

**WALBERTON
NEIGHBOURHOOD DEVELOPMENT PLAN**

2015 – 2031

INDEPENDENT EXAMINATION

A Report to Arun District Council

By

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CHAPTER 1

Introduction

Background

Neighbourhood Planning

1. Neighbourhood planning is the process introduced by Parliament as enacted by the Localism Act 2011 (“the 2011 Act”). The intellectual purpose of neighbourhood planning is to seek to enfranchise those persons living and working in a community by providing the basis through which they can play a more active role in the process of deciding the future of their neighbourhood. The 2011 Act gave powers to parish councils to involve their communities in the creation of neighbourhood development plans, in order to give them a greater say in planning matters. Thus parish councils are able to play a role in the establishment of general planning policies for the development and use of land in the neighbourhood. Examples of such involvement are directed to the siting, design and construction of new homes and offices. The neighbourhood plan sets a vision for the future for the area concerned. It can be detailed, or general, depending on what local people want.¹
2. In order to ensure that the new process is workable and effective the 2011 Act introduced the requisite amendments to the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”), and the Planning and Compulsory Purchase Act 2004 (as amended) (“the 2004 Act”).² These amendments came into force on 6th April 2012 and were supplemented by detailed procedures provided for in the Neighbourhood Planning (General) Regulations 2012 (“the 2012 Regulations”).
3. The first step towards producing a neighbourhood plan is for a parish council, or other qualifying body, to define a “neighbourhood area” for which it considers that a plan should be prepared and presented.³ This is part of the process which that body is entitled to initiate for the purpose of requiring the local

¹ <https://www.gov.uk/publications/neighbourhood-planning>

² The 1990 Act, ss 61E to 61P, Sch 4B (neighbourhood development orders); the 2004 Act, ss 38A to 38C (neighbourhood plans).

³ See s 38A(1).

planning authority in England to make a neighbourhood development plan for the whole or any part of its area specified in the plan.⁴ “A ‘neighbourhood development plan’ is a plan “.....which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area”.⁵ The local planning authority will provide assistance in this process, where appropriate. The draft plan must meet what are referred to in the legislation as the basic conditions (“the Basic Conditions”). This means that the draft plan must in general conformity with national and other local planning policies. It must also conform to other provisions.⁶

4. Once a draft plan has been prepared and made available for inspection within the area in question, and members of the community have had the opportunity to comment upon it, an independent examiner (“the Examiner”) is appointed by the planning authority, with the consent of the qualifying body that produced the draft plan. The examiner must be someone who is independent of the qualifying body and the planning authority, has appropriate qualifications and experience, and has no interest in any land affected by the plan.⁷ The examiner then produces a report (“the Report”) which contains one of three possible recommendations. One of these recommendations is that the draft plan should be submitted to a referendum.⁸
5. The purpose of the referendum is to decide whether the draft plan should be “made”, subject to any changes recommended by the examiner and accepted by the planning authority. If more than 50% of those voting vote in favour of the plan, the planning authority must then make the plan.
6. Once it comes into force, the neighbourhood plan forms part of the development plan for the area to which it relates, together with the “saved” policies of the relevant local plan, any plans for minerals and water disposal, and any saved

⁴ The 1990 Act, s 61F(1), (2), applied by the 2004 Act, s 38C(2)(a).

⁵ By virtue of section 38A(2).

⁶ The 1990 Act, Sch 4B, para 8, applied by the 2004 Act, s 38A(3). For a detailed examination of the Basic Conditions and other statutory requirements, and see Chapter 3, below.

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

⁸ The 1990 Act, Sch 4B, para 10(2)), applied by the 2004 Act, s 38A(3). For the appointment and role of the examiner, and the possible recommendations see paragraph 12, below.

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

Role of the Examiner

7. The role of the Examiner is to conduct an independent examination of the draft plan (“the Examination”) so as to test whether or not it meets the Basic Conditions, and to ensure that it is in general conformity with the strategic policies contained in the development plan for the area, and in particular with Basic Condition (e), and complies with the various other statutory requirements contained in the planning legislation. In essence the role of the Examiner is to assess whether the draft plan is “sound”. If in the event that the draft plan does not comply with the various statutory requirements, the Examiner then is obliged to consider whether it can be altered so that it does so comply.
8. The Examiner then produces a report, which contains one of three possible recommendations, namely, whether:
 - “(a) the draft plan is to be submitted to a referendum;
 - (b) the modifications specified in the report are to be made to the draft plan, and that the draft plan as modified is submitted to a referendum; or
 - (c) the proposal for a plan is to be refused.”⁹
9. The recommended modifications can only be those that the Examiner feels are necessary to ensure that the draft plan complies with the Basic Conditions and the other relevant statutory requirements, or are needed for the purpose of correcting errors. The planning authority then decides whether it is willing to make any or all of those changes. If the changes are substantial, then they may have to be the subject of a further round of consultation.
10. The Basic Conditions¹⁰ may be summarised as follows - namely whether the draft plan:

⁹ 1990 Act, Sch 4B, para 10(2), applied by the 2004 Act, s 38A(3).

¹⁰ For a detailed analysis of the Basic Conditions, see Chapter 3, below.

- (1) has proper regard to national policy and guidance;
- (2) contributes to the achievement of sustainable development;
- (3) is in general conformity with the strategic policies of the development plan for the area or any part of that area; and
- (4) does not breach or is otherwise compatible with EU obligations, including the Strategic Environmental Assessment Directive 2001/42/EC and Habitats Directive 92/43/EEC

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

Appointment of the Examiner

My appointment

12. I have been appointed by the Arun District Council (“ADC”) to conduct the Examination of the Neighbourhood Plan. I am independent of the Parish Council and ADC. I have no interest in any land affected by the Neighbourhood Plan.
13. I am an Associate Member of Francis Taylor Building having joined Chambers in October 2013 as a Legal Adviser, Mediator and Arbitrator. Prior to that until September 2003 I was in practice as a Chancery Barrister in Chambers in Lincoln’s Inn until September 2003, when I was appointed to the salaried full-time judicial role as the Adjudicator to HM Land Registry. In October 2014 I retired from that position and joined FTB since when I have specialised in planning and related property issues. To that end I have been appointed to the Panel of NPIERS as an Examiner. I am also qualified to sit as a non-statutory Inspector and I have been retained in that role on a number of town and village green inquiries.

CHAPTER 2

The Process of the Examination

Walberton Neighbourhood Development Plan, as submitted¹¹

1. The parish of Walberton (“the Parish”) comprises an area of 1,044.19 hectares (2580.25 acres) and has a population of some 2,175 contained within the three villages of Walberton, Binsted and Fontwell. Walberton Parish Council (“the Parish Council”) is a body within the terms of the Local Government Act 1972. Following a consultation process on 10th December 2012 ADC approved the application made by the Parish Council to be classified as a” qualifying body” for the purposes of the 2011 Act.¹² The plan area was considered acceptable in planning terms and conforms precisely to the parish boundaries.
2. The details of the process by which the submitted Neighbourhood Plan came into existence, and the dates on which each stage was reached, are set out in the Walberton Consultation Statement, published by the Parish Council.¹³ The plan-making process commenced, and the terms of reference were approved, on 5th March 2014. Shortly thereafter on 3rd April 2014 a neighbourhood plan steering group was established (“the Steering Group”) for the purpose of promoting the Neighbourhood Plan for the area. The Steering Group ensured that parishioners were fully involved in the preparation of the Neighbourhood Plan.
3. As stated in the Forward to the Neighbourhood Plan, it is a plan for the future of the Parish that reflects parishioners’ views about what changes should occur in their area, rather than leaving such decisions to the local planning authorities, namely ADC and the South Downs National Park Authority (“SDNPA”).
4. The Steering Group then embarked upon an extensive consultation exercise, and the process of “Community Engagement” occurred between April 2014 and September 2015, and a survey was conducted. The Walberton Consultation Statement provides a comprehensive guide to the process, and an outline of the

¹¹ Hereafter referred to as the “Neighbourhood Plan”.

¹² See the 1990 Act s 61G(2), inserted by 2011 Act, Sch 9, para 2.

¹³ See Chapter 2, below.

hard work that has been undertaken by the community in the production of the Neighbourhood Plan.¹⁴

5. Between 18th August 2015 and 29th September 2015 the consultation took place pursuant to Regulation 14 of the 2012 Regulations. On 12th October 2015 the proposed Neighbourhood Plan made pursuant to Regulation 15 was submitted to ADC. This was then followed by the publication of the submitted Neighbourhood Plan between 21st October 2015 and 2nd December 2015. The Examination document library was then forward to the Examiner by 4th December 2015.

Documentation

6. For the purposes of the Examination I have been supplied with the following documentation:

Regulation 15 plan proposal submissions documents:

- Walberton Submission Neighbourhood Plan, October 2015-2035
- Basic Conditions Statement
- Consultation Statement

Regulation 16 representations received by ADC:

- Summary of representations received by ADC in response to the consultation carried out under Regulation 16
- ADC Regulation 16 Comments

ADC statutory and core documents included in the Evidence Base:

- ADC 2003 Local Plan (“the Local Plan”)¹⁵
- List of identified selected saved Policies in the Local Plan 2003, (i.e. still in force)¹⁶

¹⁴ See the Evidence Base.

¹⁵ <http://www.arun.gov.uk/2003-local-plan>. This was adopted on 17th April 2003 and covered the period up to 2011.

¹⁶ As set out in Schedule 1A of the Neighbourhood Plan. This list does not include all the saved Policies. The policies were saved pursuant to the provisions of the PCPA 2004. They should be read in

- Arun Local Plan Examination¹⁷
- Emerging Arun Consultation Draft Local Plan 2011-2031, publication version - now suspended¹⁸
- Strategic housing land availability assessment 2012 (“SHLAA”) – in particular SHLAA Arundel – Appendix 5
- Strategic planning elements of the SDNPA emerging Local Plan, and a synopsis of its “Vision”¹⁹
- Further Evidence Base, partly online
- Bundle (“the Public Examination Bundle”) supplied by ADC for the Public Examination held on 16th March 2016

Regard has also been taken of relevant legislation and case law, and to policy guidance from central Government, all considered in more detail in Chapter 3, below.

Procedure

7. The 2004 Act provides that the general rule is that the examination of the issues by the Examiner is to take the form of a consideration of written representations. However, there must be an oral hearing if the Examiner considers that it is necessary to consider oral representations to ensure adequate examination of an issue, or to ensure that a person has a fair chance to put a case.²⁰ In this it was considered that an oral hearing would be necessary, for the reasons set out below.²¹ A Public Hearing was duly arranged for 16th March 2016.

