Neutral Citation Number: [2020] EWHC 1146 (Admin)

Case No: CO/3929/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 May 2020

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN	**Claimant**
on the application of	
LOCHAILORT INVESTMENTS LIMITED	
- and -	
MENDIP DISTRICT COUNCIL	**Defendant**
NORTON ST PHILIP PARISH COUNCIL	**Interested Party**

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- -

Richard Ground QC and Ben Du Feu (instructed by **Harrison Grant Solicitors**) for the **Claimant**
Hashi Mohamed (instructed by **Law & Governance – Shape Partnership Services**) for the **Defendant**
The **Interested Party** did not appear and was not represented

Hearing date: 24 March 2020

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Approved Judgment

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Mrs Justice Lang:

1. The Claimant applies for judicial review of the Defendant's decision, made on 2 September 2019, to accept the recommendations of the Examiner into the draft Norton St Philip Neighbourhood Plan ("the NSP NP") under paragraph 12 of Schedule 4B to the Town and Country Planning Act 1990 ("TCPA 1990"), and to proceed to a referendum.

2. Norton St Philip ("NSP") is an historic village in a rural area of Somerset with a population of around 858 people (2011 census). The NSP NP has been prepared by the NSP Parish Council, in consultation with the local community. It includes a Local Green Space ("LGS") policy, which proposes ten sites to be designated as LGSs. This challenge centres on two of these sites - LGSNSP007 Fortescue Fields South ("LGS7") and LGSNSP008 Fortescue Fields West ("LGS8") – which the Claimant contends were erroneously designated as LGS.

3. The NSP NP has been examined by an independent Examiner who concluded that the NSP NP, as modified in accordance with her recommendations, met the statutory requirements, and could proceed to a referendum. The Defendant (the local planning authority) accepted the Examiner's conclusions at its meeting on 2 September 2019 and resolved that the NSP NP be modified in accordance with the Examiner's recommendations, and then proceed to a referendum.

4. The Claimant is a property developer which has purchased a number of sites in NSP for potential development. The Claimant has promoted these sites for housing allocation in the ongoing examination into the emerging Mendip District Council Local Plan 2006 – 2029 Part II ("LPP2"). The Defendant has proposed for housing allocation two parcels of land in NSP owned by the Claimant, which are not LGS, namely, Laverton Triangle and Fortescue Fields South East, comprising Site NSP1.

5. On 12 December 2019, the Claimant applied to the Defendant for planning permission for housing, community buildings and other works, on Site NSP1, as well as other sites, including part of LGS7 and LGS8, which have not been proposed or allocated for housing. The application for planning permission will be determined after the conclusion of the judicial review claim.

6. The claim, which was brought pursuant to section 61N(2) TCPA 1990, was issued on 8 October 2019. By an order sealed on 11 October 2019, the Claimant was granted interim relief, prohibiting the Defendant from proceeding to hold a referendum until the disposal of the judicial review claim, or further order.

7. Permission to apply for judicial review was granted on the papers on 4 December 2019.

Statutory and policy framework

(1) Legislation

8. A "neighbourhood development plan" is a plan which "sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a

particular neighbourhood area specified in the plan": section 38A(2) of the Planning and Compulsory Purchase Act 2004 ("the PCPA 2004").

9. A "neighbourhood development plan" is part of the statutory development plan for the area it covers: section 38(3)(c) PCPA 2004.

10. The provisions of Schedule 4B TCPA 1990, which make provision for the making of neighbourhood development orders, apply also to the making of neighbourhood development plans: sections 38A(3) and 38C(5) PCPA 2004.

11. A qualifying body may initiate a process for the purpose of requiring a local planning authority to make a neighbourhood development plan: section 38A(1) PCPA 2004. A qualifying body is defined in section 38A(12) PCPA 2004 and includes a parish council.

12. The draft neighbourhood development plan, once prepared, must be consulted upon (regulation 14 of the Neighbourhood Planning (General) Regulations 2012 ("the 2012 Regulations")) and submitted to the local planning authority, with *inter alia* a consultation statement (regulation 15 of the 2012 Regulations).

13. The draft neighbourhood development plan must be publicised by the local planning authority, giving persons an opportunity to make representations upon it (regulation 16 of the 2012 Regulations).

14. Paragraph 7 of Schedule 4B TCPA 1990 requires a local planning authority to submit a draft neighbourhood development plan, after it has been publicised, to independent examination if the requirements of paragraph 6(2) of Schedule 4B are met. This is provided for in regulation 17 of the 2012 Regulations.

15. The Examiner must then consider whether the draft neighbourhood development plan meets the specified statutory requirements, in particular, whether it meets the "basic conditions": Schedule 4B, paragraph 8(1)(a).

16. Paragraph 8(2) provides, so far as is material:

> "(2) A draft order meets the basic conditions if—
>
> (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,
>
> ….
>
> (d) the making of the order contributes to the achievement of sustainable development,
>
> (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
>
> (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

> (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order."

17. An Examiner must produce a report. Paragraph 10 of Schedule 4B makes further provision for the duties of the independent Examiner as follows, so far as is material:

> "(1) The Examiner must make a report on the draft order containing recommendations in accordance with this paragraph (and no other recommendations).
>
> (2) The report must recommend either -
>
> (a) that the draft order is submitted to a referendum, or
>
> (b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or
>
> (c) that the proposal for the order is refused.
>
> (3) The only modifications that may be recommended are –
>
> (a) modifications that the Examiner considers need to be made to secure that the draft order meets the basic conditions in paragraph 8(2),
>
> (b) modifications that the authority need to be made to secure that the draft order is compatible with Convention rights,
>
> (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,"
>
> …
>
> (e) modifications for the purpose of correcting errors.
>
> (4) The report may not recommend that an order (with or without modifications) is submitted to a referendum if the Examiner considers that the order does not –
>
> (a) meet the basic conditions mentioned in paragraph 8(2), or
>
> …
>
> (6) The report must -
>
> (a) give reasons for each of its recommendations, and

(b) contain a summary of its main findings."

18. After receiving an Examiner's report, the local planning authority must consider each of the recommendations made and decide what action to take. It must then publish its decision, with reasons, in the manner prescribed by regulation 18 of the 2012 Regulations.

19. Paragraph 12 of Schedule 4B provides, so far as is material:

> "(1) This paragraph applies if an Examiner has made a report under paragraph 10.
>
> (2) The local planning authority must –
>
> (a) consider each of the recommendations made by the report (and the reasons for them), and
>
> (b) decide what action to take in response to each recommendation.
>
> (3) ..…
>
> (4) If the authority are satisfied –
>
> (a) that the draft order meets the basic conditions mentioned in paragraph 8(2), is compatible with the Convention rights and complies with the provision made by or under sections 61E(2), 61J and 61L, or
>
> (b) that the draft order would meet those conditions, be compatible with those rights and comply with that provision if modifications were made to the draft order (whether or not recommended by the Examiner),
>
> a referendum in accordance with paragraph 14, and (if applicable) an additional referendum in accordance with paragraph 15, must be held on the making by the authority of a neighbourhood development order.
>
> (5) ….
>
> (6) The only modifications that the authority may make are-
>
> (a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
>
> (b) modifications that the authority need to be made to secure that the draft order is compatible with Convention rights,

> (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,"
>
> ……
>
> (e) modifications for the purpose of correcting errors.
>
> (7) – (10) …..
>
> (11) The authority must publish in such manner as may be prescribed –
>
> (a) the decisions they make under this paragraph,
>
> (b) their reasons for making those decisions, and
>
> (c) such other matters relating to those decisions as may be prescribed."

20. If more than half of those voting in the referendum vote in favour of it, the local planning authority must make the neighbourhood plan unless to do so would breach "any EU obligation or any of the Convention rights": s. 38A(4) and (6), PCPA 2004.

(2) National policy and guidance

Neighbourhood plans

21. National policy is set out in the National Planning Policy Framework ("the Framework"). The February 2019 edition had come into force at the date of the Defendant's decision challenged in this claim.

22. The Framework provides that neighbourhood plans should support the delivery of strategic policies contained in local plans and should shape and direct development that is outside of these strategic policies (paragraph 13). Strategic policies should set out an overall strategy for the pattern, scale, and quality of development (paragraph 20). Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies (paragraph 21).

23. Neighbourhood plans contain non-strategic policies. The Framework provides as follows:

> "28. Non-strategic policies should be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This 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 setting out other development management policies.

> 29. Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in the strategic policies for the area, or undermine those strategic policies [FN 16: Neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers their area.]."

24. Paragraph 31 provides that the preparation and review of all policies should be underpinned by relevant and up-to-date evidence which should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned.

25. The Planning Practice Guidance ("PPG") gives guidance on neighbourhood plans. Paragraph 009 provides, so far as is material:

> "**009**: **Can a neighbourhood plan come forward before an up-to-date Local Plan is in place?**
>
> Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its local plan …..
>
> A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft neighbourhood plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development.
>
> Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:
>
> - the emerging neighbourhood plan
> - the emerging Local Plan
> - the adopted development plan
>
> with appropriate regard to national policy and guidance.

> The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination.
>
> The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan.
>
> …."

26. Paragraph 040 gives guidance on the evidence needed to support a neighbourhood plan. It provides:

> "While there are prescribed documents that must be submitted with a neighbourhood plan or Order there is no 'tick box' list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an Order."

LGS and Green Belt

27. The Framework makes provision for LGS in chapter 8, which is headed "Promoting healthy and safe communities". Under the sub-heading "Open Spaces and Recreation", paragraphs 99, 100 and 101 provide as follows:

> "99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.
>
> 100. The Local Green Space designation should only be used where the green space is:
>
> a) in reasonably close proximity to the community it serves;

> b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
>
> c) local in character and is not an extensive tract of land.
>
> 101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts."

28. Green Belt policies are set out in section 13 of the Framework. The restrictions on development proposals provide:

> "143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

29. Paragraph 145 provides:

> "145. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:
>
> a) buildings for agriculture and forestry;
>
> b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
>
> c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
>
> d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
>
> e) limited infilling in villages;
>
> f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

> g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
>
> – not have a greater impact on the openness of the Green Belt than the existing development; or
>
> – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority."

30. The PPG gives guidance on LGS materially as follows:

> "**013 What types of green area can be identified as Local Green Space?**
>
> The green area will need to meet the criteria set out in paragraph 100 of the National Planning Policy Framework. Whether to designate land is a matter for local discretion. For example, green areas could include land where sports pavilions, boating lakes or structures such as war memorials are located, allotments, or urban spaces that provide a tranquil oasis."
>
> "**015 How big can a Local Green Space be?**
>
> There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 100 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name."
>
> "**017 What about public access?**
>
> Some areas that may be considered for designation as Local Green Space may already have largely unrestricted public access, though even in places like parks there may be some restrictions. However, other land could be considered for designation even if there is no public access (eg green areas which are valued because of their wildlife, historic significance and/or beauty.
>
> Designation does not in itself confer any rights of public access over what exists at present. Any additional access would be a matter for separate negotiation with land owners, whose legal rights must be respected."

