



Slaugham Parish Council  
**Community Right to Build  
Order No. 2  
Handcross Community  
Centre  
Submission Version**

**Independent Examiner's Report**

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## Summary

I have been appointed as the independent examiner into the Community Right to Build Order No. 2 Handcross Community Centre.

Slaugham Parish Council is to be commended for taking the initiative in producing this Community Right to Build Order. It is one of the first in the country to reach examination stage.

My role as independent examiner is to assess the Order to ensure that it meets the basic conditions and other requirements set out in legislation and regulations.

It is with regret that I have reached the conclusion that the Community Right to Build Order No. 2 Handcross Community Centre, Handcross should be refused for two reasons. Firstly, it does not meet the basic conditions in that a site-specific flood risk assessment is required to be carried out and this is not something in my view that can be retrofitted given the need to have regard to national policies and guidance. Secondly, I cannot be certain that the making of the Order would not breach, or otherwise be compatible with EU obligations insofar as consideration as to whether an EIA was needed should have been undertaken.

As a result the proposed Order should not proceed to a referendum.

In the interests of completeness and to offer some support to the qualifying body so that they are aware of other matters which I considered required modification had the Order met all the basic conditions and other requirements, I have gone on to recommend a number of modifications on the details of the Order and offered some thoughts on further issues the qualifying body might wish to consider.

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17 January 2014

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## **1.0 Introduction**

- 1.1 Neighbourhood planning provides communities with an exciting opportunity to shape the future of their neighbourhoods.
- 1.2 The qualifying body, Slaugham Parish Council, is one of the first in England to produce a Community Right to Build Order under a range of community rights introduced in the Localism Act 2011.
- 1.3 As well as producing this Community Right to Build Order, Slaugham Parish Council have also proposed a neighbourhood plan and another Community Right to Build Order for the development of 76 dwellings and a commercial unit on land off St. Martin Close/Coos Lane, Handcross. The neighbourhood plan and the other Order are subject to separate examination reports.

## **2.0 What is a Community Right to Build Order?**

- 2.1 Neighbourhood Development Orders can grant planning permission for specific types of development in a neighbourhood area. A Community Right to Build Order (CRtBO) is a particular type of the Neighbourhood Development Order that can be used to grant planning permission for small-scale development for community benefit on a specific site in a neighbourhood area. This power means that the community can decide to build, for example, a community centre or new residential development without submitting a planning application and going through the usual planning application process.
- 2.2 Where the community organisation would like to develop the land itself the resulting assets can only be disposed of, improved or developed in a manner which that organisation considers would benefit the community.
- 2.3 Before proceeding, the proposal must receive the agreement of more than 50% of local people voting in a referendum and meet some minimum requirements set out in legislation and regulations. Before proceeding to a referendum, an independent examination is carried out to check that those minimum requirements have been met.

## **3.0 What is this Order for?**

- 3.1 This proposed CRtBO grants permission for “the development of a community centre and ancillary uses with associated car parking, access and landscaping works on land at Handcross Recreation Ground, off High Street, Handcross, Mid Sussex”.
- 3.2 Handcross is the largest of four villages within Slaugham Parish. The Parish is a predominately rural area with the villages of Handcross, Pease Pottage, Warninglid and Slaugham surrounded by countryside. The majority of the Parish lies within the High Weald Area of Outstanding

Natural Beauty (AONB).

#### **4.0 Appointment of the independent examiner**

- 4.1 I have been appointed through the Neighbourhood Plan Independent Examiners' Referral Service (NPIERS) by the local planning authority, Mid Sussex District Council, with the agreement of the qualifying body, Slaugham Parish Council, to carry out the independent examination of this Order.
- 4.2 I confirm that I am independent of both the qualifying body and the local authority. I have no interest in any land affected by the Order. I am a chartered town planner with over twenty years experience in planning and have worked in the public, private and academic sectors. I therefore have the appropriate qualifications and experience to carry out this independent examination.

#### **5.0 The role of the independent examiner**

- 5.1 Each order is subject to an independent examination to ensure that it meets the basic conditions and other requirements set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).
- 5.2 The basic conditions<sup>1</sup> are:
- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order
  - Having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit that it possesses, it is appropriate to make the order
  - Having special regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area, it is appropriate to make the order
  - The making of the order contributes to the achievement of sustainable development
  - The making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority
  - The making of the order does not breach, and is otherwise compatible with, European Union (EU) obligations
  - Prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

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<sup>1</sup> Paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

