

Broadstairs and St Peter's Town Council Response

Broadstairs & ST PETER'S NEIGHBOURHOOD PLAN – ADDITIONAL PARTIAL EXAMINATION OF POLICY
BSP5: DESIGNATION OF LOCAL GREEN SPACES

Thanet District Councils Responses to Examiner's Questions

RESPONSE from Broadstairs & St. Peter's Town Council 13th May 2020

Question 1: What is the relevance of the eLP in this context? Thanet Local Plan 2006 has no policy for Local Green Space, either strategic or otherwise.

Broadstairs and St Peters Town Council prepared their Neighbourhood Plan on the basis of conformity with the emerging Local Plan, as set out in their Basic Conditions Statement paragraph 2.4:

2.4 The Neighbourhood Development Plan contains 14 topic policies, 6 of these are geographically referenced and mapping is provided to establish the exact policy boundary, the plan does not seek to allocate housing as this is being dealt with by the Thanet Local Plan. The Plan has sought to avoid containing policies that duplicate other development plan or national policies that are already being used to determine planning applications. The policies are therefore a development management matters that seek to refine and supplement the new emerging Local Plan policies.

and paragraph 5.1:

5.1 The Neighbourhood Development Plan has been finalised to ensure its 'general conformity' with the development plan for the District, this is the Thanet Local Plan 2031. Consultation on the Regulation 19 stage of the Thanet Local plan ended on 4th October 2018. To ensure ongoing conformity the NDP also has the same plan period running to 2031.

Appendix 5 of the Basic Conditions Statement lists the neighbourhood plan policies and their conformity with relevant policies from the emerging Local Plan.

The Examiner states in paragraph 2.2 of his report that:

2.2 Whilst there is no requirement for the Plan to be in general conformity with any strategic policies in the emerging Local Plan, there is an expectation that the District Council and the Town Council will work together to produce complementary plans. In this regard the Plan (at page 5) is erroneous in stating that it must be in general conformity with the strategic policies in the current adopted Local Plan and the emerging new Local Plan for the period up to 2031. I make PM1 to address this point.

The Council considers that this approach is entirely appropriate as the emerging Local Plan would most likely be adopted by the time the Neighbourhood Plan would come into force. (This is even more relevant given the recent advice from MHCLG that neighbourhood plan referendums cannot be held until May 2021 due to the Covid-19 situation). The Council carried out its Reg 16 consultation on the BSPNP between November 2018 - January 2019. The Council had submitted the Local Plan to the Secretary of State for examination on 30 October 2018, so the Local Plan had been published and was at an advanced stage in the process at the time of the neighbourhood plan Reg 16 consultation.

Once made, the BSPNP will be implemented alongside the Thanet Local Plan and the 2019 NPPF so it is important that the BSPNP can adapt and retain consistency with the newly adopted plan and up to date NPPF. Paragraph 216 of the 2012 NPPF gives some weight to emerging local plans (although not specifically in the neighbourhood plan context as the 2019 version. Whilst the decision-takers may be more directly related to planning applications, it would be inappropriate to ignore the weight afforded to an emerging plan from a policy perspective):

216. From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

RESPONSE FROM BSPTC:

It is clear from the face of the statutory framework (paragraph 8(e) of Schedule 4B TCPA 1990- ‘basic conditions’) and case law (*R(Kebbell Developments Limited) v Leeds City Council [2016] EWHC 2664 (Admin) at para 12*) that it is “general conformity” of the BSPNP with the adopted development plan as a whole and not conformity with the emerging local plan (eLP) that is relevant. While there is no requirement for the BSPNP to conform to the strategic policies in TDCs emerging plan, pursuant to the guidance in the extant Planning Practice Guidance at the time (paragraph 41-009-20160211) BSPTC has always had the intention to work with TDC and produce a BSPNP that complements the eLP.

BSPTC strongly takes issue with TDCs position that *“The Council considers that this approach is entirely appropriate as the emerging Local Plan would most likely be adopted by the time the Neighbourhood Plan would come into force”*. To be clear, the only reason that the post examination BSPNP has not been put to a referendum is because TDC have been refusing since the receipt of the examiner’s report in June 2019 to comply with its legal obligation to do so in paragraph 12(4) of Schedule 4B TCPA 1990 pursuing unjustified and unwarranted amendments to the 2 LGSs in the NSPNP.

As to the position in the event that the eLP is adopted, then there are, of course, review and monitoring provisions built into the BSPNP. The review and monitoring process for the BSPNP would, of course, consider reviewing its provisions as against any changes to the adopted planning framework post adoption of the BSPNP.

Question 2: What is the basis for saying that the LGS allocations in the BSPNP are not in general conformity with the Local Plan 2006?

The BSPNP was not assessed against the Thanet Local Plan 2006 as it is out of date. This has been highlighted in a letter from MHCLG (dated 28 January 2019) regarding their Intervention in the progression of Thanet’s emerging Local Plan. The Secretary of State quotes:

In view of your continuing failure to get a Local Plan in place I am satisfied that the requirements in section 27(1) of the 2004 Act are met; Thanet District Council (in its capacity as local planning authority):

- *does not have an up-to-date Local Plan in place - the Council's last Local Plan was adopted in 2006 and covered a period up to 2011.*

He later goes on to refer to:

The wider planning context in each area in terms of the potential impact that not having a plan has on neighbourhood planning activity: at least six communities in Thanet are preparing neighbourhood plans: Birchington, Ramsgate, Margate, Broadstairs & St Peters, Westgate and Cliffsend.

Communities can bring forward neighbourhood plans in the absence of an up-to-date Local Plan, but doing so can be more challenging for communities.

This suggests that communities preparing neighbourhood plans would benefit from having an up to date plan in place, rather than suggesting that neighbourhood plans should be prepared in conformity with the out of date 2006 Local Plan.

Local Green Space designation was introduced in the 2012 NPPF so was not a relevant consideration in the 2006 plan. It would therefore be inappropriate to test the LGS allocations against policies in the Thanet Local Plan 2006 as the plan is out of date and precedes the 2012 NPPF.

RESPONSE FROM BSPTC:

TDC are conflating here the position in respect of the SSHCLGs threatened intervention in respect of its eLP and the operative legal framework for examining the BSPTC.

Case law is clear that the making of the BSPNP does not have to wait for the adoption of the eLP.

For example, in the case of *DLA Delivery Ltd, R (On the Application Of) v Lewes District Council [2017] EWCA Civ 58*, Lindblom LJ stated in the Court of Appeal at paragraph 25 of his judgment, with respect to basic condition 8(2)(e) that:

*“Paragraph 8(2)(e) does not require the making of a neighbourhood development plan to await the adoption of any other development plan document. It does not prevent a neighbourhood development plan from addressing housing needs unless or until there is an adopted development plan document in place setting a housing requirement for a period coinciding, wholly or partly, with the period of the neighbourhood development plan. **A neighbourhood development plan may include, for example, policies allocating land for particular purposes, including housing development, even when there are no "strategic policies" in the statutorily adopted development plan to which such policies in the neighbourhood development plan can sensibly relate. This may be either because there are no relevant "strategic policies" at all or because the relevant strategy itself is now effectively redundant, its period having expired**”.* (emphasis added)

In addition, in *R. (on the application of Gladman Developments Ltd.) v Aylesbury Vale District Council and another [2014] EWHC 4323 (Admin)*, Lewis J said at paragraph 59 of his judgment:

“The condition in paragraph 8(2)(e)] is dealing with a situation where there are in existence strategic policies and they are contained in a development plan document and there is a conflict between

those policies and the policies contained in a neighbourhood development plan. The condition is not dealing with a situation where there are no strategic policies dealing with particular issues contained in a development plan document. The condition is not worded in terms that a neighbourhood development plan cannot include policies dealing with particular issues unless and until a development plan document is brought into existence containing strategic policies on such issues."(emphasis added).

Accordingly, and applying the above case law principles, in the absence of any relevant strategic policies contained in the adopted Local Plan 2006, for which the LGS allocations in the BSPNP must not be otherwise than in "general conformity" with, BSPTC considers there is no basis for saying that the 2 LGS allocations in the BSPNP are not in "general conformity" with the Local Plan 2006

Question 3: Since the LGS allocations in the BSPNP must be judged against NPPF 2012, for clarity, please explain fully the reasons for wishing to delete the 2 LGS allocations. For instance, is the fact that Fairfield Road/Rumfields Road space "is possibly highway land on a busy roundabout" a sufficient justification? And, in respect of the Reading Street space, is the fact that it is "part of the grass verge adjacent to the highway" a sufficient justification?

Paragraph 77 of the 2012 NPPF states that 'The Local Green Space designation will not be appropriate for most green areas or open space' before listing the LGS criteria. This infers that the designation of a LGS should be as an exception, rather than the norm, for any sites that are put forward.

Paragraph 2.21 of the 16th December 2019 Cabinet report includes an extract from an interim note from a Planning Inspector to Mendip Council that:

'...the bar for LGS designation is set at a very high level. I therefore consider that it is clear from national policy that LGS designation should be the exception rather than the rule....'I recognise that many if not all the proposed LGS designations are important to local communities; but this is a lower bar than being 'special' and of 'particular local significance'

The sites submitted to the Council as potential LGSs were assessed on the basis that the bar for LGS designation is at a very high level and that not every area of open space would be suitable for designation. More detailed assessments of the two sites are available in Appendix 2 of the Local Green Space Report and have been submitted alongside the Council's response for ease of reference.

