

## **BP Makes a fresh proposal for a Petrol Station and Food Outlet to the west of Udimore Road at TN31 6AA on a .6 Ha sit: February 2018**

<b>Reference</b>	RR/2018/545/P
<b>Status</b>	Undecided
<b>Proposal</b>	Construction of petrol filling station, canopy, sales building, ATM, AC/refrigeration units, refuse compound, parking and associated works.
<b>Location</b>	Udimore Road - Land North of, Rye TN31 6AA
<b>Parish</b>	RYE
<b>Case Officer</b>	Mr J McSweeney
<b>Received</b>	13-02-18
<b>Validated</b>	26-02-18
<b>Decision By</b>	28-05-18
<b>Applicant</b>	BP Oil UK Limited Witan Gate House Milton Keynes MK9 1ES
<b>Agent</b>	Aitchison Rafferty Attn: Mr Nigel Ozier The Granary Spring Hill Office Park Harborough Road, Pitsford, Northampton NN6 9AA

### **Summary**

1. BP Oil's planning consultant, Aitchison Rafferty (AR) has submitted a fresh planning proposal for the land at TN31 6AA (off Udimore Road). The Rye Neighbourhood Plan Steering Group (RNP SG) does not agree with the case put forward by AR and maintains its own arguments as set out in the RNP, in earlier papers, copied and enclosed and below. As a result The SG does not support a change of decision (refusal) about development on this site. The SG retains the view that this is the **right proposal but in the wrong place**.

2. Separately AR has submitted extensive comments as part of the Regulation 14 Consultation of the RNP, for which the SG is grateful. However, from an initial examination, the SG has some difficulty with the arguments put forward in the document and as they have wider impacts for the RNP, they will need to be considered during the consultation period (23 February to 6 April) and in conjunction with Rother DC Planning Officers and other agencies. .

### **Background**

3. RR/2018/545/P is the second formal proposal for this land. It follows an initial proposal [RR/2017/1231/P](#), which was refused by the Local Planning Authority (LPA) (more below). The proposals have been preceded by two separate exploratory and informal proposals by the Developer, Aroncorps in recent years: one for commercial and one for housing. Details of these are recorded in the RNPSG updates for the Rye Planning and Townscape (P&T) Meetings on the RNP website. To both explorations, the SG indicated that they were unlikely to receive approval by the majority in the Community.

4. This second proposal (RR/2018/5454/P) is claimed by AR to have: “been re-designed to address the Council’s previous reasons for refusal on 16 October for the following reasons:-

- The proposed petrol filling station would **extend the development of Rye into open countryside beyond the clearly established town edge**, introducing a discordant addition at the approach to the town, adversely affecting the rural character of the area and the entrance to the High Weald AONB. Given the surrounding topography the new urban development would appear unduly prominent and have a significant intrusive impact on the wider rural character, being visible across a significant area beyond simply localised views. Moreover, the **illumination associated with the function and hours of operation of the premises would exacerbate the adverse landscape impact and would impinge on the intrinsically dark night skies of the rural location including the High Weald AONB**. As such the proposal is contrary to the objectives of Policies RA (ii), RA3 (v), EN (i), (v) and (Vii) and OSS4 (iii) of the Rother Local Plan Core Strategy and paragraph 115 of the NPPF.
- The use of the site over a 24 hour period with its associated illumination, in close proximity to neighbouring properties no.174 Udimore Road, Cadborough Oast House Drive, would have a detrimental impact upon the residential amenities to be safeguarded. As such the proposal would be contrary to the objectives of Policy OSS4 (ii) of the Rother Local Plan Core Strategy”<sup>1</sup>.

5. The SG considers that its consideration of the first proposal replicated in Enclosure 1 continues to apply, as the proposal for this prominent site is little changed and remains incompatible with the conservation of the character of Rye, which is a key plank of the RNP.

### **Rye Neighbourhood Plan (RNP)**

6. AR has submitted an extensive written representation on the Regulation 14 pre submission version of the RNP. This document is wide ranging and is being considered as much of the material has wide implications for the RNP, such as housing targets and supply, which will require consultation with the LPA and other agencies.