- 5.3 Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two basic conditions in addition to those set out in primary legislation and referred to in the paragraph above. These are:
- The making of the neighbourhood plan is not likely to have a significant effect on a European site<sup>2</sup> or a European offshore marine site<sup>3</sup> either alone or in combination with other plans or projects (not applicable to this examination as this basic condition refers to the making of neighbourhood plans)
  - Having regard to all material considerations, it is appropriate that the neighbourhood development order is made where the development described in an order proposal is Environmental Impact Assessment development.<sup>4</sup>
- 5.4 The examiner is also required to consider<sup>5</sup> whether:
- The order proposal is accompanied by a draft of the order and a statement which contains a summary of the proposals and set out the reasons why an order should be made in the proposed terms<sup>6</sup> and the order is made by a community organisation and grants planning permission for specified development in relation to a specified site in the specified neighbourhood area and the specified development does not exceed prescribed limits<sup>7</sup>
  - The order proposal may not provide for the granting of planning permission for development which is excluded development,<sup>8</sup> where planning permission is already granted for that development,<sup>9</sup> and may not relate to more than one neighbourhood area<sup>10</sup>
  - The order proposal complies with section 61L of Schedule 9 of the Town and Country Planning Act 1990 (as amended) which refers to permission granted by neighbourhood development orders and any conditions specified in the order and any time periods specified
  - Whether the draft order is compatible with the Convention rights.<sup>11</sup>

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<sup>2</sup> As defined in the Conservation of Habitats and Species Regulations 2012

<sup>3</sup> As defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007

<sup>4</sup> As defined by Schedule 3 of the Neighbourhood Planning (general) Regulations 2012 which states that EIA development means development which satisfies the definition of Schedule 2 development in regulation 2 (1) of the EIA Regulations

<sup>5</sup> Set out in paragraph 8 (1) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

<sup>6</sup> S61E(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

<sup>7</sup> S61Q(2) of Schedule 4C of the TCPA 1990 (as amended) as specified by S61Q(8)

<sup>8</sup> S61J(2) and as defined in S61K of Schedule 9 of the Town and Country Planning Act 1990 (as amended)

<sup>9</sup> S61J(4) of Schedule 9 of the Town and Country Planning Act 1990 (as amended)

<sup>10</sup> S61J(5) of Schedule 9 of the Town and Country Planning Act 1990 (as amended)

<sup>11</sup> S61E 8(6) of Schedule 4B of the Town and Country Planning Act 1990 (as amended) and that have the same meaning as the Human Rights Act 1998

- 5.5 The examiner must then make one of the following recommendations:
- The draft order is submitted to a referendum
  - That modifications specified in the report are made to the draft order and the draft order as modified is submitted to a referendum
  - The proposal for the order is refused.
- 5.6 If the order proposal can proceed to referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.
- 5.7 In respect of CRtBOs the examiner's report is binding.<sup>12</sup> If the examiner's report recommends that the draft order is refused, the local planning authority must refuse the proposal. If the examiner's report recommends the draft order is submitted to a referendum (with or without modifications), a referendum must be held on the making by the authority of a CRtBO.
- 5.8 If the order proposal goes forward to a referendum and more than 50% of those voting vote in favour of the order proposal then it is made by the relevant local authority, in this case Mid Sussex District Council.
- 5.9 I also considered whether it was necessary to hold a hearing into the CRtBO. Given that a hearing may be held when it is considered necessary to ensure adequate examination of the issue or a person has a fair chance to put a case, I decided that it was not necessary to hold a hearing into this Order.

## **6.0 What must the CRtBO include?**

- 6.1 Where a CRtBO is submitted to the local planning authority the Neighbourhood Planning (General) Regulations 2012 specify it must include:
- A map identifying the land to which the order relates
  - A consultation statement which includes a) details of those bodies and persons who were consulted, b) explains how they were consulted, c) summarises the main issues and concerns raised by those consulted and d) describes how those issues and concerns have been considered and addressed in the proposed order
  - The proposed order
  - An archaeology statement if the qualifying body considers it to be appropriate after consultation with English Heritage. When one is submitted this should confirm that information contained in the historic environment record has a) been reviewed, b) sets out the findings from that review and c) explains how the findings have been

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<sup>12</sup> S10(2) and (3) of Schedule 4C of Town and Country Planning Act 1990 (as amended)

taken into account in preparing the order proposal. Where no findings of relevance are identified the statement need only a) confirm the review has taken place and b) explain there are no relevant findings

- A statement that explains how the order meets the basic conditions
- Details of any enfranchisement rights and the properties or types of properties to which the enfranchisement rights are not exercisable.

6.2 In this case all of the above requirements have been submitted to the local planning authority where relevant. However, I offer some general observations on the consultation statement and basic conditions statement.