Both of the sites are adjacent to a highway and are small grassed areas. They do not fulfil the NPPF criteria of having 'a particular local significance....because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife'. Whilst the sites may have limited recreational value, and, (particularly in the case of Reading Street) community value, their roadside locations mean that they are not tranquil, and there has been no evidence to suggest that either site is of special historic significance or wildlife value.

Paragraph 76 of the NPPF requires LGS to be 'capable of enduring beyond the end of the plan period'. It is considered that this cannot be guaranteed during the plan period due to the roadside location of the two sites and the potential for road works or road widening schemes (Reading Street being quite narrow and the proposed LGS site opposite the junction with Cedar Close).

Following its assessment of the proposed LGSs put forward for inclusion in the Local Plan, the Council considers that possible highway land on a roundabout, and a grass verge adjacent to a highway do not demonstrate the 'particular local significance' to warrant their 'exceptional' designations as LGSs, and so do not meet the NPPF criteria

The Council carried out a consultation proposing modifications to the BSPNP to delete the two LGSs from September - November 2019. No additional evidence was submitted in response to the consultation to demonstrate how the two LGS proposals meet the NPPF criteria. Responses to the consultation were received from both Historic England and Natural England stating that they had no specific comment to make on the proposed modifications to remove the two sites from LGS designation, which suggests that they do not hold any particular significance in terms of historic significance or richness of wildlife.

In addition to the sites not meeting the LGS criteria in the NPPF, the Reading Street site forms part of a housing allocation (Former Club Union Convalescent Home for 24 dwellings) in the emerging Local Plan. The proposed LGS site is adjacent to the current access to the housing allocation site which lies behind the LGS site. The housing site has previously had planning permission for residential development which has expired. There have been three recent planning applications on the site, all of which have been refused permission. The most recent application was recommended for approval but refused at planning committee and is currently the subject of an appeal.

The planning applications have met with significant public opposition - a 'Club Union Action Group' was set up by Reading Street residents to coordinate a campaign against the proposed development.

Paragraph 76 of the NPPF 2012 states 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'.....and should be capable of enduring beyond the end of the plan period'.*

The Planning Practice Guidance that accompanies the NPPF states that *'.....plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making', and 'Local Green Space designation will rarely be appropriate where the land has planning permission for development. Exceptions could be where the development would be compatible with the reasons for designation or where planning permission is no longer capable of being implemented'.*

There were around 50 objections to the proposed housing allocation in the Pre-Submission Reg 19 consultation on the Local Plan. Although there is no current planning permission on the site, the Inspectors of the Thanet Local Plan state in their report:

145. In Broadstairs, land at Reading Street is allocated for 24 dwellings. Although planning applications have been refused for residential development, and subsequent appeals dismissed, in each case the main issues related to matters of design, not the principle of development or the site's accessibility to shops, services and public transport. Located within the Urban Area, the allocation of the site for residential development is justified, as supported by the SA. There is nothing to indicate that a suitable design cannot be achieved over the course of the plan period.

RESPONSE FROM BSPTC:

BSPTCs position in respect of the inadequacy of TDCs justification for seeking to remove the 2 LGSs from the BSPNP and failure to engage properly or at all with the LGS designation criteria in paragraph 77 of the NPPF (2012) is set out in point 3 of page 2 of its letter to the Examiner of 27 April 2020 and is not repeated here.

In response to TDCs representations above, BSPTC strongly take issue with the inadequacy of TDCs assessment of the 2 LGSs. For example, the Fairfield Road/Rumfields Road LGS is patently not highway space. It is owned by the Riverside Housing Association, and forms part of the estate. This could easily have been established by TDC from a simple Land Registry search. The site has a long history of residents fighting for it to be 'tidied up' and this is raised in Neighbourhood Engagement Meetings at which TDC is always represented (minutes available on request) and there are no Highways plans in KCC to acquire this land to change the junction.

In addition, TDC were unaware of the fact that the Reading Street LGS site was unregistered land as they had wrongly assumed it was owned by KCC. It was BSPTC who pointed this out to TDC that this was not the case. TDCs response (Page 4 para 1) also refers to the LGS in Reading Street being opposite Cedar Close. It isn't as Cedar Close is elsewhere. The nearest junction is Elmwood Close. There is mention that the road is not tranquil, but there is no mention of the fact that the green space adds considerably to the setting of the listed houses and the village setting in the Reading Street Conservation Area.

To be clear, and notwithstanding that it is not relevant to the designation of the 2 LGSs, BSPTC do not object in principle to a proposed Reading Street site's allocation for residential development in the eLP. It is BSPTCs position that this allocation site can be redrawn in such a way that doesn't include the proposed Reading Street LGS on the frontage. The potential for road widening would be subject to negotiation with the landowner. Neither KCC nor TDC own it therefore it is not theirs to bestow on a private commercial developer.

Question 4: There are 19 LGS designated under Policy SP30 of the eLP, of which 7 have a 'Broadstairs' location. Apart from Kitty's Green, Culmer Amenity Land, and St Peter's Recreation Ground (if that is the same as St Peter's Village Green), I cannot identify which of the LP list of sites are in the NP list of sites. It would be helpful to have these identified for me. It is certainly confusing to have sites identified by different names in different lists, which appears to be the case. I also have difficulty in reconciling the names of the BSPNP areas with some of the sites in the Report on Assessment of Local Green Space Proposals of January 2018. An explanation would be helpful.

The Council carried out a 'call for sites' for Local Green Spaces for inclusion in the Local Plan as part of a consultation from 19 January - 17 March 2017. Those sites were assessed as set out in the Local Green Space Proposals of January 2018. The names given to the sites were as they were submitted to the Council. Maps showing the Local Green Spaces submitted to the Council can be found in the Councils assessments of those sites in Appendix 2 to the Local Green Space Report January 2018 (LP

Examination document CD5.11) <https://www.thanet.gov.uk/wp-content/uploads/2018/08/LGS-full-report-plus-appendix-2-reduced-for-web.pdf>

Broadstairs Town Council also carried out a 'call for sites' for Local Green Spaces for inclusion in their Neighbourhood Plan. Some of those sites were the same sites that had been submitted to the Council, however the Town Council would have used their own site names for them. All of the sites submitted to Broadstairs Town Council and their assessment of them can be found on their website (Examination background document 10)

<https://www.broadstairs.gov.uk/UserFiles/Files/NeighbourhoodPlan/Local%20Green%20Spaces%20Background%20Document.pdf>. of the Local Green Spaces to be included in the draft

Neighbourhood Plan are available here:

http://www.broadstairs.gov.uk/Local_Green_Spaces_22125.aspx

Table

RESPONSE FROM BSPTC:

No response required.

Question 5: In any event, the submitted BSPNP allocates 18 sites, of which 2 are objected to by TDC, leaving 16 sites that are not subject to objection. Since the LP allocates 19 LGSs, most of which do not appear to be in the NP area, it seems to be the case that there are LGSs in the BSPNP that have not had the endorsement of the eLP. This seems to go against the contention, set out in paragraph 1.4 of the Cabinet Report, that "Some of the sites now being proposed in the neighbourhood plan were also submitted at this stage, but were not allocated in the Local Plan as they did not meet the designation criteria. It is considered that their allocation in the neighbourhood plan would therefore conflict with the Local Plan LGS allocations as they have already been considered unsuitable for designation." Surely that means that any LGS designated in the NP, that has not been allocated in the eLP, conflicts with that Plan? Is this a lack of consistency, or for a reason?

The 'Some of the sites' referred to in paragraph 1.4 of the report may have been better worded had it said 'Two of the sites'.

The Council received the Fairfield/Rumfields Road and Reading Street sites as proposed LGS for allocation in the Local Plan in its consultation in 2017. It assessed those sites and rejected them for inclusion in the Local Plan because it was considered that they did not meet the NPPF criteria. The Reading Street site is also included in part of a housing allocation in the emerging Local Plan.

These two sites had already been assessed and rejected by the Council as being suitable for LGS designation, so their inclusion in the BSPNP would therefore be contrary to the Local Plan.

The Council has not objected to any of the other 16 LGS sites proposed in the BSPNP as they have not previously been put before the Council for consideration, leaving the assessment and consideration of those sites to the Town Council. The Council has only objected to the two LGS sites where there has been a direct conflict in the assessments.

RESPONSE FROM BSPTC:

TDC had many early opportunities to identify that proposed LGS sites allocated in the NP were potentially not complimentary with the eLP, as BSPTC have openly and transparently engaged with TDC throughout the process. Please find enclosed an email trail that shows how BSPTC have proactively sought to engage with TDC. It should be noted that the two LGSs were not identified by TDC as being not complimentary to the eLP at any of these stages, when TDC had ample opportunity to raise concerns.

Question 6: Following from this, the Inspectors’ report on the eLP deals with LGSs quite briefly. The essential element of their report as far as the choice of LGSs is concerned is in paragraph 329: “Examination Documents CD5.11 and CD5.12 provide the justification for designating areas of Local Green Space. All sites have been assessed against the requirements of the Framework, which requires an element of professional planning judgement. In our view the Council’s conclusions on the sites put forward are reasonable and justified.” (CD5.11 being the Report on Assessment of Local Green Space Proposals, January 2018, and CD5.12 being Addendum to Report on Assessment of Local Green Space Proposals, August 2018, the latter appearing to refer only to sites in Westgate.) Does this mean that there were no omission LGS sites put forward for the Inspectors’ consideration; for instance, in relation to the 2 LGS sites that TDC now seeks to delete from the NP?

