

Report to Southbourne Parish Council on Southbourne Parish Neighbourhood Plan 2

(Compiled from notes used to deliver a verbal report to SPC on Tuesday 12th April 2022)

Cllr Jonathan Brown, Chair, Southbourne Parish Neighbourhood Plan Steering Group

I am conscious this is a long-awaited update.

As with my update to the Steering Group (SG), I won't keep anyone in suspense. The Examiner recommends that Chichester District Council (CDC) should not allow Southbourne's new Neighbourhood Plan (NP) to proceed to Referendum. [Residents can download the full report from the CDC website here: www.chichester.gov.uk/neighbourhoodplan, along with a joint statement agreed with Southbourne Parish Council.] In summary, he makes two related technical objections which boil down to Southbourne's Plan being too far in advance of CDC's severely delayed Local Plan.

My update will cover what got us to this point and what our options are. The Parish Council (PC) will then have a few decisions to make.

Going right back to the beginning, the goal of the Neighbourhood Plan was always threefold: to protect Southbourne from speculative development, to have influence over masterplanning policies and to be a way to deliver much-needed infrastructure for Southbourne. The Neighbourhood Plan was not a vehicle for challenging housing numbers; not the first time round and not this time round. Southbourne PC has done that separately and outside the framework of the Neighbourhood Plan, but given government targets this was always going to be long shot. The Neighbourhood Plan was premised on the view that whatever the number ended up being, we would need that development to be masterplanned.

Chichester's current Local Plan was approved with, in effect, a five year expiry date on its planning policies, and in July 2020 CDC missed the deadline to complete its Review. Importantly for us, CDC could not demonstrate a 5 Year Housing Land Supply (5YHLS) and with an out of date Local Plan, the whole of the District outside the South Downs National Park (SDNP) & the Chichester Harbour Area of Outstanding Natural Beauty (AONB) was vulnerable. Southbourne was exceptionally vulnerable as land was being promoted in the CDC land survey a.k.a. the Housing and Economic Land Availability Assessment (HELAA) for around 4000 dwellings, Southbourne village has much better infrastructure than other areas in the District AND it is a strategic policy of the old (current) Local Plan and the new (in progress) Local Plan Review to designate Southbourne for large scale housing growth.

So back in early 2020, well before I took over as Chair of the Neighbourhood Plan Steering Group, and in anticipation of this situation, the Steering Group recommended and Southbourne PC chose to proceed with the new Neighbourhood Plan and to plan for the CDC allocation. Why? Because a new Neighbourhood Plan provides protection even in the absence of an up to date Local Plan and 5YHLS. By updating our Neighbourhood Plan we could protect Southbourne from the deluge of planning applications we knew were heading our way.

Events since July 2020 have vindicated that approach. We have seen other parts of the District being swamped with unplanned housing permissions. In Southbourne we've had just a further 8 houses permitted. By advancing our Neighbourhood Plan we have seen applications for 200 dwellings withdrawn prior to formal submission and, as of a couple of weeks ago, an application for a further 40 dwellings at Cooks Lane being withdrawn from appeal. There are applications for others in the system, but at the very least the Neighbourhood Plan has delayed them being submitted and strengthened the case against them being permitted. Unquestionably, progress on the Neighbourhood Plan has given us a great deal of protection so I am in no doubt that it was the right decision back in early 2020 to proceed.

Besides giving us protection, what else did we gain? It meant scooping up certain anticipated planning applications into a masterplanned whole. In the process, some excellent policies – incentivising zero carbon housing, promoting wildlife corridors, a major extension of the Green Ring, and new community infrastructure, were developed. While the Neighbourhood Plan doesn't mandate a new road bridge – it's step forward in the process and has developer support. I want to be very clear on this point as it's been so central: the Neighbourhood Plan *did and does not guarantee a bridge*. But if we were and are ever going to get one, it will be a long process with many steps to go through. Our Neighbourhood Plan was gradually going through that process, ticking off the boxes. If we were going to get a bridge, *we were doing what we needed to do*.

Which brings us to the Examination. The first discouraging signs were the Examiner refusing to hold an Exploratory Meeting, in defiance of our specific request and very much against best practice guidance. Both at and after the Examination he spent very little time on a range of key issues and refused to accept further information relevant to the topics he was supposed to be examining. His report asks certain questions that he leaves unanswered. We attempted to answer them, but he wouldn't let us. In the end, he failed to examine most of the Plan. He only looked at a single basic condition and a single policy (SB2).

