John Slater Planning Ltd

Hailsham Neighbourhood Plan 2018-2028

Submission Version

A Report to Wealden District Council on the Examination of the Hailsham Neighbourhood Plan

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Contents

	Page
Executive Summary	3
Introduction	4
The Examiner's Role	4
The Examination Process	5
The Consultation Process	7
Regulation 16 Consultation	7
The Basic Conditions	8
Compliance with the Development Plan	8
Compliance with European and Human Rights Legislation	10
The Neighbourhood Plan: An Overview	12
The Neighbourhood Plan Policies	13
The Referendum Area	26
Summary	26

Executive Summary

My examination has concluded that the Hailsham Neighbourhood Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- Replace the HRA policy to the one being promoted by the District Council in its revised Appropriate Assessment.
- Referring to the built-up area boundary to that shown on the 1998 Wealden Local Plan.
- Removing the requirement for access for new dwellings to be directly on to an adopted highway
- Removing the policy that encourages design competitions.
- Revising the self and custom build policy to schemes of 10 units or more.
- Requirements to show how proposals to reduce vehicular movements is now to be imposed only on major greenfield development.
- Removing support for gardening or food production on public highway land.
- Restricting the requirement for the creation of an ecological buffer to land adjacent to Pevensey Levels to large scale residential development only.
- Allowing the expansion of employment uses to areas within and beyond the built-up area boundary.
- Reducing policy requirements relating to tourist facilities inside the built-up area.
- Deleting the requirement to show how sustainable design and construction techniques have been embedded in to the proposal from the outset from the Sustainable Design and Construction Policy and bringing the policy into line with national policy for development in areas at risk from flooding.
- Development Frameworks only to be encouraged for schemes of over 50 units
- Deleting the requirement for proposals to reflect the ancient market town character of Hailsham due to lack of clarity.
- Deleting the CIL policy.

The referendum area does not need to be extended beyond the plan area.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the Wealden Core Strategy Local Plan, the saved policies of the Wealden Local Plan and the Affordable Housing Delivery Local Plan 2016 and the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2017. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been led by Hailsham Town Council. A Steering Group was appointed to undertake the plan preparation made up of local volunteers, along with representatives of the Town Council. Hailsham Town Council is a "qualifying body" under the Neighbourhood Planning legislation.
3. This report is the outcome of my examination of the Submission Version of the Hailsham Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by Wealden District Council, the Local Planning Authority for the neighbourhood plan area.

The Examiner's Role

4. I was formally appointed by Wealden District Council in April 2019, with the agreement of Hailsham Town Council, to conduct this examination. My role is known as an Independent Examiner.
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 41 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of both Wealden District Council and Hailsham Town Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
6. Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:
    - That the plan should proceed to referendum on the basis that it meets all the legal requirements.

- That the plan should proceed to referendum if modified.
- That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.

7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Hailsham Neighbourhood Plan area.
8. In examining the Plan, the Independent Examiner is expected to address the following questions
    a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
    b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as "excluded development" and also that it must not cover more than one Neighbourhood Plan area.
    c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Town and Country Planning Act 1990 (as amended) and has been developed and submitted by a qualifying body.
9. I am able to confirm that the Plan does relate only to the development and use of land if the plan is modified in line with my recommendations, covering the area, finally designated by Wealden District Council, for the Hailsham Neighbourhood Plan, on 19th August 2016. The area had been initially approved by the District Council on 30th June 2016 but the decision makers had not at the time considered a duly made representation from Gladman Developments Ltd. The matter was reconsidered in the light of the representation and was approved.
10. I can also confirm that it does specify the period over which the plan has effect namely the period from 2018 up to 2028.
11. I can confirm that the plan does not cover any "excluded development''.
12. There are no other neighbourhood plans covering the area covered by the Plan designation.
13. Hailsham Town Council, as a parish council, is a qualifying body under the terms of the legislation.

The Examination Process

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.

15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
16. I carried out an unaccompanied visit to Hailsham, on Monday 1st July 2019. I was able to drive around the town including some of its residential and commercial areas and I walked around the town centre and along a section of the Cuckoo Trail. I was able to drive through the Pevensey Marshes and the surrounding countryside.
17. Following my site visit, I sent out a document entitled "Initial Comments of the Independent Examiner" dated 19th July 2019, which asked a series of questions or sought clarification on a number of matters. I received a response from the Town Council on 19th August 2019 and from the District Council dated 19th September 2019. One of the questions related to the status of the emerging Local Plan and the timing of the Inspector's conclusions on Stage 1 of the Local Plan examination. At that time, the Inspector's letter was still awaited but had not been received and on 24th October 2019, I issued a document entitled "Further Comments of the Independent Examiner", which explained that I was holding the examination in abeyance until the Inspector's letter was received. This prompted a response from the Town Council, dated 22nd November 2019 expressing its concern with the delay in the examination.
18. That letter prompted me to call an "Exploratory Meeting" which was intended to explore the procedural aspects of proceeding with the examination, in the absence of any clarity regarding the status of the emerging Local Plan and in particular the polices which related to the impact of development in Hailsham would have on the protected European sites. I will refer to the importance of these issues in a later section of this report.
19. The Exploratory Meeting was held on the morning of 19th December 2019 at the Town Council's offices and was attended by representatives of the Town Council and its neighbourhood plan adviser and officers from Wealden District Council. Representatives on behalf of the neighbouring Hellingly Parish Council, were also in attendance, primarily as observers, as I am also examining the Hellingly Neighbourhood Plan, which was facing similar issues regarding uncertainty as to the weight to be given to the emerging Local Plan.
20. The meeting concentrated on possible amendments to the wording of Policy HAIL HRA1 and it was agreed that a revised form of wording would be drafted by the District Council and shared with the 2 Parish Councils and it would similarly be forwarded to me to consider. I will return to this matter in subsequent sections of this report.
21. I was advised on 6th January 2020 that the Local Plan Inspector's letter had been received on 20th December 2019, the day after the exploratory meeting and the Inspector had concluded that the local plan had not met the statutory requirements, particularly on the duty to co-operate and had recommended that the plan examination should not continue to Stage 2 of the examination and that the plan should be withdrawn.