> "**019 Does land need to be in public ownership?**
>
> A Local Green Space does not need to be in public ownership. However, …. the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan."
>
> "**020 Would designation place any restrictions or obligations on landowners?**
>
> Designating a green area as Local Green Space would give it protection consistent with that in respect of Green Belt, but otherwise there are no new restrictions or obligations on landowners.**"**
>
> "**021 Who will manage Local Green Space?**
>
> Management of land designated as Local Green Space will remain the responsibility of its owner…."

31. In *Wiltshire Council v Cooper Estates* [2019] EWCA Civ 840 Lewison LJ explained the origin of LGS at [5] – [10]. He explained that LGS designations, unlike town and village green designations, are achieved through the planning process by the creation of development plan documents, which were themselves the subject of extensive public consultation and involvement. Lewison LJ explained the meaning of paragraph 101 of the Framework at paragraph 10 of the judgment as follows:

> "In other words, land designated as a Local Green Space has a very high level of protection against development. But it is not as absolute as a registered TVG."

32. At the hearing, Mr Ground QC referred for the first time to two cases concerned with challenges to Local Plans which altered Green Belt boundaries. In *Carpets of Worth Ltd v Wyre Forest DC* 62 P & CR 334, the Court of Appeal held that the Inspector and the local planning authority had failed to have regard to the relevant ministerial circulars and the test of exceptional circumstances when deciding to extend the Green Belt. Purchas LJ described Green Belt designation as sterilising the area against development, save for the limited categories permitted (at page 345). In *Gallagher Homes Limited & Anor v Solihull MBC* [2014] EWHC 1283 (Admin), the High Court applied the *Carpets of Worth* decision, and held that the local planning authority adopted a Local Plan without regard to the exceptional circumstances test for revising Green Belt boundaries. Hickinbottom J. said, at [132], that "Green Belt boundaries are intended to be enduring, and not to be altered simply because the current policy means that development of those sites is unlikely or even impossible…. A prime character of Green Belts is their ability to endure through changes of such policies. For the reasons set out in Carpets of Worth (at page 346 per Purchas LJ) it is important that a proposal to extend a Green Belt is subject to the same, stringent regime as a proposal to diminish it, because whichever way the boundary is altered "there must be serious prejudice one way or the other to the parties involved".

33. Mr Ground QC rightly did not submit that the stringent *Carpets of Worth* test applied when deciding whether to designate LGS. No such test is to be found in the enabling legislation, the Framework or PPG, or any authorities. Moreover, the Framework at paragraph 101 expressly limits the extent of the alignment with Green Belt policy to "policies for managing development within a Green Space". It chose not to align other aspects of Green Belt policy with LGS policy.

34. In my judgment, the policy criteria for designation are clearly set out in paragraphs 99 and 100 of the Framework. I do not consider it appropriate or helpful for me to add to the terms of the policy by labelling the criteria as setting a high bar or very high level, as experience shows that, over time, such labels acquire a life of their own among decision-makers, adding a judicial nuance to the original policy.

35. Mr Ground QC relied on dicta in both these cases which referred to the effect of a Green Belt designation in sterilising the land, and the enduring nature of such a designation. For my part, I consider the term "protect", as used in paragraph 99 of the Framework in relation to LGS, to be more apt than the term "sterilise". As to the enduring nature of the designation, the correct policy test is expressly set out in paragraph 99 which provides that an LGS designation should be "capable of enduring beyond the end of the plan period". In contrast, the policy requirements in paragraph 139 of the Framework for demonstrating that land to be defined as Green Belt can be kept permanently open, in accordance with paragraph 133, are more onerous.

Planning history

NSP NP

36. The Parish Council of NSP is a qualifying body for the purposes of initiating a neighbourhood plan process. In December 2017, it passed a resolution to embark upon an NSP NP, following a public meeting. A housing survey was then undertaken in February/March 2018.

37. On 5 April 2018, the Defendant approved the Parish Council's application to designate the NSP Neighbourhood Area.

38. In May 2018, the Parish Council set up a Steering Group, which established four working groups to develop the proposals for the NSP NP. A locality grant was received, and a consultant appointed. A Village Character Assessment was undertaken by the consultant and 15 volunteer residents. It identified, as a key feature of NSP, the division of the historic village around two hubs separated by green space that ran through the urban form, described as "green corridors". Some of the green open space was proposed for LGS designation, because of its importance for the setting of the village and its character.

39. On 10 and 11 November 2018, the NSP Parish Council held a display weekend and public meeting to consult upon the likely content of the first draft of the NSP NP.

40. On 19 November 2018, the Parish Council consulted the Environment Agency, Natural England, and Historic England on strategic environmental assessment screening ("SEA").

41. The draft NSP NP was consulted upon between 7 December 2018 and 25 January 2019, pursuant to regulation 14 of the 2012 Regulations. It included the proposed LGS designations, including LGS7 and LGS8. On 7 December 2018, a letter was sent to all landowners of the proposed LGS sites, including the Claimant. The list of consultees and the responses received were published on the NSP NP website.

42. The Claimant, which is an award-winning local residential developer in NSP, submitted a long and detailed response to the regulation 14 consultation in a letter dated 20 December 2018. In relation to the allocation of housing sites, it argued that the draft NSP NP did not make sufficient housing provision to meet the objectively assessed housing need in the area generally, and specifically in NSP, where development had been too modest in previous years. The provision of 45 dwellings in the Local Plan Part 1 ("LPP1") was a minimum, not a maximum. The draft plan did not contribute to the achievement of sustainable development.

43. The Claimant submitted that the following additional housing allocations were required: (1) 7 dwellings at Laverton Triangle (NSP1); (2) 15 dwellings, car park, tennis courts and landscaping at Land West of Fortescue Fields (NSP2); (3) 20 dwellings at Land South of Fortescue Fields (NSP3). Planning permission had previously been refused for different schemes at Laverton Triangle and land west of Fortescue Fields.

44. The Claimant also submitted that the designations in the draft LGS policy were excessive and were inconsistent with Framework policy as they were sterilising land from development. In particular, LGS8 at Fortescue Fields West did not meet the Framework test as an area of "particular importance" and should be deleted. Scant regard was had to the protection afforded by conservation area designation.

45. From December 2018 to February 2019, the Parish Council held discussions with Historic England regarding the SEA and, on 27 February 2019, a revised SEA screening was published. Alterations to the draft plan, affecting specific sites, were agreed with Historic England.

46. On 28 February 2019, the Parish Council submitted the draft NSP NP to the Defendant. The Defendant carried out a consultation procedure, pursuant to regulation 16 of the 2012 Regulations.

47. Policy 5 of the draft NSP NP proposed the designation of 10 LGSs.

48. On 4 April 2019, the Claimant sent detailed representations on the NSP NP to the Defendant, and asked that they be submitted to the Independent Examiner. The representations material to this claim were essentially the same as in the Claimant's letter of 20 December 2018. It is noteworthy that the Claimant only made specific objections to LGS8, not LGS7.

49. Other landowners affected by the LGS designations also made representations.

50. On 26 April 2019, the Parish Council published a summary of the regulation 16 consultation representations and its response to them. On the issue of housing, it did not accept the Claimant's representations and made the following points in response:

i) Neighbourhood plans were not required to allocate sites for development. The NSP NP encouraged and supported sustainable growth in the village compatible with the draft plan's vision.

ii) Housing development in NSP had not been modest. The minimum target in the LPP1 was for 45 new dwellings over the period of the plan. In fact, there had been 113 completions and commitments for new dwellings in NSP, 55 of which were on former greenfield sites.

iii) The NSP NP sought to ensure that a high quality sustainable development within the settlement boundary came forward, without harm to the historic village. Additionally, the plan included an Exception Site policy to meet local need. Environmental aspects of sustainable development required that the green corridors and setting of the village were maintained as a key feature of the conservation area and historic legacy of the village.

iv) A sustainable brownfield site was allocated for residential development which would meet the need for smaller market housing in a village where there was a greater than average supply of 4+ bedroom houses.

v) The three sites proposed by the Claimant were outside the development boundary and they were all unsustainable. The previous applications for planning permission were refused at appeal because the principle of development at these sites was found to have an unacceptable impact upon the setting, character and appearance of the village, and its conservation area. The reduced scale of development now proposed would not alter the adverse impact.

vi) Prior to the 2015 appeal, a village wide survey was conducted to seek local opinion on the associated benefits which the Claimant was then offering with the development (now a car park, tennis courts, etc). 60% of households responded; 95% of respondents rejected the benefits. The Inspector did not consider the benefits on offer were relevant to the planning application.

51. The Parish Council also did not accept the material objections to the LGS designations for the following reasons:

i) Each of the proposed designations had been carefully considered and justified in an extensive appendix to the Plan.

ii) There were many places on the settlement boundary where land for future development was not "sterilised" by LGS designations and they rejected the accusation of misuse of the designation.

iii) The NSP Conservation Area appraisal recognised the importance of the open spaces contrasting with the historic development of the village, noting "one of the great assets is the visual and psychological contrast between urban and rural elements" (paragraph 1.10).

iv) There were three key green corridors into the village from the surrounding countryside and the LGS designations helped to maintain this.

v) To the south a green corridor starting with the Church Mead recreation ground (LGS009) and continuing with Fortescue West (LGS8) and Fortescue South (LGS7) visually separated the two sections of the historic village as described in the Appraisal.

vi) The conservation area did not provide adequate protection for these green spaces. Moreover, three of the LGS designations, including LGS7 and LGS8, were outside the conservation area.

vii) LGS8 merited designation as an LGS. The criteria in the Framework (paragraph 100) were met. The site contributed significantly to the sense of tranquillity and beauty surrounding Church Mead. It was a significant feature in views from Church Mead and The George Inn. The view across this area from the George Inn had great cultural value to the village and was an iconic view.

viii) Each proposed LGS had a distinctive character and was a defined area, designated for specific reasons. Even those which were adjacent were all different. None of the LGS amounted to an "extensive tract of land" (PPG paragraph 015).

52. An examination of the draft NSP NP was held in June and July 2019 by an Independent Examiner ("the Examiner"), Mrs Ann Skippers MRTPI FRSA AoU. Her Report was issued on 19 July 2019. She was satisfied that the NSP NP, subject to the modifications she recommended, met the basic conditions and other statutory requirements outlined in her report. She therefore recommended to the Defendant that, subject to the recommended modifications, the NSP NP could proceed to a referendum.