8. On the day of the Public Hearing a site visit was undertaken, and an exploration made of the various sites and locations referred to in the Neighbourhood Plan

context, and are no longer valid, as such. Also it is to be noted that GEN24 is included, but this does not appear to be a current saved Policy.

¹⁷ <http://www.arun.gov.uk/local-plan-examination>

¹⁸ <http://www.arun.gov.uk/emerging-local-plan>

¹⁹ See Schedule 1B of the Neighbourhood Plan.

²⁰ PCPA 2004, Sched 4B, para 9(1).

²¹ See Chapter 4, Part III.

lying within the Parish of Walberton. This visit included a visit to Fontwell Meadows being the site where ADC had resolved to grant outline planning permission No. WA-22-15-OUT (“the Planning Application”) for the construction of 400 plus residential units in favour of Dandona Limited (“Dandona”). Approximately 50% of the site lies within the Parish. The Planning Application was “called in” by the Secretary of State on 20th January 2016.²²

Recommended modifications

9. I have highlighted in bold type my recommendations, including suggested modifications to the Neighbourhood Plan.

²² For the current planning status, see Chapter 4, Part III, paragraph 77ff.

CHAPTER 3

The Basic Conditions – Overview

The legal requirement

1. In this Chapter the Basic Conditions are analysed. The requirement made in paragraph 8(1)(a) of Schedule 4B to the 1990 Act is for the Examiner to consider whether the Neighbourhood Plan for Walberton meets the Basic Conditions.²³ Thereafter in this Report consideration is then directed as to whether the Neighbourhood Plan meets the Basic Conditions.

2. The 2012 Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the Basic Conditions, together with other statutory requirements.²⁴ In the case of a neighbourhood plan, a document entitled the “Basic Conditions Statement” dated February 2015 has been produced to accompany it. It provides summary of the measures that have been taken in this case to ensure that a neighbourhood plan does meet the Basic Conditions.

The Basic Conditions

3. Paragraph 8(2) of Schedule 4B to the 1990 Act provides that a neighbourhood development plan meets the Basic Conditions if:
 - “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the plan],
 - (b).....
 - (c).....
 - (d) the making of [the plan] contributes to the achievement of sustainable development,²⁵
 - (e) the making of [the plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

²³ The 1990 Act, Sch 4B, para 8(1), applied by the 2004 Act, ss 38A(3), 38C(5)(b), (c). Sub-para 8(1)(c) does not apply to neighbourhood development plans.

²⁴ The 2012 Regulations, Reg 15(1)(d); see below.

²⁵ For the definition of “sustainable development”, see paragraphs 12 *ff*, below.

- (f) the making of [the plan] does not breach, and is otherwise compatible with, EU obligations, and
- (g) prescribed conditions are met in relation to [the plan] and prescribed matters have been complied with in connection with the proposal for [the plan].”²⁶

4. Basic Conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood plans.

5. Only one further Basic Condition has been prescribed under paragraph 8(2)(g), as follows:

“The making of the neighbourhood development plan is not likely to have a significant effect on a European site ... or a European offshore marine site ... (either alone or in combination with other plans or projects).”²⁷

6. Further, a draft plan must meet all of the Basic Conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them.

National policies and advice: the National Planning Policy Framework

7. In carrying out the Examination of a draft plan, and deciding whether to recommend that it should be submitted to a referendum, the Examiner is required to have regard to national policies and advice contained in guidance issued by the Secretary of State (see Basic Condition (a)).

8. The most significant national policies relevant to planning matters in England are set out in the document entitled the “National Planning Policy Framework” (“the NPPF”). This was published on 27th March 2012. It replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.

²⁶ 1990 Act, Sch 4B, para 8(2), applied by the 2004 Act, ss 38A(3), 38C(5)(d).

²⁷ 2012 Regulations, Sch 2, para 1.

9. In the “Ministerial Forward” of the NPPF the declaration was made by the then Minister for Planning that “[t]he purpose of planning is to help to achieve sustainable development.” “*Sustainable* ... means ensuring better lives for ourselves don’t mean worse lives for future generations”. “*Development* means growth ... We must house a rising population, which is living longer and wants to make new choices.... Sustainable development is about change for the better, and not only in our built environment....Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision ...”. The expressed aim of the NPPF is by replacing “... over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.”²⁸

10. The NPPF comprises a clear demonstration of the Government’s commitment to a “plan-led” planning system, as is apparent throughout the document. In paragraph 2 of the “Introduction” there is an acknowledgment of the statutory presumption in favour of the development plan²⁹, and the status of the NPPF as another material consideration. There are a number of references to the “plan-led” system contained in the document.

11. Paragraph 12 acknowledges that the NPPF “... does not change the statutory basis of the development plan as the starting point for decision-making”. It states that the “[p]roposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.” It adds that “[i]t is highly desirable that Local Planning Authorities should have an up-to-date plan in place.” Paragraph 13 confirms that the NPPF “... constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.”

²⁸ In the conjoined appeal *Suffolk Coastal District Council v Hopkins Homes Ltd and Secretary of State for Communities and Local Government; Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government* Lindblom LJ referred to authorities where it is stated that this attempt for simplicity and clarity and process of simplification had not necessarily achieved what was intended.

²⁹ See section 38(6) of the 2004 Act.

“Achieving sustainable development”

12. In paragraph 6 of the NPPF it is stated that the purpose of the planning system is to contribute to the achievement of sustainable development. Reference is then made to paragraphs 18 to 219 as constituting the Government’s view of what sustainable development in England means for the planning system. Paragraph 7 of the NPPF provides as follows:

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

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

“The Presumption in favour of sustainable development”

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

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

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

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”³⁰

For **decision-taking** this means³¹:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
 - specific policies in [the NPPF] indicate development should be restricted.”³²

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

“15. ... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear

³⁰ E.g. “..those policies relating to sites protected under the Birds and Habitats Directives ... and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”

³¹ “Unless material considerations indicate otherwise.”

³² *Ibid.*

policies that will guide how the presumption should be applied locally.

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

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

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

The Core planning principles

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

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

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

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

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

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

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

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

Neighbourhood planning

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

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

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

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

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

20. More general policies relating to “plan making” are found throughout the NPPF, but they generally refer to the making of local plans. For example, paragraphs 47 and 158-159 contain important policies regarding the need to ensure an adequate supply of housing; but these specifically refer to action by local planning authorities. Nevertheless, since neighbourhood plans are to be in general conformity with strategic policies in local plans, those policies in the NPPF relating to local plans will still be indirectly relevant.
21. Other policies directly relating to the making of neighbourhood plans are in paragraphs 28, 56 - 58, 69 - 70, 76 - 77, 97, 109 - 111, and 117.

22. More generally, the NPPF sets out a number of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. It is necessary for the Examiner to have regard to these where appropriate in carrying out the Examination.

Planning Practice Guidance

23. More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 on the Planning Portal website, as *Planning Practice Guidance* (“PPG”).³³ This guidance relates to a whole range of planning issues.
24. In particular, the PPG contains the following guidance:

How should the policies in a neighbourhood plan be drafted?

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”³⁴

25. A policy that is not “clear and unambiguous” is thus not in accordance with the Basic Conditions.
26. The requirement that a policy should be distinct, reflecting local circumstances, is less straightforward. Many policies in proposed neighbourhood plans are to a greater or lesser extent generic policies that could apply to many if not all locations. However, the fact that a particular community has chosen to include a particular generalised policy in its plan reflects its awareness that the issue in

³³ <http://planningguidance.communities.gov.uk>

³⁴ PPG, ref ID: 41-041-20140306.

question is of special relevance in its circumstances. The inclusion of such general policies thus does not of itself mean that those policies, or the plan as a whole, is not in accordance with the basic conditions.

Other national policies and advice

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

EU obligations

29. In carrying out the examination of a draft plan, the Examiner is also required to consider specifically whether the draft plan is likely to have a significant effect on
 - (1) a European site (as defined in the Conservation of Habitats and Species Regulations 2010), or
 - (2) a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007),either alone or in combination with other plans or projects (additional basic condition (g)).³⁵
30. More generally, the Examiner is required to consider whether the making of the draft plan is in general conformity with “EU obligations” (Basic Condition (f)).

³⁵ 2012 Regulations, Reg 32; Sch 2, para 1.

31. The principal relevant EU obligation is under the EC directive on the assessment of the effects of certain plans and programmes on the environment (strategic environmental assessment, or SEA) (Directive 2001/42/EC). That requires, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out at the time they are prepared and before they are adopted.

32. It is not considered that any of the policies in the Neighbourhood Plan are likely to have significant effects on the environment, such that an SEA needs to be prepared.³⁶

33. The second EU obligation is that:

“any plan or project not directly connected with or necessary to the management of [a European site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s nature conservation objectives.”³⁷

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

34. The Examiner is not aware that any of the policies in the Neighbourhood Plan are likely to have a significant effect on any European site.

³⁶ See paragraph 25(4), above.

³⁷ Habitats Directive 92/43/EEC, article 6(3).

CHAPTER 4

PART I

The Neighbourhood Plan Assessment

1. A neighbourhood plan must demonstrate from the outset that it contains clear and coherent policies, and that it provides a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. It is therefore of paramount importance that a neighbourhood plan has an intelligible, cohesive and comprehensible structure. It is in this contextual framework that the Neighbourhood Plan is considered against the Basic Conditions and the other matters referred in Chapter 3.
2. ADC has made a number of comments and recommendations contained in the document entitled “Regulation 16 Comments” produced on 1st December 2015 (“the Comments”). The purpose of the Comments is to make final representations on the Neighbourhood Plan for the purpose of this Examination, and to highlight any policy and conformity issues. In one of the Comments ADC states that it fully supports the community’s initiative to produce a neighbourhood plan, and the fundamentals of the policies drafted. It also refers to its duty to support its production. Reference will be made to these various Comments, below.

The General Formulation of the Neighbourhood Plan

3. The structure of the Neighbourhood Plan is reasonably clear, the general format of which is approved in this Examination. It is my view that it reflects the views of the community and sets out clear planning aims, together with a number of policies to manage housing development in the neighbourhood area. There is general conformity with the Basic Conditions and other statutory requirements. However, a number of points have been highlighted where consideration should be directed to the wording of the Neighbourhood Plan as submitted, and a number of matters of detail which could be improved. I have therefore recommended a number of modifications to the Neighbourhood Plan which should be considered by ADC and the Parish Council, and appropriate insertions

and additions made to the structure and content of the Neighbourhood Plan before it can proceed to a referendum.

Section 1.0: Introduction

4. The first section sets out the contextual framework as to how the Neighbourhood Plan fits into the planning system and the plan preparation process. The aims of the Neighbourhood Plan are set out in six bullet points. It provides a statement of Community Involvement. Reference is also made to the fact that ADC has stated that a full Sustainability Appraisal is not required.
5. Thus, in broad terms the broad structure of the Introduction to the Neighbourhood Plan is acceptable, and **no recommendations** are made, save as to the provision of clarification of the Proposals Map (see below).

