

John Slater Planning Ltd

Rye Neighbourhood Plan 2016- 2028

Submission Version

A Report to Rother District Council on the Examination of the Rye Neighbourhood Plan

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Executive Summary

My examination has concluded that the Rye Neighbourhood Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- All allocation policies refer to a minimum level of development and incorporate consistent wording relating to flood risk assessments and removing the requirement for allocation sites to submit ecological impact assessments.
- Reference to comprehensive development be changed so that phased development should not prejudice the development of the adjoining sites.
- That the extent of Winchelsea Road (West) allocation be extended to reflect the land currently in commercial use.
- That access arrangements for the Freda Gardham School site should serve both the petrol station/convenience store and the residential development to the rear.
- That the extent of the former Lower School site is reduced, and is shown on a revised plan omitting from the allocation, the land protected by a Tree Preservation Order.
- Clarifying that in terms of flood risk policy, the allocation sites do not need to pass the sequential test when a planning application is submitted.
- Widening the extent of employment and business development to be supported.
- Requiring that the petrol station on allocated site E3 incorporates measures to prevent the pollution of groundwater.
- Deleting the policy imposing a higher car parking standard.
- Amending the community facilities policies to identify specific early year facilities and removing sports facilities that are already protected as open space.
- Amending the development boundary of the town to include Rye Primary School and to reflect the enlargement of Site Allocation H6. It will also require the insertion of a map showing the extent of the strategic gap.
- Removing reference to the designations as local green space, as the policy has not been supported by appropriate evidence. The extent of the Green space at Gibbert Marsh be enlarged, if required, to include land adjacent to the river and the railway line which needs to be shown on a revised map.
- Removing the policy protection relating to tree roots as this is covered by the requirements of the Local Validation Checklist.
- Removing the requirement for the submission of an energy statement but replacing the policy with one that supports low carbon and renewable energy.

The referendum area does not need to be extended beyond the plan area.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities to create the policies which will shape the places where they live and work. The Neighbourhood Plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies which will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the Rother Core Strategy 2014 and the saved policies of the Rother Local Plan 2006. Decision makers are required to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been led by Rye Town Council. A Steering Group was appointed to undertake the plan preparation made up of local councillors and volunteers. Rye Town Council is a “qualifying body” under the Neighbourhood Planning legislation.
3. This report is the outcome of my examination of the Submission Version of the Rye Neighbourhood Plan. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the plan then receives the support of over 50% of those voting at the referendum, the Plan will be “made” by Rother District Council, the Local Planning Authority for the neighbourhood plan area.

The Examiner’s Role

4. I was formally appointed by Rother District Council in October 2018, with the agreement of Rye Town Council, to conduct this examination. My role is known as an Independent Examiner. My selection has been facilitated by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) which is administered by the Royal Institute of Chartered Surveyors (RICS).
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 40 years’ experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and a director of John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am

independent of both Rother District Council and Rye Town Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.

6. Under the terms of the neighbourhood planning legislation I am required to make one of three possible recommendations:
 - That the plan should proceed to referendum on the basis that it meets all the legal requirements.
 - That the plan should proceed to referendum if modified.
 - That the plan should not proceed to referendum on the basis that it does not meet all the legal requirements.
7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Rye Neighbourhood Plan area.
8. In examining the Plan, the Independent Examiner is expected to address the following questions
 - a. Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
 - b. Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
 - c. Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and has been developed and submitted by a qualifying body?
9. I am able to confirm that the Plan does relate only to the development and use of land, covering the area designated by Rother District Council, for the Rye Neighbourhood Plan, on 4th November 2013, if it is modified in accordance with my recommendations.
10. I can also confirm that it does specify the period over which the plan has effect namely the period from 2016 up to 2028.
11. I can confirm that the plan does not cover any “excluded development”.
12. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
13. Rye Town Council, as a parish council, is a qualifying body under the terms of the legislation.

The Examination Process

14. The presumption is that the neighbourhood plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public

hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put a case.

15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
16. I am satisfied that I am in a position to properly examine the plan without the need for a hearing.
17. I carried out an unaccompanied visit to Rye and the surrounding countryside on 14th February 2019. This enabled me to familiarise myself with the town area. I spent the whole day in this historic town, which I had not visited before. I visited all the allocation sites as well as spending some time walking around the Citadel, admiring the sublime medieval townscape and the sensational views across Romney Marsh to the sea. I spent some time (and money) in the local market. I also visited Rye Harbour and Camber Sands.
18. Following my site visit and my initial assessment of the plan, I had a number of matters on which I wished to receive further information, both from the Parish Council and the District Council. That request was set out in a document entitled *Initial Comments of the Independent Examiner* dated 18th February 2019. I received separate responses, from Rother District Council, and from the Town Council both on 12th March 2019.
19. All documents have been placed on the respective websites.

The Consultation Process

20. The Town Council decided in 2013 to prepare a neighbourhood plan.
21. An initial consultation event took place on 17th October 2013 at a public meeting, attended by approximately 70 people, which sets out the initial vision and objectives of the plan.
22. There was a public question and answer session held at Tilling Green Community Centre on 28th January 2014 and the plan was discussed at the Rye Town Meeting held on 5th March 2014, which was attended by almost 100 people. During the summer and early autumn, separate consultation events were held with housing professionals to discuss potential housing sites and a workshop was held with students from Rye Studio School.
23. All this activity, which included survey responses, led to the preparation of the first version of the neighbourhood plan and further versions were placed on the Steering Groups website as the plan progressed. On 28th March 2015, the Steering Group updated the Rye Town Meeting, an event attended by 100 people. In January 2016 two public events were held, at Tilling Green Centre and St Mary's Centre which, in total, were attended by 230 residents.