22. In the light of that letter, the District Council agreed to still circulate the revised wording of the Policy HAIL HRA1, but also importantly stated that it would prepare a new draft Habitats Regulation Assessment for consultation with Natural England to consider the Hailsham Neighbourhood Plan in the context of the position without an emerging Local Plan and taking into account the advice of Natural England and the Planning Inspector of the Submission Wealden Local Plan.

The Consultation Process

23. Once work on the neighbourhood plan was triggered, the Town Council launched an initial consultation, seeking the community's views of the town, its town centre, growth challenges and areas of concern. This consultation used 17 "pop-up" events, operating from a specially adapted bus. A number of videos were produced and questionnaires were circulated and a website launched. This consultation ran from 4th June to 16th July 2016 and 1311 questionnaires were sent in. A parallel business survey took place between October and September 2016.
24. The results of this initial consultation were used to prepare draft objectives, a vision and issues, which was the subject of a workshop, held on 9th February 2017, attended by over 150 members of the public. This showed support for the initial themes that had been identified and helped to define the vision and objectives. Draft policy headlines or "direction of travel" ideas were publicised in two exhibitions and an accompanying questionnaire was circulated, which had 222 responses. A range of different media was used to communicate with residents.
25. All this work culminated in the publication of the Pre-Submission version of the plan, consultation on which ran over an eight-week period between 25th November 2017 and 26th January 2018, known as the Regulation 14 consultation. This included drop-in sessions and 62 questionnaire responses were submitted, plus 10 responses from statutory consultees and landowners/developers. These consultation responses are summarised in Figure 12 of the Consultation Statement and are set out in full in the appendix entitled Regulation 14 Draft Consultation Findings Report.
26. I am very satisfied that the plan making process has been both open and transparent and that the views of the community have been positively sought and have been able to influence the final content of the neighbourhood plan.

Regulation 16 Consultation

27. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation which took place over a 6-week period, between 7th May 2019 and 18th June 2019. This consultation was organised by Wealden District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 consultation.

28. In total, 16 responses were received, from Natural England, National Grid, Highways England, Southern Water, East Sussex County Council, The Woodland Trust, Friends of Park Wood, Hellingly, Hailsham Active, Age Concern, NHS Property Services, Hailsham and Hellingly Branch of The Labour Party, Hailsham Festival of Arts and Cultural Community, Turleys on behalf of Bovis Homes, Gladman Developments Ltd, Barton Wilmore on behalf of Gleeson Strategic Land and Rydon Homes and one from a local resident.
29. I have carefully read all the correspondence and had regard to them, where they have been relevant to my considerations and conclusions either in respect of specific policies or the plan as a whole.

The Basic Conditions

30. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of "soundness". The Neighbourhood Plan is tested against what is known as the Basic Conditions, which are set down in legislation. It will be against these criteria that my examination must focus.
31. The five questions which constitute the basic conditions test, seek to establish: -

- Has the plan had regard to the national policies and advice contained in the guidance issued by the Secretary of State and is it appropriate to make the Plan?
- Will the making of the Plan contribute to the achievement of sustainable development?
- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
- Whether the making of the Plan breaches or is otherwise incompatible with EU obligations or human rights legislation?
- Whether the making of the Plan would breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?

Compliance with the Development Plan

32. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Wealden Core Strategy Local Plan which was adopted in February 2013. Also of relevance are the saved policies in the Wealden Local Plan which was adopted in

1998, which includes polices related to the settlement boundary and the Affordable Housing Delivery Local Plan.

33. In the Core Strategy, Hailsham sits as one of the district centres in the settlement hierarchy, which are described as "accessible settlements by road and public transport containing a range of shops, employment and facilities including a secondary school". The plan identifies a key issue as the need to accommodate the development needs with the environmental and infrastructure limitations whilst promoting more sustainable patterns of development through improving accessibility to key services and facilities, public transport and employment.
34. The plan period is the period up to 2027 and it explicitly recognises the infrastructure limits imposed by the ability of Hailsham Waste Water Treatment Works to discharge treated water into the Pevensey Levels and the policy includes a review mechanism in 2015 to review the capacity issue at Hailsham North and Hailsham South WWTW.
35. Policy WCS2 proposes the allocation of 1300 new homes in the Hailsham and Hellingly area, concentrated in the urban areas. There is an equivalent requirement to allocate 8, 650 sq. m of employment space and 6,230 sq. m of retail, as set out in Policy WCS3. There are two strategic development areas identified in Policy WC4 – East Hailsham (SD2) for 600 dwellings and North Hailsham (SD3) falling primarily in Hellingly parish.
36. Other relevant policies include Policy WCS 12 dealing with biodiversity which originally included a requirement to include Suitable Alternative Green Spaces (SANG) for development within 7 km of Ashdown Forest and a 400m exclusion zone, but this part of the policy was subsequently removed, following a legal challenge. The other strategic policy of relevance is Policy WCS 13 dealing with Green Infrastructure.
37. The most relevant strategic policy that remains from the 1998 Local Plan is the designation of the built-up area boundary with corresponding policies dealing with the appropriateness of development inside and beyond the settlement boundary.
38. The District Council had been preparing a new Local Plan that would have extended the plan period up to 2028. The Submission Version of the plan had been submitted to the Secretary of State and the first stage of the examination held. The new plan had influenced, to some extent, the Hailsham Neighbourhood Plan and in particular the District Council had identified air quality, and the impact of development on Special Areas of Conservation, in Policies AF1 and AF2 which had driven, to a large extent, the need for the Hailsham Neighbourhood Plan to include Policy HAIL HRA 1 based on the findings of the Local Plan's Habitat Regulation Assessment.
39. However, the Inspector's letter dated 20th December 2019, concluded that the emerging local plan had failed in its "duty to cooperate" requirements on strategic cross boundary issues. She also concluded that the District Council's approach to the impact of vehicle emissions was not supported by adequate evidence. She recommended that the plan should be withdrawn and the examination would not pass beyond Stage 1.
40. At the meeting of the Full Council held on 19th February 2020, the District Council formally confirmed its decision to withdraw the submitted Wealden Local Plan 2019.

