

Norton St Philip Parish Council
Responses to the Neighbourhood Plan Examiner's "Initial Comments"
dated 18th February 2025
Examiner's questions in blue; PC responses in black.

National Planning Policy Framework

14. Can the Parish Council clarify whether it has asked for a housing requirement number from either Mendip Council or Somerset Council, as it could chose to do, as set out in paragraph 68 of the NPPF or has it relied on the adopted local plan figure when preparing the various versions of this neighbourhood plan.

1). Para 68 states that :

"Where it is not possible to provide a requirement figure for a neighbourhood area the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body."

Footnote 34 details the circumstances in which it might not be possible for a LPA to provide a requirement figure as when

"... 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process, or after strategic policies have been adopted; or in instances where strategic policies for housing are out of date".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 NSPNP area was designated in 2018, after the adoption of LPP1 and its strategic policies in 2014.

2). The PC was advised by the former MDC in 2018 that there was no housing requirement for the designated NP area during the current Plan period (2006-2029) due to the LPP1 minimum of 45 dwellings having already been exceeded. As Appendix 5 to the draft NP details, 119 dwellings have been permitted in the plan period to 31/3/24. This equates to 265% of the "minimum" and represents a 37% increase in the village housing stock.

The "minimum" of 45 dwellings is the confirmed, published and adopted figure for the current Plan period which coincides with that of the draft NP.

The PC has relied on this figure and has not been advised by either Mendip or Somerset Council of a current housing requirement. The Government's Planning Practice Guidance states that:

"The scope of neighbourhood plans is up to the neighbourhood planning body. Where strategic policies set out a housing requirement figure for a designated neighbourhood area, the neighbourhood planning body does not have to make specific provision for housing, or seek to allocate sites to accommodate the requirement (which may have already been done through the strategic policies or through non-strategic policies produced by the local planning authority). The strategic policies will, however, have

established the scale of housing expected to take place in the neighbourhood area.

*Housing requirement figures for neighbourhood plan areas are not binding as neighbourhood planning groups are not required to plan for housing. However, **there is an expectation that housing requirement figures will be set in strategic policies, or an indicative figure provided on request. Where the figure is set in strategic policies, this figure will not need retesting at examination of the neighbourhood plan. Where it is set as an indicative figure, it will need to be tested at examination.***" [emphasis added]

(Paragraph: 104 Reference ID: 41-104-20190509)

- 3). The LPP1 spatial strategy has been considered by the High Court (twice) and Court of Appeal.

The High Court judgment (Case No: CO/3929/2019) referred at §96:

*"Supperstone J decided that the criticisms failed to appreciate the limited role of the examination of a neighbourhood plan, namely, to consider whether the "basic conditions had been met". He held that the Examiner had been entitled to conclude that the draft plan had regard to the NPPF because **the need to plan positively for growth was acknowledged and the relevant policy did not place a limit on the total amount of housing to be built** (paragraphs 33 and 81 of judgment).*

62. In addition the Judge held:—

(i) The basic condition in paragraph 8(2)(e) only requires the Examiner to consider whether the draft neighbourhood plan as a whole is in general conformity with the adopted development plan as a whole. Whether there is a tension between one policy of the neighbourhood plan and one element of the local plan is not a matter for the Examiner to determine (paragraph 82);

(ii) The Examiner was not obliged to consider the wider ramifications of the draft policy upon the delivery of housing. The limited role of an Examiner to have regard to national policy when considering a draft policy applicable to a small geographical area should not be confused with the more investigative scrutiny required by the 2004 Act in order for an Inspector examining a draft local plan to determine whether such a plan is "sound" (see sections 20(7) to (7C) and 23 of the 2004 Act) (paragraph 83 of the judgment);

(iii) Whereas under paragraph 182 of the NPPF a local plan needs to be "consistent with national policy", an Examiner of a neighbourhood plan has a discretion to determine whether it is appropriate that the plan should proceed having regard to national policy (paragraph 84);

(iv) The Examiner of a neighbourhood plan does not consider whether that plan is "justified" in the sense used in paragraph 182 of the NPPF. In other words, the Examiner does not have to consider whether a draft policy is supported by a "proportionate evidence base" (paragraph 85)"

§97 also noted:

*"Although a neighbourhood plan may include policies on the use of land for housing and on locations for housing development, and may address local needs within its area, **the qualifying body is not responsible for preparing strategic policies in its neighbourhood plan to meet objectively assessed development needs across a local plan area. Moreover, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet objectively assessed housing needs.**"*

§98 of the Judgment gives further clarification:

*"Paragraph 8(2)(e)[the Planning and Compulsory Purchase Act 2004] **does not require the making of a neighbourhood development plan to await the adoption of any other development plan document. It does not prevent a neighbourhood development plan from addressing housing needs unless or until there is an adopted development plan document in place setting a housing requirement** for a period coinciding, wholly or partly, with the period of the neighbourhood development plan."* [emphasis added]

These matters were not subsequently challenged at the Court of Appeal.

