

Norton St Philip Parish Council
Care of The Parish Clerk

21 June 2023

Dear Parish Council,

1. We are writing this letter to comment on the Regulation 14 version of the 2023 Norton St Philip Neighbourhood Plan (NSP NP), to observe that it is flawed and to ask that the NSP Parish Council (PC) remove the private garden of The Barton, The Barton, BA2 7NE from the space known as NSP004. Also to ask the PC to develop Local Green Spaces (LGSs) that reflect the guidance provided by the Planning Inspector, Mike Fox, in his appraisal of the LGS policy, method and process used by the former Mendip District Council (MDC) to develop LGSs in the original 'for examination version' of their Local Plan Part 2 (LPP2).¹ Our contention is that the NSP NP contains Local Green Space designations identical to those in the 'for examination' version of the Mendip LPP2 which were derived using process, method and an evidence base found by the LPP2 Inspector to be, "not in line with national policy".

2. We have also included specific comments on the 'Application for LGS Designation NSP004' and on the NP paragraphs 16.12 through 16.18 at Annexes A and B respectively but we would draw your attention to some of the key reasons why our garden should be removed from the latest version of the NSP NP:

a. National guidance states that private gardens should be designated as LGS only if there are exceptional circumstances. The Neighbourhood Plan, associated Application for LGS NSP004 and evidence on the Neighbourhood Plan website have not demonstrated exceptional circumstances. Furthermore, it has proved possible to find many instances where the private gardens of local residents have been removed from neighbourhood plans² but no examples of where private gardens have remained in and been categorised as Local green Space.

b. In any case, our garden is already protected by two separate criteria – it is in the NSP Conservation Area and is in the historic grounds, aka curtilage, of a listed building.³ So development proposals will be tested in two separate ways and anything unwarranted would not be approved. Adding further protection suggests that the PC are attempting to

¹ ED20 Mendip District Local Plan 2006-2029: Part 2 – Sites and Policies Examination into the soundness of the Plan Interim Note - Post Hearing Advice dated 10/9/19.

² Hough-on-the Hill, Kettering, Harborough, Ringstead, Kirklees and more.

³ The first time the PC suggested we were not in the curtilage of a listed building was 21 June 2023 at the meeting we requested. Within the curtilage is a concept that is justified as required on a case-by-case basis by the Courts. Notwithstanding, The Barton, The Barton, completed in 1980, is in grounds that are contained within the historic boundary of two listed buildings, Manor Farm and the Tudor Dovecote. It is understood that both were listed before The Barton was completed. A check of the historic boundary walls around NSP004 and the properties now known as The Barton, Lyde Green, Pond Barton and The Barn affirms that all are within the boundaries of land associated with the Tudor Dovecote and Manor Farm i.e. land historically owned by Manor Farm (The Barton in fact means farmland of the Manor). Because of this, English Heritage will assess the impact on both buildings of any development proposal in their historic grounds. Such checks would be in addition to the checks associated with those arising from, 'located in a Conservation Area'. Evidence of this is the fact that English Heritage commented on 4 planning applications submitted in 2017 and 2019 for The Barn and The Barton. Their comments related to both Curtilage and Conservation Area.

use LGS designation, in this instance and against explicit direction in the National Planning Policy Framework (NPPF), as a tool to stop development.

c. The Application for LGS designation of NSP004 states that the owners of the two gardens - Chris and Karen Parsons, and Jason Warmisham - support the application for designation. This is not true and we all object in the strongest possible terms to such an assertion. None of us were consulted in the preparation of this application and we have never supported the inclusion of our gardens in an area proposed for designation as a LGS. Neither have we ever given any indication that such support would be forthcoming under any circumstances. Such an error has been raised on many occasions with the PC and with the former MDC, but no-one appears to have taken any notice.

d. Whilst the original Application for LGS designation was authored in 2015 by Mr Roe (now deceased) and Mr Martin, there is no record of who submitted it. MDC were of the view in 2019 that the request came from the two named individuals on behalf of the "Ringwell Meadow Preservation Group". However both individuals stated in subsequent written correspondence that they did not make the submission, and one has stated explicitly that he is not and has never been a member of the RMPG! No-one appears to be able to recall who is or was in the RMPG nor who on the PC at the time was responsible for coordinating, validating and then submitting the package on behalf of the village and PC to MDC.

e. The Application for LGS NSP004 is nearly 8 years old and was written against an even older (2012) version of the NPPF by two individuals, one of whom is now deceased and neither of whom admit to sponsoring it as a formal application. The areas identified in the Plan itself and the 'Application for LGS' are different. And in all instances the village electricity substation is in the defined area. The Application for LGS is hopelessly out of date and by any reasoned assessment requires an evidence-based refresh.

