

# Proposed Modifications to the District Plan

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## Balcombe Parish Council Response to the Consultation running from 7<sup>th</sup> Oct to 13<sup>th</sup> Nov 2017

### Policy Comments

#### DP 6 : Settlement Hierarchy - Increased allocation

We wish to object to the policy allocating a 'minimum' of 79 houses to Balcombe. Our objection is on grounds of Area of Outstanding Beauty (AONB) guidance, discord with the made Balcombe Neighbourhood Plan, the method of calculation of allocation and the lack of assessment of suitable sites. **We believe that the policy as set out is neither sound nor legal.**

#### *AONB – Local Need*

The parish lies entirely within the Area of Outstanding Beauty (AONB) and in accordance with guidance set out in the Management Plan for the AONB and in NPPF legislation, development must be to meet local need. Major development in the AONB must assess the need for the development, the ability to provide this need elsewhere, the detrimental effect on the landscape.

The Settlement Sustainability Review : May 2015 undertaken by MSDC which set out the hierarchy states that development in Balcombe should be for local need.

MSDC's Sustainability Assessment clause 5.8 states that there is no need to access need separately in the settlements, this is unsound and unlawful in the AONB.

#### *Made Neighbourhood Plan –local need*

The Parish has a made Neighbourhood Plan (NP) which assessed local need by a variety of methods. Methods were as set out in that NP and included District OAN, predicted population growth in the Parish, a housing needs survey, and assessed the MSDC housing need register. This was then compared to recent growth patterns in the Parish as a guide for sustainable growth.

MSDC have not shown the local need for Balcombe, they have shown a proportion of need throughout the District and the unmet needs of Crawley.

By allocating a proportion of the unmet need of Crawley to Balcombe MSDC have stepped outside legislation and guidance. It is questionable as to whether strategic need should also be being met by settlements in the AONB. For MSDC to allocate development in the AONB it must satisfy the assessment in NPPF 116 that this need cannot be provided elsewhere. MSDC has not demonstrated that the additional need cannot be met elsewhere or that there is a necessity to site this additional need in the AONB settlements. **This policy is not legal in regard to AONB policy.**

#### *Made Neighbourhood Plan - OAN and unmet need*

Unmet need should not be being allocated by MSDC in the settlements of the AONB. Recent guidance from DCLG on housing number calculation, currently under consultation (to 9<sup>th</sup> Nov), states that unmet need from outside the plan area should not in fact be being allocated in NP's calculation of numbers, (section 100 of the consultation document).

However **if** we were to accept the apportionment of housing from OAN to Balcombe, by removing the unmet need from Crawley we are left with 34 units 2014-24 and 24 units from 2024 -2031, a resultant 58 homes. As Balcombe has already established its affordable requirement in the NP as 14 units and these are provided by the made NP commitments the uplift of 20% for affordable housing can be further removed resulting in 27 units from 2014-2024 and 19 units from 2024-2031, a total of 46 homes, which is in fact almost exactly what the NP provides currently and reflects the increase in the OAN. If 46 or even 58 were to be set as the minimum for Balcombe this does not prohibit the allocation of an additional site or slight enlargement of others, however, it would encourage a sustainable approach to increasing numbers which, following extensive assessment during formation of the NP, we know the current allocation of 79 does not.

We note that MSDC has made no detailed assessment of the requirement for affordable housing in the Parish.

#### *Lack of site assessment*

Assessment has not yet been made by MSDC to show that the 79 units minimum can be met. **The policy is therefore unsound.**

Land has been called for with a deadline of 30<sup>th</sup> Oct but the lists of sites are not yet available for review (BPC has asked for the list) and the work is entirely incomplete. MSDC made the allocation in absence of knowledge of any sites being available. No new assessment on sustainability or viability has yet been made on any additional sites in the Parish and so the provision for 79 is unsubstantiated. The Balcombe NP made a full sustainability assessment on 27 sites and the suitable sites were selected for development, yet that work has not as far as we are aware been revisited.

