

SOUTHBOURNE PARISH NEIGHBOURHOOD PLAN REVIEW 2019-2037

Submission Draft

REPORT TO CHICHESTER DISTRICT COUNCIL

By

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SUMMARY

I was appointed in September 2021 to carry out the independent examination of the Southbourne Parish Neighbourhood Plan Review 2019-2037 (NP2).

I have been supplied with, and have read, all the background documents, including the 103 representations made at Regulation 16 stage.

The most substantial, and controversial, aspect of NP2 is the proposed allocation, under proposed Policy SB2, Land East of Southbourne Village, of a residential mixed use scheme to provide at least 1,250 homes.

The local plan comprises the Chichester Local Plan: Key Policies 2014-2029, adopted in July 2015 (the LP). This made an allocation to Southbourne of 300 homes in the form of medium-scale extensions.

In December 2018 Chichester District Council published, for consultation under regulation 18 of the Local Plan Regulations, a Preferred Approach Local Plan Review (LPR). This proposes an allocation of a minimum of 1,250 homes at Southbourne. Consultation on a submission LPR is planned for summer 2022, with a possible examination in spring 2023.

I determined at an early stage that a hearing was necessary. This was held (virtually) on 14 January 2022.

I find that the key Basic Condition in the present case is whether *the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority*. I conclude that NP2, taken as a whole, is not in general conformity with those strategic policies. It proposes a major strategic allocation, quite inconsistent with the LP and not in general conformity with it. I therefore conclude that NP2 does not comply with the Basic Conditions, and that it must be refused.

CONTENTS

	Pages
Introduction	1
The LP background and submission of NP2	1-3
The submission plan (NP2)	3-4
The evolution of NP2 and consultation	4-5
Assessment of consultation process	5
Regulation 16 consultation	5
Decision to hold a hearing	5-6
Principal statutory requirements	6-7
Assessment of Policy SB2: land East of Southbourne Village	7-9
Conclusion	9-10

Introduction

1. I was appointed on 29 September 2021 by Chichester District Council (CDC) with the support of the qualifying body the Southbourne Parish Council (the PC), to undertake the independent examination of the submission draft Southbourne Parish Neighbourhood Plan Review 2019-2037 (“NP2”). I am a Queen’s Counsel with over 40 years experience in planning law and practice. I am a member of the NPIERS Panel of Independent Examiners. I am independent of any local connections and have no conflict of interest.
2. I was supplied with links to all relevant background planning documents, including the adopted Local Plan (the LP), the emerging Local Plan Review (the LPR) and NP2. I was also supplied with hard copies of the 103 representations made at regulation 16 stage.

The LP background, and submission of NP2

3. The existing Neighbourhood Plan for Southbourne Parish is the Southbourne Parish Neighbourhood Plan 2014-2029 (NP1). The Neighbourhood Plan area was designated by CDC on 5 March 2014. It comprises six settlement areas: Hermitage, Lumley, Nutbourne West, Prinsted, Southbourne and Thornham. NP1 was made by CDC on 15 December 2015. It was approved by referendum on 5 November 2015, with 87% of voters agreeing. Policy 2 allocated 4 sites for a total of 350 dwellings.
4. Shortly before NP1 was made, CDC adopted the Chichester Local Plan: Key Policies 2014-2029 (the LP) in July 2015. This remains the adopted LP for the area. It describes Southbourne (2.6) as having a population of around 6,000, links to the nearby towns of Havant and Emsworth, a number of employment opportunities, a railway station and a secondary school. One of its strategies is “the East-West Corridor” from Hermitage in the west to Tangmere in the east. Both locations are “settlement hubs” which, along with others, are to be the focus of sustainable growth. Policy 2 provides that new developments in settlement hubs will “meet identified local needs”. Strategic development

locations are identified at, amongst others, Southbourne “in the form of medium-scale extensions”. Pursuant to those strategies, paragraphs 12.63-12.67 and Policy 20 describe the form of development proposals at Southbourne, with “a level of development that is appropriate to its size, character and environmental constraints”: 12.65. The level of development proposed is 300 homes, “planned as an extension(s) to Southbourne, that is well integrated with the village and provides good access to existing facilities”: Policy 2.