Section 2.0: Context

6. This section contains factual information. No proposal for any modifications is recommended other than reference should now be made to the current position with regard to the ADC new Emerging Local Plan 2011-2031. This was suspended in September 2015 following recommendations of the Inspector. I **recommend** that paragraph 2.4 should be amended in the Neighbourhood Plan to take this development in account. The wording to be inserted after the first sentence is as follows:

“The current position is that in September 2015 the Emerging Local Plan was suspended following the Inspector’s response to ADC’s proposed suspension timetable”

Section 3.0: The Parish Today

7. Chapter 3 of the Neighbourhood Plan is again largely factual and does not require much alteration. The parts **recommended** for amendment are as follows:

8. **Paragraph 3.4.3 - Biodiversity, Fontwell Meadows.**³⁸ This paragraph is not currently supported by ADC on the basis that none of the maps in the Evidence Base shows this tract of land as having been classified or designated as Lowland Meadows (Lowland Neutral Grass Land), as defined. Therefore, it is said that it should not be accorded the status of Local Green Space.³⁹ However, for the reasons set out in Part III, I **recommend** that this paragraph be re-drawn to take account of the findings, made below,⁴⁰ as to the status of Fontwell Meadows, in the following terms:

“Fontwell Meadows, otherwise known as Fontwell South, comprises 4 fields totalling approximately 9.75 hectares, the current classification of which is species-poor semi-improved grassland. It comprises open land the primary use of which is grazing animals and equestrian activities. It is to be perceived as demonstrably special to the local community with a richness of wildlife, and is valued as such by a large number of local residents. It is also to be considered to be local in character and in close proximity to the community it serves. It does not fall within definition of an extensive tract of land falling within the blanket designation of open countryside adjacent to settlements. It is consistent with local planning of sustainable development, and its status is likely to endure beyond the plan period. It should therefore be accorded the status of a Local Green Space”

9. **Paragraph 3.4.4 – Species of Interest - Birds.** Reference is made to a survey of breeding birds carried out by WAG in 2008 (as reported in the Sussex Biodiversity Report). However, this does not fall within the Evidence Base provided in the Neighbourhood Plan. The **recommendation** is, therefore, this paragraph be deleted from the Neighbourhood Plan. Otherwise, Section 3 sets out what it is designed to achieve, and is largely factually based. **No other recommendations** are sought to be made.

³⁸ Page 14, Col 2, 4th paragraph. There are eight maps attached to the Public Examination Bundle produced for Public Hearing, none of which shows that Fontwell Meadows as being so classified.

³⁹ See the reasons set out by ADC in paragraph 31 of the Comments at No 4, at page 8.

⁴⁰ Chapter 4, Part III.

Section 4.0: Vision and Core Objectives

10. *Paragraph 4.2 Core Objectives* – the **recommendation** is that the second sentence of paragraph 4.9 should be deleted, namely “**development in neighbourhood parishes will be resisted that might exacerbate traffic problems in the Parish’s local road network**”. The reason for this is that policies cannot include issues outside the Neighbourhood Plan area.

Section 5.0: Neighbourhood Plan Policies

11. *Policy VE1 – Designation of Local Green Space* – This Policy requires has proved somewhat contentious in so far as the area described as “Fontwell Meadows” is concerned. This has therefore required separate detailed consideration in Chapter III, Part III. Based upon the evidence provided it is **recommended** that the sub-paragraph be re-drawn in the terms set out above.⁴¹ In so far as the other nine sites are concerned, it is **recommended** that nine of these should be designated Local Green Space. This is dealt with in Chapter 4, Part II – Local Green Space.
12. *Policy VE2 – Horticultural Development* - For the reasons stated by ADC in its Comments, this policy is not in line with positive planning policies, and in particular it is not in with conformity with **HOR DM1(Horticulture)** in the Emerging Local Plan. The **recommendation** made is that this Policy should be deleted in its present formulation, and the wording contained in **HOR DM1 be substituted, or substantially substituted in its place**. However, the justification contained in the supporting text of the Reason is in point, and it is recommended that this should remain in its current formulation.
13. *Policy VE3 - Protection of Trees and Hedgerows* – The current wording of the policy is somewhat deficient in that there is reference to loss of habitat, namely ancient trees and trees of arboricultural and amenity value, and loss of hedgerows and significant ground cover and habitat, which, it is said, will be resisted. The policy sets out development proposals which should be accompanied by a survey, but there is no basis as to how this is to be assessed or determined. This should be addressed. The **recommendation** made is that the

⁴¹ Paragraph 8, above.

Policy together with the Reasons should be re-worded so as to take into account the basis upon which this policy is to be pursued, and to bring it more into line with Emerging Local Plan **Policy ENV DM4 – Protection of Trees**. In so far as Conservation Areas are concerned **Policy HER DM3(h)** is also relevant as to trees and hedgerows. The **recommended** wording to be inserted at the beginning of the Policy is as follows:

“Development will be permitted where it can be demonstrated that trees and hedgerows contributing to local amenity will not be damaged or destroyed. A suitably qualified person should be engaged to make an appropriate assessment in connection with any proposed development. However,”

14. ***Policy VE4 – Conservation Areas and Areas of Special Character*** – Reference is made in the Reasons to this Policy that the Parish Council has been working closely with the Conservation Officer of ADC to designate such additional areas (there are two at present). However, the present position is that no such further areas have been identified. This Policy is supported by ADC as it is in conformity with in accordance with **Policy HER DM3** of the Emerging Local Plan (and see **Saved Policy Area 2**). It is **recommended** that such areas should be so identified and designated.
15. ***Policy VE5 – Buildings and Structures of Character*** – Buildings and Structures of Character are already included in a SPD, as noted in the Policy (adopted September 2005). Thus it is already associated with a saved Policy, **GEN22**. The **recommendation** is that the last sentence of the Policy should be deleted.
16. ***Policy VE6 – Protection of Watercourses*** - No comment has been raised as to this Policy by ADC. It is **recommended** that this paragraph is adopted without amendment.
17. ***Policy VE7 – Surface Water Management*** – It is noted by ADC that the beginning of this Policy does not currently set out any requirement or criteria. It is therefore **recommended** that the beginning of the Policy is amended as follows:

“New development should aim to reduce the overall level of flood risk. In the area by:”.

18. The text to the second bullet point relating to Sustainable Urban Drainage Systems (“SUDS”) requires amendment. The requirement for SUDS to be adopted is in the process of being removed from the Flood and Water Management Act 2010. In such circumstances SUDS will no longer need to be an adopted Policy. However, reference currently should be made to **Emerging Policy W DM3**. The **recommendation** is that the words contained within the second bullet point should be **deleted**, and the following words **substituted** –

“Consideration should be given to the use of Sustainable Urban Drainage Systems (SUDS) as alternatives to conventional drainage where appropriate. Sustainable Urban Drainage Systems on private property must conform to the recommendations of the SUDS Manual produced by CIRIA.”

19. It is also **recommended** that consideration should be directed to the position relating to the Risk Register established with West Sussex County Council, and meanwhile it is **recommended** that the last sentence of the Reasons be deleted.
20. **Policy VE8 – Street Lighting** – As ADC in its Comments states, this is not a land use policy, and the **recommendation** made is that this Policy should be **deleted**. There will need to be consequential paragraph re-numbering.
21. **Policy VE9 – (to be re-numbered VE8) – Rural Buildings** – No comment is made as to this Policy. It is therefore **recommended** that this Policy is remains as currently worded.
22. **Policy VE10 - Biodiversity and Archaeology** – At present this Policy appears to be somewhat confused in that it takes account of both biodiversity and archaeology in the same Policy. These are concepts are considerable difference. There is also reference to “heritage and ecology”. It is possible that separate Policies could have been drafted within clearly defined categories, but at present is quite unclear as to what is precisely intended. The former concept in any event is covered by Emerging Policy **ENV DM5**. Emerging Policy **HER DM6** relates to sites of archaeological interest, but this is irrelevant in the present case as

there are no such currently proven sites lying within the area of the Neighbourhood Plan. Further, there is no Evidence Base in support. The **recommendation** is, therefore that this Policy be **deleted**. Subsequent Policies in the Neighbourhood Plan will therefore have to be renumbered.

23. **Policy VE11 – Renewable Energy** – There is no Evidence Base in support of this Policy. Further, there is in existence an ADC energy policy (see Emerging Policy **ECC DM1**), and it therefore would seem to be superfluous for there to be a separate Policy with the Neighbourhood Plan. The **recommendation** is, therefore that this Policy be **deleted**.
24. **Policy VE12 – Commercial Renewable Energy Schemes** – Again there is no Evidence Base in support of this Policy. The **recommendation** is, therefore that this Policy be **deleted**.
25. **Policy VE12 – (to be re-numbered VE9) - Protection of Assets of Community Value** - Schedule 6 of the Neighbourhood Plan lists a number of buildings currently proposed for inclusion the Register of Assets of Community Value. The basis for this listing is set out in the Reasons. However, it is important to note that no reference is made as to whether any of the owners of such properties have been consulted. Nor is it stated that the properties referred have in fact been listed, as such, resulting from an application process for Assets of Community Value having been undertaken. It is therefore **recommended** that the text needs to be re-worded to reflect the position that no application has so far been made for the inclusion of such buildings in the Register, if that be the case. The proposed wording is as follows:

“The Parish Council needs to apply to Arun District Council on each occasion in order to seek the inclusion of each building as an Asset of Community Value”

Section 5.4 – Housing Policies

The Proposals Map

26. Page 30 of the Neighbourhood Plan makes reference to the Proposals Map contained in Schedule 7 in the Regulation 15 Submission. The reference to

Schedule 7 is in fact incorrect – Schedule 7 being the “Development Timeline”. It is **recommended** that this reference should be **altered** to Schedule 8 in the current version of the Neighbourhood Plan.