53. The Defendant's Senior Planning Policy Officer, Ms Jo Milling, prepared a report for the Defendant's Cabinet Committee to consider at its meeting on 5 August 2019. However, on 2 August 2019, the Claimant and its solicitors wrote to the Defendant submitting that the NSP NP did not meet the basic conditions and therefore it could not lawfully proceed to a referendum unless LGS7 and LGS8 were deleted from Policy 5. In the light of this letter, the Cabinet decided to defer consideration of the NSP NP to its next meeting on 2 September 2019 to give it an opportunity to seek legal advice.

54. The Defendant sought counsel's opinion and Mr H. Mohamed advised on 20 August 2019 that the Claimant's allegation that the draft NSP NP failed to meet the basic conditions was unfair and unsustainable. The updated officer's report advised that the draft NSP NP, as modified in accordance with the Examiner's and the planning officer's recommendations, met the basic conditions and other statutory requirements and should proceed to a referendum.

55. At its meeting on 2 September 2019, the Cabinet considered the draft NSP NP in detail. Members were addressed by Mr Hasell, Chair of the NSP NP Steering Group, a Parish Councillor, and local residents who raised objections. They were advised by their planning officer on the issues raised. They accepted the recommendations made by the Examiner and resolved that the NSP NP should be modified and that it should proceed to a referendum.

Local Plan

56. In addition to the NSP NP process, the Defendant was preparing its LPP2 for the whole of the Mendip District. Amongst other matters, it proposed LGS, based on a review of the "open areas of local significance" identified in the Defendant's LPP1, which was adopted in December 2014.

57. The Defendant published an 'Issues and Options Consultation' in September 2015 to inform the preparation of LPP2. In response to this consultation, a number of community groups (including the Parish Council) submitted comments with extensive supporting evidence, suggesting a number of LGS designations.

58. The Claimant's solicitors submitted three separate representation letters dated 8 November 2017 in which they contended that LGS designations were being misused as a tool to prevent development, contrary to the Framework. In particular, at NSP, LGS7 and LGS8 fell outside the development limit and so no additional policy safeguarding was required. LGS8 was also within the setting of the Conservation Area which provided additional protection. There were no public rights of access to the land, other than a footpath on the western boundary, and the land was separated from Church Mead by a hedgerow. As to LGS7, it provided sustainable drainage and had no footpath to Church Mead. The Claimant also objected to the development limit as it had invested huge sums in the newly reopened village shop which needed support from additional houses.

59. A summary of responses was published by the Defendant in December 2017.

60. In December 2017, the Defendant published a background paper 'Designation of Local Green Spaces'. It set out the relevant policies from the Framework (2012 edition), and criteria for designation in the Mendip area. It identified 10 potential LGS designations in NSP, which formed part of the evidence base for the NSP NP.

61. On 4 January 2018, the Defendant published a Pre-Submission draft LPP2 for consultation.

62. On 6 February 2018, the Claimant submitted representations objecting to the draft LPP2 on the ground that it was not sound, as it was not positively prepared and not consistent with national policy, in respect of housing and LGS.

63. In respect of housing, it did not make sufficient provision to meet objectively assessed housing need. The minimum target of 420 homes established by LPP1 in 2014 required a substantial uplift. NSP had a minimum target of 45 dwellings which was only a minimum, not a maximum. The statement that the 95 houses completed or approved at NSP was "very high" was an over statement. NSP was a higher-tier settlement where additional growth could be accommodated in a sustainable manner. Additional housing would support the viability of services and facilities such as the village school and shop. The Claimant then set out its proposed housing allocation sites at Laverton Triangle, Land West of Fortescue Fields and Land to the South of Fortescue Fields, in similar terms to its response to the NSP NP to the consultation under regulation 14 of the 2012 Regulations, at paragraph 39 of my judgment.

64. In respect of LGS, the Claimant submitted that the proposed designation of 242 new parcels of land in the District was excessive, not justified, and inconsistent with the Framework which intended such designations to be used sparingly, and only for areas of "particular importance". The Defendant had made designation the default position for any open land which fell within a settlement's 'Development Limit'. Contrary to the guidance in the PPG, it was being used as a back door way to achieve new Green Belt. The designation criteria in the paper set a lower compliance bar than that set out in the Framework, as it did not apply the test of "particular importance".

65. The Claimant challenged the basis of the designation of LGS7 and LGS8 in the 'Designation of Local Green Spaces' background paper, disputing the assessments of their qualities. It also submitted that proposed designations LGS7, LGS8 and LGS009 cumulatively formed an "extensive tract of land" which was not appropriate for designation.

66. The Defendant published a summary of the "Pre-Submission: Issues Raised and Council Response" in respect of LPP2. This included a number of objections to the LGS designations.

67. On 23 January 2019, the Defendant submitted its draft LPP2 for examination.

68. The LPP2 examination hearings took place between 23 July and 2 August 2019 before an Inspector, Mr M. Fox DIPTP MRTPI. The policy on LGS was considered in July 2019. The Claimant made oral and written submissions (along with other objectors) that the proposed LGS designations were unsound.

69. In oral and written submissions, the Claimant reiterated its proposals for increased housing in NSP and housing allocations at its sites. It also expanded its submissions in respect of community benefits, in a Statement dated July 2019 and a Note dated 24 July 2019. At its Site NSP2 it proposed a village hall, a 10 space car park for High Street parking and a 31 space car park, with a school drop off facility. It submitted that existing facilities such as the village shop and post office provided by the Claimant would benefit from the increased custom generated by new dwellings, and the local primary school would benefit from an increase in pupils as it would be less than half full by 2023. It commented that there were no GP services in the village, other than an ad hoc mobile GP service in the village hall.

70. The Parish Council submitted a written response to the Claimant's additional submissions on benefits, countering the factual basis for them, as follows:

    i) Since 2016 the NSP school has been federated with Rode school. There were now 5 classes across the two schools, which were at 95% capacity. In her letter of 8 July 2019 to the Claimant, the Head Teacher thanked the Claimant for its financial contributions to improving the school facilities, and hoped that it would continue. She said that the school was "vibrant, expanding and sustainable". In a recent Ofsted inspection it was graded 'good', and in a statutory inspection of Anglican and Methodist schools it was graded 'excellent'. The letter of 30 July 2019 from the Chair of Governors referred to the indication in the Somerset School Planning Infrastructure Growth Plan 2019 that school numbers may fall over the next 5 years, but observed that there were many assumptions built into these numbers and for small schools especially the

numbers could be quite variable, particularly further into the future. He acknowledged the improved facilities financed by section 106 agreements from previous developments in the village, but going forward, he prioritised non-capital funding from pupil numbers. Disappointingly recent housing developments had not yielded great numbers of children, due in the main to the type and size of properties built. The NSP NP included provision for a mix of 2/3 bedroom houses that were more likely to attract families with young children.

ii) Consideration was being given to the provision of a staff car park within the grounds of the school (letter from head teacher dated 8 July 2019). Planning permission could be applied for this in the usual way. LPP2 did not need to allocate land for this purpose, and in any case, if it was proposed as part of a housing development, it would not pass the statutory tests.

iii) There was no evidence provided to support the assertion that the shop, which was run by the Co-Op, on a site owned by the Claimant, was experiencing trading difficulties. There was retail competition from the Farm Shop and shops outside the village.

iv) The GP practice was consulted in 2018 on whether establishment of a GP surgery or re-instatement of the ad hoc surgery sessions in the village could be promoted by the NSP NP. The GP Practice confirmed that they did not wish to pursue either of these options, preferring to concentrate on its Beckington and Frome sites which were fully equipped.

v) The Parish Council consulted on village hall provision in 2017. Improvements such as a new kitchen, central heating and floor renovation have been undertaken. More than half the cost of a new roof and ceiling will be funded by a National Lottery grant.

vi) The Claimant proposed similar village benefits in its previous planning applications. At the appeals, the Inspector concluded that these "extraneous inducements" did not meet the relevant tests and so could not be taken into account in favour of the proposed development.

71. On the issue of development opportunities within the settlement boundary, the Parish Council pointed out that the NSP NP allocated the Bell Hill Garage site for housing development, and re-development of the former Roman Catholic church was also likely. Analysing the village boundary, 18% abutted the Green Belt; 22% abutted proposed LGS sites; and 60% abutted the remainder and so could be considered for development.

72. As to the proposed LGS sites, the Parish Council also explained that many of the proposed LGS designated sites were areas which had been maintained as green space over time, and were of particularly importance and demonstrably special to the local community, as holding a particular local significance. Of the 7 LGS sites within the settlement boundary, 6 were Open Areas of Local Significance. Not designating them as LGS would reduce an existing level of protection which they enjoyed for many years.

73. Following receipt of the Examiner's report on the NSP NP, in which she referred to the need for the Defendant to address potential duplication of NP policies in the forthcoming LPP2, the Defendant issued a Position Statement in July 2019 in which it concluded that the NSP NP would be adopted prior to LPP2; that there would be undesirable duplications in the LGS policies; and therefore it would request the Inspector to consider deletion of the site specific LGS policies for NSP from LPP2.

74. On 10 September 2019, the Local Plan Inspector issued an Interim Note providing the Council with Post Hearing Advice. He said as follows:

> "34. National policy, as expressed through the Framework and National Planning Policy Guidance (PPG), sets a very high bar for LGS designation. The opening sentence, which amounts to the 'headline' message, in paragraph 77 of the Framework, states that LGS will not be appropriate for most green areas of open space. This is a clear message 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. One good reason for national policy setting this high bar is explained in paragraph 78 of the Framework, which states that local policy for managing development within LGS should be consistent with policy for Green Belts.
>
> 35. In order to reinforce the message that LGS designation is to be used sparingly, paragraph 77 of the Framework sets out three criteria, which spell out where LGS designation should only be used. It is clear from the phraseology that all three of these criteria are necessary for LGS designation. These criteria state that LGS designation should (i) only be used where the green space is in reasonably close proximity to the community it serves; (ii) where it is demonstrably special to the local community (holding a particular local significance); and (iii) where it is local in character and is not an extensive tract of land.
>
> 36. Para 76 of the Framework places LGS designation in the context of provision of sufficient homes, jobs and other essential services. Therefore, LGS designation has to be integral to the proper planning for the future of communities, and not an isolated exercise to put a stop on the organic growth of towns and villages, which would be contrary to national policy.
>
> 37. The PPG sets an equally high bar in relation to LGS designation and requires that landowners should be contacted at an early stage about proposals to designate any part of their land as LGS and have opportunities to make representations [ID: 37-019-20140306]. Some landowners at the Hearing sessions claimed that this had not happened, and it is not clear to me that this process has been followed in all cases.
>
> 38. The clear message in national policy is that LGS designation is to be used sparingly, as part of the overall consideration of the

planning and development needs of communities and is not a tool to stop development. The PPG also makes clear that designation of any LGS will need to be consistent with local planning for sustainable development in the area and must not be used in a way that undermines this aim of plan making [ID: 37-007-20140306].

