

# LOCHAILORT INVESTMENTS LIMITED

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11<sup>th</sup> October 2024

Dear Sirs

## **Representations: Draft *Norton St Philip Neighbourhood Plan 2024* Regulation 14 consultation**

Thank you for notifying us of your 2024 Regulation 14 consultation on the draft Norton St Philip Neighbourhood Plan (including any supporting documents). Having reviewed the draft Plan, we would be grateful if the following representations are taken into account.

### **Background**

Norton St Philip Parish Council submitted its *Neighbourhood Plan* to Mendip District Council for examination under Part 5 of the *Neighbourhood Planning (General) Regulations 2012 (as amended)* in 2019.

The *Neighbourhood Plan* was considered by Mendip's Cabinet on 2<sup>nd</sup> September 2019 with a recommendation that the *Plan* should proceed to a local referendum, subject to a number of modifications. Mendip's Cabinet resolved to accept the recommendation.

That decision was subsequently challenged by Lochailort by way of a Judicial Review. Following first an injunction, and then hearings in the High Court and the Court of Appeal, on 2<sup>nd</sup> October 2020 the Cabinet decision to approve the Norton St Philip Neighbourhood Plan and allow it to proceed to referendum was quashed.

However, the Judgement ruled that policy 5, setting out the types of development that may be permitted within the Local Green Spaces, was more restrictive than national policy and the additional restrictions had not been sufficiently justified in the Plan.

As policy 5 was not considered lawful, the council's decision to submit the Plan to referendum was quashed.

In an attempt to rectify the matters of unlawfulness identified by the Court of Appeal, on 1<sup>st</sup> March 2021 Mendip's Cabinet agreed to carry out consultation on further modifications to the *Plan*, together with the earlier modifications identified by the Examiner and at the Cabinet meeting of 2<sup>nd</sup> September 2019. Consultation took place from 3 March to 23 April 2021.

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LIL made representations on the 2023 Regulation 14 consultation of the NP, and the reasons the plan was unsound namely in relation to the Green Space, housing and the proposed site allocation at Bell Garage.

The comments put forward by LIL and the previous challenge to the Neighbourhood Plan have not been acknowledged within this revised Neighbourhood Plan.

The first section of the draft Neighbourhood Plan 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 16<sup>th</sup> December 2022 ('the Judgement').

The background 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 when previously allocated, which 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. For example, the Inspector acknowledged the need for housing in this location and that the provision of housing in close proximity to Bath and Bristol, would have a positive effect in respect of shorter commuting distances, and, as such, positive sustainability implications.

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

These matters are all relevant to the background to the Neighbourhood Plan 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**

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- 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 4: Bell Hill Garage Development Site**

Draft policy 4 of the draft Neighbourhood Plan allocates the Bell Hill Garage for up to 15 homes. It is not a site allocation in the Local Plan.

Firstly, the description for this policy fails to acknowledge the listed buildings in close proximity to the site. This gives an inaccurate representation of the constraints of the site and its suitability for development.

There is a long planning history relating to development on the site, however, only one 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 (ref: 025485/010), and never implemented. In 2013 a larger scheme for 33 units (incorporating development within the rear paddock) (ref: 2013/2217/FUL) was refused. The most recent application (in 2022 for 21 dwellings) (ref: 2021/2928/FUL) included development within the paddock to the rear of the site and incorporated replacement employment floorspace on site. This was refused on 10 March 2023.

Representations made on the Local Plan Reg 16 consultation in April 2019 by Rocke Associates on behalf of the Bell Hill Garage that 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."* Rocke Associates have noted that the only prospect of delivering the site is through the inclusion of the paddock land, however, this has implications as outlined below.

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It is noted that an application has recently been submitted to Somerset Council for the site for 9 dwellings. This is not referenced in the draft Neighbourhood Plan but should be along with the planning history so that a full picture of the planning background for the site is fairly presented.

The planning application for the Bell Hill Garage poses a number of issues and maintains a number of objections. Notably, the 9 units proposed in this application encroaches onto Lyde Green - the Open Area of Local Significance (OALS). This is in fact a designated Open Area of Local Significance (ref: OALSNSP003) under policy DP2 in the adopted Local Plan Core Strategy. Local Plan Part 2 policy DP2 states that permission will not be granted for development which would harm the contribution to distinctive local character made by Open Areas of Local Significance as identified on the Policies Map.