27. However, a more important point is raised by ADC, namely, that neither plan which currently appears in Schedule 8 is designated as such as the Proposals Map. It is probable that the second plan at pages 54 and 55 of the Neighbourhood Plan (where the various sites are identified as A to G) is intended to be such, but this lacks a number of policy identifications, such as the built up area boundary (“BUAB”), and the Conservation Areas. A further consideration that arises is that, having regard to the fact that several sites have been identified for development purposes, some of these appear to lie outside the current boundaries drawn for the BUAB (see **Emerging Policy SD SP2**). Assuming that this is the position, then it is necessary for the boundaries of the BUAB to be re-drawn to accommodate those identified sites lying outside. It is therefore **recommended** that a new plan be drawn and designated to constitute the Proposals Map taking into account these various points so as to justify the inclusion of these and subsequent Policies into the Neighbourhood Plan.
28. However, if it appears that too much information is to be provided on the newly constituted Proposals Map, then it may be necessary for there to be two Maps drawn identifying different sets of features.
29. Reference should also be made to the first plan currently positioned at pages 52 and 53 in Schedule 8. The status of this plan is unclear other than it appears to define the Parish boundaries in blue. It also indicates a yellow dashed line as apparently seeking to define the line of “protected view”. However, it seems to have no relationship with any part of the text of the Neighbourhood Plan. In short, it is not in the Evidence Base. Also it is unclear what it precisely seeks to designate as there is no proper legend to the plan itself. It is therefore **recommended** that this map be deleted as it apparently serves no useful purpose.

It is recommended that a new Map is drawn and included in place of the existing two maps at pages 52 to 53, and 54 to 55, to take account of at least any listed

buildings, Schedule 5 designated Buildings and Structures of Special Character, Conservation Areas, designated Local Green Space, the BUAB, and the Planning Application site, and any other relevant information, to which reference has been made above. It may be that two Maps will have to be included, if it appears that too much information is to be provided on the newly constituted Proposals Map.

30. Further, reference is made in the second paragraph of 5.4 that at the time of the production of the Neighbourhood Plan the future of the emerging Arun Local Plan was in doubt. It is **recommended** that this paragraph be updated to take account the current position relating to the Emerging Local Plan, and that wording should be in conformity with similar wording as **recommended** above.⁴²

Policy HP1 – Spatial Plan of the Parish

31. It is **recommended** that the second line of the Policy where it refers to the Proposals Map should refer to Schedule 8, and not Schedule 7, as mentioned above. Schedule 7 relates to the Development Timeline. Also in paragraph 3 it is **recommended** that specific reference should be made to the identification of the BUAB by reference to the newly drawn Proposals Map, as mentioned above.
32. It is further **recommended** that the Policy in its present form needs to be more clearly defined in that its intention is to frame all the housing policies in support of this Policy, but does not do this with sufficient clarity. It is therefore **recommended** that the following wording **replaces** the existing wording:

“By reference to Emerging Policies SD SP2 – Built-up Area Boundary, C SP1 – Countryside, GI SP1 – Green infrastructure and development, SD SP3 – Gaps between Settlements, Policy H SP1 – Strategic housing, parish and town council allocations, and other relevant Policies, development proposals for new dwellings as specified in the Development Timeline in Schedule 7, and identified on the Proposals Map in Schedule 8, will be supported.

⁴² In Section 2 – “Context”, at page 22, paragraph 6.

Development proposals for other new dwellings outside the Built-up Areas will be resisted unless the Plan has made specific provision for those proposals.”

Policy HP2 – Land to the East of The Old Police House, Fontwell

33. The Neighbourhood Plan allocates this site for six dwellings. However, the outline planning permission granted in favour of Dandara under the Planning Application which included this site, has now been called in.⁴³ Thus, in the text “community response” it is **recommended** that the reference to the Dandara Planning Application should be updated having regard to the current position i.e. that the Planning Application having now been called-in. It would also be useful to draw onto the plan at page 31 of the Neighbourhood Plan a dotted line indicating the line of the Dandara Planning Application.

Policy HP 3 – S & G Motors, Arundel Road, Fontwell

34. At present this Policy lacks clarity. There is a discrepancy between the number of dwellings proposed for the site in that in line 2, on page 31, reference is made to 28 dwellings to be constructed, whereas the total number of units of sheltered accommodation, namely twelve, and eight age-related affordable/starter homes, only adds up to twenty dwellings. As presently worded the words “not more than 28” could be construed as a restriction on new development, and therefore not in full compliance with NPPF’s presumption in favour of sustainable development. There is also no reference in the Evidence Base as to why this somewhat unusual mix is sought.
35. It is therefore **recommended** that that clarification is provided as to precisely what is meant by “at least” i.e. how many dwellings are sought to be constructed on this site. Attention should be directed as to whether it is intended that there should be at least 20 dwellings as opposed to 28. The wording of this Policy should therefore be made more positive, and that (if this be the intention) the words “a minimum of 28 dwellings” be included in the text. Further, when regard is had to the area identified as “B” on the Plan at pages 54-55, it is to be noted that reference is made to the text on page 54 to not more than 28 units “....

⁴³ See Chapter 4, Part III - The Fontwell Meadows proposed development.

of which at least 12 must be sheltered homes and at least 8 must be age-related starter homes for local people under the age of 40”. Where is the Evidence Base for this proposal?

36. Although it is **not recommended** that this Policy should be deleted, it is, at present, somewhat deficient in its formulation. However, it is **recommended** that the Parish Council reflects on their precise intentions as to what is sought by way of development for this site. Reference should be made to **Emerging Policies H DM1 – Housing Mix, and H SP2 – Affordable housing**. It is accordingly **recommended** that the Parish Council addresses and re-draws the Policy once it has had the opportunity to re-consider the position.

Policy HP4: Land at the rear of Woodacre Arundel Road, Fontwell

37. This Policy allocates land for the development of two houses as shown on the plan to the rear of Woodacre tinted red at page 31. However, on the plan currently to be found in Schedule 8, at pages 54-55, the shape of Site C encompasses a larger area tinted blue being all the land to the rear of “Foxwood”. Although this may not be so important for the purposes of the Neighbourhood Plan, when consideration is directed to issues of ownership of title, and rights over land (as opposed to land use), the position should be clarified. At present it appears to suggest that the land tinted blue comprises the majority of the land identified, whereas the plan forming part of the Policy HP4 identifies land tinted red to the rear of the house known as Woodacre, which only seems to comprise half the original site.
38. Reference is also made in the Policy to access being provided from the adjoining site i.e. the Land comprised in Policy HP3, but it is **recommended** that clarification be provided as to how it is proposed that this access will be provided, as similar considerations apply to those set out immediately above. Presumably the previous site means the land tinted red in Policy HP3. How is this right of access to be afforded?
39. In the Reasons to this Policy it is apparent that there should also be a justification as to why this site has been allocated outside the BUAB. It is

therefore **recommended** that the boundaries of the BUAB be re-drawn, as referred to in paragraph 26, above, so as to justify the addition of this Policy.

Policy HP5 – Land at the rear of Woodcroft West, Walberton Lane, Walberton

40. Once again, the question arises as to the reason why this site has been identified as it lies outside the BUAB. It is therefore **recommended** that the boundaries of the BUAB be re-drawn, as referred to in paragraph 26, above.
41. Further, paragraph 2 of the Policy makes reference to tree preservation orders being placed on all healthy mature trees on site. No proper justification has been provided for this part of the Policy in the Evidence Base, other than in the Reasons it is stated that the owners have agreed to a Section 106 Agreement with reference to the limitation of the proposed dwellings on the site. Reference is also made to tree preservation orders "... on the relevant trees to protect the rural setting of the site." As ADC states in the Comments, unless the trees lie within a conservation area, the justification for tree preservation orders can only relate to individual trees. Further, although it is stated that the owners have agreed to a section 106 agreement, it is unclear as to whether this is part of an extant planning application, or a that such a proposal to be made will include the same, as and when a planning application is made. It is therefore **recommended** that this aspect be clarified.

Policy HP6 – Land at Sunny Corner, Capse Lane, Walberton

42. Although the Policy itself, and the plan, currently to be found in Schedule 8, at pages 54-55, identifies this site as a Rural Exception Site within **Emerging Policy H SP3**, no evidence has been provided to justify this need, or to qualify the site as such. Indeed, it appears that it cannot be so classified, as it is now too late to do so. Accordingly, it is **recommended** that this Policy be deleted.

Policy HP7 – The Land adjacent to the Red Cottage, The Street, Walberton

43. Although no justification has been provided in the Evidence Base as to why only a single dwelling has been allocated for this site, it is **recommended** that this Policy be adopted.

Policy HP8 – Progress Garage Yapton Lane, Walberton

44. By reference to the Comments, no justification has been provided as to why this site has been chosen outside the BUAB, and whether the BUAB is being extended or altered. It is therefore **recommended** that the boundaries of the BUAB be re-drawn, as referred to in paragraph 26, above, so as to justify the addition of this Policy.

Policy HP9 – Housing Mix

45. At present the wording of this Policy is in general terms, and it is **recommended** that it should be deleted as lacking intelligibility. In any event this Policy would seem to be unnecessary as the **Emerging Policy H DM1** is specifically designed for this purpose.

Policy HP10 – Affordable Housing

46. Again, although this Policy is more meaningful, and makes specific reference to the Local Plan Policy and the Emerging Local Plan Policy (now suspended), this Policy would seem to be unnecessary as the **Emerging Policy H SP2** is specifically designed for this purpose. It is accordingly **recommended** that this Policy be deleted.

Policy HP11 – Housing Density

47. As ADC point out in the Comments, no evidence has been provided in the Evidence Base in support of this Policy. It is accordingly **recommended** that this Policy be deleted.

Policy HP12 – Local Connection

48. It is clear that evidence should be provided in support of this proposed Policy. There is further confusion as to the relationship between affordable housing being delivered as part of policies HP1 – HP11, and Local Connection. As ADC indicates, this proposed policy conflicts with the ADC Local Plan Policy in that it only has a Local Connection criterion for Rural Exception Sites. Thus, this would not be supported by ADC. It is accordingly **recommended** that this Policy be **deleted**.

5.5 Getting Around

Policies GL1 to GL7

49. No comment is made as to these proposed policies, and the **recommendation** is that these Policies should be retained in the Neighbourhood Plan.

5.6 Community Living

Policies CL1 to CL8

50. No comment is made as to these proposed policies, and the **recommendation** is that these Policies should be retained in the Neighbourhood Plan.

Schedules 1B to D, 2, 3, and 5

51. No comment is made as to these proposed policies, and the **recommendation** is that these Policies should be retained in the Neighbourhood Plan.

Generally

52. As a general point, it is **recommended** that the layout of these various Policies should be addressed. The Neighbourhood Plan would be easier to read and understand if there could be a policy box containing policy title and text together with a policy box reference of the specific evidence based documents, and not just the Evidence Base itself. Further, a list of references to the NPPF and ADC policy and any other relevant policies, both National and Local, would assist in the comprehensibility of what is proposed by the Parish Council in the Neighbourhood Plan.⁴⁴

⁴⁴ This approach is strongly recommended by ADC in paragraph 30 of the Comments.

