

Battle Civil Parish Neighbourhood Plan 2019-2028

Submission Version

A Report to Rother District Council on the Examination of the Battle
Civil Parish Neighbourhood Plan

John Slater BA (Hons), DMS, MRTPI

John Slater Planning Ltd

johnslaterplanning@gmail.com

28th May 2021

Contents

	Page
Executive Summary	3
Introduction	4
The Examiner's Role	4
The Examination Process	5
The Consultation Process	6
Regulation 16 Consultation	7
The Basic Conditions	7
Compliance with the Development Plan	8
Compliance with European and Human Rights Legislation	9
The Neighbourhood Plan: An Overview	9
The Neighbourhood Plan Policies	12
The Referendum Area	26
Summary	26

Executive Summary

My examination has concluded that the Battle Civil Parish Neighbourhood Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- Simplifying the purpose of the development boundary policy.
- In the site allocation policy, refer to the capacity of sites as delivering “approximately x units” rather than “up to x units”.
- Removing the requirement that all development should include affordable housing and shared ownership flats.
- Deleting the local connection policy.
- Removing the requirements for development within the development boundary to have to be well related to local facilities.
- Deleting three out of the four proposed green gaps and clarifying the basis for decision-making, by referring to the impact on the openness of the gap.
- Removing the presumption against the amalgamation of shop units.
- Clarifying when development within the AONB needs to address particular issues.
- Differentiating the heritage policy between those that cover designated heritage assets and non-designated heritage assets
- Deleting the local retail and employment policy and also the development contribution policy, as they effectively duplicate existing policy.
- Re-title Assets of Community Value policy as Community Facilities.

The referendum area does not need to be extended beyond the Plan area.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, that allows local communities to create the policies that will shape the places where they live and work. A neighbourhood plan provides the community with the opportunity to allocate land for particular purposes and to prepare the policies that will be used in the determination of planning applications in their area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the policies of the Rother Local Plan Core Strategy, adopted in September 2014, and the Development and Site Allocations Local Plan, adopted in December 2019. Decision makers are required to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been undertaken under the supervision of Battle Town Council. A Neighbourhood Plan Steering Group was appointed to undertake the Plan's preparations made up of Town Councillors and local residents.
3. This report is the outcome of my examination of the Submission Version of the Battle Neighbourhood Plan. My report will make recommendations, based on my findings, on whether the Plan should go forward to a referendum. If the Plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by Rother District Council.

The Examiner's Role

4. I was appointed by Rother District Council in November 2020, with the agreement of Battle Town Council, to conduct this examination.
5. In order for me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 42 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of my neighbourhood planning consultancy, John Slater Planning Ltd. I am a Chartered Town Planner and a member of the Royal Town Planning Institute. I am independent of Rother District Council and Battle Town Council and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
6. Under the terms of the neighbourhood planning legislation, I am required to make one of three possible recommendations:
 - That the Plan should proceed to referendum on the basis that it meets all the legal requirements.

- That the Plan should proceed to referendum, if modified.
 - That the Plan should not proceed to referendum on the basis that it does not meet all the legal requirements
7. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Battle Neighbourhood Plan area.
 8. In examining the Plan, the Independent Examiner is expected to address the following questions
 - Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
 - Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and also that it must not cover more than one Neighbourhood Plan area.
 - Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Localism Act and been developed and submitted by a qualifying body?
 9. I am able to confirm that the Plan, if modified by my recommendations, only relates to the development and use of land, covering the area designated by Rother District Council, for the Battle Neighbourhood Development Plan, on 13th April 2015.
 10. I can also confirm that it does specify the period over which the Plan has effect, namely the period from 2019 up to 2028.
 11. I can confirm that the Plan does not contain policies dealing with any “excluded development”.
 12. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
 13. I am satisfied that Battle Town Council as a Parish Council can act as a qualifying body under the terms of the legislation.

The Examination Process

14. The presumption is that the Neighbourhood Plan will proceed by way of an examination of written evidence only. However, the Examiner can ask for a public hearing in order to hear oral evidence on matters which he or she wishes to explore further or if a person has a fair chance to put forward a case.
15. I am required to give reasons for each of my recommendations and also provide a summary of my main conclusions.
16. I am satisfied that I can properly examine the Plan without the need for a hearing.

17. I carried out an unaccompanied visit to Battle on the morning of 23rd March 2021. I initially drove to Netherfield and saw for myself the housing allocation sites, the open spaces and the community facilities. I then returned to Battle and spent some time driving around the town and Telham, visiting the three allocation sites including seeing the Blackfriars site from a number of vantage points. I paid particular attention to the four proposed green gaps and I saw the areas where the development boundary was being proposed to be extended as well as the parts of the settlement boundaries when representations had been made at Regulation 16 stage. I visited each of the proposed local green spaces and was able to appreciate the undoubted quality of the town centre conservation area. I have previously visited Battle Abbey and the Senlac battleground in 2019. I was able to appreciate the parish's countryside, falling within the High Weald Area of Outstanding Natural Beauty and also was able to experience the linear form of development along the A2100 towards Hastings.
18. Following my site visits, I prepared a document seeking clarification on a number of matters, which I sent to both the Town Council and Rother District Council, entitled Initial Comments of the Independent Examiner, dated 25th March 2021. I received responses from the Town Council and from Rother District Council on 28th April 2021.
19. Following receipt of a copy of the District Council's response, the Chairman of the Steering Group sent me an email, setting out her response to the District Council's views regarding the green gap policy which elaborated on the published material. As I had not invited a further round of rebuttal or comments, I decided that it would only be equitable if I offered the District Council the same opportunity to respond to any of the Town Council's comments. These were received on 14th May 2021. I have asked that all the responses be placed on the respective websites.

