

NORTON ST PHILIP PARISH COUNCIL

Comment on Planning Application 2023/0640

Erection of 8no dwellings, a new vehicular access & footpath links.I Land West Of Fortescue Fields
Norton St Philip Frome Somerset

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1. Introduction

- The NPPF stresses the advantages of pre-application engagement with communities affected by development. The Applicant appears not to have sought pre-application advice from MDC which might reasonably have been expected given the nature of this application.
- The applicant attended the Parish Council (PC) Meeting on 8th February 2023 and spoke in the Public Participation session, informing the PC that a Planning Application had been lodged for the Fortescue West Field. No further information was given.
- This was the first that the PC knew of a further proposal for the site (the fourth application in 10 years).
- Subsequent to this the PC were consulted on the submitted application (2023/0247)
- The applicant attended the PC Meeting on 8th March and spoke to that application in the extended Public Participation session. Approximately 100 NSP residents also attended. There was no support shown for the proposed scheme.
- The application was withdrawn on 11th April 2023, 4 days before the end of the consultation period.
- At that time, over 50 village residents had submitted objection comments.
- The application to which this comment relates (2023/0640) had been submitted on 6th April 2023, 5 days before the withdrawal of 2023/0247.
- It would seem that 2023/0640 is identical to the withdrawn 2023/0247.
- At the time it was withdrawn, not only had over 50 village residents submitted objection comments but objections had also been submitted by Historic England, the LPA's Landscape Consultant, Somerset Highways, Somerset Waste as well as the Ward Member.
- The proposed scheme is outside of the village development boundary and thus in conflict with CP1 which clearly states that: *“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.”*

2. Planning History

This is the fifth recent application for development of this site.

- The first (2013/2033) was in outline for up to 49 dwellings. It was refused by the Council and the subsequent Appeal dismissed on the principle of development and harm to the character and appearance of the village and its Conservation Area..
- The second (2019/2976/FUL) was for 38 dwellings. This application was withdrawn prior to determination.
- The third (2021/2776) was for 20 dwellings, the site extending into the Fortescue Ponds field. This application was refused in the main on the principle of development and harm to the character and appearance of the village and its Conservation Area.
- The fourth (2023/0247) was identical to this application and was withdrawn on 11th April 2023.

3. Principle of Development

3.1 MDC 5 Year Housing Supply/Presumption of Sustainable Development

MDC can no longer demonstrate a 5-year housing supply. The ‘Presumption of Sustainable Development’ as described in NPPF Para 11 is therefore relevant, and MDC’s housing supply policy cannot be given great weight. The housing supply policy is, as the NPPF states, one of *“the most important for determining the application”* but by no means the only one.

MDC’s LPP1 confirms that:

“There may be instances where the Plan is silent or in future years, policies become out-of-date. To enable the Council to continue to take a sustainable and positive approach to decision making, applicants will need to assist by submitting evidence to demonstrate how the benefits of the proposal outweigh any adverse impacts. In this way economic, social and environmental responsibilities can continue to be met without compromising the ability of future generations to meet their own needs and well-being.”

Although Mendip’s housing supply policy is out of date, Policies in the development plan continue to apply and can be afforded relevant weight. This includes Core Policy 1 which aims *“To enable the most sustainable pattern of growth for Mendip district”* by directing the majority of development to the 5 main towns in the District whilst tailoring development in the rural parts (including primary villages such as Norton St Philip):

“to meet local needs...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.”

3.2 Relevant Recent Appeals

There have been several recent Appeal Decisions which reinforce the Core Policies of LPP1 despite the lack of a 5 year Housing Supply.

1. APP/Q3305/W/22/3292838 Land at Church Lane, Rode, Frome, Somerset [April 2023].

In dismissing the Appeal, the Inspector gave the LPP1 Policies which form the District’s spatial strategy “substantial weight”. Furthermore she recognised that, should the proposal be permitted it *“would result in an excessive amount of unplanned development in this location”*. She concluded that *“the proposal would represent an intrusive form of development into an undeveloped rural site which would result in the permanent erosion of open countryside in this location....the accumulation of harm I have identified significantly and demonstrably outweighs the benefits of the proposal”*.

