

HARRISON

SOLICITORS

GRANT

45 BEECH STREET  
LONDON EC2Y 8AD

TELEPHONE: +44 (0)20 7826 8520  
WEB: www.hglaw.co.uk

Planning Policy  
Mendip District Council  
Cannards Grave Road  
Shepton Mallet  
BA4 5BT

Also by email: [planningpolicy@mendip.gov.uk](mailto:planningpolicy@mendip.gov.uk)

Your ref:

Our Ref: [REDACTED]

2 August 2019

**URGENT**

Dear Sirs,

**Draft Norton St Philip Neighbourhood Plan**

We are instructed by Lochailort Investments Ltd.

We understand that the Mendip District Council (the LPA) Cabinet are due to consider the Independent Examiner's recommendations on the Norton St Philip Neighbourhood Plan (the NSPNP) and decide what action to take in response to those recommendations at a meeting on 5 August 2019.

We consider that the approach to the designation of Local Green Space in Policy 5 of the NSPNP does not meet the basic conditions and therefore the NSPNP cannot lawfully proceed to referendum. As explained below, the Examiner's recommendations in respect of Policy 5 and the officers' consideration of those recommendations is fundamentally flawed and should be rejected.

We therefore request that the Cabinet defer making a decision on the NSPNP until the LPA has had time to consider the contents of this letter. If the LPA does not defer consideration of the NSPNP, we request that the LPA reject the Examiner's recommendations in respect of Policy 5 and either (a) decide that the NSPNP does not satisfy the basic conditions and should not proceed to referendum or (b) decide that sites 007 and 008 should be deleted from Policy 5 in order for the NSPNP to meet the basic conditions.

**Background**

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. A regulation 16 consultation was carried out between 1 March 2019 and 12 April 2019.

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

At the Cabinet meeting, the LPA must consider each of the Independent Examiner's recommendations and decide, *inter alia*, whether the draft NSPNP meets the basic conditions.<sup>1</sup> Only if the LPA is satisfied that the draft NSPNP meets the basic conditions, or would meet the basic conditions if modifications we made to it, should it proceed to referendum.<sup>2</sup>

The LPA may make modifications to the NSPNP, whether recommended by the Examiner or not, if it considers, *inter alia*, they are necessary to ensure the draft NSPNP meets the basic conditions.<sup>3</sup>

As explained in detail below, the draft NSPNP does not meet the basic conditions (a), (d) or (e) and the Examiner's and officers' recommendations are fundamentally flawed. Therefore, if the Cabinet decide that the draft NSPNP meets the basic conditions without further modifications, it is highly likely that we will be instructed to issue proceedings in judicial review to challenge that decision. We strongly suggest that the LPA should reject the Examiner not progress NSPNP as presented.

## **Issue 1 - Local Green Space**

### *(i) Local Green Space Designation as a back door to extending the green belt*

Land designated as Local Green Space is afforded a similar level of protection from development as land within the Green Belt. However, the PPG advises that the designation of Local Green Space should not be used as "*a back door way to try to achieve that which would amount to a new area of Green Belt by another name*".<sup>4</sup> That advice is a reflection of Government Policy that Green Belt boundaries should only be altered in exceptional circumstances.<sup>5</sup> Nevertheless, the draft NSPNP seeks to extend the Green Belt into the village of Norton St Philip.

The majority of the area within the Norton St Philip Parish Boundary is included in the Green Belt.<sup>6</sup> However, most of the area adjacent to the village of Norton St Philip and the entirety of the village is outside the Green Belt. The LPA is not proposing to extend the Green Belt to include this land and so it must therefore be assumed that the LPA do not consider that there

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<sup>1</sup> Paragraph 12 of Schedule 4B of the Town and Country Planning Act 1990 (the TCPA 1990)

<sup>2</sup> Paragraph 12(4) of Schedule 4B of the TCPA 1990

<sup>3</sup> Paragraph 12(4)(b) and 12(6)(a) of Schedule 4B of the TCPA 1990

<sup>4</sup> PPG 015 - Reference ID: 37-015-20140306

<sup>5</sup> Para 136 of the NPPF.

<sup>6</sup> See Fig 3 of the NSPNP.

are exceptional circumstances which justify extending the Green Belt around Norton St Philip. However, the NSPNP seeks to designate any open land which falls within (or is surrounded by) the draft Settlement Boundary as Local Green Space. In doing so, the NSPNP is effectively extending the Green Belt, which currently ends on the northern edge of the village, to the southern edge of the village and seeks to prevent the expansion of the village into areas which would otherwise likely to be acceptable for development, particularly in relation to sites 007 and 008. It is therefore preventing a form of urban sprawl.

*(ii) Failure to have regard to the policies in the NPPF*

In considering whether the designation of the 10 parcels of land identified in Policy 5 as Local Green Space is appropriate, in accordance with national policy, the NSPNP, the Independent Examiner and the LPA's officers fail to have regard to the requirements of the NPPF (2019) and fail to recognise that the policy prevents sustainable development of the village.

First, 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."*

There is no reference to or consideration of this fundamental requirement in the evidence base for the draft NSPNP, the Independent Examiner's Report, or the officers' report to Cabinet. This is surprising considering Lochailort have repeatedly explained the designation of sites 007 Fortescue Fields South and particularly 008 Fortescue Fields West as Local Green Space is contrary to national policy, including this paragraph<sup>7</sup>.