In its allocation of sites in document 8c several settlements are discounted merely because they have fulfilled the new numbers, whilst others will have to find in some cases double the numbers allocated in their NPs. Settlements may have restriction limiting development. It should be noted that the Parishes falling below the new allocations are largely in the undulating rural areas of the AONB and face constraints due to the landscape that others do not.

The lack of assessment of additional capacity in each settlement in document 8c is unsound. Document 8c is unclear and decisions in it are made subjectively. The allocation of housing by numbers prior to assessment of capacity in settlements is unsound.

By merely allocating houses between settlements in this way before detailed assessment of viable sites rather than allocate an overall figure the DC will provide no more surety of provision than if it allocates an overall figure for distribution at a later date. In fact at this stage it may reduce delivery by discounting some settlements too early. **This approach is entirely unsound.**

## **DP6 : Settlement Hierarchy - Contiguous development.**

This policy contravenes established rules on countryside development and settlement boundaries. It is not in accordance with the NPPF in relation to the AONB.

The policy allows for multiple sites to be brought forward of less than 10 units in any settlement. The policy risks development encircling established settlements by making all land adjacent to the current established built-up boundary effectively available for development.

Policy DP6 is compounded by policy DP29 whereby affordable provision is limited on this size of development. As this policy allows for multiple sites around any settlement the situation is likely to occur where perhaps 10s of houses are built providing no affordable element.

This policy lacks any additional protection to settlements in the AONB (other than a subjective assessment on sustainability), and the policy is in disjoint with the AONB Management Plan and contrary to AONB aims and law.

**This policy is neither sound nor legal.**

### **AONB issues**

NPPF 116 states that ‘major development’ in the AONB should not be allowed unless there is an overriding need or there are benefits resulting from that development and it has been demonstrated why the development cannot be sited elsewhere and provide those same benefits/needs. It must assess the detrimental effect on the landscape in that determination. The presumption in favour of sustainable development does not therefore automatically apply in the AONB.

The Planning Practice Guidance (PPG) states that judgement on what constitutes a major development must be made in the context of that development. I.e that what constitutes a ‘major development’ for a small village or hamlet would not constitute a major development for a larger town. (Whilst the Town and Planning Act defines 10 houses as a limit the NPPF/PPG sets no limit and allows judgement to become the deciding factor.)

In determining the size of development permitted in the countryside of the AONB the District Council is by policy DP6 removing this ability for a decision maker to make a contextual judgement. It is prejudging this assessment. This is not legal. Recent case law reflects this.

MSDC’s sustainability assessment on DP6 rightly makes the observation in relationship to the setting of the 10 house limit that what might be small in the context of a larger town could be ‘significant’ for a smaller village. This observation is however not carried into the Policy itself. There is no mention made in the policy or in the sustainability assessment of the specific effect in the AONB.

There must also be some weight given to the cumulative effect of a policy. In setting DP6 with no cumulative limit on developments of up to 10 houses in the ‘countryside’ surrounding settlements the effect is almost certain to be ‘major’. Whilst there is some attempt to mitigate this in the policy, by stating that developments that could be deemed to be single development are not brought forward as piecemeal smaller units, this is not the full story. It matters not that a single development is sub-divided, the cumulative effect of this policy will allow the same degree of development in any one settlement on sequential sites. This is true in larger and smaller settlements however the effect

could be considerable for smaller villages. The cumulative effect is 'major' development. This policy is not sound.

In addition villages are already allocating housing through their Neighbourhood Plans. In the AONB those numbers are relatively small by reason of environmental constraint and the overriding requirement to protect the landscape. In combination with the under 10 unit policy the cumulative effect of allocations could be excessive and unsustainable.

By not differentiating the policy on AONB or size of settlement MSDC is not complying with legislation. The policy is not legal.

The DC should reconsider the policy. It must allow NPPF law to preside and the assessment of development relative to the context of its setting to remain. **Settlements in the AONB should be excluded from this policy.**

#### *Affordable housing and DP6*

Policy DP6 is compounded by policy DP29 whereby affordable provision is limited on this size of development. In the AONB developments of 6-10 units would require a commuted sum to be paid to MSDC however this could be used anywhere in the District and will not necessarily lead to affordable housing in the settlements of the AONB. For developments outside the AONB there will be no requirement to provide either a sum or onsite affordable units.