39. It is clear from the allocations maps in the Plan, that in not only the eight sample areas I have already referred to, but more generally in relation to all the maps in the Plan, LGS designations have been distributed liberally within the towns and to an even greater extent in several of the villages.

40. The methodology set out in the Council's Background Paper- 'Designation of Local Green Spaces' [Document SD20] omits the 'headline' element of the Framework, that LGS designation will not be appropriate for most green areas of open space, and nowhere in this document does that message come through. Although the document describes each site subject to proposed LGS designation, often in some detail, the criterion of being demonstrably special to the local community is not sufficiently rigorous to comply with national policy, and the resultant distribution of LGS designations in several instances can be said to apply to sites which can be described as commonplace (which I do view as a negative term) rather than of a limited and special nature.

41. 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'.

42. In the Council's detailed evidence provided in relation to the eight sample areas that I requested, several proposed LGS designations are already within Conservation Areas, and in a few cases within Flood Zones 2 and 3. Moreover, there are examples of extensive tracts of open land, some of it in agricultural use, in particular on the edge of some villages, where LGS designation appears to be at odds with national policy. These factors were not adequately considered in the LGS assessment work.

43. In some villages for example, several green spaces, including agricultural fields, are joined up to form extensive tracts of land, several of which are located within Conservation Areas and other protective designations, which is contrary to national policy. In some villages, the proposed LGS designations approximate to up to a quarter of the entire urban area of the relevant villages, often with Conservation Area coverage and other constraints.

44. Consequently, I suggest the Council has two options:

> Option 1: To delete the LGS designations from the Policies Map and remove references to LGS designation where they appear in the Plan. Taking the above factors into account, the Council could then undertake a comprehensive review of LGS methodology and assessment as part of its work on the emerging LPR. MM7 would reflect the Council's decision to follow this option.
>
> Option 2: To revisit the methodology and designations, taking on board the considerations I have highlighted above. This would entail a suspension of the Examination until the additional work and consultation is completed. It may also be necessary to hear evidence on this matter at a further Hearing session. This would inevitably result in a significant delay to the Examination."

75. The Inspector's proposed Main Modification 7 (MM7) read:

> "Delete all LGS designations and indicate that they should be reconsidered within either Neighbourhood Plans or the Local Plan Review."

76. The Defendant opted to delete all LSG designations from LPP2 and reconsider them within either Neighbourhood Plans or the Local Plan Review. At the hearing before me, the Defendant clarified that it did not accept the Inspector's criticisms of the evidence and approach insofar as they may have been intended to apply to the NSP NP, which was one of the areas under consideration at the hearings. The Defendant explained in a note after the High Court hearing that, as far as NSP NP was concerned, the Local Plan Review will review the strategic issues of relevance to the settlement. If matters most appropriately dealt with in the NP require review, the Defendant will work with the Parish Council to undertake a review of the NP. According to the Defendant, the Parish Council intends to review the NP within the next two years in any event. There are no other neighbourhood plans in the area which are at the same advanced stage as the NSP NP.

77. The Defendant intends to undertake a single Mendip Local Plan Review (2020 – 2040). Its scope is the adopted LPP1 and the ongoing LPP2. It is intended to commence formally in June/July 2020, with examination and adoption in 2024.

78. On 21 January 2020, the Defendant published for consultation its proposed Main Modifications to LPP2, taking into account the Inspector's Interim Note. The proposed replacement text was as follows:

> "Replace paras 5.1 – 5.3 as set out below
>
> 5.1 A Local Green Space (LGS) is a designation which can be made through Local or Neighbourhood Plans. Designation as a LGS provides similar protection to that of the Green Belt.
>
> 5.2 Policy DP2 (LPP1) designates Open Areas of Local Significance and indicates that consideration will be given to

> whether these sites are designated as Local Green Spaces in LPP2. Following the Examination a review of the approach to Local Green Space designation is required and, in addition to consideration in Neighbourhood Plans, this will be carried out in the emerging Single Plan Review.
>
> 5.3 Policy DP2 (LPP1) will continue to provide guidance on the protection of open spaces."

79. In a letter dated 3 April 2020, the Inspector has confirmed that at the further hearing sessions, to be scheduled later this year if possible, he will be considering housing allocations, and he will not be re-opening topics which have already been considered, such as LGS.

80. In his Interim Note the Inspector also advised, on his reading of LPP1 and the LPP1 Inspector's report, that the 505 dwellings identified in policy CP2 of LPP1 for allocation in LPP2 ought to be apportioned to sustainable settlements in the north east part of the District, both on sites adjacent to the towns of Radstock and Midsomer Norton and possibly also within other settlements in the District. He observed that this could lead to other sustainable benefits, for example, providing additional pupils to schools. The Claimant submitted that the Inspector probably had in mind the village of NSP, in light of the submissions made by the Claimant at the hearing, but as the Inspector observed, it was not within his remit to suggest where the dwellings should be allocated.

81. In response to the Interim Note, the Defendant has assessed potentially suitable sites in the vicinity of Midsomer Norton and Radstock and a wider area in the rural north east of the Mendip District. In January 2020, the Defendant published '505 Dwellings - Background Paper'. As a result of this exercise, Main Modification MM114 proposed the allocation of land referred to as Laverton Triangle and Fortescue Fields South East for 27 dwellings (Site NSP1). The site is outside the development limit in the emerging NSP NP and LPP2, and provides for additional growth in the village.

82. The calculation of the Defendant's 5 year housing land supply has had to take into account changes in the method for calculating five year housing supply introduced in the revised Framework in July 2018. It provides for a 5 year housing land supply based on 'Local Housing Need' ("LHN"). This figure is to be used where an adopted Local Plan Housing Requirement is more than 5 years old, and so technically out-of-date.

83. LPP1 was adopted on 15 December 2014 and remained in date until 14 December 2019. During that period, the 5 year housing supply was based on the housing requirement in LPP1 which was 420 dwellings per annum. An additional 5% buffer was added to the 5 year supply. The Defendant exceeded that target, with 5.46 years' worth of supply. However, the LHN figure is higher, at 604 dwellings per annum. There is a shortfall of 763 dwellings, over the 5 year period, equating to 3.80 years' worth of supply. Therefore the Defendant is not currently able to demonstrate a 5 year supply. The Defendant has stated that it is currently bringing forward sites allocated in LPP2 which are capable of delivery in order to address the shortfall.

84. Finally, the Claimant expressed some criticism of the fact that Ms Jo Milling, Senior Planning Policy Officer, authored reports to the Defendant's Cabinet in respect of the

NSP NP and also represented the Defendant at the LGS examination hearing for LPP2. I accept her evidence that, in a moderately sized planning policy team, staff routinely take on multiple roles. It was not inappropriate to do so on this occasion.

The Claimant's application for planning permission

85. On 12 December 2019, the Claimant submitted an application for planning permission for 38 homes, a community building and other works on NSP1; Fortescue Fields West which is LGS8; and part of Fortescue Fields South which is LGS7.

Grounds of challenge

86. The Claimant's grounds of challenge to the Defendant's decision of 2 September 2019 were as follows:

    i) The decision was unlawful as it was not taken with adequate regard to the national policies concerning the designation of LGS and misunderstood the strategic policies in the development plan.

    ii) Policy 5 of the NSP NP is inconsistent with national policies for managing Green Belts.

    iii) The view that LGS7 and LGS8 are areas of "particular importance" and "demonstrably special" was irrational and/or inadequately reasoned and/or unsupported by the evidence base.

87. Because of the overlap between the grounds, it is convenient to consider them together.

Conclusions

Legal challenges under section 61N(2) TCPA 1990

88. A challenge under section 61N(2) TCPA 1990 to a decision of the local planning authority approving recommendations for a neighbourhood plan can only be made by way of judicial review, on public law grounds. Thus, the Claimant must establish that the Defendant misdirected itself in law, or acted irrationally, or failed to have regard to relevant considerations, or that there was some procedural impropriety.

89. A legal challenge cannot involve an impermissible review of the planning merits. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P & CR 26.

90. A statutory requirement to have regard to national policies requires a decision maker to take that policy into account, and to give clear and cogent reasons for any departure from the policy: see *LN Newham v Khatun* [2004] EWCA Civ 55, per Laws LJ, at [47].

91. However, in *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath criticised inappropriate challenges to

the application of policy saying, at [26], that claimants should "distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not … elide the two".

92. It is well-established that a decision letter must be read fairly and in good faith, and as a whole, and in a straightforward down-to-earth manner, without excessive legalism or criticism. An inspector is not writing an examination paper in which he must set out all the relevant policies: *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83, per Lord Hoffmann at 84. In *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, Sir Thomas Bingham MR said at 271-2:

> "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

93. In my view, similar principles should apply to an Examiner's Report, whilst taking account of the differences between a report and an appeal decision.

94. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court gave guidance, at [24] to [26], that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Although Lord Carnwath was referring to inspectors' appeal decisions, in my view, the same principle applies to examiners of neighbourhood plans.

Case law on the statutory requirements for a neighbourhood plan

95. The Examiner, and in its turn the local planning authority, must satisfy themselves that the draft neighbourhood plan meets the specified statutory requirements, in particular the basic conditions set out in paragraph 8(2) of Schedule 4B TCPA 1990.

96. The relevant legal principles were considered by Holgate J. in *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1173 (Admin), at [56] – [62]:

> "*Neighbourhood Plans*
>
> 56. Sections 38A to 38C of the 2004 Act provide for the making and content of neighbourhood plans. Sections 38A(3) and 38C(5) and Schedule 4B (of the 1990 Act as modified) govern the process by which such plans are prepared and ultimately brought into force. The Examiner must consider whether the "basic conditions" in paragraph 8(2) of schedule 4B are met (paragraph 8(1)). In that regard he or she must be satisfied (inter

alia) that it is appropriate to make the plan "having regard to" national policies, and that the plan contributes to the achievement of sustainable development and is "in general conformity with the strategic policies" of the development plan. Paragraph 8(6) of schedule 4B prevents the Examiner from considering any matters falling outside paragraph 8(1) (apart from compatibility with Convention rights).

57. Thus, in contrast to the Examination of a development plan document, the remit of an Examiner dealing with a neighbourhood plan does not include the requirement to consider whether that plan is "sound" (cf. section 20(5)(b) of the 2004 Act). So the requirements of "soundness" contained in paragraph 182 of the NPPF do not apply to a neighbourhood plan. Accordingly, there is no need to consider whether a neighbourhood plan is based upon a *strategy* prepared to meet objectively assessed development and infrastructure requirements, or whether it represents the most appropriate strategy considered against reasonable alternatives and is based upon proportionate evidence (see also paragraph 055 of the Planning Practice Guidance).

