

Topics to be dealt with at the Public Hearing

Implications of the Local Plan Inspectors letter dated 20 December 2019

Response on behalf of Hellingly Parish Council

1. Wealden District Council should feel suitably embarrassed at letting down the residents of Hellingly and Hailsham by failing to produce a viable Local Plan. This has led to a tidal wave of planning applications in a development led, as opposed to a Plan led, approach to take advantage of Wealden's enfeebled position – exacerbated by the Council's acknowledgement that it cannot currently demonstrate a 5yr housing land supply as required by Government.
2. The Neighbourhood Development Plan (NDP), in meeting the statutory legal tests required of it must have regard to National Planning Policy/the National Planning Policy Framework (NPPF) and should not be in conflict with the strategic policies of the Development Plan. Following the essential demise of the Submission Wealden Local Plan 2019 (The Council's Director of Planning and Deputy Chief Executive has confirmed they will not be challenging the Inspectors letter) the Development Plan for Wealden now constitutes the Core Strategy 2013 and, somewhat alarmingly, the 1998 Wealden Local Plan. There is also the Wealden Design Guide Supplementary Planning Document – adopted October 2008 and thus itself some 10 years old.
3. Whilst it is true that parts of the NDP, and especially the Recommendations, have been influenced by Wealden's failed Submission Plan, the legal tests regarding the adopted Development Plan and National Policy are unchanged.
4. Very little of the background evidence to Wealden's 2019 Plan has been tested at examination. Indeed, perhaps the only, and indeed key piece of evidence that was tested related to the District Council's approach to air pollution on the Ashdown Forest. This approach, which was key to Wealden setting its strategic housing distribution, was widely criticised by their Inspector Louise Nurser who found it was simply not based upon any scientific credibility.
5. The subsequent removal from the Hellingly NDP of 'Ashdown Forest' elements of Policy HNDPE that Wealden had insisted went into the NDP has now enabled the NDP to proceed.
6. Within the NDP each Policy is clearly referenced to those Development Plan Policies that it is consistent with and supports. There is no conflict with the Strategic Policies of the adopted Development Plan. These have further been built upon the main local evidence studies Topic Papers and Support Papers. Such approach is all square with the Governments heralding of NDPs as giving communities "direct power to develop and deliver a shared vision for their neighbourhood and deliver the sustainable development they need".

b) Will this require parts of the NDP to be re-written. Is further public consultation required?

1. In response to the Inspectors specific query it is therefore considered that the essentially untested bulk of the background evidence in that failed Wealden Plan is of limited relevance now. Of far more relevance are the various local and bespoke background evidence studies carried out in the development of the NDP itself.
2. It is not felt that this situation requires any significant re-writing of the NDP or that further public consultation is required. Indeed, a brief paragraph in the text explaining why the Wealden Local Plan failed is all that is considered to be required.
3. The Hellingly Plan and indeed that for Hailsham has been significantly delayed by Wealden's slow progress, not 1 but 2 purdah periods and by the lengthy consideration of the Submission Plan itself. This has caused great disruption for Hellingly and potentially lost the Parish hundreds of thousands of pounds in Community infrastructure Levy receipts.
4. Indeed, by its failure to Plan properly the District Council's now unfortunate reliance on Development Plan Policies that are some 22 years old, out dated and inconsistent with the NPPF it is considered imperative that NDPs should proceed apace to at least bring some greater degree of relevance, modernity, control, certainty and support for both residents and developers. Indeed, to help fulfil the promises made to communities when the Localism Act came into being.

The validity of the Plans inclusion of Recommendations relating to planning matters

Response on behalf of Hellingly Parish Council

1. The Parish Council is rather surprised, and a little hurt, that in his letter of 28 January 2020 the Inspector appears to infer that any 'lobbying' or inclusion of Recommendations relating to planning matters is somehow an unseemly or illegitimate behaviour.
2. The Parish Council believes such inclusion is wholly consistent with NPPF advice on the purpose of NDPs – namely:

“to give communities the power to develop a shared vision for their area – to shape, direct and help deliver sustainable development by influencing local planning decisions” (NPPF para 29)
3. The Inspector does however concede that there is no Government advice on this matter. More importantly there is nothing, legislatively or otherwise, that prohibits or even discourages such approach.
4. The Recommendations within our NDP are founded on the very strongly felt, very often stridently aired, views of Hellingly residents following the many comprehensive consultation phases of the NDP.
5. Wealden has previously indicated that they (the Recommendations) might form the basis of representation on the Wealden Local Plan. Wealden has however now denied this opportunity to any Hellingly resident by their failure to progress that Plan to full examination. It has also denied any opportunity of testing its evidence base or indeed current developments against any up to date Policies.
6. It is a moot point as to whether even the Inspectors query can be explored further in the face of a Wealden Local Plan that is now dead, will need to be rewritten and is unlikely to be back before any examination for a number of years.
7. The inclusion of the Recommendations within those chapters of the NDP that they clearly relate to provides a more cogent, cohesive and understandable document. The NPPF 'test' such as it is simply requires them to be clearly identifiable from any Policies. In the Parish Councils submission that test is clearly met.
8. It will no doubt have not escaped the Inspectors notice on his various site visits that parts of Hellingly are awash with yellow signs and development sites. The Inspector is accordingly requested to progress the NDP as soon as possible in order to restore an element of certainty, control and Policy relevance and to help fulfil some of the many benefits promised of the NDP process to the local community.

