

# LOCHAILORT INVESTMENTS LIMITED



Norton St Philip  
c/o Nicola Duke  
81 Studland Park  
Westbury  
Wiltshire  
BA13 3HN

17<sup>th</sup> January 2025

Dear Sirs


## **Representations: Draft *Norton St Philip Neighbourhood Plan 2024* Regulation 16 consultation**

Thank you for notifying us of your 2024 Regulation 16 consultation on the draft Norton St Philip Neighbourhood Plan (NSP NP) (including supporting documents). Having reviewed the draft Plan, we would be grateful if the following representations are taken into account.

Please note that Lochailort Investments Ltd, who are the owner of land in Norton St Philip and who are affected by the NSP NP, have commented on all previous iterations of the NSP NP and that this response should be read in conjunction with our previous representations.

### **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.
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The representations made in this letter are necessarily restricted to a review of the compliance with basic conditions of the draft policy being considered, and the draft plan as a whole, and whether the basic conditions have been met, and whether additional information is required.

## Whether the plan as a whole meets the basic conditions

Paragraph 13 of the NPPF sets out that Neighbourhood Plans, *'should support the delivery strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside these strategic policies.'*

Paragraph 69 of the NPPF sets out that strategic policy making authorities should establish a housing requirement figure for their whole area which shows the extent to which their identified housing need can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re-testing at the neighbourhood plan examination, ***unless there has been a significant change in circumstances that affects the requirement.***

Paragraph 70 of the NPPF states,

*Where it is not possible to provide a requirement figure for a neighbourhood area [see footnote 33], the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.*

Footnote 33 sets out:

*Because a neighbourhood area is designated at a late stage in the strategic policy-making process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date.*

The NSP NP relies on the adopted Local Plan for the district in respect of housing requirements, in particular Policies CP1 and CP2 of the Mendip District Local Plan Part 1 (LPP1) (2014)2029. Part 2 (c) (i) of Policy CP2 of LPP1 identifies NSP as having a minimum requirement of an additional 45 dwellings during the Plan period to 2029. Completions and commitments currently total 119 dwellings.

Mendip District Local Plan Part 1 is more than 5 years old and therefore the Plan as a whole, including its strategic policies, are out of date (NPPF para. 34).

It is also well established that the former Mendip District Council cannot demonstrate a five year housing land supply. This position has worsened following the publication of the NPPF (2024) and is now considered to be between 1.54 years and 1.94 years. This is set out in detail in the accompanying report on housing land supply prepared by Pegasus (Appendix 1). As a result, for this further reason the housing requirement set out in LPP1 and its strategic policies (including those for housing) are out of date.

Additionally, and importantly, the housing requirement set out in LPP1 no longer reflects the housing needs of Mendip District following the revisions (including to the standard method for calculation of the minimum number of homes) introduced by the NPPF in December 2024. LPP1 currently includes a housing requirement of 420 per annum; the standard method require 569 new homes per annum to be delivered in the District. It follows therefore that the housing requirement for Norton St Philip

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as set out in LPP1 is also now manifestly out of date. Yet it is this requirement that the NSP NP seek to reflect and provide for. To do this is fundamentally flawed. The NSP NP is therefore basing its development requirements on out of date strategic housing policies and an out of date housing requirement (for the District and for Norton St Philip itself). The housing requirement included in the NSP NP and indeed its strategic derivation significantly underestimates the housing requirements of the former Mendip District and therefore does not adequately plan for the housing needs of the NP area going forward. Paragraph 69 is clear that adopted strategic policies apply, *'unless there has been a significant change in circumstances that affects the requirement.'* It is undeniable that this is the case here.

Paragraph 70 sets out that where strategic policies for housing are out of date, as is the case here, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body, and that this indicative figure should take into account factors including latest evidence of local housing needs and the population of the neighbourhood area. No such request appears to have been made and certainly no indicative figure which reflects up to date housing need has been provided nor is it reflected in the NSP NP. This is a fundamental failing of the NSP NP.

Evidence of the pressing local need is set out in Appendix 1 as outlined above, Appendix 2 which comprises the Housing Statement of Common Ground agreed with Somerset Council in relation to LIL's recent appeals in Norton St Philip<sup>1</sup> and at Appendix 3 which comprises a confirmation that as of 14 June 2024, 34 people were registered as being in need of affordable housing in Norton St Philip. This evidence all points to the desperate need for housing locally, which has rendered the LPP1 out of date, and which the NSP NP fails to acknowledge let alone address.

The current NSP NP does not accord in particular with paras.69-70 of the NPPF and has not followed the clear and unequivocal policy instructions provided for by those paragraphs of national policy. We address the consequences of this failing by reference to the Basic Conditions below.

## **Basic Conditions**

Basic conditions a, d and e (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) set out:

- a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).
- d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
- e. the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

In failing to properly have regard to, let alone accord with, NPPF paras. 69 and 70 in and of itself gives rise to a fundamental failure to meet Basic Condition (a). Were the NSP NP to proceed notwithstanding

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<sup>1</sup>

2023/06444/FUL, 2023/0643/FUL, 2023/0640/FUL  
APP/E3335/W/24/3337357, 3338939 and 3337232



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this would be unlawful and would be liable to (and would become) the subject of legal challenge and would be quashed.

Moreover, and as a consequence, the failure of the NSP NP to acknowledge and seeks to contribute to addressing the severe housing shortage in the district is such that basic conditions a, d and e are clearly not met for this additional reason. It is wholly remiss of the PC not to request an indicative figure for housing supply from the LPA, and to update the requirement for 45 dwellings as set out in CP1 of LPP1, and its failure to do so undermines the entire content and legality of the plan.

