

**Town and Country Planning Act 1990**  
**Neighbourhood Planning (General) Regulations 2012**

**SEDLESCOMBE NEIGHBOURHOOD DEVELOPMENT PLAN 2016 – 2028**

**INDEPENDENT EXAMINATION**

**Report to Rother District Council**

**by Edward Cousins BA, LL.M**

**November 2017**

# **CHAPTER 1**

## **INTRODUCTION**

### **Appointment of the Examiner<sup>1</sup>**

1. On 2<sup>nd</sup> February 2017 I was appointed by the Rother District Council (“the District Council”) to conduct an independent examination (“the Examination”) of the draft Sedlescombe Neighbourhood Development Plan 2016-2028 (“the SNP”), and to provide a report. Following an analysis of the material submitted for the purposes of the Examination. I now produce this report (“the Report”).
2. I am independent of the Parish Council and the District Council. I have no interest in any land affected by the SNP - nor do I have any professional conflicts of interest.
3. I was called to the Bar of England and Wales in 1971 and practised as a Chancery Barrister in Lincoln’s Inn for over 30 years with expertise in property and land law, and associated Chancery litigation. From 2002 to 2011, I served as Chief Commons Commissioner appointed under section 17 of the Commons Registration Act 1965. This was a part-time judicial post. In September 2003 I was appointed to the salaried full-time judicial role of the Adjudicator to HM Land Registry, established under the provisions of the Land Registration Act 2002. When in June 2013 this jurisdiction was transferred into the tribunal system, I then became Principal Judge of the First-tier Tribunal (Property Chamber – Land Registration Division). This meant that I was able to sit as a Deputy Upper Tribunal Judge in the Lands Chamber, and the Tax and Chancery Chamber.
4. In October 2014 I ceased to be salaried judge. I then joined Francis Taylor Building as an Associate Member specialising in planning law, and related land and property law issues. In that capacity I am engaged in the role of Legal Adviser, Mediator and Arbitrator. I have been appointed to the Panel of Examiners established by of NPIERS. I am also qualified to sit as a non-statutory Inspector, and have been

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<sup>1</sup> For the role of the Examiner, see Chapter 2, para 37 *ff*.

retained in that role to conduct a number of town and village green inquiries. I still continue to sit as a fee-paid judge in the High Court.

### **Qualifying Body**

5. The Parish Council is a qualifying body as defined.<sup>2</sup> It is therefore entitled to initiate the process whereby it can require the local planning authority to “make” a neighbourhood plan. For these purposes the District Council is the local planning authority.
6. Following the Examination, the Report will recommend whether it should go forward to a Referendum.<sup>3</sup> If the neighbourhood plan achieves more than 50% of votes in favour of a referendum, then the District Council would be under a statutory duty to make the plan.

### **The Sedlescombe Neighbourhood Development Plan**

7. The draft SNP was submitted for Examination to the Examiner by the District Council on 9<sup>th</sup> March 2017. This followed a consultation held in accordance with Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 (as amended) between 28<sup>th</sup> November 2016 and 23<sup>rd</sup> January 2017.
8. This Report addresses matters relevant to the Examination, and makes recommendations for certain modifications to the SNP.
9. However, this is not the first time the Parish Council has submitted a neighbourhood plan for Sedlescombe. A previous plan was submitted for examination in 2014. The Examiner appointed for the purpose<sup>4</sup> examined the previous plan and produced a report in January 2015. The previous Examiner recommended that the previous plan met the basic conditions, but was subject to modifications. Those modifications were not acceptable to the Parish Council, who then withdrew the plan.
10. By virtue of the principle of consistency in decision making, whilst it is open to the Examiner of the 2016-2028 SNP to reach different conclusions from those reached

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<sup>2</sup> See s. 38A(12) of the 2004 Act.

<sup>3</sup> In accordance with paragraph 14 of Schedule 4B to the 1990 Act.

<sup>4</sup> Mr Nigel McGurk BSc (Hons) MCD MBA MRTPI.

by the previous Examiner, he must give reasons for that difference of opinion.<sup>5</sup>

### **Neighbourhood Plan Period**

11. Section 38B(1)(a) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) requires that a neighbourhood plan specify the period for which it is to have effect. The plan period for the is 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2028. The Council’s Rother Local Plan Core Strategy (“the Core Strategy”) was adopted in September 2014 and covers the plan period up to 2028. In my judgment the SNP period is therefore appropriate.

### **Neighbourhood Area**

12. A plan showing the boundary of the Sedlescombe Neighbourhood Area is included as Figure 1 on page 5 of the SNP. The Council approved the designation of Sedlescombe as a Neighbourhood Area on 1<sup>st</sup> July 2013. This satisfies the relevant requirement under section 61G(1) of the Town and Country Planning Act 1990 (“the 1990 Act”).

### **The Public Hearing**

13. On analysis of the documentation submitted for the Examination it became apparent that there were a number of areas of contention, in particular in relation to:
  - (1) the overall Plan process;
  - (2) proposed **Policy Numbers 4, 7, 8 and 9**, as to access and visual amenity; and
  - (3) proposed **Policy Number 11**, as to whether it is appropriate to designate the whole of Street Farm as a Local Green Space, including having regard to whether it can be construed as an “extensive tract of land”.
14. In view of the history surrounding the production of the original Examiner’s Report, and the subsequent withdrawal of the original neighbourhood plan by the Parish Council, and the fact that there are a number of areas of contention in the

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<sup>5</sup> See, for example, *North Wiltshire DC v Secretary of State for Environment* [1992] 65 P & CR 137 at 145.

circumstances it was considered appropriate to hold an oral Public Hearing so that all the issues in the Examination could be fully and properly considered.

15. To this end an Order and Direction<sup>6</sup> was made dated 30<sup>th</sup> May 2017 that a hearing be held in order to consider oral representations from interested parties to assist the Examiner in his Examination of the issues in the case, for the reasons stated therein. Following this, Further Directions and a hearing Procedure Note were published, dated 30<sup>th</sup> May 2017. The Public Hearing itself took place in Bexhill Town Hall on 19<sup>th</sup> June 2017, for which an Agenda had been prepared.<sup>7</sup>
16. At the Public Hearing the various issues, to which reference has been made above, were canvassed. It became apparent during the course of the various discussions that a site view would be helpful in the circumstances.

### **Site View**

17. Accordingly, an accompanied Site View was duly arranged and held on 4<sup>th</sup> September 2017 where a number of sites were visited.

### **Late Representations**

18. The circumstances surrounding late representations in relation to them should only be taken into account in exceptional circumstances. However, in this regard it must be born in mind that two matters came to the fore in this Examination which has modified this approach. I have seen (and heard) late representations in this Examination. The reasons for this are as follows:
  - (1) By reason of the background history and quite considerable local dissension which surrounded this submission version of the draft SNP, and the fact that a previous draft SNP had been submitted, and then withdrawn;
  - (2) Planning permission was eventually granted on 17<sup>th</sup> May 2017 for the Brede Lane development. This has a considerable bearing on draft **Policy 11: Local Green Spaces**, and also affects draft **Policy 1: Sedlescombe Development Boundary**. The Parish Council then sought permission to

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<sup>6</sup> Made pursuant to the provisions of paragraph 9 of Schedule 4B to the 1990 Act, as inserted by schedule 10 of the Localism Act 2011.

<sup>7</sup> The Order and Direction, the Further Directions and a hearing Procedure Note, and the Agenda, are all contained within Annex 1 to this Report.

Judicially Review this decision. This was ultimately rejected by Sir Wyn Williams, sitting as a High Court Judge in his judgment on 18<sup>th</sup> September 2017. Since then correspondence has ensued from the Parish Council in relation to this judgment, which bears upon a possible agreed modification to draft **Policies 1 and 11**.

19. Accordingly, I have allowed late representations to be made, there being appropriate exceptional circumstances to enable me to do so.

## **CHAPTER 2**

### **NEIGHBOURHOOD PLANNING**

20. Neighbourhood planning is the process introduced by Parliament as enacted by the Localism Act 2011 (“the 2011 Act”). The intellectual purpose of neighbourhood planning is to seek to enfranchise those persons living and working in a community by providing the basis through which they can play a more active role in the process of deciding the future of their neighbourhood. It has been described as the ability:-

*“to give to communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need”*

21. Thus, the 2011 Act gave powers to parish councils to involve their communities in the creation of neighbourhood development plans, in order to provide them with a greater say in planning matters. Parish councils are therefore able to play a role in the establishment of general planning policies for the development and use of land in their neighbourhoods. Examples of such involvement are directed to the siting, design and construction of new homes and offices, and the designation of local green space. The neighbourhood plan sets a vision for the future for the area concerned. It can be detailed, or general, depending on what local people want.<sup>8</sup>
22. In order to ensure that the new process is workable and effective the 2011 Act introduced the requisite amendments to the 1990 Act, and the 2004 Act.<sup>9</sup> These amendments came into force on 6<sup>th</sup> April 2012 and were supplemented by detailed procedures provided for in the Neighbourhood Planning (General) Regulations 2012 (“the 2012 Regulations”).
23. The first step towards producing a neighbourhood plan is for a parish council, or other qualifying body, to define a “neighbourhood area” for which it considers that a plan should be prepared and presented.<sup>10</sup> This is part of the process which that body is entitled to initiate for the purpose of requiring the local planning authority in England

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<sup>8</sup> <https://www.gov.uk/publications/neighbourhood-planning>

<sup>9</sup> The 1990 Act, ss. 61E to 61P, Sch 4B (neighbourhood development orders); the 2004 Act, ss. 38A to 38C (neighbourhood plans).

<sup>10</sup> See s 38A(1).

to make a neighbourhood development plan for the whole or any part of its area specified in the plan.<sup>11</sup> “A “neighbourhood development plan” is a plan

*“.....which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area”.*<sup>12</sup>

The local planning authority will provide assistance in this process, where appropriate. The draft plan must meet what are referred to in the legislation as the basic conditions (“the Basic Conditions”). This means that the draft plan must in general conformity with national and other local planning policies. It must also conform to other provisions.<sup>13</sup>

24. Once a draft plan has been prepared and made available for inspection within the area in question, and members of the community have had the opportunity to comment upon it, an independent Examiner is appointed by the planning authority, with the consent of the qualifying body that produced the draft plan. The examiner must be someone who is independent of the qualifying body and the planning authority, has appropriate qualifications and experience, and has no interest in any land affected by the plan.<sup>14</sup> The examiner then produces the Report which contains one of three possible recommendations<sup>15</sup>. One of these recommendations is that the draft plan should be submitted to a referendum.<sup>16</sup>
25. The purpose of the referendum is to decide whether the draft plan should be “made”, subject to any changes recommended by the examiner and accepted by the planning authority. If more than 50% of those voting vote in favour of the plan, the planning authority must then make the plan.
26. Once it comes into force, the neighbourhood plan forms part of the development plan for the area to which it relates, together with the policies in the adopted local plan, the “saved” policies of the relevant local plan, any plans for minerals and waste disposal,

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<sup>11</sup> The 1990 Act, s. 61F(1), (2), applied by the 2004 Act, s. 38C(2)(a).

<sup>12</sup> By virtue of 38A(2).

<sup>13</sup> The 1990 Act, Sch 4B, para 8, applied by the 2004 Act, s 38A(3). For a detailed examination of the Basic Conditions and other statutory requirements, see Chapter 3, below.

<sup>14</sup> The 1990 Act, Sch 4B, para 7(6), applied by the 2004 Act, s. 38A(3).

<sup>15</sup> Reference Paragraph 43

<sup>16</sup> The 1990 Act, Sch 4B, para 10(2)), applied by the 2004 Act, s 38A(3). For the appointment and role of the examiner, and the possible recommendations see paragraph 43, below.



and any saved policies of the relevant regional strategy. Thereafter it forms an integral part of the policy framework that guides the planning authority and the planning inspectorate, in making all planning decisions in the area.

