



Slaugham Parish Council
**Community Right to Build
Order No. 1
St. Martins Close & Coos
Lane, Handcross
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. 1 St. Martin Close and Coos Lane, Handcross.

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. 1 St. Martin Close and Coos Lane, Handcross is refused for two reasons. Firstly, the uncertainty about the effects of the development and whether it can be satisfactorily delivered means that I cannot be sure that the Order has had sufficient regard to national policies and guidance or will contribute to the achievement of sustainable development. 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, I have gone on to make a number of general observations about the Order.

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17 January 2014

Ann Skippers Planning is an independent consultancy that provides professional support and training for local authorities, the private sector and community groups and specialises in appeals and neighbourhood planning.

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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 and should be commended for their initiative in taking up this opportunity 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 a community centre and associated works on land at Handcross Recreation Ground, 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 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. By using a CRtBO a community organisation can also ensure that affordable housing remains so in perpetuity through disapplying certain statutory rights (enfranchisement rights).
- 2.3 Before proceeding, the order proposal must receive the agreement of more than 50% of local people voting in a referendum and meet some minimum requirements that are 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 CRtBO grants permission for “the development of up to 76 dwellings, including 38 affordable dwellings, of a commercial unit of up to 200 sq.m GIA for an A1 retail and/or A3 café use and associated access and landscaping works on land off St. Martin Close, Handcross and off Coos Lane, Handcross, Mid Sussex”.

3.2 Handcross is the largest of four villages within Slaugham Parish. The Parish is predominately rural in nature with the villages of Handcross, Pease Pottage, Warninglid and Slaugham surrounded by countryside. Much 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 conditions¹ 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

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

the proposal for the order.

- 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 site² or a European offshore marine site³ either alone or in combination with other plans or projects (not applicable in this case 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.⁴

5.4 The examiner is also required to consider⁵ 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 terms⁶ 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 limits⁷
- The order proposal may not provide for the granting of planning permission for development which is excluded development,⁸ where planning permission is already granted for that development,⁹ and may not relate to more than one neighbourhood area¹⁰
- 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

² As defined in the Conservation of Habitats and Species Regulations 2012

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

⁴ 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

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

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

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

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

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

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

- Whether the draft order is compatible with the Convention rights.¹¹
- 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.¹² 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 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

¹¹ 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

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

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 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. However, I offer some general observations on the consultation statement and basic conditions statement in the next section.

7.0 Consultation statement and basic conditions statement

7.1 A number of representations related to the consultation process and for this reason I make some observations on this in this section.

7.2 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.

7.3 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 proposed SPNP.

7.4 In addition both statements are titled 'Slaugham Parish Neighbourhood Plan' and therefore it is not necessarily clear that they would apply to the Order as well as the proposed SPNP without reading further.

8.0 Consultation period

8.1 When this Order was placed on Mid Sussex District Council's website for the purposes of consultation¹³, it was subsequently found that some pages were missing. The local planning authority and I agreed that the consultation period should be extended so that a minimum of six weeks

¹³ Reg 23 of the Neighbourhood Planning (General) Regulations 2012

consultation period was given on this particular Order with all its pages available during that six week period.

- 8.2 This circumstance was also brought to the attention of the local planning authority and myself through a representation.

9.0 Relationship to Slaugham Parish Neighbourhood Plan

- 9.1 It is clear that the Order has been developed as an integral part of the neighbourhood plan process. 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. Policy 20 in turn refers to Policy 4 ‘Housing Site Allocations’ of the proposed SPNP.

- 9.2 However, this Order is a stand-alone entity in its own right. Whilst it has been developed as an integral part of the proposed SPNP, in theory at least the Order could grant consent for development that could be delivered by bodies other than the Parish Council and the proposed Community Land Trust. Therefore references to, or any reliance on, the proposed SPNP and the other CRtBO should be made with care especially as 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 it did 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.**

10.0 Compliance with matters other than the basic conditions

- 10.1 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.
- 10.2 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 which specify time periods and I consider that, with appropriate modifications, it would be in principle be possible for these to comply with the relevant requirements.
- 10.3 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.

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

11.0 Compliance with the basic conditions

Introductory remarks about the Order

- 11.1 The site of some 3.3 hectares in total is located outside the built-up area boundary of Handcross and located within the High Weald Area of Outstanding Natural Beauty (AONB) and a Countryside Area of Development Restraint.
- 11.2 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.
- 11.3 A Community Land Trust is proposed to be established. It is commendable that the delivery and implementation of the development has been considered and that a mechanism such as a community land trust has been considered as a way of involving local people and managing the process.

