



Representation Form

Southbourne Modified Neighbourhood Plan 2014-2029 Submission Modified Plan (January 2023)

The Neighbourhood Planning (General) Regulations 2012 - Regulation 16

Southbourne Parish Council has prepared a modified Neighbourhood Plan. The modified 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 Modified Neighbourhood Plan 2014-2029 Submission Modified Plan (January 2023) 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 14 April 2023.

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 UK GDPR (General Data Protection Regulation) 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	Patrick Barry
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Organisation (if applicable)	Nova Planning Limited on behalf of Metis Homes Limited
Position (if applicable)	Director
Date	12.04.23

PART B

To which part of the document does your representation relate?

Paragraph Number	Foreword, Paragraph 5.72	Policy Reference:	SB1, SB13, SB14, SB15
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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

Please give details of your reasons for support/opposition, or make other comments here:

Please see accompanying Statement and Appendix.

(Continue on separate sheet if necessary)

What improvements or modifications would you suggest?

Please see accompanying Statement and Appendix.

(Continue on separate sheet if necessary)

If you have additional representations feel free to include additional pages. Please make sure any additional pages are clearly labelled/addressed or attached.

Southbourne Modified Neighbourhood Plan (Regulation 16 Consultation)

Representations on behalf of: Metis Homes Limited

Local Planning Authority: Chichester District Council

April 2023

1. Instructions and Introduction

i. Instruction & Context

1.1 These representations have been prepared by Nova Planning Limited on behalf of Metis Homes (hereafter referred to as 'Metis') on the Draft modified Southbourne Neighbourhood Plan (hereafter referred to as 'the modified Plan'). Metis control land at Southbourne under SHELAA references HSB0012a, HSB0012b and HSB0039a.

1.2 The Metis land is shown at Figure 1 below and comprises two adjoining parcels - an eastern parcel (shown edged red) known as 'Harris Scrapyard & Oaks Farm' (HSOF) and a western parcel (shown edged blue) known as 'Land East of Inlands Road' (LEOIR).

