

Peasmarsh Neighbourhood Plan Examination

Rother District Council Responses to the Initial Comments of the Examiner

June 2023

Strategic policies

With regard to the adopted Core Strategy and the Development and Site Allocations Local Plan, can Rother District Council identify which of its policies, in either document, are to be considered strategic policies for the purpose of the basic conditions test?

Please refer to the attached spreadsheet which highlights the strategic policies in both Local Plan documents, the Core Strategy (adopted in 2014) and the Development and Site Allocations Local Plan (adopted in 2019). All policies in the Core Strategy are strategic. Chapter 12- Rural Areas – sets out objectives and strategies for the rural areas in the district, including development targets for each parish. Figure 12 of the Core Strategy contains the Rural Housing figure for Peasmarsh.

The policies of the Development and Site Allocations (DaSA) Local Plan are generally viewed as ‘non-strategic’, however Policy DHG1: Affordable Housing refines the thresholds set by Core Strategy Policy LHN2, and Policy DHG2: Rural Exception sites refines Core Strategy Policy LHN3 and are therefore strategic policies that supersede the Core Strategy policies. DaSA Policy DEC3: Existing Employment Sites and Premises replaces Core Strategy Policy EC3 and is a strategic policy, as confirmed by DaSA paragraph 5.40.

The policies in the DaSA for the Strategic Gaps (DEN3) and Combe Valley Countryside Park (HAS1) give spatial expression to Core Strategy policies RY1 (xii), HF1(iii) and HF1(i) respectively, and therefore are also regarded as strategic as confirmed by paragraph 1.15 of the DaSA. In addition, Figure 17 of the DaSA updates Figure 12 contained the Core Strategy to 1 April 2018 (base date of the DaSA) to take account of larger housing sites (6+) completions to that date and outstanding larger site planning permissions.

L2: Protection of habitats

Would it be possible for habitat protection and enhancement to be covered by Policy L4? Does Rother have a view on this?

As stated at Regulation 16, we do not think Policy L4: Protection of Diversity has regard to legislation which sets BNG at 10%. We feel that policy L2: Protection of Habitats, and the list of priority habitats listed, is a neighbourhood plan policy specific to the parish of Peasmarsh, as advised in Planning Practice Guidance. It also expands on Rother Core Strategy Policy EN5: Biodiversity and Green Space,

specifically criterion (vii) Ensure that development retains, protects and enhances habitats of ecological interest, including ancient woodland, water features and hedgerows, and provides for appropriate management of these features. We recommend that the policy remains as L2: Protection of habitats.

L4: Protection of Biodiversity

I would ask for both the Parish Council's and Rother's views as to whether there is still a need for policy covering biodiversity net gain.

RDC commented in the Regulation 16 response to this policy that a requirement of 15% biodiversity net gain for all development requires an evidence base and a demonstration that it is viable for development to deliver a higher percentage, which has not yet been evidenced in the Neighbourhood Plan. The Council is currently collating the evidence that will determine the required percentages of BNG for all development in the district; the expectation is that this will be set by the new Local Plan. Until then, the district will accord with the 10% requirement of the Environment Act. We believe that the requirement made in legislation is all that can be expected until the new Local Plan sets out the district position, or indeed until a Neighbourhood Plan can demonstrate and evidence a higher need in their town or parish. There is no need for a Neighbourhood Plan to repeat existing legislation or national/ local policy.

To add to our Regulation 16 comments, we are working on the evidence to justify a higher level of BNG in collaboration with the Sussex Local Nature Partnership. This is a body set up to advise the districts and boroughs across East and West Sussex, and there is a desire to set a consistent BNG percentage above the mandatory 10%. This will be brought forward through each local authority's new Local Plan.

Can Rother clarify whether it's understanding as to whether schemes that fall within the permitted development classes, will be expected to deliver net biodiversity gain?

Permitted Development is exempt from BNG by virtue of Schedule 7A of the Town and Country Planning Act 1990 (inserted after section 90 by Schedule 14 of the Environment Act 2021). Government has also indicated that the following development will be exempt from the net gain requirement of the Environment Act, however this will require secondary legislation:

- development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows
- householder applications
- biodiversity gain sites (where habitats are being enhanced for wildlife)

Small scale self-build and custom housebuilding will be added to this list.