41. I am required to assess the Hailsham Neighbourhood Plan, solely against strategic policies which are set down in the adopted Core Strategy Local Plan and the saved policies in the 1998 Wealden Local Plan and my overarching conclusion is that the plan taken as a whole is in general conformity with the strategic policies in the development plan.

Compliance with European and Human Rights Legislation

42. Wealden District Council issued a Screening Report, on 9th October 2018 which concluded, having consulted with the three statutory consultees, that a full SEA should be undertaken as part of a Sustainability Appraisal, as required by EU Directive 2001/42/EC, which is enshrined into UK law by the "Environmental Assessment of Plans and Programmes Regulations 2004", as its view was that the scale of development supported by the draft plan may result in a 'likely significant effect' upon European protected sites.
43. Wealden District Council, as competent authority, also issued, in the same report its screening under the Habitat Regulations. The screening assessed the submitted plan and concluded that its provisions may result in a " likely significant effect" on European protected sites or their qualifying features, in particular through increased atmospheric pollution at Ashdown Forest SAC, Lewes Downs SAC and Pevensey Levels SAC/ Ramsar site and an altered hydrological regime due to an increase in impermeable surfaces from new development as well as from an increase in surface runoff and treated wastewater discharge at Pevensey Levels SAC and Ramsar site. It therefore concluded that an Appropriate Assessment would be required.
44. A Scoping Study report was issued by consultants for the Town Council in November 2018 and this was the subject of consultation with the 3 statutory consultees. Natural England and Historic England did not have any specific comments and comments were made by the Environment Agency.
45. A Sustainability Appraisal Report (incorporating a Strategic Environmental Assessment Report) was published by LUC consultants in March 2019 which set out the assessment methodology, the context of the plan, considered suitable alternatives and then came to conclusions against the individual plan policies. It concluded that the plan is likely to have generally positive effects with regard to sustainability and the health and well-being of local people. The NDP is expected to avoid or mitigate all potentially significant negative effects and no negative residual effects were identified.
46. The District Council published its Habitats Regulation Assessment in May 2019. Some of its findings drew upon the evidence base and work that had already been published as the Wealden Local Plan HRA, which had drawn criticism by Natural England in its Regulation 16 comments. The document followed the recognised route by considering the issues and the pathways to impact on the protected sites and concluded that the Hailsham Neighbourhood Plan would not adversely affect the integrity of any European or international sites so long as Policy HAIL HRA1 is included in the

Neighbourhood Plan. It did include the statement "This conclusion has been reached without relying on the emerging Wealden Local Plan policies as relevant to Ashdown Forest and Pevensey Levels."

47. These issues were explored at the Exploratory Meeting, which examined whether the wording of Policy HAIL HRA1, which was imposing requirements on **all** development, without necessarily considering whether the development would, even in combination with other plans and projects, have a significant adverse impact on a SAC. That discussion lead to the suggestion by the Wealden planners to prepare a revision to the wording of the policy, so that the level of mitigation required by the policy was more directly related to the scale and type of scheme proposed.
48. Irrespective of the Local Plan Inspector's conclusions on the local plan, the rewording of the policy which the Assessment stated was required to mitigate the harm arising from the Plan, would have required a revised Appropriate Assessment and the case for that is strengthened by the Inspector's conclusion on the overall approach to the air quality question, which in part was fundamental to the imposition of requirements on development, due to a possible impact on Ashdown Forest.
49. Following the receipt of the Local Plan Inspector's conclusions on the local plan and the subsequent withdrawal of the Local Plan, Wealden District Council prepared a revised Habitats Regulations Assessment Report upon which it had consulted Natural England, the Environment Agency and Historic England. That has concluded that it is not possible to conclude that the proposals in the Hailsham Neighbourhood Plan will or will not result in an adverse effect on protected sites as a result of traffic movements. Quoting legal precedents, it "accepted that adverse effects must be assessed at every relevant stage of the procedure *to the extent possible on the basis of the precision of the plan*" (my emphasis). This therefore allows the assessment of potential adverse effects at the planning application stage when more detailed information is available.
50. A similar conclusion was reached in terms of the impact of development on the Pevensey Levels but through the inclusion of a policy requiring SUDS in any new development within the hydrological catchment area of the Pevensey Levels, the drainage regime will not be affected by additional surface water run off / associated pollutants created by new development. The Assessment recommends a revised Policy HAIL HRA1 to replace the policy within the submitted version of the Plan, which I will deal with in the specific policy section of this report.
51. The actual assessment of the neighbourhood plan under the Habitat Regulations is a matter that is determined by the District Council as competent authority and as such I am satisfied that the basic condition regarding compliance with Chapter 8 of Part 6 of the Conservation of Species and Habitat Regulations 2017 has been met.
52. I am also satisfied that the basic conditions regarding compliance with European legislation has been complied with. I am also content that the plan has no conflict with the Human Rights Act and I have received no representations on that matter.

The Neighbourhood Plan: An Overview

53. Overall this is a hugely impressive neighbourhood plan which seeks to fundamentally influence the way that new development is developed. It strives to deliver high quality places, based on a clear strategy of ensuring connectivity and high-quality design. I commend the Town Council for the ambition and the clarity of purpose that it has shown. The plan document itself is fit for purpose, is well laid out, can be read easily and makes good use of illustrations and photographs.
54. Generally, the document is Hailsham specific, having locally distinct policies which are based on evidence and a sound understanding of the existing character of the town. It draws upon good urban design principles and how they contribute to place making.
55. Much of this examination of the neighbourhood plan has, to a large extent, been diverted by the District Council's original Habitats Regulation Assessment of the neighbourhood plan and the policy it was promoting to mitigate what it saw as the potential for Hailsham development to adversely affect European protected sites, through traffic generation and its effects on air quality when considered in combination with other plans and projects. These conclusions had been to a large extent drawn upon the work carried out in respect of the Wealden Local Plan's Habitat Regulation Assessment. I have dealt at length with these issues in other parts of this report.
56. My recommendations have concentrated, almost entirely on the wording of the policies themselves as these will be crucial to the determination of planning applications. Many of the policies have been drafted so as to apply to **all** development proposals. Whilst the policies will have, no doubt, been drafted with particular types of development in mind, the policies will be a principal determining consideration when determining every planning application that is submitted within the plan area. The range of development that crosses a planning officer's desk is varied, covering proposals from minor developments, changes of use, variations of conditions, through to the largest residential and commercial schemes. It will be difficult to apply some of the plan's policy requirements to every type of planning application, due to the nature of the proposed development. I have had to introduce a number of caveats in policies such as "where appropriate", to allow some flexibility and pragmatism by the decision maker, as to when strict compliance is required.
57. The document rightly recognises that some matters affecting Hailsham do not fall within the remit of being a policy for the "development and use of land" which can be in the determination of a planning application. In accordance with the Secretary of State advice, the plan differentiates these from the development plan policy and entitles them as Projects. These have not formed part of my examination.
58. I have in a small number of cases proposed changes to ensure the policies pay due regard to Secretary of State policy and advice in order to meet the basic conditions. However, these are few in number.