2. APP/Q3305/W/22/3306827 Land west of Marston Lane, Frome BA11 4DL [February 2023].

In dismissing the Appeal, the Inspector, whilst recognising that the proposal was a breach of the spatial strategy, concluded that the lack of housing supply *“... does not mean that any speculative, unallocated site is suitable to accommodate new housing. In the case of the appeal proposal, the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits of the proposal. This is even though the benefits themselves are substantial, in particular the proposed housing in the context of a District with a less than three year supply of housing land. This is because good design is a key component of both national and local planning policy and the ‘tilted balance’ does not justify development that would cause significant harm to the character and appearance of the area.”*

3. APP/Q3305/W/21/3280802 Land at Hoecroft, Chilcompton [February 2022]

The Inspector dismissed the Appeal on grounds of:

“substantial harm to the character and appearance of the area, including the form of the village and resulting landscape and visual harm. These adverse impacts significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the NPPF taken as a wholethe basic principles of CP1, CP2 and CP4, that the majority of development should be in the five towns, that the primary villages are the most sustainable in the rural area and that their individual

growth should be proportionate, do not conflict with the NPPF, remain valid and should be given significant weight.”

4. APP/Q3305/W/21/3289537 Great Dunns Close, Beckington [October 2022]. Despite the site being (at that time) allocated in LPP2, the Inspector dismissed the Appeal on drainage grounds as:
“material considerations do not exist to justify a decision otherwise than in accordance with the development plan.”
5. APP/Q3305/W/21/3285335 Beauchamps Drive, Stratton on the Fosse. The lack of a 5 year supply was a material consideration in the Inspector’s decision. However, the Appeal was allowed on the basis that it was adjacent to a site which at that time had been allocated in LPP2 (site ‘MN1’) and would not conflict with adopted Development Policies. Having considered this, the Inspector concluded:
“the development would not cause unacceptable harm to the character and appearance of the area. As such, it would not conflict with Development Policy1 (DP1), Development Policy 4 (DP4) and Development Policy 7 (DP7) of LLP1. Amongst other things, these policies support development that does not significantly degrade the quality of the local landscape and take into account efforts to avoid, minimise and/ or mitigate negative impacts and need for the proposal to take place in that location.”

3.3 Neighbourhood Plan

The site is proposed for designation as a Local Green Space in the Draft Neighbourhood Plan.

The full history of the preparation of the Draft Neighbourhood Plan for the Parish can be found on the dedicated website. In brief, having passed Examination and been approved for referendum by the Council, it was challenged by Lochailort Investments Ltd through a Judicial Review firstly in the High Court and subsequently the Court of Appeal.

The Appeal Judgement found that the 10 Local Green Spaces are lawfully designated by the Plan; the Neighbourhood Plan Examiner had sufficient expertise and experience and understood the policy background to the Plan and that the Neighbourhood Plan did not misinterpret strategic policies in the development plan.

However, the Court found that the development policy relating to Local Green Spaces was unlawful and the decision to hold a referendum was quashed.

The Draft Neighbourhood Plan allocates a brownfield site within the settlement boundary for housing, confirms the settlement boundary as shown on the Policies Map whilst

allowing for Exception Sites to provide housing for those with a local connection in housing need and targeted at those wishing to buy or rent their first home. It also includes a Design Policy (Policy 4) containing guidelines promoting good design. These require that development proposals should (amongst other criteria):

- Maintain the Green Corridors identified in the Character Assessment as a key definition of the historic village form
- Respect the natural contours of a site and sensitively incorporate features such as trees, hedges and stone walls
- Respect the views identified in the Character Assessment
- Be sympathetic to any surrounding heritage assets

Following the High Court Judgement deleting the allocated site NSP1 from LPP2 the Parish Council are considering the next steps to enable the Draft Plan move to referendum. It is proposed that development Policy for Local Green Spaces should be consistent with Green Belt Policy. This application is not promoted as being appropriate development for the Green Belt or being “very special circumstances”.

3.4 Greenspace Designation

The Planning Statement included with the Application states at para 2.9:

“The site has no designations”

This statement is inaccurate. The Fortescue West field is designated as Local Green Space in the Draft Neighbourhood Plan. The PC suggests that, in order for this application to be permitted, “very special circumstances” would need to be shown.