Policies that require the submission of documents with a planning application.

Response on behalf of Hellingly Parish Council

a)

1. **The Inspector has asked as to the relationship between a number of Policies contained within the NDP and the Councils Local Validation Checklist** which is a different document setting out the LPA's requirements as to what documents are required to be submitted with an application.
2. There is no mutual exclusivity in a legislative sense, that is brought about by a validation checklist, that prevents a Policy requirement for submission of particular information documents or assessments. Indeed, within some of Wealden's 'saved policies' e.g. EN19 there is a clear requirement for the provision of much detailed information to be submitted, even at outline application stage.
3. More relevant still however to this question is the unarguable principle, expressed at paragraph 43 of the NPPF that

“the right information is critical to good decision making”

Paragraph 44 of the NPF confirms that:

“Local Planning Authorities validation lists should be reviewed at least every two years”

4. In this regard it is extremely worrying that Wealden's Validation Checklist has not been formally reviewed and consulted upon for a considerable number of years and certainly not “at least every two years” as clearly required by Government (NPPF para 44).
5. At the pre-examination meeting held in December with representatives of both Hailsham and Hellingly and in response to a query from the Inspector regarding landscape assessments the Council's officer's response was along the lines of their dealing with matters on a case by case basis. Whilst this might seem acceptable in some cases it is worrying that without any recent or regular reviews of their validation checklist, that a number of decisions may well not be being made on the basis of the 'right information' (para 43 NPPF).

b)

1. **The Inspector has also asked is it reasonable to expect all applications to be accompanied by an ecological survey up to 2 years old?** And how that sits alongside the conditional requirements set out in the Council's Validation Checklist.
2. Bearing in mind the deficiency in reviewing these validation checklists the Parish Council would submit they are, by this measure alone, inconsistent with the NPPF and need urgent reappraisal.
3. The list of exemptions from any requirement for an ecological/biodiversity survey – as set out at para 37 of Wealden's comments, of 19 September 2019 – is, quite frankly shocking in terms of its potential adverse impact and thus appears inconsistent again with the NPPF.
4. Paragraph 170 confirms that planning policies and decisions should contribute to and enhance the natural environment by:

“minimising impacts on and providing net gains for biodiversity”

Paragraph 174 confirms Plans should:

“a) identify map and safeguard components of local wildlife rich habitats for habitat management, enhancement, restoration and creation”

NDP Policy HNPD 5 does exactly that.

5. In contrast Wealden's Validation Checklist exemptions does the opposite. For example, all applications for Tree Works are currently exempt as are all applications to replace an extant permission (no scale of development is limited apparently).
6. Many TPO trees are old, many ancient, some potentially veteran and most would be notable trees. Many will contain bat roosts – either hibernation roosts or maternity roosts. And all bats are protected species. Such trees may also well provide nesting or roosting trees for barn owls, another protected species resident in the Parish.
7. By such exemptions remaining on the Validation List in particular the one referencing renewal of an extant permission, irrespective of scale of the development, the resulting impact on biodiversity could well prove catastrophic.
8. The latest State of Nature Report (as with all previous ones) confirms that the significant majority of our biodiversity is in perilous decline. Latest RSPB research suggests the UK has lost 40 million birds in the last 50 years.
9. The Parish Council fully accepts that any biodiversity survey needs to be proportionate to the scale of development proposed. The time period of less than 2 years is recommended by the Wildlife Trust and indeed the great majority of professional ecological surveys now issue a disclaimer to suggest they have a shelf life of no more than 2 years.
10. Without proper and up to date information we won't even know what we are losing before it is lost. Equally with Wealden having little else to fall back on apart from

outdated Policies from a 1998 Plan the dangers are all too apparent. It is considered imperative that this failure is rectified – Policy HNDP 5 of the NDP does that.

c)

Appropriate thresholds for requirement for ecological management plans

1. In response to the Inspectors final query on this issue the Parish Council considers that the appropriate threshold to be applied to developments requiring a management plan should be all those defined as 'major developments' by Government – in the case of residential development e.g. this would mean 10 units or more. Policy HNBP 5 can be amended accordingly to clarify this point.

Policies for Valued Landscapes

Does having a policy for an ALVL for the northern half of the parish devalue the rural character of the southern area and would a development proposal be considered differently in the south than in the north?