### **The statutory framework and role of the Examiner**

#### ***The legislation***

27. There now follows a more detailed analysis of the statutory basis underlying neighbourhood planning.
28. Section 38A of the 2004 Act provides that any “*qualifying body*” is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan. The Parish Council is a “*qualifying body*”, and the Council is a “*local planning authority*”, for the purpose of the 2004 Act.
29. A ‘*neighbourhood development plan*’ is defined by Section 38A(2) as ‘a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan’.
30. By section 38(3)(c) of the 2004 Act, a neighbourhood development plan that has been made in relation to an area forms part of the statutory development plan, for the purpose of guiding town and country planning decisions. Under section 38(6) there is a presumption in favour of determining planning applications in accordance with the development plan, unless material considerations indicate otherwise.
31. Section 38B of the 2004 Act provides as follows:

*“38B Provision that may be made by neighbourhood development plans*

*(1) A neighbourhood development plan—*

- (a) must specify the period for which it is to have effect,*
- (b) may not include provision about development that is excluded development, and*
- (c) may not relate to more than one neighbourhood area.*

*(2) Only one neighbourhood development plan may be made for each neighbourhood area.*

*(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.*

*(4) Regulations made by the Secretary of State may make provision—*

- (a) restricting the provision that may be included in neighbourhood development plans about the use of land,*
- (b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and*
- (c) prescribing the form of neighbourhood development plans.*

*(5) A local planning authority must publish each neighbourhood development plan that they make in such manner as may be prescribed by regulations made by the Secretary of State.*

*(6) Section 61K of the principal Act (meaning of “excluded development”) is to apply for the purposes of subsection (1)(b).”*

32. Section 61K provides, so far as is material, as follows:-

*“61K Meaning of “excluded development”*

*The following development is excluded development for the purposes of section 61J—*

- (a) development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1,*
- (b) development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,*
- (c) development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),<sup>17</sup>*
- (d) development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008).”*

<sup>17</sup>

This must now be taken to refer to codifying Directive 2011/92/EU, which repealed and re-enacted Directive 85/337/EEC and its amending instruments and states at Article 14 that references to the repealed directive are to be construed as references to the new directive, as a matter of consistent interpretation and under the principle of construction codified in relation to domestic law by s.17(2)(a) of the Interpretation Act 1978.

33. The 2012 Regulations were made under section 38B of the 2004 Act. These prescribe some detailed requirements for neighbourhood development plan proposals and how they are to be consulted upon, publicised and submitted.
34. The procedure for examining draft neighbourhood development plans is provided for in Schedule 4B of the 1990 Act, which is applied by section 38A(3) of the 2004 Act. This provides at paragraph 7 for the local planning authority to submit the draft plan for independent examination by a person who is independent of the qualifying body and of the authority, does not have an interest in any land that may be affected by the draft plan, and has appropriate qualifications and experience.
35. The Examiner must make a report on the draft plan pursuant to paragraph 10 of Schedule 4B, which must recommend either that the draft plan is submitted to a referendum; or that modifications be made to correct errors or secure compliance with legal requirements, and the draft plan as modified be put to a referendum; or that the proposal for the plan be refused.<sup>18</sup> The examiner's report must contain a summary of its main findings and give reasons for each of its recommendations.
36. The local planning authority is then required to publish the examiner's report, and to consider the recommendations made. If the local planning authority considers that the statutory requirements are complied with, the draft plan must then be put to a referendum and, if approved by the referendum, adopted as part of the development plan.

### ***Role of the Examiner – the detail***

37. The role of the Examiner is to conduct an independent examination of the draft plan. Paragraph 8 of Schedule 4B to the 1990 Act, as modified by section 38C(5) of the 2004 Act, requires the Examiner to consider the following:
- whether the draft plan “*meets the basic conditions*” (defined at subparagraph (2));<sup>19</sup>
  - whether it complies with the provision made by or under sections 38A and 38B of the 2004 Act; and

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<sup>18</sup> See below, para 43 *ff.*

<sup>19</sup> For a detailed analysis of the “*basic conditions*”, see Chapter 3.

- whether the area for any referendum should extend beyond the neighbourhood area to which the draft plan relates; and
- whether the draft plan is compatible with ‘the Convention rights’, as defined by the Human Rights Act 1998<sup>20</sup>.

38. Paragraph 8(2) of the Schedule, as modified by section 38C(5)(d) of the 2004 Act, provides:-

- “(2) A draft [plan] meets the basic conditions if—
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan],
  - [...]
  - (d) the making of the [plan] contributes to the achievement of sustainable development,
  - (e) the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
  - (f) the making of the [plan] does not breach, and is otherwise compatible with, EU obligations, and
  - (g) prescribed conditions are met in relation to the [plan] and prescribed matters have been complied with in connection with the proposal for the [plan]..”

39. It is important to note that the examination process is not intended to put the Examiner into the shoes of the “qualifying body” so as to usurp its function and re-make its decisions. The statutory remit of the Examiner is limited.

40. Thus, the examination process is less intrusive than that required in respect of a local development plan document. For instance:

*“the remit of an examiner dealing with a neighbourhood plan does not include the requirement to consider whether that plan is ‘sound’ (as in section 20(5)(b) of the 2004 Act), so the requirements of ‘soundness’ contained in paragraph 182 of the NPPF do not apply to a neighbourhood plan. The Examiner of a neighbourhood plan does not consider whether that plan is ‘justified’ in the sense used in paragraph 182 of the NPPF. In*

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<sup>20</sup> Section 1 of the 1998 Act defines these as the rights and fundamental freedoms set out in—Articles 2 to 12 and 14 of the European Convention on Human Rights, Articles 1 to 3 of the First Protocol to the Convention, and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.

*other words, the Examiner does not have to consider whether a draft policy is the ‘most appropriate strategy’ compared against alternatives, nor is it for him to judge whether it is supported by a ‘proportionate evidence base’.*

- *Whereas under paragraph 182 of the NPPF a local plan needs to be “consistent with national policy” an examiner of a neighbourhood plan has a discretion to determine whether it is appropriate that the plan should proceed having regard to national policy.*
- *The basic condition only requires the examiner to consider whether the draft neighbourhood plan as a whole is in general conformity with the strategic policies in the adopted Development Plan taken together. I am not charged with determining in respect of each particular policy or element whether there is a tension between the local and neighbourhood plans, and if there is such tension in places, that may not be determinative of the overall question of general conformity.”<sup>21</sup>*

41. Although the Examiner has a general discretion whether to recommend modification to bring the neighbourhood plan into line with national policy if he finds points of departure, I bear in mind that one would normally expect appeal decisions to follow current national policy where it conflicts with a local or neighbourhood development plan. A neighbourhood plan that is at odds with national policy is in danger of becoming a dead letter. Unless the Examiner considers that there is evidence demonstrating good reason to depart from national policy in the neighbourhood, he would be expected to recommend that it be followed.
42. In essence, therefore, the role of the Examiner is to assess whether the draft plan is compliant . If in the event that the draft plan does not comply with the various statutory requirements, the Examiner then is obliged to consider whether it can be modified so that it does so comply.

## **The Report**

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<sup>21</sup> See *R(Maynard) v Chiltern District Council* [2015] EWHC 3817 (Admin) at [13] per Holgate J.

43. The Examiner then produces a report, which contains one of three possible recommendations, namely, whether:

- “(a) the draft plan is to be submitted to a referendum;*
- (b) the modifications specified in the report are to be made to the draft plan, and that the draft plan as modified is submitted to a referendum; or*
- (c) the proposal for a plan is to be refused.”<sup>22</sup>*

44. The recommended modifications can only be those that the Examiner feels are necessary to ensure that the draft plan complies with the Basic Conditions and the other relevant statutory requirements, or are needed for the purpose of correcting errors. If the changes are substantial, then they may have to be the subject of a further round of consultation.

45. The further requirements of the Examiner, as defined in the 2012 Regulations, include considering whether the draft plan complies with the definition of a neighbourhood development plan, and the provisions that can be made by a neighbourhood development plan; and whether the draft plan is compatible with the European Convention on Human Rights. The Examiner may also make recommendations on whether the neighbourhood plan area for referendum should extend beyond the neighbourhood plan boundaries.

46. The 2012 Regulations have, at regulations 32, and Schedule 2 thereof, prescribed a condition for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act. Paragraph 1 of Schedule 2 to the 2012 Regulations stipulates that:

*“[the] making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012 ) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects).”*

47. In this Report, I shall first consider the formal compliance with the provision by and under sections 38A and 38B of the 2004 Act. I shall then address the Basic

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<sup>22</sup> 1990 Act, Sch 4B, para 10(2), applied by the 2004 Act, s 38A(3).

Conditions, before addressing the questions of human rights and the appropriate area for a referendum.

### **Compliance with provision made by or under sections 38A and 38B of the 2004 Act**

#### ***Section 38A***

48. An application was made by the Parish Council for the whole parish to be designated as a 'neighbourhood area' for the purpose of the 2004 Act. This neighbourhood area was approved and authorised by the Council on 1 July 2013. The Parish Council is a "qualifying body" by virtue of s.38A(12).
49. Section 38A(2) requires the neighbourhood development plan to only contain policies relating to the development and use of land lying in the neighbourhood area. The policies are set out in Sections 3-8 of the Neighbourhood Plan. I am satisfied that the Policies do relate to the use and development of land within the neighbourhood area, and not to extraneous matters.

#### ***Section 38B***

50. The Neighbourhood Plan must specify the period for which it has effect, which is required by section 38B(1)(a) of the 2004 Act i.e. the plan period. I have already stated that I consider that this requirement has been satisfied.

### **Public Consultation**

51. The consultation requirements for a draft neighbourhood plan are set out in Regulation 14 of the 2012 Regulations. In essence, the Parish Council are required to have publicised the details of the proposed SNP, where and when it may be inspected and how and when to make representations in a manner likely to bring it to the attention of people who live work and carry on business in the neighbourhood area. In addition, certain bodies must be consulted whose interests may be affected by the proposals in the draft SNP.
52. The Parish Council's Consultation Statement dated September 2016 is extremely thorough and it is plain from that statement that the requirements set out in Regulation 14 were amply satisfied. By holding a consultation event on 31<sup>st</sup> July 2016 as well as displaying posters including an A0 notice placed on the Village

Green for 8 weeks, delivering a summary of the plan and consultation form to every household in Sedlescombe, placing a hard copy of the draft SNP in the village shop and emailing approximately 350 residents collated on database of village email addresses.

53. I note that a number of the representations made in relation to the SNP criticise the way the consultation was carried out. This was referred to, in passing, during the course of the Public Inquiry, but having studied all the evidence in the case, and having considered those representations together with the SNP Consultation Statement I am satisfied that the consultation conducted by the Parish Council satisfied the Regulation 14 requirements and the “*Sedley Criteria*” for consultation endorsed by the Supreme Court as a ‘prescription for fairness’ in *R (Moseley) v LB Haringey*.<sup>23</sup>

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<sup>23</sup>

[2014] UKSC 56.



## **CHAPTER 3**

### **THE LEGAL REQUIREMENTS**

#### **The Basic Conditions – Overview**

54. In this Part the Basic Conditions are analysed. The requirement made under is for the Examiner to consider whether the Neighbourhood Plan for Sedlescombe meets the Basic Conditions.<sup>24</sup> Thereafter in this Report consideration is then directed as to whether the Neighbourhood Plan meets the Basic Conditions.
55. Paragraph 8(2) of Schedule 4B to the 1990 Act provides that a neighbourhood development plan meets the Basic Conditions if:
- “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the plan],*
  - (b) .....*
  - (c) .....*
  - (d) the making of [the plan] contributes to the achievement of sustainable development,<sup>25</sup>*
  - (e) the making of [the plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*
  - (f) the making of [the plan] does not breach, and is otherwise compatible with, EU obligations,<sup>26</sup> and*
  - (g) prescribed conditions are met in relation to [the plan] and prescribed matters have been complied with in connection with the proposal for [the plan].”<sup>27</sup>*
56. Basic Conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood plans.
57. Only one further Basic Condition has been prescribed under paragraph 8(2)(g), as follows:

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<sup>24</sup> The 1990 Act, Sch 4B, para 8(1)(a), applied by the 2004 Act, ss 38A(3), 38C(5)(b).