58. The Planning Practice Guidance (in the version dated 6 March 2014) adds that a neighbourhood plan "must not constrain the delivery of important national policy objectives" (paragraph 069). Presumably that would include the twelve core principles set out in paragraph 17 of the NPPF in so far as they are relevant to a particular plan (see paragraph 23 above).

59. The purpose and scope of the neighbourhood plan process was considered by Supperstone J in *BDW Trading Limited v Cheshire West and Cheshire Borough Council* [2014] EWHC 1470 (Admin). His judgment was handed down on 9 May 2014, well before the decision letter in the present case.

60. In *BDW* the Claimant challenged the examination of a draft neighbourhood plan which contained a policy limiting the size of new housing sites within or adjacent to a particular settlement to 30 homes. The criticisms included a failure to consider whether constraint policies in the draft plan were compatible with the NPPF (in particular paragraph 47), a failure to address the absence of up-to-date strategic housing policies in a local plan, and a failure to consider whether there was a proper evidential basis to support the draft policy (see paragraphs 78 to 80 of the judgment). The challenge failed.

61. Supperstone J decided that the criticisms failed to appreciate the limited role of the examination of a neighbourhood plan, namely, to consider whether the "basic conditions had been met". He held that the Examiner had been entitled to conclude that the draft plan had regard to the NPPF because the need to

plan positively for growth was acknowledged and the relevant policy *did not place a limit on the total amount* of housing to be built (paragraphs 33 and 81 of judgment).

62. In addition the Judge held:—

(i) The basic condition in paragraph 8(2)(e) only requires the Examiner to consider whether the draft neighbourhood plan as a *whole* is in general conformity with the adopted development plan as a *whole*. Whether there is a tension between one policy of the neighbourhood plan and one element of the local plan is *not* a matter for the Examiner to determine (paragraph 82);

(ii) The Examiner was not obliged to consider the wider ramifications of the draft policy upon the delivery of housing. The limited role of an Examiner to have regard to national policy when considering a draft policy applicable to a small geographical area should not be confused with the more investigative scrutiny required by the 2004 Act in order for an Inspector examining a draft local plan to determine whether such a plan is "sound" (see sections 20(7) to (7C) and 23 of the 2004 Act) (paragraph 83 of the judgment);

(iii) Whereas under paragraph 182 of the NPPF a local plan needs to be "consistent with national policy", an Examiner of a neighbourhood plan has a *discretion* to determine whether it is *appropriate* that the plan should proceed *having regard to* national policy (paragraph 84);

(iv) The Examiner of a neighbourhood plan does not consider whether that plan is "justified" in the sense used in paragraph 182 of the NPPF. In other words, the Examiner does not have to consider whether a draft policy is supported by a "proportionate evidence base" (paragraph 85).

To some extent the principles set out above are reflected in the Secretary of State's PPG. It is to be assumed that those principles were well-known to him when he reached his decision in the present case on 4 September 2014 (see e.g. *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWCH 754 (Admin) at paragraph 19(6)).”

97. In *R (Crownhall Estates Limited) v Chichester District Council* [2016] EWHC 73 (Admin), Holgate J. summarised the relevant principles in the following way:

“29. The relevant principles may therefore be summarised as follows:-

i) The examination of a neighbourhood plan, unlike a development plan document, does not include any requirement to consider whether the plan is "sound" (contrast s. 20(5)(b) of PCPA 2004) and so the requirements of soundness in paragraph 182 of the NPPF do not apply. So there is no requirement to consider whether a neighbourhood plan has been based upon a strategy to meet "objectively assessed development and infrastructure requirements", or whether the plan is "justified" in the sense of representing "the most appropriate strategy, when considered against reasonable alternatives" and based upon "proportionate evidence";

ii) Where it is engaged, the basic condition in paragraph 8(2)(e) of schedule 4B to TCPA 1990 only requires that the draft neighbourhood plan *as a whole* be in "general conformity" with the strategic policies of the adopted development plan (in so far as it exists) *as a whole*. Thus, there is no need to consider whether there is a conflict or tension between one policy of a neighbourhood plan and one element of the local plan;

iii) Paragraph 8(2)(a) confers a discretion to determine whether or not it is appropriate that the neighbourhood plan should proceed to be made "having regard" to national policy. The more limited requirement of the basic condition in paragraph 8(2)(a) that it be "appropriate to make the plan" "having regard to national policies and advice" issued by SSCLG, is not to be confused with the more investigative scrutiny required by PCPA 2004 to determine whether a local plan meets the statutory test of "soundness".;

iv) Paragraphs 14, 47 and 156 to 159 of the NPPF deal with the preparation of local plans. Thus local planning authorities responsible for preparing local plans are required to carry out a strategic housing market assessment to assess the full housing needs for the relevant market area (which may include areas of neighbouring local planning authorities). They must then ensure that the local plan meets the full, objectively assessed needs for the housing market area, unless, and only to the extent that, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF *taken as a whole*, or *specific* policies in the NPPF indicate that development should be restricted (*St Albans City Council v Hunston Properties* [2013] EWCA Civ 1610; *Solihull Metropolitan B.C. v Gallagher Estates Ltd* [2014] EWCA Civ 1610).

v) Those policies in the NPPF (and hence the principles laid down in *Hunston* and *Gallagher* in the interpretation of those policies) do not apply to the preparation by a qualifying body of a neighbourhood plan. Although a neighbourhood plan may include policies on the use of land for housing and on locations

> for housing development, and may address local needs within its area, the qualifying body is not responsible for preparing strategic policies in its neighbourhood plan to meet objectively assessed development needs across a local plan area. Moreover, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet objectively assessed housing needs."

98. In *R (DLA Delivery Ltd) v Lewes District Council* [2017] EWCA Civ 58; [2017] PTSR 949, Lindblom LJ gave guidance on the permissible scope and timing of a neighbourhood plan:

> "22. … . The provisions of Part 2 of the 2004 Act envisage a "local development scheme" comprising "development plan documents", which will together form the statutory development plan for the local planning authority's area (section 17(3) of the 2004 Act). A neighbourhood development plan, once made, will be a constituent part of the development plan (section 38A(2) of the 2004 Act). As one would expect, the statutory scheme seeks to ensure an appropriate degree of consistency between a neighbourhood development plan and the strategy of the extant, statutorily adopted development plan. That is the essential purpose of the "basic condition" in paragraph 8(2)(e). Section 13 of the 1990 Act requires local planning authorities to keep their development plan documents under review. If a neighbourhood development plan has been made and the local planning authority later produces a development plan document containing new "strategic policies", that development plan document will, under section 38(5) of the 2004 Act, prevail over any inconsistent policies in the neighbourhood development plan. And if a policy in a neighbourhood development plan is not, or ceases to be, up-to-date, this will be a material consideration in a development control decision, and may justify departing from that policy.
>
> 23. Nor, in my view, does the language of paragraph 8(2)(e) bear the interpretation urged upon us by Mr Young. The true sense of the expression "in general conformity with the strategic policies contained in the development plan" is simply that if there are relevant "strategic policies" contained in the adopted development plan for the local planning authority's area, or part of that area, the neighbourhood development plan must not be otherwise than in "general conformity" with those "strategic policies". The degree of conformity required is "general" conformity with "strategic" policies. Whether there is or is not sufficient conformity to satisfy that requirement will be a matter of fact and planning judgment (see the judgment of Laws L.J. in *Persimmon Homes and others v Stevenage Borough Council* [2006] 1 W.L.R. 334, at pp.344D-345D and pp.347F-348F).

…

25. 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. The neighbourhood development plan may also conform with the strategy of an emerging local plan. It may, for example, anticipate the strategy for housing development in that emerging plan and still not lack "general conformity" with the "strategic policies" of the existing development plan.

26. This understanding of paragraph 8(2)(e) is consistent with national policy and guidance in the NPPF and the PPG. As Foskett J. recognized (in paragraph 129 of his judgment), such policy and guidance is not an aid to statutory interpretation. However, the policies in paragraphs 184 and 185 of the NPPF reflect the statutory requirement, in paragraph 8(2)(e), for a neighbourhood development plan to be in "general conformity" with the "strategic policies" of the development plan, and the references to the "Local Plan" in those policies of the NPPF are clearly to a statutorily adopted local plan, not an emerging plan. Both NPPF policy and the guidance in the PPG are designed to prevent the mischief of a neighbourhood development plan frustrating the strategy of an up-to-date local plan. But the encouragement in paragraph 184 for local planning authorities to "set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible" does not imply that only when an up-to-date local plan has already been adopted will it be possible for a neighbourhood development plan to be taken though its own statutory process. The guidance in the PPG explicitly accepts that a neighbourhood development plan can be prepared "before or at the same time" as a local plan, and explains how a local planning authority should proceed if the neighbourhood development plan is brought forward first. Such guidance would have been unnecessary and inappropriate if the statutory scheme required

> the preparation of the neighbourhood development plan to be held back until an up-to-date local plan is in place."

Grounds 1 and 3

99. Under the first limb of Ground 1, the Claimant submitted that the Defendant's decision was unlawful because it ignored two fundamental requirements of LGS policy in paragraph 99 of the Framework, namely:

    i) whether the designation was "consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services"; and

    ii) whether the designation was "capable of enduring beyond the end of the plan period".

100. Under the second limb of Ground 1, the Claimant submitted that, when making its decision, the Defendant misunderstood the strategic policies of the development plan as it did not consider that Policy CP2 in LPP1 required 505 dwellings to be allocated in the north-east of the District, including on sustainable sites in Primary Villages such as NSP.

101. Under Ground 3, the Claimant submitted that, contrary to paragraph 31 of the Framework, the evidence in support of the designation of LGS7 and LGS8, was not proportionate or robust, and it did not meet the criteria of "particular importance", "demonstrably special" and "particular local significance" in paragraphs 99 and 100 of the Framework. The LPP2 Inspector agreed with the Claimant's assessment of the evidence base, in his Interim Note. In contrast, the Examiner failed to grapple with the criteria and the reasons for her conclusions were inadequate.

102. The function of the local planning authority, under paragraph 12 of Schedule 4B TCPA 1990, is to consider the Examiner's recommendations, and reasons for them, and to satisfy itself that the draft plan, as modified, meets the basic conditions, is compatible with Convention rights, and meets the specified statutory requirements. Its powers to make modifications are limited to these objectives.

103. The local planning authority is neither intended nor required to duplicate the detailed examination of the evidence, and the planning merits, which has been undertaken by the Examiner.

104. Under paragraphs 8(1)(a) and 10 of Schedule 4B TCPA 1990, the Examiner was required to consider whether the NSP NP, and any recommended modifications, met the "basic conditions" in paragraph 8(2) of Schedule 4B TCPA 1990. A NP meets the basic conditions if, *inter alia*:

> "(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,"
>
> ….

