

Examination

FINDON

NEIGHBOURHOOD DEVELOPMENT PLAN

UPDATE 1

2019-2035

July 2019

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Examiner.

ABBREVIATIONS and ACRONYMS

The following are acronyms and abbreviations used in this examination:

HRA - Habitats Regulations Assessment.

NPPF - National Planning Policy Framework.

NPPG - National Planning Practice Guidance.

SDNPA–South Downs National Park Authority.

SDLP - South Downs Local Plan

SEA - Strategic Environmental Assessment.

The Plan - the Neighbourhood Development Plan under examination.

INTRODUCTION

1. This is an independent examination of an update of the Neighbourhood Plan prepared by the Parish Council in consultation with the local community. The Localism Act 2011 provided local communities with the opportunity to have a stronger say in their future by preparing neighbourhood plans, which contain policies relating to the development and use of land.
2. The Plan forms part of the statutory development plan and is an important consideration in the determination of planning applications as these must be determined in accordance with development plan policies unless material considerations indicate otherwise.
3. I have been appointed by the South Downs National Park Authority (SDNPA) in consultation with the Parish Council to carry out this independent examination. I am a Chartered Town Planner with over 30 years experience working at a senior level in local government and as a private consultant. I am a member of the Royal Town Planning Institute.
4. I confirm that I am independent of the Parish Council and the South Downs National Park Authority (SDNPA) and have no interest in any land, which is affected by the Plan.
5. This report is the outcome of my examination of the submitted version of the update to the Plan.
6. My report will make recommendations based on my findings on whether the Plan should go forward to a referendum. If the SDNPA puts the plan forward to a referendum and it then receives the support of over 50% of those voting, then the Plan will be “made” by the SDNPA as the Local Planning Authority.

BACKGROUND DOCUMENTS

7. I have considered the following documents as part of this examination:

Documents submitted for the examination

The Findon Neighbourhood Development Plan, Update 1, 2019-2035, July 2019, Submission Version
Basic Conditions Statement, June 2019,
Consultation Statement, June 2019,
Regulation 16 Consultation Responses,
SDNPA Screening opinion regarding need for a Strategic Environmental Assessment and Habitats Regulation Assessment, contained in a letter to the Parish Council of 11/4/2018

Local and National Policies and Guidance

Findon Neighbourhood Development Plan, 2016-2035, made 8/12/16,
South Downs Local Plan 2019-2033, adopted 2/7/19,
National Planning Policy Framework (NPPF),
National Planning Practice Guidance (NPPG),

Other Documents

Housing and Economic Development Needs Assessment (HEDNA), Final report, September 2017, GL Hearn,
Legal opinion from Richard Turney, Landmark Chambers, 27/7/2018,
Equalities Impact Assessment, July 2019, SDNPA,
Inspector's report on the SDLP by B J Sims BSc (Hons) CEng, MICE, MRTPI, 18/6/19,
SDNPA, SDLP Main Modifications Report, April 2019,
Documents included as 'Evidence Base 2018' and "Evidence Base FNP Update 1 (2019) on the Findon Parish Council web site.

THE EXAMINATION

8. The nature of the independent examination is set out in Section 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).

9. The examiner has to make a recommendation as to whether the Plan should be submitted to a referendum, with or without modifications, and if the area for the referendum should extend beyond the plan area.

10. As a general rule the examination should be carried out on the basis of written representations unless a hearing is necessary to allow adequate consideration of an issue or to allow a person a fair chance to put a case.

PROCEDURAL MATTERS

11. It is necessary to determine that the Plan complies with the following procedural matters¹:

- The Plan has been prepared and submitted by a qualifying body
- The Plan has been prepared for an area that has been properly designated
- The Plan specifies the period to which it has effect, does not include provisions about excluded development and does not relate to more than one neighbourhood area
- The policies relate to the development and use of land for a designated neighbourhood area.

12. The Plan has been prepared and submitted by a qualifying body, Findon Parish Council. It relates to an area, which includes the whole parish that the SDNPA approved as the designated plan area during the preparation of the original Plan made in 2016.