The Consultation Process

20. Upon the designation of the neighbourhood area, a steering group was formed in July 2015. One of the first actions was a call for sites issued in November 2015.
21. Early in 2016 a public survey was distributed to residents by post in April and initial public consultation took place between 27th and 29th April.
22. Work continued throughout 2018 and there were regular reports on progress through press articles. In May 2019 a presentation of potential preferred development sites was presented to over 158 attendees at Battle Memorial Hall. Again, there was extensive press coverage of the work being undertaken on the plan during this period.
23. All this activity culminated with the preparation of the Pre-Submission version of the Neighbourhood Plan which was the subject of a six - week consultation, known as the Regulation 14 consultation, which ran from 20th January to 1st March 2020. In total 115 representations were received from local residents, 50 responses from a proforma distributed, not by the Town Council, in Netherfield. 11 responses from

statutory or similar bodies and 11 submissions from site owners or developers. These are fully set out in Chapter 3 of the Consultation Statement.

24. I am satisfied that the Town Council has actively sought the views of local residents and other stakeholders and their input has helped shape the Plan.

Regulation 16 Consultation

25. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation, which took place over a nine-week period, between 4th December 2020 and 29th January 2021. This consultation was organised by Rother District Council, prior to the Plan being passed to me for its examination. That stage is known as the Regulation 16 Consultation.
26. Responses were received, from: Natural England, Southern Water, Kent Sustainable Places, Rother District Council, Highways England, Historic England, National Grid, Wealden District Council, SGN Networks, Rother Greenways, East Sussex County Council, Crowhurst Parish Council, Netherfield Residents Opposition Group, 1066 Cycle Club, Kember Loudon Williams on behalf of Mr Lovering and G Lines, Greenhayes Planning on behalf of the owners of Rosecourt, Alex Yearsley on behalf of Wates Development and ASP Planning and Development Consultants on behalf of Beech Estates and from approximately 28 local residents.
27. I have carefully read all the correspondence and I will refer to the representations where relevant to my considerations and conclusions in respect of specific policies or the Plan as a whole.

The Basic Conditions

28. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what are known as the Basic Conditions as set down in legislation. It will be against these criteria that my examination must focus.
29. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -
- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
 - Will the making of the Plan contribute to the achievement of sustainable development?
 - Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
 - Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
 - Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?

Compliance with the Development Plan

30. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Rother Local Plan Core Strategy adopted on 29th September 2014. I am aware that there are also saved policies of the Rother District Local Plan, adopted on the 10th July 2006. The other adopted Local Plan is the Development and Site Allocations Local Plan which was adopted on 16th December 2019`
31. The overall spatial strategy is set out in Policy OSS1 of the Core Strategy and states that Battle should provide for some development that helps maintain its market town role and is consistent with its environmental constraints and settings. Policy OSS2 establishes the principle of continuing with development boundaries to differentiate between built up area and the countryside beyond and it sets criteria for reviewing those boundaries. Policy OSS3 sets criteria for assessing sites and sets out factors to be taken into consideration in planning allocations and assessing planning applications.
32. There is a specific chapter dealing with development in Battle, and the relevant policy in Policy BA1 requires the provision of between 475 and 500 new homes, through development within the development boundary and “modest peripheral expansion” whilst respecting the town’s setting within the AONB. The policy seeks to support the vibrant and distinctive town centre.
33. The village of Netherfield has its own development boundary set by the 2006 Local Plan but is classed in the Core Strategy as a rural village, which collectively are expected to deliver 1,670 additional dwellings and within Figure 12 it sets the requirement to provide 55 new homes in the period 2011 to 2028. The Policy for the countryside is set out in Policy RA2 which seeks to strictly limit new development to that which supports local agricultural, economic or tourism needs. The policy for new buildings is set out in more detail in Policy RA3 including new buildings and the conversion of traditional historic buildings.
34. The adopted Development and Site Allocations Local Plan sets a range of development management policies and specific policies for maintaining Landscape Character as set out in Policy DEN1 and a specific policy for the High Weald AONB, in Policy DEN2 and the District Council’s strategic gaps policy as set out in Policy DEN3. That plan also reviewed and reduced the extent of the strategic gap to the south of the town of Battle. There are no housing or employment allocations in the DaSA plan for the parish.
35. My overall conclusion is that the Neighbourhood Plan, apart from where I have noted in the commentary on individual policies, is in general conformity with these strategic policies in the Rother Core Strategy.

Compliance with European and Human Rights Legislation

36. Rother District Council issued a Screening Opinion, in a letter dated 11th March 2019, which concluded, after consulting the 3 statutory bodies, that a full strategic environmental assessment, as required by EU Directive 2001/42/EC, which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would be required.
37. In November 2020 the Town Council published a Strategic Environmental Assessment to accompany the submission version of the plan. I am satisfied that the assessment has followed the required methodology, including an assessment of alternative sites and a sustainability assessment of the policies within the plan. Table 6 of the assessment includes a summary of the effects of the plan against a number of SEA topics and concluded that they had all either positive or minor positive effects.
38. The District Council, as the competent authority, issued a screening report under the Habitat Regulations in August 2016 and this was updated in September 2018. This screening assessed the then emerging Development and Site Allocation Local Plan and the neighbourhood plans being prepared in the district and concluded that the Battle CP Neighbourhood Plan would be unlikely to have any significant adverse effects upon the European protected sites, namely Pevensey Levels SAC and Ramsar Site, the Dungeness, Romney Marsh and Rye Bay SPA and Ramsar site.
39. I am satisfied that the basic conditions regarding compliance with European legislation, including the more recent basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the Plan has no conflict with the Human Rights Act.

The Neighbourhood Plan: An Overview

40. I must start by congratulating the Steering Group and the Town Council on reaching this important stage in the preparation of the neighbourhood plan for the Civil Parish of Battle. The examination is a culmination of many years hard work.
41. This is a plan that clearly reflects and values the historic character of the town of Battle and the parish's other settlements, Telham and Netherfield which are set in the beautiful High Weald countryside. The plan sets out a vision for the parish which places great weight on the protection of the countryside and the unique heritage that the town and its surrounding countryside enjoys.
42. The strategic planning context for the preparation of the neighbourhood plan has been set by the now somewhat dated, Rother Core Strategy, which was prepared in the years, prior to its adoption in 2014. The housing numbers are now somewhat historic and the housing allocations in Policy HD2 have responded, by delivering the housing numbers required at that time. Going forward, work on the new local plan will update the housing requirements for Rother district as a

whole, and will include policies as to how that assessment of housing need will be distributed to specific settlements and parishes. Part of my consideration on whether the plan will deliver sustainable development, is whether it will deliver the housing requirements of present and future generations.