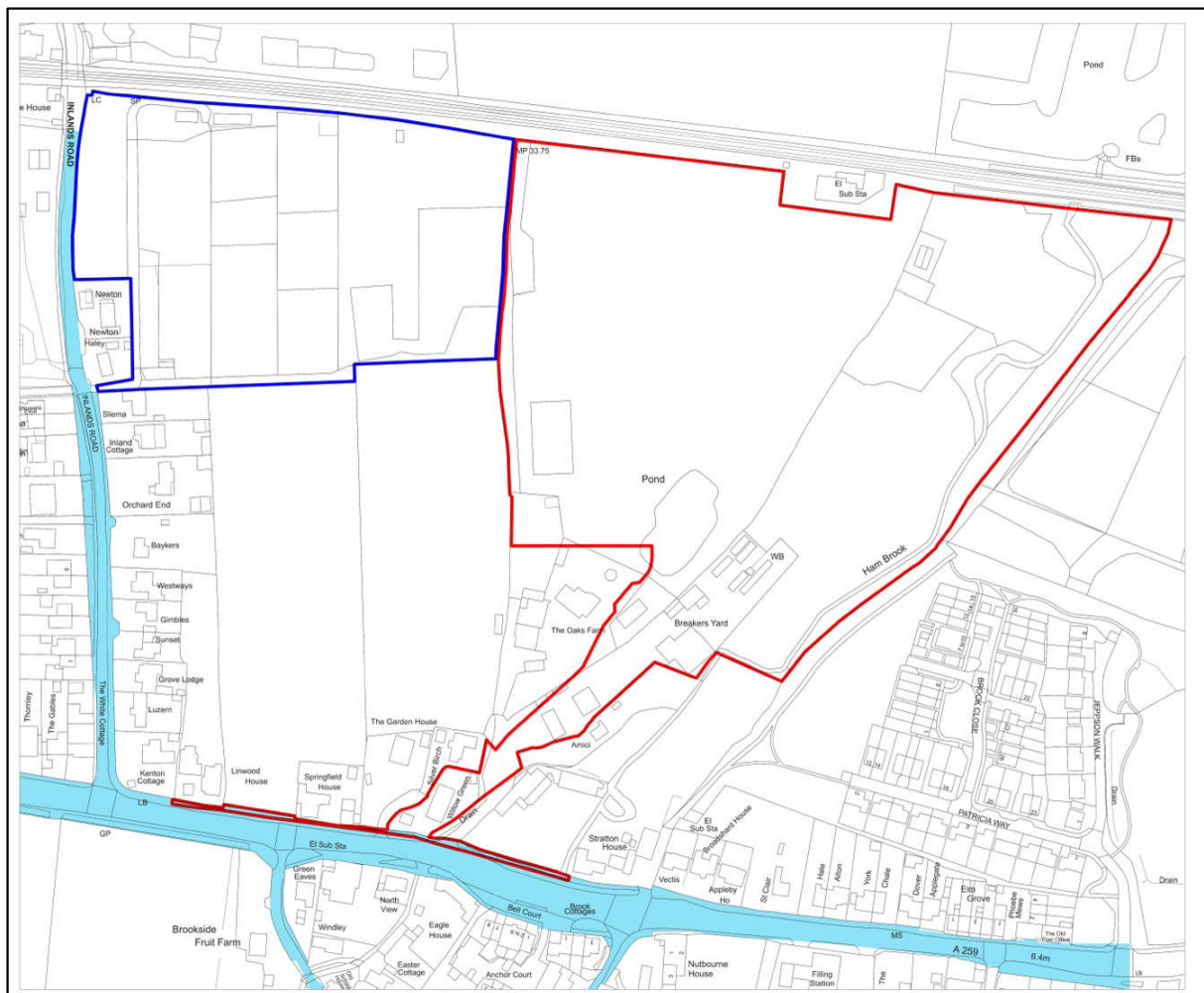


Figure 1: Site Location Plan

- 1.3 The land at HSOF is the subject of a current planning appeal under Ref. APP/L3815/W/23/3318548. The proposal comprises a residential led mixed-use development of 103 no. dwellings, a Children’s Nursery and the provision of a multifunctional Green Corridor. The proposed Site Layout/Masterplan is shown at Figure 2.
- 1.4 The eastern portion of the Site, which comprises the existing Breakers Yard, will be remediated and converted to a natural landscape in the form of a proposed multifunctional Green Corridor. This aligns with aspirations for a Strategic Wildlife Corridor in this location in the emerging Local Plan Review and emerging ‘modified’ Neighbourhood Plan. The Green Corridor will make habitat connections between the South Downs National Park to the north and that Chichester Harbour AONB/SPA to the south, whilst providing approximately 30% Biodiversity Net Gain and recreational opportunities for local residents.
- 1.5 The proposed residential development will be located on the western portion of the site. This area currently comprises flat garden land, lying between two defined edges to the north (railway line) and south (A259 – Main Road), and between two housing allocations from the current Southbourne Neighbourhood Plan to the east and west, which have recently been built out.



Figure 2: Proposed Site Layout/Masterplan

1.6 The Appeal Statement of Case includes a legal opinion from Matthew Reed KC, which deals specifically with modified Plan and assumptions with the draft plan regarding housing land supply. The Statement of Case provides commentary regarding a number of policies in the modified Plan that relate to the principle of development. These representations are made for consistency with the appeal case.

ii. Introduction

1.7 Metis are supportive of the intention to bring forward a Neighbourhood Plan for Southbourne. However, there are significant concerns regarding assumptions made within the modified Plan and resultant inconsistencies with National and Strategic Policies. These assumptions relate to housing land supply and the implication of the modified Plan for planning applications within Southbourne Parish prior to the adoption of the emerging CDC Local Plan Review. Concerns are also raised regarding the retention of existing Neighbourhood Plan policies dealing with the principle of development, given their interrelationship with an out-of-date Local Plan and conflict with the Council's Interim Position Statement on Housing Development (IPS). Finally, concerns are raised over the introduction of new policies which are considered inconsistent with the adopted CDC Local Plan and prejudicial in the context of the emerging CDC Local Plan Review.

