

Report to	Planning Committee
Date	14 June 2018
By	Director of Planning
Local Authority	SDNPA (Called In Application)
Application Number	SDNP/17/02082/FUL
Applicant	Mr J Oliver
Application	(Retrospective) Retention of temporary electric fencing using chestnut stakes to be replaced with chestnut post and rail fencing when consent is granted
Address	The Oaks, The Motor Road, Old Racecourse, Lewes, BN7 1UR

Recommendation: That planning permission be refused for the reasons set out in Section 10 of this report.

Executive Summary

The application seeks planning permission for retention of existing chestnut post and electric fencing as well as the provision of replacement chestnut post and rail fencing on land to the south west of the applicant's property known as The Oaks. This enclosure would create a grazing paddock measuring approximately 0.8 hectares.

The property includes stables and a yard which are used to operate the applicant's livery and riding business known as Tor Stables. A separate application is to be presented to Members for the erection of a manege within the same site as outlined under this application.

The site forms part of the gallops on the western edge of the Racecourse. In the view of officers, the proposal to replace the existing unauthorised fencing with chestnut post and rail fencing would amount to further proliferation of an inappropriate form of fencing and enclosure of what is a characteristically Open Downland landscape. The existing and proposed fencing would fail to preserve or enhance the characteristics of the rural area and therefore the fencing is not considered to be justified against the reasoning for the imposition of the Article 4 Direction covering the land. It is therefore recommended that planning permission be refused.

I. Site Description

- I.1 The Oaks is a residential property comprising a dwelling and stable block (adjoining the western side of the Motor Road) at The Old Racecourse in Lewes. The applicant operates a business known as Tor Stables offering trekking and livery with a total of 12 stables.
- I.2 The application site is one of wider collection of buildings forming the Old Racecourse complex, located outside of the Lewes settlement boundary. Most of the buildings across the wider site are now given over to both residential and equestrian uses. Although it is no longer used for racing, the course to the west known as the 'gallops' has been used for the training of race horses, the majority of the land falling under the applicant's ownership.

- 1.3 The site and surrounding area have been influenced by the historic presence of the racecourse on the site for over 100 years. The races course and associated gallops have a strong historic influence and significance on the west side of Lewes.
- 1.4 The application site is situated approximately 200 metres to the south of the main property and is separated by several neighbouring residential properties including Racecourse House, The Tote House, Cheyney House and The Stewards. The application site is accessible with a right of access via a hardstanding and track heading north and then double backing on itself to run parallel to the gallops. A second right of access is stated to run over land belonging to the owners of the Tote House.
- 1.5 The site is visible from several public vantage points, the closest being the footpath along the southern boundary. The bridleway beyond the strip of former racecourse land also affords views, with more limited filtering by clusters of hawthorn. To the north the site is partly contained by stunted woodland. Long distant views are from across the valley and South Downs Way to the south.
- 1.6 The South Downs Integrated Landscape Assessment places the site in the landscape Type A: Open Downland the most relevant key characteristics to the site are large scale open elevated landscape of rolling chalk downland, with dry valleys and scarp slopes.
- 1.7 The land is set below the adjoining land belonging to The Stewards and is gently sloping downward from east to west, with Footpath 5 & 48a running parallel to the application site adjacent to the gallops. Bridleway 3 runs to the east of the site of the adjoining land owner's site, which is subject to other applications to be presented to Members at the June Committee.

2. Relevant Planning History

- 2.1 Permitted development rights were removed by Article 4 Direction on 8 December 1993 for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The Direction was made for the purpose of controlling various forms of enclosure in order to protect this characteristically open downland landscape.
- 2.2 SDNP/15/05807/FUL granted planning permission dated 27 April 2017 for the erection of fencing around part of the former racecourse within the gallops (land belonging to the applicant) to allow horse grazing. Subject to amendments this was approved on the basis that part of the site would be constructed using post and wire along the southern boundary and post and rail along the north and across the southern end.
- 2.3 Planning permission was granted for The Oaks under reference SDNP/16/03999/FUL for alterations to existing stable building comprising 10 new timber roof lights, replacement of existing windows, replacement fascia's and gutters and new raised platform.
- 2.4 Application SDNP/16/06136/FUL seeks permission for the construction of a manege, fenced surround and shallow earth bank for use as an exercise and training facility in connection with the existing stables and livery at The Oaks. The application is pending determination by Members at the June Committee.