> (d) the making of the order contributes to the achievement of sustainable development,
>
> (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
>
> ….."

105. The Examiner is a chartered town planner with over thirty years experience in planning spanning the public, private and academic sectors and she is an experienced examiner of neighbourhood plans. She can therefore be assumed to have the specialist expertise to which Lord Carnwath referred in *Hopkins*.

106. In my view, the Examiner directed herself fully on the relevant statutory provisions, the Framework and the PPG, and the Local Plan.

107. In section 2.0 of her Report, she set out the applicable statutory framework, including the Basic Conditions, which were also summarised in Appendix 1 to her Report.

108. In section 6.0 of her Report she considered the Basic Conditions in turn. In respect of Basic Condition (a), she correctly directed herself to the February 2019 edition of the Framework. She referred to the following key Framework policies:

i) Paragraph 13: the application of the presumption of sustainable development in neighbourhood plans.

ii) Paragraph 16: guidance on plan making.

iii) Paragraphs 28 and 29: supporting strategic policies in the Local Plan and developing non-strategic policies.

iv) Paragraph 31: the preparation and review of plans should be underpinned by relevant and up-to-date evidence which should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and taking into account relevant market signals.

109. The Examiner then set out relevant guidance from the PPG, stating that the PPG advises that policies should be "supported by appropriate evidence, reflecting and responding to both the planning context and the characteristics of the area". She noted that "PPG states that there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken. It continues that the evidence should be drawn upon to explain succinctly the intention and rational of the policies."

110. The Examiner stated: "Whilst this has formed part of my own assessment, Table 1 of the Basic Conditions Statement sets out how the Plan aligns with the NPPF."

111. The Basic Conditions Statement was prepared on behalf of the Parish Council to accompany its submission to the Defendant. Table 1 listed the six policies in the NSP NP, identified the relevant paragraphs of the Framework, and commented on the NP's

conformity with them. Paragraphs 99 and 100 of the Framework were identified as the relevant paragraphs for the LGS policy.

112. In respect of Basic Condition (d), the Examiner summarised paragraphs 7 to 9 of the Framework on sustainable development which describe the economic, social and environmental objectives to be delivered through the preparation and implementation of plans. She cited the passage from paragraph 9 to the effect 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".

113. The Examiner stated that, whilst she had formed her own assessment, Table 3 of the Basic Conditions Statement assessed the sustainability of the six NP policies, using a 5 point scale ranging from 'very positive' to 'very negative'. It identified the provision of housing as positive and very positive as regards social and economic factors, and the LGS policy as very positive as regards social and environmental factors. Other economic factors considered were increases in tourism and employment opportunities in renewable energy and other low carbon technologies, and loss of jobs at the Bell Hill Garage (with the possibility of re-location outside the village).

114. In respect of Basic Condition (e), the Examiner stated that she had undertaken her own assessment of the Mendip Local Plan 2006 – 2014. Further, Table 2 of the Basic Conditions Statement listed the NP policies alongside the relevant LPP1 policies with a commentary on conformity. Relevant extracts from Table 2 are as follows:

> "**Policy 1: Settlement Boundary. Mendip LP1 Policy: CP2**
>
> The boundary has been determined as required by Policy CP2 with regard to development since 2006 and the views of the local community. It is also the boundary proposed in the emerging Mendip LP2. Policy 1 implements Objective 22 of the LP1."
>
> "**Policy 2: Bell Hill Garage Site. Mendip LP1 Policy: DP14**
>
> Policy DP14 in the LP1 promotes a mix of dwelling types and sizes in residential development that reflect local need. Policy 2 sets out this requirement in the local context of NSP and implements Objective 16 of the LP1."
>
> "**Policy 3: Exception Sites. Mendip LP1 Policy: CP3, DP12**
>
> Policy 3 complies with Policy DR12 in LP1, and gives additional local detail and requirements. It is implementing Objectives 15 – 16 of the LP1."
>
> "**Policy 5: Local Green Space. Mendip LP1 Policy DP2**
>
> The LP1 did not allocate LGS, but stated in the justification to Policy DP2 (para 6.15) that LP2 or neighbourhood plans would review the OALS and designate some or all as LGS. Policy 5 implements Objective 22 of the LP1."

115. In section 7.0 of her Report, the Examiner considered the NP and its policies against the Basic Conditions.

116. The Examiner found that the NP's vision and objectives met the statutory requirements. The NP's vision 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". Its objectives are to:

i) Encourage sustainable housing development within the village settlement boundary

ii) Ensure that the location, design and scale of any housing development is managed in order to maintain the character and heritage of the village

iii) Protect and enhance the village's key green spaces and recreational facilities;

iv) Support people with a local connection who wish to remain within or return to the community

v) Promote energy efficient buildings and increasing resilience to climate change

Housing

117. In relation to housing policies, the NP and the Examiner proceeded on the basis that LPP1 classified NSP as a Primary Village and proposed a minimum number of at least 45 new dwellings over the plan period. That number had been exceeded, as to date there had been about 113 completions and commitments.

118. The NP was informed by the results of the Parish Council's Housing Survey which identified resistance to open market housing, but some support for provision of housing for local people.

119. The NP maintained a settlement boundary, expanded to incorporate the new development. The Examiner referred to LPP1 Core Policy 1 which explained that new development tailored to meet local needs would be provided in Primary Villages, such as NSP. The emphasis was on maximising the re-use of previously developed sites, and other land within existing settlement limits, and then at the most sustainable location at the edge of the settlement. Development outside the boundary would only be permitted where it benefited economic activity or extended the range of facilities for the community. The Examiner also noted that the emerging LPP2 included revisions to settlement boundaries where appropriate, including NSP.

120. The NP proposed a housing development site of 0.4 ha within the settlement boundary at a brownfield site, Bell Hill Garage, which would relocate outside the village. In view of the over-supply of large dwellings in the village, the dwelling mix would be predominantly 2 and 3 bedroom homes, with a small number of flats. After considering concerns raised about the viability of the development, the Examiner concluded that the proposal broadly reflected LPP1 Policy DP14 and met the Basic Conditions.

121. The NP also proposed up to ten entry-level exception dwellings on a site on the settlement boundary, as recommended by paragraph 71 of the Framework. The

Examiner assessed the proposal and concluded that it reflected the Framework and was in general conformity with LP1 Core Policy CP4.

122. The Examiner concluded as follows:

> "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 LP1 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."

123. In my judgment, in assessing the settlement boundary and the proposals for housing, the Examiner had regard to Basic Conditions (a), (d) and (e) and there was sufficient evidence upon which she was entitled to conclude, in the exercise of her judgment, that the Basic Conditions were met, as at the date of her Report. Furthermore, the Defendant was entitled to accept her recommendation when it made its decision on 2 September 2019, on the basis of the Examiner's Report and the evidence before it and its understanding of LPP1 at that time.

124. It was only once the LPP2 Inspector issued his Interim Note, dated 10 September 2019, that the Defendant realised that it had to alter its previous interpretation of the housing allocations required by LPP1, and make provision for the additional 505 dwellings in the north-east area which the LPP2 Inspector identified. The Defendant has since assessed potentially suitable sites across the area. In Main Modification MM114 it has proposed the allocation of Site NSP1 (Laverton Fields and Fortescue Fields South East, both of which are owned by the Claimant) for 27 dwellings.

125. Although the assumptions made in the NSP NP about the housing requirements of LPP1 have subsequently been found to be partially incorrect, I do not consider that this undermines the NP to such an extent that it retrospectively renders the Defendant's decision on the NSP NP unlawful. The specific proposals for housing in the NSP NP are unaffected. In the short term, the further required housing allocation will be given effect by LLP2, which will supersede the NSP NP in that respect, as the most recent plan in the development plan. The NSP NP can be updated in the forthcoming Mendip Local Plan Review to align with LPP2, if required. The Claimant now has the opportunity to seek planning permission for a 27 dwelling development at Site NSP1 with a realistic prospect of success.

126. The proposed Site NSP1 does not encroach upon any of the ten proposed LGS in NSP. There is no suggestion that the Defendant will propose an additional allocation to NSP. It follows that this change does not affect Policy 5 on the designation of LGS in NSP.

127. Therefore, the Claimant's submission under the second limb of Ground 1 that the Defendant's decision was unlawful as it misunderstood the strategic policies in the development plan does not succeed.

Local Green Spaces

128. The Examiner had available to her a considerable body of evidence in respect of the proposed LGS designations.

129. Chapter 12 of the NSP NP, headed "Local Green Spaces", began by setting out paragraphs 99 to 101 of the Framework in full, emphasising the Parish Council's appreciation of its importance. It stated that the proposed designations had been assessed both in terms of the criteria set out in the Framework and in the Defendant's background paper 'Designation of Local Green Spaces', and both sets of criteria were met.

130. The 'Designation of Local Green Spaces' background paper explained that green spaces in Mendip had been subject to protective designations for many years, under the Local Plan (2002) and then the current LPP1 under Development Policy 2: Open Areas of Local Significance ("OALS"). With the introduction of LGS in the Framework (2012), all OALS were reviewed against the LGS criteria. The paper set out the 2012 Framework criteria and PPG guidance. It then set out the Criteria for Designation in Mendip, which were based on the Framework criteria, but provided more detailed illustrations of the way in which sites might be demonstrably special to a local community and hold a particular significance.

131. The 'Designation of Local Green Spaces' background paper assessed LGS7 and LGS8 as follows:

> **LGS7** "The site has recreational value and allows views across the ponds from higher land to the north. It is also important in views across Church Mead, and although not in the foreground, the presence of open countryside beyond the immediate confines of Church Mead is visually important."
>
> **LGS8** "Site contributes to the village's rural character and the street scene. It contributes significantly in the sense of tranquillity surrounding Church Mead and views across Church Mead."

132. In the assessment at Appendix 3 to the NSP NP, LGS7 and LGS8 were found to meet the following Mendip DC criteria:

i) Land is not the subject of a planning permission for development

ii) Space is not allocated or proposed for development in the Development Plan

iii) Is not an extensive tract of land and is local in character

iv) Within close proximity of the community it serves

v) Beauty

vi) Tranquillity

vii) Protecting important view towards or from a significant local feature

viii) Important part of street scheme or the character of the settlement.

133. In its response to the consultation representations under regulation 16 of the 2012 Regulations, the Parish Council set out its reasons for LGS designation, observing that each proposed LGS had a distinctive character and was a defined area, designated for specific reasons. Even those which were adjacent were all different and none of them amounted to an "extensive tract of land". It referred to the "green corridors", identified in the Character Assessment, which separated the two sections of the historic village. It pointed out that both LGS7 and LGS8 fell outside the Conservation Area, and so were not protected by its status.