2. Representations

i. Housing Land Supply – Inconsistency with National Policies and Strategic Policies

2.1 The ‘Foreword’ for the modified Plan sets out the basis for the modification and states as follows (my underlining for emphasis):

Why is there continued pressure for more housing in Southbourne?

A national formula sets targets for new housing which have to be met by local authorities. CDC is working on a revised LP for the whole District which has to allocate land for many more houses. Most of these will have to be built along the A259 or around Chichester, between the South Downs National Park (SDNP) and the Chichester Harbour Area of Outstanding Natural Beauty (AONB), both of which have special protection. CDC is still working on its review of the Local Plan and has struggled to demonstrate sufficient planning permissions to satisfy the government’s requirement for a 5 year supply of land for new housing. As a result, the whole area is vulnerable to speculative development (as we have seen with the planning appeals allowed for the sites at Breach Avenue and Cooks Lane).

What approach does SPNP3 take?

Although it is anticipated that CDC’s LP Review will be submitted for Examination by mid- 2023 there is no telling how long it might be before it is approved. As an interim measure, SPC intends to submit a revised NP based on the LP 2015 so that there is at least a temporary NP in place for 2 years, providing some protection and influence for the period between now and the new LP coming in to force. The benefit of having a recently agreed NP is that CDC is only required to demonstrate a 3 year supply of land for housing (rather than the normal 5 years). This should be quite straightforward and should enable it to defend the parish against speculative development.

2.2 The statement above presents the case that making the Plan will reduce the housing land supply requirement for Southbourne Parish to 3-years, relying on the provisions of Paragraph 14 of the National Planning Policy Framework (NPPF). Nova Planning Limited have previously advised Metis that this approach is unsound, and Metis have taken legal advice on this matter from Matthew Reed KC at Landmark Chambers. The advice is attached at Appendix 1 and confirms that the modified Plan fails to satisfy Paragraph 14(b) of the NPPF. Therefore, the presumption at Paragraph 11 of the NPPF would not be reversed as suggested above.

2.3 The modified Plan, as currently drafted, is inconsistent with the NPPF in that it seeks to undermine the provisions of Paragraph 11 in delivering housing where a 5-year housing land supply shortfall exists. This in turn undermines the overarching objectives of the NPPF in boosting housing delivery and supporting sustainable development - Paragraph 20 (Sustainable Patterns of Development), Paragraph 29 (Plan Making), Section 5 (Delivering a Sufficient Supply of Homes), Paragraph 60 (Significantly boosting housing supply), Paragraph 74 (Maintaining Housing Supply) and Section 9 (Sustainable Patterns of Development).

