

Your Ref:

Our Ref: BELL0001

Date: 5 August 2019

Planning Policy
Mendip District Council
Council Officers
Cannards Grave Road
Shepton Mallet
Somerset
BA4 5BT
FAO: Mrs J Milling

Dear Mrs Milling

NORTON ST PHILIP NEIGHBOURHOOD PLAN (NSPNP) ADVANCEMENT TO REFERENDUM

We note your report to Cabinet on 5th August recommending that the NSPNP should proceed to referendum. We would respectfully suggest that the advice to Cabinet is unsound given the potential for conflict between the NSPNP and the Mendip District Local Plan Part 2 (MDLPP2) which is currently subject to examination. The potential for conflict relates to the Local Green Space (LGS) designations.

As is clear from the NSPNP, the LGS designations simply mirror those in MDLPP2, the latter being the lead DPD on the matter with underlying evidence base. The evidence base underpinning the draft designations, including the methodology and approach, forms part of MDLPP2, and is currently subject to scrutiny through the examination of that plan. The MDLPP2 Examination Inspector has identified the LGS designations as one of the two main issues with the plan that is subject to his scrutiny. Moreover, it is clear from the examination session relating to Matter 5 that the Inspector has concerns about the designations, in particular whether they have been used 'sparingly' as required by national policy. He has signaled his intention to issue a preliminary note on the way forward, which is a clear indication that he does not currently consider the MDLPP2 to be sound in consequence of the approach to, and use of, LGS designations.

Since the evidence base that underpins the LGS designations does not form part of the NSPNP, it was not subject to detailed scrutiny by the Examiner of that Plan. They have therefore not been subject to the

robust scrutiny required, given the potential conflict with delivering sustainable development that follows from their designation.

You will be aware of the provisions of Section 38(5) of the Planning and Compulsory Purchase Act 2004 (as amended) that:

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.

Given the possibility that the MDLPP2 Inspector will require significant changes to the LGS designations in order to find the Plan sound, there is a genuine prospect that there will be conflict between the two plans, and which will have to be resolved in favour of the MDLPP2. The consequence is likely to be confusion and community frustration that they have made a plan, one of the principal elements of which can be afforded little, if any, weight in the development management process.

Your suggested resolution of the conflict, to simply delete the LGS designations for NSP from MDLPP2, is procedurally incorrect, and therefore *ultra vires*. Having included the LGS designations in a Plan that has been subject to consultation and submitted for Examination, you cannot simply opt in favour of the NSPNP and remove them from the plan in favour of the NSPNP if you receive a finding from the MDLPP2 Examination Inspector that indicates they are unsound, and therefore conflicts with your aspirations. You must have proper regard to the findings of the MDLPP2 Inspector on the matter, and respond appropriately. If his finding is that the LGS designations are unsound and should either be deleted or modified, then you must respond appropriately and remove them for that reason. If, in consequence of the findings of the MDLPP2 Inspector, the designations for NSP must either be removed, or substantially reduced in number and/or extent, then this will have significant implications for the weight that can be afforded to those in the NSPNP.

In short, having put the LGS designations forward for examination as part of the MDLPP2, and given that the examination is in progress, you can neither withdraw them from examination nor ignore the findings of the Inspector following his examination of them. Since they form a significant element of MDLPP2, and therefore go to the heart of its soundness, it is possible that the Plan may need to be withdrawn from the examination if the Inspector finds there to be fundamental difficulties with the designations. At the very least, they could only be removed from the Plan through a 'major modification', which must be subject to public consultation and potentially further examination.

In the light of the above, and given that the LGS designations are a principal element of the NSPNP and the real potential for conflict between the NSPNP and MDLPP2 in relation to them, it would seem wholly inexpedient to recommend that the NSPNP proceeds to referendum at this stage, and in advance of receiving the MDLPP2 Examination Inspector's findings on the matter. Moreover, your suggested resolution of any potential conflict is *ultra vires*. If you proceed as intended, then we must put you on notice that the decision of the Council may well be subject to judicial scrutiny, with the significant cost implications that that will incur. It would therefore seem prudent to await the MDLPP2 Examination Inspector's findings



on the matter, and ensure that the plans are duly aligned in the light of his findings given that the MDLPP2 is the later plan and contains the principal evidence base underpinning the LGS designations that has not been subject to proper scrutiny by the NSPNP Examiner.

Yours sincerely



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Director