In any event, there is no evidence that the designation of parcels 007 and 008 are capable of enduring beyond the plan period as required by para 99 of the NPPF. In particular, 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. At this point the Mendip Local Plan: Part I strategic policies will be more than five years old and the five year supply of specific deliverable housing sites will fall to be assessed against local housing need to be calculated using the standard method.<sup>8</sup>

This means that sustainable sites, such as Fortescue Fields will be needed in the very near future in order to address the shortfall in deliverable housing sites in the District. However, by designating large areas of open land in and around the village as Local Green Space (and thus preventing most development on that land), the NSPNP in effect acts to prevent the sustainable growth of the village. Importantly, the LPA has failed to take this matter into

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<sup>7</sup> See e.g. Lochailort Investments Limited's Regulation 19 Consultation response at page 6.

<sup>8</sup> See paragraph 73 of the NPPF (2019)

account and failed to explain whether (and, if so, why) it believes that the local green space designations can endure beyond the plan period.

Second, paragraph 92 of the NPPF requires positive planning to provide social, recreational and cultural facilities and services the community needs and paragraph 78 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.

The draft NSPNP flies in the face of this policy. There are currently proposals for housing development on sites 007 and 008 which would support and enhance local services. However, the NSPNP designates significant tracts of land adjacent to the Settlement Boundary as Local Green Space thereby preventing that sustainable development from being achieved.

There is no evidence that the NSPNP, the Independent Examiner, or the LPA's officers have considered the impact that the designation of sites 007 and 008 as Local Green Space would have in preventing the achievement of sustainable development.

Third, in order for land to be designated as Local Green Space, it must be demonstrated that a site is of "*particular importance*"<sup>9</sup> and is "*demonstrably special to a local community and holds a particular local significance*"<sup>10</sup>.

Whilst the Independent Examiner has paid lip service to these requirements, her report is woefully inadequate in its consideration of these fundamental issues. The report to Cabinet does not seek to improve on the Examiner's reasoning.

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In respect of site 007 - Fortescue Fields South, the Independent Examiner 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 Independent Examiner notes that two representations query or object to the designation – our client submitted one of those representations. However, she does not explain what the objections were nor why she disagreed with them. Those objectors do not know why their objections were rejected, why the decision has been made nor whether their consultation responses had any influence: see *R. (on the application of Oakley) v South Cambridgeshire District Council* [2017] 1 W.L.R. 3765 at para 26.

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<sup>9</sup> NPPF, para 99

<sup>10</sup> NPPF para 100(b)

The Examiner's reasons are inadequate and unintelligible and cause substantial prejudice to our client. 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 paras 24 – 36.<sup>11</sup>

Further, the evidence base in respect of sites 007 and 008 does not justify the conclusion that they can be designated as Local Green Space. The evidence supporting Policy 5 is neither proportionate or robust.<sup>12</sup> Instead it proceeds on the basis of largely unevidenced assertions which fail to engage with the requirements of national policy for the designation of Local Green Space. Such an approach to neighbourhood planning is unlawful: see *Stonegate Homes Ltd v Horsham District Council* [2016] EWHC 2512 (Admin).

### *Local Plan Part II*

On 26 July 2019 Lochailort made similar points to those set out above at the examination of the Mendip Local Plan: Part II. During that examination the Inspector raised clear concerns about:

1. the approach taken by the LPA to Local Green Space; and
2. the inadequacy of the evidence base justifying the inclusion of the Local Green Space designations within the Local Plan: Part II;

As a result, the Local Plan Inspector indicated that he intended to prepare a note on Local Green Space and sought further information from the LPA. It is clear that, at present, the Local Plan Inspector is not satisfied that the NSPNP Local Green Space can properly be designated as such. 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.

We request that the LPA delay consideration of the NSPNP until it has had an opportunity to consider the Local Plan Inspector's comments on the appropriateness of the Local Green Space designations as these will plainly be a material consideration of considerable importance.

### *Conclusions*

For the above reasons the draft NSPNP, without modification, does not meet basic conditions (a), (d) and (e) because:

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<sup>11</sup> Whilst the *South Bucks* principles are modified for the purposes of neighbourhood planning, these aspects are of universal application and apply to neighbourhood plan examination reports: see *R(Bewley Homes Plc) v. Waverley BC* [2017] EWHC 1776 at para 54-55.

<sup>12</sup> The evidence base is therefore 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...*"

1. When proper regard is had to national policy, the LPA can only logically conclude that is not appropriate to make the NSPNP without further modification to Policy 5.
2. Policy 5 does not contribute to the achievement of sustainable development, rather the designation of sites 007 and 008 would hamper sustainable development in Norton St Philip.
3. The designation of sites 007 and 008 do not accord with the local development plan, particularly Core Policy 4 and the Key Diagram of Part I of the Mendip District Local Plan. Those policies 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.

We therefore request that the LPA rejects the Examiner's recommendation that policy 5 of the NSPNP, as currently drafted, meets the basic conditions. In order to meet the basic conditions, we consider that the following modification is required:

**Sites 007 and 008 should be deleted from Policy 5 of the NSPNP.**

If no modification is made to Policy 5 by the LPA, it is highly likely that our client will instruct us to commence judicial review proceedings to challenge any decision of the LPA that the NSPNP can proceed to referendum.

**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.

**Action the LPA is requested to take**

Please confirm that a copy of this letter will be placed before the Cabinet with a recommendation that the consideration of the NSPNP be deferred.

Please acknowledge receipt.

Yours faithfully,



**Harrison Grant**