

South Downs Local Plan Hearing Session on Policy SD3 – *Major Development*

Statement by Martin Hendry BA(Hons) MRTPI MCIHT

Matter 1 **Whether Part 1 of the policy provides a justified and effective basis for an objective identification of proposals considered to comprise major development?**

1. Part 1 lacks objectivity and positivity and is not a sound basis for defining major development. It merely requires a judgement on the basis of a proposal's potential to have a serious adverse impact on natural beauty, wildlife or cultural heritage or recreational opportunities.

2. 'Serious' and 'potential' are descriptive terms that defy objective calibration in a planning context. Common usage of both words allows for an extremely wide range of interpretations. By definition, potential impacts are not actual impacts and cannot be objectively identified. Paragraph 4.22 precludes the NPA from considering actual (i.e., measurable) impacts in any detail.

3. The basis of the judgement (second bullet point in 4.22) is that 'major development' will be given its common usage. Common usage of this term, the way it is used in day-to-day discourse, can refer to anything from an over-large residential extension upwards.

4. There is considerable confusion. The first bullet point requires the judgement to be made in the light of all the circumstances of the application and the site but the fourth bullet says that nothing but the consideration in the third bullet point (which summarises Part 1) will determine the matter. The third bullet adds that in reaching a decision the NPA will not look in depth at whether the development actually will have a serious adverse impact (emphases added). It appears that the policy position is that the NPA is required to decide whether a proposal is major development on the basis of a theoretical judgement of the seriousness of its potential impacts, which cannot be objectively identified, whilst at the same time ignoring any detailed objective evidence of actual impacts.

5. This extreme level of subjectivity makes it easy for applicants (and if they wish, the NPA) to evade the fundamental point that national policy is that only exceptionally should large scale development have a place in a national park.

6. It is possible (and, I suggest, for reasons of public transparency and ease of implementation desirable) to follow the example of the EIA process and devise a strategic policy that defines major development in the majority of cases, leaving judgement to deal only with fringe examples and using terms that have a pedigree in a planning context. Such a policy should also relate directly to the statutory purposes of national parks. Perhaps along the following lines:

"The term 'major development' includes any development proposal, that on its own or in cumulation with existing, proposed or possible future development may adversely affect the achievement of the designation purposes of the National Park, i.e., the conservation and enhancement of its natural beauty, wildlife and cultural heritage and the promotion of its understanding and enjoyment by the public. This definition includes all EIA development, proposals that require appropriate assessment under the Habitat Regulations and outside events such as festivals, markets, car and motor cycle racing that require planning consent. Scale is not the determining factor and smaller-scale developments that may have the effect described above also fall within this policy. Where there is doubt whether a proposal is for major development, the NPA will reach a reasoned judgement that takes account of the nature of the proposed land use, evidence of its likely significant effects, the environmental context within which it will sit and any other factors relevant to the circumstances."

7. The justification for inclusion of EIA and HA proposals is straightforward; for that relating to 'outside events' see Matter 4 below.

Matter 2 Whether part 2 of the policy makes appropriate exceptions for permitting major developments in the SDNP.

8. Part 2 reproduces NPPF 116 and consequently the 'circumstances' that might reasonably be considered 'exceptional' remain unclarified. The three matters that Part 2 says should (ought to be 'will') be included in an assessment are also inexact. The meaning of 'local', as in 'local economy', is not defined, and the definition of 'need' is left to the discretion of the NPA.

9. Retaining NPPF 16 without clarification enables the NPA to continue to interpret 'exceptional' circumstances' in a local context, making compliance much easier. 'Need' can similarly be interpreted as supporting a personal need rather than a community or national need. All an applicant has to do is claim a need to carry out a development and, as they probably will not own any other land on which the need can be met, their proposal meets the criteria.

10. The 4.25 bullet points further weaken national policy. The first point defines 'need' as 'a need in the location', which makes compliance easier. The second point fails to confirm that the 'local economy' does not include areas outside the National Park, retaining applicant's ability to claim benefits outside the NP in support of a location within it. The third point subverts the national intention of sub paragraph b) in NPPF and Part 2 of SD3 by allowing 'need' to be interpreted as local need that should not be met outside the designated area. This twist of a straightforward reading of NPPF 116 opens the door to additional major development, for example, in the economic interests of farm diversification, an interpretation that would have wide implications across the National Park.