This draft Neighbourhood Plan also notes its significance when stating that that *“Designated OALS (003) and identified as stage 3 Greenspace, the site makes a major contribution to the visual appeal of the conservation area, blending with the surrounding contours. This also applies when looking back towards the village from the north-west. It provides an ideal setting for the surrounding listed buildings, in particular Manor Farm House. It also complements the loose-grained residential character of this corner of the village. The open space can be seen through breaks in the substantial dry stone walls that surround it and from views from the elevated ground to the west and north east across and over the site. A group of trees line the western boundary. The site contributes to the village's rural character and street scene. The openness of the site is a key feature in the historic development of the village, marking a break between the rural character of the lower village and the more densely built upper village.”*

In respect of this description, it is not clear what ‘stage 3 Greenspace’ is, and what relevance it has to this OALS and policy DP2 of LPP1.

A number of objections have been submitted by statutory consultees and this reflects the difficult nature for redeveloping the site. Historic England’s response dated 15<sup>th</sup> November 2023 states that *“The scheme has significantly reduced the number of units but would continue to erode the boundary of the orchard although much reduced from the previous scheme. The council need to be satisfied that there is not a configuration in terms of the layout or arrangement of building that would avoid the incremental erosion of the orchard’s boundary (NPPF, Para 195).”*

Similarly, the LPA’s Conservation Officer’s comments dated 4<sup>th</sup> October 2024 also objects to the scheme stating that *“There are two major concerns with the application, the encroachment into the Old Orchard and the proposed design and materials of the new build elements which have resulted in objections from the conservation team.”*

It should also be noted that Appendix 1 of the draft Neighbourhood Plan allows for the *“Relocation of the garage to a site outside of the village would be supported by the Parish Council subject to the site’s suitability and community support. The site would then be appropriate for a larger development of up to 15 dwellings.”* This 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.’*

Policy DP17 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 re-providing 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, it is impossible to see how the site can realistically accommodate up to 15 dwellings (and predominantly 2 and 3 bedroom homes as set out in the draft Policy 4) when 9 proposed dwellings alone has resulted in negative impacts, objections from statutory consultees, and breaches the policies set out in Development Plan. For the reasons set out above, the site should not be allocated within the draft Neighbourhood Plan. Even were 15 dwellings to be provided on the site, there would be a loss of the employment facility which would be contrary to Local Plan policy DP17.

Allocating the Bell Garage would not meet Condition D as it would not achieve sustainable development.

## **Draft Policy 7: Important Green Space**

A total of 16 “Important Green Spaces” are listed in this draft Neighbourhood Plan. These same locations were identified as “Local Green Space” in the previous draft. LGS designations no longer form part of the Neighbourhood Plan. This policy fails to meet Basic Conditions A and E as follows:

### **1. No Important Green Space Designation in Policy**

The Neighbourhood Plan has taken into account the fact that the previous plan did not accord with national policy on designating green space. The NP has deleted the ‘Local Green Space designations (and associated Appendices) as set out in the table on page 96. However, the Parish Council have simply created their own form of designation title “Important Green Space” replacing the Local Green Space designation, based on NPPF para 106, yet still seeks to protect the green space in the same way.

The “Important Green Space” category has been made up and supposedly based on the Greenspace SPD 2023 and Natural England’s guidance on “Principles of Green Infrastructure” and uses the Open Space SPD and Natural England Policy as justification.

There is no policy justification for specifically designating or protecting Green Spaces that are not designated as Local Green Spaces, OALS, or Green Belt. Paragraphs 101 to 103 of the NPPF only refer

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to “Local Green Spaces”. The Parish Council cannot simply make up a designation to protect green space.