In respect of a, the plan fails to properly have regard to or meet the requirements as set out in the NPPF (2024), in particular those relating to meeting housing need. In failing to plan for adequate housing development to meet the needs of the neighbourhood area, the plan fails to meet the requirements of Paragraph 11 of the NPPF which requires that plans apply a presumption in favour of sustainable development including that all plans promote sustainable patterns of development that meet the development needs of the area and as a minimum provide for objectively assessed needs for housing.

Paragraph 11 goes to the very heart of the NPPF and in failing to address the housing shortfall, the NSP NP cannot properly meet the future needs of the neighbourhood area, and thus fails condition a.

Basic condition d requires that the plan contributes to the achievement of sustainable development. Basic condition e requires the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).

As set out above, the plan fails to address the housing needs of the neighbourhood area and relies on out of date housing policies in the LPP1. In this context, the detailed plans of the NSP are too restrictive and will prevent the delivery of development that meets the needs of the neighbourhood area, thereby failing to deliver sustainable development, and basic condition d. Basic condition e relates to strategic policies in the development plan. These are out of date and should not be relied upon by the NSP NP.

## **Policy 2 – Development within the Rural Areas beyond the Defined Settlement Boundary.**

This policy restricts development outside of the development boundary and Green Belt unless such proposals satisfy the requirements of the policies in the NSP NP and adopted Mendip Local Plan.

This policy does not align with Policy CP1 of the LPP1 where part 3 sets out:

*In identifying land for development the Local Plan's emphasis is on maximising the re-use of appropriate previously developed sites and other land within existing settlement limits as defined on the Policies Map, and then at the most sustainable locations on the edge of the identified settlements. Any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.*

The NSP NP does not set out the sequential approach as outlined in CP1 above and acknowledge that development can be appropriate on the most sustainable locations at the edge of settlements. As such, it fails basic condition e.

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## **Policy 7 – Important Green Space**

A total of 16 “Important Green Spaces” are listed in this Neighbourhood Plan. These same locations were identified as “Local Green Spaces” in the previous draft. LGS designations no longer form part of the Neighbourhood Plan.

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) and simply replaced this with their own, made up form of designation title “Important Green Space”.

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 to “Local Green Spaces”. The Parish Council cannot simply make up a designation because it recognises now that the identification of Local Green Spaces was unlawful.

The NSP NP refers to the “Greenspace” Supplementary Planning Document was adopted by the former Mendip District Council on 6 February 2023 and effectively designates the green spaces that are identified in an audit at the back of the document as ‘Important Green Spaces’. This document has not been through examination, and the greenspaces are simply a list of spaces with no assessment or methodology provided. It does not provide any meaningful evidence base to support what the Parish Council now seek to introduce.

There are no national or strategic policies that protect “Important Green Spaces”, and adopting this would be at odds with the adopted Local Plan and National Policy.

Moreover, the failure of the NSP NP to address current housing need means that it is entirely premature to introduce protective policies without consider the extent to which land and sites sought to be made the subject of protection are required to meet housing need. The fact that the Parish Council has not even sought an indicative figure of the current housing requirement for Norton St Philip and is instead relying on a figure derived from an out of date Local Plan and one which is far removed from the reality of the housing requirement for the area (and Norton St Philip itself) derived from the current NPPF serves to underlie this flaw.

Without prejudice to the argument that the designation of Important Green Spaces is fundamentally wrong, there is no merit for designating sites NSP011 (Fortescue Fields West) and NSP013 (Laverton or Mackley Triangle). An assessment of these spaces is provided at Appendix 4.

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 sites that were considered to meet the relevant criteria, and did not identify NSP011 (Fortescue Fields West) and NSP013 (Laverton or Mackley Triangle), or any of the other sites identified in the Neighbourhood Plan (not already OALS).

This confirms that these sites are not demonstrably special to the local community, and do not hold local significance. LIL have repeatedly made it clear that the designation of these sites would offend

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against the requirement of the NPPF. The sites possess none of the attributes of special significance necessary to merit any designation, let alone an arbitrary and made up one.

It would appear that this allocation, particularly with reference to NSP011 and NSP013, has been incorporated for improper reasons in order to resist development of these locations. This is at odds with basic condition a) and the national requirement for sustainable development in respect of meeting the development needs of an area.

Furthermore, the approach taken is akin to doing the very thing the PPG warns against i.e. 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 the made up allocation of ‘Important Green Space’ the same principle of trying to allocate the sites as a back door method of restricting development applies.

This again goes to the heart of whether the NSP NP is sustainable in that it is actively seeking to restrict development in the neighbourhood plan area, when it is plain that such development is desperately needed. The Parish Council is seeking to introduce through the “back door” the equivalent to a Local Green Space policy which, as history records, led to the failure of the NP last time around, and it is doing so for an improper purpose. This too gives rise to a fundamental legal objection to the NP proceeding.

## **Policy 3: Housing Development**

This policy restricts new housing development in the Plan area unless the proposals comply with all other relevant policies in this Plan and the adopted Mendip Local Plan.

Policies 2 and 7 as outlined above, restrict the locations of new development. As such, the policies restrict the ability of the NSP NP to deliver the development needs of the area and both fail basic conditions a, d and e. It therefore follows that policy 3 will fail to deliver the development needed by the local community, thereby failing to meet conditions a, d and e.