That is correct. No omission LGS sites were put forward for the Inspectors’ consideration.

RESPONSE FROM BSPTC:

It should be noted that BSPTC did object to the Main Modifications of the TDC Local Plan in regard to LGS and on the 27th January 2019 Comment ID 163:

Comment ID	163
Respondent	Danielle Dunn - Broadstairs an... [View all comments by this respondent]
Response Date	27 th January 2019
Comment	Object- the policy should include reference to the possibility of Local Green Spaces being allocated in Neighbourhood Development Plans.

This was in addition to a comment submitted at Regulation 19 stage which was as follows:

Document Section	Draft Thanet Local Plan - 2031 - Pre-Submission Publication, Regulation 19 Local Green Space SP30 [View all comments on this section]
Comment ID	1402

Respondent	Danielle Dunn - Broadstairs &... [View all comments by this respondent]
Response Date	04 Oct 2018
Response Type	SUPPORT
What is the nature of this representation?	Support
Comment	The Town Council supports Policy SP30. However, the Neighbourhood Development Plan now allocates policies.

Question 7: As a follow-on from Question 6, the LGS Policy (Policy SP30) in the eLP is a strategic policy. Does this mean that a NP cannot designate additional LGSs, because to do so would be designating strategic sites?

The LGS Policy (SP30) is within the Strategic Policy section of the Local Plan because of the level of protection it gives to sites designated as LGS, as set out in para 78 of the NPPF:

78. Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts

This is clearly a very high level of protection for sites that fall within the remit of Policy SP30, however it does not make those sites Strategic Sites themselves. Policy SP30 sits alongside policy SP29 - Protection of Open Space, which also affords protection to open spaces which are not considered to be Strategic Sites. (The only open spaces that are considered to be Strategic Sites are the Green Wedges which are protected under Policy SP22 - Safeguarding the Identity of Thanet's Settlements).

RESPONSE FROM BSPTC:

Please see our earlier response <https://www.thanet.gov.uk/wp-content/uploads/2020/05/Broadstairs-and-St-Peters-Town-Council-response-to-Examiners-Questions.pdf>

UPDATE 12th May 2020:

Finally, BSPTC would like to draw the Examiners attention to a Planning Court case which was handed down yesterday, 11th May 2020, coincidentally on NP's and LGS's (<https://www.bailii.org/ew/cases/EWHC/Admin/2020/1146.html#para88>)

It is the Lochailort Investments case. It concerns the Norton St Philip NP and the Mendip Local Plan which were both examined in July 2019, and both tried to designate LGS's - including 10 around Norton St Philip.

This case reiterates the key principles that:

1. The issue is whether the NP as a whole complies with the local plan as a whole - tension between individual policies isn't a matter for the NP examiner
2. The NP process is more limited and less investigative than a local plan examination:
3. There's no need for an NP to be "sound" in LP terms.
4. The LPA is neither intended nor required to duplicate the detailed examination of the evidence, and the planning merits, which has been undertaken by the Examiner of the NP

Re: Broadstairs & St. Peter's Neighbourhood Plan

From: Danielle Dunn Town Clerk <bsptc@broadstairs.gov.uk>

Sent: Mon, 23 Jul, 2018 at 13:22

To: Adrian Verrall

Great, it is in the diary.

Kind Regards

Danielle

Danielle Dunn MRTPI

Town Clerk

Broadstairs & St. Peter's Town Council

Town Clerk's Office, Pierremont Hall, Broadstairs, CT10 1JX

01843 868718

Office Hours 9am-2pm

On 23/07/2018 13:14, Adrian Verrall wrote:

HI, Danielle

Monday 10th would suit me. I could be there by 9-9.30am.

Regards.

Adrian

Adrian Verrall
Strategic Planning Manager

On 23 July 2018 at 10:54, Danielle Dunn Town Clerk <bsptc@broadstairs.gov.uk> wrote:

Hi Adrian,

Please can we book something in for the week 10th-14th September, I work 9-2pm. It would be great if you could come over to Pierremont Hall and we can discuss everything then.

Kind Regards

Danielle

Danielle Dunn MRTPI

Town Clerk

Broadstairs & St. Peter's Town Council

Town Clerk's Office, Pierremont Hall, Broadstairs, CT10 1JX

01843 868718

Office Hours 9am-2pm

On 23/07/2018 08:29, Adrian Verrall wrote:

Hi, Danielle

Yes, happy to do that. Just let me know when is convenient. We're proposing to publish the draft Local Plan on 23 August, so the lead up to that could be quite busy.

Regards.

Adrian

Adrian Verrall
Strategic Planning Manager

On 20 July 2018 at 13:08, Danielle Dunn Town Clerk <bsptc@broadstairs.gov.uk> wrote:

Good morning Adrian,

I can confirm that the Regulation 14 Neighbourhood Plan is going to the Council meeting on the 23rd July for approval. If everything goes through, the consultation period will run from the 30th July through to the 17th September. It would have been useful to have discussed this prior, but I realise you have been busy.

Maybe we can have a meeting during the consultation period.

Kind Regards

Danielle

Danielle Dunn MRTPI

Town Clerk

Broadstairs & St. Peter's Town Council

Town Clerk's Office, Pierremont Hall, Broadstairs, CT10 1JX

01843 868718

Office Hours 9am-2pm

On 20/07/2018 08:49, Adrian Verrall wrote:

Hello, Danielle

Apologies, I had not picked this up, having been quite busy with the Local Plan.

We are happy to have a quick look at it, but bearing in mind your timetable, perhaps we could discuss with you any comments we have during the consultation period.

Hope this helps.

Regards.

Adrian

Adrian Verrall
Strategic Planning Manager

On 15 June 2018 at 10:42, Danielle Dunn Town Clerk <bsptc@broadstairs.gov.uk> wrote:

Dear Adrian

I hope you are well? This email is to inform you that we are working on the very final stages of our Draft Regulation 14 Neighbourhood Plan and if all goes to plan I will be taking it to our 23rd July Council meeting for approval so that it can go out for 6 weeks public consultation.

The link below shows the emerging final draft, where the policies are missing I am just finalising the evidence base to support these.

However, I can tell you that the shopping frontage policy will be based on your TDC policy, but we have just extended the frontages slightly. Work has been done on this I just need to produce the map.

We will be allocating Local Green Spaces, we are just surveying all the green spaces at the moment.

I am just making the Views and Vistas map.

The Seafront Character Zones policy is still in progress, but is being worked on by a consultant.

https://docs.google.com/document/d/1Az_4eIGhL_NJ1gL0i1Jneq8gAPrwWgREhZ24bC54rN0/edit?usp=sharing

Please let me know if you have any comments or suggestions.

Kind Regards

Danielle

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Danielle Dunn MRTPI
Town Clerk
Broadstairs & St. Peter's Town Council
Town Clerk's Office, Pierremont Hall, Broadstairs, CT10 1JX
01843 868718
Office Hours 9am-2pm

Thanet District Council response

Thanet District Council Response to comments submitted on behalf of Broadstairs & St Peter's Town Council (BSPTC comments shown in bold): Broadstairs & St Peter's Neighbourhood Plan- Additional partial re-examination of policy BSP5: Designation of Local Green Spaces

As requested, please find attached the legal advice note ('Note') of 31 July 2019 which concerns TDCs refusal to put the independently assessed BSPNP to referendum. We can confirm that the Town Council are agreeable to sharing the Note with Mr Kemmann-Lane.

- 1) (This also responds to paragraph 4.9 of the legal advice 'Note'). The Cabinet Report of 25th July 2019 was not asking Members to decide whether or not the NP should proceed to referendum. For the reasons set out in the report, Members were recommended to issue the Decision Statement to refuse to progress the Plan to referendum on the basis that the NP did not meet the basic conditions, and propose modifications be made to the NP so that it would meet the Basic Conditions. Had Members not agreed to the recommendations, the plan would have progressed to referendum.
- 2) The report to Cabinet in December published the Examiners Recommendations and Modifications and recommended to Members that, following the re-examination of the two LGS sites for which the Town Council has a contrary assessment as to their suitability for designation, the BSPNP be progressed to referendum.
- 3) The latest advice from MHCLG following the Covid 19 situation is that NP referendums cannot take place until May next year. The Council is investigating the possibility of the referendum for the BSPNP to be carried out simultaneously with the postponed Police and Crime Commissioners elections which should have taken place this year.

In addition to the matters set out in the attached Note and by way of an update, the Town Council would make the following additional comments:

1. The Town Council's engagement in the partial re-examination of the BSPNP and, specifically the response to Question 8, should not be taken or construed as any acknowledgment or acceptance on its part that a partial re-examination of the BSPNP is legally necessary or justified.

2. Indeed, for the detailed reasons set out in the Note, the Town Council considers that TDCs decision to partially re-examine the BSPNP is legally flawed and wholly unnecessary in circumstances when the BSPNP has already been independently assessed as according with the 'basic conditions' in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 ('TCPA 1990') and the other relevant requirements and, therefore, TDC are under a legal duty pursuant to paragraph 12(4) of Schedule 4B TCPA 1990 to put the BSPNP to referendum.

