

IN THE MATTER OF CLAY'S FIELD, STEYNING

OPINION

Introduction

1. We are instructed by DMH Stallard to give our opinion on the lawfulness of the draft designation of land on the south side of Castle Lane, Steyning, known as "Clay's Field" ("**the Site**") as Local Green Space ("**LGS**") in the pre-submission consultation draft of the Bramber Neighbourhood Plan ("**BNP**").

Background

The Site

2. The Site is approximately 7.9ha, and lies on the edge of Steyning, in the district of Horsham. The Site is between Steyning and Bramber.
3. The Site lies within the area of Bramber Parish Council ("**BPC**").

The HDPF

4. The local plan for the district of Horsham is the Horsham District Planning Framework 2015, adopted in November 2015 ("**HDPF**").
5. Policy 3 provides:

"Strategic Policy: Development Hierarchy

Development will be permitted within towns and villages which have defined built-up areas. Any infilling and redevelopment will be required to demonstrate that it is of an appropriate nature and scale to maintain characteristics and function of the settlement in accordance with the settlement hierarchy below ..."

6. There are five tiers of settlement type in the hierarchy. The first tier is Horsham itself, the only "main town". The second tier is "Small Towns and Larger Villages", the characteristics and function of which is:

"These are settlements with a good range of services and facilities, strong community networks and local employment provision, together with reasonable rail and / or bus

services. The settlements act as hubs for smaller villages to meet their daily needs, but also have some reliance on larger settlements / each other to meet some of their requirements.”

7. The settlements in tier two include “Bramber and Upper Beeding” (as one settlement) and Steyning.
8. The remaining three tiers are “medium villages”, “smaller villages” and “unclassified settlements”.
9. Policy 4 provides:

“Policy 4 Strategic Policy: Settlement Expansion

The growth of settlements across the District will continue to be supported in order to meet identified local housing, employment and community needs. Outside built-up area boundaries, the expansion of settlements will be supported where;

1. The site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement edge.
2. The level of expansion is appropriate to the scale and function of the settlement type.
3. The development is demonstrated to meet the identified local housing needs and/or employment needs or will assist the retention and enhancement of community facilities and services.
4. The impact of the development individually or cumulatively does not prejudice comprehensive long term development, in order not to conflict with the development strategy; and
5. The development is contained within an existing defensible boundary and the landscape and townscape character features are maintained and enhanced.”

10. The HDPF is therefore expressly contemplating the expansion of existing settlements on sites that adjoin the edge through allocations in a Neighbourhood Plan.
11. This is further reinforced in Chapter 6, which deals specifically with Housing. The chapter opens with an acknowledgement that:

“The population of the district will continue to rise. There is a need to ensure that everyone can access good quality housing to meet the needs of a mixed population and support the local economy”

12. There is also an acceptance that:

“The settlements of Billingshurst, Broadbridge Heath and Southwater have taken large development in recent years; care needs to be taken to ensure communities can absorb changes which have taken place to allow stable cohesive communities to thrive.”

13. All three of these settlements are in the “Small Towns and Larger Villages” tier of the Development Hierarchy.
14. Policy 15 sets out the contribution expected to be made by Neighbourhood Planning to the housing supply for the plan period (emphasis added):

“Policy 15 Strategic Policy: Housing Provision

Provision is made for the development of at least 16,000 homes and associated infrastructure within the period 2011-2031, at an average of 800 homes per annum. This figure will be achieved by:

1. Housing completions for the period 2011 – 2015;
2. Homes that are already permitted or agreed for release;
3. Strategic Sites: a. At least 2,500 homes at Land North of Horsham b. Around 600 homes at Land West of Southwater c. Around 150 homes at Land South of Billingshurst
4. The provision of at least 1500 homes throughout the district in accordance with the settlement hierarchy, allocated through Neighbourhood Planning.
5. 750 windfall units”

15. It is noted that the provision is expected to accord with the settlement hierarchy.

The BNP

16. BPC have published the draft BNP for consultation between 21 September and 2 November 2019.
17. Policy B7 designates the Site as LGS, with reasons set out in Appendix B to the BNP. The supporting text at para. 7.12 to 7.14 provides:

“Local Green Spaces

7.12 Under the NPPF, neighbourhood plans have the opportunity to designate Local Green Spaces which are of particular importance to the local community. This will afford protection from development other than in very special circumstances. Paragraph 100 of the NPPF says that Local Green Spaces should only be designated:

- “where the green space is in reasonably close proximity to the community it serves;
- where the green area is demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- where the green area concerned is local in character and is not an extensive tract of land.”