Whether the Order has had regard to national planning policies and guidance; would contribute to the achievement of sustainable development and would be in general conformity with the strategic policies of the development plan

- 11.4 One of the key documents in relation to national policy is the National Planning Policy Framework (the Framework) published in March 2012. Policies in the Framework that relate to decision taking apply to the consideration of neighbourhood development orders.¹⁴ The applicable development plan for the Order is the Mid Sussex Local 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.
- 11.5 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

¹⁴ National Planning Policy Framework (2012) para 202

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.

- 11.6 The neighbourhood planning process has identified the need for new housing in the form of affordable housing and also custom-built homes. The Order represents positive planning insofar as there is a need to boost housing supply as well as widen the choice of high quality homes as recognised by the Framework. The MSLP 2004 also recognises the need for housing.
- 11.7 The Framework taken as a whole represents the Government's view on what sustainable development means in practice for the planning system.¹⁵ The presumption in favour of sustainable development means approving proposals that accord with the development plan and granting permission if the development plan is absent, silent or out of date unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted.¹⁶ In relation to this latter point the Framework specifically refers to AONBs in a footnote to this paragraph. The Framework states "great weight should be given to conserving landscape and scenic beauty in ...Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty".¹⁷
- 11.8 The stance in the Framework on AONBs is reflected in MSLP 2004 Policies C1 which protects the countryside for its own sake, and C4 which specifically refers to AONBs and restricts development unless it is essential for local social and/or economic needs amongst other things.
- 11.9 However, the Framework also recognises that support needs to be given to rural communities and housing will be needed in rural areas and that sometimes this might be best achieved through an extension to an existing village.¹⁸ Housing should be located where it will enhance or maintain the vitality of rural communities. As part of this, mixed use is encouraged and the Order makes provision for commercial development.
- 11.10 The Framework supports rural exception sites where appropriate. This route provides for affordable housing in perpetuity and also allows some market housing if, for example, this would be essential to help deliver the affordable housing. This route is reflected in the provisions of MSLP Policy H5 which only allows such development subject to a number of criteria and in AONBs in exceptional circumstances, but makes no mention of market housing.

¹⁵ National Planning Policy Framework (2012) para 6

¹⁶ *Ibid* para 14

¹⁷ *Ibid* para 115

¹⁸ *Ibid* para 52

- 11.11 In essence then the site subject to the Order could, in principle, be regarded as a rural exception site for the affordable housing element, but the market housing proposed would benefit from greater explanation as to how and why this was considered necessary to support the provision of the affordable housing. In itself the need for the affordable housing should be justified to ensure that the right amount and balance between types of dwelling provided is sought through the Order. As part of this the scope for meeting any identified need in another way should have been considered. Given the site's location in an AONB an assessment of any detrimental effects and the extent to which these could be moderated was needed. This then would have enabled me to consider whether the Order had had regard to the Framework and the balance between conserving landscape and scenic beauty in AONBs with the need for housing and whether it could be said to contribute to the achievement of sustainable development. These concerns are reflected by some representations that questioned the overall need for the development and highlighted other sites considered to be as or more suitable for development compared to the site in this Order.
- 11.12 Amongst other things, the core planning principles in the Framework seek to secure high quality design, support the transition to a low carbon future, make full use of public transport, walking and cycling, encourage the use of renewable resources and conserve and enhance the natural environment. Many of these aims are broadly reflected in the aims and objectives of policies in the MSLP 2004.
- 11.13 The nature of the Order is such that it is broadly equivalent to an outline planning permission. By its own admission and on purpose it takes an 'in principle' approach. It contains a number of design principles and offers a masterplan concept and the feel of the document is to me akin to a planning brief.
- 11.14 The Order by incorporating design principles/concepts/frameworks and illustrative masterplans demonstrates that the community seeks a high quality development that is well-designed in line with the Framework and reflected by MSLP 2004 Policies B1 and B2 which refer to standards of design, layout and construction for new development. Conditions regarding energy efficiency and sustainability credentials of individual buildings and the development as a whole can be imposed in line with MSLP 2004 Policy B4 which refers to energy efficiency and water conservation. As it may be difficult to achieve these aspirations if the development is carried out in a phased or piecemeal manner which is possible given that some of the units are custom-built, more consideration should have been given as to how these might be secured.
- 11.15 As a number of representations point out the site is not particularly conveniently located for some local facilities and services such as the primary school and surgery. Many are also concerned about the distance of the site from the village centre and the lack of public transport. Some

highlight concern about traffic congestion and the ability of local roads to cope with additional houses together with concern over the capacity of some existing facilities.