- 2.4 The modified Plan is also in conflict with the strategic policies in the adopted CDC Local Plan and the sustainable development objectives contained within these policies.
- 2.5 Firstly, by seeking to reverse Paragraph 11 of the NPPF (see accompanying legal advice at Appendix 1), Policy 1 of the CDC adopted Local Plan, which outlines *‘the presumption in favour of sustainable development’*, would be disengaged on the basis of a flawed interpretation of Paragraph 14 of the NPPF. This is a significant conflict.
- 2.6 Policy 2 of the CDC adopted Local Plan outlines the ‘Development Strategy’ for achieving the objectives of the plan and paragraph 4.3 states that *“This approach fulfils the requirements for sustainable development as set out in the NPPF”*. Policy 2 defines a settlement hierarchy based on this sustainable development objective and the relative sustainability merits of locations within the Plan area. Southbourne is defined as a high order ‘Settlement Hub’ with excellent access to existing facilities and services. It also benefits from access to high frequency public transport (rail and bus), which promotes sustainable modes of travel and reduces environmental impacts associated with travel. It represents one of the few locations in the southern Plan area where development can be accommodated with opportunities to limit traffic generation on the A27. The modified Plan, as drafted, would restrict development in this high order settlement without any valid justification. It would undermine CDC’s ability to promote sustainable patterns of development in decision making, consistent with this policy and Policy 1. It would result in development being pushed to less sustainable locations in the district in direct conflict with Policy 2.
- 2.7 Policy 8 of the CDC adopted Local Plan seeks to ensure that development is directed to sustainable locations where it will *“minimise the need for travel, encourage the use of sustainable modes of travel as an alternative to the private car”*. The introductory text to the policy acknowledges congestion issues on the A27 as a key issue affecting the Plan area. As noted above, Southbourne is a highly sustainable location for development, consistent with its status in the settlement hierarchy. It also provides opportunities for sustainable modes of travel consistent with Policy 8. The modified Plan, as drafted, would restrict development in Southbourne on the basis of a flawed interpretation of Paragraph 14 of the NPPF and in doing so directly undermine the objectives of Policy 8.
- 2.8 The policies in the CDC Local Plan relating to housing supply are over 5 years old and therefore out-of-date, in both general terms and more specifically in the context of Paragraph 11 of the NPPF. This is acknowledged by CDC in the adoption of an IPS to ensure continued housing delivery pending the adoption of a Local Plan Review. It specifically seeks to focus development to sustainable locations such as Southbourne. It provides the Council’s basis for determining planning applications for housing in the policy vacuum that currently exists. The modified Plan, as drafted, would directly conflict with the intentions of the IPS and push development to less sustainable locations, against the intentions of the settlement hierarchy within the adopted Local Plan.

2.9 With these considerations in mind, the modified Plan fails Basic Conditions (d) and (e) in Schedule 4B of the Town and Country Planning Act 1990 (as amended) a set out below for clarity:

d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.

e. the making of the order (or neighbourhood plan) 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).

2.10 To rectify these issues all commentary which suggests that making the modified plan would engage paragraph 14 of the NPPF should be removed, including all references to housing land supply which are not relevant given the nature and scope of the proposed ‘modifications.

ii. Retention of existing Neighbourhood Plan policies dealing with the principle of development

2.11 The modified Plan presents itself as an interim basis to protect the Parish from unplanned development until the emerging CDC Local Plan Review is adopted, and a large number of policies from the current Southbourne Neighbourhood Plan are retained. These include policies that relate to the principle of development.

2.12 Policy SB1 seeks to make provision for the development needs established under adopted Local Plan Policy 2, amending the Settlement Policy Boundary (SPB) to accommodate these needs. This is reflected at Paragraph 4.6 of the Plan which states (my underlining for emphasis):

The prior alignment of the Settlement Boundaries was established in the 1999 Local Plan Policy BE1. However, as there are no sites of sufficient size to accommodate new development within these boundaries, their alignment requires amendments in order to make provision for the site allocations in Policy 2.

2.13 CDC adopted Local Plan Policy 2 sets out a spatial strategy for Chichester District based on a defined Settlement Hierarchy, wherein Southbourne is defined as a high order settlement and one of the four Settlement Hubs. It states that there will be a medium-scale extension in Southbourne. The policy seeks to direct housing to sites within SPBs and establishes a presumption against development beyond SPBs, except for development requiring a countryside location or meeting a rural need. These boundaries have been established based on the housing requirement at Policy 4 (strategic housing requirement) which is out-of-date and, in any event, suppressed the Council’s Objectively Assessed Housing Needs (OAN) at the point of adoption. This is highlighted in the Local Plan Inspector’s Report as follows:

“Halting the Plan at this stage would allow an up to date transport study to be undertaken to include testing up to the agreed OAN. However the transportation situation is complex and at present there are uncertainties about the timing and detail of the A27 upgrade. Furthermore, failure to adopt the Plan at this stage would delay delivery of the area’s strategic priorities and weaken the Council’s ability to ensure that development is sustainable...’