7.13 When designating Local Green Spaces, it is important to consider what protection is already afforded to an area and whether or not the designation will provide any further safeguard. The engagement process found a series of green spaces that the community

wishes to safeguard. The Steering Group undertook an audit of these, which revealed that some of them were already protected, for instance Bramber Castle, which is a scheduled ancient monument, while others did not meet the criteria fully.

7.14 Clays Field has been identified by the community as being of particular value and in need of protection. A map illustrating the area is shown at Figure 7.2 and a full description, including how the site meets the criteria can be found in Appendix B.”

18. In Appendix B, the “description/purpose” of the Site is as follows:

“Clays Field is a large grassy area on the edge of Bramber but conveniently situated within easy walking distance of both Bramber village and also Steyning. It has many mature indigenous and semi-indigenous trees scattered throughout as well as an attractive small lake, home to numerous ducks and similar water-loving wildlife. Although privately owned, it is freely accessible to members of the public who make good use of it for dog walking. There is a public footpath running along the southwest corner.”

19. The “quality of facility” is as follows:

“The field is largely left to its natural state, attracting a range of flora and fauna.”

20. As to the criteria in para. 100 of the National Planning Policy Framework (“NPPF”) set out above, Appendix B provides as follows:

Close to the community: The field is located between Steyning and Bramber, surrounded on all sides by housing. It is well used by walkers and as an access route between settlements. Footpath 2728 runs across the south-west corner of the site, although the site is currently accessible to the public as a whole at the discretion of the owner.

Demonstrably special and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife

“**Beauty:** Clays Field provides residents with a beautiful, tranquil space with some stunning views to the South and across to the South Downs.

Historic significance: A Late Bronze Age (1000-700 BC) hoard was discovered in 1981, during creation of the artificial lake. The hoard comprises 98 items of metalwork, mostly spearheads. Searches over a wider area revealed human and animal bones, burnt flint, a flint scraper, a pottery shard and several pieces of possible crucible, and these may or may not be contemporary with the hoard. The finds indicate a buried occupation layer [SMR reference: 3544 – WS1215]. The site has an historical connection to Bramber Castle (Grade I listed and SAM) by way of the Castle Lane track, as a medieval route, and the field, which would have originally been part of the setting of the Castle at the time the Castle was constructed. The field would have served as part of the (originally defensive) boundary between Bramber and neighbouring settlements, a role it still plays today. Bramber Castle is visible from part of the site. The centre of the site is 324m from the centre of the SAM. As noted within the Victoria County History chapter on Bramber, Castle Lane leads directly from the castle to this area of Steyning and reinforces the idea that Castle Lane is a medieval routeway laid out as the principal thoroughfare between Bramber and that portion of Steyning within Bramber borough.

Recreational value: The field is popular with walkers, including dog walkers.

Tranquillity: Clays Field offers a valued and tranquil space between the two settlements of Bramber and Steyning, in an otherwise developed area.

Richness of wildlife: The field has been left to wild and is therefore a haven for wildlife. There are many mature and significant trees in the field as well as a small lake. The Sussex Biodiversity Record Centre shows sightings of 88 distinct BAP species since 2006 in Bramber as a whole.

Local in character and is not an extensive tract of land Yes - the entire site is approximately 7.9ha. It also denotes a natural break in the landscape between the two conurbations of Steyning and Bramber.”

21. The draft BNP deals with housing in section 5, noting that part of the parish is within the South Downs National Park: para. 5.2. This is a very significant part geographically: see Figure 1.1 in the BNP.
22. The 1,500 home requirement through Neighbourhood Planning is noted in section 5, as well as AOCOM’s August 2018 housing needs assessment for the parish of Bramber, which identified a need for 64 dwellings to be delivered by 2031. According to the BNP, 8 dwellings have already been delivered, leaving a requirement for approximately 4 per year.
23. At para. 5.7, it is noted that the assessment of two possible sites for allocation did not result in an allocation. One of those two sites (the other being in the national park) is the Site (at Clays Lane). Appendix A sets out the reasons why the Site was rejected as suitable for development. That assessment recognises that only 1.8 of the 7.9 hectares is put forward for housing development (approximately 40 dwellings), and that the Site is “adjacent to the built up area boundary of Steyning which is classified as a small town”.
24. Para. 5.9 confirms that the BNP does not allocate sites for development, but seeks an “early review” following the proposed revision of the HDPF since “this will provide greater clarity about the amount of growth that Bramber may be expected to accommodate over the new HDPF plan period”.
25. It should be noted that the adoption of a revised HDPF is not anticipated until the end of 2021, and it is not suggested by the published Issues and Options paper that