CHAPTER 4

Part II

Local Green Space

53. In Policy VE 1 the Parish Council has designated the areas defined in Schedule 4 as “Local Green Space”. The policy goes on to state “[P]roposals of these areas will not be permitted except for specific necessary infrastructure where there is no reasonably alternative site available and where the benefits of development can be shown to outweigh any harm, and impact is minimised”.
54. It is recognised that the NPPF urges local communities to designate land as Local Green Spaces through neighbourhood plans. It is therefore appropriate, and in accordance with the basic conditions, for there to be a policy to that end. However, as stated above, Paragraph 77 of the NPPF states that the Local Green Space designation should only be used “where the green area concerned is local in character and is not an extensive tract of land”. The reasons given for the designation of each green tract are noted, and each shall be dealt with in turn. The question therefore whether each tract fulfils the criteria set by Paragraph 77. There is also the issue that the designation of Local Green Space is not in general conformity with the Emerging Local Plan and the strategic allocation made for housing development by ADC. This has a specific particular impact in relation to Fontwell Meadows (see below).
55. The map showing the proposed open space designations currently appears in the Evidence Base.⁴⁵ It is recommended that this map should also be inserted into the hard copy of Neighbourhood Plan in Schedule 4 for easy identification of the sites in question. Ten sites have been identified as Local Green Space in the Neighbourhood Plan. However, it is **recommended** that nine of these sites can be so described, but one fails. Detailed reference to these **recommendations** will be made below. These means that the Local Open Space map has to be amended

⁴⁵ Also see page A5 in the Public Examination Bundle.

to take this into account. This can be achieved in the context of the other comments made as to the necessary changes to be made to the Proposals Map.⁴⁶

56. Contained in the Reasons in support of the Policy is a specific reference to Fontwell Meadows and that additional information is given in the Evidence Base. The issues relating to Fontwell Meadows have been given separate consideration in Chapter 4, Part III, and it is **recommended** that paragraphs 3.4.3 on page 14, and paragraph 4 of Schedule 4 on 45 of the Neighbourhood Plan be re-drawn to reflect its status as Local Green Space in the terms stated in Chapter 4, Part I, above.⁴⁷

57. In Schedule 4 the Parish Council states in column 2 that ten sites pass all five criteria listed on page 44, column 1, and “would be designated under Policy VE1”.

58. Dealing with the 10 sites in turn, as a general point ADC does not recommend the following sites to be designated as Local Green Spaces, namely Avisford Park, (site No. 3); Fontwell Meadows (site No.4); Tupper’s Field (site No.5); and National Trust Field, Fontwell (site No.10). It is recommended by ADC that these four sites should be removed as they do not meet the criteria of the relevant paragraphs of the NPPF for such designation.

59. Detailed consideration will now be given to the 10 specified sites: -

- (1) ***Walberton Village Green and Pond*** – As stated, these are focal points at the western edge of the Conservation Area. ADC acknowledges that this site lies in the community that it serves, and that the information provided outlines the historical significance as to why it is considered demonstrably special, or to have a local distinctiveness. It is therefore **recommended** that this site should be designated as a Local Green Space.

⁴⁶ For the recommendation, see paragraph 29, above. As stated, it may be necessary to incorporate more than one map into the Neighbourhood Plan if it proves that too much information is sought to be included in one map.

⁴⁷ See Chapter 4, Part I, paragraph 8(1), above.

- (2) *Walberton Planning Field* – This is seen by the Parish Council as a vital green space in the centre of the village providing space for sports and pastimes. Again this is acknowledged by ADC as being of such significance that it should be classified as a Local Green Space. It is therefore **recommended** that this site should be designated as a Local Green Space.
- (3) *Avisford Park* – This is described by the Parish Council as once being the home of local dignitaries “elegantly green space”, well used as a golf course and a parkland setting for the Hilton Hotel. However, ADC considers that although there is some justification for it having some local significance, it is stated in the Comments that it is debatable as to how much this is local in character. Reference is made to paragraph 015 of the PPG which states that such designation cannot apply to areas that are extensive tracts of land, and consequentially blanket designation of open countryside adjacent to settlements will not be appropriate. Thus, ADC does not accept that it is appropriate for the designation of this tract of land as a Local Green Space. It is stated that it fails to comply with the last bullet point contained within paragraphs 77 of the NPPF. I agree with interpretation. The **recommendation** is that this tract of land fails to comply with the criteria set out in paragraph 77 of the NPPF as it is an extensive tract of land.
- (4) *Fontwell Meadows*⁴⁸ –
- (5) *Tupper’s Field* – It is stated by the Parish Council that this tract of land is “.... one of the fields that come into the heart of the village, giving it a truly rural character. It was highly valued by respondents to the Survey” ADC in its Comments states that this tract could be considered to be in reasonable proximity to the community it serves. However, it is suggested that the information provided does not

⁴⁸ For the separate treatment of Fontwell Meadows as constituting a Local Green Space, and definition of the same, see Chapter 4, Part III, below. For the **recommendation** to be made within the Neighbourhood Plan, see Chapter 4, part I, paragraph 8, above.

indicate that it is demonstrably special. Even though it may be considered to be local in character, it is an extensive tract of land, and therefore fails to comply with paragraph 0.15 of the PPG, and thus does not meet all the criteria contained in paragraph 77 of the NPPF. It is therefore stated that it is not suitable for designation as a Local Green Space. I do not agree with this interpretation. It is valued by the community, and lies close to the heart of the village, and is to be considered to be a buffer between the residential areas and the golf course. I do not consider in the context that it is an extensive tract of land. Accordingly, it is **recommended** for designation as a Local Green Space.

- (6) *Homefield Crescent Green Space* – This is described by the Parish Council as being a large grass area giving the surrounding houses a sense of space, and is also used for recreational purposes by residents. It is acknowledged by ADC that the information provided outlines the role of the site within the local community, and so has local significance. It is therefore **recommended** that this site be designated as a Local Green Space. I agree with this interpretation.
- (7) *Hunters Mews Play Area, Fontwell* – This is a site owned by ADC, and is described as being “... a key design element when the surrounding residential area was built.” It is also said to be the only recreational land in Fontwell. Again, this is a site which ADC recommends should be designated as a Local Green Space. Accordingly it is **recommended** that it be so designated.
- (8) *Pigeon House (Fields adjoining St Mary’s Church, Walberton* – These fields are described by the Parish Council as providing a unique setting for the Grade I Listed St Mary’s Church to the East and the iconic dovecot to the West. It is said to be valued by the entire village, being crossed by a few well-used public footpaths. The proximity of the open farm land to the residential area is a key to the semi-rural character of the village landscape. For its part ADC acknowledges that this site is close to the community it serves and is demonstrably

special with a local significance, and that being of a moderate size it means that it can be considered not to be an extensive tract of land. It is therefore **recommended** that this site be designated as a Local Green Space. I agree with this interpretation.

- (9) *The Allotments, Yapton Lane* – This is described by the Parish Council as being a great asset to the community, and to the 20 or so allotment holders, together with those who use the footpaths. As ADC states, although this is a tract of land which is some distance from the community it serves, it still lies within the Parish boundaries. It is accepted by ADC that this is a well-used community asset, although the information provided by the Parish Council does not clearly outline reasons of the local significance which make it demonstrably special. However ADC is willing to accept that it should be included as a Local Green Space. Accordingly, it is **recommended** that this site be so designated.
- (10) *National Trust Field, Fontwell* – This is described by the Parish Council as providing a green barrier between the houses and the main trunk road (the A27). It is stated that a public footpath lies across its western boundary which links to permissive paths situated on the other two sides. ADC states that this tract of land is in proximity to the community it serves, and the information provided outlines its importance to the community. However, it is stated that, in effect, further evidence is desirable as “... questions remain as to whether it would endure beyond the plan period.” The objection made by ADC in this regard is not understood as the field is apparently owned by the National Trust and presumably will remain within its ownership in perpetuity. There would therefore appear to be no good reason why this tract of land should not be designated as a Local Green Space. Accordingly, it is **recommended** that this site be so designated.

60. Thus it is **recommended** that of the ten sites specified by the Parish Council nine should be accorded the status of Local Green Space, site No 3 – Avisford Park - being the exception.

Therefore, insofar as Policy VE1 is concerned, it is recommended that in the penultimate sentence of the first paragraph of the Reasons at page 26 of the Neighbourhood Plan the word “ten” should be deleted and in its place the word “nine” inserted. It is also recommended that the last sentence of that paragraph be deleted as not making sense. In the Schedule 4 No 3 – Avisford Park should be deleted, and the sequence of sites thereafter be re-numbered.

CHAPTER 4

Part III

Fontwell Meadows

61. Reference has already been made to the fact that Fontwell Meadows as one of the areas defined by the Parish Council in Policy VE1, and Schedule 4, as Local Green Space, would be given separate treatment in this Examination. Reference is also made in the Neighbourhood Plan to Fontwell Meadows in Section 3.4.3 under the heading “Biodiversity.”⁴⁹ It has already been stated that it is **recommended** that the paragraph be re-drawn to reflect its status in biodiversity terms, for the reasons set out in this Chapter.⁵⁰
62. In its Comments ADC states that Fontwell Meadows can be considered in close proximity to the Community it serves, and can also be described as local in character, “... and through its richness of wildlife [can] be considered to be demonstrably special.” However, ADC states that it can also be considered to be an extensive tract of land within the Parish. This means that paragraph 15 of the PPG is in point in that designation cannot apply to areas that are extensive tracts of land, and “consequently blanket designation of open countryside adjacent to settlements would not be appropriate.” Further it is said by ADC that this fails to meet the last criteria contained in paragraph 77 of the NPPF, and therefore it is not appropriate for designation as a Local Green Space.
63. The designation of Fontwell Meadows as a Local Green Space has proved a somewhat contentious issue between ADC and the Parish Council and residents of Walberton. Concern has been expressed by the Parish Council, and a number of consultees, as to the issue of biodiversity, and the effect on a number of habitats on any development on the site. Particular concern has been expressed as to the proposed development resulting from the grant of the outline Planning Application on 25th November 2015 by the Development Control Committee of ADC. This granted permission for the construction of up to 400 plus new residential units, together with non-residential floor space and industrial floor

⁴⁹ See column 2, fourth paragraph.

