

Marshall Monks
West Chiltington Parish Council,
The Parish Office,
Church Street,
West Chiltington,
RH20 2JW

Our ref: WCNP Reg. 15

Your ref:

Date: 10 April 2019

Mr. Marshall Monks

By Email

Dear Marshall,

Review of West Chiltington Neighbourhood Plan

I am writing to notify you of the conclusions of my review of the draft West Chiltington Neighbourhood Plan (WCNP) and its accompanying evidence, which I promised to undertake following our meeting on 23rd January 2019, confirmed in my letter dated 31st January 2019.

In light of the Council's concerns regarding the emerging neighbourhood plan, stated in previous correspondence to you, including most recently, Norman Kwan's letter to you dated 21st December 2018, my letter of 31st January asked that the Parish Council provide me with all evidence and a chronology of their engagement process at Regulation 14 with all stakeholders, including any specific correspondence which evidences specific engagement and responses from West Sussex County Council and with all local landowning/development interests in the plan area.

In response to my request, I received your letter dated 15th February setting out the details of the Regulation 14 consultation process the Parish Council had undertaken, with links to various documents and evidence on your website. The letter and links were helpful to my understanding and I have assumed that what you have provided me with is everything there is to see in terms of documents available to evidence the consultation process you undertook at the Regulation 14 stage and in terms of your engagement processes with developers and landowners.

In addition to the evidence you pointed me towards, I felt it prudent to review all evidence underpinning the emerging plan which is available on your website, including the Site Assessment Report (2018), the AECOM Housing Needs Assessment (August 2018) and the Response to AECOM Housing Needs Assessment produced by the parish (October 2018).

I have also visited the parish to see all the sites for myself to judge whether in my professional view, the conclusions of the Site Assessment Report are sound and how

that evidence might be judged by an independent examiner, if the plan were to be put forward as it is.

In addition, I have sought advice from our legal team. I have considered their advice fully in making this response.

As a consequence of the work I felt it necessary to undertake in 'casting a fresh pair of eyes' over the WCNP and the process it had gone through, it has taken me longer than I had promised. I hope that hasn't been too much of an inconvenience for you.

Finally, your letter of 15th February 2019 states that in your view, Horsham District Council has not provided any evidence to the Parish Council that the plan does not meet the "Basic Conditions" and therefore has no legal basis upon which to refuse to move emerging Plan to the Regulation 16 submission stage. Your letter concludes by suggesting that if the Horsham District Council is unable to establish a lawful basis to refuse the neighbourhood plan in its present form, it should be moved to Regulation 16 and thereafter, onto examination.

As you are aware, the 'Basic Conditions' relevant to neighbourhood plans are as follows:

1. Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;
2. The making of the Plan contributes to the achievement of sustainable development;
3. 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);
4. The making of the order does not breach, and is otherwise compatible with, EU obligations.

Key Conclusions from my Review

The Regulation 14 Consultation Process

In its previous correspondence to you, I note it was the Council's view that the Regulation 14 consultation process you went through was fundamentally flawed. It was concerned that you did not correctly consult with West Sussex County Council (WSSC) within the official consultation period (as a result of using an incorrect email address) and that though, when alerted, you sought to rectify that flaw by re-consulting with WSSC, that because the WSSC response was received outside of the official consultation period it may flaw the consultation process. Having consulted the legal team on this point, I do not believe this causes an issue, in that the response has

been accepted by you and is available to all parties for consideration prior to any submission consultation process.

However, I remain concerned that the process you have undertaken to engage landowners and developers could be seen to be fundamentally flawed, and feel I must be clear on that point.

In addition to the consultation bodies listed in Schedule 1 of the regulations, Government guidance in respect of neighbourhood planning is also clear in stating that:

“Should other public bodies, landowners and the development industry be involved in preparing a draft neighbourhood plan or Order?

A qualifying body must consult any of the consultation bodies whose interest it considers may be affected by the draft neighbourhood plan or Order proposal. The consultation bodies are set out in [Schedule 1 to the Neighbourhood Planning \(General\) Regulations 2012 \(as amended\)](#). Other public bodies, landowners and the development industry should be involved in preparing a draft neighbourhood plan or Order. By doing this qualifying bodies will be better placed to produce plans that provide for sustainable development which benefits the local community whilst avoiding placing unrealistic pressures on the cost and deliverability of that development.

Paragraph: 048 Reference ID: 41-048-20140306

Revision date: 06 03 2014”

Having reviewed how you went about involving landowners and the development industry in preparing the draft WCNP, your documentation confirms that you did not undertake a formal ‘call for sites’, which might have alerted all local landowners and the development industry as to the neighbourhood planning process you were going through. I can also find no detailed evidence on the website (and you have provided me with no other evidence separately), which is able to illustrate to me (or an Examiner subsequently), that you have fully explored the availability, suitability and deliverability of the sites you initially identified for consideration (some 38 sites).