Response on behalf of Hellingly Parish Council

1. For the last 60 years legislation has provided for valued landscapes (e.g. National Parks and AONBs) to be given stronger protection than other areas which are, as a corollary, given less protection. Wealden is a classic example of this, with the SDNP and AONB being kept largely in aspic and most housing and commercial development being confined to the Low Weald corridor.
2. This approach was confirmed in the NPPF (revised) which in para 170 states that ***“planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes”*** and in para 171 that ***“plans should allocate land with the least environmental or amenity value”***.
3. No proposed ALVL in any other NDP has, to our knowledge, been rejected on the ground that it would devalue another area.
4. Indeed, the mere fact of designation of the northern half of the Parish as a locally valued landscape does not, per se, devalue the rural character of the southern area. Just as the act of designating National Parks, does not of itself devalue other non-National Park areas. It is poorly conceived and inappropriate development and poor planning decisions which have the most direct devaluing impact upon landscape character.
5. Designation as an ALVL would though mean that applications would need to be treated differently here in order to respect the key characteristics that led to designation. These are set out in detail within the NDP (paras 18 & 19) and within the Parish response to the Inspectors initial comments dated 18 July 2019.
6. The premise of the question is however itself open to question. The rural character of the southern area has, in the view of most residents, been significantly eroded in recent years and threatens to be still further eroded. The southern eastern part is in the process of becoming wholly urbanised. The A22 through the Dicker is a favoured location in the County Plan for employment growth. Traffic on all roads, including C class and unclassified village lanes, is increasingly noticeable as development in the area proceeds, with associated noise, pollution and environmental degradation. The character of much of the southern area may indeed now be described as ‘urban fringe’ rather than ‘rural’.
7. Within the southern area, 2 such areas may be correctly described as likely to remain rural – the largely inaccessible countryside between the north side of the A22 and the Bull River and the flood plain around Hellingly Village. Both would continue to be subject to saved Policies of chapter 4 of the 1998 Wealden Local Plan and the latter would additionally be subject to the national and local policies relating to flood zones. Development proposals in any part of the District would be considered in relation to the Policies applicable to them, which may differ from place to place.

8. In Phase 2 of the NDP Public Consultation, 18.2% of all electors in Hellingly Parish completed and returned a questionnaire and 94% of the respondents supported the identification and designation of locally valued landscapes (HNDP/S3). Given that the parish population is located predominantly in the southern area where such landscapes were unlikely to be identified, it is evident that they did not feel that such a policy would be to their disadvantage.

Policy HNBP 8 Isolated New Dwellings – are the additional criteria justified on the basis of the special character of the area having regard to the Secretary of States Policy requirements.

Response on behalf of Hellingly Parish Council

1. Policy HNBP 8 of the Hellingly NDP confirms that isolated new dwellings in the countryside will not be permitted unless the relevant special circumstances set down in the NPPF are met in full.
2. As detailed at paragraph 93 of the NDP the NPPF clearly states that such proposals should be avoided unless there are very special circumstances (NPPF para 79).
3. Two of these special circumstances are covered in greater detail by Policy HNBP 8 covering instances where an essential need to live at or near the place of work is argued e.g. for a new agricultural dwelling or where the design is of exceptional quality, innovative and significantly enhances its immediate setting and be sensitive to the defining characteristics of the local area.
4. However, whilst the NPPF sets stringent tests for such eventualities it provides no guidance at all on what constitutes or how to define essential need (para 79 (a) NPPF). This void is unhelpful as it is commonly this exemption that is argued to the general presumption against new isolated dwellings in the countryside.
5. It is emphasised that Policy HNBP 8 does not add to any further level or scale of rigour to these NPPF tests.
6. Indeed, it seeks to provide clarity for the benefit both of applicants and residents, and indeed for the Local Planning Authority of how the supportable yet rigorous tests set down as both necessary and required by these tests in the NPPF will be applied.
7. Dealing with criterion (i) essential need it is considered that this is best met by use of both a functional and financial assessment of need. This being absolutely necessary to prove an essential need as opposed to merely the greater convenience of it.
8. Policy criterion (ii) draws its wording directly from the NPPF para 79 (e) and is thus entirely consistent with and supportive of the Secretary of States Policy requirements in this regard. The ability or otherwise of any proposal to meet the tests set down in the NPPF would be clearly set down in the detailed assessment required by Policy HNBP 5 (ii).
9. In respect of the Inspectors note of 28 January dealing also with this matter the NPPF (para 79 (e)) does not require justification of the special characteristics of the Plan area to be separately identified. Rather it requires the applicant to show how the proposal will significantly enhance its immediate setting and be sensitive to the defining characteristics of the area. These characteristics will naturally differ from one proposed site or area to another.

10. Of some additional relevance here it should also be noted that within the Appendix of Saved Policies from the 1998 Wealden Local Plan,¹ Policy DC2 remains. This Policy sets down a number of specific criteria for agriculture and forestry dwellings including detailed functional and financial assessments.
11. Within Wealden's comments on the NDP (19 September 2019) the Council confirms at their paragraph 42 that when determining applications for essential need that the Council appoints a specialist rural estates surveyor to assess each on a case for case basis. Central to all such assessment are analyses of functional and financial need – this approach is widely accepted and adopted by nearly all rural authorities.
12. In conclusion it is considered that Policy HNPD 8 is both consistent with and supportive of the approach advocated in para 79 of the NPPF (amended February 2019).

¹ Saved by SOS virtue of para 13, schedule 8 of Planning and Compulsory Purchase Act 1990 (as amended)