the need for growth (including the 1,500 figure from Neighbourhood Planning) is expected to reduce.

Legal framework

26. By virtue of section 38(3)(c) of the Planning and Compulsory Purchase Act 2004 (“**the 2004 Act**”) the development plan for an area includes any neighbourhood plans which have been made in relation to that area.
27. Detailed provisions exist in relation to the process of making a neighbourhood plan. They are contained within Schedule 4B to the Town and Country Planning Act 1990 (“**the 1990 Act**”) and apply to neighbourhood plans by section 38A of the 2004 Act.
28. A neighbourhood plan must comply with the “basic conditions” set out in para. 8 of Schedule 4B, namely:

“(2) A draft order 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 order,
- (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,
- (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,
- (d) the making of the order contributes to the achievement of sustainable development,
- (e) the making of the order 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 order does not breach, and is otherwise compatible with, EU obligations, and
- (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.”

Policy framework

29. NPPF para. 13 provides:

“13. The application of the presumption [in favour of sustainable development] has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.”

30. NPPF para. 29 provides:

“Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies”

31. National policy on LGS designation is set out at paras. 99-101 of the NPPF:

“99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

100. The Local Green Space designation should only be used where the green space is:

- a) in reasonably close proximity to the community it serves;
- b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
- c) local in character and is not an extensive tract of land.

101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”

32. The Planning Practice Guidance (“PPG”) contains further guidance on neighbourhood plans and LGS designation. As to the former, we note the following:

“What must a qualifying body do to demonstrate that a draft neighbourhood plan or Order contributes to sustainable development?”

This basic condition is consistent with the planning principle that all plan-making and decision-making should help to achieve sustainable development. A qualifying body should demonstrate how its plan or Order will contribute to improvements in environmental, economic and social conditions or that consideration has been given to how any potential adverse effects arising from the proposals may be prevented, reduced or offset (referred to as mitigation measures).

In order to demonstrate that a draft neighbourhood plan or Order contributes to sustainable development, sufficient and proportionate evidence should be presented on how the draft neighbourhood plan or Order guides development to sustainable solutions. There is no legal requirement for a neighbourhood plan to have a sustainability appraisal. However, qualifying bodies may find this a useful approach for demonstrating how their draft plan or order meets the basic condition. Material produced as part of the Sustainability Appraisal of the local plan may be relevant to a neighbourhood plan.

Paragraph: 072 Reference ID: 41-072-20190509”

33. As to LGS designation, the following paragraphs are relevant:

“How does Local Green Space designation relate to development?”

Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.

Paragraph: 007 Reference ID: 37-007-20140306

...

What about public access?

Some areas that may be considered for designation as Local Green Space may already have largely unrestricted public access, though even in places like parks there may be some restrictions. However, other land could be considered for designation even if there is no public access (eg green areas which are valued because of their wildlife, historic significance and/or beauty).

Designation does not in itself confer any rights of public access over what exists at present. Any additional access would be a matter for separate negotiation with land owners, whose legal rights must be respected.

Paragraph: 017 Reference ID: 37-017-20140306

...

Does land need to be in public ownership?

A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.

Paragraph: 019 Reference ID: 37-019-20140306

Would designation place any restrictions or obligations on landowners?

Designating a green area as Local Green Space would give it protection consistent with that in respect of Green Belt, but otherwise there are no new restrictions or obligations on landowners.

Paragraph: 020 Reference ID: 37-020-20140306

Who will manage Local Green Space?

Management of land designated as Local Green Space will remain the responsibility of its owner. If the features that make a green area special and locally significant are to be conserved, how it will be managed in the future is likely to be an important consideration. Local communities can consider how, with the landowner’s agreement, they might be able to get involved, perhaps in partnership with interested organisations that can provide advice or resources.