- 1) The Council has a duty to ensure the NP meets the Basic Conditions - as set out in the July

Cabinet Report - 2.5 *It is at this point in the process (and the first formal point in the process) that the Council must come to a formal view about whether the draft neighbourhood plan meets the basic conditions. Regulation 18 of the Neighbourhood Planning Regulations 2012 (as amended), and Schedule 4B of the Town and Country Planning Act 1990 require the local authority to propose any necessary modifications to a neighbourhood plan in order that it can meet the Basic Conditions.*

- 2) Although the BSPNP has been independently assessed, the Council is of the view (based on its own assessment) that the two sites subject of this Examination do not meet the LGS Criteria set out in the NPPF 2012. Rather than proceed to a referendum with modifications (pursuant to TCPA Schedule 4B para.12), the Council has taken a course of action that is fair to all in re-consulting and asking the Examiner to consider the appropriateness of the two allocations again.
- 3) Of direct concern are the reasons for his recommendations (confined to the single paragraph) in relation to the proposed LGSs:

*“Policy BSP5 (Designation of Local Green Spaces (LGS)) – this policy proposes the designation of 18 Local Green Spaces, which are listed at Appendix 2 to the Plan each with their address, postcode and/or grid reference and description. A Local Green Space background document (July 2018) sets out the methodology for the selection of the proposed Local Green Spaces, and I am satisfied that a rigorous approach has been taken in accordance with the principles outlined in Section 8 of the NPPF and the PPG⁶. I am also satisfied that each of the proposed sites meets the specific criteria set out in paragraph 77 of the NPPF for designation as a Local Green Space. However, I do consider that a map showing the location of the 18 Local Green Spaces is necessary within the Plan, acknowledging that detailed mapping of each site is available on the Town Council’s web-site. I therefore recommend that a new map be included within the main body of the Plan alongside Policy BSP5 showing the location of the 18 Local Green Spaces, and that this map be also referenced within the text of the policy. Accordingly, I recommend proposed modification **PM6** to address this matter.”*

- 4) The Examiner stated that he was satisfied that a rigorous approach had been taken in accordance with s.8 NPPF 2012 and the NPPG and relies for that on the July 2018 background document. This document can be described at best as cursory and descriptive, but it is not analytical and does not seek to apply the appropriate criteria through individual assessment. It is also, erroneously, based on the criteria contained in the 2019 NPPF which differs in one significant respect from the 2012 NPPF which contains the phrase “*The Local Green Space designation will not be appropriate for most green areas or open space*” [para.77]. Although the Examiner states that he is satisfied that each of the proposed sites meets the specific criteria set out in para. 77 there is no reasoning to disclose his independent means of assessment against the relevant criteria

and its outcome. Whilst it is accepted that Examiners should be assumed to have the relevant knowledge and background to enable them to make informed judgments without the necessity to give detailed reasoning, the Council cannot identify any analysis in relation to the two sites, either in the background documents or the Examiner's report, how or why the sites meet the necessary threshold and criteria. Moreover, there is nothing in the examiner's Report to indicate that he visited the proposed LGS sites in order to inform his opinion.

- 5) In a recent High Court Judgement– Lochailort Investments Limited and Mendip District Council/Norton St Philip Parish Council which concerned LGSs proposed in a Neighbourhood Plan, the Judge (Mrs Justice Lang DBE) observes:

138. Although the Examiner did not hold a hearing, in accordance with standard practice, she did conduct a site visit during which she saw each proposed LGS.

142. I am satisfied that, as an experienced Examiner, she was familiar with the Framework, and that she had regard to paragraphs 99 to 100 for the purposes of her assessment. They could not be easily missed as they were also set out in the NSP NP and referred to in the Defendant's background paper.

- 6) In para 153 of the Judgement, the Judge includes the following quote from the Examiners Report (p22 of the Norton St Philip Neighbourhood Development Plan 2019 – 2029 – Independent Examiner's Report):

Turning now to whether all the proposed LGSs are demonstrably special and hold a particular local significance, I consider that in each case, this has been demonstrated satisfactorily. I have based my assessment on the criteria in the NPPF rather than in the background paper prepared for LP11. It should also be noted that beauty, historic significance, recreational value, tranquillity or wildlife given in the NPPF are examples of what might make a green area demonstrably special to a local community and of particular local significance and is not, on my reading, an exhaustive list.

- 7) In paragraph 155 of the Judgement, the Judge highlights the following '..... it should be noted that the Examiner expressly based her assessment on the Framework criteria, not the expanded criteria in the Defendant's background paper' and concludes that:

157. In my judgment, the Examiner had proper regard to the Framework and PPG, and there was sufficiently robust evidence upon which she could legitimately exercise her judgment that Basic Condition (a) was met in respect of the designations of LGS7 and LGS8 in Policy 5 of the NSP NP.

And again stresses the thoroughness of the Examiners assessments:

159... ix) In light of the above, I am not persuaded that the well-evidenced assessments carried out by the Examiner, who considered NSP in depth and had the benefit of viewing each proposed designation, have been invalidated by the LPP2 Inspector's general critique.

x) In support of that conclusion, I reiterate that the Examiner stated that she based her assessment on the criteria in the Framework rather than the criteria in the background paper prepared for LPP2.

- 8) The Norton St Philip Neighbourhood Plan proposed 10 sites as LGSs. In her report regarding the LGSs, the Examiner states '*I saw all the proposed areas on my site visit. Taking each in turn:.....*' (p20). She then lists each of the sites along with her commentary, and for some referring to her site visits - for example:

Site 004 (p20) - I saw at my visit that although the character of the garden areas differs from the other land in that it is more domestic in nature whereas the remainder of the land has a more rural feel to it along Norton Brook, there is a cohesion to the area. I found it to be a tranquil and peaceful area with views of the Church,

Site 007 (p21) I saw that the land includes balancing and drainage ponds and is used for recreation and in particular its footpaths

and site 009 (p21) At the time of my visit, it was also well used by those enjoying its attributes.

- 9) The Council is of the view that the assessments carried out by the Examiner of the Norton St Philip NP are indicative of the level of assessment that should have been carried out for the proposed LGS sites in the draft Broadstairs & St Peter's NP.
- 10) In relation specifically to the Reading Street site, the Council is also concerned that the Examiner may have overlooked the residential allocation in the eLP, part of which includes the Reading Street site, and, as mentioned previously, the Inspectors of the Thanet Local Plan found the allocation to be sound. The Examiner did not appear to consider the Local Green Spaces proposed by the Town Council and their compatibility with allocations in the Local Plan, according to his Preliminary Question below (the LGS Policy is BSP5):

Examiners Preliminary Questions:

Question 1: Re. Paragraph 8.1.1 (Housing) This paragraph states, inter alia, that "To ensure a fair and open approach to housing provision in the Neighbourhood Area, this NDP supports housing provision being planned and delivered at the district Local Plan level through allocation of suitable sites and "windfall" housing development policies". The Plan contains no further information relating to planned residential developments up to 2031. In the context of the emerging Thanet Local Plan 2031, I shall need further information on the prospective Local Plan housing site allocations that fall within, or within close proximity to, the designated Neighbourhood Plan Area. I shall require this information in order to be able to assess whether a number of policies in the Plan, including Policies BSP1, BSP2, BSP4, BSP7 and BSP8, are consistent and compatible with any prospective residential developments that may be planned. I therefore invite the District Council and the Qualifying Body to provide me with a Note setting out the

presently identified prospective Local Plan Housing Site allocations within the Neighbourhood Plan area and within close proximity to it. I also request a Map at an appropriate scale identifying the allocation site boundaries.

- 11) His omission of BSP5 in the list of NP policies he listed to assess their compatibility suggests that LGS sites were not assessed against housing sites. Whilst we accept that a NP need only be in general conformity with the relevant local plan and that there is no statutory requirement that it be in conformity with the eLP, the omission is, nonetheless, inconsistent with his stated requirement to assess compatibility and consistency of the NP with proposed housing allocations.

3. While the Town Council consider, for the reasons set out in the Note (see paragraph 6.1-6.6 the), that the post- examination consultation exercise on the BSPNP was legally unjustified, the Town Council note that the consultation responses received were overwhelmingly opposed (84 of 94 responses) to TDCs proposed removal of the 2 LGSs with consultee's responses consistently reiterating, among other things, the particular local significance and special nature of the 2 LGSs which are key criteria in paragraph 77 of the National Planning Policy Framework ('NPPF') 2012 for the designation of LGSs.

For reasons unclear, TDC seem to have disregarded the overwhelming weight of the consultation responses and are continuing to press ahead with their misconceived attempt to remove the 2 LGSs from the BSPNP which, as the original Independent Examiner rightly considered, met all the relevant tests in the policy framework for designation as LGSs. Mr Kemmann-Lane will find a link below to the consultation responses received by TDC (<https://consult.thanet.gov.uk/consult.ti/BSPNPMODS/consultationHome>).

- 1) The Council acknowledges the responses to the consultation (as set out in the December committee report). No new evidence was presented as a result of the consultation to lead the Council to alter its conclusion that the sites do not qualify for LGS status.

It is no answer by TDC to say that no new evidence was submitted in the consultation responses that the 2 LGSs meet the designation criteria. There was no requirement for the Town Council and/or consultees to provide any such new evidence in the post examination consultation, the matter having been already assessed by the Town Council in its LGS assessment and independently examined by the original Examiner. If notwithstanding the evidence base and original Independent Examiner's recommendation, TDC consider that the 2 LGSs do not meet the LGS designation criteria in the NPPF 2012 and should be removed from the BSPNP then it is surely for TDC and not the Town Council/ consultees to justify this position.

