

Hellingly Neighbourhood Development Plan 2018 - 2028

Additional Comments of the Independent Examiner

Prepared by

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15th January 2020

Introduction

1. As you will be aware I have been appointed to carry out the examination of this Neighbourhood Plan. Last summer I concluded my initial assessment of the Plan and all the accompanying documents. I also spent half a day, visiting the neighbourhood area to familiarise myself with the parish.
2. On 18th July 2019, I issued an Initial Comments document which raised a number of issues and asked for a number of responses. I received a response from the Parish Council on 18th September 2019 and from Wealden District Council on 19th September 2019, for which I am grateful. I had extended the response period as we were expecting the Local Plan's Inspector's Stage 1 letter around that time. It subsequently transpired that the letter was delayed, including being held in the purdah period for the general election. Due to the importance of the issues related to the interaction between the Neighbourhood Plan and the emerging Local Plan, especially related to the Habitat Regulation Assessment, I issued the Further Note of the Independent Examiner on 24th October 2019 explaining that the examination was being held in abeyance until the Local Plan Inspector's report had been issued.
3. I am also the Independent Examiner for the neighbouring Hailsham Neighbourhood Plan and they were facing similar issues of delay in their examination for identical reasons. I decided to hold an exploratory meeting with the Town Council and the District Council on 19th December 2019, where we discussed possible changes to the policy dealing with HRA issues which could have allowed the examination to proceed. Representatives from the Hellingly Neighbourhood Plan Group attended that meeting, initially as observers but I did invite their involvement, as the discussions evolved and it was agreed that Wealden District Council would prepare an alternative form of wording, which in the case of Hellingly would amend Policy HNDPE, for circulation with the two parish councils and for my consideration. They would also be revisiting the Habitat Regulation Assessment.
4. I was subsequently advised that the Inspector's Stage 1 letter was sent to the District Council on the following day, 20th December 2019 and this recommended that the emerging Wealden Local Plan should not proceed further with its examination and the plan should be withdrawn.
5. I am now in a position to formally indicate how I now intend to proceed with this examination.
6. Whilst it is normal practice for examinations to be dealt with, just on the basis of the consideration of the written material, the legislation does allow for the holding of a public hearing, if it would assist the examination.
7. As I intimated in an earlier note, I have concluded that a hearing dealing with some specific issues, would help me come to a conclusion on whether the plan meets the basic conditions. There will be matters that are not discussed

which will also figure in my recommendations. Similarly, I have identified a number of matters that I am happy can be dealt with by written submissions. The respective responses should be sent to me, one week before the date of the hearing.

Topics to be Dealt with at the Public Hearing

Implications of the Local Plan's Inspector's letter dated 20th December?

8. I would be interested in the participants views on what the implications would be, of the likely withdrawal of the emerging Wealden Local Plan. There is no doubt that parts of the neighbourhood plan have been influenced by proposals that have come forward in the draft Local Plan. Is any of the background evidence underpinning the policies in that draft plan still of relevance to the examination of the neighbourhood plan? Are there matters that are covered by the emerging local plan that be covered by the neighbourhood plan and can those changes be made without public consultation? Do sections of the Hellingly Neighbourhood Plan have to be re written?

The Validity of the Plan's Inclusion of Recommendations relating to planning matters

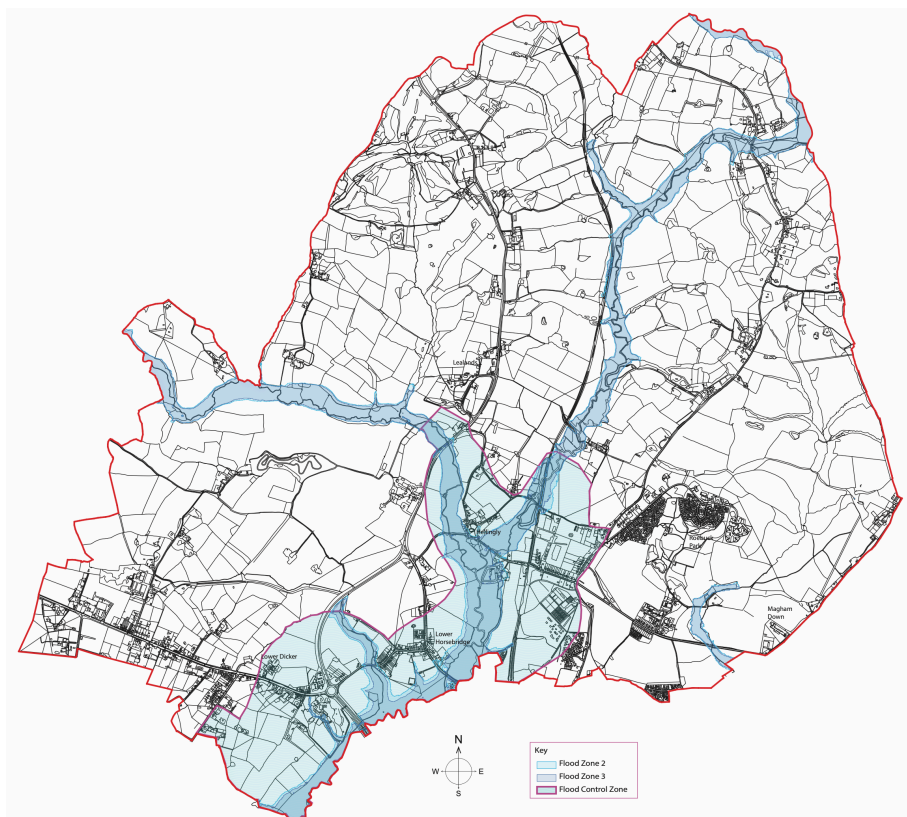
9. I will be inviting contributions as to the validity of the inclusion within the plan of what it terms "**Recommendations**".
10. The plan document is clear that there is a distinction between what are proposed to be *planning policies* and what are termed as *recommendations*. I still need to be satisfied that the inclusion of such "recommendations", which cover matters that relate to "the development and use of land", are appropriate to be retained within a document that would be part of the development plan.
11. I am conscious of the advice in the NPPF that plans should be prepared positively and should support the delivery of strategic policies contained in local plans.
12. The Planning Practice Guidance recognises that plans should contain policies for the development and use of land. It goes on "Wider community aspirations *than those relating to the development and use of land* would need to be clearly identifiable (for example, set out in a companion document or an annexe and it should be made clear in the document that they will not form part of the development plan." There is no Secretary of State guidance regarding using neighbourhood plans as a platform for lobbying on matters that **do** relate to the development and use of land within what would still be a development plan document.

