

Arun Local Plan Examination

Response from LPA to Villages Action Group comments

17th June 2015

1. Villages Action Group submissions are based around the following matters;
 - i. The Emerging Local Plan (specifically policy HSP1) is in conflict with the made Barnham & Eastergate Neighbourhood Plan.
 - ii. As such, the emerging Local Plan is contrary to Regulation 8(4) of The Town and Country Planning (Local Planning) (England) Regulations 2012

Background to the NP

2. The Barnham & Eastergate NP has been made following the Examiner's Report. It is important to note that the NP does not define the 'gap' within policy ES3 on any proposals map.
3. The Examiner's Report considers how the NP would sit alongside a future (emerging) Local Plan. He recognises (para 2.39) that any neighbourhood plan needs to be in general conformity with its (the emerging Local Plan) policies. He further states that NP's will provide building blocks to assist with the preparation of the Local Plan. However, he does note (para 2.41) that this is not a test of the 'general conformity'.
4. At para 2.42 of his report, he states 'it follows that the need to ensure that the NP also contributes towards that goal (achieve sustainable development) and has regard to national policies and advice means that a NP should also be in harmony with an emerging Local Plan.' He goes on to make reference to para 185 of the NPPF.
5. At para 2.46 of his report, he makes it clear (when discussing harmony between the documents) that it 'does not mean that the policies in a NP will necessarily determine what goes in to the next Local Plan – otherwise nothing would ever change.'

6. Finally (when discussing this topic), at para 2.48, he states that he has had regard to the policies in the Emerging Local Plan, 'particularly in relation to housing allocations.'
7. The report (para 8.18) states that mandatory policies containing words such as 'must', 'must not' or 'will not be permitted' are generally not appropriate, since they do not allow a balancing exercise.
8. At section 13 of his report, he acknowledges the proposed allocation within the LP and the contents of the NP. He concludes (para 13.14) that the proposed NP is 'highly misleading' as it contains no reference to the emerging Local Plan. He highlights that the strategic allocation may emerge through the LP adoption and in the course of a planning application but it would not be appropriate for the NP to allocate that land.

He recommended that the proposed NP housing allocation be clearly defined as being 'in addition to' permissions already granted and any strategic allocation that may be made in the Local Plan.

Local Green Space Designation

9. The Examiner makes detailed comments on the proposed 'Local Green Space' designation south of Barnham Road. He concludes that the proposed area fails the test of para 77 in the NPPF. Arun District Council agreed with this conclusion when it wrote to the Parish Council on 13 March 2014. The Parish Council responded by stating;

'In constructing our Neighbourhood Plan we were cognisant of complying with the Local Plan. Currently the area we identified south of Barnham Road is shown as a Green Infrastructure Corridor on the ADC Green Infrastructure Maps. Clearly there is emerging intention to designate this land for a Strategic Housing Development. However the team felt that this GIC met all the criteria'

10. However, the made NP removed reference to the proposed Local Green Space designation (area 7) that covered the totality of the emerging LP allocation south of Barnham Road that was within the Reg 14 and Reg 15 versions of the NP.

What the NP says

11. It is essential to stop and read the contents of the whole of the NP, rather than a few chosen words.
12. Policy ES3 clearly states that new development within the gap (which is not defined) 'will not generally be supported'. This wording clearly (in accordance with the Examiner's Report) allows for a balancing exercise to be carried out. That is why the whole of the Plan has to be looked at and not just a few chosen words.
13. Para 5.2.1 of the NP states that the Local Gap and Green Infrastructure Corridor is defined within the Local Plan. In respect of the ADC LP (2003) defined Local Gap, please see comments at para 5 of this note. In respect of the Green Infrastructure Corridor, there is no such designation in the 2003 Local Plan; this was contained within the emerging Local Plan (please see comments at para 25 of this note).
14. As para 9.1.2 of the NP states, the policies within the plan relate to a need to provide 200 houses. Para 9.1.4 then recognises that the policies in the NP are 'in addition' to 'any strategic allocation that may be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate.'