59. As previously stated. I have found that the neighbourhood plan policies actually sit well with the strategic policies in the Core Strategy and the saved policies in the Wealden Local plan and the plan certainly meets that basic condition.
60. In terms of the basic condition requirement that the plan assists in the achievement of sustainable development, the plan places design and connectivity at its heart whilst recognising the historic nature of this market town. At the same time seeking to support new housing and jobs but in an environmentally friendly manner particularly bearing in mind the ecologically sensitive Pevensey Levels which lie to the east of the town. The plan actively encourages walking and cycling both in terms of the creation of new routes as well as maximising the potential of the Cuckoo Trail and it also encourages public transport. I am very satisfied that the plan supports new development in a positive manner and the Hailsham Neighbourhood Plan, taken as a whole, will deliver sustainable development.
61. My recommendations have concentrated on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend editorial changes to the supporting text. Some changes to the supporting text may be required as a result of my recommendations. These can be agreed between Wealden District Council and the Steering Group so that the Referendum Version of the plan reads as a coherent planning document.

The Neighbourhood Development Plan Policies

Policy HAIL HRA1: Habitat Regulations

62. This has proved to be the most problematical policy, mainly due to the timing of Local Plan's Inspector's letter. The submitted version of the policy had been recommended by Wealden District Council, to be inserted in the plan, as a result of its Habitats Regulations Assessment and on the basis of the status of the emerging Wealden Local Plan. The policy was proposed to mitigate the impact of development within the plan area on three European protected areas namely the Ashdown Forest SAC, Lewes Downs SAC and the Pevensey Levels SAC and Ramsar site.
63. I had been alerted to concerns regarding this policy, in particular, the comments of Natural England at the Regulation 16 stage. It became very obvious from reading Natural England's detailed letter that the issues had already been very well rehearsed at the Local Plan examination where Natural England questioned the underlying premise that development across Wealden District's area would adversely impact on the integrity of Ashdown Forest and Lewes Down through a decline in air quality by increased traffic movements adjacent to and through the protected areas, either alone or in combination with other plans. Natural England considered that predicted improvements in air quality and technological improvements in vehicles should be accounted for in the Habitats Regulation Assessment and in doing so the conclusion is that 'environmental loading will return to below the critical level and loads within an

appropriate timeframe'[1]. This conclusion would result in 'no adverse impacts' and would negate the need for mitigation. Furthermore, notwithstanding their concerns regarding the justification for the policy, Natural England also challenged the efficacy of the mitigation measures being proposed in the policy.

64. It was this interface between this neighbourhood plan policy, in particular, and Policy AQ1 and Policy AQ2 of the emerging Wealden Local Plan, that prompted me to want to await the Local Plan Inspector's conclusions, as she would have heard the full expert evidence, some of which would have been of a highly technical and scientific nature. These were matters of a strategic nature which are more sensibly resolved, if possible, at a higher plan level and should be beyond the remit of a neighbourhood plan for a town some distance away from both Ashdown Forest and Lewes Down.
65. I had my own reservations as to whether all development taking place in Hailsham could justify the measures being proposed in this policy. My concerns were reinforced, as it appeared to me that this was an approach that was being pursued unilaterally by Wealden District, when in my experience, mitigation measures to address the adverse impacts on European protected sites from development, tend to transcend administrative boundaries and usually require coordinated measures across the different authorities and are normally pursued in conjunction with Natural England. I have in mind the approach being taken at the Thames Basin Heathlands, Epping Forest and also the Solent Bird Disturbance issues.
66. My major reservation was that the measures set out in the policy were required to be imposed on <u>all new development</u> and I questioned whether these requirements could be justified, based on an assessment of the impact of every form of development would have on these protected areas. Imposing the three requirements, namely requiring electric vehicle charging infrastructure irrespective of the type of development, the practicality of controlling the routing for freight traffic resulting from the new development and requiring personalised travel planning work, were particularly onerous and unnecessary requirements unless the development was of a significant scale.
67. My concerns regarding this policy were discussed at length at the Exploratory Meeting and the District Council representatives, I believe, accepted that the requirements being imposed on **all** new development, was an excessive requirement, irrespective of the possible outcome of the Local Plan Inspector's deliberations.
68. The Inspector's conclusions, particularly on the issue of the impact of development on Ashdown Forest in particular, and her conclusion that the District Councils approach to the science was flawed, has led to a significant change in the scope of this policy which Wealden District Council is now suggesting should be included within the policy.
69. The recommended HRA policy now effectively firstly restates the existing legal position, which is already set out in Regulation 105 of the Conservation of Habitats and Species Regulations 2017. However, I accept that there is a value in setting out the legal requirements, in the policy, not least because it draws attention to the

[1] Paragraph 25, page 12 of Natural England's Regulation 16 response.

statutory requirement for persons who may not be familiar with the Habitat Regulations.

70. The specific requirements set out in the remainder of the policy are entirely directed to mitigating the impact of development on the Pevensey Levels. The impact on this important habitat, which lies adjacent to the town and the existence of direct pathways, in my opinion, fully justify the requirements of the policy, both in terms of ensuring there is adequate capacity at the waste water treatment works that serve the town and the need to control the quality and quantity of surface water run-off from new development.
71. I am satisfied that this important policy now meets the requirements of the basic conditions in all respects. I therefore recommend that the submission version of this policy be replaced by the revised policy which is included in the latest version of the Habitats Regulation Assessment.