7. The AR Sequential Test 4.29 refers to Rother DC making a Neighbourhood Plan; for accuracy, this of course is not the case. It is Rye making a Plan<sup>2</sup>. AR correctly

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<sup>1</sup> <http://www.rother.gov.uk/CHttpHandler.ashx?id=22426&p=0>

<sup>2</sup> <http://www.rother.gov.uk/neighbourhoodplans>

notes that “The (Rye) Neighbourhood Plan (RNP)) - currently prepared as version 10 - was endorsed by Rye Town Council on 4 December 2017 to provide the basis for final preparation before Reg 14 Consultation. This was subject to detailed work to reflect comments by Rother officers and the AIRS provided Consultant (Town Planner). On 19 February 2018, Rye Town Council adopted the refined Plan for Regulation 14 Consultation, which runs from 23 February to 6 April 2018.

8. It should be underscored that the RNP has been, in the words of Government guidance: “*written by the local community, the people who know and love the area rather than the Local Planning Authority*”.<sup>3</sup> Further, the Steering Group has worked on the basis of Government guidance that Neighbourhood Planning (NP) *provides “a powerful tool to ensure the community gets the right types of development, in the right place”*. The policies in the draft Plan, from extensive consultations, reflect majority community wishes, are positive, and designed to meet the targets set by the LPA, given that in its own Core Strategy it acknowledges that “because of its topography, landscape context, statutory designations and flood risk, options for development within Rye Parish are severely limited.”

9. AR takes the view that “*As the Plan has yet to be independently examined by an Inspector the Plan can only be afforded very limited weight.*” The Steering Group notes that [Paragraph 216 of the National Planning Policy Framework](#) sets out the weight that may be given to relevant policies in emerging plans in decision taking. The AR view would appear to be at odds with their own reference to the NPPF (Application (4.7) that states that “*planning should be plan led, empowering local people to shape their surroundings*”

10. The RNP sequential test for alternative sites for a petrol station and food outlet argues that sustainability outweighs risk of development in Zone 3. The SG notes that the presumption in favour of sustainable development does not mean that that every application has to be accepted.

11. AR asserts that the former agricultural land off Udimore Road is “Brownfield” because of some concrete hard standing laid by the farm owner in the past. The SG notes that the definition of Brownfield has been tested in the Courts.<sup>4</sup> It is widely accepted that Brownfield is “Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure”. But the SG’s understanding is that **this excludes: land**

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<sup>3</sup> <https://www.gov.uk/guidance/neighbourhood-planning--2>

<sup>4</sup> <http://www.lawsonfairbank.co.uk/brownfield.asp>

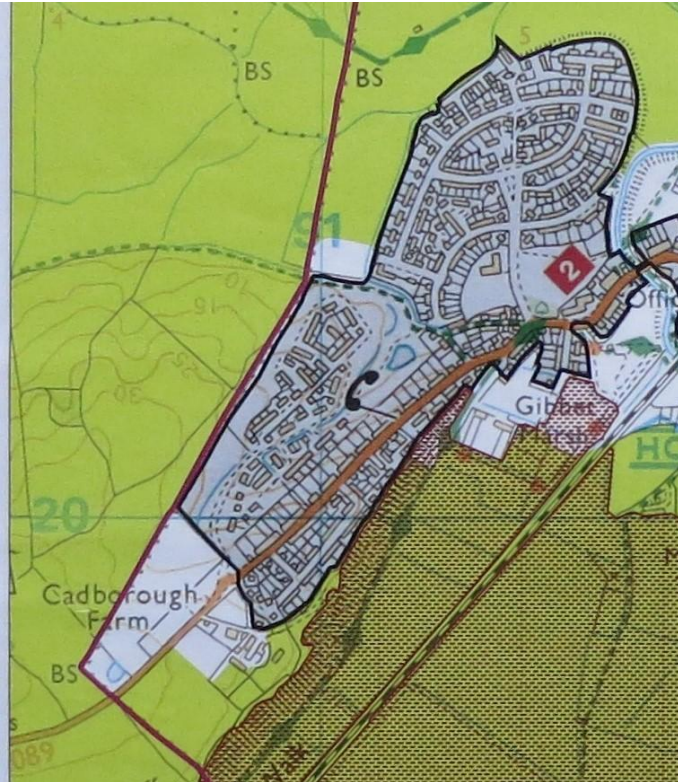
**that is or has been occupied by agricultural or forestry buildings.** It is noted that during development of Valley Park, Aroncorps has dumped material on site now subject to proposal, without planning permission. This was removed after Rother DC took enforcement action. The SG argues that the site is “Greenfield” and is not allocated in the Plan, for reasons that are spelt out in the site assessment.