The site is also designated as Greenspace in MDC’s Supplementary Planning Document, adopted in February 2023. This recognises the importance of the site to the character, appearance and setting of the historic core of the village. Evidence for this can be found in the 2015 Appeal Decision as well as the draft Neighbourhood Plan. The PC recognises that Greenspace designation is not a bar to development; however DP1 (to which the Greenspace Designation refers) aims to “ensure that the distinctive character and diversity of places within Mendip is considered, maintained and where possible enhanced.”

The text for DP1 also states:

“the Local Planning Authority encourages community groups and other interests to undertake characterisation exercises (such as Village Design Statements, Design Guides and Context Studies) to define and improve awareness of local character and identity. Where their preparation is properly informed, consulted upon amongst the community and where relevant is in accordance with guidance and other plans and policies such assessments will be formally adopted by the Council. In doing this, the Council will use these sources as material considerations in determining

development proposals in the relevant locality to better inform the application of national policies set out in the National Planning Policy Framework.”

The Character Assessment submitted for Examination together with the Draft Neighbourhood Plan is such an exercise. This document was particularly commended by the NP Examiner. It recognises the site as a “Green Corridor”, the design guidelines for which state:

“The green corridors should remain open and continue to fulfil their visual importance as the green setting for the form and character of Norton St Philip.”

3.4 Proportionate Development

The housing target for NSP in the adopted Local Plan Part1 (LPP1) was for a minimum of 45 new dwellings to be provided from 2006 up to 2029. The PC recognises that this was a minimum; to date NSP has seen 117 completions and commitments in the Plan period. This is over 250% of the minimum and an increase to date of over 35% of the village housing stock, little more than half way through the Local Plan period. LPP1 CP2 provides that development in villages should be proportionate and that a figure of 15% above current housing levels equates to this. This was confirmed at the 2015 Appeal for development on this site. The Inspector concluded that:

“In effect, the village has accommodated more than 200% of the identified allocation in the first 8-9 years of the Plan period, amounting to an increase of some 35% in the housing stock of the village, well above the ‘proportionate’ 15% growth anticipated by the Part 1 Plan for villages such as this. Whilst I recognise that the figures in the Plan are expressed as minima, the need to plan for proportionate levels of growth remains an essential consideration in accordance with the spatial strategy set out in Core Policy 1. The addition of up to a further 57 dwellings would undermine that strategy” [para 31].

Notwithstanding that the total number of dwellings has reduced to 8 in the current application, the same principle applies; the proposals would not constitute the proportionate growth of Norton St Philip and are not considered sustainable. As the adopted LLP2 states:

“An important part of the spatial strategy is that there should be a proportionate approach to growth in the designated Primary and Secondary villages. However, a number of villages have seen significant additional development built or granted permission.” [para 3.27].

That planning judgment applies in particular to Norton St Philip which has seen the greatest proportionate increase in its housing stock of **all** of the Mendip villages. LPP2 goes on to say:

“The approach of this Plan is that further growth in these villages through planned site allocations does not reflect the adopted spatial strategy. The proposed site allocations reflect this principle by not identifying allocations in villages which have already fulfilled the requirements set out in Local Plan.” [para 3.28].

The strategic aims of LPP1 CP1, 2 and 4 carry weight. As LPP1 describes at 4.22:

“The need to plan for proportionate levels of growth in Primary and Secondary Villages will, however, remain an essential consideration in accordance with the spatial strategy set out in Core Policy 1”

This fundamental strategic policy has been recently reinforced following the dismissal of an Appeal to build 95 dwellings outside the settlement boundary of Chilcompton. The Inspector found that the Core Policies should be given significant weight. He also considered that:

“Ultimately, the more important issue is whether the proposal would be a disproportionate or inappropriate addition to Chilcompton. This cannot be determined mathematically but depends on an assessment of the scheme in relation to the village concerned.”

Had the Appeal been allowed, Chilcompton’s housing stock would have increased by 35%. Should this application be allowed, NSP's increase will be 40% in little more than half of the Plan Period.