Recommendation

Replace the existing policy with

"Development either supported or proposed by policies or projects contained within the Hailsham Neighbourhood Plan, or any other development that may come forward in the Neighbourhood Plan area, may only be permitted if it can be concluded that the proposals, either alone or in combination with other plans or projects, will not adversely affect the integrity of a European site. Any proposals for development must be accompanied by information to allow the competent authority to complete a full Habitat Regulations Assessment of the impacts of the development.

To ensure that development does not adversely impact the Pevensey Levels Special Area of Conservation and Ramsar site, proposals for development may only be permitted where there is sufficient capacity at the relevant Waste Water Treatment Works or alternative foul water drainage solution. Where impermeable surfaces are proposed within the hydrological catchment area then mitigation, such as sustainable drainage systems, will be required to control the quality and volume of surface water run-off to a level that will avoid an adverse effect on the integrity of the SAC and Ramsar when considered both alone and in combination with other Plans or projects."

Policy HAIL D1: High Quality Design

72. This is a comprehensive, well presented design policy which builds upon a strong understanding of the characteristics of the town which is identified in the Hailsham Character Assessment. The policy sets out clear aspirations on how new development will be expected to deliver high-quality places.
73. This policy seeks to apply to **all** new development. The definition of *development* includes changes of use or a minor operational development, where the requirements of this design policy would not necessarily be applicable. I do not wish to water down

the high aspirations of the policy which will be relevant to most new buildings. I will therefore recommend the insertion of a caveat at the start of the policy which states that the requirements of the policy will be expected to be complied with only where it is appropriate to do so having regard to the form of development being proposed.

74. The policy encourages new residential development to meet nationally described space standards. These standards can only be imposed once it has been triggered by a local plan policy and they must be justified and considered as to the effect on the impact of viability. In this case, there is no such justification and there is no commensurate local plan policy in place. However, I note that the wording does not actually require the space standards to be met only that their use is *encouraged*. Therefore, a planning application could not be refused on the grounds that the standards have not been achieved. On that basis, I will not recommend the deletion of that part of the policy

Recommendation

Insert the following paragraph at the start of the policy "New development will be expected to comply with the following requirements where it would be relevant to the form of development being proposed."

Policy HAIL D2: Small-scale Residential Development and Household Extensions.

75. This policy welcomes the reuse of previously developed land within the built-up area of Hailsham. However, that raises the question as to how development which takes place on land within the built-up area, which does not fall within the definition of brownfield land, such as residential garden areas, will be considered. In this case, the relevant policy is saved Policy GD1 from the Wealden Local Plan 1998 which supports development within the built-up area that accords with other policy. As the policy is one that *welcomes* a particular form of development, it does not rule out development that is not on brownfield sites. Similarly, by *welcoming* particular types of development, the policy is not restricting proposals that do not meet that definitions in the policy, including the redevelopment of previously developed land outside the built-up area.
76. The neighbourhood plan does not define the built-up area, but it refers to that shown in the adopted Core Strategy, but that is only shown on a Key Diagram, which is not based on an Ordnance Survey map base, so it is impossible to define with accuracy whether certain land is within or outside the settlement boundary. I consider the built-up boundary that accurately defined within an adopted plan, is the Proposals Map within the 1998 Local Plan. I will suggest that it be referred to in the policy but add that it could be superceded by any subsequently adopted plan.
77. My interpretation of the second element of the policy, is that it is intended to cover all applications for small scale and infill development, irrespective of whether it falls within the built-up area boundary, so long as it complies with other policies. The only issue with the 4 criteria, is the requirement that the development is "directly" accessible from

the adopted highway. There will be situations where access to a new property can only be taken across unadopted land. It is not unusual on new housing developments, for example, for not all highways to be maintained by the Highway Authority, some are maintained by a management company. I propose to remove reference to the access being directly accessible from the adopted highway.

78. The requirement in the policy for applicants to refer to guidance in the Wealden Design Guide SPD and the Character Statement would only be able to be imposed where the applicant is required to submit a Design and Access Statement. I will amend the wording so as to *encourage* applicant to refer to this guidance.
79. Beyond that I consider the policy meets the basic conditions.

Recommendations

Replace the wording in parenthesis with "(as defined by the Wealden Local Plan (1998) or as subsequently superseded by an adopted local plan)".
In the fourth bullet point delete "directly".
In the final sentence replace "should" with "are encouraged"

Policy HAIL D3: Innovation and Variety.

80. The only concern with the drafting of this policy is the reference to "standard off the shelf" housing types. Whilst I understand the aspiration of the policy, I do not consider that it passes the test set by the Secretary of State that planning policies "should be drafted and sufficient clarity that the decision maker can apply consistently and with confidence when determining planning applications." I consider that the objective of the policy can be achieved by encouraging bespoke design solutions and residential typographies and not referring to a standard off the shelf housing type.
81. The final section of the policy encourages the use of design competitions. Such competitions are a successful method of encouraging high-quality design solutions but are not the only route to securing high quality development. The adoption of a design competition criteria policy could not be used, even if it is one of encouragement, in the determination of the planning application, which is the underlying purpose of having a neighbourhood plan policy. I would therefore recommend that this aspiration be retained but it could be moved from a policy to the supporting text.

Recommendations

In the first paragraph, delete "as opposed to applications of standard 'off the shelf' housing types and layouts"
Delete the final paragraph.

Policy HAIL D4: Design for Self and Custom-built Homes

82. In its response to my Initial Comments, the Town Council suggest that the approach set out in the policy should only apply to schemes that propose 10 or more self or custom build homes. I agree that this suggestion would allow some design consistency whilst allowing individual flexibility within the scope of the plot passports and will recommend accordingly. Furthermore, the Town Council suggested, in its response,

that the requirements for the submission and approval of the master plan and passports should be part and parcel of the consideration of a full or detailed reserved matters planning application by the District Council. I disagree as that could be too late when all the details of the scheme will have been developed. I consider that the site masterplan and the plot passports would be better approved at the outline planning stage, if possible.