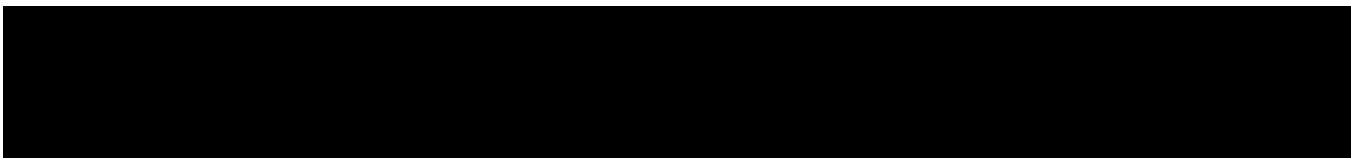
## **Conclusion**

In failing to properly acknowledge and address the fact that the strategic policies for housing are out of date, the NSP NP is fundamentally flawed. It is not simply that this is an unsustainable position that effectively seeks to prevent the development that is needed by the neighbourhood plan area, but that it risks the Neighbourhood Plan becoming a redundant document.

Moreover, paragraph 14 of the NPPF makes clear that in situations where the presumption (at paragraph 11d) applies to applications involve the provision of housing, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

- a) The neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
- b) The neighbourhood plan contains policies and allocation meet its identified housing requirement (see paragraph 69 – 70).

Therefore, for the tilted balance to NOT apply to applications, the NP must be both less than 5 years old AND be able to meet its identified housing requirement.



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As set out above, paragraph 69 is clear that adopted strategic policies apply in the context of neighbourhood plans, '***unless there has been a significant change in circumstances that affects the requirement***'. This is undeniably the case here not least since Somerset Council cannot demonstrate a 5 year housing land supply particularly when considered against the standard method as introduced by the NPPF (December 2024). NPPF paragraph 70 (and Fn 33) make provision for what should occur when, as here, strategic policies of housing are out of date. The NSP NP body has not, as far we LIL are aware, requested such a figure and its failure to do so and to prepare its NP accordingly renders the NSP NP unlawful.

Lastly, it is important to note that LIL is awaiting decisions on appeal references: APP/E3335/W/24/3337357, 3338939 and 3337232. Should the appeals be allowed, and without prejudice to our fundamental objection to these points, the proposed Important Green Space allocations NSP011 and NSP013 would need to be removed.

## Summary

We are grateful for the opportunity to make these representations, which we trust will be fully taken into account 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



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

CC. Andre Sestini – Somerset Local Plans

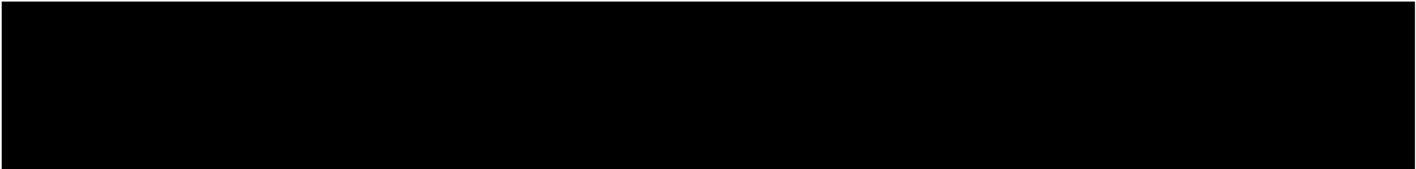
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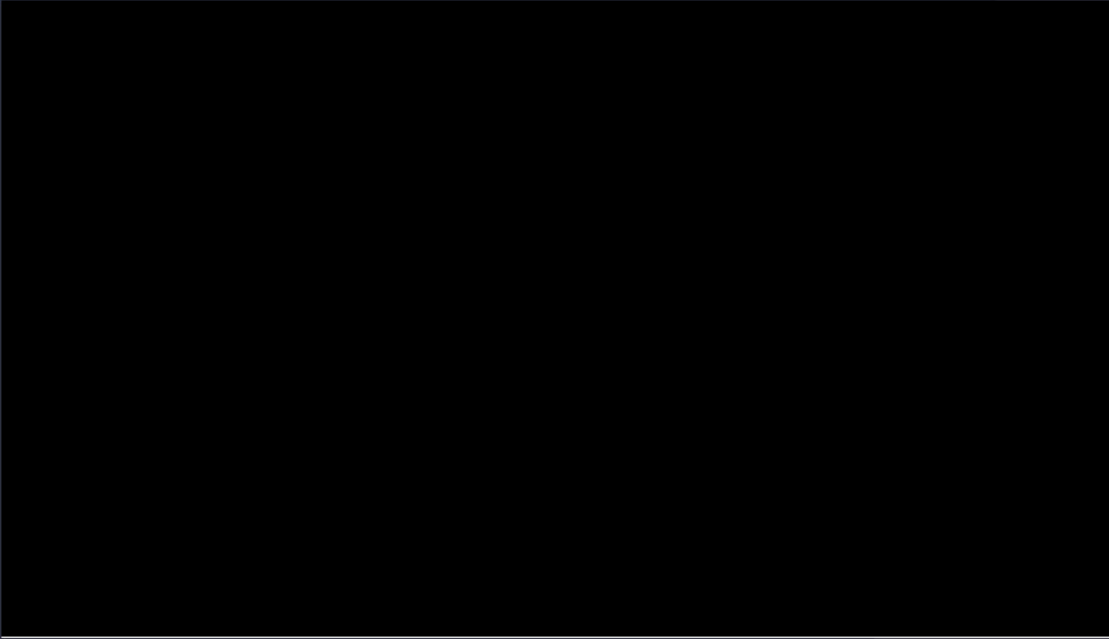
Appendix 1 – Pegasus Housing Supply Report