As this policy allows for multiple sites around any settlement the situation is likely to occur where perhaps 10s of houses are built providing no affordable element. **This policy is unsound.**

### **DP 10: Protection & Enhancement of the Countryside**

The July version of the draft plan included a reference to the changes in DP6 here. This direct reference has been removed from the October Consultation proposal however the policy still allows development in the countryside where it accords with another policy in the Plan and therefore the DP6 allowances on contiguous development.

There is no mention of the additional protection afforded to the AONB by the NPPF in the landscape paragraph and this is an omission.

MSDC have concluded that a review of the sustainability assessment for DP10 is not required as this policy has not changed since Submission stage. However this is not the case. The effect of fringe development of the countryside immediately adjoining villages' built-up boundaries in DP6 makes this change significant and a reassessment should be made on DP10 sustainability. Furthermore the District Plan monitoring section still sets the target as zero for countryside development which is clearly unachievable in light of DP6. A new target should be set that shows the effect of DP6 on protection of the countryside.

Policy DP12 excludes the AONB and refers to more restrictive clause DP14, this should be mirrored in DP10.

**This policy is not sound nor legal in terms of the AONB and NPPF.**

### **DP13 : Development in the Countryside**

This policy refers to DP6, which in itself allows development in the countryside. The scale of restriction given in all other criteria in this policy and the large scale of development which will result from DP6 are clearly illustrated here.

There is no mention of the additional protection afforded to the AONB in the NPPF and this is an omission. It is also in breach of legislation.

MSDC have concluded that a review of the sustainability assessment for DP13 is not required as this policy has not changed since Submission stage. However this is not the case. The effect of fringe development of the countryside immediately adjoining villages built up boundaries in DP6 makes this change significant and a reassessment should be made on DP13 sustainability. Furthermore the District Plan monitoring section still sets the target as zero for countryside development which is clearly unachievable in light of DP6. A new target should be set that shows the effect of DP6 on protection of the countryside.

**This policy is not sound or legal in terms of the AONB and NPPF.**

### **DP29 : Affordable Housing**

This policy on its own is acceptable, however in conjunction with the proposed DP6 policy on contiguous developments of up to 10 homes this results in a loop hole for lack of provision of affordable housing in the District. For sites in the AONB a commuted sum is allowed on any sites of 6 to 10 units but this is not tied to use in the Parish where the development takes place but could be used anywhere in the District. For sites of up to 10 allowable under DP6 elsewhere no affordable provision is payable. This policy in conjunction with DP6 contiguous development is likely to be contrary to the aims of providing affordable housing in the District and is unsound on this point.

### DP26: Accessibility

This policy seeks to reduce the regulations set out in the Building Regulations for accessibility. Flat developments for less than 10 units will be exempt from this regulation under this policy. For Balcombe this would mean all proposed flat developments currently in the NP would be exempt from accessibility regulations. This policy disadvantages small settlements where developments are of a smaller scale. Yet many rural areas lack just this type of smaller, manageable accommodation for older people and those with accessibility issues. Balcombe's NP encourages accessible accommodation and seeks its provision through the Design Guide.

There seems to be no reason for this relaxation other than viability and yet the regulations are not onerous and this cannot be justified. The requirement is that a proportion (20%) to have flat paved access, wider doors, larger bathrooms /toilets and slightly wider corridors. This could easily be accommodated on the ground floor of such blocks and the proposed policy is unsound and contravenes the legislation set out in the Building Regulations. For conversions of existing buildings this may be acceptable but for new builds it is not. **This policy is unsound and contrary to law (Building Regulations).**

### DP40 : Renewable Energy Schemes

This policy requires wind farm developments to be included in Neighbourhood Plans. With 16 out of 20 NPs already made in the District, without this policy having been in place, those plans are likely not to include sites for wind energy. This is a senseless and poorly thought through policy and will result in a reduction of provision of renewable energy contrary to current guidance.

