

IN THE MATTER OF LAND SOUTH OF SMUGGLERS LANE, BARNs GREEN

COUNSEL ADVICE

INTRODUCTION & SUMMARY

1. I am asked to advise on the proper approach to the Itchingfield Neighbourhood Plan 2024–2031 (“**the INP**”) when determining the application for residential development at land south of Smugglers Lane, Barns Green. To assist with this analysis, I am also attaching a couple of appeal decisions that support the proper approach that should be taken to the INP.
2. In short, the Council should proceed on the basis that paragraph 14 of the National Planning Policy Framework (“**NPPF**”) is a material consideration and may be formally engaged, but it should not treat it as creating an automatic or determinative bar to permission. The more appropriate approach is to recognise that the INP contains policies and allocations to meet its stated housing requirement, but that the requirement is derived from dated evidence and an out-of-date strategic context. This materially tempers the weight to be given to any neighbourhood plan conflict.
3. On the present material, any conflict with the INP is limited in principle. The INP allocates particular sites and supports windfall development within the Built-Up Area Boundary (“**BUAB**”), but it does not contain an express countryside restraint policy equivalent to those considered in some other neighbourhood plan appeals. If the Council is minded to refuse, it should therefore identify the precise INP policy said to be breached, explain why that policy is restrictive rather than merely permissive, and give clear reasons why any conflict outweighs the very substantial housing benefits.

4. The Council will also need to grapple with the consequences of any such refusal, namely that it will be implicitly undermining the site as a draft allocation.

ANALYSIS

Engagement of paragraph 14(b) of the NPPF

5. **Paragraph 14(b)** asks whether the neighbourhood plan contains policies and allocations to meet its identified housing requirement. It is not, on its face, a freestanding test of whether that housing requirement remains up to date by reference to current district-wide need. The INP identifies a housing requirement of 61 dwellings, derived from the 2018 indicative figure provided by Horsham District Council, and seeks to meet that figure through the Sumners Ponds allocation, the Old School allocation, and windfall development within the BUAB.
6. For that reason, it is fair to acknowledge that paragraph 14(b) is engaged to an extent in this context. The Council may argue that the INP formally satisfies paragraph 14(b), because it does contain allocations and a windfall policy directed to meeting the housing requirement it identifies. To reach such a conclusion would also be consistent with the approach taken by Inspectors recently in Horsham (**Henfield appeal 22.5.2026**) where paragraph 14(b) was treated as met even though the Inspector then went on to examine the reliability and weight of the housing requirement.
7. However, formal engagement is not the end of the analysis. The age and source of the INP housing requirement are highly material. The INP's housing figure is rooted in 2018 material, itself linked to the 2015 Horsham District Planning Framework ("HDPF") and a substantially different strategic housing position. These are all dated documents and in the intervening period we've had at least four iterations of the NPPF.

8. Furthermore, the present shortfall in housing land supply, and the uplift in local housing need under the standard method, mean that the INP's identified housing requirement is vulnerable to the same criticism accepted in the Henfield appeal, namely, that it is no longer a credible proxy for current housing need.
9. It is therefore my clear view that the Council should distinguish between engagement and weight in this particular context. In my view, the prudent conclusion is that paragraph 14(b) *may* be formally engaged, but that the protection afforded by paragraph 14 is materially non-existent because the housing requirement which the INP meets is dated, modest, and linked to an out-of-date strategic framework.

Whether paragraph 14 creates automatic adverse impacts

10. Paragraph 14 does not produce automatic adverse impacts which must significantly and demonstrably outweigh the benefits. Its wording is deliberately qualified. The adverse impact of allowing development that conflicts with a neighbourhood plan is "likely" to significantly and demonstrably outweigh the benefits, but that requires the decision-maker to exercise planning judgment. That was the central point in the Henfield decision relevant to Horsham, but also applied by other Inspectors elsewhere. The Inspector in Henfield held that paragraph 14 is not absolute and does not impose a firm bar on development that conflicts with a qualifying neighbourhood plan.
11. Indeed it is crucial that the decision-maker must still assess the nature of the conflict, the reliability of the housing requirement, the degree of policy harm, and the countervailing benefits. This is also against the backdrop of the site having been promoted for inclusion as an allocation in the emerging Horsham Local Plan. HDC have been directed to find more sites to allocate across the district, including at Barns Green on the basis of more up-to-date housing needs assessments since the INP.

12. Accordingly, if paragraph 14 is applied to this case in Barns Green, the Council should not treat it as a shortcut to refusal. This would not be the rational thing to do. Instead, it must identify the actual adverse impacts, including any plan-led harm and any site-specific harm, and then weigh those impacts against the proposal's benefits. This is also, again, in the context of dated evidence base, an out-of-date strategic framework and a totally transformed national policy picture. A refusal based on paragraph 14 alone, without that evaluative exercise, would be legally deficient.

Degree of conflict with the INP

13. The degree of conflict with the INP appears limited in principle. The INP plans for housing through identified allocations and windfall development within the BUAB. It also reflects a desire to protect the rural character of the parish. However, it does not appear to contain an express policy stating that residential development outside the BUAB, or in the countryside, is prohibited or should be refused.
14. Policy 11 within it is important. It supports residential windfall development on unidentified sites within the BUAB where criteria are met. That is a permissive policy for development inside the BUAB. It does not necessarily operate as an exclusionary policy for all development outside the BUAB. The Council should be cautious about treating a positive windfall policy as an implied countryside restraint unless the language of the INP clearly supports that reading.
15. There may still be an indirect conflict with the INP's housing strategy, because the proposal is not one of the INP allocations and is outside the BUAB. But that is materially different from a direct breach of an express neighbourhood plan policy restricting countryside development.