The only evidence available to me to ascertain the level of landowner and development industry engagement you undertook as part of your neighbourhood plan preparation to date appears to be set out in the Site Assessment Report 2018 and in the responses of three parties (DHM Stallard for Croudace; Strutt & Parker for Nyetimber Ltd and Strutt & Parker for Hatches Estate). Given that you initially identified 38 parcels of land for consideration, which you appear to have chosen yourselves rather than through a formal ‘call for sites’ process, I would have expected to see clear evidence that you contacted all landowners to gain their views of the potential of development on their land and the availability of that land for development, before you further assessed the suitability of the sites you had identified.

Unfortunately, the Site Assessment Report 2018 provides little if any further evidence that a positive process of involving landowners and developers in the plan making

process has been undertaken. In this context, it is my judgement that the emerging WCNP could be seen to be fundamentally flawed by an Examiner in due course.

In light of my concerns in this respect, I sought to further understand the legal position in respect of consultation processes and the neighbourhood plan making process in particular.

I am advised that the leading case on consultation, whether the duty is generated by statute or the common law duty to act fairly is *R (Mosely) v Harringay LBC* 2014. This important case identifies the overreaching requirement of fairness and explains the two practical consequences of fair consultation:

- Firstly, it is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested and;
- Secondly, it avoids the sense of injustice which the person who is the subject of the decision will otherwise feel.

Consultation processes associated with plan-making etc. have been the subject of repeated successful challenge, including within the neighbourhood planning domain with many challenges originating from landowners or developers. Cases include *R (BDW Trading and others) v Cheshire West* and *DLA Delivery V Lewes District Council* (2017), where developers have successfully challenged against what they regard as a flawed or 'unfair' consultation process.

In the absence of clear evidence being provided to me by yourselves that all landowners were formally and individually consulted (and therefore positively involved) in the preparation of the emerging WCNP and in light of the legal advice we have received in relation to 'fairness' in consultation, it is my view that unless other evidence of landowner involvement exists which hasn't yet been brought to my attention, the process of landowner involvement in the plan-making process is inadequate and needs to be redressed. Without this, I think there is a significant chance of the potential for a successful legal challenge in due course. I do not agree with you that the likelihood of a successful challenge is 'de minimus'.

Housing Requirement and 'best efforts' to allocate new housing sites to contribute towards that Requirement

Having reviewed the AECOM Housing Needs Assessment, it would appear to me that an appropriate level of housing a neighbourhood plan examiner might expect to be assured through the WCNP is the 123 dwellings suggested in paragraph 62 of the AECOM report. This figure includes a level of windfall that would be expected to be delivered in the parish during the period 2011-2031. The Council's monitoring shows that to date in the plan period, 34 net additional dwellings have been completed and that a further 35 dwellings have planning permission. The latter figure would be

regarded as a significant element of future windfall. Adding the known 34 completions and 35 commitments together, it would be sensible to assume that the WCNP might plan for a further 54 dwellings to meet estimated housing requirements in the parish identified by AECOM. Although it might also be argued that a modest level of 'as yet unknown' further windfall could also contribute to the 54 dwellings, it is my judgement that if the neighbourhood plan intended to take a role in providing new housing allocations, a neighbourhood plan examiner would expect the WCNP to include housing allocations in line with that figure. Unfortunately, at present it does not.

The requirement for a neighbourhood plan to make an important contribution towards future housing development needs, particularly those identified through local studies such as the AECOM study, is a fundamental aspect of delivering sustainable development. Paragraphs 68 and 69 of the NPPF are particularly relevant in this respect.

Unless local planning constraints are such that the sites you have to draw upon make development unacceptable, it is highly likely that a neighbourhood plan examiner will seriously question the acceptability of the Plan. Having visited the 38 sites you assessed, it is my professional judgement that if genuinely available, a number of those sites would be acceptable for future housing development in planning terms. I do not therefore agree with a number of the conclusions you draw in your Site Assessment Report.

In this context, it is my view, that a number of sites identified in the report should be reconsidered for their redevelopment potential. If the Parish Council is reluctant to do so now, I strongly suspect that the neighbourhood plan examiner will recommend you do so when examining the WCNP in due course, particularly in light of the concerns this Council will raise with the examiner during the Examination process. Of course, as an alternative, the examiner may choose to recommend a number of development sites which you do not prefer – something which has happened in several other neighbourhood plan cases.

If at this juncture, the Parish Council chooses to look again at sites it has reviewed as part of its work to redress the flaw in landowner/developer involvement that I have identified, my team would be happy to offer their support to help you assess sites which appear to have potential to accommodate new housing development in a more robust way. For obvious reasons, I do not set out my own view of the potential of individual sites in this letter.