- 11.16 Representations also highlight concern over the level of habitat and ecology surveys including tree and landscape assessments carried out to date which have informed the Order.
- 11.17 Given the sensitive location of the site and the type and amount of development sought by the Order, it is useful that some technical appraisals have been done and initial work started on some of the key issues such as access and transport, flood risk and ecology.
- 11.18 However, I would have expected more preparatory work and assessments to have been carried out given the site's AONB designation. Whilst any assessments should be proportionate, key issues should be identified and resolved before submission. This is particularly the case in this situation given the site's location outside the built-up area boundary of the village and the great weight given in national and local policy to conserving landscape and scenic beauty in AONBs, but also because of the size of the site and the amount and type of development proposed.
- 11.19 Having regard to the initial findings on highways issues including the scope (or otherwise) for an access to be taken off Coos Lane, the uncertainty over the consultation responses from the Environment Agency and the District Council about flood risk and surface water management referred to in the Order¹⁹, the presence of trees and hedgerows on the site and the ecological surveys that found suitable habitats for birds, bats and reptiles on the site, it was, in my view, necessary for more detailed assessments to be made prior to submission based on these findings. This would have helped to give more certainty over whether the Order had had regard to national policy and guidance and could contribute to the achievement of sustainable development.
- 11.20 For example, given the sensitive nature of the site's location it is necessary to ensure that existing trees and hedgerows of note are retained and also integrated into a landscaping scheme. Concern over the loss of trees is also raised in representations.
- 11.21 A number of representations also referred to the impact on wildlife and habitat. Condition 11 in the Order requires reptile surveys to be carried out and this is based on the initial findings of a phase 1 habitat survey. It is more usual for such surveys to be carried out together with any other ecological surveys before planning permission is granted. Given that the condition as currently worded seems to seek a survey to confirm the presence of reptiles on the site or otherwise, this illustrates the difficulty

¹⁹ Page 56 of the Order

of granting permission through an Order such as this in a sensitive location without adequate preparatory work. It indicates to me that without this information it is difficult to assess the effect on biodiversity. This goes against the grain of contributing to and enhancing the natural and local environment sought in the Framework.

- 11.22 The masterplan concept includes the provision of a new park and a wetland area and both of these features could be subject to conditions to ensure their provision.
- 11.23 In considering the Order and its conditions against the basic conditions, I found it difficult to modify the conditions put forward to ensure they met the tests of a condition whilst ensuring that sufficient safeguards were put in place and achieving a balance between this and the thwarting of development and its viability.
- 11.24 Given the nature of these fundamental issues which go to the heart of the acceptability of the proposal and whether it would be appropriate to make the order having regard to national policies and guidance, whether it is in general conformity with the strategic policies of the development plan or whether it would contribute to the achievement of sustainable development, it is difficult to see how conditions could satisfactorily deal with this range of issues and meet the so called 'six tests' of a condition outlined by the Framework.
- 11.25 The Framework indicates that major development in AONBs should be refused except in exceptional circumstances and where it can be demonstrated the development is in the public interest.²⁰ In considering applications the need for the development and the impact on the local economy of refusing or allowing it, the cost and scope for developing elsewhere or meeting the need in some other way and any detrimental effect on the environment, landscape and recreational opportunities and the extent to which these could be moderated are considered.²¹ The Order does not provide me with the confidence I am looking for in relation to these issues. Therefore the draft Order would not meet these three basic conditions satisfactorily.
- 11.26 I am also mindful that CRtBOs are intended to be for small-scale development and therefore it falls to be considered whether the proposed order for 76 dwellings might be regarded as small-scale. Given the need for more detailed preparatory work to be carried out because of the sensitive nature of the site and its size, and the scale and type of development proposed to enable me to decide whether the proposed Order would meet these basic conditions also points to the unsuitability of this route for this particular case.

²⁰ National Planning Policy Framework para 116

²¹ *Ibid* para 116

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

- 11.27 The site does not fall within the Handcross Conservation Area and there are no listed buildings within the site boundaries or adjacent to it. Therefore the Order proposal would meet these 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.