3. Breach of Human Rights Act Article 8 and European Convention of Human Rights Protocol 1, Article 1. The ongoing attempts to designate the back garden of The Barton, The Barton and The Barn, BA2 7NE as a LGS breaches the human rights of the owners of the properties. The Human Rights Act at Article 8 requires respect for private and family life. Protocol 1, Article 1 of the Convention requires that property owners be able to enjoy their property peacefully and without restriction.

4. The potential LGS designation of our garden as part of NSP004 has been in process for almost 10 years during which our enjoyment of our property has been restricted because of the excessive and ever-expanding time taken to defend it, and that of our neighbours, from unfair and unreasonable designation. We feel very strongly that we have been bullied and intimidated and the whole process continues to be most stressful. It is fair to say that the issue has affected our mental health and relationships as well as who we can trust and how we conduct ourselves in the community. There is no evidence to suggest that inclusion of our gardens in NSP004 is in the public interest, nor to further breach our rights by continuing to pursue Local Green Space designation for our back gardens. We strongly believe such interest has not been properly tested by the community that would be served by a designation that is not justified with policy compliant evidence. We know that Mr Warmisham and Mr McIntyre (owner of the Old Hopyard) also believe that they hold the same views.

5. It is noteworthy that the PC were, in 2018, content to remove the private garden from NSP004 if the remainder of the site could be designated as a LGS as evidenced by the Email from the Parish Clerk to Mendip Planning Policy on 15 February 2018 at 11:17 with attachment "180215 MDC LPP2 consultation response.pdf"

"The PC knows that an objection has been raised by the owner of a private garden which is included in the proposed LGS. Should either MDC or the Inspector amend the boundary of the proposed LGS so as to exclude one or both gardens, the PC further resolves that that approach would be supported by the PC if that ensured that the rest of the site became a LGS."

The Inspector of the MDC LPP2 did more than amend the boundary, he removed all the LGSs from the LPP2 because they were unsound.

6. The LPP2 Inspector's final report made it clear that Mendip DC's approach to Local Green Space designation across the district was unacceptably flawed, a fact that he had already identified in his interim advice in 2019. He made it clear that Mendip's LGS Background Paper left out important pieces of the NPPF, failed to apply NPPF criteria rigorously and designated land as LGS that clearly does not meet those criteria. Indeed, it is understood from an MDC Cabinet meeting that the Inspector had corroborated his report with colleagues.

7. The LGS designations in the current NSP NP are entirely reliant on the MDC Background Paper and are deliberately identical⁴ in all respects to those that were deemed unacceptable in the LPP2 by the Inspector. They were derived using the same methodology and data, at the same time and by the same people. It can therefore only be true that the NSP LGSs are equally misaligned with national policy and equally unacceptable. In accordance with the endorsed Local Plan, they should therefore be removed from the NSP NP for re-examination as part of the neighbourhood plan process. There is nothing in the Greenspace Supplementary Planning Document that obviates the legal requirement for LGS designation to be compliant with the NPPF.

8. We do of course recognise that an earlier version of the NSP NP went through an examination process which was deemed lawful by the Court of Appeal subject to the removal of a clause relating to the level of protection applied to land designated as LGS. And that some might consider that removal of the offending clause would be sufficient to render the modified NSP NP as lawful. But, as stated in paragraph 4 of the Appeal Court Judgment, the Examiner of the NSP NP was not required to make judgment on the methodology and data used to develop the LGS designations. All the Examiner was required to do was affirm that a valid, at the time, process (i.e. the policy, process and method articulated in MDC's LGS Background Paper) had been used, which is why she was able to recommend that the NSP NP should proceed to the next stage.

9. Equally, the Courts did not address the veracity of the NSP NP LGS designation process because they were not asked to. It was not the designation process, method or data that were in question. Rather the Courts affirmed that the NP Examiner was appropriately qualified to conduct the examination and that her scrutiny had been conducted to the level required by PPG. With one amend, and in the absence of any evidence to the contrary, the Courts noted that the draft NSP NP could be lawful.

10. But, the Court of Appeal Judgment also said, "*The ultimate decision is that of the local planning authority, which may consider matters that have arisen since the examiner's report.*" Of itself, such a statement can only be an implicit recognition that further work on the Plans and associated LGSs was already in hand with the Planning Authority and the Planning Inspectorate. And that such work might identify that the NSP NP was unsound.

11. Unlike the NP Examiner, the Planning Inspector for MDC's LPP2, appointed by the Secretary of State, was required to assess the soundness of MDC's policy, method, evidence and assessment for LGS designation when tested against national policy. He conducted his inspection some months after the Examination of the NSP NP and found that the Mendip LGS designation method and criteria did not pay due regard to national policy. The policy, process and method for LGS designation was unsound and therefore must not be used. MDC acknowledged this through Main Modifications and removed all LGSs from the LPP2. The Planning Inspector issued his final report in early September 2021, which quite clearly fits the Appeal Court's criterion, '*matters that have arisen since the [Neighbourhood Plan] examiner's report*'.