<sup>25</sup> For the definition of “sustainable development”, see paragraphs 65 ff, below.

<sup>26</sup> i.e. the European Convention of Human Rights, the Strategic Environmental Assessment Directive 2001/42/EC, and the Habitats Directive 92/43/EEC.

<sup>27</sup> 1990 Act, Sch 4B, para 8(2), applied by the 2004 Act, ss 38A(3), 38C(5)(d).

*“The making of the neighbourhood development plan is not likely to have a significant effect on a European site ... or a European offshore marine site ... (either alone or in combination with other plans or projects).”<sup>28</sup>*

58. The 2012 Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the Basic Conditions, together with other statutory requirements.<sup>29</sup> In the case of a neighbourhood plan, a document entitled the “Basic Conditions Statement” dated September 2016 has been produced to accompany it. It provides summary of the measures that have been taken in this case to ensure that a neighbourhood plan does meet the Basic Conditions.
59. Further, a draft plan must meet all of the Basic Conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them.

#### **National policies and advice: National Planning Policy Framework**

60. In carrying out the Examination of a draft plan, and deciding whether to recommend that it should be submitted to a referendum, the Examiner is required to have regard to national policies and advice contained in guidance issued by the Secretary of State (see Basic Condition (a)).
61. The most significant national policies relevant to planning matters in England are set out in the document entitled the “National Planning Policy Framework” (“the NPPF”). This was published on 27<sup>th</sup> March 2012. It replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.
62. In the “Ministerial Forward” of the NPPF the declaration was made by the then Minister for Planning that “[t]he purpose of planning is to help to achieve sustainable development.” “*Sustainable* ... means ensuring better lives for ourselves don’t mean worse lives for future generations”. “*Development* means growth ... We

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<sup>28</sup> 2012 Regulations, Sch 2, para 1.

<sup>29</sup> The 2012 Regulations, Reg 15(1)(d); see below.

must house a rising population, which is living longer and wants to make new choices.... Sustainable development is about change for the better, and not only in our built environment....Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision ...”. The expressed aim of the NPPF is by replacing “.... over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.”<sup>30</sup>

63. The NPPF comprises a clear demonstration of the Government’s commitment to a “plan-led” planning system, as is apparent throughout the document. In paragraph 2 of the “Introduction” there is an acknowledgment of the statutory presumption in favour of the development plan<sup>31</sup>, and the status of the NPPF as another material consideration. There are a number of references to the “plan-led” system contained in the document.
64. Paragraph 12 acknowledges that the NPPF “... does not change the statutory basis of the development plan as the starting point for decision-making”. It states that the “[p]roposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.” It adds that “[i]t is highly desirable that Local Planning Authorities should have an up-to-date plan in place.” Paragraph 13 confirms that the NPPF “... constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.”

### **“Achieving sustainable development”**

65. In paragraph 6 of the NPPF it is stated that the purpose of the planning system is to contribute to the achievement of sustainable development. Reference is then made to paragraphs 18 to 219 as constituting the Government’s view of what sustainable

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<sup>30</sup> In the conjoined appeal *Suffolk Coastal District Council v Hopkins Homes Ltd and Secretary of State for Communities and Local Government; Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government* Lindblom LJ referred to authorities where it is stated that this attempt for simplicity and clarity and process of simplification had not necessarily achieved what was intended.

<sup>31</sup> See section 38(6) of the 2004 Act.

development in England means for the planning system. Paragraph 7 of the NPPF provides as follows:

*“7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:*

- ***an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*
- ***a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- ***an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy. “*

### **“The Presumption in favour of sustainable development”**

66. A key component of the NPPF is the concept of “... the presumption in favour of sustainable development”. In carrying out an examination of a draft plan, the Examiner is required to consider whether the making of it would contribute to the achievement of sustainable development (Basic Condition (d)). Paragraph 14 of the NPPF explains how this presumption is to be applied:-

*“At the heart of the National Planning Policy Framework is **a presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.*

*For **plan-making** this means that:*

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*  
*any adverse impacts of doing so would significantly*

*and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*

*specific policies in this Framework indicate development should be restricted.”<sup>32</sup>*

*For decision-taking this means<sup>33</sup>:*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out of date, granting permission unless:  
any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or  
specific policies in [the NPPF] indicate development should be restricted.”<sup>34</sup>*

67. The Government’s understanding of neighbourhood plan-making is summarised at paragraphs 15 and 16 of the NPPF where specific reference is made to neighbourhood plans, as follows:

*“15. ... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.*

*16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:*

- *develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;*
- *plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and*
- *....”*

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<sup>32</sup> e.g. “...those policies relating to sites protected under the Birds and Habitats Directives ... and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”

<sup>33</sup> “Unless material considerations indicate otherwise.”

<sup>34</sup> *Ibid.*

68. None of those who submitted written representations has referred to any other definition of sustainable development, or any other documents relating to it, that should be taken into account in this Examination of the Neighbourhood Plan.

### **The Core planning principles**

69. The “Core planning principles” that should underpin all planning are then summarised at paragraph 17, and elaborated in relation to specific topics in the remainder of the NPPF. That paragraph provides as follows:

*“17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:*

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency; ...”*

70. Contained in section 8 of the NPPF under the heading “Promoting healthy communities” two paragraphs are of relevance to the present Examination, namely paragraphs 76 and 77.

*“76. Local communities through local and neighbourhood plans should be able to identify for special protection green areas of particular importance to them. By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances. Identifying land as Local Green Space should therefore be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or reviewed, and be capable of enduring beyond the end of the plan period.*

- 77. The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

- *Where the green space is in reasonably close proximity to the community it serves;*
- *Where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *Where the green area concerned is local in character and is not an extensive tract of land.”*

71. It will be noted in particular in paragraph 77 that the designation of “Local Green Space” should only be used in the circumstances set out in the three bullet points. In particular, it should not be an “extensive tract of land”. There is no apparent definition of that phrase, although it is usually used in connection with land to be designated as National Parks and not in relation to a relatively small acreage of fields.

### **Neighbourhood planning**

72. The principal policies of the NPPF specifically relating to neighbourhood planning are as follows:

*“183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:*

- *set planning policies through neighbourhood plans to determine decisions on planning applications; and*
- *grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.*

*184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its*

*strategic policies.*

*185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. ...”*

73. More general policies relating to “plan making” are found throughout the NPPF, but they generally refer to the making of local plans. For example, paragraphs 47 and 158-159 contain important policies regarding the need to ensure an adequate supply of housing; but these specifically refer to action by local planning authorities. Nevertheless, since neighbourhood plans are to be in general conformity with strategic policies in local plans, those policies in the NPPF relating to local plans will still be indirectly relevant.
74. Other policies directly relating to the making of neighbourhood plans are in paragraphs 28, 56 - 58, 69 - 70, 76 - 77, 97, 109 - 111, and 117 of the NPPF.
75. More generally, the NPPF sets out a number of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. It is necessary for the Examiner to have regard to these where appropriate in carrying out the Examination.

### **Planning Practice Guidance**

76. More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 on the Planning Portal website, as *Planning Practice Guidance* (“PPG”).<sup>35</sup> This guidance relates to a whole range of planning issues.
77. In particular, the PPG contains the following guidance:

**How should the policies in a neighbourhood plan be drafted?**

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<sup>35</sup> <http://planningguidance.communities.gov.uk>



*A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”<sup>36</sup>*

78. A policy that is not “*clear and unambiguous*” is thus not in accordance with the Basic Conditions.
79. The requirement that a policy should be distinct, reflecting local circumstances, is less straightforward. Many policies in proposed neighbourhood plans are to a greater or lesser extent generic policies that could apply to many if not all locations. However, the fact that a particular community has chosen to include a particular generalised policy in its plan reflects its awareness that the issue in question is of special relevance in its circumstances. The inclusion of such general policies thus does not of itself mean that those policies, or the plan as a whole, is not in accordance with the Basic Conditions.

#### **Other national policies and advice**

80. The reference in the first basic condition to national policies and advice is not limited to the guidance in the NPPF and the PPG. Historically, a plethora of Circulars, practice guidance notes and other such documents were in existence at an earlier stage. Fortunately, most of these were cancelled when the NPPF was produced in 2012. Those that survived, and in particular the 2007 practice guidance on “Strategic Housing Market Assessments and Strategic Housing Land Availability Assessments”, were cancelled in March 2014.
81. For the purposes of this Examination the assumption has been that the relevant national policies and advice are those that are now exclusively contained in the NPPF and the PPG.
82. Having regard to the Basic Conditions, and the NPPF, and other documents, to which reference has been made above, I am satisfied that draft SNP is fully

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<sup>36</sup>

PPG, ref ID: 41-041-20140306.

compliant therewith, and that the Policies (subject to some modifications), which are the subject of a detailed analysis in Chapter 4, below, are clear and unambiguous.

### **EU obligations**

83. In carrying out the examination of a draft plan, the Examiner is also required to consider specifically whether the draft plan is likely to have a significant effect on
- (1) a European site (as defined in the Conservation of Habitats and Species Regulations, 2010) (“the Habitats Directive”), or
  - (2) a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c) Regulations, 2007),
- either alone or in combination with other plans or projects (additional Basic Condition (g)).<sup>37</sup>
84. More generally, the Examiner is required to consider whether the making of the draft plan is in general conformity with “EU obligations” (Basic Condition (f)).
85. The principal relevant EU obligation is under the EC directive on the assessment of the effects of certain plans and programmes on the environment (the Strategic Environmental Assessment, or the “SEA Directive”).<sup>38</sup> That requires, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out at the time they are prepared and before they are adopted.
86. The second EU obligation is that:
- “any plan or project not directly connected with or necessary to the management of [a European site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s nature conservation objectives.”*<sup>39</sup>

This reflects the more specific requirement of Basic Condition (g), (see above).

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<sup>37</sup> 2012 Regulations, Reg 32; Sch 2, para 1.

<sup>38</sup> Directive 2001/42/EC.

<sup>39</sup> Habitats Directive 92/43/EEC, article 6(3).

### ***Habitats Directive***

87. As the Basic Conditions Statement makes clear, no part of the Neighbourhood Area listed within a zone of influence for a European designated site. There is therefore no requirement for an Appropriate Assessment under the Conservation of Habitats and Species Regulations 2010, and/or the Habitats Directive on the conservation of natural habitats and of wild fauna and flora.

### ***SEA Directive***

88. In January 2014 the Council issued a screening opinion requiring that the SNP be prepared in accordance with the SEA Directive on the assessment of the effects of certain plans and programmes on the environment. In February/March 2014 the Parish Council consulted with the relevant statutory consultees regarding a strategic environmental assessment (“SEA”) scoping report.
89. A draft SEA report was published alongside the pre-submission SNP for consultation in July and a final SEA Report has been published alongside the Submission SNP.
90. I am satisfied that that SEA report demonstrates that the SNP will not lead to any significant environmental effects that cannot be avoided or mitigated by subsequent planning applications and consents.
91. I note that the Representations made on behalf of MJH Executive Homes raise concerns that the SEA Report “has not properly considered Street Farm as a reasonable alternative contrary to the Basic Conditions. However, the Street Farm site is considered in the SEA Report, which concluded that Street Farm was not a reasonable alternative on the ground that its allocation would lead the plan to fail at referendum. I am therefore satisfied that the SEA Report is not defective. In any event matters in relation to Street Farm have moved on, and planning permission has been granted in so far as the Brede Lane Land is concerned.
92. In this regard, although I am aware the concerns expressed in the Report to the Council’s Cabinet on 16<sup>th</sup> January 2017, I note the Council does not, in its

representations, suggest that the SEA Report does not satisfy the requirements of EU law. Nor have other statutory consultees in respect of the European legislation, including Natural England, raised concerns regarding the adequacy of the SEA carried out.