As mentioned above the Council are collating an evidence base to determine the district requirement through the new Local Plan; until the Local Plan is adopted the Council will accord with the legislated 10% requirement.

Can Rother also confirm whether it is intended to require the submission of a biodiversity net gain report as part of an applications submission via the Local Validation Checklist or will it be required by a condition, post approval?

A Biodiversity Net Gain Plan is a statutory requirement of Schedule 14 'Biodiversity gain as condition of planning permission' of the Environment Act, inserting Schedule 7A to the Town and Country Planning Act 1990, 'Biodiversity Gain in England'. The Planning Advisory Service (PAS) advises that DLUHC intends to amend the national validation requirements in the Development Management Procedures Order to require BNG information to be submitted with planning applications. There is currently uncertainty around what level of information will be required. However, Part 2 of Schedule 14 sets out at Paragraph 13 that every planning permission will be deemed to have been granted subject to the condition that the development may not begin unless:

(a) a biodiversity gain plan has been submitted to the planning authority (see paragraph 14), and

(b) the planning authority has approved the plan (see paragraph 15).

Currently, the RDC Local Validation Checklist does not require a BNG report, however the list will be updated and will take into account the new legislation.

I2: Sewage System Improvement

Who does the Parish Council consider would appoint that independent person, would it be the District Council as decision maker or the applicant and should that be on the basis of the individual proposal or the assessment of the total amount of development that is expected to take place in the parish through the plan period? Is that a matter that should be part of the Infrastructure Delivery Plan for the next local plan?

The current Infrastructure Delivery Plan was published in March 2019. It considers the infrastructure requirement of development proposed by both Local Plan documents, the Core Strategy 2014 and the DaSA 2019, the latter includes the Pippins site allocation. The 2019 IDP Schedule indicates only that a sewerage network reinforcement is 'desirable' for the district in the short to medium term.

A new IDP will be published alongside the new Local Plan. RDC is consulting with Southern Water to establish whether there are capacity issues with the existing sewer and foul water infrastructure; the outcome of these discussions will inform the relevant sections of the new IDP.

Does the district Council have any comments as to how these issues have been addressed in other parts of the district?

The issue has been addressed by the Local Plan Core Strategy, which sets out in Policy SRM2: Water Supply and Wastewater Management that the effective management of water resources will be supported by (i) Ensuring that the relevant water companies are aware of and have capacity to meet demands for water, wastewater and sewerage arising from new development.

At Neighbourhood Plan level, Rye Neighbourhood Plan includes Policy *F1 Reducing Flood Risk* sets out in criterion c) *'the need to address local sewer systems which, in extreme conditions, in order to prevent hydraulic overload, may discharge diluted untreated wastewater to water courses and the sea.'*

Rye NP supports all measures by water companies to replace such systems. The Plan encourages the industry to:

- a. encourage partnership working to find solutions to "overload" situations;
- b. develop its systems to cope with the worst case scenarios;
- c. ensure that vital infrastructure is protected from flood risk with systems being upgraded as necessary to match occupancy of any new development.

The Plan further emphasises that *'Southern Water will be encouraged to work with partners to ensure that the sewerage system can cope with any new development, but occupancy of any new development must be aligned with the delivery of sewage infrastructure.'*

Officers are liaising with Southern Water through the Duty to Co-operate process and policies in the new Local Plan will reflect any infrastructure needs identified. In addition, given concerns raised by local residents across the Southern Water catchment area (stretching from the Hampshire to Kent), local authorities have established the Southern Water Local Authority Stakeholder Group, which includes representatives from more than 40 councils. The aim is to hold Southern Water to account for delivering the infrastructure needed. This may lead to specific policies and planning conditions being agreed and utilised across the region.

Can RDC advise whether the issues of the capacity of the sewer system was identified as an issue when the Pippin site was identified in the Development and Site Allocation Local Plan for 45 units? The only reference to drainage matters in the policy relates to the use of SUDS.