43. I did test whether Rother's planners felt in a position to indicate a more up-to-date housing figure for the neighbourhood plan area, to enable the plan to allocate the housing sites to meet such a need. I was advised that the District Council was currently not in a position to issue such a figure due to the position it finds itself in terms of preparing the new local plan. I am satisfied that by meeting the housing figures set in the adopted local plan, the Town Council has found a reasonable basis for making its housing allocations and it will meet the specific basic condition regarding general conformity. However, once the new housing figures emerge from the work the District Council is undertaking in the next year, it will be important for the Town Council to take the initiative and review this neighbourhood plan, otherwise it will be shown that its policies for new housing, will quickly be seen as out of date.
44. The ability of a neighbourhood plan to allocate housing sites is an important weapon of the neighbourhood planning armoury, but as many communities have found, making such decisions is never universally popular, either from those who oppose the proposals in their immediate locality or from those who are promoting their own sites. I believe that the approach adopted by Battle Town Council has been robust and has been based on objective criteria, particularly having regard to the sensitive landscape setting.
45. The neighbourhood plan has provoked a degree of opposition to the level of housing being promoted in Netherfield. However, I do need to point out that it was not the neighbourhood plan that established the housing requirements to be accommodated, but rather the figure is found in the adopted Core Strategy that already covers that village. If the neighbourhood plan had failed to meet those housing figures, it would have been difficult to conclude that it was in general conformity with the strategic policies in the adopted local plan.
46. I know that the Town Council has chosen not to make employment or retail allocations. That is its prerogative, although it does mean that planning proposals that come forward have to be judged against district wide policies and the community has lost its ability to make decisions as to where those employment and retail allocations should go. It should be noted that the Rutherfords allocation made by Policy EM4 in the 2006 Local Plan remains extant.
47. I have had regard to the wide range of comments made by the public at the Regulation 16 stage, as well as the Town Council's responses. I do not need to respond to every representation but I do wish to mention the correspondence from residents who are concerned regarding the possible loss of parking on land opposite Caldbec House. I do not consider the proposals in the plan, to designate the land as local green space, will be a material factor in how this essentially civil matter finally plays out and indeed it is an issue, which is in reality, unrelated to the neighbourhood plan.

48. In a number of places, the plan's policies raise expectations regarding the need for developer contributions to be made. Whilst the need for the development to fund the infrastructure based on the impact of that development is undisputable, it is important for the Town Council to appreciate that there are legal tests which are set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which requires that any planning obligation must meet the following three tests, namely that it is:
- A) necessary to make the development acceptable in planning terms
 - B) directly related to the development and
 - C) reasonably related in scale and kind to the development.
49. The plan makes a number of references to the accompanying document, Battle Civil Parish Design Guidelines. This document, along with the Character Appraisal, provides evidence that there is a sound understanding of the character and architectural characteristics of the area. I agree with the District Councils conclusion that it is a thoughtful and well set out document. Whilst there are a number of minor issues that have been raised by the District Council, such as extending the "masterplanning" advice to any new housing development, rather than just the Blackfriars, (which is already largely approved in any event), I do not consider any of these raise issues that require me to make recommendations as a result of the need to meet basic conditions.
50. As this is supplementary design guidance, rather than part of the development plan, it is not subject to the degree of examination scrutiny as the plan itself and does not need to meet the legal tests. In that respect, I will not be making any formal recommendations but the Town Council may feel that further discussion with the District Councils' planners may allow improvements to be made. I also understand that the Town Council wishes to make minor adjustments to the Design Guidelines and in the spirit of the above, I consider that it would be appropriate for these to be introduced, following the conclusion of this examination and prior to the publication of the referendum version of the plan.
51. Notwithstanding the comments regarding housing levels, I am satisfied that the neighbourhood plan as a whole, balances the need to meet the housing requirements of the plan area through housing allocations, whilst at the same time seeking to protect the landscape setting of the town and its other settlements within the High Weald AONB. It contains strong policies to protect the historic character of the town and the neighbouring countryside and its heritage assets, both designated and non-designated and protects important retail and tourist facilities that are part of the economic base for the town. The plan recognises the community facilities and local green spaces that are valued by the local community with policies to prevent their unnecessary loss. Overall, I believe the neighbourhood plan balances the social, economic and environmental threads of sustainable development and I am satisfied that it meets the basic condition regarding the delivery of sustainable development, particularly if my recommendations regarding the majority of the green gaps are adopted.

52. There are a number of cases where I have had to recommend changes to ensure that individual policies have regard to the Secretary of State's policy and advice with respect to specific issues. I have in certain cases recommended that individual policies be deleted from the plan, especially where the plan is effectively duplicating existing policy which covers the parish. However, my overall assessment of the plan, taken as a whole and if modified in accordance with my recommendations, has had regard to the policies and advice from the Secretary of State.
53. My recommendations have concentrated particularly on the wording of the actual policies against which planning applications will be considered. It is beyond my remit as examiner, to comprehensively recommend all editorial changes to the supporting text. Such changes are likely as a result of my recommendations, in order that the Plan will still read as a coherent planning document.
54. Following the publication of this report, I would urge the Town Council and Rother planners to work closely together to incorporate the appropriate changes which will ensure that the text and policies of the Referendum Version of the neighbourhood plan accord with my recommended modifications. There will also need to be editorial matters to resolve such as policy numbering, as a consequence of my recommended changes. It can also address other drafting issues raised by the Town and District Councils, which are not matters that I need to address in terms of complying with the basic conditions and other legal requirements.