24. Around the end of 2016, meetings took place with Rother planners with the aim to bring the neighbourhood plan into line with emerging policy in the draft Development and Site Allocations Local Plan.
25. All this activity culminated with the preparation of the Pre- Submission version of the plan (Version 10). This was subject to a six-week consultation which ran from 23rd February 2018 until 6th April 2018, which led to 100 comments being received as set out in Appendix 3 of the Consultation Statement.
26. I have been satisfied at the openness of the process which has allowed the public and interested parties to shape their neighbourhood plan. The residents were kept informed as the work on the plan progressed through the website, local media and specific sessions involving landowners and developers as well as young people. All parties were able to input at key points in the process.

Regulation 16 Consultation

27. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation (Version 11), which took place over an 8-week period, between 16th November 2018 and 11th January 2019. This consultation was organised by Rother District Council, prior to the plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
28. In total, 25 individual responses were received of which 9 came from local residents. The organisational responses came from Natural England, Southern Water, SGN, National Grid, East Sussex County Council, Rother District Council, Environment Agency, Highways England, Rye Amenity CIC, Gladman Developments Ltd, Rye South Undercliff Allotments Group, Rye Commuter Group, Rye Conservation Society, Rye Hire Ltd, Town and Country Planning Solutions on behalf of Martello Developments, and MDA Associates on behalf of John Jempson and Sons.
29. I have carefully read all the correspondence and I will refer to the representations where it is relevant to my considerations and conclusions in respect of specific policies or the plan as a whole.

The Basic Conditions

30. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what is known as the Basic Conditions which are set down in legislation. It will be against these criteria that my examination must focus.
31. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -

- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
- Will the making of the Plan contribute to the achievement of sustainable development?
- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
- Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
- Whether the making of the Plan would breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

32. During the course of this examination the Government issued a revised National Planning Policy Framework. However, in accordance with the stipulation of Paragraph 214 of the 2019 NPPF, this examination has been carried out applying the policies in the 2012 version of the Framework.

Compliance with the Development Plan

33. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Rother Local Plan Core Strategy adopted on 29th September 2014. I am aware that there are also saved policies of the Rother District Local Plan, adopted on the 10th July 2006, but that these do not constitute strategic policies. Work is underway on the emerging Development and Site Allocations Local Plan which was submitted to the Planning Inspectorate for examination on 18th January 2019. As this is draft policy, it is not a requirement that its policies have to be considered, as part of the basic conditions test, in any event.
34. Rye is identified as a small market town that can provide some development (355-400 dwellings over the period 2011- 2028) to maintain its role as set out in Policy OSS1. Because of commitments and completions, the emerging Local Plan indicates that there is residual requirement to deliver 81 additional dwellings for the remainder of the plan period.
35. There is a specific chapter in the Core Strategy dealing with Rye and Rye Harbour and Policy RY1 sets out its policy framework which, inter alia, seeks to preserve and enhance the character and the historic environment of the Citadel and the Conservation Area and the landscape setting of the town. It proposes that opportunities for growth should be concentrated within the built-up area. It supports flood defences for the town and requires development to minimise and manage flood risk.

36. Policy OSS2 covers the use of Development Boundaries to differentiate between areas where most forms of development will be accepted and other areas, where they will not. Rye's development boundary was established in the 2006 Local Plan.

Compliance with European and Human Rights Legislation

37. Rother District Council issued a Screening Opinion, on 15th September 2015 which concluded, having consulted with the three statutory consultees, that a full assessment, as required by EU Directive 2001/42/EC which is enshrined into UK law by the "Environmental Assessment of Plans and Programmes Regulations 2004", would be required. The Council also issued a Scoping Statement in August 2016.
38. A Sustainability Appraisal incorporating the Strategic Environmental Assessment was submitted in September 2018.
39. The District Council, as competent authority, issued a screening report under the Habitat Regulations in August 2016 and this was updated in September 2018. This screening assessed the emerging Development and Site Allocation Local Plan and the neighbourhood plans being prepared in the district and concluded that they would not have any adverse effects upon the European protected sites, namely Pevensey Levels SAC and Ramsar Site, the Dungeness Complex of designated sites and the Hastings Cliff SAC.
40. I am satisfied that the basic conditions regarding compliance with European legislation, including the newly introduced basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the plan has no conflict with the Human Rights Act.

The Neighbourhood Plan: An Overview

41. I must commend the Steering Group for preparing a well-presented submission document, which is backed up by the extensive evidence. It sets out the context of the neighbourhood area in appropriate detail and importantly differentiates between the planning policies and community aspirations, covering matters that cannot be dealt with by a development plan policy. There has evidently been close collaboration between the Steering Group and the planners at Rother District Council, with background evidence being shared.
42. The town is proposing to allocate a maximum of 160 new dwellings and it is clear that the local community has risen to the challenge of shaping the planning policies which will guide development until 2028 and in particular has identified the location

for the new homes. The plan is specifically wishing to encourage smaller homes suitable for young people and persons wishing to downsize within the town.