Appendix 2 – Housing Statement of Common Ground

Appendix 3 – Housing Need in Norton St Philip

Appendix 4 – Assessment of NSP011 (Fortescue Fields West) and NSP013 (Laverton or Mackley Triangle)









**Document Management.**

Version	Date	Author	Checked/ Approved by:	Reason for revision
ROO5v1	18/12/2024	NT	NT	

# **1. Introduction**

- 1.1. On 12<sup>th</sup> December 2024, national policy changed through the publication of a new iteration of the NPPF, new sections of the PPG and new HDT results, which represent newly arising material considerations which will be relevant to the determination of this appeal.
- 1.2. The following Statement briefly addresses the implications of these newly arising material considerations insofar as the need and supply of housing is concerned.

## 2. The new NPPF

### Paragraph 232

- 2.1. As set out in paragraphs 5.1 to 5.8 of the Hearing Statement on Housing Need and Supply submitted on behalf of the Appellant, the adopted housing requirement provided for significantly fewer homes than were needed as a minimum by the former standard method. Indeed, the adopted housing requirement provided for 324 homes per annum from 2023 onwards, whereas the standard method identified a minimum local housing need for 569 homes per annum.
- 2.2. A revised standard method has now been introduced to support the Government's objective to significantly boost the supply of housing. The new standard method is set out in the PPG (2a-004). For Mendip, this produces a minimum local housing for 906 homes per annum as calculated in Table 2.1 below.

**Table 2.1 – the minimum local housing need for Mendip**

<b>Step 1</b>	
Existing dwelling stock (Live Table 125)	54372
0.8% growth per annum	435
<b>Step 2</b>	
Median affordability ratio 2019	10.94
Median affordability ratio 2020	9.66
Median affordability ratio 2021	11.09
Median affordability ratio 2022	10.69
Median affordability ratio 2023	11.13
Average affordability ratio 2019-23	10.70
Affordability adjustment	2.08
<b>Minimum local housing need</b>	<b>906</b>

- 2.3. Accordingly, whilst it was always the case that there was a need for significantly more homes than provided for by the adopted Development Plan, the insufficiencies of the adopted Development Plan in providing for sustainable development are now even more pronounced, as this provides for only 324 homes per annum in response to the minimum need for 906 homes per annum.
- 2.4. Paragraph 232 of the new NPPF explains that policies should not be regarded as being out-of-date on the basis that there is a greater need for housing than provided for by the Development Plan if the Development Plan was adopted in the last five-years. The clear

negative corollary of this is that the policies should be regarded as being out-of-date where Development Plans do not meet the minimum housing need and have not been updated to do so within the last five years as required by paragraph 34 of the NPPF.

- 2.5. Accordingly, the relevant policies of the Development Plan in Mendip are out-of-date regardless of other considerations, owing to the fact that they do not meet the housing needs of present and future generations and therefore provide for sustainable development in accordance with paragraphs 7 and 8 of the NPPF and have not been updated within five-years to do so.

### Paragraph 78

- 2.6. Paragraph 78 of the NPPF retains the requirement to demonstrate a minimum five-year land supply against the minimum local housing need of the standard method. However, the respective housing land supply positions will have changed both as a result of the revised minimum local housing need and the requirement of paragraph 78 to apply a buffer.
- 2.7. As set out above, the revised standard method provides for a minimum local housing need for 906 homes per annum in Mendip, which equates to a minimum need for 4,530 homes within five years.
- 2.8. The recently published 2023 HDT results identify that only 79% of the minimum number of homes required have been delivered in Mendip, which represents a record of significant under-delivery according to paragraph 78b and footnote 40 of the NPPF, and which necessitates the application of a 20% buffer.
- 2.9. There is therefore a minimum requirement for 5,436 homes within five-years as calculated in Table 2.2 below.

**Table 2.2 – the five-year requirement**

Minimum local housing need per annum	906
Minimum local housing need for 5 years	4,530
20% buffer	906
<b>Minimum five-year requirement</b>	<b>5,436</b>

- 2.10. As set out in paragraphs 3.2 and 3.3 of the Statement of Common Ground on Housing Supply, which was agreed on 2<sup>nd</sup> July 2024, the respective positions were that there was a deliverable supply of 1,679 and 2,113 homes.

- 2.11. Based on this supply, the respective housing land supply positions presented in the Statement of Common Ground are updated to accord with current national policy in Table 2.3 below.

**Table 2.3 – the five-year requirement**

Minimum five-year requirement	5,436	5,436
Deliverable supply	2,113	1,679
<b>No. of years supply</b>	<b>1.94</b>	<b>1.54</b>
<b>Surplus/shortfall</b>	<b>-3,323</b>	<b>-3,757</b>

- 2.12. It is therefore evident that the housing land supply position has materially worsened from:
- i. The 3.09 year land supply with a shortfall of 1,301 homes identified by the LPA in paragraph 2.29 of the agreed Statement of Common Ground to a 1.94 year land supply with a shortfall of 3,323 homes.
  - ii. The 2.46 year land supply with a shortfall of 1,735 homes identified by the Appellant in paragraph 2.29 of the agreed Statement of Common Ground to a 1.54 year land supply with a shortfall of 3,757 homes.
- 2.13. The LPA and the Appellant had agreed in paragraph 2.31 of the Statement of Common Ground that the previous shortfalls were very significant, but these have materially increased in the interim.

