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Chief Executive
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By email: stuart.brown@mendip.gov.uk

Your ref:
Our Ref: LOC0011

19 October 2020

Dear Sirs,

Draft Norton St Philip Neighbourhood Plan

We are instructed by Lochailort Investments Ltd.

We have seen a copy of your letter to our client dated 12 October 2020. In that letter you state that your officers are currently considering how to remedy the unlawfulness which the Court of Appeal found in relation to Policy 5 of the Norton St Philip Neighbourhood Plan ("NSPNP").

As you will be aware, policies for managing development on LGS should comply with the requirements of paragraph 101 of the National Planning Policy Framework ("NPPF"). The Court of Appeal held that paragraph 101 of the NPPF means "*policies for managing land within an LGS should be substantially the same as policies for managing development within the Green Belt*" (para 10).

Policy 5 in the NSPNP, as the Court of Appeal held, is not substantially same as policies for managing development in the green belt. This is because, amongst other matters, it fails to provide for (i) planning permission to be given for inappropriate development for which very special circumstances can be demonstrated in accordance with para 143-144 of the NPPF, and (ii) certain categories to be considered as not inappropriate development in accordance with paras 145-146 of the NPPF. Rather, it seeks to exclude virtually all development.

The Council will, therefore, have to redraft the development management policies in Policy 5 to ensure that they are substantially the same as policies 143-146 of the NPPF. The consequence of this is that the Council will inevitably have to take a decision which differs from that recommended by the examiner: that Policy 5, as drafted, does not meet the basic conditions. Such a decision is not consistent with the recommendation of the examiner. The reason for the difference would be (wholly or partly) as a result of new evidence or a new fact or a different view taken by the authority as to a particular fact: i.e. the Council would be

bound to conclude (for the reasons explained by the Court of Appeal) that Policy 5, as drafted, is not consistent with national policy on managing development in the green belt. The Council will, therefore, be compelled to consult with, *inter alia*, all those persons who responded to the regulation 17 consultation on the NSPNP.¹ We would also strongly advise the Council to refer the question of the appropriate wording of policy 5 of the NSPNP for independent examination in order to obtain independent advice on the appropriate wording of the policy.

In addition, you will no doubt be aware that the Court quashed the entirety of the Council's decision that the NSPNP meets the basic conditions. The effect of that order is that the decision is to be treated as if it never had any legal effect²; it is as though it is "a blank piece of paper"³. This means that the Council must reconsider all of the examiner's recommendations; the redetermination is not, and cannot lawfully be, confined to reconsidering the wording of Policy 5. In coming to their decision, the Council will have to consider whether there have been any changes in circumstances which may affect their previous decision in relation to any of the examiner's recommendations. Such changes of circumstances will necessarily include the main modifications to the Council's Local Plan Part II.⁴ We expect that such changes in circumstance will also result in the Council taking a different decision to that recommended by the Examiner based on new facts and the Council will be required to consult on that proposed decision.

We trust that you will pass this letter to your officers to have regard to as part of their consideration of how to remedy the unlawfulness which the Court of Appeal found in relation to Policy 5 of the NSPNP.

We reserve the right to refer the Court to this correspondence in any future proceedings challenging the Council's decision on the NSPNP.

Please acknowledge receipt.

Yours faithfully,

Harrison Grant

¹ See para 13(1) of Schedule 4B of the Town and Country Planning Act 1990 and Regulation 17A of the Neighbourhood Planning (General) Regulations 2012.

² In *Hoffman-Le Roche v Secretary of State for Trade and Industry* [1975] AC 295 at 365, Lord Diplock held that a decision which has been quashed is "*Incapable of having any legal effect upon the rights and duties of the parties to the proceedings.*" In *R (H) v Ashworth Special Hospital Authority* [2002] EWCA Civ 923, [2003] 1 WLR 127 at para 46, Dyson LJ explained that a decision which has been quashed "*will be treated as never having had any legal effect at all*".

³ *R (Miller) v The Prime Minister* [2019] UKSC 41 per Lady Hale and Lord Reed at para 69.

⁴ The Council will be aware that emerging local plans should be taken into account in deciding whether the proposed neighbourhood plan meets the basic conditions - see Planning Practice Guidance Paragraph: 009 Reference ID: 41-009-20190509.