

Tunbridge Wells Borough Local Plan

Friends of East End –Statement for 23 June 2022

Matter 7, Issue 9 – Benenden

1. This statement is to be read with the reg. 19 representations on the draft Local Plan made on behalf of residents/Friends of East End dated 2 June 2021. It is in **response to the Inspector’s Matter 7, Issue 9 – Benenden**. But it also relies where relevant on the detailed response of Hazel Strouts to the Inspector’s Matters, Issues and Questions for Stage 2.
2. In summary, the proposed allocations under draft policies AL/BE3 and AL/BE4 are unjustified ineffective and inconsistent with National Policy.
3. Despite being allocated in the “made” NDP, the draft allocations under AL/BE3 and AL/BE4 have never been tested for “soundness” as required by the Planning and Compulsory Purchase Act 2004. The differences between the NPD and Local Plan processes are emphasised in R (Crownhall Estates Ltd) v. Chichester DC [2016] EWHC 73 (Admin).
4. The draft allocations are on any view unsustainable, lying far beyond the proposed limits of built development of any village and being “remote from [the] settlement centre” of Benenden so that “residents will rely heavily on private cars” as stated in the SHELAA. This is made worse by the lack of services and facilities in this “satellite” location.
5. The lack of justification for the proposed allocations is underlined by the fact that they have been taken forward despite the existence of the Greenacres and Iden Green Road sites which would more than accommodate the dwelling numbers proposed, much better related to the existing settlement (and its services) and capable of being included within its LBD.
6. Neither the “brownfield”/PDL nature of the sites nor the existence of an extant planning permission (on which the NDP examiner “placed considerable importance”, Examiner’s Report para. 130) are sufficient justification on their own for the allocations.

7. At best those factors might warrant consideration of an appropriately confined development (particularly have regard to the constraints of the LWS and the neighbouring AONB – and subject always to satisfying other sustainability criteria) but cannot be used as a springboard for fullscale allocations of the sites.
8. The sites do not lie within the AONB but their development would clearly affect its amenity and setting.
9. To all appearances the location has been chosen to put unwanted housing only just within the Parish boundary and as far as possible from the existing centre of population.
10. The endorsement of the allocations by the NDP examiner is not sufficient justification for the proposed allocations in the context of the Local Plan process and the wider balancing exercise to be performed by the Local Plan Inspector.
11. In any event, it is submitted that the balancing exercise undertaken by the NDP examiner was wrong, eg as to the assumption that allocating the sites would assist in supporting the services in Benenden when those services would be better and more sustainably supported by focusing development in the village itself, Examiner’s Report para. 71.
12. The Local Plan Inspector is concerned with the “soundness” the draft Plan as a whole. Alongside promoting the effective use of urban and PDL/brownfield land (which sites “tend to be located within established LBDs”, see para. 4.70) the strategy of the Plan is to “focus new development within the LBDs of settlements” so long as such “proposals accord with other relevant policies” of the Plan, see policy STR1(1) and (2).
13. Similarly, the strategy of the Plan is to “provide for the growth of settlements, having regard to their role and function, constraints, and opportunities”, STR1(3).
14. Not surprisingly, the draft Plan “normally limits development in the countryside (being defined as that outside the Limits to Built Development) to that which accords with specific policies of this Plan and/or that for which a rural location is fully demonstrated to be necessary”, see STR(9).

15. It follows that the proposed allocations under draft policies AL/BE3 and AL/BE4 would not therefore accord with the essential Strategy of the draft Plan. It follows that they would therefore serve to undermine those policies, contrary to NPPF para. 29.
16. Furthermore, the draft Plan cannot very well be found to be “sound” if the allocations are deleted from it as proposed in para. 5.427. This presupposes that the allocations are already inherently “sound” as a result of being in a “made” NDP, when that supposition has no basis in law, having regard to the different approval processes for NDPs and LPs.
17. Similarly, to propose that “modifications” should be made to the Plan to omit the allocations in effect concedes that the Plan is unsound in its present form and therefore needs to be modified, since the only modifications which can be proposed at this stage are ones which would be required to make the Plan sound, see s. 20(7C) of the 2004 Act.
18. A further undesirable – and unjustifiable – consequence of the LPA’s proposal in paras. 4.525-4.527 is that intentionally exempting the draft allocations from proper scrutiny as part of the Local Plan process would neutralise the effect of s. 38(5) of the 2004 Act which provides that, in cases of conflict in development plan policies, those in the latest document to be approved must prevail.
19. Accordingly, since the Friends of East End maintain that the draft allocations AL/BE3 and AL/BE4 are unsustainable and “unsound”, they should be deleted from the Plan and so section 38(5) will operate effectively so as to override the unsustainable and highly questionable allocations in the NDP
20. NB – and in case the Council raises this point – there was no obligation on the Friends of East End to challenge the NDP when there was an alternative means of remedying its defects at their disposal through the Local Plan process. In any event, the draft allocations are before the Inspector for him to consider as part of that process.

The Inspector’s Questions

21. In the light of the above, the Friends of East End have the following short observations to make on the Inspector’s Matters, Issues and Questions for Stage 2 (Revised): Matter 7, Issue 9 – Benenden.

Q1. What is the latest position regarding the Benenden NDP? Has it been formally ‘made’ and does it now form part of the development plan for the area?

Matter of record – made on 23 February 2022.

Q2. Paragraph 5.425-5.427 of the submission version Local Plan states that should the Neighbourhood Plan be adopted by the Council, then there would be no requirement for site allocations AL/BE1, AL/BE2, AL/BE3 or AL/BE4. Why is it necessary for soundness reasons to delete the allocations from the Plan?

See above. The Friends of East End reserve their position to respond on this issue in the light of the Council’s response.

Q3. Are there any conflicts between the site allocation policies proposed in the Local Plan and the site allocation policies in the Neighbourhood Plan? If so, what are the reasons for any differences?

The obvious main difference is the extent of the SSP3 allocation in the NDP/proposed allocation AL/BE3 in the LP. See further Hazel Strouts’ response.

Q4. Are site allocations AL/BE1, AL/BE2, AL/BE3 and AL/BE4 justified, effective and consistent with national planning policy?

No, they are not. See again above.

Conclusion

22. In summary, the proposed allocations under draft policies AL/BE3 and AL/BE4 are unacceptable, unsustainable and unsound. They are remote from any settlement and their mere identification as “brownfield”/PDL land does not make them sustainable. In fact they seem to have been picked for their remoteness when they are self-evidently unsuitable on sustainability grounds (including their nature conservation interest). They should be deleted from the draft Local Plan.

Friends of East End

16 May 2022