#### **Paragraph 11d**

- 2.14. It remains the case that paragraph 11d of the NPPF is engaged through footnote 8. However, it is also now engaged through paragraph 232 of the NPPF, albeit it is not necessary to engage paragraph 11d for more than one reason.
- 2.15. When applying paragraph 11d, it will now need to be recognised that the policies of the Development Plan have been even less effective in meeting housing needs and providing for sustainable development than was the case at the time the appeal sat, such that any conflict with these policies would be expected to be afforded even less weight. Similarly, there is now a demonstrably substantially greater need for housing, such that it would be expected that the weight afforded to the provision of housing proposed would increase accordingly.



Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004



STATEMENT OF COMMON GROUND ON  
HOUSING SUPPLY

SECTION 78 APPEAL BY LOCHAILORT INVESTMENTS LTD

FORTESCUE FIELDS, NORTON ST PHILIP

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
PLANNING AND COMPULSORY PURCHASE ACT 2004

LPA REF: 2023/06444/FUL, 2023/0643/FUL, 2023/0640/FUL  
APPELLANT REF: P23-0057  
PINS REF: APP/E3335/W/24/3337357, 3338939 and 3337232  
Date: June 2024

<b>On behalf of:</b> Mendip Council (the Local Planning Authority)	<b>On behalf of:</b> Pegasus Group (acting on behalf of the Appellant)
<b>Date:</b> 27 <sup>th</sup> June 2024	<b>Date:</b> 2 <sup>nd</sup> July 2024





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**1. INTRODUCTION**

- 1.1 This Statement of Common Ground (SoCG) on housing supply has been prepared by Pegasus Group and on behalf of Lochailort Investments Ltd (“the Appellant”) in conjunction with Mendip Council (“the LPA”).
- 1.2 It relates to 3 planning appeals made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of three proposed developments at Norton St Philip.
- 1.3 The purpose of the SoCG is to identify the areas where the principal parties (the Appellant and the LPA) are in agreement and to narrow down the issues that remain in dispute. This will allow the Hearing to focus on the most pertinent issues.

## **2. MATTERS NOT IN DISPUTE**

- 2.1 This section sets out the matters that are not in dispute between the Appellant and the LPA.

### **The period of assessment**

- 2.2 The latest five-year housing land supply assessment of the LPA was published in November 2023 and considers the position for the period 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2028.
- 2.3 It is agreed that it is appropriate to consider the five-year land supply over this period for the purposes of this appeal.

### **Paragraph 76 of the NPPF**

- 2.4 The applications subject to these appeals were submitted prior to the publication of the current NPPF.
- 2.5 Accordingly, paragraph 76 of the NPPF is not engaged for the purposes of these appeals as set out in paragraph 224 and footnote 79 of the NPPF.

### **Paragraph 226 of the NPPF**

- 2.6 There is not an emerging Local Plan which has either been submitted for examination or reached Regulation 18 or 19 stage.
- 2.7 Accordingly, paragraph 226 of the NPPF is not engaged for the purposes of these appeals.

### **Paragraph 77 of the NPPF**

- 2.8 The adopted Local Plan is more than five-years old. Rather than progress the previously intended full review of the Mendip Local Plan the LPA now intends to prepare a Somerset wide Local Plan following establishment of a new unitary authority on 1<sup>st</sup> April 2023.
- 2.9 In light of the above, paragraph 77 and footnote 42 of the NPPF require that the LPA identifies a supply of sufficient deliverable sites sufficient to provide a minimum of five years' worth of housing against the minimum local housing need of the standard method.

**The Housing Delivery Test**

- 2.10 The latest Housing Delivery Test result for Mendip identifies that 76% of the minimum number of homes required have been delivered over the three year period 2019-22.
- 2.11 Where there has been such a significant under delivery of housing, paragraph 77 of the NPPF requires that a 20% buffer is applied.

**The five-year requirement**

- 2.12 The standard method identifies a minimum local housing need for 569 homes per annum over the period 2023-28.
- 2.13 With the additional 20% buffer, this provides for a minimum requirement for 682.8 homes per annum or 3,414 homes over the five-year period.

**The definition of a deliverable site**

- 2.14 In order to be considered deliverable, a site must be available now, offer a suitable location for development now and have a realistic prospect of delivery.
- 2.15 Providing these conditions are met, Category A sites namely those which do not involve major development and have planning permission and all sites with detailed planning permission, should be considered deliverable until planning permission expires, unless there is clear evidence that homes will not be delivered within five years.
- 2.16 Category B sites namely those with outline planning permission for major development, sites which are allocated for development, sites with a grant of permission in principle and sites identified on a brownfield register, should however only be considered deliverable where there is clear evidence that housing completions will be achieved within five years.
- 2.17 In accordance with the consistent findings of s78 Inspectors and the Secretary of State, sites which post-date the base-date should not be included in the deliverable supply in the absence of a comprehensive review of the housing land supply position. Both parties agree that evidence which has arisen subsequent to the base-date can and should be taken into account
- 2.18 Where a site has an undetermined planning application which is subject to unresolved objections, there would need to be significant site-specific evidence that

these objections will be resolved and in sufficient time to allow delivery within five years, for the site to be considered deliverable as set out in the *Wainhomes Judgment*.