Policies that require the submission of documents with a planning application

13. A number of the policies require information, documents or assessments to be submitted with a planning application. I would like to consider the relationship between the role of neighbourhood plan policy, which sets out how a planning application is to be determined, and the requirements set out in the Local Validation Checklist which is an entirely different document which sets out the LPA's requirements as to what documents are required to be submitted with a planning application.
14. Is it reasonable to expect all applications to be accompanied by an ecological survey of up to two years old? How does that sit against the conditional requirements set out in Appendix 2 - Biodiversity Survey and Report required in the Local Validation checklist. What should be the threshold for developments requiring a management plan as required by Policy HNBP5(iv)?

Areas of Critical Flood and Drainage Concern

15. I have been provided with the following map that identifies the difference between Flood Zones 2 and 3 with the Area of Critical Flood and Drainage Concern.



16. I need to be satisfied that the whole of the extended area shown as a Flood Control Zone, which is again different to the evidence contained within the Strategic Flood Risk Assessment, is based on actual evidence of being

flooded or is at risk of flooding. Is the control over development in this extended area justified? Similarly, should the Flood Zones 2 and 3 outside the Flood Control Zone be included in the scope of the policy? The policy refers to Areas of Critical Flood and Drainage Concern but does that imply that the whole area is an Area at Risk of Flooding.

17. I need to consider whether the submitted policy is consistent with the Secretary of State's policies contained in Chapter 14 of the NPPF and in particular how the policy, which seeks to resist development in areas at risk of flooding, will be balanced against *other public benefits* and how does this approach sit with the need to follow the sequential approach and the exception test set in the Framework. I will also need to be satisfied how consistent the neighbourhood plan is with Policy EN4 from the 1998 Local Plan.
18. I wish to explore whether a presumption against the land raising on development sites anywhere in Hellingly, is a practical and feasible policy and is it substantiated by evidence, particularly for areas outside the identified areas of flood risk. Does it allow development to be flood resistant / resilient by raising of floor levels to be above predicted flood levels?

Policies for Valued Landscapes

19. At the hearing, I will want to explore how proposals would be considered differently in the Hellingly Locally Valued Landscape Area compared to the rural areas that fall in the southern part of the plan area.

Policy regarding Isolated Houses in the Countryside

20. I will also wish to discuss whether the additional local criteria set for considering isolated houses in the countryside is justified having regard to the Secretary of State's policy requirements?

Matters to be Dealt with By Written Submissions

Local Green Spaces

21. I would ask that the Parish Council sends me individual plans that show the boundary of each of the proposed Local Green Spaces.

Extent of Area of Locally Valued Landscape

22. I would be pleased if the Parish Council could provide a plan showing how the southern boundary of the ALVL, as described in paragraph 24, differs from the boundary used in the District Council's Local Character Areas and what evidence supports that difference.

Recent Planning permissions

23. I would be grateful if the District Council could update me in terms of any recent decisions on planning permissions which are relevant to the plan area.

Views and Vista

24. Can the Parish Council provide me with an explanation as to how a view is different to a vista, and does it have any implications in terms of how the neighbourhood plan policies are to be used in a development management context.

Concluding Remarks

25. I hope that this note is useful in explaining to parties, the areas I wish to concentrate on at this forthcoming public hearing. I will in the next few days, discuss the hearing's logistics with the District Council who will be my point of liaison. They will then discuss matters with the Parish Council who will be asked to provide a venue if possible. Once arrangements have been made, I will issue a further note setting out how the hearing will be conducted and specifically who should be invited. It will include specific questions that will form the structure of the discussions. I will also issue an agenda for the day.
26. I am asking that a copy of this note be placed on the respective websites and if there are any matters or questions related to this note, or the examination generally, I must ask that they be directed via the Local Planning Authority.

John Slater BA(Hons), DMS, MRTPI.

Independent Examiner of the Hellingly Neighbourhood Development Plan

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