13. In accordance with the regulations², the Plan sets out policies in relation to the development and use of land and does not refer to “excluded” development. It specifies the period for which it has effect (2019-2035). It does not relate to more than one neighbourhood area.

CONSULTATION

14. The Parish has submitted a Consultation Statement, which describes the process of consultation and summarises responses received up to the time of the submission of the Plan to the SDNPA.

15. The Plan working group consisting of two parish councillors and volunteers from the community was set up in April 2017 and in June 2017 recommended an update to the neighbourhood plan be prepared. This was primarily to focus on the selection and allocation of housing sites.

16. This process was in tandem with the work by SDNPA on the emerging Local Plan. A full assessment of alternative housing sites to that being advocated in the emerging local plan was carried out and the subject of a range of public consultation initiatives. These included consultation events advertised by leaflet drops to all households in the Plan area, stakeholder engagement housing site preference surveys and regular updates in local publications, social media and the parish council and village web sites. These engaged the local community, landowners and developers.

¹ Paragraph 8(1) of Schedule 4 B of the Town and Country Planning Act 1990 (as amended)

² Neighbourhood Planning (General) Regulations 2012

17. The formal consultation under regulation 14³ was carried out in June/July 2018 with adequate publicity involving notices on village notice boards, hard copies of the Plan at various public locations, website publicity and direct notification of interested landowners and other stakeholders. The Consultation Statement summarises the main issues and how the emerging Plan has taken responses into account.

18. I am satisfied that the “Consultation Statement”, demonstrates a good level of consultation, which has allowed community participation and involved technical consultees in the emerging Plan. I have read the Equalities Impact Assessment relating to the Plan and am satisfied that the consultation process and policy formulation has resulted in a Plan to the benefit of the community as a whole and meets the requirements of the Equalities Act 2010.

BASIC CONDITIONS

19. It is necessary to decide whether the Plan meets the “basic conditions” specified in the Act.⁴ This element of the examination relates to the contents of the Plan.

20. This Plan meets the basic conditions if:

- a) It has regard to national policies and advice contained in guidance issued by the Secretary of State,
- b) The making of the plan contributes to sustainable development,
- c) The making of the plan is in general conformity with the strategic policies contained in the development plan for the area,
- d) The making of the plan does not breach, and is otherwise compatible with, EU obligations and human rights requirements,
- e). The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017

21. The Parish has submitted a “Basic Conditions Statement”, to seek to demonstrate conformity. The analysis of conformity with the basic conditions is carried out below. Note this is not in the order specified above.

SUSTAINABLE DEVELOPMENT

22. The Parish submits in the Basic Conditions Statement that the Plan complies with NPPF core policies, which ensure the Plan promotes sustainable development. The NPPF establishes that the three components of sustainability are economic, social and environmental and that these underpin all planning policy.

³ regulation 14 of the Neighbourhood Planning (General) Regulations 2012

⁴ Contained Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

23. The Basic Conditions Statement explains that this is an update to a Plan, which was considered to promote sustainable development when it was examined in 2016. The alterations to the Plan essentially consist of new housing allocations and minor alterations to the local green space allocation. The Statement explains why it is considered the proposed alternative housing allocations are in sustainable locations in terms of minimizing environmental impact, protecting the historic areas, allowing travel by sustainable means, and proximity to broadband links. Furthermore, it is contended the proposed housing responds to local needs requirements in particular providing for more affordable homes.

24. Retained policies promote high standards of design, encourage healthy and safe communities and respond to climate change.

25. I agree that the Plan continues to promote sustainable development as required by basic conditions.

EU OBLIGATIONS, HUMAN RIGHTS REQUIREMENTS

26. A neighbourhood plan must be compatible with European Union Directives as incorporated into UK law, in order to be legally compliant. Key directives are the “Strategic Environmental Assessment Directive⁵” and the “Habitats and Wild Birds Directive⁶”. These require that consideration should be given to the need for a Strategic Environmental Assessment (SEA) to assess any significant environmental impacts and/or an appropriate Habitats Regulations Assessment (HRA) to assess any impact on a site/habitat recognised as protected under European legislation⁷. A neighbourhood plan should also take account of the requirements to consider human rights.