- 2.19 Where a site is subject to a resolution to grant planning permission but there are outstanding issues of the need for legal agreements, it should not be considered deliverable as set out by the Secretary of State in the *Winsford appeal decision*. The Council.
- 2.20 As set out by the Secretary of State in the *Stapeley appeal decision*, it would be expected that as a minimum a site would be expected to be subject to an application for detailed consent or there would need to be written evidence from the site promoters to provide clear evidence that completions will be achieved within five years.
- 2.21 When considering the deliverability of sites, it is appropriate to take account of the latest evidence as set out by the Secretary of State in the *Woburn Sands appeal decision*.

**Small permitted sites (in Category A)**

- 2.22 The LPA has not identified the specific small sites with planning permission which contribute 436 homes to the deliverable supply of the LPA contrary to the requirements of paragraph 77 of the NPPF.
- 2.23 Notwithstanding this and given the position that arises even with all of these included in the deliverable supply, the Appellant does not contest a contribution of 436 homes from this source for the purposes of this appeal.

**Other sites with detailed planning permission (in Category A)**

- 2.24 It is agreed that these sites contribute 643 homes to the deliverable supply.

**Sites with outline planning permission for major development (in Category B)**

- 2.25 The deliverability of two sites in this group is contested, namely those at Land off Anchor Road in Coleford and Land south of Fairbanks in Stoke St Michael. It is agreed that the remaining 341 homes arising from other sites are deliverable.

**Sites allocated in the Development Plan (in Category B)**

- 2.26 The deliverability of two sites in this group is contested, namely those at Land west of Somerton Road in Street and Land south of Elm Close in Wells. It is agreed that the remaining 109 homes arising from uncontested sites are deliverable.

**Sites identified on the Brownfield Land Register (in Category B)**

- 2.27 The deliverability of the only site in this group namely at North Parade in Frome is contested.

**Sites outside of Category A or B**

- 2.28 The LPA include 4 unallocated sites which gained planning permission after the base-date. The deliverability of all of these is contested.

**The housing land supply position**

- 2.29 The LPA identifies a 3.09 year land supply with a shortfall of 1,301 homes whereas the Appellant identifies a 2.46 year land supply with a shortfall of 1,735 homes. It is agreed that on either basis:
- i. The LPA is unable to demonstrate a minimum five-year land supply as expected by paragraph 77 of the NPPF.
  - ii. The most important policies for determining this appeal are out-of-date as set out in footnote 8 and paragraph 11d of the NPPF.
  - iii. Planning permission should be granted unless either footnote 7 policies provide a clear reason for refusal or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 2.30 As set out in the *Hallam Land Judgement*, the broad magnitude of the shortfall and the length of time this is likely to persist will be material to the weight afforded to relevant policies and to the provision of housing.
- 2.31 On the basis of either a 2.46 year land supply with a shortfall of 1,735 homes and a 3.09 year land supply with a shortfall of 1,301 homes it is agreed that there is a very significant shortfall.
- 2.32 It is also agreed that a minimum five-year land supply is unlikely to be restored in the near future whilst the policies of the adopted Development Plan remain in place.

- 2.33 In light of the above, the parties do not consider that it is necessary to narrow the extent of the shortfall and that the appeal can proceed on the basis of a range of between a 2.46 year land supply with a shortfall of 1,735 homes and a 3.09 year land supply with a shortfall of 1,301 homes.



**3. MATTERS IN DISPUTE/**

- 3.1 This section sets out the matters that are in dispute between the Appellant and the LPA.

**The deliverable supply**

- 3.2 The LPA considers that there is a deliverable supply of 2,113 homes.
- 3.3 The Appellant consider that there is a deliverable supply of 1,679 homes.
- 3.4 The respective positions of either party on these sites are set out in the following Scott Schedule.

**Statement of Common Ground  
Fortescue Fields, Norton St Philip**

Site	Supply of the LPA	Comments	Supply of the Appellant	Comments
<b>Sites with outline planning permission for major development (in Category B)</b>				
Land off Anchor Road, Coleford	63	<p>The Council dispute the discounting of this scheme from the five year supply. The site is being marketed to housebuilders.</p> <p>The Council has also confirmed that this site is formally allocated for housing development in the Local Plan Part II limited update publication document. A SoCG with agreement on delivery with the developer will be included with evidence on submission for examination.</p>	0	<ul style="list-style-type: none"> <li>• Outline planning permission granted on appeal in October 2021.</li> <li>• No applications for the approval of reserved matters or to discharge conditions subsequently submitted.</li> <li>• No evidence whatsoever to demonstrate that completions will be achieved within five years.</li> <li>• In this context, should not be considered deliverable as set out by the Secretary of State in paragraph 21 of the <i>Stapeley appeal decision</i> (CD4.27).</li> </ul>
Land south of Fairbanks, Stoke St Michael	47	<p>The Council dispute the discounting of this scheme from the five year supply. While there is further time for reserved matters to be submitted, estimates for delivery within five years are reasonable. There is no evidence the scheme will not come forward.</p> <p>The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment. The technical discounting of sites already started does not add to the credibility of the exercise.</p>	0	<ul style="list-style-type: none"> <li>• Outline planning permission granted on appeal in October 2023.</li> <li>• No applications for the approval of reserved matters or to discharge conditions subsequently submitted.</li> <li>• No evidence whatsoever to demonstrate that completions will be achieved within five years.</li> <li>• In this context, should not be considered deliverable as set out by the Secretary of State in paragraph 21 of the <i>Stapeley appeal decision</i> (CD4.27).</li> </ul>

