condition (e) states that it will be appropriate to make a neighbourhood plan where:
“the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)”

38. So far as this basic condition is concerned, case-law establishes the following principles:

(1) The relevant test is one of “*general conformity*” only: see DLA Delivery v Lewes District Council [2017] EWCA Civ 58 per Lindblom LJ at [23]. Assessing “*general*

conformity” is not a question of law, but one of planning judgment: see Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council [2006] 1 WLR 334.

- (2) The key test is whether the neighbourhood plan as a whole is in general conformity with the strategic policies in the development plan taken as a whole: see R (Swan Quay LLP) v Swale Borough Council at [27]-[29].
- (3) The fact that a policy in a neighbourhood plan may be in conflict, or not in general conformity, with one strategic policy in the development plan does not necessarily mean that the plan itself may not be in general conformity with the strategic policies as a whole: Hoare v Vale of White Horse DC [2017] J.P.L. 1406 at [84] and R (Swan Quay LLP) v Swale Borough Council [2017] EWHC 420 (Admin) at [29].
- (4) Paragraph 8(2)(e) requires conformity with the existing development plan. However, it does not require the making of a Neighbourhood Plan to await the adoption of any other development plan document. In particular, it does not prevent a Neighbourhood Plan from addressing housing needs unless or until there was an adopted development plan in place setting a housing requirement for a period coinciding with the plan: see DLA Delivery. For that reason, as Lindblom LJ said in the same case (at [25]):

“The neighbourhood development plan may also conform with the strategy of an emerging local plan. It may, for example, anticipate the strategy for housing development in that emerging plan and still not lack “general conformity” with the “strategic policies” of the existing development plan.”

39. Legally, therefore, it is possible for the rNP to be in general conformity with the Local Plan, notwithstanding that the Council is revising that plan through the emerging Revised Local Plan. However, it is quite clear that the eNP is not in general conformity with the strategic policies in the Local Plan. This is not a question of conflict with one policy. In terms of the housing numbers, and the delivery of those numbers in Southbourne, the eNP is completely at odds with the Local Plan. Compare, for example, the Local Plan which makes strategic allocations of approximately 300 homes in Southbourne – all of which have been delivered – with the eNP which proposes a strategic allocation of 1,250 homes.

40. In truth, the eNP relies solely on the emerging Revised Local Plan for its strategic direction – notwithstanding the fact that his emerging plan is at a very early stage, and the policies within it (including its housing numbers) have not been examined. Therefore, this is not a case where the eNP could be said to be in conformity with both the Local Plan and the Revised Local Plan (as envisaged in DLA Delivery). Rather, it is consistent with the strategic policies in the emerging Revised Local Plan but not those in the Local Plan.

41. In those circumstances, it therefore fails to comply with basic condition (e).

Conclusion

42. My conclusions are set out at paragraph 2 above.

ANDREW PARKINSON

[REDACTED]

24th May 2021