The Planning Statement submitted with the application states at para 5.11:

“In any event, the proposed development is a minor development for 8 units and is considered to be a Windfall Site. Windfall Sites are identified in the LPP2 as a further source of housing delivery in Primary and Secondary Villages, where, at paragraph 3.28, it is stated that: ‘... small residential development schemes on sustainably located sites in Primary and Secondary Villages, will be acceptable, subject to environmental and infrastructure considerations.’ ”

This is a misquote of the text contained in LPP2; the correct text is :

*“...small residential development schemes on sustainably located sites **within** all Primary and Secondary Villages, will in principle be acceptable, subject to environmental and infrastructure considerations and impact on the living conditions of neighbouring residential occupiers.” [para 3.28-emphasis added]*

The PC notes that this modification refers to small schemes “*within*” villages; clearly very different from being “*in*” which refers to a location rather than being enclosed “*within*” a boundary such as a settlement limit. The proposed scheme – which cannot in any event be regarded as “*small*” in the context of NSP – is outside of the development boundary and thus in conflict with CP1 which clearly states that:

“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.”

3.5 Importance of the setting/Landscape Character

The setting of NSP village, sloping to the west from a ridge, makes its visual appearance particularly important in the wider landscape. The historic development of the village around two medieval settlements is part of its historic form and is only clearly read with the open space between them being maintained. The open space creates the distinction between the looser, open and green settlement around the church, and the compact stone terraces of the elevated High Street area. This has been described in MDC’s 2007 Conservation Area Appraisal and resulted in significant amounts of open space being included within the conservation area boundary because of their visual importance in maintaining the historic form.

Historic England, in its comments on the (withdrawn) application 2019/2976 reiterates this, stating:

“...[the village’s] heritage significance lies in the legibility of its medieval form and development and the survival of two distinct character areas that stand out in a prominent position within the wider landscape”.

Historic England commented in a similar vein on the withdrawn 2023/0247 (identical to this application):

"Consequently, the impact would be detrimental to the understanding and legibility of the historic development of the village, negatively intruding on the rural setting between the two identified character areas....the scheme would have a harmful impact on the appreciation of the historic development of the conservation area and therefore its special interest."

MDC’s LPP1 Policy DP4 protects Mendip’s landscapes. The application site plays an important role in the landscape character of Norton St Philip. Its development will cause substantial harm to the character and appearance of the area. Further, adding this impact to that of the existing Fortescue Fields development only worsens that effect.

The existing Fortescue Fields development was permitted notwithstanding its impact on the landscape, given it was a redundant brownfield site in need of development (the factory was a ‘scar’ on the landscape); the same clearly cannot be said of green spaces adjoining the village. The cumulative effect of both the existing and proposed developments (which should be recognised as an extension of the already dominant Fortescue Fields scheme) would significantly adversely and permanently alter the important character of the landscape.

This is referenced by the 2015 Appeal Inspector at para. 52 of her Report:

“Whilst the Conservation Area is generally inward looking, its significance also derives from outward views afforded by its elevated position in the landscape. That is amply demonstrated in the sudden, quintessentially English view out from the George car park and the summit of Bell Hill over the lower slopes, including Church Mead which forms an important visual link between the centre of the village and the countryside beyond. I am in no doubt that the open undeveloped nature of the appeal site has a positive role in the significance of the Conservation Area, allowing for an appreciation and understanding of the historic evolution of Norton St Philip”.

and

“Church Mead would be enclosed on all sides by built form and the crucial link to the open countryside would be obliterated”

and, in addition to heritage impact (considered further under section 3 below),
“there would be corresponding harm to the established character and appearance of the area more generally”.

The proposed development would have a significant impact that will change the character of this important landscape, such that there would be substantial harm to the landscape character. This is in direct conflict with Policy DP4. This would also conflict with NPPF para. 127

(“developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting”) and para.170 *(protect and enhance valued landscapes – of which the PC considers there can be no doubt that this is clearly and demonstrably one (see “Heritage” section below for Inspector’s comments))*.