Commentary

15. Whilst the above is not directly responding to the points raised by VAG and it might be lengthy, it provides a useful context behind the preparation of the NP and how it would sit alongside an emerging Local Plan.

16. Paragraph 14 above is consistent with the *Tattenhall & District Parish Council v Taylor Wimpey UK LTD* [2014] EWHC 1470 (Admin) judgement that confirmed that;

- Identifying strategic sites in neighbourhood plans would be contrary to NPPF paragraph 184 as it is the role of the local planning authority to identify the strategic growth for an area.
- Fundamentally, neighbourhood plans cannot be used to undermine the strategic policies for the local area.

17. It is within this context (the need to provide for 200 dwellings) that the policies within the NP have been progressed and how they will be used as part of the development plan. They would not be determinate for strategic development.

The NPPF & NPPG

18. Paragraph 16 of the National Planning Policy Framework is clear that those producing neighbourhood plans or Orders should support the strategic development needs set out in Local Plans.

19. The NPPF (para 184 and 185) recognises the relationship between NP's and LP's. Paragraph 185 states '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. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation.'

20. Paragraph 184 states that '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.'

21. The LP sets out the strategic policies for the District and NP's should be in general conformity. NP policies should be outside of strategic elements of planning policy. And non-strategic policies should not be within an LP (where there is a NP).
22. As the NPPG states at para 41-009-20140306, any conflicts between the NP and the LP must be resolved by the decision maker in favour of the last document to become part of the development plan – section 38(5) of the Planning & Compulsory Purchase Act.

The LPA's Submission that there is NO conflict between the Emerging Local Plan (specifically Policy H SP1) and the Barnham and Eastergate Neighbourhood Plan

23. The NP has been produced in accordance with the NPPF. It therefore recognises that the policies contained within it have nothing to do with the strategic planning policy as these are to be within the LP (para 185 of the NPPF).
24. The policies within NP therefore relate only to a requirement to provide 200 dwellings (permission has been granted for some 158 dwellings since March 2013); they do not relate to strategic development. They are outside of the strategic elements of the Local Plan.
25. The NP itself recognises this at para 9.1.4. In doing so, the NP already acknowledges that there is no conflict between the NP policies and the Emerging Local Plan. Further, as the NP acknowledges (para 5.2.1), the policy that VAG rely upon adds nothing to the adopted 2003 LP and indeed seeks to rely upon the emerging LP as its justification. It is therefore confusing to be asked to comment on what VAG consider to be unequivocal conflict.

26. The LPA would further state that there is no conflict because a balancing exercise looking at the whole Plan is required. VAG have chosen a few words of the Plan to make their submission but the wording of the policy (ES3) specifically requires this balancing exercise to be carried out (as advocated by the Examiner and as the 2003 LP from which it relies does).

27. It is noteworthy that para 99 of the judgement R (RWE Npower Renewables) v Milton Keynes BC [2013] EWHC 751 (Admin) referred to in the VAG submission states;

'The question whether a policy is in conflict with an adopted development plan is not a question of construction or one analogous to it. It involves a planning judgment that it is for the relevant planning authority to make provided that it does not act unreasonably.'

The judgement of the planning authority is set out above.

28. The VAG submission is critical that the LPA have previously failed to explain the conflict between ES3 and HSP1. This was simply because there is no conflict and this is already acknowledged in the NP itself.

The LPA's Submission that the Emerging Local Plan is NOT contrary to Regulation 8(4) of the 2012 Regulations

29. In response to the submission on Regulation 8(4), the LPA are in no doubt that the emerging LP and the made NP are consistent. Section 38(5) of the Planning and Compulsory Purchase Act 2004 makes it clear that "To any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)".

30. The strategic policies within the emerging LP are not intended to supersede the policies in the made NP. The policies in the LP relate to strategic development, the policies within the NP relate to the need to provide a defined number of dwellings locally. This is already recognised by the NP and these policies will continue to be used (as part of the development plan) in this context following adoption of the Local Plan.

31. ADC considers that the emerging LP will not supersede a policy in the NP.