- 1) The Councils assessment of the two sites concluded that they do not meet the criteria in the NPPF so shouldn't be allocated as LGSs. The consultation was an opportunity for

comments to be made to demonstrate how the sites do meet the NPPF criteria. Of the comments received, 14 objections referred specifically to the planning application that was current at the time (others referred to proposed development but did not make specific reference to the planning application) which suggests that the LGS allocation may be seen by some objectors as means of preventing development.

The only purported justification that has been provided to date by TDC for the proposed modifications is that Fairfield Road/Rumfields Road LGS “is possibly highway land on a busy roundabout” and the Reading Street LGS is “part of the grass verge adjacent to the highway”. Such scant reasoning is insufficient justification for TDCs approach (contrary to the original Independent Examiner’s recommendation) and, in particular, in no way address the specific designation criteria in paragraph 77 of NPPF 2012.

- 1) This has been addressed to some degree in our previous response.

However it should be noted that there has been no justification to suggest why the two sites should be allocated as LGS. The assessment by BSPTC simply states that Fairfields Road/Rumfields Road is ‘*In a residential area, situated next to a roundabout opposite a primary school and is a semi natural green space edged with trees*’. The assessment states that the Reading Street site is ‘*located in the heart of the historic village of Reading Street and is a small corner grassed area opposite Kitty’s Green, with two small raised flower beds and two benches*’. These assessments do not address or meet the specific designation criteria in paragraph 77 of the NPPF 2012. Appendix 2 to the Town Councils background document on Local Green Spaces includes the LGS assessment summaries carried out by the District Council for LGSs proposed in the eLP process, including the two sites and accompanying summaries that they do not meet the NPPF criteria. Although the Town Council was aware of our assessments and conclusions, their assessment did not provide the justification to demonstrate that the two sites do meet the NPPF criteria.

- 2) The Town Council received the following objection to their LGS designations to their Regulation 14 Consultation (the responses are available on the Town Councils website <https://www.broadstairs.gov.uk/UserFiles/Files/NeighbourhoodPlan/Response%20to%20Representations%20Received%20on%20Reg14.pdf>):

‘The document does not seem to detail any requirement for quality of the landscape value for a site. The list does not include parks and open spaces and many of those listed were the result of planning requirements. Some were what used to be termed as ‘bits left over after planning’ of which the Fairfields Road/Rumfields Road area is a good example. Owned by the Housing Association which owns the adjacent properties it is I believe commonly regarded as an eyesore and although may have wildlife value is not maintained to any standard. You also list Salts Drive open space which is I feel largely unknown to many people and I suspect hardly ever used by anyone. Is it worth retaining such areas and requiring them to be maintained when they are so hidden. Surely in these financially difficult times it would be better to have flexibility where such areas

could be used for other purposes and the ongoing revenue maintenance costs put to more prominent sites'.

The Town Council disagreed with this comment and proposed that no changes be made to their LGS designations.

- 3) The Council provided informal comments to the Town Council prior to the Regulation 16 consultation in an email dated 27th September 2018. This included concern that not all of the sites proposed as LGS met with the NPPF criteria. Again, no changes were made to the LGS designations as a result of this comment.
- 4) Concerns raised about the LGS allocations have not been addressed or additional justification provided to demonstrate how the two sites meet the criteria in the NPPF.

4. Having considered TDCs Cabinet report of 16 December 2019, it is also no answer for TDC failing to meet its legal duty in paragraph 12(4) of Schedule 4B TCPA 1990 to put the BSPNP to referendum, that such a decision might be subject to a theoretical judicial review action by the disgruntled proposed residential developer of the Reading Street LGS site. The fact that such a decision is theoretically capable of being judicially reviewed does not, in any way, mean that any such speculative legal action would be brought let alone be successful and should not prevent TDC from meeting its legal obligations under the statutory scheme for neighbourhood plans.

- 1) The Committee report explains the reasons for the conclusion that the sites do not meet the LGS criteria.
- 2) However, it is the duty of officers to advise Members as to possible risks to their decision-making.

5. As Mr Kemmann-Lane queries in his 7 questions to TDC, TDC continue to labour under the misapprehension:

a. That the re-examination of policy BSP5 is to be examined under the revised NPPF whereas, (pursuant to transitional arrangements in footnote 69 to paragraph 214 of the revised NPPF) it is to be assessed against the policies in the original NPPF (2012) which, as Mr Kemmann-Lane notes, makes no reference to emerging local plan policies;

Already addressed in our previous response

b. That there is a requirement for the BSPNP to be in 'general conformity' with the strategic policies in the emerging TDC local plan which is directly contrary to

paragraph 8(2) of Schedule 4B TCPA 1990 and relevant case law (see para 3.4 of the Note). The statutory scheme and relevant case law are clear that it is general conformity with the adopted local plan (i.e. Thanet Local Plan 2006) which is the relevant test. As Mr Kemmann-Lane notes. there is, in fact, no LGS policy in the adopted local plan (strategic or otherwise). In the absence of any such relevant LGS LP policy, the Town Council fail to understand how it is considered by TDC that the 2 LGSs that they are opposed to are not in conformity with the Thanet Local Plan 2006;

Already addressed in our previous response

6. The Town Council agree with Mr Kemmann-Lane's observation as to the seemingly inconsistent approach that TDC are taking to the proposed designation of the 18 LGSs in the BSPNP. In respect of the 2 opposed LGSs in the BSPNP, TDC assert that their removal is justified as they are not allocated in the emerging local plan and therefore conflict with the emerging local plan LGS allocations and yet, as Mr Kemmann-Lane notes, other unopposed LGS allocations in the BSPNP are also not allocated in the emerging local plan and yet are not opposed by TDC;

Already addressed in our previous response

7. Mr Kemmann-Lane should be aware that the Town Council have made a request to the Secretary of State for Housing Communities and Local Government ('SSHCLG') on 11th September 2019 asking (for the reasons set out in the Note) for the SSHCLG to intervene and direct TDC to make arrangements forthwith for a referendum to be held on the post-examination BSPNP pursuant to paragraph 13B of Schedule 4b of the TCPA 1990.

- 1) The Council accepts that the Town Council have requested intervention from the Secretary of State on the grounds of all three criteria (as set out in the Note). A point of note on criteria a) - where the LPA has failed to take a decision to send a NP to referendum within 5 weeks of receipt of the examiner's report. The Council received the Examiners Report on 14th June. The June Cabinet meeting was on the 13th June. The earliest possible Cabinet the Report could be taken to was the 25th July.
- 2) The Town Council also requested that the Secretary of State placed a holding direction on the determination of the planning application, which, at that time, was still pending decision. A direction was not issued and the Council was able to determine the application.

On 16 April 2020, MHCLG provided an update on the Town Council's intervention request. MHCLG confirmed that the SSHCLG was continuing to closely monitor developments with the BSPNP. MHCLG advised that the SSHCLG continues to carefully consider the Town Council's request to intervene and considers it appropriate to await Mr Kemmann-Lane's conclusions in respect of the 2 LGSs before formally determining

the intervention request;

For the reasons set out above and in the attached Note, the Town Council would ask Mr Kemmann- Lane to conclude, with respect to the partial re-examination of the BSPNP, that policy BSP5: Designation of Local Green Spaces meets the basic conditions in paragraph 8(2) of Schedule 4B TCPA 1990.

Mendip District Council

**Norton St Philip
Neighbourhood Development Plan
2019-2029**

Independent Examiner's Report

By Ann Skippers MRTPI FRSA AoU

19 July 2019

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Summary

I have been appointed as the independent examiner of the Norton St Philip Neighbourhood Development Plan.

The village of Norton St Philip lies some 8 miles south of Bath and about 7 miles north of Frome, Mendip's largest town. As well as the village of Norton St Philip, there are two smaller settlements of Farleigh Hungerford and Hassage which are washed over by the Bath and Bristol Green Belt.

Norton St Philip is situated on a ridge and as a result there is a strong skyline of this historic settlement that boasts the George Inn claimed to be one of Britain's oldest taverns.

A resolution to start work on the Plan was agreed towards the end of 2017. It is commendable that the Plan has reached this stage so quickly. It builds on work and the evidence gathered for a Conservation Area Appraisal and Parish Plan.

The Plan contains six policies including a site allocation, designation of Local Green Spaces and one on design that strongly reflects evidence gathered together in a Character Assessment which was prepared by the local community and is a document which I commend to others.

It has been necessary to recommend some modifications. In the main these are intended to ensure the Plan is clear and precise and provides a practical framework for decision-making as required by national policy and guidance. My reasoning is set out in detail in this report. These do not significantly or substantially alter the intention or overall nature of the Plan.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Mendip District Council that the Norton St Philip Neighbourhood Development Plan can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI
Ann Skippers Planning
19 July 2019



1.0 Introduction

This is the report of the independent examiner into the Norton St Philip Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Mendip District Council (MDC) with the agreement of the Parish Council to undertake this independent examination. I have been appointed through the Neighbourhood Planning Independent Examiner Referral Service (NPIERS).

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over thirty years experience in planning spanning the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and experience to carry out this independent examination.

2.0 The role of the independent examiner

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

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 neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation

¹ Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.² It states that:

- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

The examiner is also required to check³ whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.⁴

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a 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.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case Mendip District Council. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

² Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

³ Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

⁴ The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

3.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).⁵ PPG confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.⁶ Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

As a result of some modifications, consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on. I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and such editing carried out.

