

LOCHAILORT INVESTMENTS LIMITED

EAGLE HOUSE
108 - 110 JERMYN STREET
LONDON SW1Y 6EE
TEL: 020 3468 4933
www.lochailort-investments.com

2nd August 2019

Planning Policy
Mendip District Council
Cannars Grave Road
Shepton Mallet
Somerset BA4 5BT
Also by email: planningpolicy@mendip.gov.uk

Dear Sirs

RE: Norton St Philip Neighbourhood Plan

Introduction

It is recognised that this letter is not pre-action protocol letter before claim as the decision with which it is concerned is yet to be taken. It is, however, to give the proposed defendant advanced warning of the fundamental concerns of the proposed claimant and the anticipated challenge to any decision which is taken without further consideration.

The proposed Defendant

Mendip District Council, Cannards Grave Road, Shepton Mallet, Somerset, BA4 5BT

The Proposed Claimant

Lochailort Investments Limited, Eagle House, 108-110 Jermyn Street, London, SW1Y 6EE

Interested Party

Norton St Philip Parish Council

The Proposed Claimant's Legal Advisers

Harrison Grant
45 Beech Street
London EC2Y 8AD FOA H Campbell [REDACTED]

The Decision

This letter is in response to the recently published Examiner's Report following the examination of the Norton St Philip Neighbourhood Plan ('the NSPNP') and the report to Mendip District Council ('the LPA') Cabinet ahead of a meeting on 5th August 2019 at which it is proposed that the LPA's Cabinet will consider the question of whether to send the draft Norton St Philip Neighbourhood Plan ('the

NSPNP') to a referendum. The Cabinet report recommends that the NSPNP should proceed to referendum.

For the reasons which follow, there are fundamental flaws in the NSPNP, the examiner's report and report to Cabinet which mean that the NSPNP should not proceed to referendum without modification and further detailed consideration by the LPA.

Norton St Philip Parish Council ('the PC') submitted the NSPNP to the LPA for examination under Part 5 of the Neighbourhood Planning (General) Regulations 2012 (as amended) in February 2019. Regulation 16 consultation was carried out between Friday 1st March 2019 and Friday 12th April 2019.

Ann Skippers MRTPI FRSA AoU (the Independent Examiner') was appointed as the independent examiner of the NSPNP. The Independent Examiner's Report is dated 19 July 2019 ('the Report').

Pursuant to paragraph 12 of Schedule 4B of the Town and Country Planning Act 1990 (the TCPA 1990') the LPA must now consider each of the recommendations made by the Independent Examiner and importantly consider, for itself, whether *inter alia* the draft NSPNP meets the basic conditions as set out in paragraph 8 of Schedule 4B of the TCPA 1990 and the relevant EU obligations: see paragraph 12(2) and (3) of Schedule 4B of the TCPA 1990 as applied and modified by section 38C of the Planning and Compulsory Purchase Act 2004. Only if the LPA is satisfied that the draft NSPNP meets those basic conditions should it proceed to referendum. The report to Cabinet fails to adequately engage with this task.

By paragraph 12(4)(b) of Schedule 4B of the TCPA 1990 as well as considering any modifications recommended by the Independent Examiner, the LPA may also make any further modifications it deems necessary to ensure the draft NSPNP meets the basic conditions.

The draft NSPNP does not meet the basic conditions. In particular, conditions (a), (d) and (e) are failed by the draft NSPNP. Condition (a) is that *"having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order"*. Condition (d) is that *"the making of the order contributes to the achievement of sustainable development"* and condition (e) is that *"the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)"*.

Therefore, if the draft NSPNP were to proceed to referendum without modifications there is a high risk that the decision will be successfully challenged. We strongly suggest that the LPA should not progress NSPNP as presented. Our concerns, with reasoning, are detailed below.

Issue 1

Local Green Space Designation

The draft NSPNP seeks to designate 10 parcels of land as Local Green Space. These same designations are also within the draft Mendip Local Plan: Part II. In considering whether such designations are appropriate, in accordance with national policy, both the drafters of the NSPNP, and with respect, the Independent Examiner and, in turn, the author of the report to the committee have utterly failed to have regard to the requirements of the NPPF (2019) in making such designations.

Firstly, paragraph 99 of the NPPF explains that:

“...Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.”

Neither the evidence base for the draft NSPNP or the Independent Examiner’s Report or the LPA’s report to Cabinet make reference to or considers this principal important issue in deciding whether it is in accordance with national policy to make such designations.

Lochailort have repeatedly made it clear that the designation of both **007 Fortescue Fields South** and particularly **008 Fortescue Fields West** would offend against this requirement. The approach taken is akin to doing the very thing the PPG warns against: using the designation of Local Green Space as *“a back door way to try to achieve that which would amount to a new area of Green Belt by another name”* (PPG 015 - Reference ID: 37-015-20140306).

There is no evidence that the designations are capable of enduring beyond the plan period particularly as the LPA have indicated during the course of the examination of the Mendip Local Plan: Part II that it is not going to be able to demonstrate a five year supply of deliverable housing sites beyond December 2019. This issue does not appear to have been considered adequately or at all.