6.3 To avoid repetition, the Order refers to the consultation statement and basic conditions statement of the proposed Slaugham Parish Neighbourhood Plan (SPNP). However, Community Right to Build Orders have a number of additional requirements in relation to both consultation and basic conditions. It is not clear to me whether these have been carried out and therefore whilst the general aim of avoiding unnecessary repetition is generally to be welcomed, it also needs to be clear whether the additional requirements have been met.

6.4 In particular I cannot be sure that English Heritage and any owner or tenant of the land affected by the Order have been consulted. It is not clear to me whether the interests of any other consultation body have been considered. The consultation statement does not detail or distinguish between those representations made on the Order and the SPNP.

## 7.0 Relationship to Slaugham Parish Neighbourhood Plan

7.1 It is clear that the Order has been developed as an integral part of the neighbourhood plan process and indeed may well be partly reliant on other development for funding. It makes reference to a number of policies in the proposed SPNP. In particular it refers to Policy 20 'Community Right to Build Orders' which indicates that two CRtBOs will be made. In turn Policy 20 refers to Policy 15 'Handcross Community Centre' of the proposed SPNP.

7.2 However, the Order is a stand-alone entity in its own right. Therefore references to, or any reliance on, the proposed SPNP and the other CRtBO should be made with care especially given that it is not at all certain that all three could proceed to a referendum at the same time or indeed all be supported at a referendum. In fact during my examination of the proposed SPNP, I recommended that the Plan should not proceed to a referendum. Therefore **any references to the SPNP in the Order should be deleted and consequential amendments made to the text as necessary.**



7.3 As a point of clarification, there is an apparent anomaly with Policy 18 of the proposed SPNP which seeks to identify assets of community value. Criterion v. of Policy 18 identifies the pavilion/nursery and the recreation ground as one such (potential) asset. Whilst the policy refers to buildings, it was clarified at the hearing into the neighbourhood plan that it was the use of the buildings that was intended for identification rather than the buildings themselves. Given this is the case there is no contradiction between the proposed SPNP and the Order in this respect. I have otherwise considered Policy 18 in my examiner's report on the proposed SPNP.

## **8.0 Compliance with matters other than the basic conditions**

8.1 In relation to the matters set out in paragraph 5.4 of this report, I am satisfied that the Order is made by a qualifying body and grants planning permission for a specified developed on a specified site in a specified neighbourhood area. It does not grant permission for development which already has planning permission and does not relate to more than one neighbourhood area.

8.2 The Order proposal contains a draft of the Order and a statement of the proposals and reasons why the Order should be made. The draft Order contains a number of conditions including some that specify time periods and I consider that, with appropriate modifications, these would comply with the relevant requirements.

8.3 The draft Order does not refer to Convention rights and the basic conditions statement only contains a short statement referring to the neighbourhood plan rather than the CRtBO in this respect. It would have been useful for a statement to have been included on this matter. Nevertheless no evidence has been put forward to demonstrate that the draft Order has not had regard to Convention rights and the Order would appear to have neutral or positive impacts. Therefore the Order is compatible with the Convention rights.

8.4 In relation to whether the development is excluded development, I comment on this in next section of this report.

## **9.0 Compliance with the basic conditions**

### ***Introductory remarks about the Order***

9.1 The Order takes what it calls an 'in principle' approach. The Order includes a 'sketch design' for the proposed community centre to establish some key principles, but it does not fix the size, layout or uses as it is intended that these details should be "worked up with the community alongside a business plan after the Order is approved".<sup>13</sup> The Order

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<sup>13</sup> Page 3 of the Order

explains that there a number of existing uses and activities that require new premises and that the community centre will bring these together and “create a stronger community hub”.<sup>14</sup> Section 4.0 of the Order, entitled ‘design and access statement’, explores the site’s context and characteristics and introduces masterplan and building concepts together with an illustrative masterplan.

- 9.2 It is proposed to establish a Community Land Trust to help deliver and manage the proposed community centre and to activate greater community participation and management of the scheme.
- 9.3 A site plan included in the Order outlines two sites: a ‘blue’ line around a 3 hectare site that includes the recreation ground and a ‘red’ line around a 1 hectare site that includes the access, parking area, landscaping and the area in which the building and other facilities such as the bowling green would be located.
- 9.4 The Order usefully explains the rationale for the proposal and offers guidance on the design concept and provides illustrative drawings to show what the Order could achieve. As an Order can grant planning permission subject to any conditions or limitations specified in the Order this approach is manageable. However, there is a lack of clarity about whether it is the ‘blue’ or ‘red’ line that is the site for the Order.
- 9.5 In addition a size range and upper size limit for the building are referred to in various parts of the Order, but none is specified in the description of development or limited by condition. These references probably reflect the upper size limit of 750 square metres gross internal floor space referred to in Policy 15 of the proposed SPNP. **Both the site to which the Order relates and the size range or limit for the building should be clarified and the Order modified accordingly** to avoid confusion, help with consistency and ensure that the Order has the certainty needed to deliver the development.
- 9.6 The site is located outside the built-up area boundary of Handcross and located within an Area of Outstanding Natural Beauty (AONB) and a Countryside Area of Development Restraint. The site is currently used for recreation and community purposes and has a number of existing buildings on it together with an access and car parking.