93. I am therefore satisfied that the SNP complies with the relevant requirements of EU law.

#### **European Convention of Human Rights**

94. I am also satisfied that the SNP has regard to the fundamental rights and freedoms guaranteed under the European Convention of Human Rights (“the European Convention of Human Rights”) and does not interfere disproportionately with them. It therefore complies with the Human Rights Act 1998. No substantive evidence to the contrary has been provided.

## CHAPTER 4

### SEDLESCOMBE NEIGHBOURHOOD PLAN

#### Sustainable Development

95. Having regard to paragraph 7 of the NPPF,<sup>40</sup> paragraphs 9 and 10 of the SNP states, as follows;

*“Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life, including (but not limited to):*

- *making it easier for jobs to be created in cities, towns and villages;*
- *moving from a net loss of bio-diversity to achieving net gains for nature;*
- *replacing poor design with better design;*
- *improving the conditions in which people live, work, travel and take leisure; and*
- *widening the choice of high quality homes.*

*Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas.”*

96. The SNP sets out two key aims: (1) to identify sufficient development land within the Parish of Sedlescombe at sites that meet the strategic needs of the Rother Local Plan Core Strategy, and (2) to propose sites that will be acceptable to the majority of Sedlescombe residents. These aims would contribute to achieving sustainable development.
97. Paragraphs 31 to 37 of the SNP consider the way in which the plan contributes to sustainable development. From those paragraphs it is clear that consideration has been given to improving the local economy (supporting an existing employer, encouraging tourism, and enabling the redevelopment of the Sedlescombe Sawmills site so that they are fit for employment use). Provision is also made as to developing a range of market and affordable homes, and supporting community cohesion by improving community facilities in the SNP Area.

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<sup>40</sup>

See Chapter 3.

98. The SNP is therefore focused primarily on securing benefits in relation to the economic and social aspects of sustainable development. Paragraphs 36 to 37 nevertheless make clear that the environmental aspect of sustainable development has been carefully considered, with particular regard to the importance of conserving the landscape and scenic beauty of the AONB.
99. Indeed, paragraphs 43 to 49 provide a detailed description of the High Weald AONB and its relevance to the SNP. Paragraphs 50 to 51 consider the character of the built environment in Sedlescombe and makes clear that the SNP seeks to respond to this.
100. I note at paragraph 52 that the SNP states “*the Plan proposes no development larger than 12 properties*”. It is clear from the Site Assessments that this, on occasions, results in slightly lower densities of development than have been achieved by some other recent developments in the Area. In this context, it is to be noted that planning permission has been granted for the Brede Lane development. This provides for 16 dwellings to be constructed on that site (see below). However, the SNP states that the size of the developments proposed is important. This is a response to the character of Sedlescombe.
101. I am therefore satisfied that the approach taken by the SNP to determining the size and location of proposed new developments aims to, and does, contribute to sustainable development.

## **THE POLICIES**

### **General considerations**

102. Neighbourhood plans are not required to meet the test of soundness. A neighbourhood plan is required only to “*have regard to*” national policy, be in general conformity with strategic policies in the Local Plan, and contribute to sustainable development. Paragraph 14 of the NPPF explains sustainable development differently in the context of plan making and decision taking. In the context of plan making local authorities should positively seek opportunities to meet the development needs of their area, and should meet objectively assessed needs with sufficient flexibility to adapt to rapid change.
103. In my judgment, in principle the SNP does this. **Policy RA1** of the **Core Strategy** identifies Sedlescombe as a village where land should be allocated for 35 dwellings to provide for housing needs during the period 2011 to 2028. It therefore complies with the requirement of paragraph 184 of the NPPF, and is in general conformity with the Core Strategy.

### ***Sites identified for housing***

104. Following a review of sites made available “*on the edge of Sedlescombe*” (as it is put) pursuant to the Rother Strategic Housing Land Availability Assessment (“SHLAA”) and the SEA, the Parish Council has specifically identified five sites in Sedlescombe for housing development in the SNP. This provides a total number of about 39 dwellings which it says are both suitable and acceptable to the local community. Where available, these sites have been “allocated” for development. However, some sites do not, at present, appear to be available for development, and as a consequence may not be deliverable. The SNP therefore takes the approach of giving policy support the principle of developing these sites, rather than allocating them for development. An example of this is the fifth site being the land identified in **Policy 9: Land at Balcombe Green**, now the subject of suggested comprehensive modification to the SNP by its removal from the SNP, (see below).

### ***Judicial Review and the planning history of the Brede Lane Land***

105. Considerations of some importance have arisen since the submission of the draft

SNP, and the June 2017 Public Hearing. These relate to amendments/modifications sought to the proposed Sedlescombe Development Boundary. **Policy 1** in principle seeks to define a new development boundary for Sedlescombe Village (“the **Sedlescombe Development Boundary**”). However, since the submission of the draft SNP particular concerns have arisen in relation to **Policy 11: Local Green Space**, and the land referred to as the “**Brede Lane Land**”,<sup>41</sup> as defined in my Note dated 18<sup>th</sup> August 2017.<sup>42</sup> The Note was designed to provide clarification as to status of the Examination following the application made by the Parish Council to seek permission to judicially review the decision notice of the Council dated 17<sup>th</sup> May 2017 (“the Decision Notice”).<sup>43</sup> The issue arose whether the production of this Report should be suspended pending the decision of the High Court. On consideration of this issue I determined that the Examination of the draft SNP should proceed, and not await the outcome of the application made by the Parish Council.

106. The historical planning background is as follows: by virtue of the Decision Notice the Council determined to grant planning permission for the erection of 16 residential dwellings, together with ancillary works, together with the transfer of land, on the **Brede Lane Land**.<sup>44</sup> This issue is further considered below under **Policy 11**. It should be noted in this regard that I have accepted late representations made on this issue, as stated above.
107. Despite entreaties made to the Secretary of State, he determined not to call in that Decision. The matter was therefore returned to the Council’s Planning Committee for consideration, and the Committee again resolved to grant planning permission. Subsequently, an application for Judicial Review was made to the High Court, Queens’s Bench Division, Planning Court, seeking to review the grant of planning

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<sup>41</sup> There is some potential confusion in nomenclature. The land defined for planning purposes as the Brede Lane Land is, in effect, coterminous with the identified as the “**Street Farm**” land falling within draft **Policy 11**. See footnote 15, below.

<sup>42</sup> See Annex 2.

<sup>43</sup> Application reference RR/2016/1837.

<sup>44</sup> See **Annex 2**. Attached to **Annex 2** are three plans: Plan 1 identifies the proposed Sedlescombe Development Boundary, together with then proposed site allocations, and the Street Farm/Brede Lane Land. Plan 2 identifies the Brede Lane Land as the land edged red, which in large measure is coterminous with the land identified as Street Farm and hatched green on Plan 1. This plan taken from RDC’s submissions also shows a reduced LGS reflecting the planning permission, which is shown as its alternative proposal on “Plan 3”. The area tinted grey on Plan 3 is defined as the area of land the subject of the grant of permission for the construction of 16 dwellings. The land tinted green is the reduced area proposed by the Council to be designated as LGS.



permission. This was refused on 18<sup>th</sup> September 2017 by Sir Wyn Williams, sitting as a High Court Judge.<sup>45</sup>

*The 26<sup>th</sup> September 2017 letter*

108. By reason of the failure of the Parish Council to persuade the High Court to grant permission to judicially review the Council's decision to grant planning permission, the Parish Council now appears to have reversed its approach, hitherto maintained, as to the development of the **Brede Lane Land**. The recent approach is now set out in the letter dated 26<sup>th</sup> September 2017 sent to me in my capacity as Examiner, a copy of which is annexed to this Report, at **Annex 4**. In effect the approach now apparently adopted is the following: as the result of the grant of planning permission over the **Street Farm** site there is now a conflict between policies contained in the SNP and the Council's **Core Strategy** housing policy set out in **Table 1 of Policy RAE1**. This refers to the delivery of 35 houses in Sedlescombe.
109. It is now therefore said that, following the grant of planning permission for the **Brede Lane Land** another 16 houses are likely to be constructed. The Parish Council has expressed concern as to this development. It says that this figure of 16 houses needs to be added to the original target of 35 houses, as the grant of permission had not been envisaged at the time of the submission of the draft SNP. Thus, as the target originally set has now increased by that figure to approximately 50 houses, it is therefore necessary to reduce the number of houses proposed to be constructed in Sedlescombe by that, or a similar amount.
110. In its letter dated 26<sup>th</sup> September 2017 the Parish Council is now proposing that one way of reducing this overall housing allocation is for **Policy 4: Land at Church Hill Farm**, which provides for the construction 10 to 12 houses, be "deleted" completely from the SNP, thereby reducing the total amount by 10 to 12 houses to between 24 and 27, to which is then added the 16 dwellings on the **Brede Lane Land**. By so doing, it is said, the number of proposed dwellings will be then be reduced. There will be still be an over-delivery of housing, and therefore exceed that 35 home requirement, but this deletion will (so it is said) help to redress the balance as to perceived over-delivery. However, the proposed allocation of housing under

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<sup>45</sup> The Judgment is at Annex 3.

**Policies 2, 7 and 8** can remain.

*Archaeological constraints*

111. East Sussex County Council (“the County Council”) suggest that when assessing the **Brede Lane Land** (as well as the sites under **policies 5, 7, 8, 9 and 10**) archaeological surveys should have been undertaken because they fall within Archaeological Notification Areas and there is therefore a real possibility that archaeological mitigation works will be required.
112. This requirement arises under the NPPF and whilst the SNP is required to have regard to national policy it is not required to meet the test of soundness.<sup>46</sup> The Consultation Report makes clear that national policies concerning archaeological interest were considered but that the view was taken that consideration of archaeological interest should not prevent the modest development of the village. The County Council accepts that archaeological interest should not prevent the development and I do not, therefore, regard it as necessary to amend any of the policies in the SNP to reflect this.

**Policy 1: Sedlescombe Development Boundary**

113. As a general point, the principle of identifying the Sedlescombe Development Boundary accords with the strategic approach to development planning contained in the Council’s **Core Strategy**, provided that a suitable development boundary confines development to those areas that are recognised as being appropriate. This is of especial importance in an Area of Outstanding Natural Beauty (“AONB”), as identified in paragraph 61 of the SNP. The previous Examiner accepted the principle of identifying suitable housing allocations in the SNP. However, he expressed his concerns regarding the degree of certainty that the proposed developments allocated in the SNP would be achievable/deliverable.
114. **Policy 1** proposes modifications to the Sedlescombe Development Boundary, as shown on the Proposals Map. These take account of planning consents granted since the Local Plan Proposals Map produced in 2006, and the need for the Sedlescombe Village (which is defined as a “Local Service Centre”) to grow in accordance with

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<sup>46</sup> See also paragraph 40, above.