134. It described the qualities of LGS7 and LGS8, in the village context, at paragraph 2.6:

> "Church Mead (LGS009) is a stunningly attractive village green with established recreational space for organised sport and events. The views from this site to the church and surrounding countryside are iconic.
>
> The Churchyard and adjoining paddock (LGS006) are historically significant, surrounding the listed church and contribute to views across Church Mead.
>
> Fortescue Fields West (LGS008) allows key views out to the open country beyond the village. It maintains the countryside link into Church Mead and gives an understanding of the historic evolution of the village. Great importance was given to this by the Appeal Inspector in 2015…
>
> Fortescue Fields South (LGS007) is important for its beauty and tranquillity. It allows views across open land to the important focal point of the church tower. Through its network of PROW's and permissive paths it has become an important amenity space. The links with the permissive path on Fortescue West and Vicarage Lane give a much used 'circular' walk'. An important wildlife habitat is developing in and around the drainage ponds. It also allows an appreciation of the village's unique open aspect with its long views into Norton…. "

135. In response to representations about LGS made by a resident, Mr Oliver, of the Parish Council responded, at paragraphs 5.1 and 5.2:

> "LGS 007 and 008 are designated individually; together with Church Mead (within the conservation area) they form a vital green corridor.
>
> As well as their individual qualities both LGS 007 & 008 have a crucial role in maintaining the historic setting of Norton St Philip as a village that grew up around two centres with the countryside coming into the village.

> If the vital green separation between the village on the ridge along High Street and the more rural cottage village form around the church is to be maintained, the designation of LGS008 Fortescue Fields West is essential.
>
> The comments from the Appeal Inspector given in para 1.2 are also relevant.
>
> The designation satisfies the criteria for LGS in both the NPPF and Mendip DC's Designation of Local Green Spaces' document…"

136. The comments by the Appeal Inspector referred to by the Parish Council were made in 2015, in respect of a site which now includes LGS8, when dismissing the Claimant's appeal against the Defendant's refusal of planning permission for housing. The Inspector said (APP/Q3305/A/14/2224073):

> "52 ….. The appeal site lies immediately adjacent to but outwith the Conservation Area boundary here and thus lies within its setting. Church Mead is an integral part of the character and appearance of the Conservation Area, forming a transition between the village and the adjacent open countryside. It is adjoined by built development to the north/northeast (centred on the George Inn) and to the west (around the church). Whilst the Conservation Area is generally inward looking, its significance also derives from outward views afforded by its elevated position in the landscape. That is amply demonstrated in the sudden, quintessentially English view out from the George car park and the summit of Bell Hill over the lower slopes, including Church Mead which forms an important visual link between the centre of the village and the countryside beyond. I am in no doubt that the open undeveloped nature of the appeal site has a positive role in the significance of the Conservation Area, allowing for an appreciation and understanding of the historic evolution of Norton St Philip.
>
> 53. Even with reinforcement of the hedge/tree line along the northern boundary of the appeal site, the development proposed would create a much stronger urban presence than is currently the case in those views and would intrude into the experience of the Conservation Area. On completion, the development would also link the Fortescue Fields site with other parts of the village, including recently approved residential development on land to the west. As a consequence, Church Mead would be enclosed on all sides by built form and the crucial link through to the open countryside beyond would be obliterated.
>
> 54. The planning guidance confirms that substantial harm may arise from works to an historic asset or from development within its setting. I recognise that substantial harm is a high test and may not arise in many cases. In this case however, I consider that the

> development proposed would have a considerable adverse impact on the setting and significance of the Conservation Area, completely altering its historic development pattern and plan form, with significant consequences for one of the most important and clearly cherished views into and out of the Area. To my mind, the scale of that harm verges on substantial. There would be corresponding harm to the established character and appearance of the area more generally. There would be conflict therefore with policies DP1, DP3, DP4 and DP7 of the Part 1 Plan DP3 of the Part 1 Plan."

137. Further evidence available to the Examiner included the Character Assessment 8 February 2019 (paragraph 38 above); the Conservation Area Appraisal (paragraph 50 above); representations made pursuant to the consultations under regulations 14 and 16 of the 2012 Regulations, including the detailed representations made by the Claimant (paragraphs 42-44 & 48 above); comments from the Parish Council on the consultation representations (paragraphs 50 – 51 above); proposed changes agreed by the Council in December 2018 and corrections made in March 2019; various documents on the Parish Council and NSP NP website.

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.

139. In her Report, at part 12 of section 7.0, the Examiner considered the issue of potential duplication with the emerging LPP2, and said:

> "The supporting text explains that the LGSs are also proposed in the emerging LP11. Whilst the NPPF is clear that plans should serve a clear purpose and avoid unnecessary duplication, it is more than likely that this Plan will be adopted before the LP11. Any duplication is therefore likely to be incurred by the LP11. 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 LP11. I consider this is a matter for MDC to address as both plans progress."

140. In my judgment, the Examiner's approach to the emerging LPP2 was a legitimate exercise of her discretion, which was not contrary to the Framework or PPG. The Defendant was entitled to endorse it.

141. The Examiner accurately summarised the relevant provisions of the Framework:

> "The NPPF explains that LGSs are green areas of particular importance to local communities [Footnote NPPF paras 99, 100, 101]. The management of development in such areas is consistent with Green Belt policy.
>
> <u>The identification of LGSs should be consistent with local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services.</u> The NPPF is clear that the designation should only be used where

> the green space is in reasonable clear proximity to the community it serves, is demonstrably special and is local in character and not an extensive tract of land." (emphasis added)

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.

143. The sentence underlined is a quotation from paragraph 99 of the Framework which the Claimant submits that the Defendant ignored. However, it was drawn to the Defendant's attention by the Examiner in her Report, who clearly had it well in mind, as her reference to it demonstrates.

144. Earlier in her Report, she had considered in some detail the extent to which the NP met the requirements of sustainable development, referring to the tables in the Basic Conditions paper which assessed each policy against the Framework's sustainability objectives of economic, social and environmental factors. In respect of Policy 5 on Local Green Space, the assessment was neutral for economic factors and very positive for social and environmental factors. The commentary stated:

> "Green Spaces that people value will be protected. The historic setting of the village will be protected, offering an environmental and tourism benefit, but removing potential development sites."

145. Both the Examiner and the Defendant will have been well aware from the consultation representations submitted by the Claimant that it wished to develop land which was proposed for LGS designation for housing, car parks, and tennis courts. However, the response from the Parish Council pointed out that the previous applications for planning permission at two of the sites had been refused on appeal because development was found to have an unacceptable impact upon the setting, character and appearance of the village.

146. Importantly, the Parish Council submitted that there were many other potential development sites in or on the boundary of the village which did not encroach on LGS sites. One of the main objectives of the NP was to encourage sustainable housing development. The Examiner considered the proposed housing sites in the NSP NP in some detail, and was satisfied that they were suitable and sufficient. It is noteworthy that Site NSP1, subsequently proposed by the Defendant to meet the additional housing requirement, also did not encroach on LGS sites. In my view, the Examiner did not accept the Claimant's submission that the LGS designations would prevent necessary development. She correctly observed that the NP was not required to allocate sites for housing and she did not consider that the NP's approach would "constrain or otherwise frustrate any spatial development strategy".

147. The Examiner also expressly rejected the Claimant's submission that the LGS designations were being improperly used as a means of sterilising open land land and preventing development, in effect, extending the Green Belt under another name. The Examiner said:

> "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."

148. The Parish Council also drew the Examiner's attention to the fact that the associated benefits offered by the Claimant (car parks, tennis courts etc) were rejected by 95% of respondents to a village survey, at the time of the 2015 appeal, and were excluded from consideration by the Inspector.

149. By the time the Defendant was considering the NSP NP, the Claimant had made its further written and oral submissions to the LLP2 Inspector in which it submitted that additional housing would support the viability of services and facilities such as the village shop and the school, and would fund an improved village hall. The Defendant's officers, who worked on both the NSP NP and LPP2, will also have seen the Parish Council's response in which it disputed the suggestion that the school would not remain viable without the Claimant's development, in the light of correspondence from the school; observed that the proposed school car park was within the school grounds and so did not require land to be allocated for development; noted the absence of evidence that the village shop (a Co-Op) was experiencing trading difficulties; described its extensive renovations of the village hall with the aid of a lottery grant; and confirmed that in 2018 the nearest GP surgery declined the offer of facilities to run a service from NSP.

150. Thus, both the Examiner and the Defendant were faced with conflicting opinions and evidence from the Claimant and the Parish Council on whether and to what extent the proposed LGS designations were consistent with sustainable development and complemented investment in sufficient homes, jobs and other essential services. However, the Parish Council was the promoter of the NP and as the Framework states, at paragraph 29, "neighbourhood planning gives communities the power to develop a shared vision for their area". Its vision and objectives were clearly set out in the NP. It was not the role of the Defendant or the Examiner to impose a different vision on the community of NSP, even assuming that they accepted the Claimant's submissions, which the Examiner clearly did not. The role of the Examiner, and in turn the Defendant, was to satisfy themselves that the NP met the Basic Conditions. In my judgment, there was a sufficient basis upon which they could properly conclude, in the exercise of their judgment, that Basic Condition (a) and (d) were met.

151. Therefore, the Claimant's submission, under the first limb of Ground 1, that the Defendant's decision was unlawful as it was not taken with adequate regard to the provision in paragraph 99 of the Framework that LGS designation should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services, does not succeed.

152. In her Report, the Examiner briefly summarised the evidence in respect of each proposed LGS designation, stating in respect of LGS7 and LGS8:

> "**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."

153. The Examiner then set out her conclusions as follows:

> "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 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.
>
> 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 [Footnote PPG para 011]. 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 the designation of the LGSs. It is clearly worded. With a

> modification for accuracy, the policy will meet the basic conditions."

154. As I have never seen NSP and the LGS Sites, I found the Examiner's summaries of the evidence relating to LGS7 and LGS8 too brief, and I gained a fuller understanding of the reasons for designation in the Parish Council's consultation response, including the Appeal Inspector's decision, which I have set out above, as well as from the Defendant's background paper. As the Examiner observed, the photographs were helpful. I have no doubt that the Examiner's summary was informed by the fuller evidence available to her, and her own site visit, and it would be unfair not to take this into account.

155. In view of the LPP2 Inspector's subsequent criticisms of the Defendant's background paper, 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.

156. I agree with the Examiner's interpretation of paragraph 100(b) of the Framework. It sets out examples, not an exhaustive list. It follows that other factors (including those in the Defendant's background paper), could legitimately be a basis for a finding that a green space was demonstrably special and held a particular local significance.

