

Your Ref:
Our Ref: SXT/CZL/WIL0602-0006
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Planning Policy
Melton Borough Council

By Email Only: planningpolicy@melton.gov.uk

Dear Sirs

**Hoby with Rotherby Parish Council draft Neighbourhood Plan Representations to Melton Borough Council
The Neighbourhood Planning (General) Regulations 2012 (as amended)**

Roythornes Limited are instructed by Ms A Warner of Willows Farm, Hoby to make representations to the draft Hoby with Rotherby Parish Council Neighbourhood Plan (2020 and 2037) (the “**HRNP**”) on her behalf. These representations are made in response to the HRNP pursuant to Regulation 16 of the Neighbourhood Planning (General) Regulations 2012 (the “**Regulations**”). Our client own various parcels of land within and surrounding Hoby, some of which are directly affected by the proposed HRNP policies.

Please find below our representations to the HRNP and the formal response form for completeness. Having reviewed the HRNP we have serious concerns that the draft HRNP, including a number of the key policies, contains significant legal flaws, contrary to the statutory basic conditions that a draft Neighbourhood Plan (“**NP**”) must meet if it is to proceed to referendum, pursuant to paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (as amended) (“**the TCPA 1990**”).

In particular, we have concerns regarding the application of local and national policy in the context of **Policy 6 (Designated Local Green Space)** of the HRNP which appears to be a mechanism for seeking to frustrate future sustainable growth and development upon our clients’ land in Hoby for reasons which do appear not to be entirely planning related. Further, we are concerned as to whether the development control policies within the HRNP are in conformity with Melton Borough Council’s (the “**Council**”) wider strategic policies contained in the Melton Local Plan 2011-2036 (“**the Local Plan**”). We consider that such policies are contrary to the underlying purpose of the National Planning Policy Framework (revised February 2019) (the “**NPPF**”) which is to contribute to the achievement of sustainable development. In conjunction with this, it is evident that Policy 6 has been drafted in the absence of

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robust and objective evidence, which further highlights the legal failings in the present draft.

National Planning Policy – the “Basic Conditions”:

As the Council are aware, before an NP can proceed to referendum, it must be examined through an Independent Examination and tested against the basic conditions pursuant to paragraph 8(2) of Schedule 4B to the TCPA 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 (“**the PCPA 2004**”).

Paragraph 13 of the NPPF indicates that neighbourhoods should both develop plans that support the strategic needs set out in local plans and plan positively to support local development that is outside the strategic elements of the development plan.

Thus, before the HRNP can progress to referendum, the Independent Examiner must conclude that:

- a) *having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the HRNP;*
- b) *the making of the HRNP contributes to the achievement of sustainable development;*
- c) *the making of the HRNP 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); and*
- d) *the making of the HRNP does not breach, and is otherwise compatible with, EU obligations; and*
- e) *prescribed conditions are met in relation to the HRNP and prescribed matters have been complied with in connection with the proposal for the HRNP.*

Further, the NPPF provides that plans should provide a clear framework within which decisions on planning applications can be made and that they should give a clear indication of how a decision-maker should react to a development proposal (paragraph 16d). This is supported by the Planning Practice Guidance (“**PPG**”) (Paragraph ID:41-041-20140306), which indicates that policies in neighbourhood plans should be drafted with sufficient clarity so that a decision-maker can apply them consistently and with confidence when determining planning applications. Policies should also be concise, precise, and supported by appropriate evidence.

Paragraph 040 of the PPG gives guidance on the evidence needed to support a neighbourhood plan. It provides:

“While there are prescribed documents that must be submitted with a neighbourhood plan or Order there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an Order.”

Policy 6 – Designated Local Green Space

The designation of Local Green Space (“**LGS**”) is a means by which special protection can be afforded to green areas of particular importance to local communities against development. In order to be designed the LGS needs to meet the criteria set out in paragraphs 99-100 of the NPPF.

Policy 6 of the draft HRNP concerns the identification of LGS. Eight LGS sites are proposed for designation including ‘Hoby with Rotherby Play Area and Paddock’ (Field reference: OS8695) which falls within the ownership of our client. The proposed designation includes the whole of our client’s

land despite the fact that the play area was sited only on a small portion of the field. Please see our further comments below regarding the status of the land for use as a play area, following the end of the lease in May 2020.

A separate document, Appendix C, entitled, 'Local Green Space Justification', alleges to provide supporting justification for the proposed designation of each of the eight LGS sites. However, we have concerns about this justification document and the manner in which it has been prepared and we have set these concerns out further below.

Paragraphs 99-100 of the NPPF provide:

*"99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to **identify and protect green areas of particular importance to them**. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.*

100. The Local Green Space designation should only be used where the green space is:

- a) in reasonably close proximity to the community it serves;*
- b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- c) local in character and is not an extensive tract of land.*

101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts."