Effect on European sites

- 11.28 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

- 11.29 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.²²
- 11.30 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.
- 11.31 Environmental Impact Assessment (EIA) is required for EIA development. This 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.²³
- 11.32 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”.²⁴ One of the descriptions of development in Column 1 is

²² Regulation 29A of the EIA Regulations

²³ Regulation 2 of the EIA Regulations

²⁴ The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

urban development projects.²⁵ The corresponding threshold in Column 2 of the table refers to the area of development exceeding 0.5 hectare. Sensitive areas include AONBs.²⁶

- 11.33 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 urbanizing effect. Residential development would, in my view, come under the definition of 'urban development projects' referred to in Part 10(b).
- 11.34 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.
- 11.35 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 assessment²⁷ (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 in my examination of that document. 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.
- 11.36 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. Rather 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.
- 11.37 Community Right to Build Orders differ to neighbourhood development

²⁵ Part 10 (b) of Schedule 2 of Town and Country Planning (environmental Impact Assessment) Regulations 2011

²⁶ *Ibid*

²⁷ Page 14 of the Order

orders in that proposals that require an Environmental Impact Assessment or have significant impacts under the terms of the Habitats Regulations are not eligible to use the CRtBO process. Given it is my view that the development subject to this Order should have been subject to consideration as to whether an EIA was necessary, the development may also fall within the definition of 'excluded development'.²⁸ This reinforces my view that an assessment of whether the proposed development required an EIA should have occurred.

- 11.38 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.

12.0 Other observations

- 12.1 Although I have found that the Order as it is currently proposed does not meet a number of the basic conditions and therefore must be refused, in this section I make a number of general observations about the Order that are intended to be helpful to the Parish Council.
- 12.2 In the interests of clarity and completeness it would be useful for the description of development to include all the major components of the proposed development. For instance the Order includes a new park/open space.
- 12.3 The description of the CRtBO only refers to a "mix of high quality, affordable homes" and given that about half of the total number of dwellings that could be built will be affordable, this could be construed as misleading. It is suggested that the wording is changed to make it clear what the Order is for.
- 12.4 The site address could usefully include a postcode for completeness.
- 12.5 The Order has a number of conditions attached to it. Any conditions need to meet the 'six tests' of a condition set out in the Framework and be in line with advice in Circular 11/95 *The Use of Conditions in Planning Permissions*. In order to meet the '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 and 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, a number of modifications to the conditions would have been needed. I comment on some issues in the next paragraphs by way of illustrating this point.

²⁸ S61J(2) and as defined in S61K of Schedule 9 of the Town and Country Planning Act 1990 (as amended)

- 12.6 Matters about the concern raised on the adequacy of the existing sewerage and drainage systems and the need for clearance distances from a foul sewer which crosses the site and the location of two pumping stations would have needed to be addressed, as would the capacity of Handcross Wastewater Treatment Works. Whilst this could have for example, been dealt with through layout details, the potential for a piecemeal approach to the custom-built dwellings on the site may have made this difficult.
- 12.7 In addition given the 'in principle' nature of the Order, it would have been necessary in my view to have conditions requiring details of, for example design, appearance and landscaping to be provided.
- 12.8 Some conditions may have gone beyond the scope of the relevant to planning test as they sought to control matters outside planning legislation. However, informatives about the need for further consultation with bodies such as the Highways Authority and Gatwick Airport Ltd would have been helpful.
- 12.9 More consideration should have been given to how the mechanism of a planning obligation would have worked. It is generally inappropriate to require financial or other contributions by way of condition as it is unlikely that these could be enforced against.
- 12.10 It would be generally helpful to ensure figures have keys and features are easily defined.

13.0 Conclusions

- 13.1 It is with regret that I have reached the conclusion that the Community Right to Build Order No. 1 St. Martin Close and Coos Lane, Handcross be refused for two reasons. Firstly, the uncertainty about the effects of the development and whether it can be satisfactorily delivered means that I cannot be sure that the Order has had sufficient regard to national policies and guidance or will contribute to the achievement of sustainable development. 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.
- 13.2 As a result the proposed Order should not proceed to a referendum.
- 13.3 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 make a number of general observations about the Order.

14.0 Formal recommendation

- 14.1 I recommend that the order proposal Community Right to Build Order No. 1 St. Martin Close and Coos Lane, Handcross for “the development of up to 76 dwellings, including 38 affordable dwellings, of a commercial unit of up to 200 sq.m GIA for an A1 retail and/or A3 café use and associated access and landscaping works” is refused.

Ann Skippers
Ann Skippers Planning
17 January 2014