11. In similar vein, although Part 2 requires demonstration of both 'exceptional circumstances' and 'public interest' before major development can be consented it leaves these terms open to wide interpretation and reduces the requirement of a finding of 'exceptional circumstances' to one merely of 'a reasonable expectation that exceptional circumstances exist'. In similar fashion, it changes a clear identification of 'the public interest', to 'a reasonable expectation of a public interest'.

12. This dilution of NPPF 116 changes what should be a rigorously enforced national policy to exclude non-essential major development from national parks into a local policy linked to many subjective tests that gives wide discretion to permit a range of major development. In order to re-insert the necessary backbone into national policy for national parks, it is essential to tighten the principal material considerations included in Part 2. This could be done along the following lines:

"Consideration of the such application will require evidence

- a) *of an overriding need for the development, including in terms of any national consideration, bearing in mind the impact of permitting it, or refusing it, upon the economy of the national park;*
- b) *that any proven overriding need cannot be met outside the designated area, or in some other way, and*
- c) *that potential adverse effects on the achievement of the designation purposes of the national park has been moderated to the maximum extent possible.*

Circumstances deemed exceptional will, by definition, not be of general application. In defining public interest, great weight will be given to conserving the landscape and scenic beauty of the National Park.

13. In summary, the position is that Part 2 is not an appropriate approach to defining exceptional circumstances and if this is maintained in the adopted plan will considerably weaken national policy.

Matter 3. Whether part 3 of the policy sets appropriate requirements and constraints for the control of major development exceptionally permitted within the SDNP.

14. Major development permitted as an exception will, by definition, not comply with policy. Even so, Part 3 can hardly be described as a demanding approach to planning control. It simply says that 'all opportunities to conserve and enhance the states that if consent is granted 'all opportunities to conserve and enhance the special qualities should (sic) be sought'. What Part 3 describes as 'factors' for the purpose of measuring sustainability are in practice headings that require considerable amplification if they are to be used to measure compliance. There is no actual requirement for the proposal to be sustainable or to be treated any differently from development generally, and no way of identifying whether the proposal meets the criteria. This unfortunately opens the way for unsustainable major development to be approved as compliant with Part 3.

Matter 4. Whether the policy should refer to major events, as distinct from permanent development?

15. The overall picture is that Core Policy SD3 is an inadequate recognition of and response to the pressures for major development that the South Downs National Park currently faces. These pressures will doubtless increase due to its proximity to and accessibility from growing conurbations and London and its attraction as an event location. The precedent that has been allowed to take root at Cheesefoot Head is highly unfortunate and makes it vital that the local plan contains a clear policy message that outdoor events will be treated as major development.

16. Matter 4 implies that for policy purposes it is possible to distinguish between major events and permanent development. These types of events are however commercially comparable to those held in well-known urban venues. They can require infrastructure and services on the scale of a medium sized town. The need to maintain at least the framework of supporting infrastructure on-site means that it not possible to return all the land to its former use, which precludes the area being managed in the best interests of the purposes on the national park. The GPDO definition of temporary use is thus left far behind.

17. Such events have a profound effect on landscape quality and the legitimate recreational use of the Park, and also on public perception of the way that national parks can be treated. Such events are the direct opposite of sustainable development, the achievement of which NPPF paragraph 6 says the Government's views as the purpose of the planning system.

18. National-level concern at the impact of major events on designated areas is evident from Defra's advice that events should be 'controlled' (Defra National Parks Circular 2010). At the

moment, events in the SDNP are untouched by local strategy and have been dealt with in a largely ad hoc fashion, taking every advantage of the vagueness of NPPF116. Unless changes are made to this local plan before adoption, this will continue to be the planning position. Given the increasingly likelihood of precedent-setting leading to a spread of such events through the National Park, this is clearly not 'the highest status of protection in relation to landscape and scenic beauty' that NPPF115 assumes applies to all national parks.

19. None of the major events staged at Cheesfoot Head, which include national motocross (consent refused by WCC but permitted on appeal) and music festivals (the incremental year on year growth of which has been unwisely accepted by the NPA) and also tank driving have any true connection with the purposes of the National Park.

20. David Pain's suggestion of a separate policy for major events is supported, and since major events require permanent/so-called temporary infrastructure, substantial parts of which are not returned to their original purpose (either at all or within the prescribed time limits) they do not benefit from permitted development rights and should be treated in the same way as other major development.

21. I have (see paragraph 6 above) therefore included major events in my suggested definition of major development. A straightforward definition of 'major event' will suffice, there is no need for anything more. SD3 should simply cover all outside events that require planning permission. It goes without saying that this assumes that Class B of the GPDO will not continue to be abused.

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