27. A screening assessment was carried out by SDNPA, in consultation with Historic England, the Environment Agency and Natural England to determine whether an SEA or HRA was required.

28. This concluded that the proposed allocation sites are not directly adjacent to any sensitive environmental areas. In relation to the HRA, it is noted no European designated habitats are affected by the update proposals. It is submitted that whilst the modified Update Plan was proposing to allocate different sites to that of the then emerging South Downs Local Plan (SDLP), the amount of development proposed was in line with the overall housing provision set out for Findon in the Pre-

⁵ Article 3(5) of Directive 2001/42/EC

⁶ European Directives 92/43/EEC and 2007/147/EC transposed into the Conservation of Habitats and Species Regulations 2010.

⁷ Often referred to as Natura 2000 sites and include Ramsar sites - wetlands of international importance, Special Areas of Protection (SPA) - providing protection to bird habitats and Special Areas of conservation (SAC) - protecting a variety of plants animals and habitats.

submission South Downs Local Plan which was itself subject to SEA, Sustainability Appraisal and HRA.

29. The SDNPA has expressed concern that the screening opinion was carried out prior to the adoption of the SDLP and does not take account of the possibility that the proposed housing allocations may be considered as extra rather than alternative provision. I agree if this were the case a further scoping study regarding SEA and HRA would be required. I also consider that the concerns of Historic England that the potential for impact on archaeological remains has not properly been taken into account.

30. I do not consider the Plan raises any issues under the European Convention and the Human Rights Act 1998. Article 6 of the Act is particularly relevant as it relates to the right to a "fair hearing". I consider the consultation process has been effective and proportionate in its efforts to reach out to different groups potentially affected. Consultation responses have been taken into account in a satisfactory manner during the processing of the plan.

RECOMMENDATIONS IN RELATION TO BASIC CONDITIONS

General Matters

31. I have taken into account all aspects of the representations received during the Plan process. These generally do not require specific reference or highlight of particular issues as they do not in my view effectively raise a concern that the Plan does not conform to basic conditions. I do however make specific references to the SDNPA representations.

32. I have explained my recommendations in accordance with the order and format of the Plan and expressed them in bold type at the end of the various sections.

NEW and AMENDED POLICIES

33. The Plan proposes to allocate alternative housing sites to those designated in the South Downs Local Plan (SDLP) adopted on the 2/7/2019. This is predicated on the Parish Council view that these sites are preferable to the sites designated in the SDLP, as they are the less intrusive on the national park landscape and character, do not have an adverse impact on historical and cultural heritage traditions, provide better transport options and have more demonstrable support from the community.

34. The Parish contends that the housing allocation policies in the Plan should supersede allocation policies in the SDLP. The Parish maintains that the proposed housing sites are more in conformity with a number of other policies in the SDLP that seek to protect landscape character, the environment and the historic and cultural tradition of the national park.

35. The SDNPA respond that the proposed sites can only be seen as “alternatives” if it is considered they are in conflict with those proposed in the SDLP. If they are not considered to be in conflict they would be regarded to be extra sites to those in the SDLP. This would mean that the housing figure of 28 for Findon specified in SDLP policy SD 26 would be exceeded by the 30-36 homes, which are proposed in the Plan. This view takes into account the legal opinion from Landmark Chambers, submitted by SDNPA with its comments on the submitted Plan⁸.

36. The SDNPA has not objected in principle to the potential increase in the housing figure for Findon although it has objected to the locations of the specific sites particularly on the basis they relate poorly to the existing built form of the village.

37. The Parish Council is aware of the SDNPA view and the legal opinion, which it states, is “somewhat equivocal”. The Parish Council want the sites proposed in the Plan to be accepted and the SDNPA to withdraw the housing allocations in the SDLP. It is not the intention in the Plan to retain the SDLP allocations and the proposed Plan sites. The Plan proposal is for alternative sites to replace those in the SDLP. In paragraph 3.11 of the Plan it is stated that examination of the Plan will allow the community “to have a proper say on where new housing is located in their area, in an updated Neighbourhood Plan....”