The submitted “Proposed Levels Strategy” (now noted as being “subject to detailed engineering”) shows that substantial earthworks are required to achieve the proposed levels. The result is that houses will be elevated several meters above the level of Church Mead and will be dominant.

Furthermore, the very considerable changes to the levels proposed require the building of very substantial retaining walls. It appears these will be constructed of “gabions, timber sleepers or brickwork” and would thus not be in keeping with the setting of the CA.

The PC suggest that no weight should be given to the claim at para 3.5 of the Planning Statement that *“The proposed layout creates clear views from Church Mead and beyond to the countryside to the south of the village.”* These are the *existing* important views which would in fact be significantly harmed by the proposal.

4. Heritage

The village's elevated ridge top position above the valley of Norton Brook is referred to in the Conservation Area Appraisal (CAA) which recognises that:

"The village's position on a ridge and down its western slopes, means that it dominates its immediate surroundings and is visible from lower ground to the west." [para 2.3]

The CAA understood the importance of the proposed development site to the Conservation Area :

*"The Parish Church, School, Vicarage and Old Vicarage stand rather separately from the main flow of development, along Vicarage Lane, on the south-west edge of the village. This limb of buildings, the south side of Bell Hill and the west side of High Street all enclose a large rectangular green space, **Church Mead**, which is hidden from much of the rest of the village but **is an essential landscape and amenity element. Its southern edge faces open countryside.**" [para 4.2- emphasis added]*

The views from within the village are notable, especially to the south and west. These are also noted in the Conservation Area Appraisal:

"There is also a fine elevated view from the (George) car park over Church Mead, the cricket pavilion, Church, School, churchyard trees and the low ridge to the west of the village." [para 5.8]

And

"One of the great assets is the visual and psychological contrast between 'urban' and rural elements, experienced in the sudden views over the lower slopes and open countryside from The George's car park and the summit of Bell Hill. The views back east to the ridge and the skyline of High Street and The Plain from Church Mead and the Wells Road entry are also significant." [para 8.3]

The medieval origins of the 'low' village are described

"Church Street, the Parish Church 'precinct', Church Mead and Bell Hill: the original core of the village, taking into account the possible settlement remains south of the churchyard, a T-shaped cluster may be speculated, created by the junction of Vicarage Lane and Church Street. The main road has a continuous building frontage on its north side and a looser assembly of Church, School and Church Cottage on the south. The latter buildings are placed around a rectangular green space. The churchyard links this with the larger expanse of Church Mead, edged by trees and overlooked by the higher ridge of High Street. Bell Hill seems to be a later link to High Street but, because of steep contours, seems more obviously linked to the 'low' village." [para 6.3]

Having linked twin centres is a defining characteristic of the village because the two hubs are separated by green space that thins the urban form. These 'green corridors' should continue to fulfil their visual importance as the green setting for the form and character of Norton St. Philip. They play an important role as positive contributors to the conservation area.

The proposed application would fundamentally affect these 'Green Corridors' and cause damage to the Historic Core of the village. As Historic England have stated, the village's *"heritage significance lies in the legibility of its medieval form and development and the survival of two distinct character areas that stand out in a prominent position within the wider landscape"*.

The proposed dwellings would be intrusive to the extent of causing substantial harm to the setting of Church Mead and its adjacent historic buildings – the Grade 1 listed George Inn and the Grade 2* listed parish church of St Philip and St James.

The 2015 Appeal Inspector concluded:

"I recognise that substantial harm is a high test and may not arise in many cases. In this case however, I consider that the development proposed would have a considerable adverse impact on the setting and significance of the Conservation Area, completely altering its historic development pattern and plan form, with significant consequences for one of the most important and clearly cherished views into and out of the Area. To my mind, the scale of that harm verges on substantial".

Whilst the number of units proposed has been reduced since the previous application, the overall impact has not been avoided, and this was supported by Historic England in their response to the previous, withdrawn Application:

"...Consequently the scheme would have a harmful impact on the appreciation of the historic development of the conservation area and therefore its special interest... the rural setting within this section the conservation area is of fundamental importance as it reinforces the green buffer between the two historic centres and consequently, the conservation area's significance. In our view, the scheme fails to preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) (Para 200, NPPF).