## Extracts

### Settlement Sustainability Review : May 2015

**Balcombe** has a lower proportion of those aged 5- 15 years and 16-24 and 45-64 than the Mid Sussex “district” and “rural” averages; and a higher proportion of the same indices of those aged 25-44, and 65+. The village is considered to be a Limited Local Service Centre. The village benefits from a peak public transport service to significant local employment opportunities; and an off peak service that is sufficient to enable access to further services and facilities, aided by its railway station located on the London to Brighton mainline. Balcombe is environmentally constrained due to its location wholly within the High Weald Area of Outstanding Natural Beauty. Future development should therefore be primarily to meet local needs. There are pockets of woodland and Ancient Woodland surrounding the village.

## Comments on other issues in the Draft District Plan

### Sustainability Assessment Report

**5.5 –** *One modification is proposed that would strengthen the spatial strategy. This is a proposed amendment to policy DP6: Settlement Hierarchy which now sets out the approximate number of dwellings expected in each settlement and groups of settlements. This aims to give more certainty regarding the amount of development expected across the District and provides stakeholders (inclusive of Town and Parish Councils preparing Neighbourhood Plans) a steer to ensure that future plans are in accordance with the spatial strategy.*

The aim of DP6 is to give certainty however it refers to NPs in preparation and no reference to those already made. By setting minimum allocations after NPs are made, in some cases resulting in up to 100% increase, there is actually less certainty. **This is unsound.**

**5.8 -** *The level of development to be directed to Towns and Villages does not require its own appraisal. This conclusion has been reached as:*

- *The District’s overall housing provision has been appraised (section 6) to ensure that, overall, the level of development in the District is sustainable.*
- *The broad locations and strategic sites to accommodate the majority of this development has been appraised (section 7)*
- *The residual amount to be directed to Towns and Parishes is in accordance with the settlement hierarchy, which itself has been appraised in the Submission Sustainability Appraisal and is still relevant and up-to-date*
- *The numbers for each Town and Parish to be delivered through (for example) Neighbourhood Plans will be assessed in the Sustainability Appraisal that accompanies these plans. If these identify sustainability concerns, policy DP6 provides flexibility for more sustainable/less constrained settlements to accommodate growth in accordance with the settlement hierarchy.*

We entirely disagree with this statement. Neighbourhood Plans have required an individual assessment of need or achievable development. **To override this is unsound.** In particular in the AONB where NPPF rules preside need must be assessed on a settlement by settlement basis. This statement is lazy and takes no account of Neighbourhood Plans.



## Commentary on the Sustainability Appraisal

**DP 6 :** Comments on context of development have not been carried through to the policy.

DP6: Settlement Hierarchy																		
Reason for Modification:																		
Amended in accordance with MSDC8c.																		
Summary of Main Modifications:																		
<ul style="list-style-type: none"><li>Includes support for windfall development where other criteria is met</li><li>Criteria related to under-development and phasing added</li></ul>																		
Implications for Sustainability Appraisal:																		
In order to boost supply, it was deemed appropriate to include support for windfall development, particularly where contiguous with the existing built-up area boundary. This																		
MM Option A) Include support for up to 10 dwellings contiguous with the built-up area provided other criteria are met																		
MM Option B) Include support for up to 20 dwellings contiguous with the built-up area provided other criteria are met																		
Re-appraisal:																		
Policy Stage	Social				Environmental								Economic					
	1 – Decent and Affordable Home	2 – Access to Health	3 – Opportunities for Education	4 – Access to Retail and Community Facilities	5 – Cohesive, Safe, Crime Resistant Communities	6 – Flood Risk	7 – Efficient Land Use	8 – Conserve and Enhance Biodiversity	9 – Protect and Enhance Countryside	10 – Protect and Enhance Historic Environment	11 – Reduce Road Congestion	12 – Reduce Waste Generation	13 – Maintain and Improve Water Quality	14 – Increase Energy Efficiency	15 – Encourage regeneration of Town and Village Centres	16 – Ensure High and Stable Employment Levels	17 – Support Economic Growth	18 – Encourage Tourism
MMOption A	+	+	+	+	0	0	-	-	-	0	-?	0	0	0	+	+	+	0
MMOption B	+	+	+	+	-?	0	-	-	-	0	-	0	0	0	+	+	+	0
Sustainability Impact of Modification:																		
<p>Both options will boost the supply of housing provided other criteria within the policy are met. Option (A) will allow for development (less than 10 dwellings) which, in context with the towns and larger villages is small-scale but in context of smaller villages is significant. Development would contribute towards health, education, retail and community facilities, so is likely to have a positive impact on these objectives. However, increasing the windfall amount to 20 units would encourage relatively large schemes (in the context of some settlements) and piecemeal development with corresponding contributions to existing facilities, where there is already pressure and capacity issues. For smaller settlements in particular, levels of development associated with option (B) would be best planned for via an allocation in a Neighbourhood Plan or Site Allocations DPD in order to ensure that development can be brought forward alongside the necessary infrastructure.</p> <p>Similarly, smaller schemes may have less of an impact on road congestion and other transport related impacts, however larger 'unplanned' schemes arising through windfall development are more likely to have transport impacts. This is reflected under objective (11).</p>																		