The draft Neighbourhood Plan stipulates that *“A “Greenspace” Supplementary Planning Document was adopted by the former Mendip District Council on 6 February 2023. The SPD provides guidance on the implementation of policies in the adopted Mendip Local Plan Parts I and II relating to the provision and protection of new and existing open space and greenspace.”* The NP contends that the greenspaces sites are “allocated” within this document. This is incorrect. SPD’s cannot allocate sites, as they have not been through examination. Furthermore, the only mention of the spaces in the SPD are in an audit in the back of the document. This is nothing more than an audit; it is not an assessment, and it is not policy.

As set out in the Audit, *“the Council is currently re-mapping greenspaces across Mendip, with a focus on the settlements. The audit updates previous open space studies undertaken in 2008 and 2012 and consolidates and aligns with the assessment work carried out whilst preparing the Local Plan Part 1 and Local Plan Part 2.”*

The NP policy proposed to designate the spaces as set out in the table listing the amendments made following the 2023 Reg 14 Consultation; *“new Policy identifying important green space and describes contribution space makes to village infrastructure, character and appearance. Requires development proposals to take account of designation and justify any conflict.”* Thus, simply retitling it has not change its intention to restrict development in these locations.

In addition, the Natural England guidance provides no basis or justification for the allocations, and it is unclear how the allocation of the spaces would in fact achieve the objectives of that guidance. No explanation is provided.

The approach taken is akin to doing the very thing the PPG warns against: using the designation of Local Green Space as “a back door way to try to achieve that which would amount to a new area of Green Belt by another name” (PPG 015 Reference ID: 37-015-20140306). Whilst this policy relates to LGS the same principle of trying to allocated the sites as a back door applies.

As such there is no policy that protects “Important Green Spaces”, and adopting this would be at odds with the adopted Local Plan and National Policy, this failing to meet Conditions A and E if the designation were to be created.

## **2. The criteria for assessing the Important Green Space**

Without prejudice to the argument that the designation of Important Green Spaces is flawed, there is no merit for designating sites NSP011 (Fortescue Fields West) and NSP013 (Laverton or Mackley Triangle).

Firstly, the LPA have already gone through a statutory process of designating greenspaces that have value (OALS). The process the council went through with the OALS identified the site that were considered to meet the relevant criteria, and did not identify the further sites identified in the Neighbourhood Plan.

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It is contended that they are not demonstrably special to the local community, holding local significance. LIL have repeatedly made it clear that the designation of these sites would offend against the requirement of the NPPF. The site possesses none of the attributes of special significance necessary to merit a Local Green Space designation.

Some areas of NSP offer logical amenity and recreational value such as the Ponds area which also provide a pedestrian and visual connection to the Church and are of value to the Local community. The two sites (and of course the gardens put forward as local important spaces) should not be warranted with the same importance.

## Fortescue Fields West (NSP011)

This is private land onto and across which the public has no right of access, other than via the fenced permissive footpath from Fortescue Street to Church Mead along the land's easternmost boundary. The site does not offer any recreational value to the local community. There is no public or private pedestrian link between the land and Church Mead, and any visual interrelationship between the two is already curtailed by existing trees and hedgerows.

There is a substantial belt of trees on its southern boundary abutting the recent residential development to the south. There is a strong and well-defined tree/hedgerow boundary separating the land from Church Mead to the north, meaning that there is a severely restricted visual relationship between the two.

The description of the site in Appendix 2 of the draft NP also stipulates that *"This area makes a significant contribution to the setting of the Conservation Area and Grade 1 listed George Inn and Grade 2\* Parish Church."* However, this is not the case and should be corrected as set in the in the Heritage Statement submitted for Appeal References E3335/W/24/3338939, APP/E3335/W/24/3337232 & APP/E3335/ W/24/3337357:

- The West Site sits partially within the CA and is located between two recreational open spaces within the village (Church Mead and the Ponds Country Park). The West Site therefore does not form a boundary between the CA and the open countryside. In general terms, as an open space in the setting of the CA, the West Site contributes to its rural setting however, this contribution derives mostly from the mature trees and hedgerow along the northern boundary which for the middle ground of views of the open countryside to the south/ south-west from Church Mead and the garden of the George Inn, rather than the open space itself. The contribution to the CA is also limited because Fortescue Fields form the backdrop to these views.
- The site makes no particular contribution to the setting of the Townsend and Townsend Cottage (Grade II).
- The West Site can only be seen from the terrace of the George Inn and not directly from the High Street. The site therefore does not fall within the setting of this group of buildings.
- The Inspector considered the contribution that the West Site made to the setting of the Church of St Philip and St James (Grade II\*). The Inspector was *"not persuaded that, in absence of any functional link, the appeal site makes anything more than a neutral contribution to the significance of the church"*.