The PPG provides further clarification on the use of LGS:

"Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the **Local Green Space designation should not be used in a way that undermines this aim of plan making**" (emphasis added) (Paragraph: 007 Reference ID: 37-007-20140306).

Local Green Spaces may be designated where those spaces are demonstrably special to the local community, whether in a village, or in a neighbourhood, or in a town or city (Paragraph: 009 Reference ID: 37-009-20140306).

It is clear within the NPPF that the designated LGS must be of 'particular importance to local communities'. Further, the designation of LGS must be based on evidence that clearly demonstrates why the LGS is special to a local community and holds a particular local significance. It is apparent that the use of blanket designations of all/most green areas or open space within an area is not appropriate with NP's.

The HRNP designates LGS3 'the Hoby with Rotherby Play Area and Paddock' as green space. This area of land is within the ownership and control of our client. The land was subject to a lease to the Parish Council as a recreational space, which has since ended. The land is now subject of an application for planning for residential development (Planning Application Reference: 19/01113/FUL) including the provision of a new LGS play space. It is submitted that the LGS designation contained within the HRNP is not supported by proportionate or robust evidence contrary to the requirements of the NPPF and as a result of this it does not meet the criteria of

"particular importance", "demonstrably special" and "particular local significance" in paragraphs 99 and 100 of the NPPF. Appendix C to the HRNP, which is alleged to provide justification for the designation does not provide any methodology as to how the Parish Council have reached the decision to designate these 8 sites. The very brief description as to importance is vague and is not supported by any criteria or evidence as to how such sites were assessed. Further, it is not clear whether other sites have been considered for designation and then subsequently discounted or whether factors such as ease of access, proximity to the centre of the village, and/or whether the ability to secure the provision of these areas of LGS into the future and beyond the end of the NP plan period has been taken into account in making the designation. For example our client is offering an alternative area of land for a play area as part of their planning application (Reference: 19/01113/FUL), the Parish Council are aware of this and should have considered this area of land in any assessment prior to designations being made. Further, it fails to assess the various LGS sites against the criteria in the NPPF (paragraph 100). It is apparent that our clients' site will not be available into the future and was only leased to the Parish Council for these purposes for a short period, there was no guarantee given that this land would not be used for alternative purposes in the future. With regards to our clients' land it appears that the Council, being aware of our clients' aspirations to develop this area for residential purposes, have sought to use ulterior purposes to essentially sterilise the land from development. The submission of the planning application relating to our clients' land is clear evidence that it will not endure as LGS beyond the end of the NP plan period.

Furthermore, the Council have failed to provide any justification in relation to the forms of development that it considers would be appropriate within this location. Without this clarity, we seriously question how this policy can be applied. Given the benchmark test of "*very special circumstances*" for which there are no exceptions or description provided, it suggests that it is perhaps the Parish Council's intention that no future development can ever realistically be achieved in this locality given the hurdles that one would have to overcome.

Without clarity as to how this policy can be applied by the Council and members of the public, it is impossible to suggest that it can be applied consistently in the future. Opinions on "*very special circumstances*" are often highly subjective and, in the absence of clarification, it is likely to lead to inconsistency in decision-making which is contrary to the NPPF. In any event we would submit that any disputed recreational value is already protected by Paragraph 97 of the NPPF and therefore no additional protection would be gained by a designation of the land as LGS in this case. The designation as currently drafted places an unjustifiable burden on the viability of future development proposals in this area and prevents the delivery of sustainable development that can be brought forward without impacting on the loss of the importance placed on the LGS by the Parish Council.

We would reiterate that the lack of precise and sufficient detail within the wording of the policy itself suggests that it is being used as a mechanism to prevent appropriate sites for future development from coming forward. In the preparation of the Local Plan, the Council commissioned the Melton Borough Areas of Separation, Settlement Fringe Sensitivity and Local Green Space Study 2015. This Study included an assessment of existing and proposed Protected Open Areas and candidate Local Green Spaces put forward by local people and organisations (including parish councils), to determine, with appropriate evidence, which sites were or were not worthy of protection. We note that our client's area of land was considered for designation as LGS in this assessment but was subsequently rejected as not being worthy of protection. Even in the event that it can be demonstrated that our clients' land is valued by the community, this does not in and of itself mean that it should automatically be designated as LGS. It is noted that the Eastington

Neighbourhood Plan Examiner's Report¹ recommended the deletion of an area of LGS due to the lack of evidence demonstrating its importance and significance to the local community. Similar conclusions should be drawn in respect of the designation of our clients' land as LGS given the points raised above.