### **Site Assessment**

12. AR cites its own work on site assessment and sequential tests, but the SG considers that it has still not considered all the sites with potential identified by the RNP within Rye Parish. These are documented in three relevant supporting documents to the Rye NP: the Site Assessment, supported by Sequential and Exception Tests. The latter is supported by an assessment for a second petrol station and food outlet. All papers can be viewed on the Rye NP website: [www.ryeneighbourhood.org.uk](http://www.ryeneighbourhood.org.uk) . Despite offers to discuss the issue with AR (see communication below) there is no evidence that AR has made serious attempts to do so, apart from a brief telephone call. Instead their proposal appears to have been designed to fit their assessment of the availability and achievability of the unallocated site (by Rye NP) on Udimore Road.

### **The AONB**

13. AR acknowledges the proximity of the AONB to their proposed site but argues that, despite the height and prominence of the land, further measures – more than moving the development as proposed 6m to the East - can be taken to reduce the impact of development on it. AR notes that the Inspector when considering the Valley Park (SHLAA 2013 RY5) development found that the impact on the AONB of the housing development on lower ground was acceptable. But, AR declines to note (Application 3.5) the other key remark, which was that because development in RY5 was much lower than the land subject to AR’s proposal, it was felt that “it could be contained within the landscape and sit comfortably within the context of the adjoining development”. Can this be argued for the new proposal?



AONB is in light green; other protected areas are hashed

### **Development Boundary**

14. This proposal is beyond the development or settlement boundary. The Steering Group does not agree with the AR view of development boundaries: “restricting unnecessarily the determination of planning applications”. Further, it does not agree with AR that such boundaries represent a “red line” providing a “blunt tool”. The Steering Group view is that a very strong case must be made to exploit beyond the development or settlement boundary.

### **Flood Risk**

15. In the Proposal much is made of flood risk (and rightly so where a large proportion of the Parish falls in Flood Zone 2 and 3) but there is little reference to the RNP exception test.<sup>5</sup> AR states (Sequential Test 4.34) that “the whole area (meaning the area of the A259) is within a flood risk area which is unsuitable for the storage of fuel”. Given that in the same flood risk zone there are other fuel storage facilities and a top tier COMAH site, we would expect to see some further argument and justification for these remarks. In particular, is AR reflecting the views of the Environment Agency?

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<sup>5</sup> <https://www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants>

## **The Rye Trading Hierarchy**

16. The size of the trading outlet proposal does not require an impact statement, but there is scant discussion about how this proposal might fit within the (relatively small) Rye trading hierarchy. We believe that it would risk providing a “destination facility” to draw traffic to the western extreme of Rye and from the A259 among the already congested minor road B2089. Is this a sustainable approach?

### **Conclusion**

17. This second proposal provides little change from the first in 2017. It follows several years of discussion about the future of this elevated Greenfield site at the edge of Rye Parish, adjacent to the AONB and beyond the settlement boundary. The commercial proposal would be likely to provide a “destination facility” drawing traffic from the rest of Rye and the A259 up the constrained B2089. The land has not been previously allocated in any development plan for Rye, including the RNP.

18. The Inspector who approved Valley Park development to the east, on the lower ground (RY5) did so specifically because that development “could be contained within the landscape and sit comfortably within the context of the adjoining development”. This cannot be argued for this new proposal. The RNP records the need for a second petrol station and food outlet but indicates that alternative sites along the strategic A259 main through road are available within Rye Parish.