Both options would involve development in countryside, as they both allow for development outside (but contiguous) with built-up areas. This is likely to have a negative impact on objective (9), however option (B) is assessed as being more negative than (A) as it would involve greater levels of development in the countryside, with the site size potentially causing more harm than smaller schemes.

Overall, it is concluded that the most sustainable option is option (A). This would allow for development in the countryside in order to boost supply, but at lower levels than option (B). Option (A) is more likely to reflect the existing character of settlements, particularly those lower down the settlement hierarchy and be less harmful on environmental objectives. Option (A) is more likely to offer social benefits, whereas greater levels of development will only likely deliver such benefits if allocated and planned for through the development plan process – option (B) may discourage development being brought forward through this process.



**DP 10 :** The statement that there has been no change is incorrect. DP6 contiguous development makes a significant change.

<b>DP10: Protection and Enhancement of the Countryside</b>
<b>Reason for Modification:</b> No Change
<b>Summary of Main Modifications:</b> N/A
<b>Implications for Sustainability Appraisal:</b> This policy has not changed since Submission stage, therefore the appraisal within the Submission Sustainability Appraisal is still relevant. Therefore this policy does not require re-appraisal.

**DP 13 :** The statement that there has been no change is incorrect. DP6 contiguous development makes a significant change

<b>DP13: New Homes in the Countryside</b>
<b>Reason for Modification:</b> To anticipate expected changes to the National Planning Policy Framework on planning for small sites.
<b>Summary of Main Modifications:</b> <ul style="list-style-type: none"> <li>• Additional criterion requesting conformity with DP6</li> </ul>
<b>Implications for Sustainability Appraisal:</b> The modifications proposed to this policy relate to supporting text, factual updates or changes to improve clarity. The changes would not alter the policy so much that it would be distinct from the options already appraised within the Submission Sustainability Appraisal, and therefore a re-appraisal is not required.

**DP 14 :** The statement that there has been no change is incorrect. DP6 contiguous development makes a significant change

<b>DP14: High Weald Area of Outstanding Natural Beauty</b>
<b>Reason for Modification:</b> No Change
<b>Summary of Main Modifications:</b> N/A
<b>Implications for Sustainability Appraisal:</b> This policy has not changed since Submission stage, therefore the appraisal within the Submission Sustainability Appraisal is still relevant. Therefore this policy does not require re-appraisal.