**Policy RA1.**

115. I am satisfied that the principle of amending the Sedlescombe Development Boundary to take account of extant consents, and future suitable and acceptable development, has regard to national planning policy and guidance. I find that it is in general conformity with strategic policies in the SNP, including **Policies RA1 and OSS2**. Thus, I consider that it would contribute the achievement of sustainable development by promoting a sustainable pattern for the future growth of the Sedlescombe Village.
116. I am therefore satisfied that the Sedlescombe Development Boundary proposed satisfies the basic conditions.
117. I do not, therefore, consider it necessary to include a sentence to the effect that new suitable residential development on the edge of Sedlescombe will be supported where it can be demonstrated that such development is necessary to enable the neighbourhood area to meet its housing land requirements, and is in keeping with “local character”. In my view, including wording which supports development outside the settlement boundary undermines the purpose of the settlement boundary. It should not be forgotten that a policy containing an adopted neighbourhood plan, which forms part of the development plan, can always be outweighed by relevant material considerations. This is a matter for the decision maker in any given case.
118. However, in so far as the **Brede Lane Land** is concerned it lies outside the proposed Sedlescombe Development Boundary.<sup>47</sup> The Council has suggested that **Policy 1** should be amended, and the boundary be re-drawn, to take account of the fact that it has resolved to grant planning permission in relation to the **Brede Lane Land**.
119. For present purposes, and for the reasons stated in the commentary to **Policy 11**, in so far as the **Brede Lane Land** is concerned, I recommend that the Sedlescombe Development Boundary should be modified to reflect the fact that planning permission has been granted for 16 dwellings so as to include the whole of the land the subject of the planning consent (i.e. the land tinted grey). The remainder of the land comprising **Street Farm** should be designated as Local Green Space, as

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<sup>47</sup> For further reference, see the commentary to **Policy 11**.

envisaged in the documentation.<sup>48</sup>

120. However, although I have recommended that the proposed Sedlescombe Development Boundary be modified in accordance with the proposed development in respect of the **Brede Lane Land** the boundary delineated at **Balcombe Green (Policy 9)** can remain as identified, as it is a recognition of the natural settlement boundary, lying as it does, at the rear of four gardens to houses in the neighbouring road.

### **Policy 2 : Land at Sunningdale**

121. **Policy 2** allocates land at Sunningdale for approximately 9 new dwellings. The Policy makes provision for the retention of the existing dwelling and for 1, 2 and/or 3 bedroom dwellings located entirely within the Sedlescombe Development Boundary.
122. The Policy relates to land which the Environment Agency has confirmed is within Flood Risk Zone 1. As set out in the SNP, its allocation complies with the sequential test under paragraph 100 of the NPPF, and with policy EN6 of the Core Strategy.
123. Given the site abuts the River Brede, it is important to stress that the Policy requires any development to avoid damaging this important habitat so as to comply with **Core Strategy Policy EN5**.
124. The Council, amongst others, has proposed amendments to the wording of this Policy. The Council suggests that rather than referring to “approximately 9” dwellings the policy should refer to “6-9 dwellings”. The previous Examiner accepted that 6 dwellings should be provided on this site. However, further work has been undertaken since that examination, and an indicative layout has been produced. I am not convinced that the Council’s amendment is desirable since it would have the effect of preventing more than 9 dwellings being provided. In my view it would be better to amend approximately 9 to “approximately 9, and no fewer than 6, dwellings”

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<sup>48</sup> The provisional recommendation for the Local Green Space Designation at Street Farm/the Brede Lane Land is identified as the land cross-hatched green on Plan 2, in Annex 2.

125. The Council also suggests that the words “if practicable” should be inserted after “makes provision for the retention of the existing dwelling.” I agree with the Council that this would provide flexibility, recognising the contribution to local amenities and to containing development visually from the wider countryside.
126. I therefore recommend that the wording of **Policy 2** be amended as follows to read:

**The Neighbourhood Plan allocated land for approximately 9, and no fewer than 6, dwellings on land off Gregory Walk, as shown on the Proposals Map. Development proposals will be supported, provided the scheme:**

- 1. Makes provision for the retention of the existing dwelling, if practicable, and for 1, 2 and/or 3 bedroom dwellings located entirely within the development boundary of Sedlescombe.**
- 2. Is accessed from Gregory Walk**
- 3. Comprises a layout and building orientation that does not harm the amenities of adjoining dwellings by way of overlooking;**
- 4. Avoids damaging the habitat of the River Brede and the adjoining river bank and protects the river’s wildlife corridors;**
- 5. Retains the existing hedges on its boundaries; and**
- 6. Implements appropriate restoration on the adjoining River Brede, to the satisfaction of the Environment Agency.**

### **Policy 3 : Land at Pestalozzi**

127. **Policy 3** supports in principle the redevelopment of a brownfield site at Pestalozzi International Village. The Policy makes provision for 1 and 2 bed houses and flats of no more than two stories in height, a proportion of which should be made available as affordable housing. The number of units of affordable housing is to be determined in accordance with a viability appraisal produced by the developer.
128. In principle this Policy accords with Core Strategy policies OSS3 and EC3. The redevelopment of an existing brownfield site to provide residential (including affordable residential) properties, as well as effective use of the employment site, would contribute to achieving sustainable development.
129. I accept that the proposal, whilst outside the Sedlescombe Development Boundary, is of a small scale and would not adversely impact the landscape character of the

countryside.

130. I note that the proposed amendments suggested by the previous Examiner have been taken into account. In particular, the Policy now refers to finding an alternative location for the estate management facility and to refurbishing/replacing (as opposed to rebuilding) the volunteers' accommodation.
131. Natural England in their objection suggest that part of the site is Priority Habitat deciduous woodland and seeks an amendment to the policy requiring that development avoid that priority habitat. I am of the opinion that this is necessary to ensure that the SNP has regard to paragraph 117 of the NPPF and contributes to the objective of achieving sustainable development.
132. I therefore propose that **Policy 3** be amended to read as follows:

**Proposals for housing development on land at Pestalozzi International Village, as shown on the Proposals Map, will be supported, provided the scheme:**

- 1. makes provision for 1 and 2 bed houses and flats, of no more than two storeys in height, a proportion of which will be made available as affordable homes giving first preference to eligible employees or volunteers in perpetuity;**
- 2. includes a viability appraisal that demonstrates the minimum number of open market dwellings required to cross-subsidise the refurbishment or replacement of the volunteers' accommodation;**
- 3. incorporates a landscape scheme that mitigates any visual impact on the surrounding countryside;**
- 4. preserves the area of the site designated as Priority Habitat;**
- 5. comprises appropriate works to improve Ladybird Lane provided they do not include any additional lighting;**
- 6. identifies and agrees an alternative location for the estate management facility; and**
- 7. demonstrates that any new access will have an acceptable impact on the character of the Brede Valley and demonstrated to be visually contained from public view points.**

**Policy 4: Land at Church Hill Farm, North of Village Hall**

133. This Policy allocates land on the northern edge of the village for a residential development scheme of approximately 10 to 12 houses. The site falls within the amended Sedlescombe Development Boundary. The majority of it falls within

**SHLAA Site SE15** which was assessed positively, subject to satisfactory access being resolved.

134. However, more recently a complicating feature has emerged (to which reference has been made above) which is that the Parish Council now seeks the removal of this Policy from the SNP.
135. I am therefore enjoined to “delete” Policy 4 from the draft SNP. In this regard, I consider that this falls outside my remit as an Examiner. My powers are circumscribed by statute and regulation.
136. Accordingly, in my judgment I am unable to remove **Policy 4** from the draft SNP. I consider that if the Parish Council still is intent on pursuing this approach, the only way for the Parish Council now to act is for them to withdraw the draft SNP from examination. However, this is not a course which I would recommend because this is the second time that the draft SNP has been submitted for examination.
137. This approach also has implications for proposed **Policy 11**, to which I shall refer, below.
138. I also note that there are several objections to this allocation on the basis of landscape/ visual amenity harm. However, as set out in the supporting text for **Policy 4**, views of the proposed site from the footpath that runs from south to north on the opposite side of the eastern boundary of the field in which the housing allocation site is situated are limited. The reason for this arises from the fact that there is vegetation along the western boundary of the path and the site is not as visible from Church Hill because of the levels and roadside vegetation. I am therefore of the view that, in principle, allocating this site for residential development would accord with the Core Strategy, and would contribute to achieving sustainable development.

#### *Access concerns*

139. The key concern in relation to this site is access. Similar concerns are raised in relation to neighbouring sites, the subject matter of **Policies 7 and 8**.
140. As the supporting text makes clear, one possibility would be for access to be

provided via the existing Village Hall access. The Highway Authority (being the County Council) have also indicated that it would be feasible to provide a new access to the site from Church Hill, to the north of the existing site. At present access at that point would lie from a road with a current 50mph speed limit in force. However, the County Council has indicated that they would be supportive of reducing the speed limit to 30mph, subject to appropriate traffic calming measures. Safe access to the proposed allocated site could therefore, in principle, be achieved.

141. I note in addition, that the County Council have suggested that the wording of this Policy, together with **Policies 7 and 8**, should be amended to make reference to the developers of those sites working together to ensure that access arrangements for one site do not prejudice the subsequent the access arrangements for, and therefore the delivery of the other, sites.
142. I agree that such an amendment is necessary to ensure that the plan is in general conformity with strategic policies in the development plan and contributes to the achievement of sustainable development. Any other approach would risk the plan allocating as sites for development required to meet the village's housing need which ultimately could not be delivered.
143. I therefore propose that **Policy 4** should be re-worded:

**The Neighbourhood Plan allocates land for approximately 10 to 12 dwellings on Land North of the Village Hall, as shown on the Proposals Map. Development proposals will be supported, provided:**

1. the scheme comprises 2 and/or 3 bedroom dwellings;
2. the building orientation minimises the effect of the development on the scenic beauty of the Area of Outstanding Natural Beauty;
3. the layout and landscape scheme provide a buffer on the northern boundary to prevent the development being extended beyond the site boundary;
4. the landscape scheme retains the remainder of the land as natural greenspace and strengthens the hedgerow on the northern boundary of the site; and
5. **the development is accessed from Church Hill:**
  - (1) **such that the access arrangements for the development do not prejudice access to the sites allocated under Policies 7 and 8, and**



- (2) **so** as to minimise the land required for the access road and the loss of the hedgerow to Church Hill;
6. a planning obligation **is** agreed to finance and deliver traffic calming measures to Church Hill prior to the occupation of the dwellings.

**Policy 5 : Land at Sedlescombe Sawmills**

144. **Policy 5** supports proposals for mixed-use development at Sedlescombe Sawmills. This is a partly derelict industrial site which includes a range of buildings. The previous Examiner accepted that this Policy is in general conformity with the Local Development Plan, and contributes to the achievement of sustainable development.
145. As he explains, the Policy takes into account paragraphs 28 and 55 of the NPPF, which (1) supports economic growth in rural areas through conversion of existing buildings and well-designed new buildings as well as the promotion of rural tourism; and (2) supports the re-use of redundant or disused buildings that would lead to an enhancement of their immediate setting.
146. I see no reason to depart from the previous Examiner's findings, with which I agree.
147. However, the Council makes the valid point that the use of the word "maximum" in sub paragraph 3(a) is potentially confusing. I agree with this concern. The word minimum would make more sense.
148. Natural England have raised the issue of priority habitat in relation to this site. In order to have regard to paragraph 117 of the NPPF, I recommend that **Policy 5** should be amended as follows:

**Proposals for a mixed-use development scheme at Sedlescombe Sawmills, as shown on the Proposals Map, will be supported, provided the scheme:**

1. makes provision for an employment scheme, comprising the reuse and/or redevelopment of existing buildings for employment purposes increasing the square footage from 9,250 to approx. 12,000 sq. ft. provided the employment scheme is completed and available for occupation prior to the final occupation of the housing scheme; and
2. **preserves the area of the site designated as Priority Habitat**
3. makes provision for a residential scheme, comprising only open market dwellings, provided:

- a. the number of dwellings is assessed to be the **minimum** required to cross-subsidise the employment scheme, based on a submitted viability appraisal;
- b. the design of all the dwellings makes sufficient provision for dedicated office and/or workshop space for the benefit of the occupants;
- c. makes provision for a holiday accommodation scheme; and
- d. includes the demolition of existing buildings and structures that detract from the scenic beauty of the adjoining landscape.