38. Part of my role as examiner is to establish whether the Plan policies are in general conformity with the “strategic” policies in the development plan i.e. SDLP. This is one of the basic conditions. It is therefore crucial to determine whether the Plan and SDLP housing allocation policies are “strategic”. The National Planning Policy Framework (NPPF) states⁹ that the allocation of sites can be regarded as non-strategic. The SDLP does not list the housing allocation policies as strategic. The Plan and the SDLP housing allocations are not strategic policies. The Plan housing allocations are alternative site proposals at a non-strategic level. The fact that they are different housing allocations does not mean that they are necessarily in conflict and the Plan is not in conformity with “strategic” policies in the SDLP and contrary to basic conditions.

39. There are, however, other strategic policies in the SDLP and government guidance to which the housing allocations must be in general conformity and take into account. I do not consider the extra (30-36) dwellings for Findon, beyond the 28 targeted for Findon, would be contrary to strategic policy. The NPPF allows for Neighbourhood Plans to allocate more housing than that specified in local plans and policy SD26 in the SDLP underpins this provided such housing is in general conformity with the development plan. Furthermore, given the housing need in the national park recognised in the SDLP¹⁰ evidence as 447 homes per year I consider

⁸ Submitted under regulation 16 of the Neighbourhood Planning (General) Regulations 2012

⁹ paragraph 28

¹⁰ as presented in the “Housing and Economic Development Needs Assessment (HEDNA), Final report, September 2017”, GL Hearn

an extra 30-36 homes is a relatively small proportion and would be not be contrary to strategic policy in the SDLP. The SDNPA has not raised any strategic objections although it has objected to the Plans proposed sites on the basis that it contends there is a poor relationship to the built form of Findon.

40. The Parish Council states in the Plan that the Plan allocations are more aligned with the strategic policies in the SDLP relating to protection of the landscape and other factors. This is not a basis for the proposed Plan sites to override those in the SDLP. The SDLP has recently been determined as sound and the policies adopted. It was not considered there was an inherent conflict in the Plan between its strategic policies and its housing allocations.

41. The Inspector in his final report¹¹ on the SDLP, in June this year, considers the issues of concern to the Parish Council relating to the two allocated sites in terms of landscape impact, impact on cultural heritage and transport implications. He considers that in these respects there are no overriding reasons to resist these allocations. In paragraph 10 of his report in relation to the community objections on the allocations and preference for alternative sites, the Inspector states that *“Such judgements are necessarily subjective and the mere fact that opinions differ is not in itself any reason to find the SDLP unsound”*. In accordance with these findings I do not consider it possible to conclude that a comparative assessment of the Plan and the SDLP allocations is appropriate, as the SDLP allocations have survived a very recent rigorous analysis. During the examination of the SDLP the Inspector did not determine that the SDLP allocations should be deferred in the knowledge of the emerging (neighbourhood) Plan. I conclude there is no substantive evidence to demonstrate a need to “de-allocate” the SDLP sites. In these respects the plan does not conform to basic conditions and NPPG advice¹² that *“robust evidence should support the choices made”*.

42. I do not consider the different housing allocations in the Plan and the SDLP are in conflict and as referred to above they both can help to meet local housing targets. There is no basis to accept that the Plan’s housing allocations should replace those of the SDLP. If the Plans housing allocations were acceptable in principle then in the absence of a conflict with the SDLP allocations the two sets of allocations would be operative and available for development. This is not the intention of the Plan. The Parish Council wishes to gain acceptance of the Plan and then require the SDNPA to “withdraw” the SDLP allocations. This is not possible because there is no evidence to undermine the SDLP allocations and the two sets of allocations are not in conflict.

¹¹ Report to SDNPA, B J Sims, BSc (Hons.) CEng, MICE, MRTPI, 18/6/19 paragraphs 143-157

¹² NPPG Paragraph: 040 Reference ID: 41-040-2016021

¹² NPPG Paragraph: 041 Reference ID: 41-041-20140306

43.The Plan is therefore fundamentally confusing, as its expressed intentions cannot be achieved. In this case it does not meet basic conditions as it does not take into account guidance in the National Planning Practice Guidance (NPPG)¹³ which, requires policies to be drafted with clarity and precision that allow a decision maker to apply “consistently and with confidence”.