5. In December 2018 CDC published, for consultation under regulation 18 of the Local Plan Regulations, the draft Chichester Local Plan Review 2035 Preferred Approach (the LPR). Policy S4 provided a housing target of 12,350 dwellings for the period 2016-2035. Under Policy S5 the Parish Housing Requirement for Southbourne was specified as nil. Policy AL13 proposed to allocate a minimum of 1,250 dwellings in the revised Southbourne Neighbourhood Plan. The direction of expansion(s) was not indicated. The LPR recommended that a number of junction improvements on the A27 Chichester Bypass would be required.
6. On 29 July 2021 a report was considered by CDC addressing the relationship between the LPR and the A27 improvements. The recommendations, which were accepted, were stark. The full scheme of improvements was “undeliverable”; the LPR was likely to be unable to meet full housing needs. CDC have commented that “...no further update can be provided...regarding the final distribution [which must include amount] of development to be proposed in the emerging Chichester Local Plan area”.
7. Following an informal member/officer meeting on 12 January 2022, CDC supplied a letter to the examination dated 13 January 2022. It stated that the emerging development strategy is “continuing to test” 1,250 homes at Southbourne, and that this should be the “working assumption” for NP2. So far as the LPR is concerned, the present timetable is a proposed submission plan consultation in summer 2022 with examination in spring 2023 and adoption in summer 2023. Bearing in mind the scope and complexity of the LPR this last date (in particular) seems to me to be extremely optimistic.

8. I take the opportunity at this stage to refer to the consultation response of CDC in November 2019 to the SA/SEA accompanying NP2. The relevant officer stated:

“It is accepted that the SEA process is iterative. However, it is important to note that the revised Southbourne Neighbourhood Plan (NP) will be examined against policies in the Chichester Local Plan Review rather than the existing adopted Local Plan. The allocation of sites in the revised NP will need to be in conformity with the Local Plan Review as will other NP policies.

As currently written the emphasis in the scoping report appears to be on policies in the adopted Local Plan. CDC asks that this is revised to take account of policies in the Preferred Approach Local Plan Review, albeit it is agreed these are still emerging and subject to change. In order to ensure the draft neighbourhood plan accords with the policies and housing requirements of the Local Plan Review, the submission version of the draft NP should not be submitted to CDC until after the adoption of the Local Plan Review when the policies will be in their final format and at that stage will form part of the development plan.”

Thus CDC was advising the PC not to submit NP2 in advance of the adoption of the LPR, and assuming that this examination would take place in the context of an adopted LPR. This advice and assumption seem to me to be not only prescient, but correct. I explain my reasons for this comment below.

The submission plan (NP2)

9. In its submitted form, NP2 is a hybrid. It was proposed as “largely a replacement of the made Plan”, with 3 policies of the made NP1 retained, with minor updating, for the original plan period to 2029. Appendix A contained what was called a “Modification Proposal Statement” setting out proposed amendments to Policies 2, 3 and 8.
10. In my Note 1 dated 5 October 2021 I set out my reasons for concluding that the above approach would not be lawful. CDC and the PC responded on 8 October, disagreeing with Note 1. In my Note 2 dated 12 October I retained my position, but suggested a solution of incorporating the previously “retained” policies as

policies within NP2, all policies having the same plan period of 2019-2037. This way forward was agreed, and proposed amendments were put forward, essentially incorporating Policies 2, 3 and 8 as Policies SB23-25 in NP2. Consultation on a document (SBPC001) setting out these amendments was undertaken by CDC for a three week period to 6 December 2021. Eight representations were received.

The evolution of NP2 and consultation

11. The LP was adopted in July 2015, and CDC commenced a review process in June 2017. As the Consultation Statement states (1.11) *“Southbourne Parish Council became aware that its NP would require review to bring it in line with the strategic requirements of the emerging Local Plan review”*.
12. Work on the review of NP1 (i.e. NP2) commenced in March 2018 with the help of the Neighbourhood Plan Steering Group (NPSG). The process of evolution of NP2 and the consultation were set out fully in the Consultation Statement. It sets out the three stages of consultation from December 2018 to January 2021. During Stage 2, residents were encouraged to consider three possible site options to accommodate the 1,250 homes referred to in the LPR, to the east, to the west, or using a combination of small sites. The last of these was not supported. In Stage 3, December 2019, the remaining two options (to the west or to the east) were displayed. Of the 226 completed questionnaires (actually 236), 51% preferred the east, 34% preferred the west, and 15% had no preference. It is stated (3.11) that this was *“a key consideration when the SPC made the decision to allocate land to the east in the Pre-Submission Plan”*.
13. Regulation 14 consultation was undertaken between 17 August – 12 October 2020. This was extensively advertised, though due to Covid it was not possible to hold any public consultation exhibitions or events. 145 responses were received (including 122 from residents). Changes were made to the Plan set out in paragraph 5.26.

