

Appendix 3

Officers' comments on potential grounds for challenge in respect of Application for Judicial Review of the Decision to Proceed to Referendum on the resubmitted Loxwood Neighbourhood Plan

The comments set out below are officer comments relating to the various grounds of potential challenge set out on behalf of Crownhall Estates Ltd with regard to the decision by the District Council to proceed to referendum on the resubmitted Loxwood Neighbourhood Plan.

Ground 1:

The Examiner makes no mention of whether it is appropriate to make the Neighbourhood Plan having regard to national policy, merely the requirement to have regard to that Policy (para 18).

Contrary to Crownhall's assertion it is absolutely clear, reading her report, that the Examiner considers it appropriate to make the Neighbourhood Plan having regard to national policy (see paragraphs 18, 34, 45 and 48-51 of the Examiner's report). Indeed, the Examiner sets out the parameters of her determination in paragraphs 16-18 of her report. Paragraph 74 sets out the various options regarding recommendations that are available to her to make on the Loxwood Neighbourhood Plan. Within her recommendation (stated at paragraph 75) it is clear that she considers that the legal requirements have been met as she has recommended that the Loxwood Neighbourhood Plan as modified by her recommendations should proceed to Referendum. In so doing, she has not sought to recommend that the Plan should not proceed to referendum, on the basis that it does not meet the relevant legal requirements, an option that was available to her. Given the Examiner's conclusions, it is self-evident that she considers it appropriate to make the plan.

Ground 2:

The Examiner gives no adequate or intelligible reasons for concluding that the housing numbers in the Neighbourhood Plan should be 60.

The Loxwood Neighbourhood Plan proposes to provide a minimum of 60 dwellings which accords with the indicative parish housing number identified in the Chichester Local Plan Key Policies. The Examiner sets out clearly the progress of the Chichester Local Plan Key Policies since her previous examination (paragraph 41 onwards). In addition, she sets out that the Neighbourhood Plan examination process does not require a rigorous examination of district wide housing land requirements. As is correctly identified, this is the role of the examination of the emerging Local Plan. The Examiner states in her report on the Loxwood Neighbourhood Plan (paragraph 43) that 'From the evidence before me, I consider the indicative housing figure provides me with the best guidance on total housing numbers for the Loxwood Parish area.' She goes on to say that in the absence of adopted strategic housing policies it is not her role to determine whether the Neighbourhood Plan would be inconsistent with the adopted version of the emerging Local Plan if it were to be subject to future amendments to accommodate further

growth. It is considered that this is a proportionate and appropriate response for an Examiner of a Neighbourhood Plan. Therefore, contrary to Crownhall's assertion, the Examiner was entitled to say that the emerging Local Plan figure was best guidance and the basis for this view and approach is clear.

Ground 3(a):

Windfall – The Examiner and the local planning authority erred in law:

(a) in considering that the draft Local Plan included windfall sites in the indicative figure of 60 units for Loxwood;

The Loxwood Neighbourhood Plan makes reference (in Policy 1) to the provision of a minimum of 60 houses on allocated and windfall sites located within the settlement boundary. Policy 4 – Land at Farm Close seeks to allocate a minimum of 17 houses; Policy 5 – Land at Nursery Site identifies an indicative number of 43 dwellings. Together these allocations provide for a minimum of 60 dwellings as required.

In addition, Policy 1 allows for other small scale windfall sites to come forward within the settlement boundary. Whereas housing permitted on the two allocated sites will count against the indicative housing number of 60 units identified for Loxwood within the Chichester Local Plan Key Policies, small scale windfall sites (of less than 6 dwellings) are taken into consideration in the Small Sites Windfall Allowance included within the Chichester Local Plan Key Policies (see amended paragraph 7.29 in Proposed Modifications document) and will not count against the indicative housing number identified for Loxwood. The Council does not accept the contention put forward by Crownhall in relation to this issue and this is supported by the Examiner's report in paragraph 45 that states that the revised wording of Policy 1 meets the Basic Conditions.

Ground 3(b):

Windfall – The Examiner and the local planning authority erred in law:

(b) failing to address the criticism of the Neighbourhood Plan requiring non-allocated developments to be of fewer than 6 dwellings.

As set out under 3(a) above, Policy 1 allows for small scale windfall sites (of less than 6 dwellings) to come forward over and above the allocation of 60 dwellings within the settlement boundary. This policy approach is not contrary to the Chichester Local Plan Key Policies but it is nevertheless the case that this does not necessarily prevent larger windfall sites within the settlement boundary coming forward. If any such site was forthcoming, it would be considered on its individual planning merits having regard to relevant policies in the Neighbourhood Plan, Local Plan and National Planning Policy Framework (NPPF).

The NPPF sets out clearly the role of neighbourhood plans with regard to the ability of local communities to shape and direct sustainable development in their area. The Neighbourhood Plan was therefore entitled to take the approach expressed in the policy and this is not contrary to the emerging Local Plan.

Crownhall's criticism of the Examiner in relation to this issue is therefore not accepted. The Examiner (in paragraph 44 of her report) acknowledged that the emerging Local Plan recognises that in some cases suitable sites of over 6+ dwellings may come forward as planning applications. However, the Examiner also states that most importantly paragraph 7.28 of the emerging Local Plan states that it is intended that the identification of sites and phasing of delivery will be determined primarily by local communities through a neighbourhood planning process.

Ground 4:

The site selection assessment in the Neighbourhood Plan was unlawful as it was biased against the South of Loxwood Farm Site and so based on irrelevant considerations, an improper purpose and irrational.

The Examiner makes the point that the approach to site selection for the purpose of neighbourhood planning is not an exact science. She makes it clear that she is satisfied that all sites were considered against the same criteria and that a robust consultation process was carried out. The Examiner specifically refers to one of the basic conditions when she states that the sites within the plan will, in her view, contribute towards the achievement of sustainable development. Given the requirement that the plan meets the basic conditions rather than other tests (e.g. of soundness for a Local Plan), the approach to site selection undertaken by the parish council is considered to be a proportionate and reasonable one as set out by the Examiner (paragraphs 46 onwards).

Ground 5:

The District Council's adoption of the Examiner's errors.

The District Council resolved to accept the Examiner's report on the basis that the recommended modifications were relatively minor. This process was undertaken in conjunction with the Parish Council. The District Council was satisfied that the Plan met the basic conditions and that it was therefore appropriate to proceed to referendum. The District Council's Decision Statement makes it clear that the District Council fully and properly considered these matters.

Ground 6:

Authority to go to a second referendum.

The matter relating to the officer decision is addressed in the Cabinet report attached.