The Neighbourhood Development Plan Policies

Policy HD1- Development Boundaries

55. Policy OSS2 of the Rother Core Strategy reinforces the principle of the use of development boundaries across the district. The Battle Neighbourhood Plan has reviewed the development boundaries around the urban areas of Battle and Telham and the village of Netherfield, which were last reviewed in the 2006 Local Plan. This policy has enlarged the boundary in five locations around Battle as shown in Map 1 and the south west corner of Netherfield, which are shown on Map 2, which reflects the planning permissions and proposed housing allocations in the neighbourhood plan. I am satisfied that the inclusion of these additional areas correctly reflects the criteria set for the review of settlement boundaries set down in Policy OSS2.
56. Representations have been made regarding the inclusion of some areas within the settlement boundaries both in Netherfield and Battle and also some Regulation 16 representations relating to the exclusion of some sites from the built-up area. I am satisfied that the case has been justified, either on the basis of the planning history, the housing allocations or the plan's assessment of the changing character of an area, which justifies the changes proposed.
57. At this stage, having regard to the position regarding the need to meet the housing figures set out in the adopted local plan, there is no need for me to

consider amendments to the boundary to further enlarge the built-up area. However, if in future, the housing requirements to be delivered within the plan area, were to change, which is not an unlikely scenario, that will lead to a need to review the neighbourhood plan or it would become an out-of-date document. Such a review may well need to address whether further changes are needed to the development boundary.

58. There are some issues relating to the drafting of the remainder of the policy. The statement that all new housing development should take place within the defined boundaries, is not an accurate statement as Policy RA3 of the Core Strategy does allow for the construction of new dwellings outside the boundaries in “extremely limited circumstances” as set out in section iii of the policy. The next sentence is a statement of fact, rather than policy, noting that the parish lies within the High Weald AONB.
59. The local plan policies which are relevant are set out in the penultimate sentence, setting out the development allowable in the countryside. The development plan needs to be read as a whole and it is unnecessary to say in one policy that a proposal will only be acceptable if it complies with other development plan policies.
60. My amendments will simplify the policy so that it refers to the new revised development boundaries and signpost the policies, which apply to planning proposals beyond the limits of development.

Recommendations

At the end of the first sentence “for the purpose of identifying policies which relate to the acceptability, or otherwise of development proposals falling within or outside the development boundary, as set out within the development plan.”

Delete the remainder of the policy

Policy HD2 – Site Allocations

61. The Rother Core Strategy, in Policy BA1, sets out the housing requirements for Battle and establishes that the town needs to deliver between 475 and 500 net additional dwellings over the period 2011 to 2028. The figure for Netherfield as set out in Figure 12 is 55 dwellings. The District Council has provided me with an update to the table on page 40 which as of 1st April 2020 which shows a residual requirement of 14 units to be provided in Battle and 23 for Netherfield after taking into account completions and permissions granted. Much of the first paragraph sets out the overall housing requirement at the time of the submission of the plan and is effectively a statement of fact rather than neighbourhood plan policy. I will propose that it be removed from the policy into the supporting text. The final two sentences refer to infrastructure requirements which I believe would be better located within the section of the policy setting out the criteria for the allocation sites.
62. The neighbourhood plan’s largest housing allocation is at Blackfriars which has been a long-standing allocation, dating back from the 2006 Local Plan. The relevant policy was Policy BT2 which was expected to deliver at least 220

dwelling. I now understand the outline planning permission for 200 houses was granted on 18th December 2020 with a reserved matters approval being given recently in April 2021. The remaining 20 units will be in a separate development in the north-east corner of the site. I also understand that public sector funding has been achieved to deliver the link road which gives added confidence that the site will now be built out. Some representations offered the view that the site was not deliverable.

63. Whilst it could be argued that the site is now a commitment as it has planning permission, until such time as the planned development is completed alternative proposals could come forward and hence a development plan policy would assist the consideration of such proposals. I am aware that there was a planning consent which had been granted in 2007. I note that some Regulation 16 representations indicate that the capacity of the site could be increased and also the fact that the earlier outline consent was for up to 245 dwellings. They point out that additional development on Blackfriars could mean that other allocation sites need not be developed. However, the District Council's response to my Initial Comments question has satisfied me that because of the constraints of the site a higher figure would not be deliverable.
64. I am satisfied that the site selection exercise has been carried out on an objective basis, having considered the wide range of sites, both SHLAA sites as well as sites which were put forward to the Town Council through its call for sites. That work has been carried out in a comprehensive manner by AECOM and in my view meets the requirements set out in the Planning Practice Guidance in terms of how neighbourhood plans should be allocating sites.
65. I am concerned that the capacity of the sites is quoted as "up to x dwellings". That would mean that the sites could come forward at a very low density and still be in compliance with the neighbourhood plan policy. This could result in the sites not being used in a way that makes best use of developable land. If replicated, that could have a consequence that the neighbourhood plan would not be able to meet the level of housing expected by the Core Strategy. The number of units achievable on the site will also be dependent, to certain extent, on the mix of units.
66. I have noted the view of the District Council that the capacity of the Glengorse site was more likely to be closer to 15 rather than 20. Whilst the Town Council now would accept that lower figure, I have been offered no evidence to how the District Council reached its view that 15 would be a more appropriate number and again the form and mix of the development could affect the capacity. My recommendation still allows a degree of flexibility in the site's ability to deliver new homes.
67. The other policy requirements for the allocated sites do not need to include the need to be subject to compliance with other policies in the plan as they will already apply to development proposals, whether allocated or not. Similarly, a planning policy cannot require *agreement* to be reached between the site owner and RDC, although clearly that would be a desirable scenario. A site owner / developer will

submit to proposals for the development they are promoting and in the first instance RDC as planning authority, will agree or otherwise to the proposal.

68. I have no other concerns regarding the criteria that applied to the five allocated sites, although in the case of Blackfriars, most of the details have already been approved.