Anthony Kimber PhD  
For Rye NP SG

**Enclosure 1: First Proposal on land adjacent to Udimore Road : Refused 16 October 2017**

**Enclosure 2: Record of Communication by RNPSG in the Public Domain and between itself and AR**

## Enclosure 1

### RR/2017/1231/P - Application for a petrol station and food outlet for land on Udimore Road: Refused by the LPA on 16 October 2017

Reference	Location	Proposal	Status
<a href="#">RR/2017/1231/P</a>	Udimore Road - Land North of, Rye TN31 6AA	Construction of petrol filling station, canopy, sales building, ATM, AC/refrigeration units, refuse compound, parking and associated works.	TBD

<b>Reference</b>	RR/2017/1231/P
<b>Status</b>	REFUSED
<b>Proposal</b>	Construction of petrol filling station, canopy, sales building, ATM, AC/refrigeration units, refuse compound, parking and associated works.
<b>Location</b>	Udimore Road - Land North of, Rye TN31 6AA
<b>Parish</b>	RYE
<b>Case Officer</b>	Mr J McSweeney
<b>Received</b>	30-05-17
<b>Validated</b>	06-07-17
<b>Decision By</b>	17-10-17
<b>Decided</b>	16-10-17
<b>Applicant</b>	BP Oil UK Limited Witan Gate House Milton Keynes MK9 1ES
<b>Agent</b>	Aitchison Raffety Attn: Mr N Ozier The Granary, Spring Hill Office Park Harborough Road Pitsford, Northampton NN6 9AA

### A Consideration of the proposal in the context of the Rye Neighbourhood Plan

1. Aroncorps is developing the 10.87 hectare greenfield site known as Valley Park, initially approved for 135 dwellings, but subsequently increased to 165 in 5 phases. Around 4 hectares of the total site are being developed.
2. The development boundary (Figure 2) does not include an extension of the Aroncorps site on the west side of the roundabout, which rises to the high ground and the Rye Parish boundary. This site (Figure 1 – Red) is the subject of a further planning proposal.
3. The site sits to the north of one of the “gateways” to Rye from the West, close to the boundary of the AONB. In common with Valley Park, this site is a green space comprising mainly old pasture over clay. There is some old hard standing, formerly used for agricultural purposes. Drainage is complicated by springs, ponds and the impervious clay.

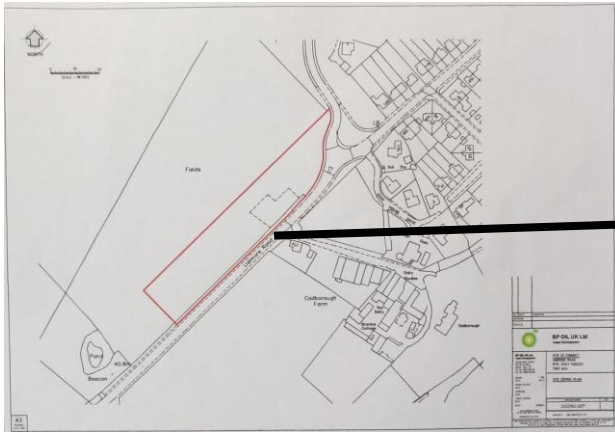


Figure 1 Site plan under proposal

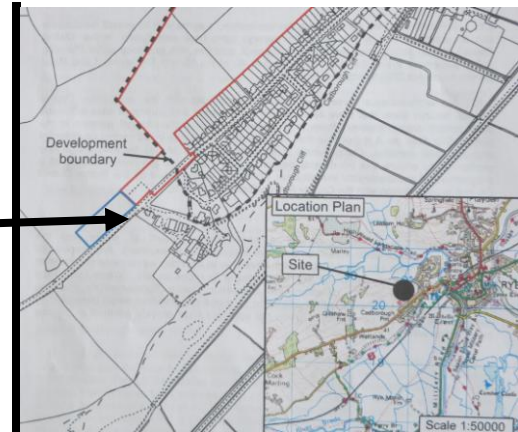


Figure 2 – development boundary

## The Proposal

4. The proposal [RR/2017/1231/P](#) notes correctly that a second petrol station and food outlet is an objective of the RNP. Planners for BP have carried out a sequential test of some (but not all) sites identified in the RNP and have concluded that the one proposed is the most “suitable location”.

It does this on the basis of low flood risk and environmental impact. A sequential test by Neighbourhood Planners indicates more suitable locations closer to the centre of town and the main South Coastal highway, the A259.

[The RNP sequential Test is linked HERE](#)

5. From the work by the RNP Steering Group, many in the community are against any form of development – residential or commercial - of this site. Hence, one of the reasons for its non inclusion in the allocation; a view communicated to Aroncorps. Current views are being re-tested on Facebook.