12. Whilst the Appeal Court used the word *may* rather than *must*, it seems irrefutable that the new Planning Authority, Somerset County Council, is obliged to consider the Inspector's Report in the context of the 2023 NSP NP, and the adopted Local Plan, because the LGSs are such a fundamental and important element of the NP, and contentious too. In consequence and if challenged in Court, the Planning Authority would likely be deemed to have failed in its

⁴ Ms Jo Milling (MDC Council Officer) and District Councillor Linda Oliver provided guidance to this effect at a Village meeting to discuss the Neighbourhood Plan. One consequence of this was that the previously removed garden of the Old Hopyard was put back into the NSP Neighbourhood Plan as LGS NSP001.

statutory responsibilities were it to continue to recommend proceeding to referendum with the current version of the NSPNP, containing as it does LGSs that were proposed for designation using flawed process, method and evidence. Proceeding any further with such a flawed NP would likely call into question the due diligence of officers and elected members because of the high risk of yet more waste of public money and elected official and officer time. Furthermore, any failure to review the LGSs would likely breach two of the seven Basic Conditions required of a NP examination, rendering any such an examination an expensive waste of resource.

13. There are also issues around consultation with landowners and specifically the owners of the three houses whose private gardens have been included in the sites for LGS Designation. None of the landowners have ever been properly consulted by the NSP PC upon the inclusion of their gardens in LGSNSP004 and LGSNSP001 despite requests on many occasions and presentations to various PC meetings over the last 8 years. Indeed, the latest consultation initiated with us by the PC is risible in its nature and cynical too. Specifically, a Royal Mail signed for letter dated 11 May 23 from the PC stating little more than that they are consulting on the pre-submission draft of the NSP Neighbourhood Development Plan to complete by 25 June. It is relevant that work on this version of the NSP NP began in December 2022. Why did the PC wait until 11 May to communicate with residents of the Parish about LGS designation of their private gardens?

14. Furthermore, the letter is identical to emails sent at the same time on the Parish wide distribution, including to the landowners. It was available on the PC website and was posted on the Parish Noticeboard. It is very difficult to understand how this could be viewed in any way as proper consultation with landowners, especially the owners of private gardens given the impact of a LGS designation on the value and usefulness of their properties. The NPPF requires that landowners should be contacted at an early stage about proposals to designate any part of their land as LGS and for them to have opportunities to make representations. No such consultation has taken place and all attempts by owners of the private gardens in NSP004 to enter into sensible discussion upon designation have been rebuffed.⁵ Request for comment at the pre-submission stage is simply too late and most likely invalidates the plan. It is understood that the owner of NSP001 has been treated similarly and holds the same views.

15. Flaws in the NSP NP include LGSs that do not comply with the NPPF, it contains evidence that needs a refresh, and geographical boundaries that are wrong. And appropriate consultation has not taken place with the owners of the 3 private gardens afflicted by the Plan. SCC might choose to turn a blind eye and carry on with 'Making' the NSP NP via an Examination and Village referendum, but the Council would then be endorsing a NP that breaches their own Local Plan as well as guidance from the Secretary of State's representative, Mike Fox. This would surely waste more money as well as open yet more routes to expensive legal challenge from those who are adversely affected, including challenges suggesting several breaches of Convention rights.

16. As with the flawed LGSs in the 2023 NSP NP it remains likely that some, or many, of the other OAsLS across the district will continue to be challenged through the planning process including the Courts. Testing the validity of each of the OALS for LGS designation in NSP as part of a rework of the NSPNP would provide the opportunity to develop and validate a Somerset wide approach to closing out the OAsLS legacy gifted to SCC by the former MDC.

17. I would be grateful if you would acknowledge receipt of this letter, consider and action my request for the removal of our garden from NSP004 and consider my suggestions on the way ahead for the NSP NP and the outdated OALS designations. I also request that the PC acknowledge that proper consultation has not taken place with us upon the inclusion of our garden in NSP004 and note that our Convention rights may well have been breached.

Yours sincerely

Signed on original

⁵ A request on 6 Jun for a meeting was finally granted on 21 Jun when the PC listened politely but perhaps did not hear what we were saying.

Annex

- A. Norton St Philip Checklist and Criteria for Local Green Space Designation - comments in Jun 2023 by Mr and Mrs Parsons on the application for LGS designation of NSP004 dated November 2015 submitted in support of the NSP NP 2023 Reg 14 Version.
- B. NSP NP paras 16.12 through 16.18 - LGSNSP004 - RINGWELL MEADOW – Comments by Mr and Mrs Parsons dated 21 June 2023.

Copy to:

Ian Hasell

SCC - Planning Team, Chair of Planning Board East, Councillor Boyden, Councillor Denton, Andre Sestini, Martin Evans
Gordon McIntyre, Jason Warmisham