**Policy 6 : Land adjacent to St John the Baptist Church**

149. This policy was also examined by the previous Examiner and found to meet the basic conditions. I agree with the previous Examiner's findings. This policy represents an important exercise to secure the conservation of a heritage asset. That seeks to secure community benefits. Regard has plainly been had to the NPPF and in particular to paragraphs 140 and 70.
150. The proposed wording takes into account the previous Examiner's suggestion that the policy should refer to preserving "*the significance and setting*" of the Church, rather than to "*causing no significant harm*". The policy refers to a Grade II\* heritage asset. Whilst the church is a designated heritage asset, Grade II\* status attaches specifically to statutorily listed buildings. This should be amended.
151. As with **Policy 5**, I am of the view that the word "*maximum*" is potentially misleading and should be reworded to minimum.
152. In my judgment, **Policy 6**, if amended as follows, will meet the basic conditions:

**Proposals for housing development on Land Adjacent to St John the Baptist Parish Church, as shown on the Proposals Map, will be supported, provided the proposals:**

- 1. make provision on the northern part of the site for a residential scheme, comprising 1, 2 and/or 3 bedroom affordable and open market dwellings, provided the number of open market dwellings is assessed to be the **minimum** required to cross-subsidise the delivery of the affordable homes and of the community benefit scheme, based on a submitted viability appraisal;
- 2. make provision for a community benefit scheme, comprising:

- a. a car park to serve the Church of at least 30 spaces, that can be used by cars and coaches for dropping off and collecting Church visitors;
  - b. the use of the Church facilities by the local community during the entire year and during evenings;
  - c. a renewable energy heating solution to service the new homes and the Church;
  - d. a restoration scheme of the Church, including interior alterations to make the space more usable for community activities;
3. make provision for both schemes to benefit from a single road access at a location off Sandrock Hill to the satisfaction of the local highway authority;
  4. comprise a residential scheme layout and building orientation, and make provision for a significant landscape scheme, including the retention of the existing mature trees on its boundaries, that mitigate the impact of development on the scenic beauty of the Area of Outstanding Natural Beauty; and
  5. preserve the significance and setting of the Church, a Grade II\* **listed building**.

#### **Policy 7 : Land at Gate Cottage**

153. This policy allocates land on the northern edge of the village for residential development of approximately 8 dwellings. It falls within the proposed development boundary under **Policy 1**. This site was one of the areas inspected on the Site View held on 4<sup>th</sup> September 2017.
154. The landowners have indicated their support for this Policy and their active desire to develop the land. The Policy does appear to be deliverable, and it accords with **Core Strategy Policy OSS3**. It is presently occupied by a semi-detached bungalow, and an area surrounding it used for growing fruit and keeping chickens. Having regard to what is being replaced, and the fact that the land is reasonably screened from the open countryside by mature vegetation, if the design requirements of **Policy 7** are respected, the proposed small-scale development is unlikely to have a negative impact on the AONB. It complies with **Core Strategy policies OSS4 and EN1**. However, a question may arise if it is intended that the existing bungalow should remain in existence, having regard to the physical size and shape of the site.
155. The County Council have again raised concerns that the access design should not prejudice access to other allocated sites and the policy requires amendment to ensure that.

156. Otherwise **Policy 7** meets the basic conditions.

157. I recommend that **Policy 7** should, therefore, be amended to read:

**The Neighbourhood Plan allocates land for approximately 8 dwellings on Land at Gate Cottage, as shown on the Proposals Map. Development proposals will be supported, provided the scheme:**

- 1. comprises 2 and/or 3 bedroom dwellings with a layout, building orientation and a landscape scheme that make provision for the retention of the existing mature trees on its boundaries and new structural planting to mitigate the impact of development on the scenic beauty of the Area of Outstanding Natural Beauty and that avoid harm to the amenities of adjoining dwellings by way of overlooking;**
- 2. is accessed from Church Hill, subject to a planning obligation being agreed to finance and deliver traffic calming measures to Church Hill prior to the occupation of the dwellings; and**
- 3. demonstrates that access arrangements will not prejudice access to the sites allocated under policies 4 and 8.**

**Although not essential to benefit from this allocation, favourable consideration will be given to proposals for the comprehensive development of the land with the adjoining Land at Church Hill Farm of Policy 8.**

#### **Policy 8 : Land at Church Hill Farm**

158. **Policy 8** allocates land for approximately 10 dwellings on land at Church Hill Farm. It is adjacent to the land allocated under policy 7. Some concern has been expressed as to access to both this site, and to the land allocated under **Policy 7**. Also, to be noted, the land the subject matter of **Policy 4** lies on the opposite side of Church Hill. For that reason, the concerns expressed regarding access arrangements referred to above in **Policies 4 and 7** should be viewed in the same contextual framework. Accordingly, each Policy should be amended accordingly.

159. Beyond that, the policy meets the basic conditions. It accords **with Core Strategy policy OSS3 and 4**. It makes effective use of land on the northern edge of the

village. The proposed density is approximately 22.2<sup>49</sup> dwellings per hectare which, whilst lower than that achieved in some other nearby developments, is consistent with maintaining the character of Sedlescombe. The development complies with **Core Strategy OSS4**.

160. The only views from a public vantage point that will be affected by the development are a public footpath running in a generally northerly direction at the north end of the site. This footpath is at the extreme northern edge of the site and could be accommodated within the development. Whilst there would plainly be some impact upon the AONB that impact would be very limited and (even giving it the weight required by the NPPF) is decisively outweighed by the benefits of allocating a deliverable site to meet Sedlescombe's housing needs. The proposed allocation therefore contributes to achieving sustainable development.

161. **Policy 8** should therefore read as follows:

**The Neighbourhood Plan allocates land for approximately 10 dwellings on Land at Church Hill Farm, as shown on the Proposals Map. Development proposals will be supported, provided the scheme:**

- 1. comprises a residential scheme of 2 and/or 3 bedroom dwellings with a layout, building orientation and a landscape scheme that make provision for the retention of the existing mature trees on its boundaries and new structural planting to mitigate the impact of development on the scenic beauty of the Area of Outstanding Natural Beauty and that avoids harm to the amenities of adjoining dwellings by way of overlooking;**
- 2. layout and landscape buffer on the western boundary prevent the development being extended beyond the site boundary;**
- 3. is accessed from Church Hill, subject to a planning obligation being agreed to finance and deliver traffic calming measures to Church Hill prior to the occupation of the dwellings; and**
- 4. demonstrates that access arrangements will not prejudice access to the sites allocated under policies 4 and 7.**

**Although not essential to benefit from this allocation, favourable consideration will be given to proposals for the comprehensive**

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<sup>49</sup> In paragraph 98 of the SNP there is reference to a lower net developable area and higher density. This at variance with the Sites Report which provides the correct analysis.

**development of the land with the adjoining Land at Gate Cottage of Policy 7.**

**Policy 9 : Land at Balcombe Green**

162. Policy 9 was amongst the more contentious policies proposed in the SNP. The site comprises four back gardens, and access land, and this proposed development lies within the modified Sedlescombe Development Boundary. The Policy supported (as opposed to allocating) development on land at Balcombe Green. The reason for this distinction is, as the consultation responses make clear, that not all landowners supported the development of their land. Objections to this proposed Policy were made by owners of properties adjacent to the site
163. In principle, therefore, the Policy was neither available nor deliverable.
164. Having said that, in principle there is nothing objectionable in principle with supporting development on such a site, provided it is not relied upon to provide for Sedlescombe's housing need.
165. However, during the Consultation Period, and prior to the Public Hearing, some residents raised concerns as to the environmental impact of developing the site. Surprise was expressed at the fact that the "key landowners"<sup>50</sup> (as it has been put) had at one stage stated that they would **not** make the site available for the development of housing, as stated above. In contradistinction to this, it was pointed out by residents in correspondence prior to the Public Hearing, (and subsequently expressed in somewhat forceful terms during the course of the Public Hearing) that four out of the five landowners had made it clear that they had every intention of making the site available for development.
166. Some debate took place on the issue during the Public Hearing. After deliberation Mr Vine-Hall stated that there was no objection on the part of the Parish Council with the Policy being removed from the SNP in order to avoid further dissension. However, the removal of the Policy would not affect the overall housing numbers.
167. Accordingly, I recommend that the SNP be modified so as to remove **Policy 9:**

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<sup>50</sup> In fact, one landowner holds the key to the proposed development in that it is his land that would provide the necessary access to the site.

**Balcombe Green** therefrom. I also recommend the modification of the SNP by the deletion of the reference to **Balcombe Green** in paragraph 63 of the SNP. The reason for this is that I accept the proposition that this proposed Policy is neither achievable or deliverable.

168. However, although I have recommended that the proposed Sedlescombe Development Boundary be modified in accordance with the proposed development in respect of the **Brede Lane Land** the boundary delineated at **Balcombe Green (Policy 9)** can remain as identified, as it is a recognition of the natural settlement boundary, lying as it does, at the rear of four gardens to houses in the neighbouring road (see paragraph 120, above).

#### **Policy 10 : Land at Pump House Yard**

169. **Policy 10** is similar to the former **Policy 9**, in that it supports rather than allocates development. The development supported is the change of use of an existing employment site within the modified Sedlescombe Development Boundary to residential use, thereby enabling development for the provision of a new public car park.
170. The principle of residential development in this location accords with **Policy OSS3** of the **Core Strategy**.
171. **Policy EC3** makes clear that the loss of employment sites will only be accepted if it can be shown that there is no reasonable prospect of its continued employment use. However, only the front extension of the existing building will be lost. The main building, together with all the other buildings on the site, will remain in employment use. Planning permission granted in 2006 for 4 business units was never implemented. This suggests that an intensification in the employment use of the land is unlikely.
172. Therefore, of particular relevance to this Policy is that it enables the provision of much needed car parking. This accords with **Core Strategy policy CO1** which promotes the provision of new or improved community facilities. Thus, reading the strategic policies in the Core Strategy as a whole, I am satisfied that the proposal

accords with them. It would not only have a neutral economic and environmental impact, but also has considerable social benefits. For that reason, it would promote sustainable development. It therefore meets the basic conditions, and no amendments are necessary.

### **Policy 11: Local Green Space**

173. This policy seeks to designate land at **Street Farm** and land at **Red Barn Field** as Local Green Space, upon which proposals for development will be resisted except in exceptional circumstances. The consultation responses received overwhelmingly support the designation of the **Street Farm** site as a Local Green Space.

174. The test for designation as Local Green Space is set out in NPPF paragraph 77 which states,

*“The Local Green Space designation will not be appropriate for most green areas or open space. The designation should only be used:*

- *where the green space is in reasonably close proximity to the community it serves;*
- *where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- *where the green area concerned is local in character and is not an extensive tract of land.”*

175. The previous Examiner considered that **Red Barn Field** met this test. I agree.

176. However, in so far as **Street Farm** is concerned, I have set out in some detail above the current position with regard to the planning history relating to the **Brede Lane Land** and the Judicial Review issue, and the issues arising from consideration of the 26<sup>th</sup> September 2017 letter. I particularly refer to paragraphs 105 to 110, above.

177. Having regard to altered circumstances, and the apparent position now taken by the Parish Council, I recommend that for present purposes that the Sedlescombe Development Boundary should be modified to reflect the fact that planning



permission has been granted for 16 dwellings over the **Brede Lane Land** so as to include the whole of the land the subject of the planning consent (i.e. the land tinted grey). For the remainder of the land comprising **Street Farm** to be designated as Local Green Space, as envisaged in the documentation.<sup>51</sup>

## **CONCLUSION**

178. In my judgment the SNP, with the suggested modifications incorporated, meets the Basic Conditions, and the various other legal requirements, referred to above. It therefore can proceed to a Referendum.

Francis Taylor Building  
Temple  
EC4Y 7BY

November 2017

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<sup>51</sup> The provisional recommendation for the Local Green Space Designation at Street Farm/the Brede Lane Land is identified as the land cross-hatched green on Plan 2, in Annex 2.