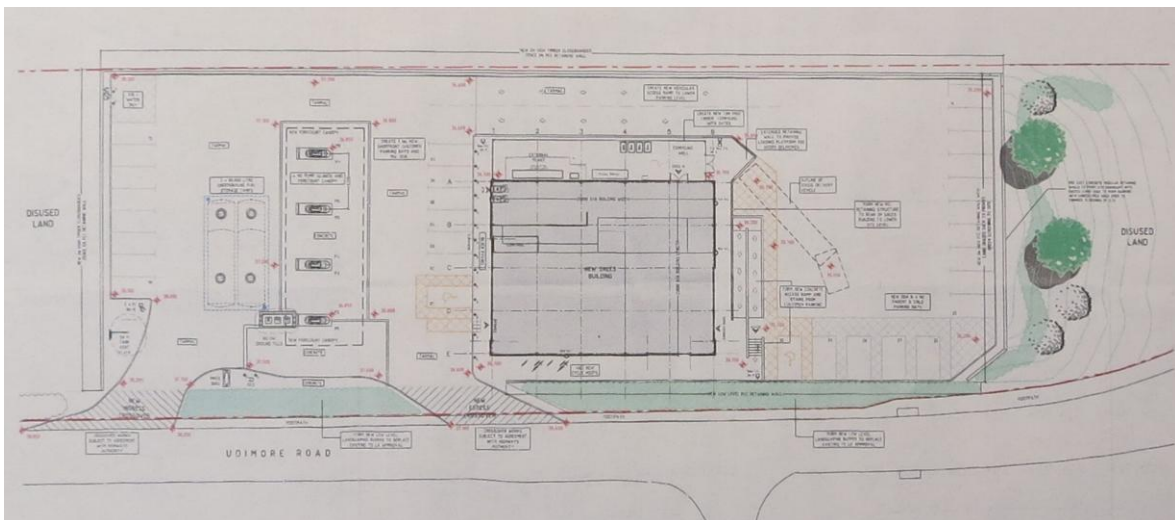


Figure 3 Proposal Plan



6. One reason for this opposition is that the RNP seeks to check development at the extremities of the Parish on sites just beyond or on the settlement boundary to ensure that the gateways to the Town are not adversely affected and that the unique character of Rye is preserved. There are several current proposals affecting other gateways in the Parish: Rye Hill (sites in Rye Foreign immediately adjacent the Parish Boundary), the tennis club on the Military Road and now this site. In addition there has for many years been informal development in the strategic gap to Rye Harbour. All this is seen to add “urban creep” into the green spaces surrounding Rye Parish, adversely impacting on the character of Rye and its place in the environment.

7. The proposal makes several references to the adjacent residential development of Valley Park. In 2008, Rother DC saw this proposal as residential development on land adjacent to the settlement area, which could, conveniently, form an extension to Rye Parish because of “seemingly over-riding factors.....placing it in the context of the strategic requirements for housing supply”.

8. On appeal, in June 2008, the Planning Inspector commented on the Valley Park proposal [RR/2007/2365/P](#) that the land was: *“lower than the Udimore Road (one of the gateway entrances to Rye from the West), and that the Valley Park site was not visually prominent from certain angles, notably the South and West. However since development, it is very prominent from the North and Northwest. At the time the site was seen to bring about a change in the pattern of development but would be contained within the landscape and sit comfortably within the context of the adjoining development”*.

9. The 2008 argument by the Planning Inspector above is considered relevant, because it cannot be applied to this new proposal. Even with landscape and lighting mitigation, on such an elevated site, it would not *“be contained within the landscape and sit comfortably within the context of the adjoining development”*.

10. Rather, this proposal could be seen as further “urban creep” (both by structure, lighting and noise) that would impact adversely on one of the gateways into Rye and in turn on Rye’s unique character and profile in its marsh surroundings, including the adjacent AONB.

11. Other issues which should be underscored are:

- Traffic implications: the services provided by the development would draw people up the Udimore Road from Rye and in from nearby settlements, adding to movement on an already busy B2089 Road.
- Flood risks: given the nature of the site, the significant flood mitigation in Valley Park and the downstream sewerage issues, flood risks are by no means non applicable to this proposal. The increased run-off from hard

surfaces, the additional sewerage loading and the risk of toxic spillage would all need consideration and mitigation.