43. Rye's capacity to accommodate additional development is curtailed by the environmental constraints arising from its topography, its medieval layout, its heritage buildings and being surrounded by areas which are subject to international nature conservation designations. However, the most pressing constraint relates to flood risk.
44. At the present time, the whole of the town falls within the Flood Zones 2 and 3 apart from the Citadel and higher land at the extreme north and west of the town. At the present time, approximately 1000 homes in Rye are at risk of flooding from the Rivers Rother, Tillingham and Brede. Most of the town is protected by flood defence schemes which are designed to provide protection up to a height of 5.8m AOD, when the highest floodwater was measured in 2014 at 5.1m AOD. The final section of flood defence is the River Rother (Eastern Tidal Walls) scheme which is programmed for 2022.
45. As with all flood defences there will remain a residual flood risk, covering the town as the defences could be overtopped in a greater than 1 In 200-year flood event or the defences could fail. Therefore, flood risk is an ongoing constraint.
46. The starting point in terms of planning for areas subject to flood is set out in the NPPF and the Planning Practice Guidance, which is that if there are better sites in terms of flood risk, or if the proposed developments cannot be made safe, then the development should not be permitted. These principles are embedded, in the case of plan making, through adopting a sequential approach to site allocation, so that development takes place where the risk of flooding is lowest. Furthermore, if development is to take place in the areas at risk from flooding, then there should be benefits demonstrated through the exception test, that shows there are sustainability benefits such as regeneration of brownfield sites and it can be demonstrated that the development will be safe for the lifetime of the building.
47. Flooding was one of the key constraints that the Town Council considered in its Sustainability Appraisal which looked at balancing a number of sustainability objectives. It did identify that there were two sites within Flood Zone 1 which could accommodate residential development, but discounted them in terms of meeting other objectives, as set out in planning policy for Rye which is to concentrate development within the built-up area, to protect greenfield sites and to improve the "walkability" of the town.
48. It took an explicit position that it had to consider allocating housing sites which fall within the areas liable to flood. It has followed a sequential approach to site selection although it could have given greater weight to building homes in areas not a risk of flooding but were on higher ground, albeit on greenfield sites. I do, however, concede that this balanced judgement is a matter that the community is entitled to make, particularly having regard to the level of protection offered by existing and proposed flood protection schemes.

49. Having followed the sequential approach and concluded that development has to take place in Flood Zone 2 and 3 – which all the allocated sites are, then it is necessary to follow the exception test. In particular, the need for the site to be rendered safe for the lifetime of the development which in the case of residential development is 100 years. The basis for that assessment needs to take account of increases in sea level as a result of climate change. In most of the cases, the proposed allocation site will involve development of previously developed land, bringing wider sustainability benefits. The only site where there is arguably greenfield site development is on the Tilling Green Centre site, where there is the possibility of the existing building being retained and the housing will take place on the amenity land adjoining it.
50. In terms of providing for “safe” development, I am conscious that most of the surrounding land will be flooded in times of extreme flood events, although the periods of flooding may be more limited in the case of tidal flooding, compared to fluvial flooding. It will be necessary for individual planning applications to be accompanied by a site-specific flood risk assessment and it will be necessary for applicants to satisfy the District Planning Authority and the Environment Agency that the occupants will be safe in times of flood. I will be recommending amendments to a number of the allocation policies to make that requirement explicit. I sought, and have been provided with evidence from the local planning authority, that planning applications for development within Flood Zone 3 have been able to show that development can be considered safe. This has given me confidence in supporting the allocations.
51. The issue of flood risk has been a major theme of my examination and I am satisfied, on the basis of the information provided, not just in the submission document, but also in the accompanying Site Assessments, Sequential and Exception Flood Risk Test and the Evidence Base, that the plan does meet basic conditions in terms of complying with national and local strategic policy, particularly in regard to flood risk measures and will also deliver sustainable development.
52. There are a number of other themes relating to the allocations. The first relates to how the capacity of sites is expressed and I will discuss my approach in greater detail, in respect of Policy H1, but essentially it will change the emphasis from them providing “up to X units” with wording that refers to “at least x-units”.
53. Another common element is that the neighbourhood plan, in a number of instances, is proposing that development should take place on a comprehensive basis, notwithstanding that the sites are potentially in a multiplicity of ownerships. In view of the difficulties of land assembly and the statement from the District Council that it was not intending to use its compulsory purchase powers, I will propose that these policies should refer to “development being carried out in such a way not to preclude the development of the adjoining sites”.
54. All the allocation policies require the applicant to submit an ecological impact assessment. It is not within the remit of a neighbourhood plan to require a particular

document be submitted with a planning application. Those requirements are established by the District Councils Local Validation Checklist. The District Council does not include the requirement for the submission of ecological information in every case. In all instances, I will be recommending that this requirement be removed from the policy although the supporting text could encourage such information.

55. My recommendations have concentrated on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend editorial changes to the supporting text. These changes are likely as a result of my recommendations, so that the plan must still read as a coherent planning document.
56. Following the publication of this report, I would urge the Town Council and Rother planners to work closely together to incorporate the appropriate changes which will ensure that the text of the Referendum Version of the neighbourhood plan matches the policy, once amended in line with my recommendations. I have noted that the Town Council has already recommended some textual changes.