44.I consider this is a fatal flaw relating to all of the housing policies in the Plan i.e. HD1, HD9, HD10a, HD10b, HD11, HD12, HD13, HD14. On the basis that I consider these policies and supporting text do not conform to basic conditions in principle, I have not analysed their detail.

45.Policy ES1 establishes a “gap” between the southern end of Findon and the Findon Valley settlement. The boundary of the gap as drawn on maps 2A and 5 is clearly flawed as a result of the unacceptability of the housing allocations. I also consider that in principle this policy that, seeks to prevent coalescence of these settlements is unnecessary. The SDLP policy SD4 Landscape Character Development Strategy adequately deals with the control of development in these areas to prevent coalescence. To partially repeat the policy in the Plan is confusing and contrary to basic conditions.

RECOMMENDATION 1

The Plan’s housing policies HD1, HD9, HD10a, HD10b, HD11, HD12, HD13, HD14 and Gap policy ES1 cannot supersede the housing policies in the SDLP. The proposed housing allocations will effectively be in addition to those in the SDLP and therefore the intentions of the Plan cannot be achieved. The policies are therefore confusing and contrary to national guidance on neighbourhood plans that require clarity and precision.

APPENDIX 2 LOCAL GREEN SPACES

46.This proposes an addition to the list of “twittens” (historic rural paths, roads and lanes). This relates to the green landscape setting to historic rural road Nepcote Lane and the historic quiet lane to West view and North View Cottages. The SDNPA consider that designating the “twittens” as local green space is inappropriate taking into account government advice in the NPPG that “there is no need to designate linear corridors as Local Green Space simply to protect rights of way, which are already protected under other legislation.”¹⁴

¹⁴ Paragraph: 018 Reference ID: 37-018-20140306¹⁴

47. I note the community wishes to continue and amend these designations in the Plan. These areas have value as quiet green spaces with a substantial historic role in the village. They have an enhanced role and significance over a functional right of way.

48. I consider that inclusion of these further areas as local green space provides continuity and consistency with the existing Plan policy. This is in accordance with national guidance in the NPPG aimed at clarity¹⁵. I also consider that it has been demonstrated that these areas are of appropriate location, scale and value to the local community to justify designation in accordance with the NPPF criteria.

RECOMMENDATION 2

The Appendix 2 Local Green Spaces amendment could be incorporated into the updated Plan.

MODIFICATIONS TO ACHIEVE GENERAL CONFORMITY WITH THE ADOPTED SDLP AND NATIONAL GUIDANCE

49. The SDNPA has suggested some further modifications to the current neighborhood plan to take account of the adopted SDLP and avoid confusion, to achieve the clarity recommended in national guidance. These should be considered.

50. Most of these relate to the issue that the current neighbourhood plan policies, (referred to in the Update 1) are now either repeated or slightly different in the SDLP. In these cases, it is correct that they should be omitted from the Update Plan if they are adding nothing or could be interpreted in any way as contradictory. Clearly any clear contradiction or incompatibility in policies would not be in accordance with basic conditions. There may be further issues relating to conformity with the SDLP than those highlighted at this stage by the SDNPA, which need to be considered in further Plan update work, as referred to below. For the purposes of this examination I have restricted my analysis to those matters raised in the specific representations by the SDNPA.

51. Where I have recommended a policy be removed there is value in cross-referring to the relevant policy in the SDLP in the interests of clarity. This is also valuable in cases of retained policies, which need to be considered alongside SDLP policies.

52. In this context, I make the following observations and recommendations.

Policy BT2 Retention of Employment land

53. This is effectively repeated by SDLP policy SD35: Employment Land and adds nothing further. It should be removed from the Plan

¹⁵ Paragraph: 041 Reference ID: 41-041-20140306

Policy BT4 Retention of Retail Frontages

54. There is now a discrepancy in the marketing/vacancy window whereby changes to non-retail uses may be acceptable. The Plan states 12 months whilst the SDLP policy SD37: Development in Town and Village Centres uses 24 months. The Plan policy should be deleted.

Policy BT9 Communications Infrastructure

55. SDLP policy SD44: Telecommunications and Utilities Infrastructure adds extra criteria to the consideration of communications infrastructure. The policy should be deleted.