## **ANNEX 1**

### **Sedlescombe Neighbourhood Plan**

#### **Directions for Public Hearing Held 19<sup>th</sup> June 2017**

#### **Further Directions and Hearing Procedure Note for Public Hearing**

#### **Agenda for Public Hearing 19<sup>th</sup> June 2017**

**IN THE MATTER OF:****THE TOWN AND COUNTRY PLANNING ACT 1990****THE NEIGHBOURHOOD PLANNING (GENERAL) REGULATIONS 2012  
(AS AMENDED)****AND IN THE MATTER OF:****THE SEDLESCOMBE NEIGHBOURHOOD DEVELOPMENT PLAN****EXAMINATION****DIRECTION**

Pursuant to the provisions of paragraph 9 of Schedule 4B to the Town and County Planning Act 1990, as inserted by schedule 10 of the Localism Act 2011, **IT IS ORDERED AND DIRECTED** that a hearing be held in order to consider oral representations from interested parties to assist the Examiner in his Examination of the issues in the case.

**REASONS**

1. On 1st July 2013 Rother District Council (“the District Council”) designated Sedlescombe as a Neighbourhood Area. Pursuant to Regulation 14 of the 2012 Regulations Sedlescombe Parish Council (“the Parish Council”) then embarked on what has been described as a “robust” public Consultation of the Neighbourhood Plan between March 2014 and May 2014. At the conclusion of the Consultation the Parish Council in July 2014 submitted the proposed Sedlescombe Neighbourhood Plan 2016-2028 to the District Council.
2. During the period of the pre-submission Consultation specific concerns were expressed as to inappropriate behaviour and conduct. Subsequently the District Council carried out a Monitoring Exercise. This was completed in January 2015. The Investigating Officer did not find sufficient evidence that there had been any breach of conduct. The Monitoring Exercise was duly closed.
3. In October 2014 Mr Nigel McGurk was appointed by the District Council as the Examiner to conduct the Neighbourhood Plan Examination and to provide a report.
4. In January 2015 Mr McGurk produced his report. He recommended that the Sedlescombe Neighbourhood Plan met the basic conditions, and should proceed to a referendum, but subject to a number of modifications. These modifications were not acceptable to the Parish Council, as they did not reflect the wishes of the community. The Parish Council then on 10th November 2015 decided to withdraw the Plan.

5. The current draft Neighbourhood Plan is the revised draft version of the pre-submission Neighbourhood Plan. Consultation took place on the pre-submission draft Plan between July and September 2016 under Regulation 14. The current Plan was submitted to the District Council on 29th September 2016 and consultation took place over an 8-week period between 28th November 2016 and 23rd January 2017.
6. On 2 February 2017 I was appointed by the District Council as the as the Examiner to conduct the Neighbourhood Plan Examination and to provide a Report.
7. By virtue of the principle of consistency in decision making, whilst it is open to the Examiner of the Sedlescombe Neighbourhood Plan to reach different conclusions from those reached by Mr McGurk, he must give reasons for that difference of opinion<sup>1</sup>.
8. The Examiner is required to hold a public hearing where it is considered that oral representations are needed to ensure an adequate examination of an issue or issues, or to ensure people get a fair chance to put their case.
9. The Examiner has noted that there are numbers of areas of contention, in particular in relation to:
  - (1) the overall Plan process;
  - (2) proposed Policy Numbers 4, 7, 8 and 9, as to access and visual amenity;
  - (3) proposed Policy Number 11, as to whether it is appropriate to designate the whole of Street Farm as a Local Green Space, including having regard to whether it can be construed as an “extensive tract of land”.
10. In view of the history surrounding the production of the original Report, and the subsequent withdrawal of the Neighbourhood Plan by the Parish Council, and the fact that there are a number of areas of contention, as identified in paragraph 9, above, the Examiner considers that in the circumstances it is appropriate to hold an oral hearing so that all the issues in the Examination can be fully and properly considered.

Further Directions as to the conduct of the public hearing will be issued separately.

**Edward F Cousins**

**The Examiner appointed by Rother District Council to conduct the Examination**

**Dated: 30th May 2017**

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<sup>1</sup> See for example *North Wiltshire DC v Secretary of State for Environment* [1992] 65 P & CR 137 at 145.

## **ANNEX 2**

**Sedlescombe Neighbourhood Plan**

**Examiner's Note 18<sup>th</sup> August 2017**

## NOTE

## SEDLSCOMBE NEIGHBOURHOOD PLAN EXAMINATION

1. The purpose of neighbourhood planning is to provide communities with the power to establish their own policies to shape the future development of the area where they live and work. It “...gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need.”<sup>1</sup> That vision as set out in a draft neighbourhood plan may conflict with the needs and desires of others who wish to seek the development of land for housing and other goals by utilising the planning process to that end.
2. On 2nd February 2017, I was appointed by Rother District Council (“RDC”) to conduct an Examination of the submission version of the Sedlescombe Neighbourhood Development Plan (“the current Plan”). This is the second submission version of the Plan submitted for Examination. In so far as the first version was concerned, various recommendations were made by the Examiner, then appointed to conduct the Examination (Mr McGurk), some of which did not find favour with the Parish Council. The result was that the Parish Council subsequently withdrew the first submission version of the Plan.
3. Thus, the current Plan is the revised draft version of the pre-submission Neighbourhood Plan. Consultation took place on the pre-submission current Plan between July and September 2016 under Regulation 14. The current Plan was submitted to the District Council on 29th September 2016 and consultation took place over an 8-week period between 28th November 2016 and 23rd January 2017.
4. Following the service of the submission version of the current Plan for Examination, it transpired that there were a number of areas of contention which needed to be addressed before the Examination could proceed. To this end a Public Hearing (“the Public Hearing”) was arranged at which these issues could be aired, and Directions were made to facilitate its conduct. I refer to paragraph 9 of the Directions dated 30th May 2017.
5. One of these areas of contention relates to proposed Policy 11 of the current Plan. This seeks the designation of two parcels of land at the edge of Sedlescombe Village as Local Green Spaces in accordance with paragraphs 76 and 77 of the NPPF. These parcels are known as Street Farm and Red Barn Field.<sup>2</sup> One of the contentious issues canvassed during the Public Hearing was whether it is appropriate to designate the whole of Street Farm, and Red Barn Field, as Local Green Spaces, having regard to the fact that it could be considered to be an “extensive tract of land”.
6. On 19th June 2017, the Public Hearing took place in Bexhill Town Hall. One of the matters discussed in the context of Policy 11 related to the recent grant of planning permission by RDC for the erection of 16 residential dwellings, together with ancillary works, together with the transfer of land, on land at Brede Lane,

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<sup>1</sup> See NPPF, paragraph 183.

<sup>2</sup> These parcels of land are identified as the land edged hatched green on the first plan annexed to this Note (“Plan 1”), being the submitted Proposals Map Inset A.

Sedlescombe, (“the Brede Lane Land”).<sup>3</sup> It is to be noted that the land defined for planning purposes as Brede Lane Land is coterminous with the „Street Farm” land falling within draft Policy 11.

7. The decision notice produced by RDC in respect of the Brede Lane Land was dated on 17th May 2017 (“the Decision Notice”). This provided for the erection of 16 residential dwellings, together with the creation of a new access onto Brede Lane, and provision for car parking, open space and landscaping, and the transfer of land to be used as school playing fields and public open space.
8. This was the second application made in respect of the Brede Lane Land, the first application having been refused by RDC, and subsequently dismissed on appeal by the Inspector. The grounds for its dismissal were that at that stage the then Sedlescombe Neighbourhood Draft Plan was at a sufficiently advanced stage, and would be prejudiced on prematurity grounds. This appeal was called- in by the Secretary of State, who agreed with the Inspector’s Decision.
9. On 6th June 2017 RDC was notified in a letter from Surrey Hills Solicitors that they had been instructed on behalf of the Sedlescombe Parish Council, and Mr Jonathan Vine-Hall, to challenge the Decision Notice made in respect of the Brede Lane Land by way of an application for judicial review. This letter was acknowledged by Setfords Solicitors, on behalf of RDC, who stated that they would resist the claim in full, and would not be consenting to the proposed order, as requested. It was made clear that if and when an application for judicial review was made, it would be opposed.
10. It is in this contextual framework that the question has been raised whether this Examination of the current Plan should proceed, or should be suspended pending the determination of the judicial review application. During the course of the Public Hearing it was suggested by Mr Homer, for the Parish Council, and Mr Vine-Hall, that the Examination should be put “on hold”. Mr Marlow, for RDC, was not in agreement with this proposal.
11. In my judgment, the Examination should proceed, and not await the outcome of the application for judicial review. My reasons are as follows:
  - (1) The issues raised in the proposed application for judicial review of the grant of planning permission over the Brede Lane Land by the Parish Council and Mr Vine-Hall are be seen as self-contained and separate from the issues raised in the Policies proposed in the current Plan;
  - (2) The consideration arising in the current Plan is that the Parish Council seeks to designate the whole of Street Farm, including the Brede Lane Land, as a Local Green Space, which would fail if it was found not to meet the tests in paragraph 77 of the NPPF. This is an issue to be determined in the Examination;

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<sup>3</sup> Annexed to this Note is a second plan (“Plan 2”) which identifies the Brede Lane Land as the land edged red, which in large measure is coterminous with the land identified as Street Farm and hatched green on Plan 1. This plan taken from RDC’s submissions also shows a reduced LGS reflecting the planning permission, which is shown as its alternative proposal on “Plan 3”.

(3) The Parish Council in the current Plan is seeking to establish policies to shape the future development of the Parish of Sedlescombe. To that end a considerable amount of time and effort has been expended in this endeavour by the residents of Sedlescombe. This has resulted in the production of a comprehensive draft neighbourhood plan with ten considered Policies.

(4) It would not be in the interests of justice, or to the people of Sedlescombe, to be denied the opportunity to have their Plan fully and properly considered for what could be a lengthy period of time whilst the judicial process unfolds.