- 4). Furthermore, in the High Court proceedings brought by the Parish Council following the allocation of 505 dwellings in the North East of Mendip (Case No: CO/323/2022) there was common ground that allocations in the district should be in accordance with the adopted spatial strategy. Indeed the judge noted that the LPP1 Inspector had been "crystal clear" in his report that CP1 and CP2 should be the basis of strategic allocations.
- 5). At present there is no objectively assessed housing requirement for the parish. The emerging Somerset Local Plan may allocate further strategic development in the parish. Adoption of the Somerset Local Plan is anticipated in early 2029.

- 6). The NP is being examined against the 2023 NPPF which had housing requirements as being "advisory" and did not include the requirements and standard method introduced in the 2024 NPPF.

Policy 2: Development within the Rural Area beyond the Defined settlement Boundary

16. Does the Parish Council have a view whether greater clarity could be achieved if the policy wording reflects the requirements of the third part of Local Plan Policy CP1 which states that development "will only be permitted where it benefits economic activity or extend the range of facilities available to the local communities"?

- 1). This part of Policy CP1 also states that development in the open countryside will be "*strictly controlled*".
- 2). NP Policy 2 includes the requirement that development in the open countryside will only be supported if it can "*satisfy the requirements of policies in this Plan and the adopted Mendip Local Plan.*"
- 3). The parish is already well served by a range of facilities. Work on the NP including extensive consultation did not establish a need for any further or extended facilities. Nevertheless the PC would not object to reference being made to CP1(3) and that development proposals outside of the development limit should be to meet an identified local need for additional facilities or provide significant economic benefits for the NP area. The PC suggests that such reference would be best included in the supporting text for Policy 2 and should also refer to CP1(1c) as well as possibly CP2(2c).

Policy 3: Housing Development

17. This appears to be a policy which requires planning applications to be determined in accordance with existing policy that will already apply within the parish, either through the local plan or other policies in the plan. It strikes me that it adds nothing in terms of assisting a decision maker and goes against the expectations set out in para 16f) of the NPPF.

- 1). The spatial strategy for housing growth was set in the former MDC's LPP1. Policy CP1 directs the majority of development towards the five principal settlements with new development in the rural parts of the District "*tailored*" to meet local needs. Development in the open countryside is "*strictly controlled*".

- 2). This strategy is strongly supported by the PC which successfully defended its principle at the High Court in 2022. This litigation followed the fundamental misinterpretation of CP1 by the Inspector examining the submitted LPP2. The Inspector had considered that CP1 required the Council to make further development allocations in the north-east of the District.
- 3). The adoption of LPP2 with allocations only in the north east of the district was successfully challenged by NSP PC (NSP PC v MDC-Case No: CO/323/2022).

The Judge recognised the Inspector's conclusions as being a material misinterpretation of LPP1 concluding :

"There is nothing in LPP1 to suggest that the Plan directs any development towards those settlements or to the north-east of the District, or expresses a preference for those locations over other parts of the District.....I am left in no doubt that the Inspector who examined LPP2 misinterpreted LPP1 and also the 2014 Report in the material respects identified above."

The Judgment also noted that:

"Appendix 3 to MDC's Background Paper shows the growth which had taken place in the villages in the north/north-east of the District. Norton St Philip and Beckington have experienced the greatest rates of growth in housing stock between 2006 and 2019, 34.4% and 30.6% respectively. That level of growth had already exceeded the minimum requirements stated in LPP1 for additional development in each village by 233.3% and 196.4% respectively."

- 4). The Judge's Order required the Council to (inter alia) review the Policies Map, removing the sites previously allocated, including the site allocated in NSP (NSP1). Their compliance with this order was challenged by Lochailort Investments Ltd who objected to the policies map showing NSP1 as being outside of the development limit for Norton St Philip and within the countryside. They contended that this decision was unlawful and the designation of the land for housing under allocation NSP1 should be shown on the Revised Policies Map as being struck through, so as to make clear that it was 'white land', that is land without any designation in the adopted development plan.
- 5). Judgment was handed down on 14th July 2023, with the case dismissed. The Judge concluded

".... I conclude that the action taken by MDC to alter the development limits on the Adopted Policies Map cannot be criticised as unlawful in any way. It simply addressed the unlawful consequences of the unlawful allocation of NSP1 and lay well within the ambit of MDC's powers as explained by the Court of Appeal in

*Fox and by Lang J in Bond. Furthermore, I agree with Mr. Forsdick that that action accords with the order dated 16 December 2022, as well as the judgment to which it gave effect.
The application by Lochailort for judicial review is dismissed.”*