Recommendations

After "house building" insert "comprising 10 dwellings or more", replace "should" with "are encouraged to" and delete "and submitted for approval" and insert "ideally at outline planning application stage for the approval of the Local Planning Authority". In the second sentence, replace "regulate" with "establish".

Delete the final paragraph.

Policy HAIL D5: Residential Car Parking Design

83. I have no comments to make on this policy.

Policy HAIL AT1: Active Travel

84. This policy requires all new development to demonstrate how they reduce reliance on vehicular movement. I agree with the District Council that it will be unreasonable to expect the smallest developments to be delivering new walking and cycling routes. Such a requirement would be more appropriately directed to the significant new residential and commercial developments and only where it is appropriate to do so. For example, clearly the requirement could apply to a greenfield housing site, but it would not necessarily be appropriate to the redevelopment of a brownfield site within the urban area, which has existing highway frontage.

Recommendation

In the first sentence before "development" insert "major greenfield residential and commercial".

Policy HAIL AT2: The Cuckoo Trail

85. I have no comments to make on this policy.

Policy HAIL AT3: Public Transport

86. I have, again, no comments to make on this policy.

Policy HAIL GS 1: Natural and Amenity Green Space

87. The only issue with the policy is the rather novel concept of utilising underused roadside verges for gardening, wildlife and food production. Inasmuch as such activities would constitute development requiring planning permission, the Highway Authority has confirmed that it would not give its consent to the use of highway land

for gardening or food production. I therefore propose to follow the suggestion of the District Council and refer to the retention of highway verges for wildlife protection where it is safe to do so.

Recommendation

At the end of the second bullet point, replace "these purposes" with "wildlife habitat, where it is safe to do so".

Policy HAIL GS2: Open Space with Major Development Areas

88. The policy requires the provision of open space in accordance with standards set by Wealden District Council. The policy refers to the more up-to-date standards which were being proposed in the draft Wealden Local Plan. As that plan has now to be withdrawn, I consider that the *Wealden Open Space Sports and Recreation Assessment 2016-2028* is the most up-to-date evidence-based source of information for developers on open space requirements and I would recommend an amendment which refers to that document or any subsequent standard adopted by Wealden District Council that supersedes it.
89. Other than that, the proposal meets basic conditions.

Recommendation

Delete all the text in the first paragraph after "2028" and insert "or any subsequent standard set by Wealden District Council, which supersedes this document."

Policy HAIL GS3 Pevensey Levels

90. The requirement in the first paragraph, that "All applications will be subject to the Habitat Regulations Assessment, is not a statement of how a planning application should be determined, rather it is a statement of the statutory requirements placed on the LPA in processing the planning application. I will recommend that this sentence be removed.
91. The second paragraph of the policy requires the provision of green space alongside the non-built-up edge of the growth area to create an area of natural green space for biodiversity and ecological use. The policy lacks clarity in that it refers to *any* development adjacent to the Pevensey Levels rather than the growth areas. I will make that clear in my recommendation.

Recommendations

Delete the second sentence in the first paragraph.
In the first sentence of the second paragraph, after "any" insert "large scale residential".

Policy HAIL EMP1: Providing for a Mix of Employment Opportunities

92. As in the case of Policy HAIL D2, the policy refers to the built-up area "(as defined in the adopted Core Strategy or as redrawn in the new local plan when adopted.) The

extent of the built-up area is accurately shown in the 1998 Wealden Local Plan rather than the Core Strategy Key Diagram, shown as figure 7. However national advice in the NPPF, recognises that all types of business can grow and expand, not just in built-up areas but also in the countryside, through the conversion of existing buildings and well-designed new buildings. In order to ensure the policy is in line with such a Secretary of State policy, I will recommend a revision to the drafting of the policy, by removing reference to the built-up area boundary which will mean that it now meets the basic conditions.

Recommendation

In the first sentence replace "built up" with "plan" and remove all the text within the parenthesis.

Policy HAIL CF1: Community Facilities

93. A neighbourhood plan policy cannot require that particular documents to have to accompany a planning application. The circumstances where a Transport Assessment is required to be submitted is already set out in the District Council's Local Validation Checklist. Beyond that the policy complies with basic conditions.

Recommendations

In the second paragraph delete all text after "parking provision".
Replace "the planning application should be supported by a statement establishing" with "the Local Planning Authority will need to be satisfied with regard to"

Policy HAIL TOU1: Tourism

94. I consider that this policy is a positive statement which recognises the tourist potential of the area. As previously stated planning policy cannot dictate what assessments are required to accompany a planning application.
95. The final paragraph is set as a requirement which by implication would cover all proposals for tourist related development to encourage sustainable travel, environmental stewardship and overall good site management. I do not consider that it would be appropriate to impose on all proposals, such as a bed and breakfast establishment, a requirement to encourage environmental stewardship. The Town Council has indicated that the intention was more towards tourist attractions.
96. The first two sets of criteria, relating to siting, design and materials would only be relevant to the new build application rather than for changes of use and I will recommend an appropriate modification.

Recommendations

In the second sentence of the first paragraph insert "build" before "development".
Replace the third and fourth paragraphs with "Where appropriate, tourist development outside the built-up area will be assessed in terms of its visual,

landscape and transport impacts and long term measures to encourage sustainable travel, environmental stewardship and overall good site management may be required."

Policy HAIL AQ1: Charging Points for Electric Vehicles

97. I have no comments to make on this policy which encourages the necessary infrastructure to support electric vehicles

Policy HAIL AQ2: Sustainable Design and Construction

98. I have significant concerns regarding the first part of the policy as it requires applicants to "embed sustainable design and construction techniques from the outset". I do not consider that a decision maker, when faced with a planning application, would be in a position to know whether the proposed development had met the requirement, or indeed what the "sustainable design and construction techniques" are expected, by the Town Council. I consider that the policy's aspirations could be moved to the supporting text as it is a matter that could be addressed in an applicant's Design and Access Statement, where they are required to be submitted.
99. I note that the majority of the rest of the policy is expressing itself in terms of offering "*encouragement*" rather than setting out policy *requirements*. I will therefore be retaining the majority of the policy, apart from the reference to meeting the Building Regulations, which will of often be sought once the principle of the development has been established by the granting of planning permission and for which compliance is a legal requirement. I also propose to strengthen the policy regarding flood measures from minimising flood risk to a policy that requires the applicant to demonstrate that the development will not increase the risk of flooding elsewhere and is appropriately flood resistant and resilient. That would bring the policy in line with national policy.