Paragraph: 021 Reference ID: 37-021-20140306”

34. It important to emphasise that “*the bar for LGS designation is set at a very high level*”, and “*LGS designation should be the exception rather than the rule*”: see the Interim Note dated 10 September 2019 of the Mendip District Local Plan Inspector

at para. 34 (quoted at para. 23 of the High Court’s recent decision on an interim injunction application relating to a draft neighbourhood plan, **R (Lochailort Investments Limited) v Mendip District Council** [2019] EWHC 2633 (QB) per Steyn J). The Inspector also at para. 36 highlighted that the LGS designation “*has to be integral to the proper planning for the future of communities, and not an isolated exercise to put a stop to the organic growth of towns and villages*”. The assessment must therefore, in our view, be robust and rigorous to meet the high threshold set in national policy.

Analysis

35. We have significant concerns in respect of the compliance of the draft BNP with the “basic conditions”, due to the LGS designation of the Site. In particular, we are concerned that:

- (1) The LGS designation is inappropriate having regard to national policy;
- (2) The BNP – by not allocating any housing and instead designating the Site as LGS – is not contributing to the achievement of sustainable development;
- (3) In the light of Policies 4 and 15 of the HDPF, the BNP’s failure to allocate housing and the decision to designate the Site as LGS cause the BNP to not be in general conformity with the HDPF.

36. We will consider each of these in turn.

(1) Inappropriate due to national policy

37. NPPF para. 99 contains critical policy on the relationship between LGS designation and development needs:

“Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.”

38. This crucial sentence is not found anywhere in the supporting text to Policy BE7 (paras. 7.12-7.14), or in Appendix B which sets out the reasons for the Site’s designation. Nor is it reflected in section 5 on housing.

39. It therefore appears that no consideration has been given to the need to ensure that this designation of LGS is consistent with the planning of sustainable development and investment in sufficient homes. Quite the opposite is clear from section 5 of the draft BNP, which states that no housing allocations are made, notwithstanding the acknowledged housing need for Bramber and the requirement in the HDPF for 1,500 homes to be secured through Neighbourhood Planning consistently with the Development Hierarchy.
40. When one considers that hierarchy in Policy 3, both of the settlements either side of the Site are in tier 2 (with only Horsham itself being in a higher tier). It is also apparent that three of the tier 2 settlements are already getting significant development through the HDPF itself, which implies that no further development should be sought at a neighbourhood planning level: see the final bullet point on the first page of Chapter 6 of the HDPF. That leaves only five other settlements in tier 2, of which two are the settlements either side of the Site.
41. The justification / explanation for not allocating sites for development appears in para. 5.9 to rely on the hope that “*suitable sites*” may “*become available in the future*”, and that the future revised HDPF may “*provide greater clarity about the amount of growth that Bramber may be expected to accommodate over the new HDPF plan period*”. However, in our view:
- (1) There is no obvious basis for the suggestion that other more suitable sites than the Site will come forward. If they exist, they will have become apparent already. As noted already, much of the parish is designated as a National Park, which is the highest status of protection from development. The opportunities for development outside of the National Park appear to be very limited.
 - (2) There is no indication in any publicly-available material on the revised HDPF that the need for development in Tier 2 settlements through the Neighbourhood Planning process is expected to decrease.

42. We are also critical of the justification put forward in Appendix B for the LGS designation, having regard to NPPF para. 100. In particular:
- (1) Regarding “beauty”, we note the points advanced in the report by Nick Harper at Harper Landscape Architecture LLP.
 - (2) As to “historical significance”, Sara Davidson at Heritage Collective has undertaken a detailed Heritage Appraisal, which concludes at para. 40 that “[b]ased on the available information, the Site itself does not appear to be of any historic significance in its own right within the meaning of Paragraph 100 of the NPPF that would warrant its allocation as an area of Local Green Space”. In addition, her conclusion is that the proposed development of the Site would make a broadly positive contribution to the significance of identified designated heritage assets: para. 41.
 - (3) The discussion of the Site’s “tranquillity” is generic and suggests no greater quality of tranquillity than any other piece of open (i.e. un-built-upon) land.
 - (4) The purported “recreational value” has no regard to the precarious nature of access rights beyond the public footpath. It would be open to the owner of the Site to restrict public access, and the Site needs to be assessed on this basis. As the PPG notes at para. 1.7, “[d]esignation does not in itself confer any rights of public access over what exists at present. Any additional access would be a matter for separate negotiation with land owners, whose legal rights must be respected”. By contrast, the development proposal offers a majority of the Site as public open space (protected in perpetuity), which arguably has significantly greater recreational value.
 - (5) The “richness of wildlife” justification is generic to Bramber as a whole, and does not offer any specific details about the Site itself. The Preliminary Ecological Appraisal undertaken by Phlorum highlights that the Site does not support any features that are considered to be of value at an international, national, regional, district or even local (i.e. Steyning) importance. Instead,