16. There is therefore an important distinction to be drawn with the Henfield decision and its more restrictive nature. In Henfield, the neighbourhood plan policy expressly linked development outside the BUAB to countryside policy compliance, making it more difficult to be acceptable. The INP is less restrictive.
17. It is therefore my clear view that the Council should, therefore, approach any INP conflict as, at most, limited to moderate in principle. There is of course the wider assessment in local and national policy that shall seek to assess the separate site-specific conflicts with policies on design, green infrastructure, biodiversity, heritage, water, parking or amenity. Those matters should be assessed on their merits and not assumed from the site's location alone.

Paragraph 14 of the NPPF balance

18. If paragraph 14 is applied, the Council must still carry out a balancing exercise. It is my clear view that the balance will clearly favour the proposal if the only 'substantial adverse impact' is neighbourhood plan conflict. As we know, the district's housing land supply position is acute. The Henfield appeal recorded a **1.7-year supply** by reference to the December 2025 Authority Monitoring Report. Earlier material before the Council recorded an even lower position. Either way, the shortfall is very significant.
19. The delivery of 68 dwellings would therefore attract very substantial positive weight. The affordable housing contribution would also attract very substantial positive weight, particularly given the accepted need for affordable housing in the district. Additional benefits may include biodiversity net gain, public open space, economic activity, CIL or section 106 contributions, and support for local services. These are overwhelming and compelling benefits that weight heavily in favour of the development.

20. Against those benefits, the adverse INP impact appears materially limited. In sum, the INP's housing requirement is dated. The INP contains no obvious express countryside bar. The proposal is on a site which the Council has itself identified as suitable in the emerging Local Plan process. Those features substantially reduce the force of any paragraph 14 objection.
21. It is my clear view, if paragraph 14 is engaged, the Council could lawfully conclude that the adverse impacts of any conflict with the INP do not significantly and demonstrably outweigh the benefits. Indeed, on all of the evidence available, that is the more robust conclusion unless the Council can identify clear, evidenced, site-specific harms which materially alter the balance. I do not think they will be able to do that.

Emerging Local Plan Context

22. The emerging Local Plan cannot override the adopted development plan. At the time of writing it is not adopted and its weight is limited. However, it remains a significant material consideration, particularly where the relevant site assessment work has identified the site as capable of accommodating sustainable development.
23. The fact that the site is identified as proposed allocation BGR1 is important. It shows that the Council's own emerging spatial strategy has recognised this site as a suitable location for housing growth at Barns Green. That does not compel permission as a matter of principle, but it does make a refusal based solely or principally on the INP more difficult to justify. On any approach that seeks to give undue credence to the INP in order to stop this draft allocation would lead to the Council undermining its emerging spatial strategy in Barns Green.

24. It is fair to acknowledge, of course, that the Council is entitled to give weight to the INP and to the statutory development plan. However, if it refuses permission by relying on the INP, it should explain how that position is reconciled with its own recent evidence base and emerging allocation of the site. Without such an explanation, the decision risks appearing internally, and entirely, inconsistent.
25. In practical terms, the Council should ask itself whether refusal would protect a coherent plan-led strategy, or whether it would instead frustrate a site which the Council's own emerging evidence has identified as suitable to help address the district's acute housing need. That is a material consideration of real weight.

Costs Risk

26. The potential risk of a costs award should not drive the planning judgment. It is fair to say that the Council must determine the application on its merits. However, if the Council refuses permission, it should ensure that each refusal reason is precise, evidence-based and capable of being defended at appeal.
27. In particular, a refusal resting on a broad assertion that paragraph 14 is engaged, or that the proposal conflicts with the INP, may attract close scrutiny. The recent appeal decisions, including the Henfield decision, show that paragraph 14 is not an automatic bar and that dated NP housing requirements may attract reduced weight.
28. If permission is refused without a clear explanation of the precise policy conflict, the weight given to the dated INP housing requirement, and the reasons why the acknowledged housing benefits are nevertheless outweighed, an appellant may consider seeking an award of costs. This would be entirely rational but also avoidable.

Other Considerations

29. The statutory starting point remains the development plan, unless material considerations indicate otherwise. The Council should therefore identify the relevant HDPF and INP policies, assess compliance with each, and then decide whether material considerations justify a departure. It should avoid treating the INP in isolation from the wider policy context, including the acute housing land supply shortfall and the Council's own Shaping Development in Horsham District guidance.
30. The Council should also separate in-principle policy conflict from technical harm. Issues such as heritage impact, ancient woodland buffers, landscape effects, highways, drainage, water resource matters, biodiversity net gain, affordable housing and planning obligations should be assessed discretely. If those matters are acceptable or capable of being secured by condition or obligation, they should not be folded into a general neighbourhood plan objection.
31. My clear advice is that the Council should not (indeed could not rationally) refuse permission solely by reliance on paragraph 14 or an asserted conflict with the INP.
32. Indeed, if the Council is otherwise satisfied on technical matters and planning obligations, the stronger and more defensible course is to recognise the limited weight of any INP conflict and to give substantial weight to the delivery of market and affordable housing on a site which the Council's own emerging evidence identifies as suitable for allocation. This would be the rational and logical approach to take.

CONCLUSION

33. In sum, the Council should approach the INP with respect, but not as an absolute bar.
34. Paragraph 14(b) may be formally engaged, but the dated and limited housing requirement underlying the INP materially reduces the weight of any conflict.
35. Any conflict with the INP appears limited in principle, particularly given the apparent absence of an express countryside restraint policy.
36. Against the acute housing land supply shortfall, the delivery of 68 homes, affordable housing and the site's proposed allocation in the emerging Local Plan, the balance is likely to overwhelmingly favour permission unless there are clear and evidenced site-specific harms which independently justify refusal.
37. I advise accordingly.

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