## Laverton or Mackley Triangle (NSP13)

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This is private land onto and across which the public has no right of access and does not provide any recreational value for the Local Community. There is no public or private pedestrian link between the land and Church Mead, and any visual interrelationship between the two is already curtailed by existing trees and hedgerows. There is no merit in designating this land as Important green Space.

Furthermore as set out in Appendix 2 of the draft NP, there are inaccurate descriptions of the site. Firstly, It states that the site is “bounded on 2 of its 3 sides by ancient stone walls and important hedgerow and on the third side by a 15m wide tree belt planted as part of the conditions associated with the permitted development of Fortescue Fields.” However, this is incorrect as there is a poorly established tree belt along the Fortescue Fields boundary in the Laverton Triangle site. There is not ancient stone wall on 2 sides of the site. The Stone wall faces Mackley Lane.

The description also states that “It is an important green corridor leading towards from the open countryside towards the village centre as described in the NP Character Assessment.” However, The site is not within a protected or designated landscape. The site is located at a topographic level consistent with the existing built areas within the settlement. It lies below the high ground occupied by the development at Fortescue Street and rising up to the housing on Frome Road.

To conclude, it is evident that the Neighbourhood Plan’s descriptions of the two sites as ‘Important Green Spaces’ are misleading and not appropriate. It does not meet the requirements the NPPF paragraph 106. It does not meet Conditions A or E.

## **Housing**

The housing numbers reported in the Neighbourhood Plan are based on outdated figures. Mendip’s housing land supply has significantly worsened. The evidence presented at the ongoing joint Appeal (refs: E3335/W/24/3338939, APP/E3335/W/24/3337232 & APP/E3335/ W/24/3337357) demonstrates however that this shortfall is understated. A report prepared by Pegasus Group that supported the planning application calculated the supply at just 2.46 years, with a shortfall of 1,735 homes, a significant shortage by any count. This is agreed in the Statement of Common Ground with the Council.

Paragraph 13.2 of the draft Neighbourhood Plan is 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.

MDLP Part 1 (LPP1) is now more than 5 years old, and the Council cannot currently demonstrate a 5-year housing land supply in accordance with paragraph 76. The Council’s Planning Policy response to the application states a supply of 3.3 years and as of December 2023 this is now stated 3.24 years with a shortfall of 1,201 homes.

This shortfall makes plain that the policies of the adopted LPP1 (2014) were designed to meet a housing requirement that is demonstrably too low to meet housing needs. The Council accepts that it is unable to meet a 5YHLS.

Furthermore, the NP housing policies section starts with *“This minimum figure has already been more than doubled, with 119 completions and permissions at 31 March 2024 (Appendix 5). The PC wishes to have a NP in place which takes account of the residents needs. The NP aims to reflect local concern*

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*that continuing inappropriate development will harm the unique rural and historic character of the Parish.”*

Appendix 4 of the draft Neighbourhood Plan sets out the House Price Data as taken supposedly from Zoopla and Rightmove between n1 January 2022 and 31<sup>st</sup> December 2023 Paragraph 14.11 further states that *“Eight of the 119 permissions to date in the Plan period have been for affordable housing.”* There is clearly a need for more affordable housing in Norton St Philip, which can be delivered on sites around NSP where they comply with other policies of the Local Plan.

The only site allocated for development is the Bell Hill Garage (and even this does not offer affordable housing as part of the extant application). 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 there is a significant housing shortfall. 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.

## **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.

## **Summary**

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.

We support the approach that Green Spaces should not be designated as a back door way to try to achieve that which would amount to a new area of Green Belt by another name, and they should be designated only where they are demonstrably special to the local community. If not, Lochailort will challenge where necessary.

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

Yours sincerely

**Sarah Ballantyne-Way**  
**Planning Director**