

IN THE HIGH COURT OF JUSTICE

KING’S BENCH DIVISION

PLANNING COURT

Before the Hon. Mr Justice Holgate

NORTON ST PHILIP PARISH COUNCIL

Claimant

-and-

SOMERSET COUNCIL

Defendant

-and-

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

(2) LOCHAILORT INVESTMENTS LIMITED

(3) REDROW HOMES LIMITED

Interested Parties

***Draft* APPLICATION TO VARY THE ORDER OF THE COURT
DATED 16 DECEMBER 2022**

Introduction

1. This is an application by Norton St Philip Parish Council (“**NSP**”) to vary paragraph 5 of the order dated 16 December 2022 (“**Order**”) in the same or similar terms to those set out in the Schedule to the draft order which accompanies this application.

Paragraph 8 of the Order gave the parties liberty to apply to vary or modify the Order on notice.

The reason for the application

2. The Order was granted following a successful claim for statutory review of a local plan (“**LPP2**”) brought by NSP against Mendip District Council (“**LPA**”)¹ pursuant to section 113 of the Planning and Compulsory Purchase Act, 2004.
3. Certain modifications had been made to the draft LPP2 during its examination. Those modifications entailed the allocation of land for residential development, including the allocation of land in NSP’s administrative area (“**Allocation NSP1**”).² The development limit for the settlement shown on the Policies Map³ was also revised so as to extend it to include the land comprised within Allocation NSP1 inside that development limit.⁴ Prior to that point the Allocation NSP1 land had been located outwith the development limit.⁵
4. The modified version of LPP2 was then adopted by the LPA and challenged by NSP. On 16 December 2022 the court handed down judgment in the case (“**Judgment**”) and held that the allocations were made unlawfully following a misinterpretation of the LPA’s pre-existing spatial strategy by the LPP2 inspector. This misinterpretation

¹ Due to local government re-organisation, the LPA has been succeeded by a new unitary authority known as Somerset Council. Apart from the amendment of the Defendant’s name in the instance of these proceedings nothing turns on this point for the purposes of the present application.

² Allocation NSP1 is shown tinted orange on the Policies Map extract at Annex C.

³ The development limit is shown with a red line on Annexes A, B, C and D.

⁴ As shown on Annex C. The revisions to the Policies Map introduced as a result of the unlawful modification to include Allocation NSP1 may be seen by comparing Annex B to Annex C.

⁵ The Policies Map extract at Annex A shows the position of the development limit immediately prior to LPP2 being submitted for examination. The Policies Map extract at Annex B shows its position as originally proposed in the regulation 19 version of LPP2 submitted for examination.

was then also adopted by the LPA. The LPA was ordered to take certain steps to implement the practical consequences of the Judgment. Those steps were set out in the Order.

5. The Order required that the unlawful modifications be removed and remitted back to the LPA for further consideration. Paragraph 5 of the Order also required the LPA to amend the Policies Map to reflect the terms of the Order and the consequential changes made to LPP2 as a result of the remittal.
6. On 12 January 2023, the LPA published an amended version of LPP2 and the associated Policies Map in accordance with the Order.⁶
7. The Second Interested Party, Lochailort Investments Limited (“**Lochailort**”), has brought judicial review proceedings against the LPA on the basis that the amendments made to the Policies Map (insofar as these relate to the removal of Allocation NSP1 and the reinstatement of the development limit for the settlement to its position immediately prior to the unlawful allocation being introduced into LPP2) do not comply with the requirements of the Order (“**Lochailort JR**”).⁷
8. Through the Lochailort JR, Lochailort seeks to require that the development limit be left in the extended position which resulted from the unlawful allocation being made i.e. so as to include the Allocation NSP1 land inside the development limit of the settlement instead of reverting the development limit to its position prior to the unlawful allocation being made.

⁶ An extract of the amended Policies Map showing the area in and around Allocation NSP1 is provided at Annex D.

⁷ Claim no. CO/709/2023

9. NSP's view – with which the LPA agrees – is that the corrected version of the Policies Map properly and correctly implements the intention of the Judgment and paragraph 5 of the Order. If Lochailort's preferred approach was adopted instead then this would lead to the perverse outcome of Lochailort retaining the 'benefit' (in planning policy terms) of the unlawful Allocation NSP1. This clearly does not accord with the tenor of the Judgment and would pre-empt the outcome of the fresh allocation exercise which the LPA is required to undertake pursuant to paragraph 6 of the Order.

Other case management matters

10. Finally, given that the Lochailort JR relates entirely to compliance with the terms of the Order, NSP invites the court to list the Lochailort JR before Holgate J. This would further the overriding objective in CPR1.1 since Holgate J. is already familiar with the lengthy background to the original claim, the Judgment, and the terms of the Order. It would therefore save judicial and court resources and enable matters (including the Lochailort JR) to be dealt with expeditiously, proportionately and without the parties incurring unnecessary costs.

Conclusion

11. For the reasons set out above, NSP applies for an order in the terms set out in the draft order attached to this application.

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