**DP26** : it is unclear why the change has been made from 5 units to 10.

<b>DP26: Accessibility</b>																
<b>Reason for Modification:</b> Amended in accordance with MSDC8b.																
<b>Summary of Main Modifications:</b> <ul style="list-style-type: none"> <li>Minimum provision of 20% now included (previously all development)</li> <li>Amended wheelchair proportion from 5% to 4%</li> </ul>																
<b>Implications for Sustainability Appraisal:</b> The proposed amendments to this policy, including the addition of further criteria, means the revised policy is distinct from the options appraised within the Submission Sustainability Appraisal. This means that a re-appraisal is necessary.																
<b>Re-appraisal:</b>																
Policy Stage	Social					Environmental							Economic			
	1 – Decent and Affordable Home	2 – Access to Health	3 – Opportunities for Education	4 – Access to Retail and Community Facilities	5 – Cohesive, Safe, Crime Resistant Communities	6 – Flood Risk	7 – Efficient Land Use	8 – Conserve and Enhance Biodiversity	9 – Protect and Enhance Countryside	10 – Protect and Enhance Historic Environment	11 – Reduce Road Congestion	12 – Reduce Waste Generation	13 – Maintain and Improve Water Quality	14 – Increase Energy Efficiency	15 – Encourage regeneration of Town and Village Centres	16 – Ensure High and Stable Employment Levels
Submission	+	+	+	+	0	0	0	0	0	-?	0	0	0	0	0	+
Modification	+	/	/	/	/	/	/	/	/	/	/	/	/	/	/	/
<b>Sustainability Impact of Modification:</b> The modification to this policy reduces the provision of wheelchair-user dwellings from 5% to 4% and increases the threshold from zero to 5+ dwellings providing 20% Category 2 accessible dwellings. This therefore will reduce the number of dwellings built to these standards – this may not be as positive in sustainability terms for objective (1) compared to the policy appraised at Submission stage, as the type of home required for all members of the community may not be delivered. However, the thresholds/proportion introduced are more closely aligned with evidence, meaning need for these types of dwellings should still be met. This will be monitored during the plan period and amendments made  Overall the sustainability impacts expected from the modifications to this policy are unlikely to be significantly different to the policy appraised at Submission stage.																

**DP29** : the cumulative effects of DP6 contiguous development has not been accounted for here.

<b>DP29: Affordable Housing</b>																
<b>Reason for Modification:</b> Amended in accordance with MSDC 8e																
<b>Summary of Main Modifications:</b> <ul style="list-style-type: none"> <li>Policy reverted to the Pre-submission version (doc ref: BP2)</li> <li>Inserted references to the forthcoming SPD</li> <li>Added requirement to meet national technical standards including optional requirements</li> </ul>																
<b>Implications for Sustainability Appraisal:</b> The modification proposed to this policy is minor. The changes would not alter the policy so much that it would be distinct from the options already appraised within the Submission Sustainability Appraisal, and therefore a re-appraisal is not required.																

## Conclusions Table :

Shows no negative values where some exist, the table should be corrected.

### Policy Appraisals - Conclusion

8.8. The following table summarises the total number of impacts (ranging ++ to --) for each objective:

	Social					Environmental										Economic			
	1 – Decent and Affordable Home	2 – Access to Health	3 – Opportunities for Education	4 – Access to Retail and Community Facilities	5 – Cohesive, Safe, Crime Resistant Communities	6 – Flood Risk	7 – Efficient Land Use	8 – Conserve and Enhance Biodiversity	9 – Protect and Enhance Countryside	10 – Protect and Enhance Historic Environment	11 – Reduce Road Congestion	12 – Reduce Waste Generation	13 – Maintain and Improve Water Quality	14 – Increase Energy Efficiency	15 – Encourage regeneration of Town and Village Centres	16 – Ensure High and Stable Employment Levels	17 – Support Economic Growth	18 – Encourage Tourism	
++	1	2	1	2	1	0	0	0	0	0	0	0	0	1	0	0	0	0	
+	1	1	0	0	1	1	1	2	4	3	2	0	1	0	1	0	1	1	
+	1	2	0	1	0	1	2	3	1	0	0	0	0	0	0	0	0	0	
0	1	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
/	34	32	36	34	35	36	35	33	33	35	36	38	37	37	36	38	37	37	
-?	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	
-	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
--	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

**Table 8 - Sustainability Appraisal – Policies Conclusion**