PPG⁷ explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.⁸

After consideration of all the documentation and the representations made, I decided that it was not necessary to hold a hearing.

Last year NPIERS published guidance to service users and examiners. Amongst other matters, the guidance indicates that the qualifying body will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for a Parish Council to make any comments; it is only if they wish to do so. The Parish Council sent comments and I have taken these into account.

A representation refers to criminal damage on land expressing hope that this will not have any influence on the examination. I can confirm that these are matters outside the scope of the examination and have had no bearing on it.

I am grateful to both Councils for helping to ensure that the examination has run smoothly and in particular for the assistance given to me by Jo Milling of MDC.

⁵ PPG para 055 ref id 41-055-20180222

⁶ Ibid

⁷ Ibid para 056 ref id 41-056-20180222

⁸ Ibid

I made an unaccompanied site visit to familiarise myself with the Plan area on 29 May 2019.

4.0 Neighbourhood plan preparation

A Consultation Statement has been submitted. It meets the requirements of Regulation 15(2) of the Neighbourhood Planning (General) Regulations 2012.

Work began on the Plan in December 2017. The Parish Council is to be congratulated in submitting the Plan within this timescale. A Steering Group consisting of Parish Councillors and the community was established. Regular meetings were held which were open to the public and minutes of those meetings are publicly available.

A dedicated website was set up. Four Working Groups were set up. Building on earlier work on a Parish Plan and in rebutting various planning applications, good use was made of existing evidence and networks. A questionnaire was sent to businesses and local groups alongside a Village Housing Survey which attracted a high response rate of 44%. Meetings were held with various businesses, groups and landowners. A Character Assessment was carried out. Information and Awareness Days including displays at village events.

A two day exhibition of draft documents was held in November 2018. This was publicised online, via mail shots, noticeboards and a leaflet drop to every household in the Parish. After the exhibition, a public meeting was convened.

Pre-submission consultation was held between 7 December 2018 – 25 January 2019 allowing a little more time over the Christmas period. Prior to the consultation, each house in the village was given an information sheet, summary and response form, letters were sent to statutory consultees and those on the mailing list including landowners and local businesses, an online survey was held, paper copies available from various locations in the Plan area.

I consider that the consultation and engagement carried out is satisfactory.

Submission (regulation 16) consultation was held between 1 March – 12 April 2019. The Regulation 16 stage resulted in representations from nine individuals or organisations.

I have considered all of the representations and taken them into account in preparing my report.

A representation raises concern about the openness and transparency of the engagement process. However, such allegations should be pursued through other mechanisms. A representation makes some suggestions for changes to the Consultation Statement; if the Parish Council feels it would be helpful to undertake

these in full or in part, then that might go some way in addressing the concerns raised, but they are not modifications I need to make in respect of the basic conditions. The same principle applies to detailed matters raised about the Character Assessment.

5.0 Compliance with matters other than the basic conditions

I now check the various matters set out in section 2.0 of this report.

Qualifying body

Norton St Philip Parish Council is the qualifying body able to lead preparation of a neighbourhood plan. This requirement is satisfactorily met.

Plan area

The Plan area is coterminous with the Parish area. MDC approved the designation of the area on 5 April 2018 (the Basic Conditions Statement indicates the 9 April, but this is a minor typo). The Plan relates to this area and does not relate to more than one neighbourhood area and therefore complies with these requirements. The Plan area is shown on page 5 of the Plan.

Plan period

The Plan period is 2019 – 2029. This is clearly shown on the front cover of the Plan and confirmed in the Plan itself.

Excluded development

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement. This is also helpfully confirmed in the Basic Conditions Statement.

Development and use of land

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community's priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.⁹

⁹ PPG para 004 ref id 41-004-20190509

6.0 The basic conditions

Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. On 19 February 2019, the revised NPPF was updated and replaces the previous NPPF published in March 2012 and revised in July 2018.

Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

Footnote 69 explains that for neighbourhood plans “submission” means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

This Plan was submitted after the 24 January 2019. It is therefore clear that it is the NPPF published in 2019 that is relevant to this particular examination.

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the delivery of strategic policies and should shape and direct development outside of these strategic policies.¹⁰

Non-strategic policies are more detailed for specific areas, neighbourhoods or types of development.¹¹ They can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and set out other development management policies.¹²

The NPPF also makes it clear that neighbourhood plans should not promote less development than that set out in strategic policies or undermine those strategic policies.¹³

The NPPF states that all policies should be underpinned by relevant and up to date evidence; evidence should be adequate and proportionate, focused tightly on supporting and justifying policies and take into account relevant market signals.¹⁴

¹⁰ NPPF para 13

¹¹ Ibid para 28

¹² Ibid

¹³ Ibid para 29

Policies should also be clearly written and unambiguous so that it is evident how a decision maker should react to development proposals. They should serve a clear purpose and avoid unnecessary duplication of policies that apply to a particular area including those in the NPPF.¹⁵

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at www.gov.uk/government/collections/planning-practice-guidance which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous¹⁶ to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the planning context and the characteristics of the area.¹⁷

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.¹⁸ It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.¹⁹

Whilst this has formed part of my own assessment, Table 1 of the Basic Conditions Statement²⁰ sets out how the Plan aligns with the NPPF.

Contribute to the achievement of sustainable development

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development.

The NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development.²¹ This means that the planning system has three overarching and interdependent objectives which should be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the different objectives.²² The objectives are economic, social and environmental.²³

¹⁴ NPPF para 31

¹⁵ Ibid para 16

¹⁶ PPG para 041 ref id 41-041-20140306

¹⁷ Ibid

¹⁸ Ibid para 040 ref id 41-040-20160211

¹⁹ Ibid

²⁰ Basic Conditions Statement page 4

²¹ NPPF para 7

²² Ibid para 8

²³ Ibid

The NPPF confirms that planning policies should play an active role in guiding development towards sustainable solutions, but should take local circumstances into account to reflect the character, needs and opportunities of each area.²⁴

Whilst this has formed part of my own assessment, Table 3 of the Basic Conditions Statement²⁵ assesses each Plan policy in relation to sustainability.

General conformity with the strategic policies in the development plan

The development plan consists of the Mendip Local Plan 2006 – 2029 Part I (LPI) adopted on 15 December 2014.

Whilst this has formed part of my own assessment, Table 2 of the Basic Conditions Statement²⁶ lists the Plan policies alongside the relevant LPI policies with a commentary on conformity.

Emerging Planning Policy Context

MDC is currently preparing the Mendip Local Plan Part II Sites and Policies (LPII). The LPII and Proposed Changes were submitted for examination on 23 January 2019. A Focused Consultation on the Proposed Changes has now closed and the examination is due to start shortly.

The LPII does not propose any site allocations for Norton St Philip. The proposed settlement boundary subject of Policy 1 and the proposed Local Green Spaces subject of Policy 5 align with the proposed settlement boundary and proposed LGSs in the LPII.

European Union Obligations

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

PPG²⁷ confirms that it is the responsibility of the local planning authority, in this case MDC, to ensure that all the regulations appropriate to the nature and scope of the draft neighbourhood plan have been met. It is MDC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

²⁴ NPPF para 9

²⁵ Basic Conditions Statement page 8

²⁶ Ibid page 6

²⁷ PPG para 031 ref id 11-031-20150209

Strategic Environmental Assessment and Habitats Regulations Assessment

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (EAPPR).

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.²⁸ The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

A SEA and HRA Screening Statement dated February 2019 prepared by MDC and the Basic Conditions Statement²⁹ explain that a draft Screening Opinion was produced, but Historic England raised some concerns. The other two statutory consultees concurred with the conclusions. The concerns raised by Historic England are summarised in the document alongside the action taken and the Plan was duly amended. Historic England has been consulted on the revised screening and confirm agreement with its conclusions.

The Screening Statement is therefore a revised screening after the pre-submission stage. It concludes that a SEA will not be needed.

EU obligations in respect of SEA have been satisfied.

With regard to HRA, the Screening Statement concludes that the Plan is unlikely to result in significant effects on any European sites. Natural England (NE) commented that although there are no European sites in the Plan area, “the nearest European site to the Plan area is a component of Bath and Bradford on Avon Bats Special Area of Conservation (SAC), approximately 2.5 km to the north of the Parish”.³⁰ NE agreed that significant effects on European sites are not likely to arise from the Plan. MDC also consulted Somerset County Council’s (SCC) Ecologist³¹ who confirmed that Norton St Philip lies just within Band C of the Mells Valley SAC but agreed that there is unlikely to be a significant effect on greater horseshoe bat foraging areas or habitat that forms commuting structure.

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was

²⁸ PPG para 047 ref id 11-047-20150209

²⁹ Basic Conditions Statement page 9

³⁰ Letter from Natural England dated 29 November 2018

³¹ Email from SCC of 19 November 2018

substituted by a new basic condition brought into force by the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

The Screening Statement concludes the Plan will not give rise to any likely significant effects.

Given the distance, nature and characteristics of the SAC concerned and the nature and contents of this Plan, together with the responses from NE and SCC, I consider that the requisite requirements have been met and that the prescribed basic condition is complied with.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.³²

European Convention on Human Rights (ECHR)

The Basic Conditions Statement includes a short statement on human rights. There is nothing in the Plan that leads me to conclude there is any breach of the fundamental rights and freedoms guaranteed under the ECHR or that the Plan is otherwise incompatible with it or does not comply with the Human Rights Act 1998.