***Regard to national planning policies and guidance; contribution to the achievement of sustainable development and general conformity with the strategic policies of the development plan***

- 9.7 One of the key documents in relation to national policy is the National Planning Policy Framework (the Framework) published in March 2012. The applicable development plan for the Order is the Mid Sussex Local

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<sup>14</sup> *Ibid*

Plan 2004 (MSLP 2004). Whilst I have referred to various parts of the Framework and some specific policies in the MSLP 2004 this should not be regarded as a complete or finite set of references, but rather an indication of the general thrust of the Order in relation to my assessment.

- 9.8 The Order usefully identifies various policies from the MSLP 2004 and includes relevant extracts from them and a commentary on how the Order meets those development plan policies. It also highlights various principles from the Framework. In addition it looks ahead to the emerging District Plan and whilst these emerging planning policies at District level are not part of the development plan and therefore not policies I may examine, this approach represents good practice.
- 9.9 The neighbourhood planning process has identified a need for a new community centre and has identified concerns about the continuing use of existing community facilities. This Order has therefore sought to reflect the needs and priorities of the neighbourhood. By relocating existing community facilities to the proposed new community centre, no loss of community facilities would occur and arguably better provision would result with accessible local services that would support the community's health and social well-being in line with the general thrust of the Framework which promotes the retention and development of community facilities and local services in villages.
- 9.10 The inclusion of an enterprise hub with offices and employment services would support local people wishing to undertake business activities and would encourage economic development activity helping to build a competitive economy. The Framework particularly supports the sustainable growth and expansion of all types of business and enterprise in rural areas. The policy aims of the MSLP 2004 include support for the continued prosperity of Mid Sussex by enabling and encouraging growth in the local economy and to support small firms and provide new business development in order to minimise the need for travel.
- 9.11 The provision of a mix of uses within the scheme is to be welcomed. The community centre and incorporation of the Parish office would provide opportunities for people to meet and provide for the possibility of a wide range of activities to promote health and well-being. The shared space sought in the illustrative masterplans would help to facilitate contact and provide opportunities for the community.
- 9.12 The location of the proposed community centre is close to existing recreational grounds, residential properties and other services serving Handcross such as the primary school and surgery. It is close to what might be regarded as the centre of the village.
- 9.13 The Order would necessitate the replacement of a number of existing buildings. Given this and the use of the majority of the site area for recreational purposes now and the steer given to the location of the new

building close to the existing buildings, little further intrusion into this open area would result.

- 9.14 The Order through the provisions of design principles and illustrative masterplans demonstrates that the community seeks a high quality development that is well-designed and would improve the quality of life for people in the Parish, contributing to a sense of local identity referred to in MSLP 2004 Policy C1.
- 9.15 Conditions regarding the energy efficiency and sustainability credentials of the building itself can be imposed in line with the Framework and MSLP 2004 Policy B4.
- 9.16 The site is accessible and conditions can ensure that transport and highway matters are adequately addressed at the detailed design stage and that adequate priority is given to both pedestrians and cyclists. Given the site's proximity to the village centre and other services as well as serving the larger village of Handcross and other villages in the Parish, and recognising the common difficulties of achieving sustainable transport in rural areas through modes other than the car, by cycle or on foot, the location is in principle acceptable.
- 9.17 The site is located within an Area of Outstanding Natural Beauty (AONB) and the Framework accords the highest status of protection in relation to landscape and scenic beauty to AONBs. The Order would bring a number of positive economic and social benefits. In addition the Order seeks a high quality of design and landscape setting. As a result, the Order plans positively to support local development needs and would contribute to the achievement of sustainable development. There is little scope for developing a community centre elsewhere outside the AONB given that the majority of the Parish and neighbourhood area (which is contiguous with the Parish boundary) is within an AONB. It is important to have such a mixed-use facility at the heart of the largest village in the Parish, Handcross, to support social and economic considerations and the needs of local people in line with MSLP 2004 Policies C1 and C4.
- 9.18 The Order notes that the site is in Flood Zone 1 and indicates that "given the scale of the development proposed...it is considered that there will be no significant flooding issues."<sup>15</sup> However, whilst it is noted the Environment Agency<sup>16</sup> considers that the Order complies with the requirements of the Framework, the Framework and Guidance<sup>17</sup> published alongside it indicate that a site-specific flood risk assessment is needed for development proposed on sites of 1 hectare or above. The vulnerability to flooding from other sources as well as from river and sea flooding, and the potential to increase flood risk elsewhere through the addition of hard surfaces and the effect of the new development on