The Neighbourhood Development Plan Policies

Policy H1: Housing Allocations

57. I am satisfied that the overall level of housing being allocated in this neighbourhood plan exceeds the requirements set out in the Rother Core Strategy, whose Policy RY1 covers both Rye and Rye Harbour, now that the District Council considers that the ecological constraints on the development at Rye Harbour, can be overcome and that allocation can proceed in its own right.
58. I have raised with the Town Council and the District Council a suggestion that stating the capacity of the allocation sites as being “up to X dwellings” could potentially lead to a situation whereby the sites were not developed in a site efficient manner and development would be acceptable even if lower yields from each site was delivered. Both parties have responded positively to my suggestion that the capacity of the sites should be referred to as “approximately x dwellings”.
59. I have reflected further on this point and also had regard to a number of the Regulation 16 comments that have convinced me that the policy should be worded on the basis of providing “at least x units”. I do this on the basis that at this stage the size of the units is not known or indeed in a number of cases the extent of the site that will come forward in individual phases.
60. The policy’s rationale “to meet the Rother Core Strategy housing targets for Rye” is not actually the policy but the justification for making the allocations. I will recommend that that wording be deleted from the policy.
61. It is now necessary for the policy to set out the cumulative total of the housing achieved from the allocations on the basis that they will deliver “at least x

dwellings”.

Recommendation

Delete “To meet the Rother Core Strategy housing target for Rye”

Insert “at least “before the housing yield numbers in a. to f.

Replace “a total of “with “at least”.

Policy H2: Housing Mix

62. I have no comments to make on this policy.

Policy H3: Former Tilling Green School

63. In view of my recommendations in respect of Policy H1 I will recommend that the capacity be referred to as “at least 20 dwellings”. I note that the policy allows either the retention of or the reprovision of the community centre. If the decision is to re provide the community centre then the policy requires that it should be before the dwellings are occupied. What is not clear is the exact trigger, whether the occupation is related to the first or last housing unit on the site. In order to give flexibility of development phasing, I will recommend that reference should be made to the occupation of the final dwelling on the site. However, that trigger only comes into play if it is decided that the existing building is not to be retained.
64. Whilst I understand the aspirations regarding the new building facing onto Mason Road, I consider that stipulation could unnecessarily restrict the site layout by predetermining the position of the main entrance, for example it could be on a corner of the building, facing both the car park as well as the road. I will recommend that requirement be omitted.
65. In terms of the private gardens, it would be possible that some of the residential units could be provided by way of flats, where communal gardens may be more realistic. I will therefore refer to appropriate “external amenity areas” which would cover both the needs of residents and for users of the community centre.
66. A representation has been made claiming that it is inequitable to require the development to alleviate historic surface water flows and ponding on Mason Road. However, I am conscious that Paragraph 100 of the NPPF (2012) urges “using opportunities offered by new development to reduce the causes and impacts of flooding”. As the site falls within Flood Zone 3, I will add a requirement that the Site-Specific Flood Risk Assessment demonstrates that the development of the housing is shown to be safe for the lifetime of the development.

Recommendations

In the first sentence, replace "up to" with "at least" and insert "replacement" before "community centre"

In a. replace "dwellings are" with "the last dwelling is"

Delete b.

In c. replace "private gardens for the dwellings and public open space for the community centre" with "external amenity areas for the dwellings and the community centre"

In e. insert at the start "A site specific flood risk assessment demonstrates that the residential development is safe for the lifetime of the development incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required and mitigation by a SUDS"

Delete f.

Policy H4: Rock Channel

67. I consider that the plan of Rock Channel's broad location - Figure 7 could lead to confusion, in that it refers to Sites A to D, when the policy is only allocating Site A. There are no proposals in terms of the allotments, which are protected from development by being Statutory Allotments and the supporting text states that Sites C and D may deliver some windfall development. I consider that a separate plan should be prepared which merely refers to Site A, with perhaps the map showing the four sites - Figure 7 being inserted into the text of paragraph 4.10.
68. The policy refers to the site being allocated for a mixed-use development but the wording of the policy only refers to residential development. In line with my earlier recommendations, I will refer to the site delivering "at least 30 dwellings". There is also a typographical omission and I will recommend that the insertion of "the" between "enhance" and "setting".
69. I note that the Town Council is no longer suggesting that the sites are only developed on a comprehensive basis and/or according to an overall master plan. I am persuaded that an alternative form of wording would achieve the objective, so as to ensure that if the site were brought forward in phases, it should be done in such a manner that does not prejudice future phases of development. That would meet the objection submitted on behalf of the site owners.

Recommendations

Insert a plan showing the extent of Site A only and move Figure 7

In the first sentence remove “mixed use” and insert “at least” before “30 dwellings” and change the Policies Map which shows the site as a mixed-use allocation to a residential allocation.

In c. replace “The development shall be designed to minimise and mitigate flood risk including” with “A site specific flood risk assessment demonstrates that the residential development is safe for the lifetime of the development incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required and include”

Replace d. with “The development shall be designed so that if it is developed in phases, the form of development does not prejudice the redevelopment of any adjacent land”.

Delete e.

Policy H5: Winchelsea Road (East Side)

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70. In my opinion this whole area provides an ideal opportunity to achieve waterfront regeneration. However, I understand from the submissions of both the Town Council and the District Council, that a number of issues have prevented a comprehensive scheme coming forward, including landownership issues, which includes major holdings by the Environment Agency which is not prepared to release its freehold interest.
71. Previous attempts to secure a comprehensive redevelopment over this waterfront side have failed despite a Development Brief being prepared for the site over a decade ago.
72. The policy allocates the whole site for a mixed-use development but is only proposing a *maximum* of 10 dwellings along with the car parking and B1 employment uses. Recognising the difficulty in achieving the comprehensive scheme, I believe that it is more realistic to expect the site to come forward on a piecemeal basis, with any series of developments rather than a single comprehensive scheme. The suggested capacity of 10 residential units across such a large site would in my opinion render any redevelopment not viable. I will therefore be recommending that the policy allows for the development of a minimum of 10 units but does not propose an indicative number for a maximum.