Policy CFW5 Protection of assets of community value

56. The SDLP policy SD43: New and Existing Community Facilities adds new criteria in the consideration of these proposals. The policy should be deleted.

Policy ES3 Protection of trees and hedgerows

57. The SDLP policy SD11: Trees Woodland and Hedgerows effectively supersedes this policy. It contains more explicit criteria. Plan policy ES3 should be deleted.

Policy ES4 Renewable Energy

58. This policy and SDLP policy SD51: Renewable Energy complement each other apart from the reference to protection of agricultural land. There is merit in retaining the Plan policy as it adds to the SDLP policy SD51 and it should be modified to account for the reference to the need to avoid siting of infrastructure on grades 1, 2 and 3a agricultural land.

Policy ES7 Flint Walls

59. Regarding the SDNPA comment, I do not consider it is necessary to identify the flint walls on a map or extend the policy to enhance flint walls in order to comply with basic conditions.

Policy HD2 Local Connection

60. These criteria do not match those expressed in paragraph 7.61 of the SDLP. The policy should be deleted.

Policy HD3 Live/Work units

61. I do not accept fully the SDNPA concerns that it is not clear to which areas the policy applies provided there is cross-reference to SDLP policies.

RECOMMENDATION 3

The Plan is updated to include cross-references to SDLP policies where relevant.

Policies BT2, BT4, BT9, CFW5, ES3 and HD2 should be deleted.

Policy ES4 criterion (e) should be modified as follows. “energy generating infrastructure is not sited on agricultural land, grades 1, 2 and 3a.

PROCEEDING WITH THE PLAN UPDATE

62.I do not consider that it is appropriate to proceed to a referendum on the basis of deletion of the housing policies and the minor modifications to account for the SDLP and the local green space policy as referred to above. This is significantly different to the submitted Plan and bears little relation to the Plan that was consulted upon. Furthermore, the NPPG¹⁶ advises on different procedures in relation to more minor modifications as part of a Plan update.

63.It would be appropriate for the Plan to be updated to take account of policies in the recently adopted SDLP and to allow for the revision to the local green space in Appendix 2, proposed in this Plan. The SDLP supersedes the 2016 Neighbourhood Plan policies in the event of any conflict and it would establish greater clarity if the neighbourhood plan was updated.

64.The NPPG advises that minor (non-material) modifications to a neighbourhood plan are those, which would not materially affect the policies in the plan, do not require an examination or referendum. However, material modifications, which do not change the nature of the plan or order, would require examination but not a referendum.

65.It is the responsibility of the Parish Council and the SDNPA to establish whether it is considered these modifications are minor (non-material) or material. In this case on the basis of the current proposals without the housing policies, this would rest on a determination as to whether the alterations to the local green spaces and the modifications to accommodate the SDLP were non-material or material.

66.A local planning authority may make minor (non-material) updates at any time, but only with the consent of the Parish Council. Consultation, examination and referendum are not required.

67.In the event they are considered material there are certain procedural requirements in the NPPG¹⁷ that need to be complied with.

¹⁶ Paragraph: 106 Reference ID: 41-106-20190509

¹⁷ Paragraph: 085 Reference ID: 41-085-20180222

68. These are as follows;

- the qualifying body must (at the pre-submission publicity and consultation stage and when the modified plan is submitted to the local planning authority) state whether they believe that the modifications are so significant or substantial as to change the nature of the plan and give reasons
- the local planning authority must (when sending the modified plan to the independent examiner) state whether they believe that the modifications are so significant or substantial as to change the nature of the plan and give reasons.
- The local planning authority must submit a copy of the original plan to the independent examiner

69. In the absence of the proposed housing allocations it remains therefore for the Parish Council in consultation with the SDNPA to determine how to proceed with an update to the Plan.

SUMMARY

70. The Update to the neighbourhood plan does not meet basic conditions, as the housing allocations could not replace those in the SDLP. This would create an outcome contrary to the intentions of the Plan, which is confusing, and contrary to national guidance that planning policies should be clear, precise and able to be implemented consistently.

71. The Parish Council and SDNPA should consider the appropriate way forward to update the Plan.