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<sup>15</sup> Page 37 of the Order

<sup>16</sup> Representation from Environment Agency dated 22 July 2013

<sup>17</sup> Technical Guidance to the National Planning Policy Framework (March 2012)

surface water run-off, should be incorporated in the flood risk assessment.<sup>18</sup> Therefore it seems to me that a site-specific flood risk assessment is needed. This does not appear to have been carried out.

- 9.19 Having regard to the Framework, it is clear that flood risk is a consideration. It may well be that after carefully considering the issue, consultation with the Environment Agency and other reasons may have led to a conclusion that no specific flood risk assessment was needed in this case. However, it is not clear that a robust or logical process to address this consideration has been followed. As a result I cannot be certain that this issue has been addressed appropriately and it is not a matter that can be satisfactorily conditioned.
- 9.20 Bringing all these matters together, I conclude that in relation to the three basic conditions indicated above, whilst I am satisfied that in all other respects the Order meets these three basic conditions, I cannot be certain that it is appropriate to make the proposed Order in relation to flood risk. In this respect then the Order does not have regard to national policies and advice contained in guidance issued by the Secretary of State.
- 9.21 In relation to the detail of the Order and in particular the conditions attached to it, I make more detailed modifications in a later section of this report.

***Special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit and preserving or enhancing the character or appearance of any Conservation Area***

- 9.22 The site does not fall within the Handcross Conservation Area and there are no listed buildings within the site boundaries or adjacent to it. Whilst the Handcross Conservation Area lies close to the site's southernmost boundary, the details of the proposed development and associated works, which would be subject to conditions as appropriate, can be designed in ways which would preserve or enhance the character or appearance of the Handcross Conservation Area.
- 9.23 Therefore the Order proposal would meet the two basic conditions that require special regard should be paid to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit that it possesses and to the desirability of preserving or enhancing the character or appearance of any Conservation Area.

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<sup>18</sup> Technical Guidance to the National Planning Policy Framework (2012) p. 3

### ***Effect on European sites***

- 9.24 There are no European designated or RAMSAR sites within Mid Sussex District. Therefore no habitats assessment is needed in relation to Directive 92/43/EEC and Directive 2009/147/EC (often referred to as the Habitats and Wild Birds Directives respectively).

### ***Environmental Impact Assessment***

- 9.25 The process of Environmental Impact Assessment (EIA) is governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Neighbourhood Planning (General) Regulations 2012 amended the Environmental Impact Assessment Regulations 2011 so that they apply to neighbourhood development orders.<sup>19</sup>
- 9.26 The purpose of EIA is to protect the environment. In deciding whether to grant planning permission for a project which is likely to have significant effects on the environment, an EIA will ensure that those significant effects are first of all known about and secondly taken into account in the decision making process.
- 9.27 Environmental Impact Assessment (EIA) is required for EIA development. The EIA Regulations state that EIA development means development which is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as size, nature or location.<sup>20</sup>
- 9.28 Schedule 2 development means “development, other than exempt development, of a description in Column 1 of the table in Schedule 2 where any part of that development is to be carried out in a sensitive area or any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development”.<sup>21</sup> One of the descriptions of development in Column 1 is urban development projects.<sup>22</sup> The corresponding threshold in Column 2 of the table refers to the area of development exceeding 0.5 hectare. Sensitive areas include AONBs.<sup>23</sup>
- 9.29 Bringing this together, this means that in sensitive areas such as AONBs, all development in or partly in these areas should be screened. Case law affects how the Directive is applied and it can apply to development in non-urban areas which has an urbanising effect.