The issue of sewer capacity was raised as an issue by objectors to the proposed Pippins allocation at Regulation 18 consultation stage, and consequently RDC officers consulted with Southern Water who advised the sewer *did* have adequate capacity to accommodate the allocation. This is summarised in the DaSA Local Plan Proposed Submission Consultation Statement (September 2018), see below.

General comments relating to the site allocations

Over the years there have been a number of drainage issues in the village, in particular foul water, with the Iden wastewater treatment works running near to its maximum capacity. Raw sewage has spilled onto the road at the entrance to The Maltings on several occasions.

Noted. Advice has been sought from Southern Water, which has confirmed that the wastewater treatment works (WTW) at Iden is running well within capacity with no hydraulic issues. Sewage emerging from drains is most likely to be caused by problems in the network (underground sewer pipes) rather than the WTW. These problems can stem from a number of causes such as blockages, groundwater infiltration (e.g. through cracks in the pipes) or surface water inundation. Any such problems should be reported to Southern Water's Customer Services team.

Comments relating to site PS24 (Land south of Main Street) and Policy PEA1

The site suffers from drainage problems. The site drains to the south, rather than to the drains on Main Street, meaning that properties in the lane to the south-east of the site endure flooding in their gardens from the site at times of moderate/ heavy rainfall. A drainage ditch on the edge of the site has become overgrown/ silted up meaning that surface water runs into a pond at Old Redford, where it then follows pipes into the Farleys Way area. Heavier rainfall results in the water overflowing and causing flooding. Building on this land will exacerbate the problems unless a major upgrade of surface water drainage and sewage is conducted. Peasmarsh is full of natural water springs which are exposed during changes to ground levels. Gardens in Farleys Way had to have large stone-filled cages installed underground to resolve the problems caused. The National Home Builders Registration Council (NHBRC) said they would resist any further applications for new dwellings in the area.

Noted. The DaSA recognises that surface water flow paths cross the south-eastern part of the site and that a sustainable drainage scheme (SuDS) is likely to be required in this location as part of any future development. It is therefore proposed to add a specific policy criterion requiring SuDS.

The detail of the proposed drainage scheme will be subject to further advice from the Lead Local Flood Authority at planning application stage, which would take account of existing drainage infrastructure and issues in the local area. Development of the site, including an appropriate SuDS, offers the opportunity to address existing drainage issues. The Council does not have a record of the particular issue referred to at Farleys Way. In any event, issues at the Farleys Way development, which lies to the south-east of the preferred site, would not necessarily be relevant to the future development of this site.

Detailed comments on proposed Policy PEA1

The policy should require increased sewerage capacity before development.

Southern Water has confirmed that their site assessment of the allocation indicated that there is adequate capacity within the network to serve the development. This means the nearest point of connection to the development (the closest sewer pipe the developer would wish to connect to) is of a size that can accommodate existing flow plus the added foul flow from the new development. Consequently, Southern Water has advised that a specific policy requirement is not necessary. Southern Water would be consulted at planning application stage and make appropriate recommendations.

The following excerpt is from an email from Southern Water to RDC regarding the 2018 consultation:

'I can confirm that the allocation PEA1 for 45 dwellings at Land south of Main Street was assessed as having adequate capacity (i.e. no policy criteria required)... this means the nearest point of connection to the development i.e. the closest sewer pipe the developer would wish to connect to, is of a size that can accommodate existing flow plus the added foul flow from the new development. I should caveat this with the point that the assessment is taken as a snapshot in time, and should the development not progress for a number of years, other developments in the catchment take up some of the capacity that currently exists in the network.'

With regard to the reports from local residents regarding drainage issues, these would need to be identified by our network manager. With regard to Iden WTW I have spoken with our Process Capacity Engineer who informs me the treatment works at Iden is running well within capacity with no hydraulic issues. Unless there is a major problem at the WTW, sewage emerging from drains is most likely to be caused by problems in the network (underground sewer pipes) rather than the WTW. These problems can stem from a number of causes such as blockages (eg from a build up of unflushables, such as wet wipes or grease and fat), groundwater infiltration (eg through cracks in the pipes) or surface water inundation (eg during times of heavy or prolonged rainfall). I trust that the residents affected have reported the issue to our Customer Services team so that it can be investigated and resolved?'