⁵⁰ See Chapter 4, Part I, paragraph 8.

space, and associated works. About 50% of the area the subject matter of the outline Planning Application falls within the Parish boundary of the Neighbourhood Plan. For its part the Parish Council has sought to secure the designation of this tract of land as a Local Green Space, and it has also been referred in documentation as a “Priority Habitat”.⁵¹

64. Pre-submission consultation was carried out by the Parish Council between 18th August 2015 and 29th September 2015 pursuant to Regulation 14 of the 2012 Regulations. The consultation on the Neighbourhood Plan Proposal submission took place between 21st October 2015 and 2nd December 2015. The draft Neighbourhood Plan was subsequently published, and the Examination Document Library was submitted to the Examiner. Following the submission date being by 4th December 2015 the Steering Group of the Parish Council then made further representations to the Examiner by emails dated 10th December 2015 and 16th December 2015. Such emails appeared to raise fresh material relating to Fontwell Meadows after the final submission of the Neighbourhood Plan Proposal.
65. Accordingly, pursuant to the powers granted to the Examiner to hold a public hearing when it is considered that in the circumstances oral representations are needed to ensure an adequate examination of an issue or issues, or to ensure that people get a fair chance to put their case,⁵² the Examiner considered that, in the circumstances, it was appropriate to hold a Public Hearing so that all the issues in the Examination could be fully and properly considered.
66. Directions and a Hearing Procedure Note were accordingly drawn and served on the relevant parties. In paragraph 1(8) of the Directions it is stated that the purpose of the Public Hearing was to assist the Examiner in his assessment as to whether the Neighbourhood Plan met the basic conditions and other relevant

⁵¹ There is some considerable uncertainty as to the current status of Fontwell Meadows as a “Priority Habitat”. The Steering Group states that at the time of the preparation of the Neighbourhood Plan Fontwell Meadows were designated as Lowland Green Grassland” (MG5) in the Habitat Map produced by the Sussex Biodiversity Partnership, see the Evidence Base, and page C25 of the Public Hearing Bundle. However, this status is challenged by ADC and Dandara.

⁵² Pursuant to 1990 Act, Sch 4B, paragraph 9, as inserted by 2011 Act, Sch 10.

legal requirements. The particular issue of a determination at the Public Hearing was defined as follows:-

To examine in the context of current planning policies, including the emerging Local Plan, the relevance of the evidence presented by the Parish Council, and other consultees, as to the status of Fontwell Meadows, otherwise known as the Land to the East of Fontwell Avenue.⁵³

The Public Hearing

67. The Public Hearing was held on Wednesday 15th March 2016 at the Walberton Pavilion, and a number of representations were made by ADC and the Steering Group of the Parish Council, and other interested parties nominated to make representations.⁵⁴

68. Three key principal issues were considered at the Public Hearing:

- (1) Clarification regarding the extent of the site named as Fontwell Meadows;
- (2) The status of Fontwell Meadows in biodiversity terms; and
- (3) The status of Fontwell Meadows in planning terms.

Clarification regarding the extent of the site described as Fontwell Meadows

69. One point over which there has been a certain amount of confusion relates to the extent of the tract of land described as Fontwell Meadows, part of which seemingly falls within the Parish of Eastergate, and was therefore the subject matter of the Barnham and Eastergate Neighbourhood Development Plan made in July 2014. It is necessary to have precise regard to the various descriptions.

⁵³ The Further Directions on Hearing Procedure Note are set out in Annex 1 to this Report.

⁵⁴ For the Agenda for the Public Hearing see Annex 2. Notes of an informal nature of the Public Hearing have been produced by ADC for the use of the parties, see Annex 3. A list of the attendees at the Public Hearing is set out on page 1, thereof.

70. Fontwell Meadows is identified as area number 4 on the Local Green Space Map contained in the Evidence Base under Policy VE1.⁵⁵ It is located in the north western corner of the Neighbourhood Plan area lying within the Parish of Walberton. The land identified on the map is an open area defined by built-up areas on its north and western boundaries. The western boundary adjoins the Parish boundary with Eastergate Parish.
71. However, the land identified as “Land East of Fontwell Avenue” is a larger tract of land identified on the plan (“the Application Plan”) attached to the representations made by Dandara. This tract corresponds to the overall site for which the Planning Application was sought which ADC had, in principle, resolved to grant. The land the subject matter of the Planning Application includes the area referred to in the Neighbourhood Plan as Fontwell Meadows, together with the tract of land beyond the western boundary of the Parish and within the parish of Eastergate up to Fontwell Avenue. The overall site has also been referred to as “Fontwell South”, and this denomination derives from the time when ADC dealt with the petition seeking definition of the site as a Local Green Space.

The Status of Fontwell Meadows in biodiversity terms

72. An important point for consideration in relation to the Examination is the biological classification of “Land East of Fontwell Avenue”, and more particularly the area described as Fontwell Meadows. Mr Peter Brown, a member of the Steering Group, in his representations refers to Fontwell Meadows as being “unimproved grassland”, and in the Evidence Base there is a more detailed description of the site in which it is stated that the land is a “Priority Habitat”. However, ADC has since corresponded with Sussex Biodiversity Records Centre (“SBRC”) in relation to the designation of Fontwell Meadows. It is stated that at no point has the SBRC ever confirmed that it is recognised as “unimproved grassland”.⁵⁶ In the evidence provided by Dandara

⁵⁵ It is also to be found at page A5 in the Public Examination Bundle.

⁵⁶ There is some uncertainty as the current status of Fontwell Meadows as a “Priority Habitat”. The Steering Group states that at the time of the preparation of the Neighbourhood Plan Fontwell Meadows were designated as Lowland Green Grassland” (MG5) in the Habitat Map produced by the Sussex Biodiversity Partnership, see the Evidence Base, and page C25 of the Public Hearing Bundle

in the Grassland Survey where is stated in its conclusions that the four fields comprising that part of Fontwell Meadows lying within the Parish cannot be described as “unimproved grassland”, but all four fields are more accurately described as “species-poor improved grassland”.⁵⁷

73. ADC in its statement dated February 2016 (“the February 2016 Statement”) prepared for the Public Hearing states that the site “... comprises open land used primary for grazing and equestrian activities alongside boundary trees/hedgerows and individual trees disbursed through the site.” ADC also relies upon the Biodiversity Report dated 6th May 2014 in which there is contained the Habitat Map. This does not include any unimproved grassland sites in the Parish.
74. Parallel to the neighbourhood planning process, the Petition, referred to above, was submitted to ADC on 21st November 2014 requesting that “the land known as Fontwell South approx. 24 acres re-designated as a Local Green Space”. Members of ADC considered this petition at the Local Plan Sub-committee meeting on 30th July 2015, and then subsequently agreed at Full Council on 9th September 2015. The decision reached was that “the land is not appropriate to be designated as a Local Green Space as it does not meet the tests as set out in paragraph 76 and 77 of the National Planning Policy Framework.”
75. ADC also refers to the NPPG which provides guidance on Local Green Space Designations. ADC particularly relies upon the following:-

“Designating any Local Green Space will need to be consistent with Local Planning for sustainable development in the area. In particular, parents must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that under minds the same of plan making.”⁵⁸

ADC then goes on to refer in the representations prepared by it for the Public Hearing to the following, that:-

⁵⁷ See page B31 of the Public Examination Bundle.

⁵⁸ See paragraph 007.

“There are no hard and fast rules about how big a Local Green Space can be because spaces are different and a degree of judgment will inevitably be needed. However paragraph 77 of the [NPPF] is clear that Local Green Space designation should only be used where the Green Area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements would not be appropriate. In particular, designations should not be proposed as a “back door” way to try to achieve what would amount to a new area of Green Belt by another name.”⁵⁹

76. Further, ADC does not consider that Fontwell Meadows has any official nature conservation designation. This is based upon what they state is the most up-to-date information available from national and local sources.
77. In paragraph 2.7 of the February 2016 Statement dated February 2016⁶⁰ ADC has produced a table in which (so it is stated) that Fontwell Meadows fails the majority of the requirements criteria for designation as a Local Green Space by reference to paragraphs 76 and 77 of the NPPF. It will be noted that of the five statements extracted from paragraph 76 and 77 of the NPPF it is submitted by ADC only two fulfil the criteria met.

The status of Fontwell Meadows in planning terms

SHLAA

78. SHLAA is required by national planning policy, as set out in the NPPF. An update to SHLAA 2009 was undertaken by Peter Brett Associates, on behalf of ADC in 2012. The original study identified various sites promoted by developers, landowners, and other organisations, together with members of the public. The 2012 Update forms one of the key pieces of evidence for the local development framework for the Emerging Local Plan and the Neighbourhood Plan in relation to the assessment of future housing potential.. However the Practice Guidance is clear that “the assessment is an important evidence source to inform plan making but does not in itself determine whether a site should be allocated for housing development” (see paragraph 8).

⁵⁹ See NPPG, paragraph 015.

⁶⁰ At pages C107/8 of the Public Examination Bundle.

79. A number of detailed reports are annexed to the 2012 Update, the relevant one for present purposes being that referred to as “SHLAA Arundel – Appendix 5 - Sites outside settlements with future potential.”⁶¹ It is stated that these reports “...represent an independent evaluation of all potential sites in terms of their suitability, availability and achievability for housing development.” However, it is to be noted that the contents represents the views of Peter Brett Associates and do not constitute ADC policy. It is also stated that the inclusion of any particular site does not commit ADC to allocate any particular parcel of land for a particular use, not does it approve any application for development.

The Planning Application

80. The Planning Application for the Fontwell Meadows site was originally registered on 6th May 2015. It was presented to ADC’s Development Control Committee on 25th November 2015 where it was resolved that “...the application be approved and the Heads of Terms be brought back to the next meeting for approval”. The current status of the Planning Application is that, following a request made by Nick Herbert to the Secretary of State requesting the Planning Application be “called-in” on 8th December 2015, the Department for Communities Local Government wrote to ADC directing it not to approve the Planning Application.
81. A further letter dated 20th January 2016 from the Department of Communities and Local Government then “called-in” the Planning Application. The decision to call-in the Planning Application was based on the “conflict with the made Barnham and Eastergate Neighbourhood Plan and any other matters the Inspector considers relevant”. An inquiry date has been set for 1st August 2016.
82. The Fontwell draft application for housing is included within Policy HSP1 of the Publication Version of the Arun Local Plan, and the Parish Council and Town allocations are within the same policy. This means that the Parish allocations run in parallel with the proposed Local Plan allocated sites. The Parish and

⁶¹ Fontwell Meadows is identified as FONS5” – outside the settlement boundaries within the Fontwell area, but “...may provide future potential subject to further consideration through the plan making process.” It is also to be noted that in Appendix 4 to the SHLAA 2012 Update reference is made to a “final suggested yield of 90 between 2013 and 2023 in an area of land comprising 17.65 hectares.

Town allocations within this Policy are based on a housing requirement figure going back to July 2011.

83. The Land East of Fontwell Avenue (i.e. the land corresponding with the plan attached to the Planning Application) was first submitted in the Call for Sites 2008. It was further included in the SHLAA Update 2012 and then re-submitted by Dandara in 2013. In 2009 the larger area Fontwell was included in Appendix 3 of the Options for Growth document. The wider area of Fontwell was included in the Sustainability Appraisal Strategic housing parish and town council allocations Policy in the submitted Local Plan 2011/2031 for a Site Specific Allocations Development Plan Document.