the on-site vegetation is considered to only have value within the immediate vicinity (c.250m away from the proposed development).

(6) There is no overall assessment of why the Site is “demonstrably special and holds a particular local significance”, which is a high threshold (as acknowledged recently by the Mendip District Local Plan Inspector – see above).

(7) As to size, there was a previous indication from BPC (in a document prepared for the public exhibition on 24 November 2018) that “the whole field is probably too large for a LGS but, depending on the proposed development, the southern section meets all the necessary criteria”. This is precisely what is sought by the development proposal.

43. For these reasons, the justification for LGS designation is, in our view, significantly flawed.

(2) Failure to contribute to achieving sustainable development

44. For the same reasons, our opinion is that the BNP does not at present make a contribution towards achieving sustainable development. No sites are allocated for development, and the LGS designation threatens to remove the only site outside of the National Park that has been put forward as a potential development site as a result of the BNP’s Call for Sites.

45. We finally note two issues of concern in the BNP Sustainability Statement (August 2019):

(1) First, a statement at p.12 that the BNP assessment of the Site “concur[s] with” the conclusion of the Council’s SHELAA Report (December 2018), which stated that the Site was “not currently developable”. When one actually looks at the SHELAA report for Bramber Parish, it is clear that the “not currently developable” conclusion is based simply on the fact that development would currently be contrary to the HDPF. The justification expressly notes the possibility of allocation in a Neighbourhood Plan. The Sustainability

Statement is therefore adopting a circular argument in relation to “concurring” with the SHELAA.

(2) The assessment of Policy B7 on p.19 is flawed:

(a) The option of designating the Site as LGS is assessed as having a neutral effect on criterion (4), “Soc – Housing Need”. This is wrong – the LGS designation would exclude the only non-National Park housing development site in Bramber Parish. This can only be regarded as a negative effect in the sustainability appraisal.

(b) The “summary and conclusion” section states that “this space would not otherwise be protected”, which ignores the alternative of some housing development coupled with a majority becoming public open space. Similarly, the assessment generally has no regard to (a) the public open space offer and (b) the existing potential for recreational restrictions due to private ownership.

(c) The conclusions acknowledge that “the need for housing across the district could add additional pressure for development here. This would negatively impact on each of the reasons provided to justify designating the space”. This is not reflected in the outcome of the Sustainability Statement or the decision to designate the Site as LGS.

(3) Non-conformity with HDPF

46. The legal requirement is to consider whether there is general conformity with the extant local plan for the District, i.e. the current HPDF.

47. We are therefore concerned about the lawfulness of the approach at section 5 of the BNP because it appears to defer the issue of housing provision until after any future revisions to the HDPF are adopted (despite there being no indication that the revisions will materially alter the housing need). The consequence of this is that there is no general conformity with the HDPF’s policy requirement and expectation that Neighbourhood Planning deliver housing allocations in

accordance with the Development Hierarchy (in which the Site is wedged between two Tier 2 settlements). It is clear from Policy 15 that such provision is critical to the delivery of the housing supply for the District as a whole.

48. Even if one accepts the BNP's approach of deferring consideration of housing to a future review, it is inconsistent with keeping that consideration open to seek to preclude development of the single suggested non-National Park site by means of LGS designation. There should – at the very least – be a deferral of both (1) housing allocations and (2) any LGS designations to later review, given the requirement in NPPF para. 99 to ensure consistency.

Conclusion

49. For the reasons given above, the draft BNP does not satisfy three of the “basic conditions” required of neighbourhood plans. These flaws can be addressed by removing the LGS designation and instead allocating the Site for a small element of housing development, with a majority becoming public open space.
50. We have nothing to add as presently instructed, but would be happy to advise further if required.


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1 November 2019