Policy 5 – Key Views:

The HRNP addresses what it perceives as key views in the latter section of the document, at Policy 5. For the reasons stated below, we submit that Policy 5 of the HRNP contains a number of fundamental legal flaws which directly conflicts with the Basic Conditions. Consequently, Policy 5 in its present form should be deleted by the Parish Council in its entirety.

Firstly, in considering Policy 5, it is material to note the comments made by the Independent Examiner (Andrew Ashcroft BA (Hons) MA, DMS, MRTPI) who prepared the Report to Breckland Council on the Mattishall Neighbourhood Development Plan (dated 16th May 2017)². The comments made by the Inspector are in response to a draft policy prepared by the Parish Council regarding important views and vistas:-

*"7.21 There are three areas where this policy approach fails to have regard to national policy. In the first instance, it **fails to provide any definitive evidence** about the significance of the views identified. In particular, there is no evidence to suggest that the views are of such significance as to warrant the **very prescriptive approach** as set out in the policy. In the second instance the view shown in Figure 12 are somewhat of a **general nature**. The arrows displayed would not allow the decision-maker to apply the Policy with any **degree of consistency**. In the third instance the Policy offers no guidance on the **scale of development** that would be regarded as "sufficiently intrusive, unsightly or prominent" to warrant the refusal of planning permission on the basis of this policy" (our emphasis).*

A parallel can be drawn from the Independent Examiner's conclusion above to Policy 5 of the HRNP, as detailed further below. Firstly, there is very little detail provided by the Parish Council to explain and justify why the identified views or vistas within Policy 5 are considered to be designated as so important as to warrant the imposition of the Policy in its current prescriptive form.

Policy 5 has adopted a very selective approach and it is inconsistent with the PPG which confirms that:

*"**proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan...**" (Paragraph: 040 Reference ID: 41-040-20160211) (our emphasis).*

Policy 5 of the HRNP provides that these "Key Views" should be safeguarded from their loss or unnecessary interruption. However, no clarity is provided on what this means or how it should be applied in practice. It appears that no systematic or logical approach has been adopted with regard to views concerning the settlement. Furthermore, it appears that no consideration has been given as to how these protected views potentially conflict with the aspirations of other policies set out in the HRNP, including Policy 1 which seeks to allow new residential development.

In addition, Policy 5 of the HRNP adopts a very prescriptive approach. The pictures referenced in the HRNP show views which are of wide-reaching landscapes which provides no objective certainty as to

¹ <https://www.stroud.gov.uk/media/2596/2016-04-28-eastington-examiners-report-final.pdf> (paragraphs 3.36-3.43)

² https://www.breckland.gov.uk/media/4615/MNP-Examiners-Report/pdf/Mattishall_Neighbourhood_Plan-Examiner's_Report_-_final_version.pdf?m=636385867685600000

which elements within those landscapes on the pictures are sought to be protected or are considered sensitive to development. As a consequence, this would likely lead to inconsistencies in the decision-making process as it is impossible for a decision-maker to understand the scope and extent of the landscapes sought to be protected. As set out above, such an approach would be entirely inconsistent with the PPG and the NPPF and potentially susceptible to legal challenge. The Inspector at paragraph 7.22 of the Mattishall Neighbourhood Plan examination report provided that:

*“The views should help to define the design and orientation of development that would otherwise be Policy compliant **rather than being seen an absolute barrier to development**”.*

The PPG makes it explicitly clear that, *“... Blanket Policy is restricting housing development in some settlements and preventing other settlements from expanding and should be avoided unless their use can be supported by robust evidence...”*.

It is clear that Policy 5 is inconsistent with the requirements of the NPPF, especially the requirement to significantly boost the supply of homes pursuant to paragraph 59 of the NPPF. Instead, Policy 5 is drafted in a manner which seeks to constrain the supply of future deliverable sites.

Furthermore, Policy 5 of the HRNP fails to conform to a number of crucial paragraphs of the NPPF, including paragraph 11 which provides as follows:

Plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;

b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (our emphasis).

An NP should be used to support the strategic development needs set out in the Local Plan and plan positively to support local development, as outlined in paragraph 13 of the NPPF and the PPG (paragraph 0.04 reference ID 41-004-2017 0728), and should not be used to constrain and restrict growth in the NP area, which is currently contrary to the position adopted in Policy 5 of the HRNP. The above failings demonstrate that the Policy is fundamentally and legally flawed and contrary to a number of fundamental Basic Conditions as detailed above.

The NPPF is clear that Neighbourhood Plans cannot introduce policies that would otherwise prevent sustainable development opportunities from coming forwards. Policies should be prepared so that sustainable development is pursued in a positive way and, thus, at the heart of the NPPF is a presumption in favour of sustainable development (paragraphs 10 and 11 of the NPPF). Policies that are intended to place an unjustifiable constraint on further sustainable development are not consistent with the NPPF and the Basic Conditions, and we have serious concerns in this respect in relation to Policy 5 of the HRNP. Accordingly, Policy 5 is not a policy that can genuinely be considered to add value to the existing policies with the Council's Local Plan and the requirements of the NPPF, particularly in respect of supporting sustainable development.