Housing allocations

84. The current position with regard to housing allocations in the Neighbourhood Plan area is as follows:- In paragraph 3.5 of the February 2016 Statement it is stated by ADC that the Barnham and Eastergate Neighbourhood Development Plan was made in July 2014 and covers approximately 50% of the Application Site, namely the western half, which falls within Eastergate Parish. The remaining 50% lies within Walberton, i.e. Fontwell Meadows.
85. In paragraph 3.6 of the February 2016 Statement reference is made to the fact that the application site is not defined by the Barnham and Eastergate Neighbourhood Development Plan as lying within a Local Gap a Local Open Space, or a Green Infrastructure Corridor. It is stated that it is not designated as a Local Green Space. However, some confusion arose during the course of the Public Hearing with regard to the contents of the second sentence of paragraph 3.6 which states as follows:

“Page 57 of the [Barnham and Eastergate Neighbourhood Development] Plan confirms that a proposed Local Green Space on land south of Barnham Road and north of Barnham Road and the east of Fontwell Avenue has been removed because ‘the Examiner and ADC felt that the land failed the principles of paragraph 77 of the NPPF’”.

The February 2016 Statement from ADC then goes on in paragraph 3.7 as follows:-

“The Examiner’s Report (May 2014) is noteworthy because, whilst the Barnham and Eastergate NP did not seek to designate the western half of the inquiry site as a Local Green Space (as the Walberton MP seeks to), other areas were proposed as Local Green Spaces and the Examiner makes some relevant comments. Paragraph 11.17 of his Report confirms that sites north and south of Barnham Road fail the test within the NPPF.”

86. That statement is in fact incorrect in that it seems to be suggested that this in some way impacted upon the status of Fontwell Meadows in planning terms as a proposed Local Green Space. However, on analysis it is apparent that when regard is had to the proposed Local Green Space in the Barnham and Eastergate Neighbourhood Development Plan the reference being made by the Examiner relates to sites identified as number 6 and number 7 lying within Eastergate Parish and to the north and south of Barnham Road. This has no impact whatsoever on the proposal that the eastern half of the Planning Application site should be designated as a Local Green Space.
87. Thus it is correct that the Barnham and Eastergate Neighbourhood Plan did not seek to designate the western half of the Planning Application site. However this has no bearing, in my view, on whether or not that part of the Planning Application site lying within Walberton Parish should be so designated.
88. On 16th July 2015 the Local Plan Inspector held a procedural meeting as part of the Examination of the Local Plan in order to discuss the implications of ADC’s revised position on the “objectively assessed needs (OAN) for market and affordable housing.” During this discussion a number of options were discussed including the suspension of the Examination for 6 months to enable additional work and consultation to be carried out to amend the Local Plan to deliver at least 641 dwellings per year in the ADC area, together with a commitment to review the Plan within 2 years of adoption to reflect the updated OAN; and the withdrawal of the Local Plan from the Extermination process.
89. Subsequently the joint Inspectors’ conclusions on an appropriate level of OAN to apply in the Aran Local Plan Area was received earlier this year. The letter recommends that the OAN figure identified through the OAN Report, prepared

by G L Hearn in March 2017 of 758 dwellings should increase to at least 845 dwellings per annum to be tested through the next stages of the inquiry process.

90. Thus, there the matter stands in that the identified OAN figure prepared by G L Hearn in March 2015 of 758 dwellings per year should increase to at least 845 dwellings per year to be tested through the next stages of the Inquiry Process.

91. A considerable body of evidence was collated for the Public Hearing which took place on 16th March 2016 at the Walberton Pavilion. The essential position of the Parish Council was that it was clear that the designated site as a Local Green Space i.e. Fontwell Meadows in Policy VE1 met the necessary criteria set out in paragraph 76 and 77 of the NPPF. It was also stated that the residents of Walberton Parish had already voted strongly in favour of supporting the increase in housing targets in the Local Plan area.

92. Discussion ensued as to the two reports from FPCR described as a “Grassland Survey 2015” and produced in July 2015. In fact two reports were produced by FPCR. The first of these is that entitled “Phase 1 Habitat Survey” (“Phase 1”), and is referred, as such, in the second report entitled “Grassland Survey 2015” which was produced in July 2015 (“the Second Report”). The report was originally commissioned by Dandara to undertake an initial ecological appraisal of Fontwell Meadows associated with the proposal to promote the site for residential development. In its conclusion at paragraph 5 the Second Report states that-

“5.1 The original Phase 1 Habitat Survey over evaluated fields A, B and C as semi-improved grassland, and they are more accurately described as being species-poor improved grassland. The initial assessment of field D as species-poor semi-improved grassland was accurate.

5.2 None of the hay field support grassland of a type that would be considered as being of national or county importance. At best they would be considered as being only of local or parish interest.

5.3 The current classification of Fontwell Meadows by Sussex Biodiversity Record Centre as Lowland Meadows was based on less detailed information than that provided by this survey and report. It is expected that the current

classification would be revised on the basis of the findings of this survey.”

93. The Parish Council/Steering Group expressed two concerns, first, that this was a Report commissioned by Dandara who had an interest in its outcome, and also presumably must have been paid for this report to be produced. Secondly, the Parish Council was happy to accept its conclusions set out in the Phase 1 report.
94. It was explained by the representatives of Dandara during the course of the Public Hearing that the Phase 1 report was a basic assessment which was sent to Sussex Biodiversity Record Centre who supported the view that the majority of the site was species-poor semi-improved grassland. As the Sussex Biodiversity Record Centre highlighted, Fontwell Meadows had the potential to support Lowland Meadow Priority Habitat.
95. The Parish Council in the Evidence Base produced a document for the Public Hearing setting out the Parish Council’s comments on the FPCR reports, in which a number of issues had been noted. These include –
 - (1) The failure of FPCR to contact the Sussex Biodiversity Record Centre with regard to information that was held on the site prior to the production of the Dandara reports;
 - (2) The surveys themselves were not comprehensive and had significant shortcomings and omissions;
 - (3) There was no fauna coverage;
 - (4) The timing of the sampling would have omitted important flora; and
 - (5) No soil tests were carried out.
96. For their part, the representatives of Dandara reiterated that the First Phase was very general, and the Second Report was undertaken as a result of the representations made by local residents, and the requirement for a more detailed analysis as to the ecological value of Fontwell Meadows. It was confirmed that the report had been sent to the Sussex Biodiversity Record Centre, and that the surveys were comprehensive and soil tests were carried out in terms of GEO Tech.

97. In essence, the emphasis of the case presented by Dandara and ADC was that Fontwell Meadows does not meet the criteria set out by the NPPF, and cannot be designated as a Local Green Space; there is no official classification for the site; and it has no nature conservation designation. It was emphasised by representatives of the Parish Council that it would support the increase of the number of housing units within the Parish, but only where they were desirable in accordance with the residents of the Parish.

98. Three criteria are referred to in the representations made in Dandara for the Public Hearing.⁶² A summary of these points are as follows:-

(1) It is acknowledged that the northern part of the site is in close proximity to Fontwell Village, but it is not considered that the entirety of the site can be considered to be in reasonable close proximity to the community it serves;

(2) It is also acknowledged that although a proposed Local Green Space is “demonstrably special” to a local community is a subjective test, the point is made that as the western part of Fontwell Meadows was not proposed for such status in the now made Barnham and Eastergate NDP, this raises questions as to whether the eastern part is “demonstrably special” given that it represents the same tract of land. The land has to hold a particular local significance due to its beauty or appearance. In the case of Fontwell Meadows it is described as being locally “unremarkable and agricultural and grazing land which is not easily appreciable as a collective whole from public vantage points”;

(3) Fontwell Meadows has no historical significance falling outside the Conservation Area, and it had been confirmed previously that the site was of no archaeological value⁶³;

⁶² At page C 64 of the Public Examination Bundle.

- (4) Fontwell Meadows has no public access or recreational value being private land;
- (5) The site is not considered to be of significance from a tranquillity perspective as it is surrounded by busy main roads and a built-up environment;
- (6) It is of no particular habitat or biodiversity interest compared with any other land in the Neighbourhood Plan area;
- (7) It represents an extensive tract of land (9.75 hectares in size) and therefore fails the local in character test. Furthermore, as only approximately half of Fontwell Meadows falls within the Walberton NDP area. The whole site is in reality much larger and appears as a disparate number of field parcels spread over 18 hectares with no definable local character or local function.

99. In conclusion, these representations state that recent updates to the NPPG have clarified that emerging Neighbourhood Development Plans must be aligned with the strategic planning and needs and priorities of the wider local area, and must support, rather than undermine policies in the “parent” Local Plan. The NPPG explicitly advises that Examiners should consider the extent to which a Neighbourhood Development Plan has taken into account the reasoning and evidence supporting and emerging the Local Plan as part of the general Basic Conditions Test. It is stated that the Walberton Neighbourhood Plan has demonstrated that it is in direct conflict with the emerging ADC Local Plan, and the Evidence Base informing it, by seeking to prevent housing development on land in Fontwell, this land having been identified as a strategic location for future housing growth within the “parent” Local Plan as set within the context of ever increasing housing need. It is suggested that there is no evidence in support of the proposed Local Green Space designation. It is an attempt to

⁶³ Since the conclusion of the Public Hearing, the suggestion has been made that crop marks indicate that there is possible archaeological evidence of a Roman Villa under Fontwell Meadows.

prevent development on the land using unsubstantiated ecological arguments “... which is a misapplication of the intention of the NPPF expressed within paragraphs 76 and 77 to provide local people with a tool to protect truly local important spaces of which land at Fontwell clearly is not one.”

Conclusion

100. In summary, the position adopted by representatives of Dandara and ADC was that Fontwell Meadows fails to meet the specific criteria for paragraphs 76 and 77 of the NPPF, as set out in the written representations made by Dandara prepared for the Public Hearing.⁶⁴
101. For the purposes of this Examination I reject this interpretation, and I come to the following conclusions.

Clarification regarding the extent of the site named as Fontwell Meadows

102. The extent of the site described as “Fontwell Meadows” is clearly defined as the site marked No. 4 on the Local Green Space Map in the Evidence Base. It comprises 4 fields totalling approximately 9.75 hectares. It does not include the area to the west falling within the Parish of Eastergate. It forms approximately 50% of the site in respect of which Dandara sought planning permission for the construction of 400 plus residential units, the other 50% of which lying within the Parish of Eastergate. The overall area is described as the land to the “East of Fontwell Avenue”.

