

# Staplehurst Neighbourhood Development Plan: Examination Version

Report to Maidstone Borough Council of the Examination into Staplehurst Parish Council Neighbourhood Development Plan

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## Interim Report of Independent Examiner

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Member of NPIERS

4 May 2016

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- 1.1. As you know I have been appointed by Maidstone Borough Council with the consent of Staplehurst Parish Council to conduct the Examination and provide this Report as Independent Examiner and I have now completed my initial assessment of the plan. I have also carried out an unaccompanied site visit to the village and parish.
- 1.2. One of the examiner's first tasks is to determine whether the examination should proceed via the normal route, namely through an examination of the written material and the representations or whether a public hearing is required should I feel the need to call for further submissions to allow me to adequately examine matters in greater detail.
- 1.3. At the moment I believe the outstanding matter of concern regarding the legality of the SEA can be dealt with effectively by written representations. However, in the unlikely event of this being required as a result of additional information sought through this request, I reserve the right to hold a Hearing at a later stage.

1.4. I wish at this stage to commend the Parish on the production of this Plan. The quality of the intense, place-based public engagement has resulted in a well-considered plan. The clear layout and extensive use of maps, diagrams and photographs makes this document easy to understand, effectively conveying the quality of the place and at the same the community's requirements. The community should be very proud of their work.

1.5. Neighbourhood plans coming forward now have been developed during times of a rapidly changing planning landscape, both locally and nationally which is yet still in the relatively early stages of neighbourhood planning. Therefore it is inevitable that some elements of the Staplehurst Plan will have not caught up with the most recent changes and indeed the Local Planning Authority. Healthchecks and their subsequent Examinations all have a role here to ensure plans are at their most current and compliant.

1.6. My interim findings are as follows:

### **Strategic Environmental Assessment**

Basic Condition (f) states:

(f) the making of [the plan] does not breach, and is otherwise compatible with, EU obligations

Maidstone Borough Council screened the Neighbourhood Plan for the need for a Strategic Environmental Assessment (SEA) or Habitats Regulation Assessment (HRA) and has received responses from statutory consultees as required by the legislation. Annex 3, Scope of the EU Directive 2001/42, para. 3 allows for Member States to determine whether the use of small areas at local level, minor modifications and plans and programmes referred to in its para 2 shall have 'significant environmental effects'. Member States were required to bring into force the laws, Regulations and administrative processes necessary to implement the EU SEA Directive (2001/42/EC) by July 2004. The EU SEA Directive (2001/42/EC) was transposed into UK legislation through the Environmental Assessment of Plans and Programmes Regulations 2004, including separate Regulations for England (SI 2004/1633). To assist with this the ODPM published 'A Practical Guide to the Strategic Environmental Assessment Directive' that provides a decision chart for screening such effects, based on Schedule 1 of SI 2001/1633, both of which having been followed in the Maidstone Borough Council SEA report.

The SEA screening carried out for Staplehurst Neighbourhood Plan states in its report that its focus on screening was for 'SEA and the criteria for

establishing whether a full assessment is needed in light of the Habitats Regulations Assessment of the Maidstone LDF Core Strategy Screening Report, 2007 (Stage 1 Screening) and Sustainability Appraisal (incorporating Strategic Environmental Assessment) of the Maidstone Local Plan 2014 (including SEA)'.

Therefore the SEA for the neighbourhood plan relies upon the SEA undertaken for the emerging Maidstone Local Plan 2014. However the emerging Local Plan is not an adopted document. The emerging Local Plan has not yet reached a stage whereby its policies and supporting evidence have undergone rigorous examination. The Reg. 19 version of the Maidstone Plan has only recently been published. The District level criteria may not be detailed or site specific enough for use at the scale of the neighbourhood level or sufficient in themselves. Taking this into account, it is inappropriate for the SNDP to only place reliance on supporting evidence for emerging local policy in demonstrating compatibility with European obligations. Taking all this into account there is no certainty that the Neighbourhood Plan, and particularly that part relating to site allocations will be compatible with European Union obligations.

I am highlighting a procedural issue that has also been brought to my attention via the Reg. 16 consultation responses from Mr. John Fleming, Gladman Developments, reference ID 955283.

At this stage it is not possible for me to proceed further in this examination with confidence that the Staplehurst Plan, Examination Version is legally compliant on this issue.

The remedy would be to re-screen the Plan and that will allow me to conclude the Examination.

In this I draw your attention to the scenarios suggested by Mr. Fleming which states that "the Steering Group should undertake a SEA immediately before submitting the Plan to Examination. The SEA should consider all reasonable alternatives including whether a pro-growth scenario is capable of being delivered and active consideration to the removal of the settlement boundary and the use of criteria based approach which assess development on its sustainability measures should be undertaken as a further reasonable alternative in an open and transparent manner.'

In response to this suggestion, should the SEA screening find that a full SEA is required, I must advise of my concerns over the site allocations methodology that is not sufficiently robust for a number of reasons, appended to this report. Consequently at this stage I am minded to recommend deletion of Policies **H4**, **H5** and **H6**. The provisions within them

relating to design and encouragement of employment and mixed development could be included in other thematic policies in the Plan that will be used to inform the shape of development coming forward. The Plan would still achieve its aims of guiding development without allocating sites for development.