**Statement of Common Ground  
Fortescue Fields, Norton St Philip**

Site	Supply of the LPA	Comments	Supply of the Appellant	Comments
<b>Sites allocated in the Development Plan (in Category B)</b>				
Land west of Somerton Road, Street	100	The Council dispute the discounting of this scheme from the five year supply. The scheme is being promoted by a housebuilder (Curo) and the only major housing site coming forward in the settlement. The council consider the extent of technical to be addressed in reserved matters will not delay delivery. Phosphate mitigation is agreed. It is noted that the 2023 trajectory estimates implementation in 2025-26. This is agreed to be optimistic and discount of 40 dwellings (100 units in five years) would allow for additional time.	0	<ul style="list-style-type: none"> <li>Application for the approval of reserved matters submitted in December 2023 remains undetermined and subject to objections including on discharge rates, ecological grounds and the need for an HRA.</li> <li>No significant site-specific evidence has been provided to demonstrate that these will be resolved as required by paragraph 34iv of the <i>Wainhomes Judgment</i> (CD4.37).</li> <li>Also no evidence to demonstrate that completions will be achieved within five years even if these objections are resolved.</li> <li>Even if the necessary evidence was available, the trajectory of the LPA would remain unrealistic, as it relies upon the first completion being achieved within c.9 months, when according to the Start to Finish report this takes over 3 years on average.</li> </ul>
Land south of Elm Close, Wells	50	The Council dispute the discounting of this scheme from the five year supply. The council is not aware of any matters apart from legal delays in completing the s106. The published assessment with the trajectory is agreed to be optimistic and discount of 50 dwellings would be more realistic.	0	<ul style="list-style-type: none"> <li>Undetermined outline planning application which the LPA resolved to permit in December 2023 subject to a legal agreement.</li> <li>There is no clear evidence that such an agreement will be reached as per the Secretary of State's position in paragraph 18 of the <i>Winsford appeal decision</i> (CD4.24).</li> <li>The trajectory relied upon the LPA was informed by the site promoters' suggestion that outline planning permission would be granted in mid-2023, which was not achieved, and in such circumstances the Secretary of State has set out that there is not the clear evidence to consider such sites deliverable in paragraph 21 of the <i>Stapeley appeal decision</i> (CD4.27).</li> <li>In light of the above, the trajectory of the LPA is unrealistic.</li> </ul>

**Statement of Common Ground  
Fortescue Fields, Norton St Philip**

Site	Supply of the LPA	Comments	Supply of the Appellant	Comments
<b>Sites identified on the brownfield land register (in Category B)</b>				
North Parade, Frome	18	<p>The Council dispute the discounting of this scheme from the five year supply. This is a proposal where the council is working with an affordable housing provider and making use of public land. The current position is that only additional habitat surveys are required before reporting positively to committee. Other technical matters have been resolved.</p> <p>The Council has also confirmed that this site is formally allocated for housing development in the Local Plan Part II limited update publication document. A SoCG with agreement on delivery with the developer will be included with the evidence on submission for examination.</p> <p>The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment.</p>	0	<ul style="list-style-type: none"> <li>Undetermined full planning application submitted in April 2023 remains undetermined and subject to objections.</li> <li>No significant site-specific evidence has been provided to demonstrate that these will be resolved as required by paragraph 34iv of the <i>Wainhomes Judgment</i> (CD4.37).</li> <li>No evidence whatsoever to demonstrate that completions will be achieved within five years.</li> </ul>
<b>Sites outside of Category A or B</b>				
Land south of Cherrytrees Stonewater, Frome	24	<p>The Council dispute the discounting of this scheme from the five year supply. The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment. The technical discounting of sites already started does not add to the credibility of the exercise.</p>	0	<ul style="list-style-type: none"> <li>This unallocated site gained full planning permission after the base-date in March 2024.</li> <li>As set out in the consistent findings of every appeal decision of which I am aware, of which there are very many, such sites which post-date the base-date cannot be included in the deliverable supply as this would provide for an unbalanced assessment – see for example the Farleigh Fields (CD4.23), Windacres Farm (CD4.30), Bakers Lane (CD4.31), Woolmer Green (CD4.32), Woolpit (CD4.33), and Bures Hamlet (CD4.34) appeal decisions.</li> </ul>

**Statement of Common Ground  
Fortescue Fields, Norton St Philip**

Site	Supply of the LPA	Comments	Supply of the Appellant	Comments
Land off Adderwell Road, Frome	25	<p>The Council dispute the discounting of this scheme from the five year supply. The site is under construction and expected to deliver homes in the current year (2024-25).</p> <p>The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment. The technical discounting of sites already started does not add to the credibility of the exercise.</p>	0	<ul style="list-style-type: none"> <li>This unallocated site gained full planning permission after the base-date in November 2023.</li> <li>As set out in the consistent findings of every appeal decision of which I am aware, of which there are very many, such sites which post-date the base-date cannot be included in the deliverable supply as this would provide for an unbalanced assessment – see for example the Farleigh Fields (CD4.23), Windacres Farm (CD4.30), Bakers Lane (CD4.31), Woolmer Green (CD4.32), Woolpit (CD4.33), and Bures Hamlet (CD4.34) appeal decisions.</li> </ul>
Land at Lowerside Lane/Common Moor Drive, Glastonbury	60	<p>The Council dispute the discounting of this scheme from the five year supply. A pre-application from a National housebuilder been submitted for reserved matters to on 6<sup>th</sup> June 2024. This is within the timescales set out in the outline permission and considered sufficient evidence that the site is being progressed and estimates of delivery are reasonable. The pre-application is based on the outline layout to provide 90 dwellings.</p> <p>The Council has also confirmed that this site is formally allocated for housing development in the Local Plan Part II limited update publication document. A SoCG with agreement on delivery with the developer will be included with evidence on submission for examination.</p>	0	<ul style="list-style-type: none"> <li>This unallocated site gained outline planning permission on appeal after the base-date in May 2023.</li> <li>As set out in the consistent findings of every appeal decision of which I am aware, of which there are very many, such sites which post-date the base-date cannot be included in the deliverable supply as this would provide for an unbalanced assessment – see for example the Farleigh Fields (CD4.23), Windacres Farm (CD4.30), Bakers Lane (CD4.31), Woolmer Green (CD4.32), Woolpit (CD4.33), and Bures Hamlet (CD4.34) appeal decisions.</li> <li>There have also been no applications for the approval of reserved matters or to discharge conditions subsequently submitted.</li> <li>No evidence whatsoever to demonstrate that completions will be achieved within five years.</li> </ul>