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<sup>19</sup> Regulation 29A of the EIA Regulations

<sup>20</sup> Regulation 2 of the EIA Regulations

<sup>21</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

<sup>22</sup> Part 10 (b) of Schedule 2 of Town and Country Planning (environmental Impact Assessment) Regulations 2011

<sup>23</sup> *Ibid*

- 9.30 It was therefore necessary to consider whether the development subject to this Order is EIA development. Given that the development could be regarded as an urban development project, the site exceeds 0.5 hectare and in any case is within a sensitive area (the AONB), this means that consideration should have been given as to the likely significant effects on the environment to determine if an EIA was required. The test of this includes characteristics of the development, its location and the characteristics of the potential impacts. Schedule 3 contains selection criteria for screening Schedule 2 development.
- 9.31 As far as I can ascertain, no such assessment has been undertaken. EIA is not mentioned in the Order itself. Reference is made to a strategic environmental assessment<sup>24</sup> (SEA) of the proposed SPNP and it appears that the Order seeks to rely on this given that it refers to a policy in the SPNP. I found a number of shortcomings with the proposed SPNP during my examination of it including how the SEA had been undertaken. In any case, put simply, SEA relates to plans and programmes and EIA to projects. Even if the SEA of the proposed SPNP had been found to be compatible with EU obligations, consideration still needed to be given as to whether the development in the Order proposal required an EIA.
- 9.32 I consider that it is not the role of the examiner to carry out this assessment which would effectively amount to a screening opinion or direction. However, it is the role of the examiner to consider whether the Order does not breach, or is otherwise compatible with, EU obligations and having regard to all material considerations, whether it is appropriate that the neighbourhood development order is made where the development is EIA development. Given that the necessary process has not been followed, regardless of the outcome of that process, there is no alternative but for me to find that the Order would not meet these two basic conditions.
- 9.33 Added to this, EIA development is specifically excluded from the type of development suitable for CRtBOs.<sup>25</sup> This reinforces my view that an assessment of whether the proposed development is EIA development should have occurred.
- 9.34 Given that the Framework reminds us that the right information is crucial to good decision-taking, particularly where formal assessments such as EIA are required, the Order proposal must be refused.

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<sup>24</sup> Page 14 of the Order

<sup>25</sup> S61J(2) and as defined in S61K of Schedule 9 of the Town and Country Planning Act 1990 (as amended)

## 10.0 Comments in relation to the detail of the Order

- 10.1 Although it has been found that the Order does not meet the basic conditions and therefore must be refused, I now go on to consider the Order in more detail in order to offer constructive comments to Slaugham Parish Council on a way forward for this Order.
- 10.2 Given that the recommendations of the independent examiner are binding in relation to CRtBOs, I have distinguished between modifications to the Order which I consider would have been necessary to ensure the Order meets the basic conditions and recommendations to the qualifying body to give further consideration to a number of issues to improve the clarity and usability of the Order. The reason for taking this approach is to ensure that I do not impose modifications upon the qualifying body which fall outside the remit of this examination. Both modifications and recommendations are highlighted in **bold** text, but it should be clear which are *modifications* which must be done and which are *recommendations* for the Parish Council to consider.

### *Description of development*

- 10.3 Policy 15 of the proposed SPNP specifies that the community centre will be of up to 750 square metres of gross internal floor space with a bowling green, play space and other associated open space and car parking and ancillary residential accommodation for a care taker. I have recommended in my comments on Policy 15 of the SPNP that the policy is revised to include any other elements mentioned in the supporting text to the policy and that form part of the community centre development, should be specified. The same principle applies here to the Order.
- 10.4 In addition if an upper limit (specified in Policy 15 of the proposed SPNP), and mentioned in a number of places in the Order without a specific figure, is sought this should be clearly stated in the Order.

**Modification – the description of the development be revised to include all elements of the development such as the Parish Council office and office facilities for home-based businesses together with ancillary residential accommodation for a care taker as well as any other elements of the scheme which are specifically required by the qualifying body and any size limitations to help with clarity and the deliverability of the overall scheme in line with the general thrust of the Framework. In the interests of clarity the postcode should be added to the site address.**



### ***Site plan***

- 10.5 As required by the Regulations, the Order includes a site plan (Figure 1, Page 6 of the Order) that identifies the red line to which the Order relates. However, in section 4.0 of the Order, Figure 2 identifies the site as 'D' namely the blue line site. The site is also identified in Figure 3 on page 19 as the larger 'blue line' site. Given that it is important that a site plan that clearly and unequivocally identifies the land to which the Order relates, this level of uncertainty causes me some concern.