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## Site Selection

The Parish Council clarified by briefing note received 26<sup>th</sup> January 2016 how the sites were selected. This states:

'The starting point for development sites was the results of the MBC call-for-sites (Spring/Summer 2013) and the neighbourhood plan needed to address the most likely and/or suitable of these to come forward. There was a desire from the parish council and the local community that the neighbourhood plan needed to influence and shape these sites. Landowners and developers were all invited to September and October events. Attendance by landowners and developers at the October 2013 design forum was welcomed and valued. There has been ongoing involvement through meetings with SPC since.

These sites, and others including north of railway, were tested in the September and October 2013 events (dedicated reports from both events available) and focus was given to the two sites east and west of the station as they were considered:

- 1) most suitable re: access to station, shops (Sainsbury's), services and so on;
- 2) to have a good opportunity to integrate with existing areas;
- 3) to be likely to have minimal landscape impact when compared to land to the south of the village heart;
- 4) the most likely to be delivered as both landowners/developers were most advanced in their negotiations.

It was therefore considered important that the neighbourhood plan engage, influence and shape these two sites and get these right. Both sites added up to significant numbers (together 900+ later revised downwards to 650+) and were deemed sufficient to carry Staplehurst through the plan period as a Rural Service Centre although some in the community and parish would argue that these numbers are still too high.

During the neighbourhood plan preparation, outline consent was granted for the western site (Policy H4 : Hen and Duckhurst Farm) underlining the urgency to influence and shape this and other likely development sites.'

In order to understand the site selection process further, I followed the directions of the Parish Council in reading the dedicated reports from the consultation events in September and October 2013. The slideshow for the September 2013 workshop showed a map of potential development sites and asked if the participants agreed. General preferences were reported on whether people favoured development to particular parts of the village. Task 03, page 18, reported on Direction of Growth. There was a general

preference for westwards growth of Staplehurst but concerns were raised over the further pressure on the existing road networks and some possible solutions were mooted. Growth to the east was not ruled out but seen to have more complex challenges of landscape and access. Growth north of the railway line was seen as a possibility due to the emerging critical mass of development including the railway station and new supermarket. Concern was raised over access and defensible edges providing natural barriers to growth. These findings were supported by drawings produced from the workshop showing visual workshop notes.

The work was carried on to the October workshop. Referring to the report titled 'Results of the Three Day Design Forum', dated October 2013, page 63 shows the workings of the Areas of Growth Task Group looking at phasing, potential capacity of individual sites and suitability of sites, building on the earlier workings in this series documented on pages 45 and 46. The plans on page 63 show analysis of various sites, although the resolution is not clear in the online version. However this is immensely useful and demonstrates an obvious site selection process.

The Areas of Growth Task Group reported on 'An Overall Approach' and looked at how development could be phased and delivered alongside a proportionate and appropriate level of community infrastructure. The schedule was reported to be 'a good platform for discussion with landowners and developers as work on the neighbourhood plan continues.'

No further reporting can be found charting landowners' and developers' involvement nor further documentation provided as to the rationale for site selection that should include not just suitability but availability and viability against the set criteria. For the two main sites selected this is not so much of an issue as they had already been considered as acceptable by Maidstone Borough Council as part of the emerging Local Plan Site Selection. However no documentation is provided on the comparative merits or otherwise of individual sites providing reasons for rejection of each against their merits, shortlisting leading to why some sites have become 'preferred sites' over others and scoring methods based the common criteria and used consistently across all sites.<sup>1</sup>

This issue of consistency and transparency and corresponding fairness has been raised by a number of respondees via Reg. 16 consultation and could have been avoided with publicising a clear and obvious audit trail. The site selection process has not been sufficiently robust enough to ensure the policies and proposals in the Plan would contribute to the achievement of sustainable development, have regard to national policy and guidance and generally conform to the strategic policies of the development plan.

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<sup>1</sup> Specific guidance on these matters is provided in Locality's 'Site Assessment for Neighbourhood Plans', published 2015, NPPG and earlier, the NPPF 47 (2012).

Reg. 16 responses<sup>2</sup> to the neighbourhood plan focus largely on the perceived fairness of the site allocation process. In particular they are concerned at the non allocation of the sponsors' sites without sufficient justification, the selective nature of the Plan, assertion of a number of policy judgements that have yet to be determined through the emerging local plan that cannot be considered to be positively prepared in accordance with paragraph 184 of the NPPF, risk of policies becoming outdated, restrictive policy PW2 preventing development in the open countryside. As stated earlier insufficient evidence exists to demonstrate a sufficiently robust process for the Plan to include site allocations, therefore these elements have been withdrawn. The useful design guidance for major sites may be included within a project with which to inform any future development that may come forward on these larger sites in the future. The remaining policies are therefore criteria based, unrelated to the supply of housing, other than being generally facilitatory to encourage appropriate development coming forward within the plan area in accordance with NPPF. Therefore there are no housing supply policies to become immediately out of date on the plan being 'made' through the absence of a five year land supply within Maidstone Borough.<sup>3</sup>

The exemplary design and visioning work that has gone into developing the policy for the two allocated sites may be included to useful effect into the design related policies of this Plan that will inform future development of these and other sites. The outline briefs for the sites can usefully be included into projects for the Parish Council to pursue in the event these sites may be brought forward for development.

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<sup>2</sup> Woolf Bond Planning letter dated 4 December 2015, Peter Court Associates letter dated 3 December 2015, Gladman letter in response to Reg. 16 consultation, undated, Wates Developments email dated 27 November 2015, 955784

<sup>3</sup> NPPG Neighbourhood plans ref. Paragraph: 083 Reference ID: 41-083-20160211 dated 11<sup>th</sup> February 2016