Secondly, Paragraph 92 of the NPPF requires positive planning to provide social, recreational and cultural facilities and services the community needs. The draft NSPNP, by designating significant tracts of land adjacent to the development limit where there are proposals for development which would support and enhance local services is entirely contrary to this requirement of national policy.

Such widespread designations undermine the intentions of paragraph 78 of the NPPF which explains that housing should be located where it will enhance or maintain the vitality of rural communities and policies should identify opportunities for villages to grow and thrive.

There is no evidence of this issue being considered adequately or at all by the drafters of the NSPNP or the Independent Examiner or the authors of the report to Cabinet.

Thirdly, the designation of Local Green Space requires demonstration that a site is of “particular importance” and is “demonstrably special to a local community” and “holds a particular local significance”.

Whilst the Independent Examiner has paid lip service to these requirements her report is woefully inadequate its consideration of these fundamental issues. The report to Cabinet does not seek to improve on the reasoning of the independent examiner in this regard or indeed in any regard at all.

In respect of 007 Fortescue Fields South the Examination Inspector makes several factual observations from her site visit:

“I saw that the land includes balancing and drainage ponds and is used for recreation and in particular its footpaths. There is seating too. Short and long distance views are gained from these areas over the surrounding countryside.”

It will be immediately apparent that these observations get nowhere near to establishing any particular local significance or demonstrable specialness.

In respect of 008 Fortescue Fields West the Examination Inspector notes that two representations query or object to the designation. However, she does not explain what the objections were or why she disagreed with the objections. This was, with respect, a wholly deficient approach to take.

The available reasoning is inadequate and unintelligible and the cause of substantial prejudice. It gives rise to a substantial doubt as to whether any decision to allow the plan to proceed to referendum will be taken in accordance with the statutory scheme: see *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 at para 36.

The evidence base in respect of sites 007 and 008 does not justify such a conclusion being rationally reached and, in any event, the reasoning of the Independent Examiner is insufficient in this regard. There is no attempt to engage with or respond to the objections to the designations.

The designation of 007 and 008 is not supported by a proportionate and robust evidence base which engages with the requirements of national policy for designation of LGS and therefore is contrary to PPG 41-040- 20160211 which explains:

“Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...”

Instead it proceeds on the basis of largely unevidenced assertions which were the subject of successful challenge in *Stonegate Homes Ltd v Horsham District Council* [2016] EWHC 2512 (Admin) which led to the plan being quashed.

For these reasons, when proper regard is had to national policy, the only logical conclusion is that without modification it is not appropriate to make the order and therefore, without further modification, the plan should not proceed to referendum.

For these same reasons, the making of the order cannot be said to contribute to the achievement of sustainable development. The opposite is true. The LGS designations 007 and 008 would hamper sustainable development in Norton St Philip.

Nor are the designations in accordance with the local development plan. Particularly Core Policy 4 and the Key Diagram in the Part I Plan. Both of which require the safeguarding of existing community facilities and the extension of the range of community facilities available to allow local people to secure more of their everyday needs locally.

The NSPNP, without further modifications therefore fails to meet the basic conditions in three crucial ways.

The details of the action that the LPA is expected to take

The LPA is therefore strongly urged to bring forward a main modification which either:

- a. Removes the LGS designation from sites 007 and 008; or
- b. Removes the LGS designation for site 008 and alters the extent of the designation for 007.

If no such modification is made by the LPA Lochailort will pursue a challenge to any decision of the LPA to proceed to referendum in accordance with section 61N of the TCPA 1990.

On 26 July 2019 Lochailort made these points at the examination of the Mendip Local Plan: Part II. In consequence of the discussions during that examination and the Inspector's clear concerns as to:

- a. the approach taken by the LPA; and
- b. the adequacy of the evidence base justifying the inclusion of the Local Green Space designations within the Local Plan: Part II;

the Local Plan Inspector indicated that he intended to prepare a note on Local Green Space and sought further information from the LPA. If the LPA purports to rely on any such unpublished further evidence justifying the LGS designations then it will plainly be necessary for any such evidence to be adequately consulted on.

It is further submitted that any consideration of the NSPNP by the LPA should await the comments of the Local Plan Inspector as to the appropriateness of the LGS designations as these will plainly be a material consideration of considerable importance.

Issue 2

Consultation

Representations were submitted concerning the adequacy of the consultation exercise in respect of the preparation of the draft NSPNP. The Independent Examiner notes the existence of these concerns but fails to deal with them stating:

"A representation raises concern about the openness and transparency of the engagement process. However, such allegations should be pursued through other mechanisms."

It is not clear what other mechanisms the Independent Examiner had in mind nor is it clear that any opportunity is being provided by the LPA to, by means of another mechanism, for those concerns to be addressed. The report to Cabinet does not consider this issue. This is another failing both in terms of the consultation exercise and also the reasoning.

The details of the action that the LPA is expected to take

The LPA is asked to set out by reply, and before any decision is taken, its response in respect of the issues raised as to the adequacy of the consultation.

Proposed reply date

The LPA is encouraged to defer its decision until such time as it has had the opportunity to consider the contents of this letter and to address the fundamental concerns raised by Lochailort Investments Ltd. The LPA is asked to respond by 19 August 2019 and in any event, before any final decision is made as to whether the NSPNP should proceed to referendum.

Yours sincerely


PP **Hugo Haig**
Managing Director