3. Proposal

- 3.1 The application seeks planning permission for:
 - a) The retention of existing chestnut post and electric fencing around the perimeter of the field to form one paddock; and
 - b) The retention of chestnut posts and replacement of electric fencing with chestnut post and rail fencing.
- 3.2 A site plan has been submitted for the proposal indicating the area subject to development. Whilst posts have already been installed on the land, no proposed plans or elevations are submitted indicating the type of chestnut post and rail fencing. In the event that Members are minded to approve the application it is advised that final details of the fencing type are submitted to and approved by the Local Planning Authority.

4. Consultations

4.1 **St Ann (Without) Parish Meeting** - No comments received.

4.2 **South Downs Society** - No comments received.

4.3 **ESCC Rights of Way Officer** - No comments received.

4.4 **ESCC Landscape Officer** - No comments received.

- The existing temporary fence has a minor adverse impact on the open character of this area of the gallops. The temporary fence is white and does stand out in the landscape as an urbanising element. The fence is visible from the adjacent public right of way through gaps in the hedge. This is viewed against a background of the racecourse development and other fenced paddocks.
- The replacement with a more permanent post and 3 wire stock proof fence would be an enhancement. Stock proof fencing is more characteristic of the open downland character area than the current temporary fencing.
- Chestnut post and rail fencing would be more intrusive on the skyline than post and wire. Timber post and rail is also more commonly associated with gardens and is not characteristic of the open downland.
- The applicant has provided evidence that there is an operational justification for the paddock to be fenced. If this application is permitted it is recommended that no other fencing is permitted extending further south into the open gallops, apart from the gallop fencing approved in April 2017.
- In the context of the existing equestrian facilities associated with the Old Racecourse the proposed development is likely to have minor landscape and visual effects.
- It is recommended that the proposed application can be supported subject to the permanent fence being a post and wire type stock proof fence.

Officer Note: The Landscape Officer's comments are given on the presumption that the applicant is proposing to erect post and wire fencing, which is confirmed by the applicant not to be the case. The proposal relates to replacement with chestnut post and rail fencing. Officers have re-consulted the Landscape Officer and any further comments will be given via the update sheet.

5. Representations

5.1 3 third-party representations have been received *objecting* to the proposal. The representations raised the following issues:

- No right of access to the land
- Materials not in keeping with other fencing in the area
- Paddocks around site are being overgrazed
- Impacts on neighbours
- Extra crossing points will be a hazard
- Possible campsites
- The fencing would disrupt the cross country course
- The site is too small for the gallops rail and the manege
- More fencing will have an adverse visual impact across the whole site

6. Planning Policy Context

6.1 National Park Purposes

The two statutory purposes of the SDNP designation are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage of their areas;
- To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

If there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social well-being of the local community in pursuit of these purposes.

National Planning Policy Framework and Circular 2010

- 6.2 Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010 and The National Planning Policy Framework (NPPF) which was issued and came into effect on 27 March 2012. The Circular and NPPF confirm that National Parks have the highest status of protection and the NPPF states at paragraph 115 that great weight should be given to conserving landscape and scenic beauty in the national parks and that the conservation of wildlife and cultural heritage are important considerations and should also be given great weight in National Parks. Paragraph 116 states that planning permission for major developments within National Parks should be refused except in exceptional circumstances.
- 6.3 The development plan policies listed below have been assessed for their compliance with the NPPF and are considered to be compliant with the NPPF.

7. Planning Policy

7.1 The statutory development plan in this area is the Lewes District Local Plan (2003) and the Lewes District Joint Core Strategy (2016).

7.2 The relevant Saved Policies in the Lewes District Local Plan are:

- CT1 – Planning Boundary and key countryside
- ST3 – Design Form and Setting of Development
- ST11 – Landscaping of Development
- RE8 – Equestrian and Related Activities
- LW9 – Lewes Battlefield

7.3 The relevant policies in the Joint Core Strategy are:

- CPI0 – Natural Environment and Landscape
- CPI1 – Built and Historic Environment & Design

South Downs Local Plan (2017)

7.4 The Pre-submission version of the South Downs Local Plan (2017) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 for public consultation from 26 September to 21 November 2017, and the responses considered by the Authority. The Plan was submitted to the Secretary of State for independent examination in April 2018. The Submission version of the Local Plan consists of the Pre-submission Plan and the Schedule of Proposed Changes. It is a material consideration in the assessment of this planning application in accordance with paragraph 216 of the NPPF, which confirms that weight may be given to policies in emerging plans following publication. Based on the current stage of preparation, and given the relative age of the saved policies within the Lewes District Local Plan (2003), the policies within the Submission South Downs Local Plan (2018) are currently afforded considerable weight.