## Conclusion

12. From the RNP perspective, this development does not conform to the allocations in the draft RNP (V8) and as a potentially highly visible development (day and night) alongside the B2089 gateway into Rye, fails to integrate well within the Parish.

ATBK PhD

For RNPSG

## Record of Communication by RNPSG in the Public Domain and between itself and AR

### Update for Rye TC on 18 September 2017

BP proposal [RR/2017/1231/P](http://www.ryeneighbourhoodplan.org.uk/wp-content/uploads/2017/07/RNPSG-update-31-July.pdf) for a petrol station and shop on the site to the west of Valley Park was submitted to Rother DC and sits on the planning website.

<http://www.ryeneighbourhoodplan.org.uk/wp-content/uploads/2017/07/RNPSG-update-31-July.pdf>

In the context of the RNP, it is concluded that the (BP commercial) development does not conform to the allocations in the draft RNP (V8) and as a potentially highly visible development (day and night) alongside the B2089 gateway into Rye, fails to integrate – visibility, lighting, traffic, impact on the adjacent AONB - within the Parish. This was a key requirement for the earlier 5 phases of the Valley Park development. It is understood that local residents have raised a petition against the proposal. *In short it is a welcome proposal (for second petrol station and 24/7 shop) in the wrong place.*

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**Andrew Gray**

To

[Anthony Kimber](#)

CC

[Nigel Ozier](#)

24 Jan at 4:08 PM

Dear Anthony

I am a planning consultant acting on behalf of BP Oil who you will be aware (as a member of the Rye Neighbourhood Planning Group), recently made an application for a Petrol filling station along Udimore Road (Application reference: RR/2017/1231/P)

John McSweeney the case officer at the Council who dealt with the application, has kindly provided me with your contact details as we would like the group clarify a couple of points made within the statutory consultation period in respect of the application.

Firstly, the Neighbourhood Planning Group stated there were other more suitable sites for the petrol station located closer to the Town Centre, or along the South Coastal Highway having carried out their own Sequential Assessment. Could the group kindly clarify where these sites are located as I have been unable to identify these alternatives in any public documents relating to the neighbourhood Planning Group. You will appreciate these areas which the group has referred to are very broad, so I would like to understand specifically where these are located.

Secondly, we would be interested to see a copy of the Sequential Assessment which the statutory consultation response refers to having been carried out by the group to support these views. I have reviewed the contents of the group's website but can only find an assessment for the purposes of "flood-risk" completed in November 2017. I am conscious that there are differences between the purpose of a Sequential Assessment for flood-risk, and one for retail use so welcome feedback on this matter.

Clarification from the group on these points would be duly and respectfully welcomed.

Yours faithfully

**Andrew Gray MSc TP MSc Regeneration MIED  
Planning Consultant  
AITCHISON RAFFETY  
Chartered Town Planning Consultants**

The Granary, Spring Hill Office Park, Harborough Road, Pitsford, Northampton,

**From:** John McSweeney  
**Sent:** 24 January 2018 15:25  
**To:** Andrew Gray  
**Subject:** RE: Rye NP Group - RR/2017/1231/P

Dear Mr Gray,

I apologise for the delay in coming back to you, as you will appreciate I have been away from the office.

The contact for Rye Neighbourhood Plan is Anthony Kimber are enclosed.

I hope this is of assistance.

Regards

John

**John McSweeney MA**  
Senior Planning Officer  
Rother District Council  
Town Hall  
Bexhill-on-Sea  
East Sussex

### **Anthony Kimber PhD**

**To:** Andrew Gray  
**Subject:** RE: Rye NP Group - RR/2017/1231/P

Dear Mr Gray,

Dear Andrew. Thanks. Would welcome some discussion as not clear on what basis you selected the unwelcome (to many in the community) proposal for the hilltop site adjacent to the AONB off the B2089.

Anthony Kimber PhD  
For Rye NP Steering Group

[Sent from Yahoo Mail on Android](#)

### **Telephone Call Follow Up**

During a follow up telephone conversation there was a focus on alternative sites. Following the call the RNPSG refreshed its work on a second petrol station/food outlet and after agreement by the RNPSG, published a paper on the RNP Website. This paper reinforces the work completed on RNP site assessment.

<http://www.ryeneighbourhoodplan.org.uk/wp-content/uploads/2018/02/Rye-Neighbourhood-Plan-2nd-Filling-Station.pdf>