I think it is useful to quote him: "I find that policy SB2, in its allocation of 1,250 homes by way of a very significant expansion of the village, incorporates a quite different strategy [to that of the current Local Plan]. The response and advice of CDC in November 2019 were correct [i.e. not to proceed in advance of the Local Plan Review]. The development plans officer of CDC accepted at the hearing that the two levels of development were of a "different nature" and that the SB2 allocation was "outside the parameters of the Local Plan". I therefore conclude that SB2, the key policy of NP2, is quite inconsistent with the [current, out of date] Local Plan."

In effect he is saying that we cannot make a Plan that allocates housing in advance of the Local Plan Review. He does not reflect on the fact that the Local Plan policies are out of date. He fixates on a communication from November 2019 and does not consider more recent advice provided to us by CDC. He does not address the fact that there is a right to make Neighbourhood Plans in advance of Local Plans enshrined in planning case law. While making a seemingly logical case that we shouldn't allocate housing in advance of a Local Plan strategy being finalised, he does not address the nature of the planning system which is explicitly tilted in favour of the granting of planning permission to developers, especially where there is an out of date Local Plan and no demonstrable 5 Year Housing Land Supply (i.e. a pipeline of approved housing applications being developed at sufficient scale and speed to meet the national housebuilding target for our area).

If I sound annoyed – I am. The Examiner's conclusions make sense in an ideal world where development follows the making of plans. In the real world where development is frequently permitted in advance of local plans and infrastructure provision, his advice is of no help to us whatsoever.

He did however say that, and I quote again: "I find that, overall, the Parish Council went to extensive lengths to try and engage the local community, and that the consultation process was adequate."

Where does this leave us? He recommended that our Neighbourhood Plan should not go forward to referendum, but what does this mean? In theory, CDC commissioned this report and can do what they like with it. They don't have to accept it. But the Examiner didn't complete his examination of the Plan, so in practice CDC are all but certain to feel they have little option but to agree with his recommendation. CDC aren't required to publish the Examiner's Report until they make a decision at the May Cabinet meeting, but we have agreed with them to bring forward the publication date. [It is now available on the link above.] If at that May Cabinet meeting they refuse our Neighbourhood Plan, in practice it dies there. Our Plan would die there – but please note, *our housing allocation would not*.

As such, both CDC and our consultants have recommended that we withdraw the Neighbourhood Plan from Examination, prior to CDC making a determination. Although the Examiner has completed his report, this is still something we are allowed to do. Indeed, if the Examiner had followed the guidance and met with us prior to the Hearing, we would have had the opportunity to withdraw the Plan from Examination then and saved everyone a lot of time and effort and some public expense. The Steering Group unanimously supports this approach.

Withdrawing the Plan doesn't kill the Plan or the process. It puts us back to Regulation 14 (the first formal public consultation stage of the Plan) in the process. In other words, the Neighbourhood Plan has no formal weight in the planning system and CDC will not be able to use it to refuse planning applications on the ground of prematurity. But it would still exist and the evidence gathered could still be referred to. We will need further discussions with CDC and our consultants about what our options are i.e. whether there is anything else we can do to strengthen our defences.

Which brings me to the recommendations on the agenda. The Neighbourhood Plan in its current form, with the current allocation cannot be taken forward for the foreseeable future. The questions which need answering are:

- Should the Parish withdraw the NP from Examination?
- Should the Parish abandon the NP altogether or attempt to save policies where possible and to try to use the Plan to provide as much protection as possible from speculative development?
- Should the NP Steering Group be refreshed? With updated terms of reference (TOR) and reopened to new volunteers to work on the NP's policies?
- If we want to do anything with the NP, we may need additional technical support from Locality (a Government Agency). To meet a deadline for applications in the current (now previous) year, I have already submitted provisional requests for this support. If we want to keep our options open, the PC will need to approve these applications. Note that there is no financial cost to the Parish associated with them.
- And finally, I suggest that we publish a joint statement with CDC alerting everyone to the Examiner's conclusions and whatever we decide this evening. As time is of the essence, I would suggest that the wording be delegated to the Chairman, the Clerk and myself as Chair of the Steering Group.

The Steering Group's recommendation is that the PC should withdraw the Plan, but not give up on it. There is still much too much that is very good indeed (e.g. the Green Ring, Zero Carbon housing, Wildlife Corridors, community centre, etc.) and we should try to preserve those objectives as well as maximise any influence over future planning permissions. Exactly how this is to be achieved will be informed by discussions with CDC and our consultants.