7.5 The following policies from the SDLP are relevant:

- SD1: Sustainable Development
- SD4: Landscape Character
- SD5: Design
- SD6: Safeguarding Views
- SD8: Dark Night Skies
- SD12: Historic Environment
- SD24: Equestrian Uses

South Downs National Park Partnership Management Plan (SDPMP)

7.6 The South Downs Partnership Management Plan (SDPMP) was adopted on 3 December 2013. It sets out a vision and long term outcomes for the National Park, as well as 5 year policies and a continually updated Delivery Framework. The SDPMP is a material consideration in planning applications and has some weight pending adoption of the SDNP Local Plan.

7.7 The following Policies are of particular relevance to this case:

- General Policy 1 – conserve and enhance the natural beauty and special qualities of the landscape
- General Policy 3 – protect and enhance tranquillity and dark night skies
- General Policy 9 – the significance of the historic environment is protected from harm
- General Policy 28 – Improve and maintain public rights of way and access land, to provide a better connected and accessible network for a range of abilities and users and to reduce conflict where it occurs
- General Policy 29 – Enhance the health and wellbeing of residents and visitors by encouraging, supporting and developing the National Park as a place for healthy outdoor activity and relaxation.
- General Policy 30 – Develop ‘access for all’ opportunities, particularly supporting those groups currently underrepresented in the National Park visitor Profile.

8. Planning Assessment

Principle

- 8.1 The proposal does not constitute major development for the purposes of paragraph 116 of the NPPF or policy SD3 of the emerging South Downs Local Plan: Pre-Submission (2017). In reaching this conclusion, regard has been had to the opinions of James Maurici QC, and the recent judgment of the High Court in R (FH Green Ltd) v South Downs National Park.
- 8.2 In determining the principle of development, attention must be given to the Article 4 Direction and whether the fencing would contradict the purpose for its imposition which was to protect the rural character of the Open Downland landscape. Consideration must also be had to the justification for the principle acceptability of the fencing as well as design and visual impact of the new access track, having regard to relevant policies in the LDLP, the JCS and emerging policies in the SDLP.
- 8.3 Policies CT1 (Planning Boundary and key countryside), RES6 (New Development in the Countryside) seek to restrict new development in the countryside unless it conforms with other policies in the plan. Saved policy RE8 of the Lewes District Local Plan (2003) is a main relevant policy which permits ‘small-scale equestrian and related developments’ provided that:
- a) there would be no adverse effect on nearby rights-of-way or open spaces and their users;
 - b) good access is available to existing bridleways and the creation of new access points to public roads is avoided wherever possible;
 - c) the development would not give rise to new buildings, unrelated to existing buildings, in open downland landscapes; and
 - d) the proposals comply with other relevant policies of the Plan. Proposals in the Sussex Downs Area of Outstanding Natural Beauty, Parks and Gardens of Special Historic Interest, Sites of Special Scientific Interest and National Nature Reserves will not be permitted unless they are compatible with the objectives of these designations.
- 8.4 The provision of fencing required in connection with the keeping of horses on the land qualifies the Authority’s determination of the application against this policy.
- 8.5 Regarding point a), the fencing would not inhibit the use of public footpath 5 running along the western boundary of the gallops, although the provision of fencing would result in an experiential visual effect upon users of the footpath. Regarding b) the site is accessible to rights of way and the provision of fencing does not affect this.
- 8.6 Regarding point c) the applicant has also applied for the construction of a manege within the application site however no buildings are proposed.
- 8.7 Against point d), the existing temporary fencing is considered to detract from what is a characteristically open and rural setting. The Article 4 direction was put in place to prevent a proliferation of fencing. The Landscape Officer has expressed concern both with this application and with an adjoining site regarding the cleft chestnut post and rail fencing which

is uncharacteristic of the Open Downland character area, also noting that more attention is drawn to the fencing and in this case it would be more visible from wider views across the site. No plans have been submitted to indicate the design of permanent fencing therefore Officers are unable to determine its specific impact. Overall, Officers remain concerned regarding the proliferation of fencing to be provided across the site resulting in an unacceptable level of harm to the defining character of the Open Downland landscape.