**Modification – a scale, north point, address and key indicating the blue and red line notations are added to the site plan/map and a statement are added describing the land (the red or blue line) to which the Order relates in the interests of clarity.**

### ***Conditions***

- 10.6 The Order has a number of conditions attached to it. I have carefully considered both the substance of the conditions and their wording in line with the Framework and the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. In order to meet the so called 'six tests' of a condition namely 1) necessary, 2) relevant to planning, 3) relevant to the development proposed, 4) enforceable, 5) precise and 6) reasonable in all other respects, to achieve the necessary safeguards and to ensure that the development specified in the Order takes account of national policy and guidance and is in general conformity with the strategic policies in the development plan, the following modifications are put forward.
- 10.7 ***Condition 1*** seems to muddle the need to conform to Policy 15 in the proposed SPNP and a time limit. Notwithstanding my earlier points in relation to references to the proposed SPNP, as this condition is titled 'time limit' I have assumed that the intention is to impose a time limit on the development in line with the SPNP. I cannot find a specific time scale in the SPNP in relation to the Handcross Community Centre or any other justification for a time period in the Order itself. Therefore **this condition in the Order should be modified to read "The development hereby permitted shall begin before the expiration of ten years from the date of approval of the Order."** in order to achieve a balance between allowing a reasonable time period for the details and any delivery mechanism to be agreed and set up and the community to participate with the need to achieve sustainable development.
- 10.8 ***Conditions 2, 3, 4 and 5*** relate to access arrangements. As well as referring to the occupation of dwellings and houses to which only the caretaker's accommodation might apply, these conditions go beyond the scope of the 'six tests' by requiring works outside of the planning remit. Nevertheless I agree it is important that the access arrangements are properly provided for to achieve sustainable development and accord

with the provisions of the Framework and the development plan and so **the Order should be modified by deleting conditions two, three, four and five and replacing them with “Development shall not be commenced until details of the access for vehicles, cyclists and pedestrians including any works to the junction between the proposed service road and the highway, have been submitted to and approved in writing by the local planning authority, and the community centre and any associated buildings will not be occupied until those works have been constructed in accordance with the approved details.”** This modification incorporates cycle access to accord with the provisions of the development plan and the Framework. Drainage is dealt with by condition 6.

10.9 **Condition 6** refers to surface water and foul drainage. **The Order should be modified by deleting condition 6 and replacing it with “No development hereby permitted shall take place until details of foul and surface water sewerage disposal have been submitted to and agreed in writing by the local planning authority. No buildings hereby permitted shall be occupied until foul and surface water sewerage disposal works have been implemented in accordance with the agreed details.”** In relation to drainage it is important that consideration is given to sustainable drainage in accordance with the general thrust of national and local policy and in the interests of achieving sustainable development.

10.10 **Condition 7** refers to trees. Given the sensitive nature of the site’s location it is necessary to ensure that existing trees of note are retained and also integrated into a landscaping scheme. Therefore **the Order should be modified by deleting condition 7 and replacing it with two separate conditions to read:**

**“[condition number] No development hereby permitted shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include details of all existing hedgerows and trees and details of those to be retained, together with measures for their protection in the course of development.”**

**“[condition number] All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building hereby permitted or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.”**

- 10.11 **Condition 8** refers to a construction management plan. To make the condition more precise and enforceable in line with the six tests, **the Order should be modified by substituting the following condition “No development shall take place until a Construction Method and Management Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:**
- 1) traffic management within the site confines and delivery times and routes in and out of the site**
  - 2) the parking of vehicles of site operatives and visitors**
  - 3) loading and unloading of plant and materials**
  - 4) storage of plant and materials used in constructing the development**
  - 5) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate**
  - 6) wheel washing facilities**
  - 7) measures to control the emission of dust and dirt during construction**
  - 8) a scheme for recycling/disposing of waste resulting from demolition and construction works**
  - 9) a restriction on any burning of materials on the site.”**
- 10.12 **Condition 9** requires the developer to enter into a planning obligation if required by the local planning authority prior to commencement of any development on site. The reason supporting the condition refers to section 7.0 of the Order, but this only states that obligations should conform to local authority requirements. Reference is also made to the infrastructure contributions identified in the proposed SPNP presumably by Policy 21 which itself identified the Handcross Community Centre as the number one priority project. I have in any case recommended that Policy 21 be deleted as a policy from the SPNP and its contents moved to a separate section or appendix as it represents aspirations of the community.
- 10.13 Conditions can only be imposed if they are reasonable and such an open-ended condition could place an unjustified burden on the developer. It is inappropriate to positively require financial or other contributions by way of condition as it is unlikely that these could be enforced against. However, a negatively worded condition to prohibit development authorised by the Order until such an obligation has been entered into might be appropriate. The ‘six tests’ should however be borne in mind. Condition 9 as currently worded is negatively worded restricting commencement of development until an obligation has been completed. Whilst I have some reservations about this condition in relation to the ‘six tests’, without further information about what might be sought, and given that it cannot be assumed that the developer will be the qualifying body or the proposed Community Land Trust, it is difficult to do anything

other than retain it in its current form as agreement cannot be reached between the parties before consent is granted, but **consideration should be given to making this requirement more certain and in line with the 'six tests'**.

