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Dear Sirs

Representations: Draft *Norton St Philip Neighbourhood Plan 2023* Regulation 14 consultation

Thank you for notifying us of your 2023 Regulation 14 consultation on the draft Norton St Philip Neighbourhood Plan (NP). Having reviewed the draft Plan, we would be grateful if the following representations are taken into account.

Background

Section 1 of the draft NP includes a detailed summary of the history of the preparation of the plan up until the most recent judgement in respect of the Parish Council's successful application for Judicial Review of Mendip DC's decision to adopt LPP2 was handed down on 16th December 2022 ('the Judgement').

It does however fail to acknowledge or address the current application for Judicial Review made by Lochailort Investments Ltd against Mendip DC in respect of the Mendip DC's decision to publish a policies map showing the land known as NSP1 outside of the development limit for Norton St Philip and within the countryside.

It also fails to reference (albeit this was submitted post the publication of the Reg 14 NP) the Parish Council's application to vary the Order of the Court dated 16th December 2022 pursuant to paragraph 8 of that Order, relating to the development boundary of Norton St Philip.

The NP therefore does not give an accurate representation in terms of the legal position of the development boundary of Norton St Philip. It also fails to consider how this matter will be addressed in the NP, should the challenge made by Lochailort Investments Ltd be successful and the Court agree that the land that was NSP1 should be designated as "white land".

The background set out in Section 1 also fails to consider or acknowledge the comments made by the Local Plan Inspector in respect of why Norton St Philip, a Primary Village, was considered an acceptable location for a site allocation for a minimum of 27 units. These comments are not infected by the failures which led to the successful challenge. Nor does it deal with his other conclusions on Norton St Philip or the proposed NSP1. It also does not acknowledge that the challenges to these aspects of his report were not upheld, particularly that Holgate J found no merit in the argument that the Local Plan Inspector had not considered the principle of proportionate growth. The failure to have regard to an independent consideration of this issue, having heard much argument, is noticeable.

This sits at odds with the otherwise thorough background provided and means that material factors are left out of account. It also suggests bias in that it excludes comments which are unfavourable to its justification or that might undermine the plan, particularly given that it can be inferred from both

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the Judgement and the Inspector's comments that Norton St Philip is capable of delivering a site allocation of a minimum of 27 units, sustainably.

Paragraph 5.2 of the draft NP is also incorrect in that it refers to the 'quota' of dwellings ascribed to the village, and that this has been far exceeded. This is not a fixed amount and represents a minimum as confirmed by the Local Plan Inspector and by Holgate J in the Judgement.

These matters are all relevant to the background to the NP and carry weight. This section should be revised to address and acknowledge the above points.

The Basic Conditions

Only a draft *Neighbourhood Plan* that meets all of a set of basic conditions can be put to a referendum and be made. Those basic conditions are set out in paragraph 8(2) of Schedule 4B to the *Town and Country Planning Act 1990*, as applied to *Neighbourhood Plans* by section 38A of the *Planning and Compulsory Purchase Act 2004*. The basic conditions are:

- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State; *and*
- b. Having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses; *and*
- c. Having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area; *and*
- d. The making of the *Neighbourhood Plan* contributes to the achievement of sustainable development; *and*
- e. The making of the *Neighbourhood Plan* is in general conformity with the strategic policies contained in the development plan for the area of the authority; *and*
- f. The making of the *Neighbourhood Plan* does not breach, and is otherwise compatible with, European Union obligations; *and*
- g. Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with.

The representations made in this letter are necessarily restricted to a review of the compliance of each draft policy, and the draft plan as a whole, with the basic conditions.

The remainder of this response sets out where it is not considered that the basic conditions have been met, and that additional information is required, followed by a further Reg 14 consultation before the NP will be in a position to proceed to a Reg 19 examination.

In any event, there should be no question that a new examination is required given the time passed since the previous examination, and the changes to planning policy at local and national levels, as well as changes to matters that should be considered material in terms of the drafting of planning policies in this NP.

Draft Policy 1: Settlement Boundary

The extent of the Settlement Boundary is the subject of Lochailort Investment Ltd.'s Judicial Review as set out above. Should this challenge be successful, the Defined Settlement Boundary will need to be reconsidered, as the area of what was NSP1 will be white land. This potential eventuality should be fully acknowledged in the NP.

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Draft Policy 2: Bell Hill Garage Development Site

The Bell Hill Garage Development site is the only allocated site for development within the village. However, this site cannot be relied upon to come forward during the plan period as follows:

1. There is a long planning history relating to development on the site, however only 1 application for 10 units, in 2010 has been permitted (aside from a PD change of use from office to residential in 2015). There is no extant planning permission for the site. All other applications for residential development on the site have been refused.