Recommendations

Delete the first paragraph

In the second paragraph, replace “supports this requirement and seeks to allocate” with “allocates”

At the end of each of the bullet point sites, replace” up to” with “approximately”

At the end of the 4th paragraph, after “development plan” insert “and the following criteria”

Delete the fifth paragraph

In 1. Delete” and “and also “Policy HD1 and”

At the end of 6. Delete ‘and”

At the end of 7. Insert “and”

Add “8. The provision of the necessary infrastructure required, as a result of the development, to make it acceptable, with special attention to education provision and flood prevention (fluvial and pluvial)”

Policy HD3 – Housing Mix

69. As written, the policy implies that *all* developments must include affordable housing and shared ownership flats. The first point to make, is that shared ownership properties are a form of affordable housing, according to the definitions of affordable housing in the glossary of the NPPF. This is a point also made by the District Council. I do not know why the policy would require shared ownership accommodation to be in the form of flats rather than any other form of accommodation, including shared ownership houses. I believe that the Town Council now accepts that reference to just shared ownership flats is not appropriate.
70. Affordable housing will only be required on schemes of 10 units or more within Battle and in the AONB, outside the urban area, on units of six units or more. Therefore, the first sentence the policy requires reference to the level of affordable housing set by Policy DHG1 of the Development and Site Allocations Local Plan.
71. There will be some situations, where insisting on the inclusions of bungalows would not be appropriate or desirable, for example, in streetscene terms or to comply with a desire to be integrating the development into surrounding development. Similarly, some locations may not, by virtue of their location, be suitable for sheltered accommodation. I propose to change the emphasis from will “be expected” to will “be encouraged, where appropriate”.

Recommendations

In the first sentence replace “within the Development boundary of Battle Civil Parish will be permitted where they include” with “will be expected to deliver”

After “affordable housing” replace the rest of the sentence with “in accordance with the requirements set by Policy DHG1 of the Development and Site Allocations Local Plan which may include shared ownership homes”

In the second sentence, replace “expected” with “encouraged to, where appropriate.”

Policy HD4 – Quality of Design

72. I have no comments to make on this policy which should form a strong basis for assessing planning applications.

Policy HD5 – Protection of Landscape Character

73. The first sentence of the policy seeks to apply to all development proposals and it will be over onerous on both the applicant and indeed decision-makers to impose such a requirement on all planning applications. I consider that the requirement should only be triggered, if, by virtue of the scale of the development, or its position, would mean that the development has the potential to have an impact on the landscape.

74. The requirement in the policy is to integrate new landscape features at an early stage of the design should be required. The drafting policy states that it “will happen” rather than being “should happen”. A similar change is required to consider and interpret the landscape character of the location.

75. I do not believe this is an appropriate policy to be addressing the issue of development within strategic or green gaps. Policy DEN3 of the DaSA local plan refers to effective landscape management to strengthen and reinforce their role as protecting landscape areas. I will address this issue in my comments in respect of Policy HD8.

Recommendations

In the first sentence, replace “will” with “which have the potential to have an impact on the landscape should”

In the second sentence, replace “will” by “should”

In the third sentence, replace “will have considered and correctly interpreted” with “should consider and correctly interpret”

Delete 6.

In the penultimate paragraph, replace “required” with “expected”

Policy HD6 – Local Connection

76. I do not consider a policy that seeks to control who will be offered the chance to occupy an affordable home in the parish, falls within the definition of being a policy for “the use and development of land”, which is the requirement that the

neighbourhood plan policy should cover. The allocation of social housing is responsibility of the Housing Authority through its Allocation policy, which has to consider levels of housing need. As such I will be recommending that this policy should be deleted. I understand that the Town Council would reluctantly support its removal.

Recommendation

That the policy be deleted.

Policy HD7 – Integration of New Housing

77. Essentially this policy is to ensure that new housing fits in well with the surroundings. I have no issues with its design aspirations.
78. In terms of local connections to facilities, this is, to a large extent, already achieved through the neighbourhood plan adopting a development boundaries policy, where residential development is by its definition, deemed to be appropriate. To require an additional locational criterion could create uncertainty as to whether a property within the development boundary, is considered to be well connected to the community and the shops and related facilities.
79. Quite frankly, I do not know what the second sentence of the policy is seeking to achieve – is it requiring infrastructure to be visually integrated with their surroundings and well-connected? I do not see how decision-makers can be expected to comply with this requirement and pay “particular attention to flood prevention and car parking/congestion in the parish”. I will recommend that this element of the policy be deleted.

Recommendation

Delete all the policy after “surroundings”

Policy HD8 – Protection of the Green Gaps Between Settlements

80. This has proved to be one of the more contentious policies in the plan. It is clear to me that this is an important policy to the Steering Group members. The policy seeks to differentiate itself from the gap policy used in Rother District Council’s DESA Local Plan, which refers to “strategic gaps”, by referring to them as “green gaps”.
81. However, there are large parts of the drafting of the neighbourhood plan policy which are close to the wording used in Local Plan Policy DEN3, specifically that within the gaps “*development will be carefully controlled*”, the neighbourhood plan policy has the same objectives as the Policy DEN3 but are set out within the policy rather than the supporting text, and also both policies referred to the enhancement of the gaps through effective landscape management.
82. It is clear that the Local Plans’ gaps are more strategic, not just in terms of their title but also through the extent and nature of the land that is being protected by the policy, which equates to larger tracts of open countryside. I am also conscious that a large part of the strategic gap south of Battle was removed, upon the adoption of the DaSA Local Plan.