Recommendations

Delete the first paragraph.
In the second paragraph delete "Building Regulations"
Replace the final sentence of the fourth paragraph with "Where development is considered acceptable in areas at risk of flooding, the flood risk assessment should demonstrate that it will not increase the risk of flooding elsewhere and be designed to ensure the building is flood resilient / resistant (as appropriate) and will be safe for the lifetime of the development"

Policy HAIL AQ3: High Energy Efficient Buildings

100. Again, as this policy that only *encourages* high energy efficiency standards. I consider that it is appropriate to retain the policy as it does not set out a specific planning requirement and as such a planning application could not be refused if a scheme did not meet its aspirations.

Policy HAIL AQ4: Renewable

101. In order for the policy to be consistent with the support given to on-site renewables in Policy HAIL AQ2 and also to recognise the role that renewable energy sources can have in terms of reducing greenhouse gases, I will be proposing that the wording is amended to read as a positive statement that a scheme "will be supported so long as it does not have a significant adverse impact on landscape and townscape character, biodiversity, heritage or cultural assets or amenity value". This is in line with Secretary of State advice set out in the Planning Practice Guidance (para 007 ref ID5–007–20140306).

Recommendation

Replace "required to" with "supported if they can"

Policy HAIL SD1: Development Frameworks

102. As this policy is offers *encouragement* and is generally in line with good planning practice. I consider that it will help achieve its objective of encouraging a coherent and positive engagement between the applicant and the planning authority, statutory consultees and the public.
103. The policy refers to any major development proposal but does not define what is meant by *major* developments. The Town and Country Planning Development Management Procedures Order 2015 sets a threshold of 10 units as a major scheme. That is, in my opinion, too low a threshold to justify the preparation of a development framework. I have suggested that a more appropriate benchmark would be schemes of 50 units or more and this has been agreed by both the Town Council, who had in mind their use on the major growth area applications, on the periphery of the town, and also by the District Council.
104. The policy should be explicit that these frameworks should be submitted for approval of the District Council, as the local planning authority.
105. With regard to the final paragraph, I recommend that the policy should read that the development frameworks *should* rather than *will*, be subject to a programme of community consultation.

Recommendations

In the first paragraph substitute "site" with "of 50 dwellings or more" and before "Council" insert "District"
In the final paragraph, replace "will" with "should".

Policy HAIL SD2: Design and Place Making Principles

106. This policy again refers to any major development proposal and in this case, I agree with the view expressed by Wealden District Council that it could usefully be imposed on schemes of 10 units or more. I will recommend that change to give clarity as to what is required.

Recommendation

In the first sentence after "proposals" insert 10 units or more"