Recommendations

Replace “up to” by “at least”

Replace the second paragraph with “The development shall be designed so that if it is developed in phases, the form of development does not prejudice the redevelopment of any adjacent land”.

Replace the penultimate paragraph with “A site specific flood risk assessment demonstrates that the residential development is safe for the

lifetime of the development incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required”

Delete the last paragraph.

Policy H6: Winchelsea Road(West)

73. I will be recommending that the policy should refer to the delivery of at least 20 dwellings. The site allocation does not reflect the extent of the current commercial uses where the lorry parking area and hardstanding extend to the rear of the warehouse building. I agree with the Regulation 16 representations from the site owners and the Rye Conservation Society that the extent of the allocation should be enlarged to incorporate the whole site. I note that the development boundary will need to be enlarged to follow the new boundary as per the attached plan.

Recommendations

Enlarge the allocation site to accord with the following plan



Replace “up to” by “at least”

Replace a. with “The development shall be designed so that if it is developed in phases, the form of development does not prejudice the redevelopment of any adjacent land”.

Replace d. with “A site specific flood risk assessment demonstrates that the residential development is safe for the lifetime of the development

incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required.”

Policy H7: Former Freda Gardham School site

74. I am conscious that the development is contingent upon the completion of flood mitigation works, which the policy notes is planned “for 2022”. For the purpose of the planning policy, it is not necessarily to specify the date for the completion of the works and if for some reason the project were to be delayed, then the development of this former school site for residential purposes should not proceed.
75. I am anxious to avoid any ambiguity as to the relationships between this residential allocation and the land for a petrol station and/or convenience store. That part of the site is shown crosshatched in Figure 10 as the potential petrol station site as well as it being coloured brown so that it appears to be shown as included within the housing allocation. I will be recommending that the residential allocation on the front part of the site be removed.
76. Policy H7 requires that “there should be adequate access to/from the A259”. However, Policy B3 allocates the land on the road frontage for a petrol station and convenience store and it is a requirement of that policy that “the site will have a separate road access from the housing development(H7) to the south”.
77. I have serious reservations that the narrow secondary access connecting the rear part of the site which runs between a pair of houses would be adequate in width, visibility and geometry to serve the scale of residential development proposed on the land to the rear. If that were to be the sole point of access, it could frustrate the delivery of the housing. I will be proposing an access requirement that will provide appropriate access arrangements for both parts of the site, which are covered by Policy H7 and B3.

Recommendations

Amend Figure 10 to remove the housing allocation shading from below the cross hatched allocation shown as Potential Petrol Station.

Replace “up to” by “at least”

In a. remove “planned for 2022”

Replace c. with “A site specific flood risk assessment demonstrates that the residential development is safe for the lifetime of the development incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required”

In e. add at the end “to serve the residential allocation and the petrol station/ convenience store allocated by Policy B3”

Delete f.

Policy H8: Former Lower School Site

78. I will again recommend removing reference to the ecological impact assessment and change reference to the housing numbers as approximate.
79. The development is required to avoid damage to what it described as Natural England Priority Woodland. My understanding is that the tree belt which lies adjacent to the railway line, is covered by a Tree Preservation Order. This is a Woodland Order and it does seem inappropriate to be allocating housing on land which is a protected woodland. I will therefore be proposing to reduce the extent of the allocation site, by removing the belt of trees from the allocation. I do not consider that this will affect the capacity of the site. I am satisfied that if delivered in accordance with local standards, it should be possible for the development “to avoid increasing pressure for on street parking in the vicinity of the site”. That is not something that is a developer or a planning policy could deliver.

Recommendations

Amend the extent of the allocation site in Figure 11 to remove the land subject to the Tree Preservation Order

Replace “up to” by “at least”

Replace a. with “A site specific flood risk assessment demonstrates that the residential development is safe for the lifetime of the development incorporating appropriate flood resilient and resistant measures including safe access and escape routes where required”

In b. replace “Natural England priority woodland” with “belt of trees adjacent to the railway which is protected by a Tree Preservation Order”

In d. omit all of text after “standards”

Delete e.

Policy D1: High-Quality Design

80. One of the requirements of neighbourhood plan policy is that it should offer certainty to both an applicant and decision maker. The wording of the second principle refers to “adhering to such principles as Secured by Design”. Without specifying which principles that a proposal will be judged against, it means that the policy lacks clarity. I have no difficulty in accepting Secured by Design as a valid criterion against which to judge a planning application, but I will remove any ambiguity by deleting reference to “such principles”.
81. A number of the requirements would not apply to all developments in all parts of the neighbourhood plan area. For example, not all proposals would need to be the

subject of a new desktop assessment in terms of archaeological interest. For example, a dormer roof extension in a modern house would not be of any archaeological interest. Equally there will be some developments where a mix of land uses will not even be possible, indeed or necessarily desirable. I will therefore recommend that “where it is appropriate” be inserted at the start of the second sentence of the policy.