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. It follows that I reject the Claimant's submissions, under Ground 3, that her conclusions on LGS7 and LGS8 were irrational and unsupported by the evidence base. In my view, this aspect of the Claimant's case was a thinly-disguised attack on the judgment of the Examiner, and in turn the Defendant, which is impermissible.

158. In reaching these conclusions, I gave careful consideration to the LPP2 Inspector's criticism of the Defendant's background paper, and the Defendant's approach to LGS designation across its District, as insufficiently rigorous and not reflecting the "high bar" to use of LGS designation, reflected in the Framework and PPG (see his Interim Note at paragraph 75 above).

159. Ultimately, I did not accept that it undermined the lawfulness of the Examiner's Report and the Defendant's decision, for the following reasons:

i) The examination of the NSP NP, culminating in the Examiner's Report dated 19 July 2019, was independent of the LPP2 process, and it was undertaken in accordance with a prescribed statutory scheme. The LPP2 Inspector had no jurisdiction over the NSP NP: the LPP2 Inspector does not have an appellate or review power in respect of the judgments of NP Examiners.

ii) The LPP2 Inspector was, of course, entitled to express his views on the proposed LGS designations since they were included in the draft LPP2 before him.

iii) However, since the LPP2 Inspector's Interim Note was published on 10 September 2019, it post-dated the Examiner's Report and the Defendant's decision accepting the Examiner's recommendations on 2 September 2019.

Therefore, in law it was not a matter which the Examiner or the Defendant could or should have taken into account in reaching their decisions.

iv) Any potential conflict between the NSP NP and LPP2 on LGS designations has been avoided by the LPP2 Inspector's proposal, accepted by the Defendant, that LGS designations should be removed from LPP2, and instead addressed in neighbourhood plans and the forthcoming Local Plan Review.

v) Thus, the LPP2 Inspector's views were only relevant to this challenge insofar as they lent the support of an experienced professional planning inspector to the Claimant's critique of the NSP NP process, in particular, the evidence relied upon and the proper application of the Framework and PPG.

vi) The statutory tasks of the LPP2 Inspector and the Examiner were different. As Holgate J. explained in *Crownhall Estates*:

> "Paragraph 8(2)(a) confers a discretion to determine whether or not it is appropriate that the neighbourhood plan should proceed to be made "having regard" to national policy The more limited requirement of the basic condition in paragraph 8(2)(a) that it be "appropriate to make the plan" "having regard to national policies and advice" issued by SSCLG, is not to be confused with the more investigative scrutiny required by PCPA 2004 to determine whether a local plan meets the statutory test of "soundness"."

vii) LPP2 was examined under transitional arrangements to which the Framework March 2012 edition applied. The Inspector took as the "headline message" of the policy the opening sentence in paragraph 77 that "LGS will not be appropriate for most green areas of open space", which the Defendant's background paper did not reference. However, the NSP NP was examined under the February 2019 edition of the Framework in which that opening sentence no longer appears. The opening words of paragraph 100 merely state that "The Local Green Space designation should only be used where…" and then sets out the criteria. The February 2019 policy is, in my view, more precise. In light of the submissions made to me by the Claimant, I observe that it does not purport to apply a test of exceptionality, nor to cap the number of designations which may be appropriate in any particular area.

viii) The Inspector's observations about the over-use of LGS designations were made at a high level of generality. He was considering hundreds of potential designations in towns and villages across the Mendip District, which is a rural and scenic area, with many green spaces. Although he focused on 8 sample areas, including NSP, he did not make any specific findings in respect of these sample areas or their proposed designations. He made some site visits, but it is not known whether he visited NSP. He did not mention the Examiner's Report, and it is not clear whether and to what extent he considered the evidence available to her, such as the representations on designation made by the Parish Council, the Appeal Decision from 2015, the Character Assessment etc. I find it inconceivable that the Inspector intended to reject every proposed designation

in NSP. For example, even the Claimant accepts that the designation of Church Mead in NSP is appropriate.

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.

160. Therefore, the Claimant's submission under Ground 3 that the assessment of LGS7 and LGS8 as areas of "particular importance" and "demonstrably special" was irrational and/or unsupported by the evidence base does not succeed.

161. The Claimant submitted under Ground 1 that the Defendant and the Examiner ignored the question whether or not the designations at LGS7 and LGS8 were "capable of enduring beyond the end of the plan period" (paragraph 99 of the Framework).

162. This sentence was set out in the NSP NP, in paragraph 12.1. As I have already indicated, I am satisfied that the experienced Examiner considered the entirety of paragraphs 99 to 101, when considering whether Basic Condition (a) was met. It can be assumed that specialist planning inspectors and examiners are familiar with the relevant policies and failure to mention a specific policy is not, of itself, evidence that they have overlooked it. They are not writing an examination paper in which they must demonstrate their knowledge to the reader.

163. In my view, the likely reason for the absence of any specific reference as to whether these designations were capable of enduring beyond the end of the plan period was that this criterion was clearly met. The Examiner, and in turn the Defendant, accepted the legitimacy of the Parish Council's NP proposal and its representations that these sites were not suitable for development (as the Appeal Inspectors had already found), and that sustainable development could and should take place elsewhere in and around the village.

164. For these reasons, the submission under Ground 1 that the Defendant's decision was unlawful because the Defendant and the Examiner ignored the question whether or not the designations at LGS7 and LGS8 were "capable of enduring beyond the end of the plan period" does not succeed.

Reasons

165. The Claimant submitted, under Ground 3, that the Examiner's reasons were inadequate and unintelligible. They were not improved upon by the subsequent officer reports and Cabinet minutes. They give rise to a substantial doubt that the decision to allow the NP to proceed to a referendum has been taken in accordance with the statutory scheme, in particular, the Basic Conditions.

166. In *R (Wilbur Developments Limited) v Hart District Council* [2020] EWHC 227 (Admin), at [70] – [73], I considered the extent of the duty to give reasons for the conclusions reached in respect of compliance with the basic conditions.

167. A local planning authority is required to give reasons for its decision under paragraph 12(11) of Schedule 4B TCPA 1990. The Defendant relied upon the reasons given by the Examiner in his Report. As Lindblom LJ held in *R (Kebbell Developments Limited) v Leeds City Council* [2018] 1 WLR 4625, at [45], a local planning authority is entitled to rely upon the reasons given by the Examiner in his Report, where appropriate. This point was conceded by the Claimant. However, it submitted that the Examiner's Report was inadequately reasoned, and so the Examiner's Report became the focus of the reasons challenge.

168. As confirmed by the Supreme Court in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108, the reasons are required to meet the standard set out in *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, per Lord Brown, at [36]:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

169. I agree with the observations of Holgate J. in *R (Crownhall Estates Limited) v Chichester District Council* [2016] EWHC 73 (Admin), where he said, at [57] – [58]:

> "57…. South Bucks was concerned with the obligation to give reasons for a decision determining a planning appeal. Such appeals may involve a range of issues raised by a number of parties to do with the planning merits of a proposal for development. By contrast the ambit of an examination into a

> neighbourhood plan is rather different. Generally, the main focus is on whether or not the basic conditions in paragraph 8(2) of schedule 4B are satisfied, or would be satisfied by the making of modifications to the plan. The level of scrutiny is less than that applied to matters falling within the true ambit of the examination process.
>
> 58. …. Thus the statutory scheme delimits the matters which the Examiner and the local planning authority are able to consider, which in turn will affect the application of the obligation to give reasons. At the very least the statutory process will affect what may be considered by the Court to have been the "principal important controversial issues"; they will not necessarily be any matter raised in the representations on the draft plan."

170. In my judgment, the Examiner's Report met the required standard of reasons for a report of its kind, and the Defendant was entitled to rely upon them. The legislative and policy provisions were adequately set out. The Examiner was not required to respond directly to the points made in all the consultation representations. The Examiner rightly identified that there was no specific objection made to the designation of LGS7. She clearly took into account the objections to the designation of LGS8, and her findings on LGS8 were clear. The Claimant had access to all the supporting evidence and representations from the Parish Council. Although the Examiner did not refer to the Claimant directly, it is apparent from several references in the Report that she had its principal representations in mind and responded to them, for example, whether the LGSs were an extensive tract of land and whether the designations beyond the settlement boundary were a ruse to prevent development.

171. I am not persuaded that the Claimant has been prejudiced by the lack of more extensive reasons. The Claimant has been seeking to develop sites in NSP for many years and so it has been extensively involved in planning applications, and consultations about plans, most recently for NSP NP and LPP2. It has regularly accessed the representations made by others, notably the Parish Council, which has opposed many of its proposals, in some detail. It is aware of the positions adopted by the Defendant, particularly during the emerging LPP2. I consider that it is likely to be well-informed about the approach taken by the Parish Council and the Defendant and the reasons why its proposals and representations have not prevailed.

172. For these reasons, the Claimant's reasons challenge under Ground 3 does not succeed.

Ground 2

173. Policy 5 of the NSP NP provides that:

> "Development on Local Green Spaces will only be permitted if it enhances the original use and reasons for the designation of the space."

174. The Claimant submitted that the level of constraint imposed by this clause was more restrictive than policies for managing the Green Belt. As such, it was inconsistent with

paragraph 101 of the Framework which requires that policies for managing development within an LGS should be consistent with those for Green Belts. The Examiner failed to have regard to this in her Report.

175. In fact, the Examiner did consider this clause, stating:

> "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 the designation of the LGSs. It is clearly worded. With a modification for accuracy, the policy will meet the basic conditions." *(emphasis added)*

176. The Framework policy concerning development in the Green Belt prevents "inappropriate development" unless "very special circumstances" exist. Paragraph 144 explains: "'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

177. Paragraph 145 provides that the construction of new buildings is generally inappropriate development in the Green Belt but provides a number of exceptions to this rule. These include *inter alia*: "the provision of appropriate facilities…for outdoor sport, outdoor recreation…as long as the facilities preserve the openness of the Green Belt"; "limited infilling in villages"; "limited affordable housing for local community needs"; and "limited infilling or the partial or complete redevelopment of previously developed land." Paragraph 146 then identifies a number of other types of development which, if certain criteria are met, are not treated as inappropriate.

178. In my judgment, the development policy in Policy 5 is sufficiently broad in scope so as to be interpreted and applied consistently with Green Belt policy. Plainly some development policies which are suitable for vast areas of Green Belt are not going to be appropriate for small areas of LGS in a country village, where part of the purpose of designation is to protect openness and views. For example, it seems unlikely that construction of housing on LGS7 and LGS8 is going to meet the requirements of Policy 5 or be consistent with Green Belt policy. However, landscaping, buildings and other structures relating to, for example, agricultural use, community use and enjoyment, recreation and sport could all potentially enhance the use and reasons for the designation.

179. For these reasons, Ground 2 does not succeed.

Final conclusion

180. For the reasons given above, the claim is dismissed.