- 8.8 The ILCA highlights that the Open Downland landscape is characterised by ‘visually permeable post and wire boundaries. Few visible hedgerow boundaries and woodland cover limited to small deciduous woodland blocks and distinctive hilltop beech clumps.’ The subdivision of the field with chestnut post and rail fails to complement this Downland landscape characteristic.
- 8.9 In addition to RE8, the tests of emerging policy SD24 (Equestrian Uses) of the SDLP are relevant. Given the age of the existing Lewes Local Plan, this policy is considered to carry significant weight in decision making. The policy has not been subject to a high number of representations and no significant issues have been raised. The policy tests are set out as follows:
- a) The development is of a scale and / or an intensity of equestrian use compatible with the landscape and the special qualities;
 - b) It demonstrates good design which is well located and responds to local character and distinctiveness;
 - c) It will re-use existing buildings wherever feasible and viable;
 - d) Measures taken to locate new buildings, stables, yard areas and facilities adjacent to existing buildings provided they respect the amenities and activities of surrounding properties and uses;
 - e) The proposals are well located to existing utilities and transport infrastructure, including vehicular and field accesses, tracks and bridleways;
 - f) New or supplementary landscape features are provided including hard and soft treatments and planting, consistent with local character; and
 - g) A conservation based land management approach can be demonstrated.
- 8.10 Point a) largely relates to the provision of buildings and change of use of land although the extent of subdivision of the land must be considered. The fencing would provide a single paddock covering an
- 8.11 Noting the concerns highlighted above, regarding a lack of detailed information regarding design, and more fundamentally a concern over the use of chestnut post and rail fencing in this Open Downland location the proposal is considered to conflict with point b).
- 8.12 Point c) is not applicable however in relation to point d) a proposed manege would be sited within the new paddock. The fencing and resultant paddock formed would be unlikely to materially change the use of the land in a way which would be detrimental to the residential amenity of neighbouring properties.
- 8.13 Parking is provided within the applicant’s stable yard and there is no deemed conflict under point e).
- 8.14 In relation to point f) and g) no supplementary landscape features are proposed and there is no submitted land management approach within which any landscape or ecological enhancements and provided. The gallops area is characteristically open and therefore any planting and significant changes in land form should be avoided. Officers consider that the proposal is contrary to policies CT1, RE8 and SD24 and further detailed consideration of design, landscape impact, heritage impact and effects on local amenity are considered in further detail below.

Further consideration of design and landscape impact

- 8.15 The South Downs Integrated Landscape Assessment places the site in the landscape Type A: Open Downland the most relevant key characteristics to the site are:

- Large scale open elevated landscape of rolling Chalk Downland, with dry valleys and scarp slopes;
 - Sparse settlement, with occasional isolated farms and barns;
 - Blocks of modern farm buildings punctuate the open landscape with some urban development, beyond the designated area apparent in views from the wider landscape.
- 8.16 Policies CP10, CP11 of the JCS seek to preserve and enhance the character and appearance of the countryside. LDLP (2003) policy ST3 seeks high quality design in new development and notes that materials should be of a quality, type, colour and design which is appropriate to the character of the local area.
- 8.17 Policy ST11 requires applications to include a framework for landscaping and maintenance showing features to be retained as well as new landscaping measures. No further landscaping is proposed.
- 8.18 Policy SD4 in the emerging Local Plan permits development proposals where they conserve and enhance landscape character. The policy was not subject to significant issues during consultation stage and is therefore considered to carry substantial weight overall. The policy requires that proposals demonstrate that:
- a) They are informed by landscape character reflecting the context and type of landscape in which the development is located;
 - b) The design, layout and scale of proposals conserve and enhance existing landscape and seascape character features which contribute to the distinctive character, pattern and evolution of the landscape
 - c) They will safeguard the experiential and amenity qualities of the landscape;
 - d) Where planting is considered appropriate, it is consistent with local character, enhances biodiversity, contributes to the delivery of green infrastructure and uses native species.
- 8.19 The existing and proposed fencing are not considered to respect the landscape context; a concern which is echoed by the Landscape Officer. The proposal is in conflict with points a) to d) of policy SD4.
- 8.20 SD5 only permits where they adopt a landscape-led approach and respect the local character, through sensitive and high quality design that makes a positive contribution to the overall character and appearance of the area. SD6 seeks to preserve the visual integrity, identity and scenic quality of the National Park, in particular by conserving and enhancing key views and views of key landmarks within the National Park. Again, no significant issues were raised against these policies during consultation stage which are considered to carry substantial weight.
- 8.21 The applicant has expressed concerns that chestnut post and rail should not be disregarded in this location, and it is appropriate for the intended use of keeping horses. The British Horse Society offers guidance on the provision of fencing, noting that any fence should be sufficiently strong and well-maintained to prevent horses from breaking through it and should also discourage animals from leaning through to graze, which could lead to injury to the horse or damage the fence boundary.
- 8.22 Some forms of fencing are indicated to be more desirable for equestrian use than others; post and rail wooden fencing or post and rail-solid uprights and flexi-rails with either electric tape or wire are suggested as being advantageous over wire fencing (both plain or barbed) or single strand electric wire as they can be potentially injurious.
- 8.23 Wire fence options are available for keeping horses and officers consider that if a principle for fencing is established in this location, a suitable alternative could be found to provide a more permeable means of enclosure which ensures horses do not get caught or injure themselves. The proposed fencing would fail to conserve or enhance the Open Downland character in this particularly sensitive historic area of the National Park. The proposal is considered contrary to policies ST3, ST11, RES6 of the LDLP (2003), CP10 and CP11 of the JCS, SD4, SD5 and SD6 of the South Downs Local Plan: Pre-Submission (2017).