82. The requirement requiring selective redevelopment is too vague, as a decision maker would not know when this policy would be triggered.
83. I am unclear what the plan expects by referring to making “the best use of rural margins and river fronts”. I consider a revision to require the designs to respond to the riparian or urban edge nature of the site.
84. It is the Secretary of State’s policy that neighbourhood plans should not set any local requirements relating to the construction, internal layout or performance of new dwellings” therefore Criterion j does not meet the basic conditions.

Recommendations

In a. replace “such principles as” with “the principles of”

At the start of the second sentence of the first paragraph insert, “Where it is appropriate” before “demonstrate”.

Delete d.

In f. replace “Make the best use of the” with “Respond to the”

Delete j.

Policy F1: Reducing Flood Risk

85. The policy needs to be clear as to where the policy applies – referring to areas at risk of current or future flooding is somewhat imprecise. I will recommend that the policy should refer to areas shown as Flood Zones 2 and 3 on Figure 13.
86. The policy also needs to differentiate between planning applications on allocation sites, which do not need to go through the sequential test and other development proposed in areas that are subject to flooding. However, in all cases the developments need to be subject to the “exception test”, in particular the need for the development to be safe for the lifetime of the development.

Recommendations

Replace “at current or future risk from flooding” with “within Flood Zones 2 and 3 as shown on Figure 13”

In the final paragraph replace “accompanying the National Planning Policy Framework (Footnote 34)” with “as set out in the Flood Risk and Coastal Change section of the Planning Practice Guidance”

At the end of the policy “The requirement to demonstrate the sequential test does not apply to development on sites that are allocated in the plan”

Policy B1: Employment and Business Development

87. The plan seeks to promote specific types of businesses, in particular it has identified “developments which regenerate and enhance the fishing and maritime and port related industries”. However, whilst these may be industrial sectors that there is a local desire to encourage, there could be other commercial uses which could provide employment and need to be covered by the policy. It is not possible under planning control to restrict the nature of businesses that occupy premises that fall within the same Use Class e.g. B1, B2 or B8. I will propose that the policy should state that business floorspace will be supported, but that developments suitable to support the fishing, maritime or port related industries will be particularly encouraged.
88. The second set of proposals relates to “micro (low footfall) businesses”, which is not a recognised planning category. The policy should refer to small scale offices and business premises within the Citadel being supported, where consistent with other planning policy.
89. I am happy to accept the recommendations of the Town Council in responding to Rother DC’s Regulation 16 representation that existing employment floorspace can be lost, where it is proposed to relocate the business to more modern facilities within the locality, including at Rye Harbour.

Recommendations

At the start of a. insert “new employment premises especially”

In b. replace” micro (low footfall) businesses” with “small scale office and business premises”

At the end of the policy, replace “relocation to more modern facilities in Rye Harbour” with “provision is made for the relocation to more modern facilities, within the locality, including at Rye Harbour”.

Policy B2: Supporting Rye as a Visitor Destination

90. This is a locally distinct policy which seems to build upon the “reasons to visit” attractions, some of which may not necessarily constitute development in their own right, such as “festivals and entertainments” but where development is required to support such activities then this policy would support such activities. I consider that the policy meets basic conditions.

Policy B3: Further Convenience Store Provision

91. This policy has clear linkage with Policy H7. I have discussed the issues of the interface with that policy in an earlier section of this report.
92. In terms of the requirement of the policy for the submission of a retail impact assessment, the District Council's local validation checklist only requires such a submission for schemes of over 500 sq. m. I note that the Town Council has no objections to me submitting a recommendation that this requirement be removed. I note that the intention is to either retain or replace the existing trees on either end of the site. I do not consider it necessary to retain or replace the existing vegetation on the site.
93. As the site is served by a pavement which runs from the site into the town centre, I do not consider it necessary to impose a requirement to retain and enhance pedestrian links into the town centre.
94. In respect of the access question, it is not necessary or desirable to require a separate highway access, independent of the housing development. I can envisage a range of access options that could allow perhaps a separate entrance to the petrol station, but where the exit is onto a new residential access road.
95. I note that the Environment Agency has concerns regarding the principle of a new petrol station in areas of high ground water. I propose to add a requirement to the policy which will ensure that the development incorporate such ground water protection measures to protect it from the risk of pollution. I know that the Agency in its Regulation 16 comments, is suggesting that this may require above ground storage solutions. If these concerns cannot be resolved to the satisfaction of the Environment Agency, I consider it prudent that the policy should be drafted so as to allow a petrol station and/or convenience store up to 500 sq.m to ensure that the convenience store could be provided without the petrol station.

Recommendations

After "petrol station" replace "and" with "and/ or"

Delete a.

At the end of b., delete "and other vegetation"

Delete c.

Replace d. with "The development shall be designed with appropriate access arrangements capable of serving both the petrol station/ convenience store and the residential allocation on the land to the rear"

Replace f. with "The petrol station shall be designed to incorporate measures to prevent the pollution of groundwater to the satisfaction of the Environment Agency".

Policy T1: Connectivity and Sustainable Transport

96. I welcome this policy which seeks to facilitate walking and cycling within the plan area. However, the policy appears to set a criterion which deals with location, which

could affect all development. It requires that “development is located close to the town centre and other community facilities”. There could be some development, perhaps in areas outside the settlement boundary, that are not “close to the town centre or community facilities”. I consider that this matter is adequately dealt with by other planning policies and I will recommend that this element of the policy be deleted.