For these reasons I conclude that the Plan should be adopted now, subject to a commitment to a review to be completed within five years. This will ensure that housing delivery after the first five years of the Plan period can be updated to take account of emerging evidence on highway infrastructure and rigorous testing of the impacts of providing housing up to the OAN or any updated OAN”.

2.14 Policy 2 itself uses the SPB in a very blunt and binary manner. It does not have any regard to the varying context and character of areas outside of defined SPB. For example, the land controlled by Metis is located outside of the SPB, yet it includes an operational Breakers Yard and is closer to existing local amenities than the housing allocation to the east know as Meadow View, which is within the SPB.

2.15 CDC adopted Local Plan Policy 4 identifies an overall housing requirement of 7,338 dwellings for the District over the Plan period and the distribution of this requirement based on the spatial strategy in Policy 2. This housing requirement is out-of-date as the Local Plan is more than 5 years old in accordance with Paragraph 33 of the NPPF. The policies in the Plan that relate to housing delivery are considered to be out-of-date for the same reasons, and Paragraph 11 of the NPPF is also engaged on that basis.

2.16 Whilst CDC has not explicitly acknowledged that Policy 4 is out-of-date, it is implicitly acknowledged through the publication of the IPS. The Council has explicitly acknowledged that a 5-year housing land supply shortfall exists and therefore paragraph 11d of the NPPF is engaged. On this basis, it is clear that Policy 4 is out-of-date.

2.17 In this respect Policy SB1 of the modified Plan is simply a vehicle to deliver the strategic housing requirement for Southbourne as defined by Policy 2 of the CDC adopted Local Plan and the SPB is an extension of Policy 4 of that plan. Consequently, Policy 1 of the modified Plan would be immediately out-of-date. It would restrict development outside of the settlement policy boundary which has been carried over from an out-of-date Neighbourhood Plan. Whilst a Housing Needs Assessment was undertaken in 2020, this is now three years old and, in any event, the modified Plan does not include housing policies that respond to the findings of the assessment, contrary to Paragraphs 66 and 67 of the NPPF.

2.18 On this basis. Policy SB1 of the modified Plan is directly in conflict with Basic Condition (d).

2.19 To address this issue, Policy SB1 should be omitted from the modified Plan or amended to:

- 1) Remove reference to SPB and replicate the sustainable development principles outlined in the IPS, whereby development proposals would be determined on their merits and having regard to these principles; or
- 2) Remove reference to SPB and define specific criteria for development which are consistent with the NPPF and strategic policies in the CDC adopted Local Plan where these policies remain relevant (noting that the Plan is over 5 years old).

2.20 These changes would also address pre-existing deficiencies in Policy SB1, where the very blunt and binary application of the SPB does not have any regard to the varying context and character of areas outside of defined SPB. For example, some of the land controlled by Metis is located outside of the SPB, yet it includes an operational Breakers Yard and is closer to existing local amenities than the housing allocation to the east known as Meadow View, which is within the SPB. This is consistent with the approach used in the IPS, which seeks to apply a more nuanced assessment to proposals beyond SPBs based on character-based considerations, amongst other criteria.

iii. [Introduction of new and amended policies which are considered inconsistent with the adopted CDC Local Plan](#)

2.21 The modified Plan includes a number of new and amended policies, some of which are considered to be inconsistent with the CDC adopted Local Plan. It is inconsistent and prejudicial in the context of the emerging CDC Local Plan Review.

2.22 **Policy SB13 (Green and Blue Infrastructure Network)** – Metis is supportive of the ‘Green Ring’ principles that were established through the currently adopted Neighbourhood Plan. Metis also recognises the importance of the Ham Brook wildlife corridor in this approach and the role of their land in delivering Green Infrastructure networks in Policy SB13. However, as currently drafted, the policy wording defines this area by reference to the associated ‘Policies Map’.