- 6). The PC has thus, during the course of the preparation of its NP, been to the High Court on three occasions, the Court of Appeal once as well as having been a participant in Appeal Hearings. The PC's involvement in these proceedings have all been aimed at conserving the historic, rural nature of the village; one of the objectives of the NP.
- 7). At the same time, the PC acknowledges the severe housing supply in the former district and that this may mean that development plan policies are out of date; however the PC suggests they should continue to carry weight.
- 8). The NP is not aimed at frustrating the sustainable development of the village; in fact it supports sustainable growth. It recognises that the quantum of growth provided for in LPP1 was a minimum. CP1 states that development may "*exceptionally be permitted in line with the provisions set out in Core Policy 4: Sustaining Rural Communities*". This refers inter alia to the "*informed views of the local community*". The NP recognises that development in the village, although having already supplied over 250% of the LP minimum, has very largely resulted in migration from outside of the parish; very largely from outside of the Mendip area.
- 9). Policy 3 is intended to reinforce the NP's support for the adopted Core Policies and the sustainable development of the village as provided in the NP; in particular the allocation of the brownfield Bell Hill Garage site and the Exception site policy. It pulls together both the LP and NP. The NP does not follow the option of not promoting further development of the village (as it could have done whilst still being in compliance with the Local Plan strategy) but instead it proposes more. Nevertheless the PC would not object were the Examiner to recommend deletion of the Policy.

Policy 4: Housing Allocation Site – Bell Hill Garage

18. Would the Parish Council have a view, that rather than describing the capacity of the site as being "up to 12 dwellings", it may be better to give some flexibility, say if more flats were proposed, to refer to "approximately 12 dwellings"?

- 1). The PC recognises that it could be helpful to add supporting text noting that although the site could not accommodate more than 12 houses, a proposal that included flats might allow a greater number of dwellings (subject to other policies in the plan).

Policy 5: Rural Exception Sites

19. The first paragraph refers to small sites in the rural area, but it then goes on to require the exception site to be adjacent to the defined settlement boundary. Does the Parish Council accept that it may be neater drafting to refer in the first paragraph to "small sites adjacent to the defined settlement boundary" thereby removing the need for b)?

- 1). The PC would support such an amendment.

Policy 7: Important Green Spaces

20. Can Somerset Council furnish me with the context and the full text of the comments made by Historic England as set out in paragraph 18.6.

- 1). (For info the PC has forwarded these to Somerset Council.)

21. I note that the definition of open space contained in the glossary of the NPPF refers to "open space of public value" which can, inter alia, include "a "visual amenity". Para 102 of the Framework refers to a "network of high-quality open space which can deliver wider benefit for nature and support efforts to address climate change". I am treating these important open spaces under the provisions of that part of the framework and these have a lower status than local green space, in that para 103 allows circumstances where they could be built upon and are not, as in the case of local green space, necessarily capable of enduring beyond the end of the plan period, which will then be in the context of a new local plan. Is that the understanding of the Parish Council?

- 1). The PC recognises that public access is not possible for a number of the identified greenspaces and that LGS designation would not be appropriate for all of them. The PC also recognises that designation as LGS would not necessarily be able to endure beyond the end of the NP period with the emergence of the new Local Plan.
- 2). NPPF para 11a requires plans to:
"promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change"
Para 180 requires plans to protect and enhance valued landscapes; para 181 that they:
"take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure."
- 3). The PC acknowledges that the development policy for the sites identified as Important Greenspace is less stringent than that for Local Green Space designations.

22. Also, would the Parish Council accept that if a development proposal came forward that met the requirements of the policy such as respecting the reason for their designation and having regard to national and local plan policy, development on these sites could be countenanced.

- 1). The policy is not intended to be a bar to development of these sites. It aims to set standards for development proposals on the sites identified as making a significant contribution to the village's green infrastructure.
- 2). Seven of the sites are currently designated as six OALS in LPP1 DP2. It is not currently known whether this designation will be carried forward in the emerging LP. LPP1 DP3 (Heritage Conservation) also applies to all the identified greenspaces as they are either within or adjacent to the Conservation Area. This states that:
"Proposals and initiatives will be supported which preserve and, where appropriate, enhance the significance and setting of the district's Heritage Assets, whether statutorily or locally identified".
- 3). NP Policy 7 aligns with DP3 and provides evidence and detail about each identified site. Should a proposal be deemed to meet those standards, it will be supported by the policy.

Policy 9: Monitoring and Review

25. The legislation states that a neighbourhood plan policy is a policy for the development and use of land to be used to determine planning applications. It seems to me that this policy is actually a commitment by the Parish Council to review the plan and whilst it clearly has a place in the neighbourhood plan document, it does not perform the role of helping determine planning applications. Would the Parish Council have a view if I was suggested that the intentions are moved to the supporting text?

- 1). The PC wishes to stress its commitment to a review of an adopted NP in particular so that it remains aligned to the new Local Plan. It acknowledges that this commitment might not be considered to align with relevant legislation and as such would not object to the policy being deleted with its intentions described in supporting text.