97. There will be some development, which by virtue of its location is not possible to be linked directly with strategic walking and cycling routes. The policy could be offered some flexibility by introducing the caveat “where practical”.
98. There will also be some development proposals which would not need to incorporate cycle parking e.g. a new shopfront. Again, a caveat “where appropriate” would mean that the policy is more targeted to development that will generate additional trips in their own right. I agree with the County Council that it would be helpful if the policy made reference to the East Sussex Cycle Parking Standards, which allows reference to cycle parking to be removed from the policy dealing with car parking.

Recommendation

Delete a.

In b. after “new development” with “where practical”

At the start of c. insert at the start “In accordance with East Sussex Cycle Standards,”

Policy T2: Car Parking

99. This policy refers to “development proposals” but its requirements only relate to “residential development”. I propose to clarify that in my recommendations.
100. I recognise the Town Council’s desire to promote a higher parking standard than required by the East Sussex Parking Calculator. I consider that this desire is based on the public’s perceptions as to problems with the existing parking standards. However, I have seen no submitted evidence which justifies the proposed parking requirements and the basis for concluding that the county standards are inadequate. The reference to parking in the Evidence Base document refers more to parking, generally in the town rather than inadequate parking experienced on new developments. I note that the East Sussex Parking Calculator provides guidance that is specific to Rye and I am satisfied that the County Council’s standards are up-to-date, having been produced in October 2017. I am also satisfied that they will all be properly evidence- based and are based on the car ownership information provided in the 2011 Census.
101. Advice in the NPPF is that when setting standards for car parking, Local Planning Authorities should take into account the following information:
 - the accessibility of the development
 - the type, mix and use of development

- the availability of opportunities for public transport
- local car ownership
- and the overall need to reduce the use of high emission vehicles”

102. Whilst I note that the policy as submitted does allow applicants to seek to justify departing from the neighbourhood plans requirements, nevertheless, because the policy is not substantiated by any tangible evidence which supports the setting of new standards, the policy does not, in my opinion, meet the basic conditions in terms of complying with national policy. I will recommend that the policy be deleted. This is a matter that could be discussed with East Sussex County Council and included as a Community Aspiration. Alternatively, evidence could be collected which could then be used to justify a policy in a future review of this neighbourhood plan.

Recommendation

That the policy be deleted.

Policy I1: Infrastructure and Community Facilities

103. This policy deals with both physical and social infrastructure. I have no concerns regarding any policy that seeks to encourage the delivery of improved essential utility infrastructure.
104. In terms of the community facilities, the policy identifies the following buildings, Conduit Hill and Marley Road Community Centres as well as Rye Leisure Centre. I sought clarification from the Town Clerk as to what premises are covered by the description of being “early years’ services”. His reply identified the Pugwash Nursery, the Rye Children’s Centre and Ferry Road nursery. The policy also seeks to protect the Salts sports fields and services, which are areas that are protected by virtue of their Green Space designation set out in Policy E2. I see no value in the sport field being protected, both as green space as well as community facilities. I will therefore be recommending they be removed from this policy.
105. Subject to these amendments I am satisfied that the policy meets the basic conditions.

Recommendations

Replace “Early Years facilities” with “the Pugwash Nursery, the Rye Children’s Centre and Ferry Road Nursery and”

Remove “Salts sport fields and facilities including Rye Bowls Club; and Rye Rugby Club”.

Policy E1: Development Boundary, Strategic Gap and Setting of Rye

106. I do not consider that the first paragraph accurately reflects the strategic policy in that it states that “new development will be contained within the development boundary”. However, there will always be some development that can legitimately

take place outside the settlement boundary, which is acknowledged by the second paragraph of the policy. I note that the emerging Development and Site Allocations Local Plan is proposing, in its draft policy IM2 that “new development shall be focused within a defined settlement boundaries” rather than the proposed Rye neighbourhood plan policy which states that development “will be contained”. I consider that the local plan is more accurate description of the spatial strategy.

107. The plan is proposing two areas which are shown in Figure 2, where the neighbourhood plan is proposing a change in the settlement boundary. The Town Council in its response to my Initial Comments document is supporting a third area where the boundary line is to be adjusted to incorporate the new Rye Primary School, which lies off Love Lane.

108. I am aware that the emerging Development and Site Allocation Local Plan is itself promoting a strategic gap between Rock Channel and Rye Harbour. It is quite in order for the neighbourhood plan to bring this designation forward, as it currently is only being proposed in a draft local plan. I will recommend that the strategic gap be defined on a map in the neighbourhood plan and should protect the same land as shown on the Proposed Submission Version of the emerging DaSA.

Recommendations

Amend the development boundary of the Policies Map and the Development Boundary Map on Page 70 to include Rye Primary School as per the following plan and also to incorporate the enlarged site allocation H6.