83. When I conducted my site visit to Battle, I was struck by the developed nature of most of the proposed green gaps. Rather than being areas where the openness of the land is the key to maintaining the separation of settlements – a concept that I am very familiar with from neighbourhood plans across the country, three of these areas could be characterised as almost transitional areas between the built-up areas of the town and the countryside beyond. The one area that does fulfil the purpose of providing a gap between developments is GG03, along Marley Lane. This is an open area of land between the outskirts of the town of Battle and the loose settlement to the north based around Marley Farm. To my mind that gap does meet the objectives of the policy.
84. The policy refers to the gaps preventing the coalescence of settlements, but in the three cases which I am questioning, I do not consider that development within the proposed green gaps would individually or cumulatively, lead to effective coalescence of the settlements, as there are significant tracts of open land beyond the gaps to protect the separate identity of Battle from Crowhurst and/or Whatlington.
85. Notwithstanding the intentions of this policy, the areas identified as green gaps are all outside the development boundary and importantly, are within the protection of the Area of Outstanding Natural Beauty, which offers the highest level of landscape protection. From my research, I have noted that these policies have been used successfully to defend at appeal, planning refusals. I have also considered the arguments put forward in the Town Council's evidence document Green Gap Analysis, but I have found, under closer examination, that many of the proposals quoted as examples of pressure for development within the gaps, did not actually support the case for having these gaps. For example, in some cases the site which was being quoted, actually lay within the development boundary and was not within the green gap. Several cases were located within countryside areas which are not proposed for designation as green gaps. Other development quoted were the result of the redevelopment of a large care home on the site. Other cases involved changes in the usage of existing buildings which already impacted on the openness of the site. As a justification for the policy, I am afraid that I found the case being made, less than convincing.
86. I did seek clarification from Rother District Council as to how it used the local plan policy which referred to development "being carefully controlled". This is the same wording used in the neighbourhood plan. My role is to examine the neighbourhood plan policy having regard to Secretary of State advice. Neighbourhood plan policies are required by the legislation to meet different tests to those that apply to a local plan. I have reservations that that wording, without guidance as to how development will be "carefully controlled", will be difficult to be used in a development management context, notwithstanding that it is used in the Local Plan. I am not convinced that it would provide the certainty the Secretary of State expects of a neighbourhood plan policy. In the section of the Planning Practice Guidance describing how a policy should be drafted, he requires the policy to be "clear and unambiguous. It should be drafted with sufficient clarity that a

decisionmaker can apply consistently and with confidence when determining a planning application”.

87. I was told by Rother District Council that proposals are judged against the objectives of the policy, which is to retain the openness of the gap, but it does allow some small-scale developments such as agricultural buildings, building conversions and replacement dwellings. In my view if the policy is to be retained then it needs to set the parameters as to in what respect “development will be carefully controlled.”
88. In my experience a gap policy can only protect open undeveloped land which protects all the open land between two settlements, which if developed would lead to the coalescence of the settlements. It could not be used if the boundary of the gap were to be defined by an administrative boundary, such as a parish council boundary.
89. To adopt the approach being taken by the Town Council, could lead to a bizarre situation, where in the case of three of the green gaps, which comprise mixed areas which include low density housing, will actually have a higher level of protection than the open fields and woodland that lie, beyond the green gap boundary.
90. I also consider the proposal to re-designate the area to the north of Telham Lane as a green gap, which had been removed from the strategic gap through the Development and Sites Allocation Local Plan, would have the effect of undermining this strategic policy decision. This is not something that a neighbourhood plan should be doing as set out in paragraph 29 of the NPPF.
91. I have noted that part of the justification for designation of the green gaps is to protect important views, particularly of the town from the countryside. That objective could have been achieved by the neighbourhood plan identifying what are deemed to be important views, and establishing a policy framework to protect such views. Such a policy would deliver a similar outcome, without being a policy based upon an unachievable premise, namely the separation of the settlements.
92. I have considered carefully the further elaboration of the policy provided by the Chair of the Steering Group, Councillor Howell, who referred me, in an email sent in response to Rother’s reply to my Initial Comments questions, to the fact that the neighbourhood plan policies had not been written by planning professionals, but by persons who find the complexity of planning rules and policies somewhat difficult to understand. Whilst I appreciate that context, the neighbourhood plan system specifically allows the community to draft the policies which will form part of the development plan and will be used to determine planning applications. The importance of that task is in part the reason that the legislation requires the independent examination the plan against specific legal tests. I also note that the group has been advised by an experienced professional planning consultant.
93. Councillor Howell acknowledged that the green gap proposals do not, in some cases, “distinctly separate settlements, but they will positively separate the street scene characteristics of the roads concerned. They provide important recognition of the transition from the town connected linear housing to the more random

occasional housing along these routes between Battle and further away settlements". This explanation does not form part of the plan's justification set out in the submission document which refers to recognising the separate identities of Netherfield and Telham and Battle, the landscape characteristics of the High weald AONB and prevent urban sprawl.

94. My overall conclusion is that the area covered by GG 01, 02 and 04 do not perform the purpose of a gap, which is, inter alia, to prevent the coalescence of settlements and accordingly should not be identified as a Green Gap. To introduce a more restrictive policy to these areas, than is covered by countryside policy would not be in general conformity with Policy OSS1, OSS3, OSS4 and Policies RA2 and 3. In addition I do not consider that the case for these 3 gaps is backed up by evidence as to how they will achieve the objective of a gap policy, as set out earlier in this section. I do not consider that their inclusion will assist in the delivery of sustainable development. However, I will be recommending the GG03 – Battle east, Marley Lane does meet the criteria of being a green gap and should be designated as such.
95. In addition, I will amend the wording of the policy to make it clear how development would be controlled considered to be "carefully controlled".

Recommendations

Replace the policy with:" The Plan designates the area identified in APPENDIX D as a green gap where development will only be supported if it maintains the openness of the area"

Delete all reference to Green Gaps GG01,02 and 04

Policy HD9 - Town Centre Boundary

96. I have no issues with the extent to the town centre boundary as shown on Map 6. The policy is up to date as it acknowledges the introduction of Class E.
97. Rother District Council has recommended that for clarity references to the main shopping area be replaced with the "town centre". This has been agreed by the Town Council and I will make that as a recommendation in order to remove the possibility that some persons may argue that the main shopping area is different to the town centre.
98. The third paragraph of the policy seeks to resist the amalgamation of existing retail ground floor space. However, as they will be in the same use class, there is no development involved as there is no change of use. Equally the removal of internal dividing walls to amalgamate units, constitutes internal works which does not constitute development and no planning permission is required. Whilst listed building consent may be required for such internal works, such applications only consider the effect of the works on the heritage asset, and will not consider the effect of the works on wider planning objectives, such as protecting the town centre's retail role.
99. The final paragraph seeks to prevent new housing developments within the town centre boundary unless they are small scale and located behind the High Street frontage. Whilst most high streets will enjoy permitted development rights to

convert Class E units to residential subject to certain restrictions, these do not apply to the plan area as it is within an AONB so there remains planning control.