One other point I would make to you in respect of housing allocations, relates to the proposed allocation of the Moto Di Marino garage site. Whilst I believe it may be reasonable to potentially include this site towards your housing provision up to 2031, I am also mindful that it is in active and viable commercial use and even if that use ceased, Policy 9 of the Horsham District Planning Framework (HDPF) would require evidence that it's retention as an employment use is no longer needed or viable, before

considering its potential redevelopment to housing. You also previously confirmed at our meeting, that there was no definite plan for the current commercial occupier to seek housing redevelopment on the site at the present time. In that context it is my view, the garage site cannot evidence deliverability within the plan period and should not be formally allocated in the Plan. Instead, it should be more appropriately regarded as potential future windfall.

Does the emerging Neighbourhood Plan meet the ‘Basic Conditions’?

Taking all of these points together, it is my view that the draft WCNP is fundamentally flawed in two respects:

1. The process of landowner involvement in the neighbourhood plan-making process to date has been inadequate and does not closely reflect government guidance for involving landowners and the development industry in the plan-making process (*Basic Condition 1 listed above*) and;
2. The draft WCNP makes inadequate allocation for new housing development in response to identified housing needs, and therefore does not make appropriate contribution towards ensuring sustainable development in accordance with the NPPF (*Basic Condition 2 listed above*).

Whilst I am clear in my own mind that the WCNP does not presently meet the Basic Conditions and would not pass at examination, I have also noted other paragraphs set out in government guidance regarding neighbourhood planning which state that:

“Does the local planning authority consider whether a neighbourhood plan or Order meets the basic conditions when a neighbourhood plan or Order is submitted to it?

When a draft neighbourhood plan or Order is submitted to a local planning authority the authority is considering the draft plan or order against the statutory requirements set out in [paragraph 6 of Schedule 4B of the Town and Country Planning Act 1990 \(as amended\)](#). A local planning authority has to be satisfied that a basic condition statement has been submitted but it is not required to consider whether the draft plan or order meets the basic conditions. It is only after the independent examination has taken place and after the examiner’s report has been received that the local planning authority comes to its formal view on whether the draft neighbourhood plan or Order meets the basic conditions. The local planning authority should provide constructive comments on an emerging plan or Order before it is submitted.

Paragraph: 053 Reference ID: 41-053-20140306

Revision date: 06 03 2014”

Mindful of this passage of government guidance, notwithstanding my conclusions in respect of the draft WCNP when compared to the ‘Basic Conditions’, which you should be regarded as ‘constructive comments’, it is also clear to me that the Council would normally be expected to enable a draft neighbourhood plan to move to Regulation. 16

Consultation and thereafter onto examination, irrespective of its concerns and instead, make those concerns clear at the examination stage in due course.

In practice of course, any decision from the Council to enable a flawed neighbourhood plan to move forward may attract significant criticism from an examiner in due course. It also carries a potentially significant cost to the Council taxpayer.

Whilst therefore in the context of the planning acts, there would appear no legal basis for the Council to refuse to take forward what it regards as a flawed draft WCNP, the Council may still feel within its rights to refuse to move forward the draft WCNP in the light of what I have concluded, and to protect the local Council taxpayer from unreasonable or unnecessary cost. In this context, it will be the Director of Place, Barbara Childs who makes the final decision upon whether the neighbourhood plan should be allowed to move forward in its present condition.

Potential Options for the WCNP from here

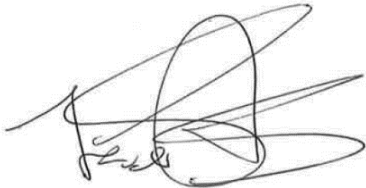
In light of the concerns I raise in this letter and whilst you await the Director of Place's final decision in respect of whether or not the Council is prepared to allow the neighbourhood plan to be taken forward given the financial risk to taxpayers, I would suggest that the Parish Council should also reflect on the other options available to them before determining the best course of action to take.

Those options are as follows:

1. Delay the intended Regulation 16 Submission Consultation process and return to the Regulation 14 stage in order to fully and positively involve all local landowners and developers with land identified by your Site Assessment process, fully evidencing the availability (or not) and the suitability of those sites, with the purpose of allocating sufficient land to better meet the housing requirements identified by the AECOM Study or;
2. Continue with the draft WCNP, but substantially re-fashion the housing section of the WCNP to be clear that the parish council is no longer seeking to identify any new housing allocations in its neighbourhood plan (therefore negating the need to involve landowning interests to the extent that is otherwise required when assessing sites for housing allocation), and in parallel, make the choice to work closely with Horsham District Council to assess the most appropriate new housing allocations for inclusion in the Local Plan Review and a future review of the WCNP.

It is my professional view, those options are the only appropriate options to take to ensure a robust process and a neighbourhood plan that meets the 'Basic Conditions'.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Trevor Saunders', with a large, stylized flourish above the name.

Trevor Saunders
Head of Strategic Planning

cc. **Barbara Childs, Director of Place**
Catherine Howe, Principal Planning Officer, Local Plan
Norman Kwan, Senior Neighbourhood Planning Officer