As it stands with the proposed allocation at Peasmarsh, any existing foul drainage issues are the remit of Southern Water and the developer would not be expected to contribute to 'betterment' of the existing network. The developer should only be required to demonstrate that their development would not cause detriment to the existing system and our assessment, which shows adequate capacity, means the nearest sewer pipe to the allocated site is of a size that, currently, can accommodate flows for 45 new homes in addition to existing flows. However as previously stated this situation may change over time and provided Southern Water are consulted when a planning application for the site is received by Rother District Council, another assessment will be carried out at that future point in time and the appropriate recommendations made. An assessment of the impact of all development within a catchment on the network is not made for the purposes of individual development sites, as this is not a concern for the developer and as such is managed internally.'

In summary, the issue of sewer capacity was highlighted during the Reg 18 consultation, however Southern Water, as the statutory service provider, responded that there was not an existing capacity problem.

I3: Surface Water Drainage

Can Rother confirm whether the requirement to submit a SUDS statement is included in the Local Validation List, which sets out the documents which are required to be submitted with a planning application and which applies across the district.

RDC requires a Sustainable Drainage Assessment to be submitted with any development involving surface water drainage and gives the following guidance:

'Sustainable drainage should be designed as part of the initial layout on any development and is a national requirement in relation to all major developments with surface water drainage. Specific advice has been produced at a county level taking into account local conditions in East Sussex. Applications will need to be accompanied by sufficient information – depending on the type of application - dealing with, amongst other matters: - existing drainage arrangements - discharge rates exiting and as a result of the development - proposed drainage layout and strategy - site investigations - construction details - off-site impacts, and - future maintenance and management.

In view of local drainage issues any new development (excluding changes of use) at Fairlight Cove (other than Major developments requiring the information required above) shall be accompanied by surface water drainage arrangements for the proposed development and where applicable based on the use of, and information obtained from, the East Sussex County Council - SuDS Decision Support Tool for Small Scale Development.'

The above guidance can be found on the Local Validation List, Item 23 [Rother Planning Validation Checklist](#)

E2: Adaption of Existing Buildings for WFH

Can Rother set out what its approach is, in terms of working from home being classed as activity incidental to the enjoyment of a dwelling and not requiring planning permission? Does it for example see home offices as outbuildings as covered by Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)?

RDC considers working from home to be incidental to the enjoyment of the dwelling and therefore does not require planning permission. Home offices in the curtilage of dwellinghouses would be covered by Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Note that outbuildings are only permitted development in the AONB where they are within 20 metres of the dwellinghouse (this applies to the whole of the Peasmarsh parish). Our submitted comments at Regulation 16 stated that extensions and outbuildings are effectively covered by Local Plan Policy DHG9: Extensions, Alterations and Outbuildings. Applications for outbuildings more than 20M from the main dwelling are considered on a case-by-case basis (a requirement for a High Weald AONB location), with a key

consideration being the conservation and enhancement of the landscape and scenic beauty of the High Weald AONB.

We would support the proposed policy E2: Adaption of Existing Buildings for WFH with some re-wording, recognising that longer gardens in rural locations may require a more specific policy to support outbuildings to be used for home working whilst still having regard to AONB requirements. The policy wording should clearly indicate this.

S1: Development Size

Has the District Council any evidence to support its claim that it is only the LPA or PINS that can be classed as “decision-makers” especially in the context of plan making, rather than development management?

We commented at Regulation 16 that the decision-maker is the local Planning Authority or PINS in the context of determining a planning application, with NPPF paragraph 16 e) in mind which states that plans should ‘*contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals*’.

Again, applications are considered on a case-by-case basis and whilst the Parish Council can allocate a site in the Neighbourhood Plan it is RDC that will determine the application against current development plan policy and must consider where the proposal is major development, as defined by NPPF paragraph 177 and footnote 60.