Policy 14: New Development

This policy proposes limits to development for the NP area. The Council will be aware that, to meet the requirements of the Basic Conditions and the NPPF, the HRNP should be in general conformity with the strategic policy requirements as set out within the Local Plan.

The NP should not be used to prevent sustainable development coming forward. It is apparent that this Policy places a strict upper limit on the number of dwellings that may be permitted to be constructed on sites coming forward in the NP area. This aspect of Policy 14 of the HRNP is not, in its present form, in 'general conformity' with Policy SS2 or SS3 of the Local Plan which places no such restriction on the number of dwellings that will be permitted. Paragraph 12 of the NPPF sets out that *"Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies"*. Further, paragraph 16 of the NPPF confirms that the HRNP should *"contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals"*.

The restriction imposed within this aspect of Policy 14, in our view, places a clear emphasis on 'preventing' future infill development above three dwellings rather than on seeking to facilitate opportunities for future sustainable development opportunities, in accordance with the Local Plan and the NPPF. Indeed, paragraph 16 of the NPPF requires that the HRNP should *"be prepared with the objective of contributing to the achievement of sustainable development" and "be prepared positively, in a way that is aspirational but deliverable"*.

Further Policy 14 seeks to further restrict any development to that which has, "gained the support of the local community and Parish Council" and which has demonstrated in, "the design and access statement how the local communities' comments have been incorporated into the development proposal." No guidance has been provided as to what would be deemed to fulfil these requirements, the percentage of local support that has to be gained from local residents in order for an application for development to be considered acceptable. It is noted that the Local Plan does not impose such additional burdens on future applicants considering applications for development. In addition, we would suggest that such wording amounts to an unachievable restriction and may be used to unreasonably prevent some otherwise policy compliant and sustainable schemes from being permitted.

Such restrictions within Policy 14 does not properly allow for any flexibility to reflect the fact that there could be forms of otherwise sustainable development that are able to come forward that are acceptable. It appears to be another opportunity exploited by the Parish Council to restrict genuinely sustainable development from coming forwards. The Council will be aware that the purpose of the planning system is to contribute to the achievement of sustainable development, which can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs (paragraph 7 of the NPPF).

Indeed, paragraph 10 of the NPPF highlights that, at the heart of the NPPF, there is a presumption in favour of sustainable development. For plan-making, this means that plan makers should positively seek opportunities to meet the development needs of their area, and this requirement is equally applicable to the preparation of the HRNP. It is submitted that these over prescriptive and unduly restrictive terms of Policy 14 should be appropriately and reasonably amended in order for Policy 14 to satisfy the Basic Conditions.

Policy 14 should not be overly prescriptive. It should allow flexibility in order for it to be able to appropriately respond to individual development proposals which can then be assessed against stated criteria, rather than imposing a 'one size fits all' or a 'blanket restriction.' Such an approach is not conducive to the requirements of the NPPF or the Basic Conditions.

Policy 15: Design Brief for Brooksby Spinney

In addition to the submissions set out above regarding the policies relating to new development within the NP area, we have some serious concerns regarding the inclusion of the proposed Brooksby Spinney site. Outline Planning Permission was granted on appeal for this scheme (Appeal Reference: APP/Y2430/W/16/3150720) on the 17th November 2017. At the time of determination of the Appeal the Melton Local Plan had not been adopted, the plan was adopted on the 10th October 2018. The adopted Melton Local Plan does not allocate the Brooksby Spinney site for the permitted development scheme. Further, we understand that reserved matters for the scheme are required to be submitted by the 17th November 2020. To date we have not seen that any such submission has been made to the Council. If the reserved matters are not submitted in time the Outline Planning Permission for this scheme will lapse and any re-submission may not be in accordance with the revised policies contained in the now adopted Melton Local Plan. The viability and deliverability of this scheme could therefore be called into question. In addition, the current wording of the draft Policy 15 appears to seek to circumvent the proper planning process and place restrictive design requirements and obligations upon the future development of this scheme, we would further question whether this can be considered to be in accordance with the current policies of the Local Plan, the NPPF and the Basic Conditions.

Conclusion:

As you can see above, we have set out in detail our analysis of how the current policies are fundamentally flawed. We trust that the Council will take due account of the above, especially as the failure to meet with the Basic Conditions and the statutory tests could lead to potential legal challenge in the future.

If you do have any questions or queries or require any further clarification in respect of the above or enclosed, please do not hesitate to contact the writer on the below details.

We look forward to hearing from you in due course.

Yours faithfully



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