**Statement of Common Ground  
Fortescue Fields, Norton St Philip**

		<p>The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment. This is important given that housing supply in the former Mendip district is being assessed in terms of a shortfall position. In addition the practice of a strict imposition of a base date does not suit local circumstances where mitigation solutions for nutrient neutrality have seen significant change. The supply characteristics of other land supply appeals in other local authorities cannot be considered definitive.</p>		
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Site	Supply of the LPA	Comments	Supply of the Appellant	Comments
Wells Police Station, Wells	47	<p>The Council dispute the discounting of this scheme from the five year supply. Two implementable permissions have been granted on the site and there are no viability constraints. Marketing and registrations of interest are being taken on this development. The Council do not agree that inclusion of up to date information which is material to the certainty of supply would result in an unbalanced assessment.</p> <p>The Council has also confirmed that this site is formally allocated for housing development in the Local Plan Part II limited update publication document. A SoCG with agreement on delivery with the developer if required and included with the evidence on submission for examination</p>	0	<ul style="list-style-type: none"> <li>This unallocated site gained full planning permission after the base-date in April 2023.</li> <li>As set out in the consistent findings of every appeal decision of which I am aware, of which there are very many, such sites which post-date the base-date cannot be included in the deliverable supply as this would provide for an unbalanced assessment – see for example the Farleigh Fields (CD4.23), Windacres Farm (CD4.30), Bakers Lane (CD4.31), Woolmer Green (CD4.32), Woolpit (CD4.33), and Bures Hamlet (CD4.34) appeal decisions.</li> </ul>
Land at West Shepton Playing Fields	0	The council agree that this site should be discounted from the five year supply	0	<ul style="list-style-type: none"> <li>Not even the subject of a planning application.</li> <li>As set out in the consistent findings of every appeal decision of which I am aware, of which there are very many, such sites</li> </ul>

Statement of Common Ground  
Fortescue Fields, Norton St Philip

	Proposals developed in close co-operation with affordable housing providers on public land have been included in Mendip five year supply estimates for some time and in evidence at previous Mendip appeals. The site has been in active discussion with Livewest for some time. The current position is that there remain uncertainties whether the scheme will be brought forward.		which post-date the base-date cannot be included in the deliverable supply as this would provide for an unbalanced assessment – see for example the Farleigh Fields (CD4.23), Windacres Farm (CD4.30), Bakers Lane (CD4.31), Woolmer Green (CD4.32), Woolpit (CD4.33), and Bures Hamlet (CD4.34) appeal decisions. <ul style="list-style-type: none"><li>No evidence whatsoever to demonstrate that completions will be achieved within five years.</li></ul>
Uncontested sites (from all categories)	1,679	1,679	
Total	2,113	1,679	



## Information Requests

Reference: 15021725

14 June 2024

Dear Requester

### **Freedom of Information Act 2000**

I can confirm that the information you have requested is held by Somerset Council.

#### **Your Request:**

I would like to request information under the Freedom of Information Act on the number of people registered in need of affordable housing:

- (a) who are resident in Norton St Philip.
- (b) who have a local connection to Norton St Philip.
- (c) who are seeking affordable housing in Norton St Philip.

I hope that you are able to provide this information as soon as possible.

#### **Our Response:**

I have detailed below the information that we hold.

**(a) who are resident in Norton St Philip. 2**

**(b) who have a local connection to Norton St Philip. 25**

**(c) who are seeking affordable housing in Norton St Philip. 7**

Please quote the reference number 15021725 in any future communications.

I will now close this request.

If you feel your request has not been answered in sufficient detail, or if you wish to clarify the information given, please contact me, and I will be happy to address the issues you raise.



Alternatively, if you are not satisfied with our response you may request an internal review. This is an independent investigation into the handling of your request, which is carried out by the Information Governance Team. The conclusions of this investigation, and if applicable, a fresh decision about the information to be provided, should be sent to you within twenty working days of receipt of the internal review request.

To request an Internal Review please respond to this letter detailing why you are not satisfied, and your request will be dealt with by the information governance team.

If you are not satisfied with the results of the internal review, you may then appeal directly to the Information Commissioner's Office with your complaint.

The Information commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Telephone: 0303 123 1113

Web address: [www.ico.gov.uk](http://www.ico.gov.uk)

<https://ico.org.uk/make-a-complaint/>

Yours sincerely

**Information Governance Manager**  
Legal B

## **Appendix 4**

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

#### 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 (NSP013)

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.