"We have identified that the proposed west parcel of land would result in harm to the legibility of the two historic cores of Norton St Philips Conservation Area and consequently fails to preserve or better reveal the significance of the affected heritage asset (Para 200). Where harm is identified, this should be clear and convincingly justification as required under para 194, NPPF".

The PC fundamentally disagrees with the Applicant's statement (at para. 6.2 of their Planning Statement) that

“ It is not considered that the proposal would result in harm to heritage assets ”.

It is clear that there would be substantial harm to heritage assets and there is no justification for this harm. The proposals are in direct conflict with the NPPF and the PC considers that this planning consideration alone, notwithstanding the other issues, is sufficient to refuse the application in accordance with NPPF para. 11.

The PC, in considering that the proposed development would cause substantial harm leading to the permanent loss of significance of the heritage assets, and having concerns about the accuracy of the submitted Montagu Evans Heritage Statement, commissioned a Report from Angel Architecture. This Report will be submitted to the LPA separately to this comment.

5. Housing Need

The main “identified local need” in NSP is for affordable, entry level housing, as evidenced by the Housing Survey undertaken by the Neighbourhood Plan(NP) Steering Group in 2018. This Survey was completed by 171 village households, an exceptionally high response rate of 44% of village households. Only 3% favoured new open market housing being built in the village. 32% favoured new properties being built to meet the needs of local people, with 27% “no strong views/don't know”. 20 respondents had family members who wished to set up home in the parish within the next 5 years. 15 of these wished to purchase, 3 to rent privately and 2 to move to sheltered housing.

A further Housing Survey of village needs was carried out in January 2023 with a response rate of 45% of village households. 11% favoured new open market housing (albeit in most cases with qualifications) with 78% opposed. 57% supported new properties being built to meet the needs of local people.

The Draft Neighbourhood Plan includes an Exception Site Policy intended to bring forward entry level homes for sale or rent for those with a local connection.

The PC acknowledge that further housing would provide more business for the shop, which is a much-valued facility. The shop was built by the Applicant at the time of the ‘brownfield’ development and was justified according to the number of homes in the village (and the surrounding community) at that time.

6. Design

Given the sensitivity of this site, design in terms of scale and massing is of the utmost importance. The relationship of the site to the village and the rural environment is a major cause for concern, particularly to views out from the heart of the village including from The George Inn, Church Mead and the Parish Church.

The proposed dwellings, being 10m high will have an overbearing effect on the Mead, particularly as they are sited on levels up to 4m higher than Church Mead. The effect of this is shown in the accurate visualisations which are submitted by the PC separately to this comment.

Page 23 of the Design and Access statement contains the following,

“All development proposed backs onto the back of existing development and fronts onto the new proposed public open space. This frames the green space and creates no additional unactivated urban edges.”

The Parish Council is curious as to what this might mean?

Open character and open space

The application suggests that development of the site will somehow increase rather than decrease “open space”. At para 5.21 the Planning Statement states,

*“The remainder of the site will be landscaped to form a new area of publicly accessible open space. The units will appear as a continuation of the Fortescue Fields development, but will maintain the open character of the site, with the added benefit of allowing for passive surveillance of the **newly created open space.**”* (our emphasis)

Again, at Planning Statement para, 5.27,

“The proposed development creates a large area of publicly accessible open space.”

And at p 21 the Design and Access statement states,

“These houses frame a wide, open view across the green to the south, so preserving the rural outlook of the village and adding new publicly-accessible open space to Church Mead.”

It is true that the open space that is retained (not created) is proposed to become publicly accessible. However, overall, if 8 substantial dwellings are built on a field there will inevitably be a reduction in open space and not an increase. Eight new large suburban houses on a designated Local Green Space will not preserve the “rural outlook” of the village. They will diminish it. On p 23 of the Design and Access statement it is acknowledged that there will be a negative effect:

“All built form is screened by existing tree belts [so] as to minimise the effect of views from the surrounding landscape.”

The PC disputes this claim; the visualisations provided separately provide an accurate indication of the effect of the proposals on the landscape.

The Inspector in the Marston Lane (Frome) Appeal was clear that :

“...good design is a key component of both national and local planning policy and the ‘tilted balance’ does not justify development that would cause significant harm to the character and appearance of the area.”