100. I do have reservations regarding the reference to small scale dwellings. I am unsure whether refers this is referring to *small-scale* in terms of dwelling size or the number of dwellings. I will remove reference to small-scale from the policy as it is ambiguous and also clarify that the policy only applies where planning permission is required. I will also add that residential uses above the ground floor units would be considered appropriate within all parts of the town centre.

Recommendations

In the second paragraph, delete “the main shopping area of”

In the third paragraph, delete “or amalgamation”.

At the start of the fourth paragraph, insert “Where planning permission is required”, remove “are of small-scale dwellings and” and at the end “or are located above ground floor level (apart from the entrance)”

Policy IN1 – Traffic Mitigation

101. The NPPF assess the requirements for the need to provide a transport assessment to those applications that generate a significant increase in traffic. Furthermore, a neighbourhood plan policy cannot dictate what documents need to accompany a planning application. This is the purpose of the District Council's Local Validation Checklist. I will therefore be recommending the removal of reference to “major developments” producing a transport assessment. The requirements to improve traffic calming will only be relevant, if that is a requirement which arises where it has been demonstrated that the need for additional measures arises from the development. I will be recommending adding these caveats so that the policy will meet the basic conditions.

Recommendations

Delete “major” “and after “development”, insert “that will generate a significant increase in traffic”

In the second sentence replace “will” with “are required to”

Policy IN2– Maintain and Improve Existing Infrastructure

102. This is a positive policy which encourages and supports new and improved infrastructure. However most statutory undertakers have permitted development rights, so this policy will only apply where planning permission is required.

Recommendation

At the start of the policy insert “Where planning permission is required”

Policy IM3 – Parking and New Development

103. In my experience, this policy is somewhat unusual. A number of neighbourhood plans' policies specifically prevent garages from being recorded as part of the parking provision, as so many garages are used for purposes other than the parking of the family car. However, this is a matter for local determination and I consider this policy meets basic conditions.

Policy IN4 – Pedestrian Provision and Safety

104. Whilst this policy is to be welcomed, ensuring that new housing has a safe pedestrian access, I do not consider that it should extend to being specific in terms of providing links to public transport, school, retail and medical facilities. I think these can be quoted as examples, which demonstrate the benefits of pedestrian connectivity, rather than being a locational criterion.
105. The second paragraph of the policy is a requirement to contribute to wider appropriate cycling and walking networks, which I am satisfied that can be retained as it is only required “where appropriate”. Any such contributions would in any event need to meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Recommendations

In the first sentence, after “networks” insert “for example”

In the second sentence replace “We will support” with “The Plan supports”

Policy EN1 - Local Green Space Designations

106. I visited each of the proposed local green space allocations and I am satisfied that each of these meet the requirements set out in paragraph 100 of the NPPF. I also consider the policy requirements are in line with the approach advocated by the Secretary of State.
107. The final sentence of the first paragraph is unnecessary as a presumption against development applies “other than in very special circumstances”. I will recommend that sentence be deleted.
108. The final paragraph referencing the LGS Designation Analysis document, which is part of the plan’s evidence base, that justifies the specific designations and can be more appropriately referenced in the supporting text rather than being part of the actual policy.

Recommendations

Delete the final sentence of the first paragraph

Delete the final paragraph

Policy EN2 – Conservation of the Natural Environment, Ecosystems and Biodiversity

109. I consider that the policy strikes an appropriate balance between the protection of the natural environment and the need to support development. I consider that the policy meets the basic conditions.

Policy EN3 – The High Weald AONB and Countryside Protection

110. The whole of the plan area falls within the AONB but it would not be a relevant consideration for every application for all types of development to be required to demonstrate how they meet the 5 requirements set out in the policy e.g. impact on watercourses, woodland management, historic routeways, ancient woodlands or historic field boundaries. I will therefore be proposing that the policy be caveated by “where relevant”. This is a view that has previously been made by the District Council. I appreciate that the Town Council wish the policy to be retained as

submitted but I consider that it needs to reflect how the policy unamended would work when considering a planning application for a domestic extension or a change of use would demonstrate how it meets the 5 requirements.

Recommendation

In the second sentence, before “development”, insert “where relevant to the proposal or its location”

Policy EN4 – Historic Environment

111. This policy covers both designated and non-designated heritage assets and confers the same level of protection to both. That goes against the advice of the Secretary of State. The protection of these non-designated heritage assets is, in fact, covered by Policy EN5 and I will accordingly remove reference to non-designated heritage assets from this policy to avoid confusion as to which policies apply. It would mean that the policy would then meet basic conditions.
112. The final paragraph of the policy extends the protection afforded by the protection of a historic environment policy to sites of sensitive ecology, which is already protected by Policy EN2, and landscape designations which are covered by Policy EN3. I will recommend that the final paragraph be deleted from the policy.

Recommendation

Delete all the policy after “sense of place”

Policy EN5 – Locally Important Historic Buildings, Other Structures and Other Non-designated Heritage Assets

113. It is appropriate for a neighbourhood plan to be used to confer buildings, structures and features with the status of being treated as non-designated heritage assets. I will be recommending that the list of properties and sites, which are set out in Schedule 2, be treated as non-designated heritage assets.
114. The policy seeks to *conserve* these buildings in a manner appropriate to their significance. I believe that the test for decision makers, when considering a proposal affecting these assets requires a balanced judgement, weighing the extent of any loss or harm against the significance of the asset, rather than a policy where the presumption is that it will be “conserved”, notwithstanding the outcome of that planning balance assessment.
115. The use of the Battle CP Character Appraisal to assess the impact is not a statement of policy and should be moved to the supporting text.