7.0 Detailed comments on the Plan and its policies

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I suggest specific changes to the wording of the policies or new wording these appear in **bold italics**.

The Plan is presented well. Photographs of the area add a distinctive and local flavour. It contains six policies. It starts with a useful contents page.

I found the Plan to contain a number of acronyms which it would be helpful to readers to include in a list of acronyms. These include BaNES on page 11 and so on.

- **Include a list of all acronyms used throughout the Plan**

1. Introduction

This is a well-written section that sets out the background to the Plan. Useful boxes shown the process and provide definitions of key terms.

³² PPG para 031 ref id 11-031-20150209

Some natural updating to the section will be needed as the Plan progresses towards referendum and being made.

- **Update this section as required and particularly paragraph 1.8 on page 5**

2. Norton St Philip – a brief history

Succinctly detailing the importance and history of the Parish, this well-written section is a useful introduction to both the past and present issues.

3. Vision and objectives

The vision for the Plan is:

“To maintain the special character and built heritage of the Parish of Norton St Philip while promoting its development as a compact and sustainable community.”

The vision is supported by five objectives.

Both the vision and objectives are clearly articulated and relate to the development and use of land.

4. The Neighbourhood Plan should

This short section sets out five bullet points amplifying the vision and objectives. All are clearly worded.

5. Housing Policies, 6. Housing survey/Housing statistics and 7. Basis of Housing Policies

These three sections of the Plan set out background to the housing and development related policies in the Plan.

LPI Core Policy 2 provides for a minimum of 9,635 new homes to its end period of 2029 which is the same end date as for the Plan. Whilst most growth will be focused on the main towns, Norton St Philip has been classified as a “primary village” in LPI Core Policy 1. In such villages, the LPI proposes proportionate growth of 15% increase in housing. This equates to a minimum of 45 houses for Norton St Philip.

Since 2006, the village has had around 113 completions and commitments and so has already exceeded the 15% proportional growth figure.

A Housing Survey was carried out in early 2018. This showed that there was little support for new open market housing, but some support for homes to meet the needs of local people, although the majority still did not support such housing.

Given this background, the Plan proposes a settlement boundary designation which includes the new development and focuses on housing that will meet the needs of local people. Whilst it is accepted that the housing figures in the LPI are a minimum, it is not obligatory for a neighbourhood plan to allocate sites. MDC has not raised any objection to the approach taken in the Plan and I do not consider it will constrain or otherwise frustrate any spatial development strategy.

8. Settlement Boundary/Green Belt

“Primary villages”, like Norton St Philip, have key community facilities and some employment opportunities. Most daily needs can be met locally and there is a realistic transport alternative to the private car to access services and employment. LPI Core Policy 1 explains that new development that is tailored to meet local needs will be provided in such villages.

The emphasis is on maximising the reuse of previously developed sites and other land within existing settlement limits, then at the most sustainable location on the edge of the settlement. Outside the settlement limits, development is strictly controlled and is only permitted where it benefits economic activity or extends the range of facilities available to the local community.

Part II of the Local Plan, currently in preparation, includes revisions to settlement boundaries where appropriate. An amendment is proposed to Norton St Philip to reflect development at Longmead Close. The Plan follows that and the proposed change is shown on Figure 2 on page 13 of the Plan.

Outside the settlement boundary, rural policies apply. Around 70% of the Parish falls within the Bristol and Bath Green Belt which is shown on Figure 3 on page 14 of the Plan.

Policy 1: Settlement Boundary

This policy defines the revised settlement boundary shown on Figure 4 which is usefully cross-referenced in the policy. It supports development within the settlement boundary. Outside the settlement boundary it defines land as open countryside and only permits development in line with LPI Core Policy CP4 as well as other development plan policies.

A representation suggests the inclusion of a reference to the NPPF within the policy itself. This is not necessary as the NPPF would be taken into account in any decision-making process and its policies do not form part of the development plan.

Figure 4 is variously labeled “development limit” and “development boundary” whereas the policy and text refers to “defined settlement boundary”. In the interests of consistency, a modification is made to align the terminology.

- **Change the title on Figure 4 “Development Limit” to “*Defined Settlement Boundary*”**
- **Change the title which reads “Fig 4: Development Boundary as proposed in Policy 1” to “Fig 4: *Settlement Boundary as defined by Policy 1*”**
- **Change the word “the” to “*this*” in the second sentence of the policy so that it reads “Outside *this* defined settlement boundary...”**

9. Housing Development Sites

Policy 2: Bell Hill Garage Development Site

The supporting text explains that Bell Hill Garage is a valued local facility which also provides employment. There is a history of planning applications for the site and adjoining land which have lapsed.

This policy seeks to allocate the site for housing development. The site falls within the Conservation Area (CA). In principle support for the relocation of the garage to another site outside the village is given in the supporting text.

The policy cross-references a development brief which has been prepared (Appendix 1) as well as the Village Character Assessment and Policy 4. It does not specify a number of dwellings but encourages 2 and 3 bedroomed homes as well as some flats. This broadly reflects LPI Policy DP14.

A representation made on behalf of Bell Hill Garage explains that there are a number of constraints to redevelopment of the site including remediation of contamination, access issues and the site’s location within the CA. The viability of redevelopment on the basis of the policy is called into question. The landowner indicates that without the land to the north, redevelopment is unviable. The representation indicates that the policy has not been subject to a viability assessment. Whilst I appreciate that plans should be prepared positively in a way that is aspirational but deliverable,³³ little specific evidence

³³ NPPF para 16

has been put forward to support the changes sought including the removal of key aspects of the policy such as smaller units.

Overall I consider the policy meets the basic conditions and no modifications to it are put forward.

10. Entry Level Exception Site

Policy 3: Exception Sites for Local Affordable Homes

This policy permits sites outside, but adjoining the settlement boundary, to provide for up to 10 'entry level' dwellings targeted at first time buyers or renters with a local connection. Appendix 2 of the Plan defines local need on a 'cascade' approach; the Parish first, then neighbouring Parishes and then in general.

The NPPF supports the development of entry-level exception sites suitable for first time buyers or for those looking to rent their first home unless this need is being met elsewhere.³⁴ They should be on land not already allocated for housing and comprise entry-level homes offering affordable housing (as defined in the NPPF), be adjacent to existing settlements, not compromise protection given to any areas specified in the NPPF and meet local design policies and standards.

The NPPF also explains that such sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.³⁵ In this case the policy specifies no more than 3% of the village housing stock.

The policy requires a planning obligation to ensure that any sites remain for affordable housing.

It then supports some market housing where this has the backing of the Parish Council and where viability assessments are public and support the inclusion of market housing. I note that LPI Policy DP12 includes a criterion on clear evidence of support from the PC in relation to the inclusion of market housing being supported as part of a rural exception site and therefore in this instance it is appropriate for this policy to reflect an adopted policy stance. The NPPF indicates that viability assessments should be publicly available.³⁶

The policy is worded clearly. It reflects the NPPF, is in general conformity with LPI Core Policy CP4 in particular and will help to achieve sustainable development.

³⁴ NPPF para 71

³⁵ Ibid footnote 34

³⁶ NPPF para 57

With modifications made in the interests of accuracy and clarity, it will meet the basic conditions.

- **Change the section title to read: “Entry Level Exception Sites”**
- **Change the phrase “...where a site would be permitted under normal policies...” to “where a site would normally be permitted...” in criterion b)**
- **Change the words “...this plan...” in criterion c) to “...the development plan...”**

11. Design of Future Development

Policy 4: Promoting Locally Responsive Good Design

Policy 4 seeks to promote good design for housing related proposals. As well as reference to the Conservation Area Appraisal, a Character Assessment has been produced as part of the work on the Plan.

The Character Assessment is a commendable piece of work that has analysed both Norton St Philip and the settlements of Farleigh Hungerford and Haslage. The Character Assessment sets out some general guidelines for development and most of these find their way into the policy in one form or another.

In the village of Norton St Philip, six distinct character areas have been identified in the Character Assessment which then sets out further guidelines for each area. One of the six areas is “green corridors”. The Character Assessment does not seek to designate any such corridors, but rather identifies these areas as having a particular character.

The policy promotes good design and seeks compliance with the guidance in the Conservation Area Appraisal and the Character Assessment.

One of the criteria refers to views of particular merit in the Character Assessment. These are identified on Figure 10 on page 25 of the Character Assessment. For the avoidance of doubt, I consider it would be helpful to cross-reference this figure in the policy itself.

Reference is also made in the policy to MDC’s House Extension Design Guide of May 1993. This is currently being reviewed, but the policy recognises this position.

The NPPF indicates that good design is a key aspect of sustainable development.³⁷ It seeks policies that are clear about design expectations and how these will be tested.³⁸ This policy is grounded in an understanding of the local area through the work which

³⁷ NPPF para 124

³⁸ Ibid

has been carried out for the Character Assessment without being overly prescriptive given the local character.³⁹ It is a local expression of LPI Policies DP1 and DP7 and will help to achieve sustainable development.

Modifications are made in the interests of accuracy and clarity. With these modifications, the policy will meet the basic conditions.