The Design section of the submitted D&A summarises the proposal thus:

“It will be a natural extension to one of the most beautiful villages in England.”

For this village – without question one of the most beautiful in England – to retain its beauty and significance it must retain its historic core, the centre of which is Church Mead. The proposal is an extension – an extension of the former brownfield Fortescue Fields development into that historic and green core; the same core that provides the village’s beauty.

The proposed houses, being detached with large gardens, do not fit with the close knit design of the existing Fortescue Fields development, of which this is an extension.

7. Biodiversity and Environmental Protection

Background guidance and legislation

National Planning Policy Framework (NPPF) 2021 states:

“In determining a planning application, planning authorities should aim to conserve and enhance biodiversity by ensuring that: designated sites are protected from harm; there is appropriate mitigation or compensation where significant harm cannot be avoided; measurable gains in biodiversity in and around developments are incorporated; and planning permission is refused for development resulting in the loss or deterioration of irreplaceable habitats including aged or veteran trees and also ancient woodland.”

Paragraph 8 of the NPPF sets out 3 key objectives for achieving sustainable development. The third is an environmental objective –

“to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity. ... and mitigating and adapting to climate change, including moving to a low carbon economy.”

In addition, the Local Plan planning policies have implications relating to the effects of the proposed development on biodiversity:

Biodiversity and Ecological Networks Policy DP5 section 2:

“Proposals with the potential to cause adverse impacts on protected and/or priority sites, species or habitats are unlikely to be sustainable and will be resisted.

Exceptions will only be made where:

a) The impacts cannot be reasonably avoided

b) Offsetting/compensation for the impacts can be secured

c) Other considerations of public interest clearly outweigh the impacts, in line with relevant legislation.”

One of the strategic objectives of LPP1 is to:

“Maintain and enhance the quality of the local environment and contribute to international climate change goals”, specifically to “Protect sensitive wildlife habitats and valued landscapes from development and enhance biodiversity and local scenery through an integrated network of green spaces, corridors and protected areas.” (para 22)

Habitat protection

The 2013 outline application for up to 49 dwellings with associated access, parking and landscaping on this site was refused in June 2014 and dismissed on Appeal. One of the reasons for refusal was that protected species and meadow habitat would be adversely affected.

Para 3.5g of the application Planning Statement claims that *“wider biodiversity enhancements”* will create *“wildlife corridors linking to neighbouring sites, and opportunities for habitat extensions.”* The PC submits that these wildlife corridors are already in place and would be reduced rather than enhanced if these 8 dwellings were to be constructed.

The Planning Statement also proposes that:

“There would be an additional net biodiversity gain through the provision of targeted habitat enhancements....Landscape enhancements, including the retention of the Fortescue Fields Phase I tree belt, new tree belts to the north and west of Phase 2c”.

These enhancements refer to planting outside of the red line of this application and within the site of other applications for development which would actually compromise the Phase 1 tree belt.

Paragraph 5.43 of the application Planning Statement claims that the site has “a relatively low value in terms of biodiversity”. The PC suggests that the information below indicates otherwise.

According to The Wildlife Trust:

“Unimproved’ grasslands are extremely important for wildlife. ‘Unimproved’ means grassland that hasn’t been reseeded, fertilised or drained. Whilst considered to be on less ‘productive’ soil they support a huge range of species.

“UK grasslands store two billion tonnes of carbon in their soils..... (they) have a huge potential for locking up carbon, not only due to the plants we can see on the surface, but also due to the relationships between the plants, fungi, bacteria and many other species which help enrich the soil with carbon.”¹

Muntjac deer are regularly sighted on the application site and barn owls are regularly seen hunting above the green fields and spaces in and adjacent to Norton St Philip.

Barn owls

Field voles, common shrews and field mice make up 82% of what barn owls eat in the UK. In Britain permanent rough grassland, such as that found on the site of this planning application, is “by far the best habitat” for these species.²

Barn owl foraging habitat has no statutory protection and the current barn owl population decline is largely a result of reduced food supply with fewer areas of rough grassland available for hunting.³

Badgers

In its Preliminary Ecological Appraisal of November 2022 for all three application sites, the Applicant's consultants, Arbtech, states:

“Badgers (Meles meles) are protected under The Protection of Badgers Act 1992 which makes it an offence to... Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof...