Recommendation

Replace the policy with:

“The heritage assets set out in Schedule 2 and illustrated in Map 8 are identified as non-designated heritage assets, which are of substantial local architectural and historic significance and contribute to the Parish distinctiveness. Proposals affecting such assets will be assessed based on the scale of any loss or harm set against the significance of the asset.”

Policy ET1 – Tourism and Local Economy

116. I have no comments to make except that the tourism assets to be protected, need to be specific rather than referencing generically to “public houses and hotels”, “recreation grounds”, “churches” and “heritage trails”. The District Council has pointed out that Bannatynes Health Club lies outside the plan area and is within Hasting’s jurisdiction. I will recommend therefore that the reference to the Health Club be removed as accepted by the Town Council as the plan cannot protect facilities that are not within the plan area. There is no value in duplicating the protection of areas already protected as local green spaces
117. Finally, the intention of the Town Council to seek world heritage status is not a statement of planning policy, which could be used to determine the planning application. This paragraph indicating the intentions of the Town Council should be moved to the supporting text.

Recommendation

Replace the penultimate paragraph with:

“There will be a presumption against the loss of the following tourism and facilities:

White Hart (Netherfield),

Kings Head (Mount Street, Battle),

The Bull (High Street, Battle),

Abbey Hotel (High Street, Battle),

The Chequers (Upper Lake, Battle),

The Railway (Lower Lake, Battle),

Black Horse (Telham)

Almonry and gardens (High Street, Battle)

Battle Museum of Local History (High Street, Battle)

Battle Abbey and grounds

John the Baptist Church (Netherfield),

Battle Baptist Church (Mount Street, Battle),

Our Lady Immaculate and Saint Michael (Mount Street, Battle),

St. Mary the Virgin (Upper Lake, Battle),

Battle Church of the Ascension (Telham)

Beauport Park Golf and Country Club

Bannatyne Spa Hotel

1066 Country Walk (As shown on Ordnance Survey map: Explorer124),

1066 Malfosse Walk (ISBN 978-1-903099-05-6),

Children’s Trail*,

Country Trail*,

Heritage Trail*,

Battle Sculpture Trail*”

* See <https://www.visit1066country.com/things-to-do/battle-heritage-trails-p1732511>

Policy ET2 – Sustaining Local Retail and Encourage Employment Opportunities

118. Planning controls cannot maintain the diversity of the retail offer of the shopping centre, as the changes in the type and occupier of a shop is not a matter that requires planning permission. Equally, the introduction of Class E means that retail space can change into other commercial uses without requiring planning permission. The protection of the town centre's retail function is already covered, to some extent, by Policy HD9.
119. In terms of Policy BA1 of the Core Strategy, that policy is already specific to Battle. I do not consider this policy adds to the existing local plan policy and essentially the neighbourhood plan policy is duplicating the existing Core Strategy policy. Such duplication is contrary to the Secretary of State expectations for plans as set out in paragraph 16f) of the NPPF and accordingly I recommend that the policy be deleted.
120. In terms of the consideration of the basic conditions, a neighbourhood plan cannot be required to make employment or retail allocations indeed it cannot be required to address issues that the community does not propose to be covered by its policies. For these matters any planning application would have to be considered against existing development plan policy as well as national policy guidance.

Recommendation

That the policy be deleted.

Policy ET3 – Developer Contributions

121. This policy, in the main, repeats the requirements set out in Policy IM2 of the Core Strategy. The only issue is to focus where such contributions should be aimed at. The Core Strategy merely refers to the Infrastructure Delivery Plan but the Planning Practice Guidance confirms that a neighbourhood plan can also identify what infrastructure is required within its plan area, but this policy does not do that.
122. The District Council has recommended that the policy be omitted and the Town Council appear to have accepted that. I do not believe that it adds to existing development plan policy as set out in the Core Strategy. However, the neighbourhood plan cannot bind the District Council on how it chooses to spend the CIL receipts as that is a budgetary decision, although it is open to the Town Council to indicate within the plan document somewhere, how it will choose to spend its 25% CIL receipt.

Recommendation

That the policy be deleted.

Policy ET4 – Protection of Assets of Community Value

123. This policy reveals a common misconception on the role of assets of community value. It is not a planning designation as such. Any designation, if applied for and is granted, only last for three years and offers a moratorium on the disposal of a designated asset to allow the community to have an opportunity to purchase it. It is known as the community right to bid. A neighbourhood plan can identify as community facilities those facilities which it seeks to protect. I believe that that is the intention of the policy and I will be recommending that the policy be amended accordingly.

Recommendations

Retitle the policy Community Facilities

In the first sentence, replace “that has been included in the register of Assets of Community Value” with “which is included in the list set out in Schedule 4”

Delete the second sentence

Remove Bannatyne Health Club from Schedule 4

Policy ET5 – Community Leisure and Cultural Facilities

124. I have no comments to make on this policy.

The Referendum Area

125. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Battle Neighbourhood Plan as designated by Rother District Council on 13th April 2015 is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

126. I congratulate Battle Town Council on producing this locally distinctive neighbourhood plan.

127. I know that there may be some disappointment at some of my proposed changes, particularly in respect of the green gaps policy. However, I am confident, that with the changes, the plan will still be strong policy basis for determining planning applications over the next few years. The policies still protect the area's landscape and its special heritage, reinforces the role of Battle town centre, whilst meeting the Core Strategy's housing requirements for the parish. I note the intention of the Town Council is to review the plan every five years, but it is possible that changes in the emerging local plan may prompt a need for an earlier review.

128. It is clear that much work has gone into this plan by volunteers on behalf of the local community and the work does the Town Council and its volunteers' great credit.
129. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test and that it is appropriate, if successful at referendum, that the Plan, as amended, be made.
130. I am therefore delighted to recommend to Rother District Council that the Battle Neighbourhood Plan, as modified by my recommendations, should proceed, in due course, to referendum.

JOHN SLATER BA(Hons), DMS, MRTPI
John Slater Planning Ltd
28th May 2021