Policy HAIL SD3: Design Codes and Quality

107. I have no comments to make on this policy which welcomes the production of design codes.

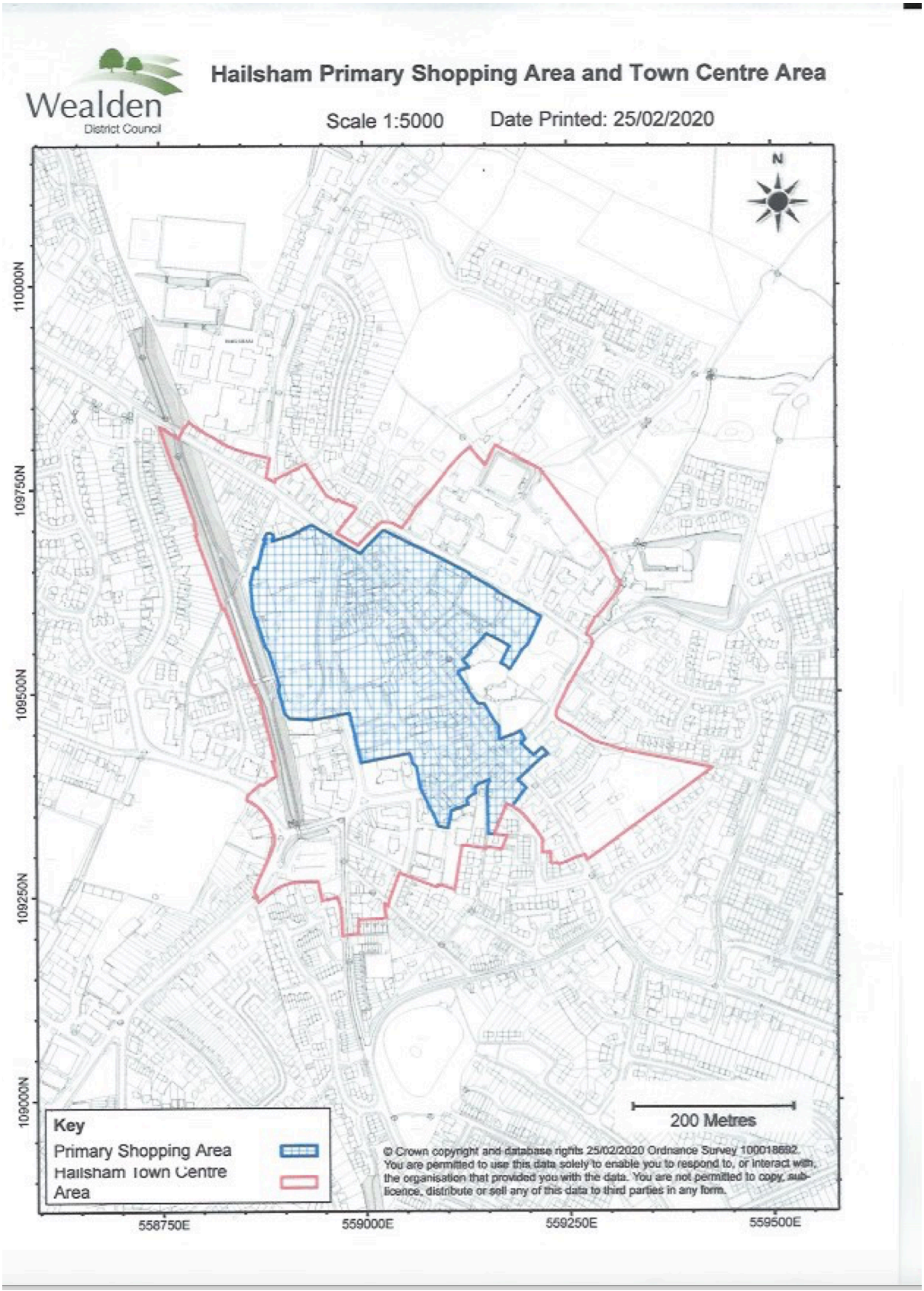
Policy HAIL TC1: Hailsham Town Centre

108. I consider that it is important for the sake of clarity that the extent of the town centre should be defined on a map. The original submission document includes an inset plan from the emerging local plan, which sets a town centre boundary. Now that the draft Local Plan is to be withdrawn, I consider that it is necessary for the neighbourhood plan to define the extent of the town centre and it should be based on the same alignment as was being proposed by the withdrawn plan.
109. The first paragraph requires *any* proposal in the town centre to have to broaden the retail offer. I consider that is unreasonable and unrealistic expectation, for example where an application is proposing a change of use of the vacant town centre shop to a complimentary use, which could include non-retail uses referred to in the second paragraph of the policy. I would recommend that that section of the policy be deleted but retain the requirement to add to the vitality and viability of the shopping centre.
110. With regard to the requirements set out in the seventh paragraph of the policy which proposes five requirements on applicants for new development. These requirements would be unreasonable and unnecessary in the case of particular forms of development requiring permission such as changes of use or minor operational development e.g. installation of a new ATM in the town centre. That concern can be addressed by inserting the caveat "where appropriate and relevant to the form of development proposed".

Recommendations

Insert the map on the following page, to be annotated as Map X (insert appropriate map number).
In the first sentence after "town centre" add "as shown on Map X and should, where it appropriate, add" and delete "should broaden the retail offer, adding".
In the fifth paragraph, second sentence, delete "in such cases" and after" residential units" insert "within the primary shopping area "In the seventh paragraph after "required" insert "where it is appropriate, and relevant to the

form of development proposed"



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Policy HAIL TC2: Town Centre Design Principles

111. Again, the requirements to reflect best practice design principles will only be appropriate for new build development. I will again recommend the same caveat as in Policy HAIL TC1. Again, not all development will need to have to respect the ability for markets and other events to operate in the town centre e.g. an application to extend an existing building in the town centre.

Recommendations

Replace "All proposed development" with "New buildings, as appropriate"
At the beginning of the final paragraph, insert "Where relevant,"

Policy HAIL TC3: Town Centre Heritage Assets

112. The requirement to preserve and enhance the ancient market town character does not, in my view, constitute clear and the precise criteria for assessing a plan application. In any event, I consider the matter is already adequately covered by the penultimate paragraph set out in Policy HAIL TC2.
113. I would also point out the statement of intent on behalf of the Town Council to work with the District Council is not actually a policy that can be used to determine a planning application. This aspiration can be included in the supporting text or set out as a separate project, which is not part of the development plan.

Recommendation

That the policy be deleted.

Policy HAIL TC4: Town Centre Car Parking

114. I have no comments to make on this policy

Policy HAIL TC5: Shopfronts

115. The only issue arising from this policy relates to the placing of shop signs on pavements. These are matters that do not require the submission of a planning application, but rather dealt with as highway licensing issues. The aspiration of the policy is perfectly appropriate for a neighbourhood plan, but it should be taken forward either as a community aspiration or included within a project e.g. Project HAIL TC1 or included in the supporting text. Reference to the Wealden Design SPD is not actually a statement of policy, but a means of signposting information to deliver the well-designed shopfronts, which are sought by the policy.

Recommendation

Delete the final two paragraphs and move to the supporting text.

Policy HAIL TC6: Street and Spaces in the Town Centre

116. Again, the requirements of the policy, especially as set out in the second paragraph, refers to *all* development. Some development will, by its very nature, not impact on the movement network or indeed the public realm and I will again recommend the insertion of the caveat "where appropriate".

Recommendation

At the start of the second paragraph insert" Where appropriate"

Policy HAIL P1: Community Infrastructure Levy

117. The payment of CIL is not a matter of planning policy, but rather is a separate legal requirement following the adoption of a Community Infrastructure Levy Scheme. As such this policy does not meet the definition of being "a policy for the development and use of land". Similarly, proposals on how the Town Council propose to spend its proportion of the levy, is a budgetary decision of the Council. Commitments as to future spending priorities can be included within the neighbourhood plan but not as a development plan policy. Equally, the intention of the Town Council to discuss CIL spending with Hellingly Parish Council can be included within the supporting text or as a separate.
118. I will be recommending that the policy be deleted.

Recommendation

That the policy be deleted.

The Referendum Area

119. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Hailsham Neighbourhood Plan as designated by Wealden District Council on 19th August 2016 is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

120. I must congratulate Hailsham Town Council for preparing a locally distinct and focussed neighbourhood plan, which seeks to deliver on the expressed priorities of the community, by setting aspirational standards for new development in the town. This plan recognises the sensitive environmental areas on its doorstep and seeks to ensure the right infrastructure is put in place to ensure that these assets are protected.

121. This is a really well presented plan which will shape the growth that the town is facing in the coming years but requires that to be done in a way that is both sensitive to the character of the town and meets the highest expectations in terms of place making and sustainable development.
122. The plan may not seek to allocate areas for new development but it sets the bar high in terms of the requirements that developers will be expected to meet.
123. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.
124. **I am therefore delighted to recommend to Wealden District Council that the Hailsham Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.**

JOHN SLATER BA(Hons), DMS, MRTPI
John Slater Planning Ltd
11th March 2020