Assessment of consultation process

14. It is apparent from the regulation 16 responses that some residents are critical of certain aspects of the consultation process. In my view, such consultation processes can seldom be perfect. I find that, overall, the PC went to extensive lengths to try and engage the local community, and that the consultation process was adequate.
15. The stark fact, however, and this is not the fault of the PC, is that the level of response was very low. This is by no means unusual in neighbourhood planning. But the present circumstances are most unusual, i.e. involving a major decision as to the future size of the village (“the transition of a large village to a small town”: NP2, 5.23), and a binary decision as to east versus west. Assuming the 236 questionnaires were all by residents, less than 2% decided in favour of the chosen option.

Regulation 16 consultation

16. Consultation on the Submission NP was carried out over the period 8 April – 3 June 2021. Representations were made by 103 individuals and bodies (many of whom made multiple representations). I have carefully considered all these representations.

Decision to hold a hearing

17. The SB2 allocation (Land East of Southbourne Village) was by far and away the most controversial topic. In the light of the fact that, if developed, it would increase the number of households in the village by over 50%, and it is described in paragraph 5.23 of NP2 as a “step change for the village not dissimilar to the transition of a large village to a small town”, this is not at all surprising.
18. From an early stage, I came to the view that a hearing would be required. In the language of the statute, this would be required to enable me to undertake

adequate examination of the issues raised by SB2, and also to ensure that those promoting SB2, and those objecting to it, might have a fair chance to put their cases. I announced my decision to hold a hearing on 12 November 2021. Apart from CDC and the PC, I invited a representative(s) for the promoters of SB2, representatives of those local residents who had submitted representations objecting to SB2, and the Church Commissioners for England (who control a large site broadly representing the western option).

19. The hearing was held on 14 January 2022. Owing to Covid circumstances, it was decided to hold it virtually, and CDC managed the process expertly. I believe that all those who wished to felt able to make their views known, and no-one suggested to the contrary. I found the hearing to be a vital part of the examination as a whole.
20. I visited the area, unaccompanied, on 18 October 2021.

Principal statutory requirements

21. The principal relevant sources are sections 38A-38C of the Planning and Compulsory Purchase Act 2004, and Schedule 4B to the Town and Country Planning Act 1990 (as amended).
22. A neighbourhood plan must set out policies “*in relation to the development and use of land*” in the neighbourhood area. NP2 meets this requirement. It must specify the period for which it is to have effect. The plan period for NP2 is specified as 2019-2037. It must not include provision in relation to “*excluded development*”: this is complied with. It must not relate to more than one neighbourhood area: this is complied with.
23. Under Schedule 4B the principal task for the examiner is to consider whether the plan meets the “Basic Conditions”. A neighbourhood 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,*
- (d) *the making of the plan contributes to the achievement of sustainable development,*
- (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),*
- (f) *the making of the plan does not breach, and is otherwise compatible with, retained EU obligations.*

24. The national policies and advice containing guidance are principally the NPPF and PPG on neighbourhood plans. The policy/advice most relevant to NP2 is:

- (i) the advice in PPG as to bringing forward a neighbourhood plan before an up-to-date local plan is in place. The reasoning and evidence in the emerging local plan is likely to be relevant for the consideration of the basic condition. This position has been considered in a number of cases in the courts, not least DLA Delivery v. Lewes DC (2017) EWCA Civ 58;
- (ii) the stated purpose of neighbourhood plans to give communities the ability to choose where they want new homes (41-001-20190509);
- (iii) the advice, in the context of the viability of plans, that more detailed advice may be necessary for key sites on which the delivery of the plan relies.

Assessment of policy SB2: land east of Southbourne Village

25. As already noted, this proposed development would increase the number of households in the village by over 50%, and it would “result in a step change for the village not dissimilar to the transition of a large village to a small town”: 5.23. It would involve the substantial expansion of the village beyond its present limits. Not surprisingly, the implications of SB2 permeate much of the entire

plan, as indicated (by way of example only) in the Foreword, in the Policies Map, SB4, SB5, SB6, SB13 and accompanying maps.