S3: Development Boundary

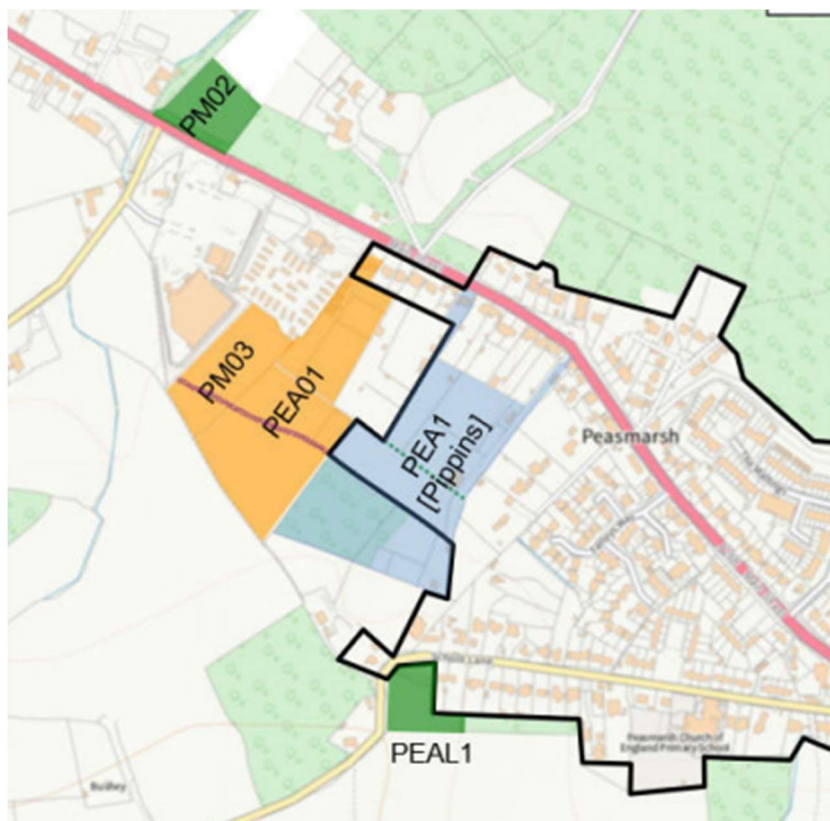
In view of the plan’s qualified support for the two potential sites, PEA01 and PM03, is there scope for extending the development boundary to include these sites, which could be developed if access can be resolved and is there a case for including within the settlement area The Cock Inn and it’s adjacent caravan site. Equally, also should the boundary recognise the developed nature of the Jempson site? I would be interested in both the Parish Council’s and Rother’s view on that matter.

In principle, we would support extending the development boundary to include parts of PEA01 and PM03. If the access issue was resolved, development here would be supported in principle. If the development boundary was extended to include these areas, we would also consider including The Cock Inn, the caravan site and Jempsons (providing the boundary is tightly drawn and does not extend into the open fields south-west of Jempsons). This would also mean that the small area of field/garden between PEA01 and PEA1 would be included within the development boundary. This land is currently unavailable, however appropriate development could be supported here if it were to become available in the future.

We would like to raise two further points regarding this matter:

1. The Landscape Assessment undertaken in support of the HELAA (not yet published) found that development on these two sites could be acceptable if it

does not extend any further south than the proposed residential section of the allocated DaSA site (PEA1), and that a similar depth of landscape buffer to that of the DaSA site would need to be provided (to the southern boundary), also that the existing tree planting on the sites' south-western boundaries must be strengthened to prevent long views into the site from the countryside in the winter months, which could otherwise be harmful to the wider landscape character. Therefore, rather than any new development boundary following the south-western boundaries of PM03 and PEA01, consideration should be given to following the existing line of the development boundary to the east, please see the map below.



As shown in the Policies Map Inset Map 12: Peasmarsh (page 249 of the DaSA), the existing development boundary purposefully excludes the southern extent of the PEA1 allocation because this land is allocated for open space/retained orchard only. A similar approach should be considered for PM03 and PEA01.

2. Extending the development boundary to include PM03 and PEA01 (or parts of them) without a detailed allocation policy is reason for further concern. This would mean that development would be supported here in principle, but there would be no specific policy to set out the type or amount of development preferred or any other specific requirements (e.g. tree planting). This would be less of a concern (in terms of landscape impact) if the development boundary is drawn as per the recommendations above. Any development would have to accord with Local/ Neighbourhood Plan policies and the NPPF e.g. proportion of affordable housing, housing mix etc.