2.23 Having reviewed this Map, the location and alignment of the Green Ring reflect the ‘Ham Brook Chalk Stream Wildlife Corridor’, which is entirely logical. However, the extent of this area shaded green appears to reflect the Strategic Wildlife Corridors identified in the emerging CDC Local Plan Review. The emerging Local Plan is not at an advanced stage. Therefore, all proposed designations remain in draft form and subject to potential change or removal through the Local Plan Examination process. Defining boundaries on this basis is considered prejudicial and it risks future inconsistency with the emerging CDC Local Plan Review.

2.24 Separately, the extent of the designated area does not account for the context of land within it or physical boundaries. For instance, the wildlife corridor as represented on the Policies Map includes land controlled by Metis which comprises part of an existing Breakers Yard. The extent of this area should be informed through the planning process, where the context of the land within the area can be properly assessed against the overall benefits of the proposal can be considered in the context of the objectives of creating a high-quality Wildlife Corridor. The Metis land occupies an important area within the proposed Green Ring and Strategic Wildlife Corridor, given the site's direct interface with the Ham Brook Chalk Stream (one of the most ecologically sensitive parts of the proposed Strategic Wildlife Corridor). The proposed development represents an opportunity to significantly improve a relationship that is highly compromised by the existing use of the land. It is neither practical nor commercially viable for a landowner to release land in an existing commercial use solely for green space. Furthermore, delivering the extent of green space envisaged for the Strategic Wildlife Corridor would require engineering works to clear existing hardstanding and decontamination measures, which bring associated costs that need to be recovered by the development.

2.25 To address these issues, it is recommended that:

- 1) Part A of the policy is amended to recognise the presence of the Breakers Yard and to provide more explicit support for redevelopment of this land as required for the delivery of the Green Ring and Wildlife Corridor.
- 2) The Policies Map is updated to include a less definitive boundary to the Green Ring and Wildlife or alternatively to describe it as illustrative.

2.26 In the absence of these changes, the policy is considered prejudicial. It is inconsistent with the strategic policies in the adopted Development Plan. It is also prejudicial in the context of the strategic policies in the emerging CDC Local Plan Review and risks potential conflict. In these respects, without changes the policy fails Basic Condition (d). Separately, the policy does not accurately describe the context of the Ham Brook chalk stream, i.e. the main basis for the Wildlife Corridor designation, and it fails to promote sustainable development by positively supporting the redevelopment of the existing Breakers Yard to facilitate the delivery of the policy objectives. This results in a conflict with Basic Condition (e).

2.27 **Policy SB14 (Biodiversity)** – The policy is accompanied by Plan D at paragraph 5.72, which relates to the Strategic Wildlife Corridors identified in the emerging CDC Local Plan Review. The emerging Local Plan is not at an advanced stage and therefore all proposed designations remain in draft form, subject to potential change or removal through the Local Plan Examination process. For the same reasons as cited above at paragraph 2.22, the inclusion of Plan D and the associated text is considered prejudicial, and it risks future inconsistency with the emerging CDC Local Plan Review. These elements need to be removed to avoid a conflict with Basic Condition (d).

2.28 The policy also needs to reflect the extended timetable being given to small sites to ease the burden on small developers and LPAs. The Government’s response to the consultation on the regulations for and implementation of BNG outlines that implementation of BNG on small sites will be extended to April 2024.

2.29 **Policy SB15 (Trees, Woodland and Hedgerows)** – This includes the requirement for like-for-like replacement of trees where removed. This does not account for scenarios where trees may be removed for sound arboricultural reasons and in the interests of the retention of good quality trees. The policy makes provision for scenarios where like-for-like replacement is not possible. However, in these scenarios it does not support the planting of younger specimens. This does not account for the fact that planting mature trees can often be less successful than planting younger specimens. The success is largely dependent on suitable planting and management. Whilst the retention of trees of amenity value is supported, where possible, it is important that the policy does not make development unviable and undeliverable.