26. I turn first to Basic Condition (e).
27. It is apparent from the Foreword onwards, that SB2 is seen, quite obviously, as the key element of NP2. Further, and again quite obviously, it is proposed Policy AL13 of the LPR that has driven, and underpins, SB2 as paragraph 5.19 states:

This policy serves to fit between eLP Policy AL13 of the Preferred Approach Local Plan and the comprehensive master planning of the land as required by Policy 7 of the CLPKT and Policy S32 of the eLP. Policy AL13 proposes the role of this Plan Review is to allocate land for a minimum of 1250 dwellings along with education, community, employment and green infrastructure and open space uses.

28. It was contended at the hearing by the PC, CDC and the SB2 promoters that, while the allocation of 1,250 homes was a quantum leap over the LP allocation, the strategy underlying the allocation was consistent with the LP strategy (described at paragraph 4 above). I do not accept that contention. The modest level and nature of the allocation in Policy 20 reflected and gave effect to the east-west corridor and settlement hub strategy set out earlier in the LP.
29. I find that SB2, in its allocation of 1,250 homes by way of a very significant expansion of the village, incorporates a quite different strategy. The response and advice of CDC in November 2019 were correct. The development plans officer of CDC accepted at the hearing that the two levels of development were of a “different nature” and that the SB2 allocation was “outside the parameters of the LP”. I therefore conclude that SB2, the key policy of NP2, is quite inconsistent with the LP.
30. The statutory test in Basic Condition (e) is whether the neighbourhood plan, taken as a whole, is in general conformity with the strategic policies of the local plan. It was common ground that SB2 is central to NP2. That is clear from NP2 as a whole, not least its Foreword. I asked at the hearing whether, in the event

that SB2 fell, anyone would contend that NP2 should proceed without it. No-one so contended. The PC representative was quite clear: “*Without SB2 we don’t have a neighbourhood plan*”. I agree. I therefore conclude that NP2 does not comply with Basic Condition (e).

31. In so concluding I bear in mind all the following. The case law referred to in paragraph 24 above (the fact that the plan period of the neighbourhood plan in that case, 2015-2030, did not coincide with or even overlap the plan period of the local plan, 1991-2011, was important. Here, the NP period 2019-2037 substantially overlaps with that of the LP, 2014-2029); the fact that, without a made neighbourhood plan, CDC will continue to come under significant pressure from a number of planning applications proposing, cumulatively, significant development; comparable cases (I note that at Blandford Forum the examiner, faced with an emerging local plan, found that the significant neighbourhood plan allocation was “*fully in accord with the local plan*”: report paragraph 9.3. This could not possibly be said in relation to NP2.).
32. I note that, in its regulation 16 Response, CDC noted that “*as yet the overall development strategy for the...LPR has not been agreed*”. It went on to advise that “*there may be a need for the Parish Council to undertake an early review of the NP once final numbers for the submission version of the LPR are agreed or if the figures are amended through the subsequent examination of the LPR. As a result this will potentially require the PC to undertake further work including with the wider local community prior to redrafting the NP, along with the Strategic Environment Assessment (SEA) and Habitats Regulations Assessment (HRA) work to date, and to review other relevant evidence that supports the proposals in the draft plan*”.
33. As I said at the hearing, I do not understand or accept this approach. If NP2 proceeded, it might be made towards the middle of this year. Any planning applications for development within the SB2 allocation would then fall, in principle, to be granted. This would be at a stage when the strategy for Southbourne in the LPR will remain not agreed.

Conclusion

34. I have concluded above that NP2 does not comply with Basic Condition (e). Pursuant to paragraph 10(3)(a) of Schedule 4B to the Town and Country Planning Act 1990, I do not consider that I could recommend any modifications which secure that NP2 would meet Basic Condition (e). Pursuant to paragraph 10(2) I therefore **Recommend that the proposal for NP2 is refused and therefore cannot recommend that it proceeds to referendum.**
35. It is therefore neither necessary nor appropriate for this report to address the other Basic Conditions, or to address the other elements of NP2 apart from SB2 and its implications.
36. I have reached this conclusion and recommendation with great reluctance. I am acutely aware of the very substantial time and effort that all those involved in NP2 have put in to the Plan. It would seem unfortunate that the advice of CDC in November 2019 was, for reasons unclear to me, not acted on. However, the statutory framework is clear, and the non-compliance with Basic Condition (e) is also clear.

Christopher Lockhart-Mummery QC

Examiner

10 March 2022