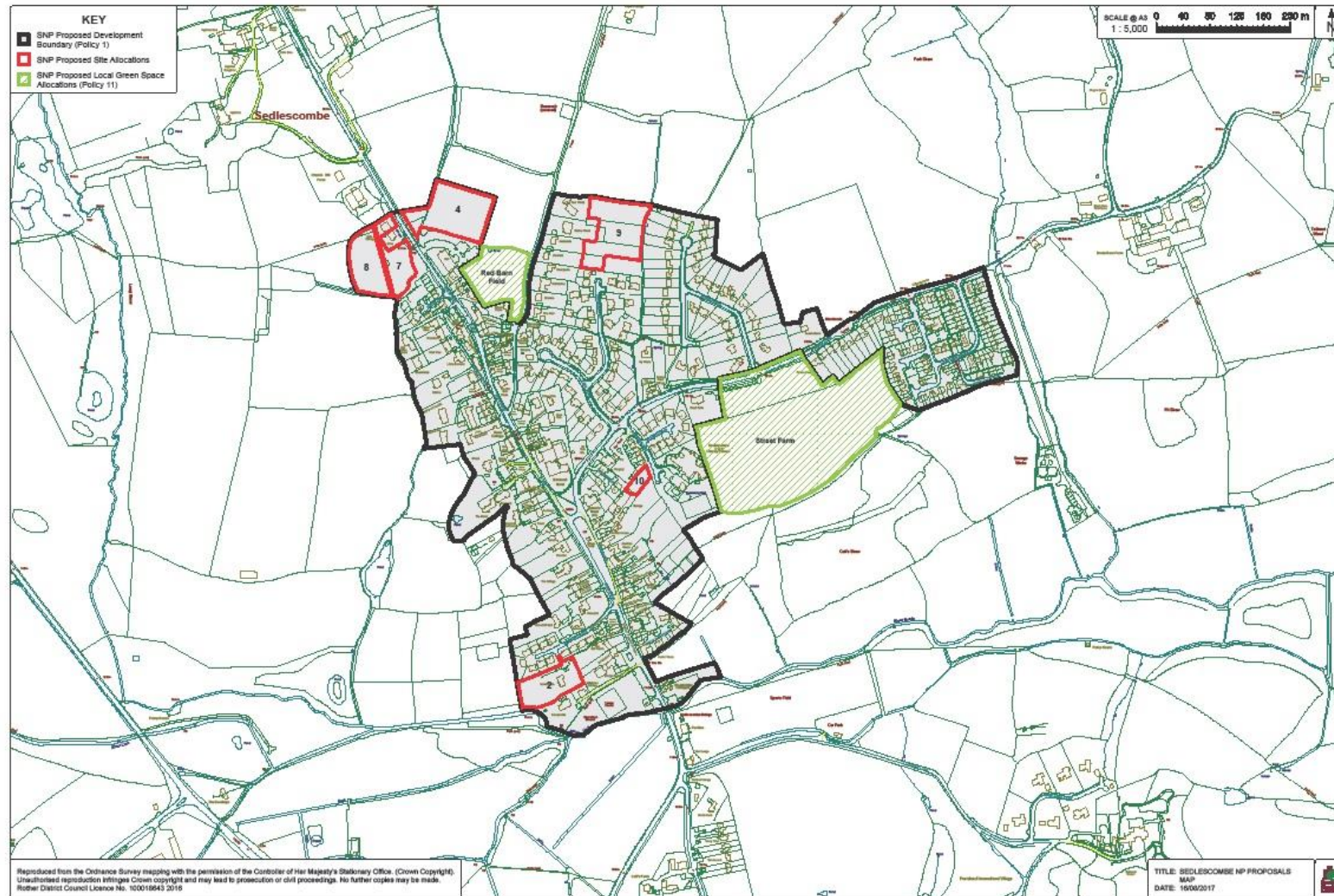
12. Accordingly, I have decided to proceed with the Examination of the current Plan. To this end a Site View of some of the sites the subject matter of the Policies has now been arranged, to be held on Monday 4th September 2017.

EDWARD F COUSINS  
Associate Member  
18th August 2017

Francis Taylor Building  
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**DX: 402 LDE**



Plan 1 to accompany the Examiner's Note, August 2017

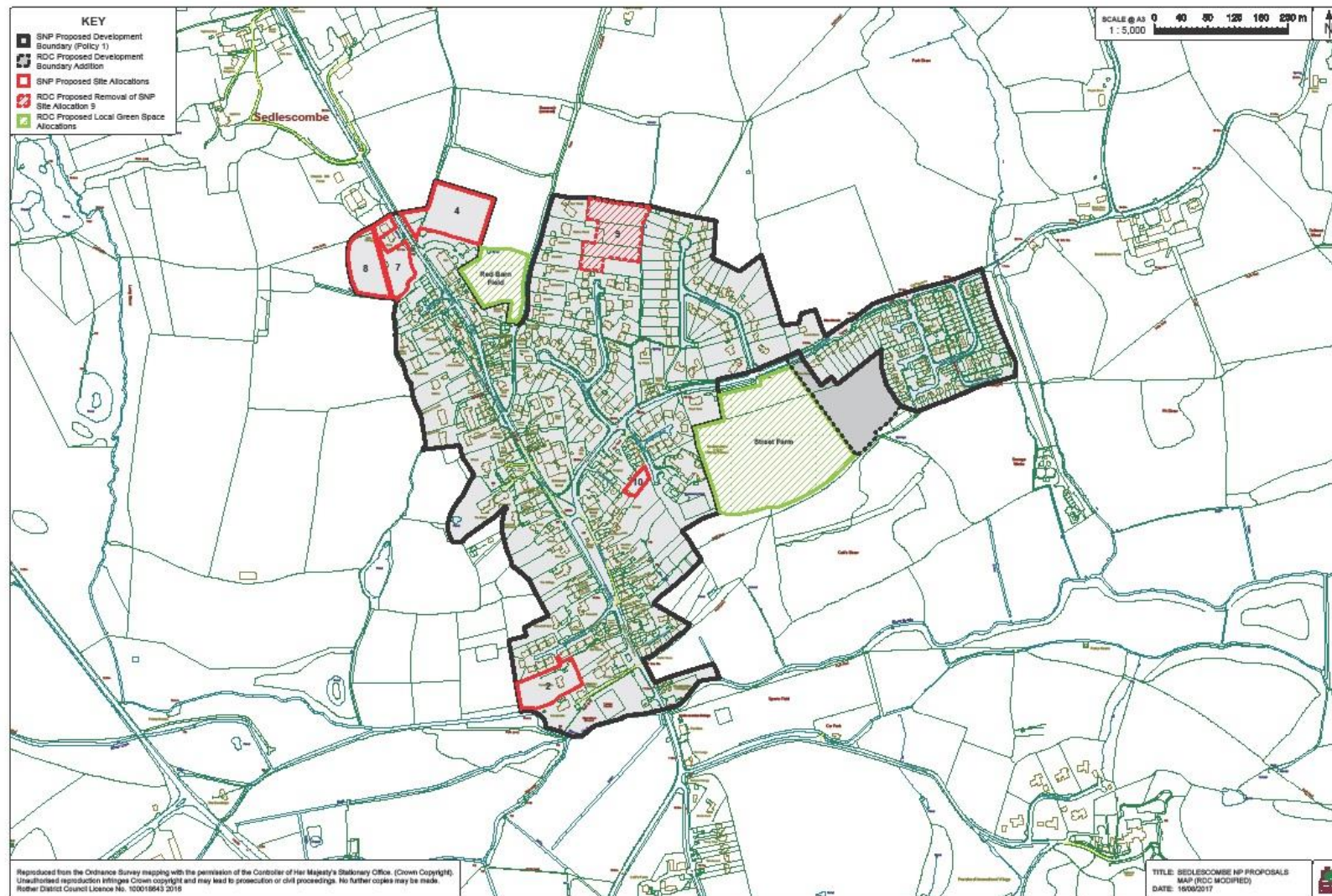


Plan 2 to accompany the Examiner's Note, August 2017 (taken from RDC representations)





Plan 3 to accompany the Examiner's Note, August 2017



## **ANNEX 3**

### **Sedlescombe Neighbourhood Plan**

**High Court Judgment 18<sup>th</sup> September 2017**



**In the High Court of Justice  
Queen's Bench Division  
Planning Court**

CO Ref:

CO/3033/2017



in the matter of an application for Judicial Review

The Queen on the application of Sedlescombe Parish Council

versus

Rother District Council

**Application for permission to apply for Judicial Review  
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant and / or Interested Party

Order by Sir Wyn Williams sitting as a High Court Judge

**Permission is hereby refused.**

Reasons:

The AOSs submitted by the Defendant and IP are compelling. I am satisfied that the Defendant's Committee made no errors of law in its approach to the IP's application. The Committee was entitled to attach significant weight to the lack of a five year housing supply (as it clearly did) and it did not err in its approach to national planning policy or local or emerging local planning policy. Its view of the contention that the grant of planning permission would be premature was one which was open to the Committee. Its reasoning is properly discernible from the relevant minutes. I have reached the clear conclusion that there is no properly arguable basis to challenge the grant of planning permission in this case.

- The costs of preparing the defendant's Acknowledgment of Service are to be paid by the claimant to the defendant, in the sum of £2450 plus VAT unless within 14 days the claimant notifies the court and the defendant, in writing, that it objects to paying costs, or as to the amount to be paid, in either case giving reasons. If it does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right to reply within a further 7 days, after which the claim for costs is to put before a judge to be determined on the papers. Where the claimant seeks a reconsideration, costs are to be dealt with on that occasion.
- I make no order for costs as between the Claimant and IP applying the well settled principle that normally only one set of costs is awarded in cases such as these.
- No other orders are necessary unless the Claimant seeks a reconsideration in which case any further applications can be dealt with at the oral hearing

Signed

Form PCJRI 4; v APRIL 2014 – Judicial Review Permission Refused RENEWAL FEE [NLAct claim issued on or after 7 October 2013]

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**For completion by the Planning Court**

Sent / Handled to the claimant, defendant and any interested party / the claimants, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

18 SEP 2017 ref: SEDLE01-01

**Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. **For details of the current fee see the Court website**. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>





**In the High Court of Justice  
Queen's Bench Division  
Administrative Court**

CO Ref no: CO/3033/2017

In the matter of a claim for Judicial Review

The Queen on the application of

SEDLESCOME PARISH COUNCIL

versus ROTHER DISTRICT COUNCIL

**Notice of RENEWAL of claim for permission to apply for Judicial Review (C P R 54. 12)**

1. *This notice must be lodged in the Administrative Court Office, by post or in person and be served upon the defendant (and interested parties who were served with the claim form) within 7 days of the service on the claimant or his solicitor of the notice that the claim for permission has been refused.*
2. *If the claim was issued on or after 7 October 2013, a fee is payable on submission of Form 88B. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>*
3. *If this form has not been lodged within 7 days of service (para 1 above) please set out below the reasons for delay:*
4. *Set out below the grounds for seeking reconsideration:*

5. *Please supply*

COUNSEL'S NAME:

COUNSEL TELEPHONE NUMBER:

Signed

Dated

Claimant's Ref No.

Tel.No.

Fax No.

**To the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL**

**FORM 88B**

## **ANNEX 4**

### **Sedlescombe Neighbourhood Plan**

#### **Parish Council Letter to Examiner 26<sup>th</sup> September 2017**





## Sedlescombe Parish Council

April Cottage, Church Road, Catsfield, East Sussex. TN33 9DP

Telephone Number: 075 310 654 69

Email: [clerk@sedlescombe.org.uk](mailto:clerk@sedlescombe.org.uk)

Website: [sedlescombe.org.uk](http://sedlescombe.org.uk)

Mr. E Cousins  
Francis Taylor Building  
Inner Temple  
London  
EC4Y 7BY

26th September 2017

Dear Mr. Cousins,

As you may already be aware Sedlescombe Parish Council was not granted leave for a Judicial Review of the Street Farm approved application which directly conflicts with Policy 11 of the Sedlescombe Neighbourhood Plan (SNP) and was given approval after the SNP was submitted to the LPA and during the examination process. We have attached this decision for your information. As we are sure you will appreciate the grant of this permission whilst conflicting with the SNP also contributes to the housing numbers set out in policy RA1 table 12 of the District Council's Core Strategy.

Whilst the SNP aims to deliver the target set of 35 houses, the Parish Council it is also very aware of the need to conserve the AONB wherever possible as set out in the NPPF at para.115. To this end the Parish Council resolved at its meeting on the 26<sup>th</sup> of September to write to you (through the District Council) to request that you delete Policy 4 of the SNP which allocates 10-12 houses. This is land at Church Hill Farm, North of the Village (directly next to the Village Hall car park). We would ask you do this only if you propose to accept the allocations set out in Policies 2, 7 and 8. The Parish Council has chosen this site as it was the next least favoured site at the Regulation 14 consultation and in its opinion would have the highest impact on the AONB of the remaining sites.

The housing requirement for Sedlescombe is 35 houses and the approval of Street Farm site has delivered 16 houses against that requirement. This means that the SNP only requires to find a minimum of 19 further houses. This balance can be adequately satisfied by the following proposed allocations from the remaining policies:-

Policy 7: 8 houses  
Policy 8: 10 houses  
Policy 2: 6-9 houses

**Total: 24- 27 houses**

These policies will deliver 24- 27 houses against the balance of 19 houses with the SNP still giving a potential over-delivery of 5- 8 houses.

We would also ask that should you agree to recommend this modification that the extension of the settlement boundary to accommodate Policy 4 as set out in Policy 1 be modified so as to reflect the existing settlement boundary.

Yours sincerely

*C E Hodgson*

Mrs Carol Hodgson  
Clerk to Sedlescombe Parish Council