Heritage Impact

- 8.24 Policy LW9 of the LDLP states that planning permission will not be granted for development which would affect the landscape, setting or archaeological integrity of the Lewes Battlefield. The site is located on the edge of the historic battlefield designation and the fencing (existing and replacement) must be considered both in its own right and also in accumulation with other development at the site.
- 8.25 The site lies predominantly outside of the Lewes Battlefield Archaeological Notification Area. It is recommended in the event that Members are in support of the proposal that conditions are imposed for a written scheme of investigation and any necessary additional schedule of surveying, recording and analysis.
- 8.26 However, in its current and proposed form, the fencing would fail to respect the setting of the Lewes Battlefield which is an historically open landscape stretching from the edge of the gallops across the brow of the Racecourse to the East.

Amenity

- 8.27 Adjoining neighbours are unlikely to be significantly affected by the proposed fencing however the visual impact would be harmful upon the amenity of walkers and the general public using the adjoining footpath 5.

9. Conclusion

- 9.1 The proliferation of fencing (existing and proposed) to form a grazing paddock by virtue of the design, form, layout and lack of justification is considered to result in an unacceptable degree of harm to the landscape and visual amenities of the area with insufficient justification for the proposed permanent fencing to be used. The application therefore fails to justify development noting the reasoning for the imposition of the Article 4 Direction in 1993. This proposal would therefore fail to enhance or maintain the vitality of the rural setting and is considered to be contrary to the protection of local landscape and scenic beauty of the National Park which is afforded the greatest protection under the NPPF.

10. Reason for Recommendation and Conditions

- 10.1 It is recommended that the application be refused for the following reasons:
1. The existing post and electric fencing, by reason of its sense of enclosure and use of non-locally distinctive materials is considered to fail to conserve or enhance the open downland character of this part of the South Downs National Park or the Lewes Battlefield designation. This would be contrary to policies CT1, ST3, ST11, RE8 and LW9 of the Lewes District Local Plan (2003) and policies CPI0 and CPI the Lewes District Joint Core Strategy (2016), policies SD1, SD4, SD5, SD6, SD12 and SD24 of the emerging South Downs Local Plan: Pre-Submission (2017), the NPPF and the first purpose of the National Park.
 2. The proposed use of chestnut post and rail is considered to be uncharacteristic of this landscape setting and it would therefore fail to conserve or enhance the open downland character of this part of the South Downs National Park. This would be contrary to policies CT1, ST3, ST11, RE8 and LW9 of the Lewes District Local Plan (2003) and policies CPI0 and CPI the Lewes District Joint Core Strategy (2016), policies SD1, SD4, SD5, SD6, SD12 and SD24 of the emerging South Downs Local Plan: Pre-Submission (2017), the NPPF and the first purpose of the National Park.

11. Crime and Disorder Implication

- 11.1 It is considered that the proposal does not raise any crime and disorder implications.

12. Human Rights Implications

- 12.1 This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

13. Equality Act 2010

13.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

14. Proactive Working

14.1 In reaching this decision the Local Planning Authority has worked with the applicant in a positive and proactive way, in line with the NPPF. This has included discussions with SDNPA Officers and consultees. Unfortunately this did not result in a positive officer recommendation in light of more significant concerns.