The smaller proposal for 10 units was permitted some 13 years ago, and never implemented. In 2013 a larger scheme for 33 units (incorporating development within the rear paddock) was refused. The most recent application (in 2022 for 21 dwellings) included development within the paddock to the rear of the site and incorporated replacement employment floorspace on site.

Over 4 years have passed since the Reg 19 consultation regarding the earlier NP draft and this site is no further forward in terms of being delivered. The reason for this is set out in the representations made on the Reg 16 consultation in April 2019 made by Rocke Associates on behalf of the Bell Hill Garage. This makes plain that,

“Given the constraints and abnormal costs of redeveloping the site, the only prospect of achieving a viable scheme of redevelopment is to incorporate land to the north comprising the Old Orchard which was included in the application that was refused planning permission in October 2013.”

The Parish Council has objected to any development on the paddock to the north and provided no viability information to justify the allocation of the site. As such, it can be concluded that the Bell Garage site (without the paddock to the north) is highly unlikely to be developed.

2. The Bell Hill Garage has existed on site for many decades and remains operational. This is acknowledged in the NP at paragraph 9.2 where it states, ‘the Bell Hill Garage is a long established and greatly valued village facility which also provides local employment’. At paragraph 9.7 it states that ‘Relocation of the garage to a site outside the village would be supported by the Parish Council subject to the site’s suitability and community support.’ No suitable or available site has been posited.

The proposal therefore fails to meet the requirements of part 7 of LPP1 Core Policy 4: Sustaining Rural Communities which states that ‘Rural settlements ... will be sustained by safeguarding community and commercial premises ... in line with Development Policy 17.’

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Development Policy 17 states:

DP17: Safeguarding Community Facilities

Development proposals that would result in the loss of sites or premises currently or last used for local facilities and services will not be permitted unless:

1. Suitable alternative provision is being made in the locality and will be available before development or change of use can commence; or
2. The maintenance of the existing use would perpetuate existing amenity, highway or other environmental problems; or
3. If the service or facility is of a commercial nature (including pubs and neighbourhood shops), and there is no likelihood of a viable community use.

Without reproviding the employment facility, either on site (as per the refused 2022 application) or off-site, it needs to be demonstrated that there is no likelihood of a viable community use on site. The vague assertion in the preamble to the policy that the garage can be relocated outside the village, subject to finding a suitable site, that the local community support, indicates that the requirements of LPP1 policies Core Policy 4 or DP17 cannot be met through this site allocation.

In conclusion, there is no indication from the planning history of the site that the Bell Hill Garage will come forward for development during the plan period. Furthermore, there is no indication that a viable scheme, that is acceptable in planning terms, that can incorporate the replacement of the garage/ employment use on site or one that relocates said use close to the village, will come forward. This policy therefore fails Basic Condition D in that it fails to plan for sustainable development in respect of the delivery of housing, identified as being needed for the local community at para 7.3 by allocating a site that is highly unlikely to come forward in a form acceptable to the Parish Council. The policy also fails Basic Condition E in that it cannot be demonstrated that the site could come forward and be in conformity with LPP1 Core Policy 4 and Policy DP17.

Draft Policy 5: Local Green Space

10 Local Green Spaces are allocated in the NP. This policy fails to meet Basic Conditions A and E as follows:

1. The criteria for assessing LGS

The draft NP fails to take account of the requirement in LPP2 that:

“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 future Local Plan Review.”

The LPP2 originally included LGS designations however, at the LP examination, the Inspector concluded the following:

“LGS designations have been distributed liberally within the towns and to an even greater extent in several of the villages” (para 39)

“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.” (para 40)

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“...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’. (para 41)

The Inspector’s view here is clear - that the approach to LGS designation requires review, and the adopted LPP2 makes clear that this is to be achieved via the Local Plan Review and the NP process. As such, the NP cannot rely on the draft LPP2 (2017) approach to LGS designation and should be reviewed against updated criteria that is agreed with the Council. The criteria should be sufficiently rigorous to comply with national policy, and this is necessary for this policy to comply with the adopted Development Plan and the NPPF.

The Parish Council relies on the Court of Appeal judgement of July 2020 in this regard. While the judgement, at the time, considered the LGS to be lawfully allocated, this is superseded by the LPP2 which makes clear that a review to the approach to Local Green Space is required and that this applies to NPs as well as the LPR. The Norton St Philip NP cannot therefore rely on the 2017 methodology prepared by the former Mendip DC. The LPP2 Inspector was clear that the criteria used was not significantly rigorous and failed to meet the requirements of the NPPF. The Basic Conditions (A and E) are clear that NPs must comply with national and local policy.

The judge, in the appeal case that the Parish Council relies on, may have opined on the Inspector’s comments at the time of the judgement, however this related to an unadopted NP and an unadopted local plan. Time has moved on, the LPP2 is adopted and this is what the NP is required to adhere to, and in this respect, it does not.