So I'm putting the following recommendations to the Council:

On the basis of advice we have received to date:

1. To withdraw the Neighbourhood Plan from Examination.
2. To set as a goal the saving of as much of the Neighbourhood Plan and its influence over planning applications as we can.
3. To approve the applications for further technical support with Locality.
4. To recommend that the Steering Group's Terms of Reference be revised and the SG re-open for new volunteers.
5. To delegate to the Chair, in consultation with the Clerk and the Chair of the SG, authority to agree upon a joint statement with CDC to update residents on the Examiner's conclusions and our way forward.

Following the adjourning of the Parish Council meeting for a public open forum, during which various questions were put, these five resolutions were all agreed by the Parish Council.

Following the meeting I thought it would be helpful to note a few things regarding three specific points that were raised in open forum.

1. Neighbourhood Planning Independent Examiner Referral Service (NPIERS) - Guidance to service users and examiners

A question was asked about whether the Examiner had actually followed the best practice guidance produced by a working group that he himself had chaired. The following three quotes illustrate our concerns that he may not have done:

"2.10.6. Where you [the Examiner] have fundamental concerns, these should be brought to the attention of the qualifying body and local planning authority in a written note at the first available opportunity... The qualifying body and local authority should be invited to comment on your concerns, and if appropriate be provided (subject to the nature of the failing) with an opportunity to:

- submit further written clarification to demonstrate legal compliance;
- request an exploratory meeting; and/or.
- ask for the examination to be suspended to do further work or rectify an omission."

We were not offered any of these opportunities.

"2.10.7. Having regard to the Guiding Principles, a report failing a neighbourhood plan should not come as a surprise to the qualifying body and the local planning authority. Early action, initially an exchange of correspondence, should precede such a finding."

“2.13.1. ... [N]o qualifying body should receive a report that their plan has failed without having some opportunity to engage with the examiner, either through written correspondence and/or an exploratory meeting.”

We were expressly denied an opportunity to engage with the Examiner.

In the experience of our consultants, who have guided over 100 Neighbourhood Plans to successful adoption, it is practically unheard of for an Examiner to fail to call an Exploratory Meeting relating to a complex plan making a large housing allocation where there may be any doubt about conformity with the Basic Conditions.

2. Thornham Wastewater Treatment Works (WWTW) Capacity

It will come as news to no one that Thornham WWTW is almost at official capacity. Residents will know that planning applications have been refused by CDC in part for this reason. A very reasonable question was asked regarding why Southbourne could not rely upon this state of affairs to protect us from speculative applications.

Firstly, while there is (and was) capacity available, CDC would not have been able to refuse planning applications on this basis. The situation now is not what it was in early 2020.

Secondly, development can be phased. In other words, permission can be granted for homes that may not be occupied until upgrades to the network capacity are carried out. It is true that this will take years, but this will not prevent planning permissions being granted in the meantime.

And thirdly, while it is true that Thornham WWTW is nearing capacity, it is not illegal for additional ‘capacity’ to be generated by discharging additional quantities of untreated sewage into the harbour. I am sure we would all wish that weren’t the case, and the rules are complicated, but the planning system is such that a lack of infrastructure capacity cannot be relied upon to put a halt to speculative development.

3. Chichester District Council’s 5 Year Housing Land Supply (5YHLS)

Now that CDC can demonstrate a 5 Year Housing Land Supply, i.e. they can evidence a sufficient scale and speed of new homes construction, can’t we rely upon this to protect Southbourne from speculative developments?

CDC has been since July 2020 until only recently been unable to demonstrate a 5YHLS. Had Southbourne’s Neighbourhood Plan not proceeded apace, we would have been without protection that whole time. Furthermore, CDC will only be able to maintain the 5YHLS by continuing to grant planning permissions for some unplanned development schemes. (If they don’t do this, they will fall behind.) And finally, CDC’s 5YHLS position will be tested at appeal. On Monday 11th April an appeal decision on an application for 140 houses between Chichester and Lavant upheld CDC’s decision to refuse permission, in part on the basis that a 5YHLS could be demonstrated. However, the Inspector ruled that over 170 homes planned for Tangmere that form part of CDC’s 5YHLS should not be counted as contributing towards it. This leaves the position intact – but hanging by a thread.