- **Change the reference to “section 10” in paragraph 11.1 on page 22 to “section 14”**
- **Change both references to “CA” in the policy to “*Character Assessment*”**
- **Add the words “...on Figures 10 and 13...” before “...in the Norton St Philip Character Assessment...” in bullet point three of the policy**
- **Change the spelling of “stories” in bullet point four of the policy to “*storeys*”**
- **Change the ninth bullet point to read: “Developments should include *satisfactory off street parking to Somerset County Council standards or, if superseded, any subsequent standards* whilst not reducing existing on street car parking capacity”**
- **Insert full stop at the end of the policy**

12. Local Green Spaces

Policy 5: Local Green Space

Ten LGSs are proposed. Details of each proposed LGS are given in Appendix 3 of the Plan. I am not aware of any limit to the number of green areas which can be put forward for designation.

The supporting text explains that the LGSs are also proposed in the emerging LPII. Whilst the NPPF is clear that plans should serve a clear purpose and avoid unnecessary duplication,⁴⁰ it is more than likely that this Plan will be adopted before the LPII. Any duplication is therefore likely to be incurred by the LPII. There is no reason for blanket deletion of this policy whilst I accept the point that there will also be little need for duplication between the Plan and LPII. I consider this is a matter for MDC to address as both plans progress.

Some of the proposed areas were identified as an Open Area of Local Significance (OALS) in the LPI. These in turn retained sites designated under Policy Q2 of the Local

³⁹ NPPF paras 125, 126

⁴⁰ Ibid para 16

Plan 2002. A commitment was made in the LPI that LPII would review all OALSs and potentially identify new areas. MDC has determined that as the NPPF introduces the LGS designation, the OALSs will be reviewed under the criteria in the NPPF and against a set of local criteria. This forms part of the LPII.⁴¹

The NPPF explains that LGSs are green areas of particular importance to local communities.⁴² The management of development in such areas is consistent with Green Belt policy.

The identification of LGSs should be consistent with local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. The NPPF is clear that the designation should only be used where the green space is in reasonably close proximity to the community it serves, is demonstrably special and holds a particular local significance and is local in character and not an extensive tract of land.

Further guidance about LGSs is given in PPG.

I saw all the proposed areas on my site visit. Taking each in turn:

001 The Old Hopyard is valued for its visual contribution to the village's rural character and the street scene and its tranquility. Although much of it is enclosed, vistas across are glimpsed. It falls within a Conservation Area (CA). It was identified as an OALS.

002 Lyde Green This is a small triangle of land which forms a visual focal point in amongst lanes. It also falls within the CA and is an OALS. The Character Assessment indicates this area falls within the "Leafy Cottages" Character Area, but Figure 11⁴³ appears to show it within a "Green Corridor". If I am correct, this is a minor editing issue for Figure 11 when finalising the Character Assessment.

003 Great Orchard is valued for its visual contribution to the CA and setting of listed buildings. The community regards this area as an important green space within the village that is essential to its character connecting the historic with its surroundings. It is also an OALS. A representation raises objection to this designation.

004 Ringwell Lane is an area of land adjacent to Ringwell Lane within the CA. It is valued for its visual contribution to the vilage's rural character and street scene. It includes some private gardens. MDC's policy on LGSs suggests that only in exceptional circumstances should private gardens be designated. Objections have been raised to the inclusion of private gardens in the designation. The entire site is an OALS. I saw at my visit that although the character of the garden areas differs from the other land in that it is more domestic in nature whereas the remainder of the land has a more rural feel to it along Norton Brook, there is a cohesion to the area. I found it to be a tranquil and peaceful area with views of the Church.

⁴¹ As explained in SD20 Background Paper to the LPII Designation of Local Green Spaces December 2017

⁴² NPPF paras 99, 100, 101

⁴³ Of the Character Assessment page 27

005 Church Green is an area close to St Philip and St James's Church. It is important to the character and setting of the Church both visually and helping to create a tranquil oasis. It contains a large tree with seats beneath. It is also an OALS.

006 The Churchyard and adjoining field Another OALS, this area forms part of a network of three other areas (Fortescue Fields South, Fortescue Fields West and Church Mead) and is particularly important for its beauty and views across the site.

007 Fortescue Fields South 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.

008 Fortescue Fields West is an open area adjacent to development. There is a footpath down steps that leads to Church Mead which affords views across the land out across to the countryside and to the village. This land is an important part of the setting of the village. There does not appear to be any public access to this land, but this, by itself, is not a determining factor in LGS designation. Two representations query or object to this designation.

009 Church Mead is a green space in the heart of the village home to play areas, seating and cricket. Close to the Church, it affords views of the Church and beyond. As it is at a lower level than the main settlement it is sheltered and affords views towards the skyline; it is an important green space in the CA. At the time of my visit, it was also well used by those enjoying its attributes. It is also important for its position in the village and the link between areas 006, 007 and 008. Together these form a visual link to the countryside, reflect the historic development of the village and provide an important recreational facility valued both for its use and its visual contribution including where there is no or little public access.

010 Shepherds Mead is an open space close to development which was being constructed at the time of my visit. It is particularly valued for its setting in relation to the village and surrounding landscape and its views. A representation has been made in relation to the proposed designation. There appear to be footpaths on or in close proximity to the site. It is also adjacent to a village green, but this land does not form part of the village green and so the pertinent issue is whether the land meets the criteria for LGS designation in the NPPF.

I consider that all of the proposed LGSs are in reasonably close proximity to the community and that all are local in character and individually do not comprise extensive tracts of land. I have also considered whether areas 006, 007, 008 and 009 which adjoin each other together form an extensive tract of land. However, they all differ in appearance, nature and reason for designation and I have concluded that, in this case, this is not an issue of concern.

Whilst many of the proposed LGSs are located beyond existing development, this reflects the topography and the historic nature of development and I do not regard it as a ruse to prevent development.

Turning now to whether all the proposed LGSs are demonstrably special and hold a particular local significance, I consider that in each case, this has been demonstrated satisfactorily. I have based my assessment on the criteria in the NPPF rather than in the background paper prepared for LPII. It should also be noted that beauty, historic significance, recreational value, tranquility or wildlife given in the NPPF are examples of what might make a green area demonstrably special to a local community and of particular local significance and is not, on my reading, an exhaustive list.

I have also considered whether there is any additional benefit to be gained by the designation for sites falling within other designations such as a CA.⁴⁴ I consider that there is additional local benefit to be gained by identifying those areas of particular importance to the community as the designations serve different purposes.

The policy designates these areas, cross references Figure 2 (but it should be 5) which shows the areas and only permits development which enhances the use and reasons for designation of the LGSs. It is clearly worded. With a modification for accuracy, the policy will meet the basic conditions.

- **Change the reference to “Figure 2” in the policy to “Figure 5”**

13. Climate Change, Biodiversity and Low Carbon Development Policies

Policy 6: Climate Change, Biodiversity and Low Carbon Development

This is a long policy which covers a variety of issues aimed at ensuring new development is resilient to climate change. It also supports community renewable energy projects subject to new criteria.

With some minor modifications to assist with flow and clarity and to provide a practical framework for decision-making, the policy will meet the basic conditions. It takes a positive approach reflecting the NPPF’s support for a low carbon future and renewable and low carbon energy.⁴⁵ It reflects strategic objectives 21 and 23 of LPI and LPI Policy DP9 and will help to achieve sustainable development.

- **Change the word “Any” at the start of the start of the policy to “All”**
- **Add the words “*wherever possible or suitable replacement facilities are to be provided*” after “...are to be retained...” in the second paragraph of the policy**

⁴⁴ PPG para 011 ref id 37-011-20140306

⁴⁵ NPPF Section 14

14. Appendix 1: Bell Hill Garage Development Brief, 15. Appendix 2: Definition of Local Need, 16. Appendix 3: Local Green Spaces

These have been discussed at appropriate earlier points in my report.

Appendix 4: House Sales and Appendix 5: House Completions

Appendix 4 is not referred to in the Plan itself. A reference should therefore be inserted at an appropriate point or the appendix removed.

In the interests of consistency, I am assuming that these two appendices will be section numbered like the first three appendices. This is a minor editing matter.

- **Insert a reference to Appendix 4 in paragraph 6.3 of the Plan (if this appendix is to be retained)**

8.0 Conclusions and recommendations

I am satisfied that the Norton St Philip Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Mendip District Council that, subject to the modifications proposed in this report, the Norton St Philip Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion. I therefore consider that the Plan should proceed to a referendum based on the Norton St Philip Neighbourhood Plan area as approved by Mendip District Council on 5 April 2018.

Ann Skippers MRTPI
Ann Skippers Planning
19 July 2019

Appendix 1 List of key documents specific to this examination

Norton St Philip Neighbourhood Development Plan 2019 – 2029 Reg 16 Draft 14
February 2019

Basic Conditions Statement February 2019

Consultation Statement 15 February 2019

Strategic Environmental Assessment and Habitats Regulations Assessment Screening
Statement February 2019

Character Assessment 8 February 2019

Mendip District Local Plan Part I 2006 – 2029 adopted 15 December 2014

Mendip District Local Plan Part II Sites and Policies Draft for Pre-submission consultation
2 January – 12 February 2018

Background Paper to LP II Designation of Local Green Spaces December 2017

Proposed Changes agreed by Council 17 December 2018 and corrections 19 March 2019

Conservation Area Appraisal October 2007

House Extension Design Guide 4 May 1993

Various documents on the Parish Council website and
www.nortonstphilipneighbourhoodplan.com

Comments from the Parish Council on the Regulation 16 representations

List ends