The status of Fontwell Meadows in biodiversity terms

103. Fontwell Meadows comprise open land the primary use of which is grazing and equestrian activities. There are a number of boundary trees and hedgerows and individual trees dotted across the site. At present it seemingly cannot be described as being a “Priority Habitat”. Despite the views expressed by the Steering Group, the Evidence Base does not demonstrate that Fontwell Meadows can currently be classified as “unimproved grassland”, although its status may change if further research is undertaken by the appropriate bodies, bearing in mind that at an earlier stage it seems to have been considered to be

⁶⁴ At page C 64.

“unimproved grassland”.⁶⁵ It is to be noted that the First Phase report produced by FPCR did originally describe three of the four fields comprising Fontwell Meadows as “semi-improved grassland”. However, as subsequently stated in the Second Report, this original assessment was apparently based upon less detailed information than that provided by the subsequent Report. The latter revised the original assessment, and classified three fields it as “species-poor semi-improved grassland”. The Second Report confirmed that the initial assessment of Field D as “species-poor semi-improved grassland” was accurate. In paragraph 5.2 of the Second Report it has been stated that none of the hay fields supports grassland of a type that would be considered as being of national or county importance.

104. In paragraph 86, above, the two concerns of the Steering Group of the Parish Council as to the Second Report have been set out. First, although presented in an objective framework, it was a report commissioned, and presumably paid for, by Dandara. Secondly, the Parish Council was happy to accept the conclusions presented by FPCR in the First Phase report on the basis that this provided a more balanced and accurate interpretation.
105. Drawing together the various strands, although the classification of Fontwell Meadows in biodiversity terms is of considerable importance to this Examination, the evidence of its exact status is, at present, inconclusive. The Dandara evidence contained in the Second Report are snapshots, albeit scientifically based. It also appears to modify its earlier interpretation in the First Phase report, and the original findings of the Sussex Biodiversity Partnership. I consider that it is therefore unsafe to draw any hard and fast conclusions based upon this evidence at this stage. Circumstances may change with further scientific research being undertaken. There is also the suggestion, as yet unproven, that there may be Roman archaeological remains *in situ*. Thus I

⁶⁵ There is some uncertainty as the current status of Fontwell Meadows as a “Priority Habitat”. The Steering Group states that at the time of the preparation of the Neighbourhood Plan Fontwell Meadows were designated as Lowland Green Grassland” (MG5) in the Habitat Map produced by the Sussex Biodiversity Partnership, see the Evidence Base, and page C25 of the Public Hearing Bundle. ADC appear to accept this status as current, see the February 2016 Statement, at page 4.

do not consider that the biodiversity status is of central concern to the Examination. It is more important to concentrate upon the terms of paragraphs 76 and 77 of the NPPF.

106. As previously stated, the central thrust of the case presented by Dandara and ADC is that Fontwell Meadows does not meet the criteria set out in the NPPF, and in particular the three bullet points contained in paragraph 77. Paragraph 76 is also referred to. Accordingly, it is said that cannot be designated as a Local Green Space.
107. I disagree with that interpretation, and I reject the contention that Fontwell Meadows fails to meet the specific criteria contained in paragraphs 76 and 77 of the NPPF, for the reasons set out below.

Paragraphs 76 and 77 of the NPPF

Paragraph 76 - Sustainable development and the planning status of Fontwell Meadows

108. The point made by Dandara that the Parish Council's desire to seek the designation of Fontwell Meadows as a Local Green Space is in direct conflict with the Emerging Local Plan and in particular to the strategic policies underlying the proposed housing development. It is said that the Steering Group seeks to undermine the planning position, and more particularly, the proposed housing development the subject matter of the Planning Application. However, the Parish Council in this regard have stated in terms, both orally and in writing that they are not, in principle, opposed to housing development. The thrust of the Dandara assertion, made on more than one occasion by representatives of Dandara, that the Parish Council/Steering Group are using unsubstantiated ecological arguments in order to prevent housing development, is unhelpful and inappropriate.
109. It is apparent that the Parish Council is not using ecological and other arguments for the purpose of prevention of housing development, but from a genuine concern, as expressed during the Public Hearing, that Fontwell Meadows is a special tract of land which is suitable for designation as a Local Green Space, and unsuitable for a large scale housing development having regard to

environmental considerations. Indeed, it would appear that their concerns have been expressed over a long period of time.

110. A tension will always exist between the need to plan for the achievement of sustainable development in the context of the strategic assessment for housing needs. I consider that the designation of Fontwell Meadows for housing, and in particular on the scale proposed, is not justified. The Neighbourhood Plan with the current allocation of housing included would not achieve sustainable development when seen in the context of the policies of the NPPF, and other statutory material, taken as a whole.⁶⁶ The reason for this interpretation is that the adverse impact of designating this tract of land for a large housing development will significantly and demonstrably outweigh the benefits to the local community when assessed against the backdrop of the various considerations set out above. The Parish Council has identified Fontwell Meadows as an area for special protection of particular importance for the community. Identifying this area as a Local Green Space is consistent with the planning of sustainable development for the community, and should endure beyond the end of the plan period having achieved the Local Green Space status.

Paragraph 77 - first bullet point

111. It is accepted by ADC that as part of the northern boundary of Fontwell Meadows borders the existing built up area forms it can be considered to be in reasonably close proximity to the community it serves. That feature is also partially recognised by Dandara/FPCR in that it is acknowledged that the northern part of the site is in close proximity to Fontwell Village, although it is not considered that the entirety of the site can be so classified. In this Examination I prefer the (earlier) interpretation of ADC in this regard,⁶⁷ and it is difficult to see the intellectual basis for suggesting that one or two fields out of

⁶⁶ As is apparent from the judgment of the Court of Appeal in the *Suffolk Coastal District Council* case the NPPF is a policy document, and "...ought not to be treated as if had the force of statute. It does not, and could not, displace the statutory "presumption in favour of the development plan", per Lindblom LJ at [42]. A broad approach to the concept of sustainable development is justified.

⁶⁷ There has been a change of emphasis on the part of ADC in its February 2016 Statement from the position stated its earlier Comments as to "proximity to the community".

the total of four can be considered to be in close proximity to the village when the other fields do not apparently fall within that interpretation.

Paragraph 77 - second bullet point

112. Again, it is acknowledged by ADC that Fontwell Meadows can be perceived as being demonstrably special to the local community. Reference in the Evidence Base is made to the Petition which demonstrates that this area is valued by a large number of residents, and, in effect, it holds a specific local significance for the inhabitants of Fontwell. It is also acknowledged by ADC in its Comments (but not in ADC’s February 2016 Statement) that the fields demonstrate a richness of wild life, and consequently can be considered to be “demonstrably special”. Reference is also made by ADC to the fact that the SBRC refers to Fontwell Meadows as being a Priority Habitat, and recognises its ecological value.⁶⁸

113. Dandara/FPCR also acknowledge that whether a proposed Local Green Space is “demonstrably special” to a local community is a subjective test. As demonstrated during the course of the Public Hearing, and in the documentation contained in the Evidence Base including the Petition), it is apparent that there is strong local feeling that Fontwell Meadows indeed is “demonstrably special” and falls within one of the examples given in relation to holding a particular local significance i.e. due to the richness of its wild life.

Paragraph 77 - third bullet point

114. In so far as the third bullet point is concerned, ADC takes issue with (a) whether the green area concerned is local in character, and (b) whether it can be described as an “extensive tract of land”. It states that “[s]maller areas have been recognised as failing on this basis within Examiner reports...”

116. As to (a), ADC asserts that it is not “especially” local in character. I disagree with that interpretation, having regard to the statutory material to which I have

⁶⁸ As stated above, there is some uncertainty as the current status of Fontwell Meadows as a “Priority Habitat”. The Steering Group states that at the time of the preparation of the Neighbourhood Plan Fontwell Meadows were designated as Lowland Green Grassland” (MG5) in the Habitat Map produced by the Sussex Biodiversity Partnership, see the Evidence Base, and page C25 of the Public Hearing Bundle.

made reference above. The Evidence Base demonstrates that Fontwell Meadows is local in character. It is a self-contained area comprising four fields lying at the north west extremity of the Parish at the side of Wandleys Lane, behind Barn Farm, and to the south of the built up area lying on the north and south of Arundel Road. The area is used for grazing of cattle and equestrian activities. It is clearly “local in character”.

116. As to (b), can Fontwell Meadows be considered to be an “extensive tract of land” within the Parish? For its part ADC assert that Fontwell Meadows can be so considered. Reliance is placed upon paragraph 015 of the PPG where designation of Local Green Space cannot apply to such areas and “consequently blanket designation of open countryside adjacent to settlements will not be appropriate.” Dandara/FPCR support this interpretation, and further add that only half of Fontwell Meadows falls within the Walberton NDP Area and in reality the whole site is much larger than the 9.75 hectares that is being sought to be designated as a Local Green Space by the Parish Council. I discount that point on the basis that this Examination is concerned solely with the area within the parish of Walberton.
117. There does not appear to be any direct legal authority on the definition of an “extensive tract of land”. The word “extensive” is defined in the Oxford Dictionary as “having a wide extent”. Other attributable meanings are “uncircumscribed”, “expanse”, “unlimited space”. In planning terms the phrase “extensive tract” is usually used in connection with land to be designated as national parks. In my judgment is apparent from the planning perspective that the definition of an extensive tract of land means large areas of the countryside.
118. In this Examination I therefore do not consider that 9.7 hectares of Fontwell Meadows lying within a much larger area comprising Walberton Parish can be considered an extensive tract of land falling within the blanket designation of open countryside adjacent to settlements.
119. Thus, on the balance of the evidence provided, both orally and in writing, for this Examination, and having regard to the principles of sustainable development, and despite the fact that Fontwell Meadows has been now

identified in SHLAA as an area for housing development by ADC in conformity with the strategic policy allocation for housing, I consider that Fontwell Meadows is suitable to be classified as a Local Green Space, for all the reasons set out above.

SUMMARY AND OVERALL RECOMMENDATIONS

Having regard to the Basic Conditions, and in particular to Condition (e), the terms of the NPPF, the saved policies of the ADC Local Plan, the proposed policies of the Emerging Local Plan, and other documentation, to which reference has been made above, the Walberton Neighbourhood Plan, as submitted, does not, as yet, fully comply with the Basic Conditions. My report highlights a number of areas where the wording of the Plan, as submitted, needs to be addressed. In its present formulation it cannot therefore be submitted to the Referendum process. However, the problems referred to are capable of remedy. The proposed modifications are set out as recommendations to be made to the text of the Plan.

Such modifications, once incorporated, should then render the Walberton Neighbourhood Plan compliant with planning requirements, as identified in Chapter 3.

Thus, subject to the modifications proposed in this report having been considered and adopted, I recommend that the Plan is then submitted to a Referendum.

Edward F Cousins
Examiner

5th July 2016