2.30 The policy should be amended to state *“Where the loss of mature trees or hedgerow is proven to be unavoidable or where this is justified for sound arboricultural reasons, the proposals must make provision on site for ~~like-for-like replacements~~ suitable mitigation...”*.

2.31 **Policy SB19 (Zero Carbon Buildings)** - Metis supports the motivations and objectives in of this policy. However, it is important that there is consistency between the modified Plan, the CDC adopted Local Plan and Building Regulations. Similarly, it is important that these policies do not prejudice the emerging CDC Local Plan Review and policies within this plan which are potentially subject to change during the Local Plan Examination process. In the interests of providing a deliverable development and to ensure that the Neighbourhood Plan remains up to date for the Plan period, it is recommended that this policy is either removed or altered to reflect CDC adopted Local Plan Policy 40 unless superseded by Building Regulations. As currently drafted, the policy is inconsistent with the strategic policies in the adopted Development Plan and as such fails Basic condition (e).

3. Conclusions

- 3.1 We trust that the representations herein will be given due consideration. However, we reserve the right to make further representations, as necessary, at the Examination stage.

OPINION

1. I am asked to advise Metis Homes in connection with the above site (“the Site”). In particular, I am asked to advise on the applicability of paragraph 14 of the NPPF in the event that the draft Southbourne neighbourhood plan (“the SNP”) is made in its current form.
2. I do not set out the background facts in this case – they are straightforward and well-known to the parties. Nor do I set out paragraph 14, which the parties have access to.
3. The critical part of that paragraph is paragraph (b). In my view, it is quite clear that the SNP does not comply with that paragraph which requires “allocations” to meet the plan’s “identified housing requirement”. The SNP makes no provision for any future housing requirements. It does not make an allocation and it does not identify the housing requirement.
4. The “housing requirement” is not looking back to a housing requirement which was set out in the previous, out of date plan. It is looking at the housing requirement for future needs which the plan-making body will have identified. This is quite clear from the PPG. Paragraphs 96-97 in the Neighbourhood Planning section of the PPG state (emphasis added):

Where a qualifying body wants to benefit from the protection of paragraph 14, why is it important that they should include policies and allocations in their neighbourhood plan?

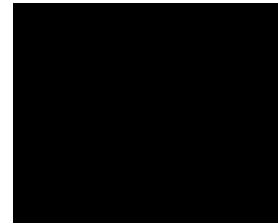
Allocating sites and producing housing policies demonstrates that the neighbourhood plan is planning positively for new homes, and provides greater certainty for developers, infrastructure providers and the community. In turn this also contributes to the local authorities’ housing land supply, ensuring that the right homes are delivered in the right places.

In the context of paragraph 14 of the National Planning Policy Framework, what does ‘policies and allocations to meet its identified housing requirement’ mean for neighbourhood plans?

In order for a neighbourhood plan to meet the criteria set in paragraph 14b of the Framework, the ‘policies and allocations’ in the plan should meet the identified housing requirement in full, whether it is derived from the housing figure for the neighbourhood area set out in the relevant strategic policies, an indicative figure provided by the local planning authority, or where it has exceptionally been determined by the neighbourhood planning body.

5. Further advice is given in paragraph 101 of the same PPG section on how the plan-making body should identify its housing requirement.
6. My approach to paragraph 14 is reflected in the decisions of two separate Inspectors: Shipwater APP/Z3825/W/20/3257700 (decided 2 August 2021) and Cressing, APP/Z1510/W/20/3253661 (decided 14 December 2020).
7. The SNP does not, therefore, comply with paragraph 14(b) of the NPPF.
8. As a result, the policy set out in that paragraph (reversing the presumption in paragraph 11) would not apply, irrespective of the plan-making body's aspirations.
9. I hope the above is of use. If there are any queries, I would be happy to help.

MATTHEW REED K.C.



26 January 2023