***In the first paragraph of the policy replace “contained “with “focussed”.
At the end of the final paragraph, include “as shown on the Policies Map.”
Add to the Policies Map the Strategic Gap which is shown in the Development
and Site Allocations Local Plan as Figure 8***

Policy E2: Green Infrastructure

109. This policy deals with the designation of local green space (LGS), as well as the protection of trees and proposes improvements around the connectivity between people and habitats.
110. The NPPF (2012) in paragraph 74, deals with the issue of the protection of open space and it confirms that open spaces, sports and recreational buildings and land should not be built on unless it meets three criteria.
111. The Framework, in paragraph 76, offers through neighbourhood plans, the ability for the community to identify for special protection any green areas of particular importance where “development is ruled out other than in very special circumstances”. These are known as Local Green Space. It goes on to say that local green space status will not be appropriate for most green areas or open space. To qualify for that status, the area in question must be “demonstrably special to the local community and hold a particular local significance”. It then gives various examples as to what could constitute “significance”.
112. It is important that any neighbourhood plan policy should be based on evidence rather than mere assertion. I have seen no evidence submitted, either within the neighbourhood plan document itself or in the supporting evidence which describes in what way and for what reasons the local community considers these identified areas to be “demonstrably special”. This is a shortcoming that has been identified by Gladman Developments in its representations. I am therefore unable to confirm, due to the absence of any evidence, that these areas qualify for the highest level of protection. In my experience, neighbourhood plans will provide specific evidence to substantiate LGS designation and the case why the land designated is demonstrably special. These green spaces shown in Figure 28 will continue to be protected by Policy CO3 of the Local Plan Core Strategy.
113. This is a matter that the Town Council may wish to address when it comes to reviewing this neighbourhood plan.
114. The second element of the policy covers trees and it appears to offer protection to any tree irrespective of the quality, its amenity value or health when assessing whether it should be retained or replaced. It goes beyond the District Council’s requirements set out in the Local Validation Checklist. The policy is not specific in terms of imposing a requirement to “take into account the impact on the roots of trees to be retained”. I consider that a requirement to facilitate measures intended to protect buildings from tree roots, is already covered by the Building Regulations and British Standard document BS 5837:2012 Trees in Relation to Design,

Demolition and Construction. I suggest that the policy is unnecessary and the requirements are already covered by the District Councils requirements relating to the submission of planning applications, in respect of “protected or significant” trees.

115. In the final paragraph, I will recommend that “will” be substituted by “should”.
116. The accompanying map the two allotments shown should be described as “Statutory Allotments”. The plan also needs to be explicit in that it is clear that it covers the riverside corridor and the land adjacent to the railway line as recommended by the District Council.

Recommendations

In a. delete “local” and insert at the end “by the provisions of Policy CO3 of the Rother District Local Plan (or equivalent policy)”.

Delete b.

In c. replace “will” with “should”

In the key to Figure 28 refer to “Statutory Allotments”. The map should be amended, if required, to include the riverside and land adjacent to the railway as recommended by Rother DC.

Policy E3: Heritage and Urban Design

117. The Town Council now acknowledges that the policy cannot cover works by Highway Authorities or Utility Providers as these are covered by their permitted development rights. I would welcome the authors making corresponding changes being made to supporting text to reflect those proposed by the Town Council, in response to my Initial Comments. In the same document, it acknowledges that this policy is only focussed on the area within the Rye Conservation Area. I propose to make that explicit by way of a proposed modification.
118. Beyond that, I consider that policy uses as illustrations some of the characteristics that contribute to the outstanding medieval character of the Town Centre.

Recommendations

In the first sentence, delete “and major repairs by Highway Authorities and Utilities” and after “Rye “insert “Conservation Area”.

Policy E4: Renewable and Low Carbon Energy

119. This policy is totally disproportionate. It requires the preparation and submission of an energy statement in respect of **all** development. The emerging Local Plan is proposing a similar requirement for schemes of over 100 dwellings or 10,000 m² of non-residential development through their Design and Access Statement.
120. The policy does not accord with Secretary of State advice, which is set out in the Written Ministerial Statement, dated 25 March 2015 to the House of Commons. That states that neighbourhood plans should not set “any additional local technical standards or requirements relating to the construction, internal layout or

performance of new dwellings”. In terms of energy performance, this statement allows energy performance standards to be imposed by policies contained within a local plan (not a neighbourhood plan).

121. I therefore do not consider that the policy as submitted meets the basic conditions. However, if it were amended so as to support works that constitute development (some of the suggested measures, such as installation of smart meters, do not require planning permission), although to a certain extent some will be covered by permitted development rights. Such a policy could relate to solar panels, small-scale individual or community energy generation systems and ground source heat pumps.

Recommendations

Replace the policy with:

“Proposals which include measures to use renewable and low carbon energy will be supported, including

- The fitting of solar panel systems where this is appropriate to the character of the building and the area***
- Small scale industrial and community energy generation systems including solar photovoltaic panels, biomass anaerobic digestion and communal combined heat and power (CHP) units, and ground and air source heat pumps “***

The Referendum Area

122. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Rye Neighbourhood Plan as designated by Rother District Council on 4th November 2013, is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

123. I must congratulate Rye Town Council on grasping the opportunities presented by neighbourhood planning to allow the community to shape its planning policies and to allocate land for new housing. This has been a difficult task in view of the low-lying nature of the town, outside the Citadel. I am satisfied that the plan has adopted a sequential approach to site allocation and the sites will bring sustainability elements particularly by redeveloping brownfield sites. It is however

important that when development proposals come forward that they are flood resistant and resilient and demonstrate that the residents will be safe for the lifetime of the development, which can include achieving safe access for evacuation.

124. I consider that this is a locally distinct neighbourhood plan, which seeks to deliver on the expressed priorities of the residents of Rye and will deliver on its vision and protect its high quality townscape and landscape setting. The plan will provide a sound basis for dealing with planning applications in the town in the coming years.
125. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.
126. **I am therefore delighted to recommend to Rother District Council that the Rye Neighbourhood Plan, as modified by my recommendations, should now proceed to referendum.**

JOHN SLATER BA(Hons), DMS, MRTPI
John Slater Planning Ltd
16th April 2019