- 10.14 **Condition 10** refers to the need to complete an agreement under the Highways Act. This would not meet the test of relevant to planning as it would control matters that are subject to control outside planning legislation and therefore would not be in accordance with national policy or guidance. Therefore **the Order should be modified to delete condition 10, but consideration should be given to retaining it as an informative in a separate section headed 'informative'**.

*Other conditions*

- 10.15 I consider that to bring the Order in line with the basic conditions, **the Order should be modified by the addition of the following three conditions:**

**“[condition number] Details of the layout, scale, design and external appearance of the buildings hereby permitted including details of the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.”**

**“[condition number] The exact location of the foul sewage pumping main which crosses the site should be confirmed on site and an easement of a minimum of six metres in width provided for the pipe. Siting and layout of the development hereby permitted shall take account of the location of the pipe and the easement in accordance with details that have been submitted and approved in writing by the local planning authority.”**

**“[condition number] Tree felling, site or vegetation clearance works, demolition work or any other work which may affect nesting birds will not take place between March and August inclusive unless the absence of nesting birds as identified in the extended phase 1 habitats survey is confirmed by further surveys or inspections and agreed in writing with the local planning authority.”**

- 10.16 Section 3 indicates that the Order includes conditions requiring the approval of the detailed design of the buildings and surrounding landscape works (page 11). A condition relating to landscaping is contained in the section above as a result of a modification to condition 7 contained in section 2.3 of the Order. However no condition relating to design is to be found in section 2.3. Having regard to national policy and guidance, the development plan and in the interests of achieving sustainable development, it is necessary to impose such a condition.

- 10.17 In addition the Order contains a masterplan concept and illustrative drawings and further information in sections 4.4. to 4.7. **Consideration should be given as to whether some of the design principles outlined in the Order and particularly in these sections should be incorporated into a condition or whether flexibility is required as to the detailed design to be drawn up with the community.**
- 10.18 In relation to nesting birds the Order identifies the potential for nesting birds.<sup>26</sup> Whilst usually surveys would be carried out before permission is granted, given the results of the extended Phase 1 Habitat Survey referred to in the technical appraisals section of the Order,<sup>27</sup> in this particular case it is appropriate to impose a condition to deal with the requirement set out in relation to ecology.
- 10.19 As a result of these modifications, it should be noted that **there would be consequential changes needed to the numbering of conditions and it is suggested that the sub headings in this section are removed** to help with clarity.

*Other changes to help with the clarity of the Order*

- 10.20 In the interests of consistency and to help with clarity, the following changes should be considered:

Page 11. The extract from MSLP 2004 Policy C4 should be in italics in line with the other policy extracts from the development plan.

Page 12. The second paragraph under the heading 'Policy B6' should not be in italics as this does not form part of the policy.

Page 13. Reference is made to Policy DP25 Dwelling Space Standards of the emerging Mid Sussex District Plan 2013. It does not seem to me that this policy is relevant to this CRtBO and reference to it should therefore be deleted.

Page 16 Figure 2. The text refers to '(E)' in paragraph 4.1.2, but no 'E' is indicated on the Figure. It would be helpful to add a north point to the Figure and a key.

Page 19 Figure 3, page 20 Figure 4, page 22, Figure 5. It would be helpful to add a north point to each Figure and a key.

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<sup>26</sup> Page 38 of the Order

<sup>27</sup> Page 37 of the Order

## **11.0 Conclusions**

- 11.1 It is with regret that I have reached the conclusion that the Community Right to Build Order No. 2 Handcross Community Centre, Handcross be refused for two reasons. Firstly, it does not meet the basic conditions in that a site-specific flood risk assessment is required to be carried out and this is not something in my view that can be retrofitted given the need to have regard to national policies and guidance. Secondly, I cannot be certain that the making of the Order would not breach, or otherwise be compatible with EU obligations insofar as consideration as to whether an EIA was needed should have been undertaken.
- 11.2 As a result the proposed Order should not proceed to a referendum.
- 11.3 In the interests of completeness and to offer some support to the qualifying body so that they are aware of other matters which I considered required modification had the Order meet all the basic conditions, I have gone on to recommend a number of modifications on the details of the Order and offered some thoughts on further issues the qualifying body might wish to consider.

## **12.0 Formal recommendation**

- 12.1 I recommend that the order proposal Community Right to Build Order No. 2 Handcross Community Centre for “the development of a community centre and ancillary uses with associated car parking, access and landscaping works on land at Handcross Recreation Ground, off High Street, Handcross, Mid Sussex” is refused.

Ann Skippers  
Ann Skippers Planning  
17 January 2014