New criteria must be developed and agreed with the Mendip DC, and all the LGS’s should be assessed against this updated criterion in order to meet the aforementioned basic conditions.

2. LGS Policy is incapable of enduring beyond the plan period

The LGS policy fails to have regard to national policy, specifically paragraph 101 of the NPPF in which it is set out that LGS should be capable of enduring beyond the plan period.

Again, the Court of Appeal judgement that the Parish Council relies on needs to be considered in the current context. Paragraph 45 of the judgement sets out:

“A designated LGS might not be capable of enduring beyond the plan period if, for example, pressure on development, and in particular the supply of new housing, would probably require it to be given up for development before the end of the plan period. If, on the other hand, pressure for development can be satisfied elsewhere within the neighbourhood over the plan period, it is likely that a designated LGS will at least be capable of enduring beyond the plan period. Given the examiner’s conclusions in relation to other parts of the draft plan, and in particular the supply of land in Norton St Philip for housing over the plan period... I consider the judge was justified in her conclusions”

Paragraph 46 goes on to state:

“It does not seem to me that the letter (2 August 2019 from Lochailort to Mendip raising the ‘enduring’ point) contained information that was unavailable to the examiner; and as things have turned out Mendip has proposed to allocate a further site in NSP for housing development. So that would relieve pressure on development to a greater extent than was apparent to the examiner.”

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There are a number of factors to consider here:

1. Mendip's housing land supply has significantly worsened and currently the published level sits at 3.3 years but is in fact much lower, at 2.87 years (Appeal Reference: APP/Q3305/W/22/3311900).
2. The site allocation referred to by the Judge was former NSP1. This no longer exists following the Parish Council's successful Judicial Review, and there is now no site allocation to *'relieve pressure on development to a greater extent than was apparent to the examiner.'*
3. The NP housing policies section starts from the wholly incorrect premise that the *Local Plan Part 1* somehow placed a 45-dwelling "limit" at Norton St Philip and that there is no need for further housing in the parish. This has been confirmed as a minimum by both the Local Plan Inspector and Holgate J.
4. The only site allocated for development is the Bell Hill Garage. As the NP itself sets out, it has had the benefit of planning permission on and off since 2010 and it has not been developed. The most recent refusal included Orchard LGS and was refused in March 2023. There is nothing to suggest that this site can be relied upon to deliver housing in the plan period given its history (see above section).

The above indicates that that the housing supply issues in Mendip are vastly worse than they were 3 years ago when the Court of Appeal's judgement was handed down, and at examination, compounded no doubt by the failure of sustainable villages in the district to contribute equitably to housing supply in the district.

It is argued in the NP that the Bell Hill garage site will deliver sufficient homes for the village, and the housing needs survey identifies a large proportion of residents as not wanting new homes. However, there is clear evidence that new homes are needed – not least in respect of the wider district, and the fact that the local primary school is not full, with intake expected to fall over the coming years.

This all points to a pressing need for housing. The only allocated site in the NP will not in all likelihood come forward, the only site allocation in the village has been struck through. The only other reasonably located site is draft *Local Green Space* LGSNSP008 at Fortescue Fields West. This is the only LGS proposed that is not within the village Conservation Area and that has no public access rights. There is a live planning application for this site, and, in the context of the NPPF policy, it must be acknowledged that this site cannot be capable of enduring through the plan period.

We would remind the officers that the proposed development on the site includes 1.2ha of open space, that would be secured via a legal agreement, and which will be accessible to the public, where currently, there is no potential for this to happen.

In conclusion, all the LGS proposed do not meet the test of particular importance to warrant designation, and each needs to be assessed against updated criteria that meets this high bar. The Council's previous criteria, that this NP relies upon, has been confirmed as inadequate by the Local Plan Inspector and this is reflected in the LPP2. The NP must comply with the LPP2.

The LGSNSP008 at Fortescue Fields West allocation therefore does not meet basic condition A in that it is not capable of enduring beyond the plan period. It should be deleted. Public preference to protect this private land from development cannot in itself be used as the critical test for designation.

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Other comments

For completeness, we have no reason to believe that the making of the *Neighbourhood Plan* would be likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) (either alone or in combination with other plans or projects) and that consequently, Regulations 32 and 33 of the *Neighbourhood Planning (General) Regulations 2012* (as amended) are not engaged.

We are grateful for the opportunity to make these representations, which we trust will be fully taken into account when the draft *Neighbourhood Plan* is revised ahead of its submission for independent examination.

If any of the above representations are unclear, please contact us at your convenience for clarification.

Yours sincerely

A handwritten signature in black ink, reading 'SBWay' in a cursive, stylized script.

Sarah Ballantyne-Way MRTPI
Planning Director

CC – Andre Sestini, Somerset Council
Martin Evans, Somerset Council