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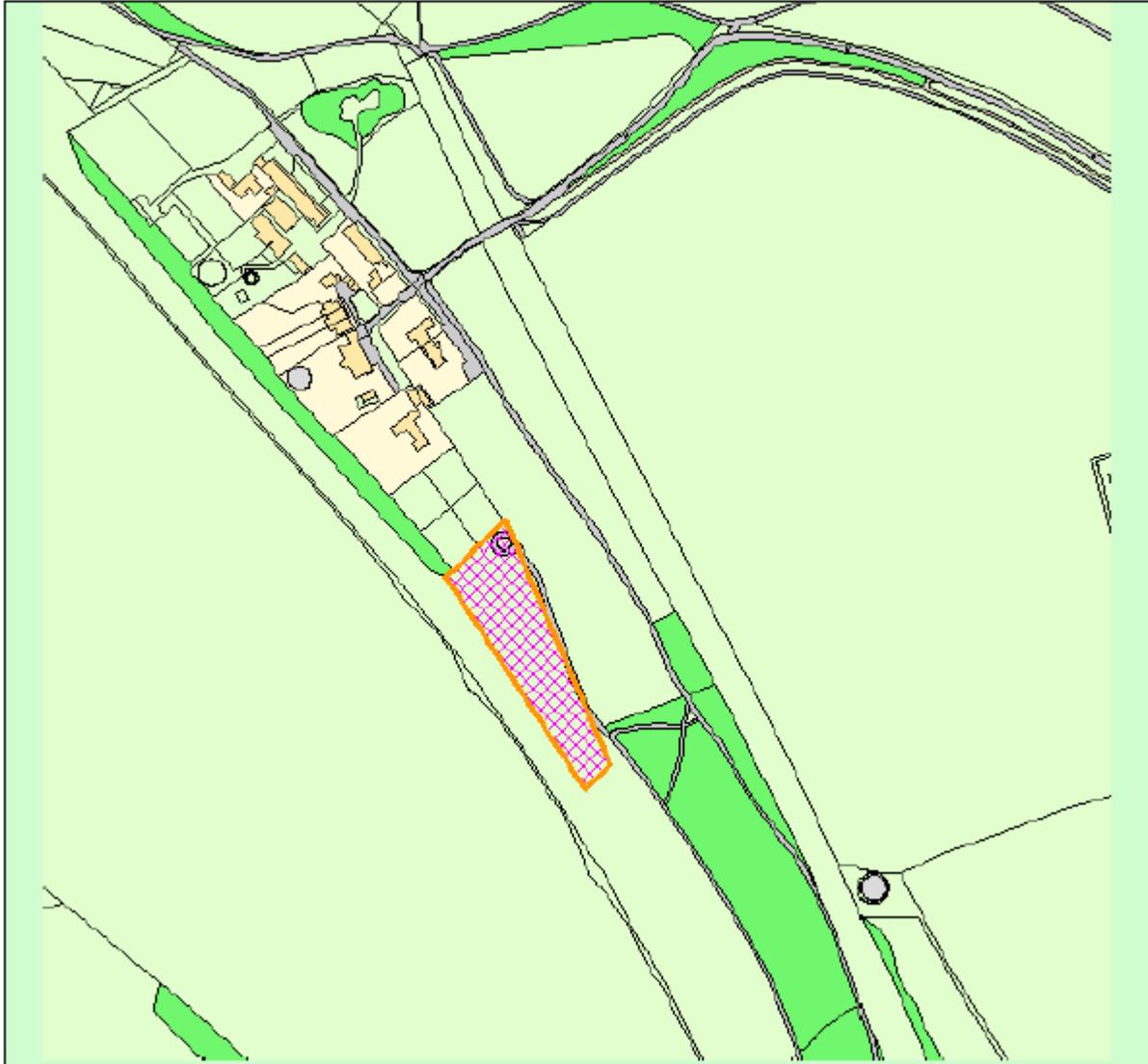
Appendices I. Site Location Map

SDNPA Consultees Legal Services

Background Documents

- [Application Documents](#)
- [Lewes District Local Plan \(2003\)](#)
- [Lewes District Joint Core Strategy \(2016\)](#)
- [South Downs National Park Local Plan \(2017\)](#)
- [South Downs Local Plan Schedule of Changes \(2018\)](#)
- [South Downs Partnership Management Plan \(2014-2019\)](#)
- [National Planning Policy Framework](#)

Site Location Map



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