*“Effects on development works: A development licence will be required from the relevant countryside agency ... for any development works likely to affect an active badger sett, or to disturb badgers whilst they occupy a sett. Guidance has been issued by the countryside agencies to define what would constitute a licensable activity. **It is not possible to obtain a licence to translocate badgers.**” [Our emphasis]*

¹ The Wildlife Trusts “Glorious Grasslands”

² The Barn Owl Trust “Barn Owl Hunting and Feeding”

³ RSPB “Barn Owl Conservation”

Arbtech Consulting, in its Preliminary Ecological Appraisal of Phase 2b/West site (Mar 2022, updated Feb 2023) states on page 8:

"A Preliminary Ecological Appraisal was completed by ELMAW Consulting Consultant Ecologists & Wildlife Managers on 25th November 2019. The land of 2b was found to support species-poor grassland and hedgerows with some bramble scrub, scattered trees and introduced shrubs. There was evidence of badgers in 2b and a further Badger Survey was undertaken in January 2020, confirming the presence of both a main and annexe sett within the land and significant badger paths throughout. In addition to badgers, the site is considered to have the potential to support important species and species groups such as feeding and foraging bats, important species of nesting birds, and hedgehogs."

On page 18 Table 4, Arbtech states:

"Badgers are currently using Site 2b which is evident from freshly excavated sett entrances and bedding which has been left in front of the main sett... A review of the BRD data shows 2 records of badgers recorded locally."

No mitigation measures have been provided, but measures for keeping the setts within a fenced area and providing only limited access to the foraging areas to the east and north of the site are unlikely to be adequate, given the proximity of the surrounding housing.

The PC would urge the LPA to monitor closely the legal obligations of the Applicant to avoid damaging, destroying or obstructing access to the badger setts.

Biodiversity Net Gain

Importantly, the Royal Town Planning Institute (RTPI) states:

"LPAs have a statutory duty to review all planning applications and permitted developments regarding the potential ecological impact of a development and to ensure proposals will promote ecological enhancement. This duty includes the need to validate planning applications to ensure biodiversity and geological conservation issues have been adequately addressed by the applicant."

The PC requests that the Council's Biodiversity and Landscape Officer is tasked to inspect the ecological impact of this planning application and especially the Biodiversity Net Gain reports which are technically complex and not within the remit of the PC. In particular the PC is concerned that:

1. As previously documented, Planning Statement Para 6.1 suggests that: *"There would be an additional net biodiversity gain through the provision of targeted habitat enhancements....Landscape enhancements, including the retention of the Fortescue*

Fields Phase 1 tree belt, new tree belts to the north and west of Phase 2c”.

It is important to note that these Phase 1 tree belt enhancements refer to planting outside of the area of this application and that they are also proposed as mitigation for other “live” applications submitted by the applicant.

2. The proposed Net Gain is required to be fully secured and funded for the lifetime of the development (as advised by Natural England – see BNG Evaluation, page 2). It is difficult to see how this can be enforced.
3. The generous figures for net gain – 23% and 25% seem unachievable given the existing/baseline biodiversity of the development site and compensation site and the area of proposed sealed surface.

9. Light Pollution

LPP1 para. 6.71 states:

“Lighting can also have effects on the activities and foraging patterns of nocturnal species, notably bats. Development proposals in a rural settingshould make all reasonable efforts to minimise noise and light pollution impacts.”

More development inevitably means more lighting. Scientific evidence suggests that artificial light at night has negative and deadly effects on many creatures including amphibians, birds, mammals, insects and plants. Both Mendip District Council (MDC) and Somerset County Council have declared a Climate and Ecological Emergency. On 7 December 2020 the Leader of MDC made the following statement, *“one of our major priorities at Mendip is to deliver on our climate and ecological commitments.”* Two of the four main objectives cited were: protecting our existing habitats, biodiversity and carbon stores and restoring nature at scale. Continued building on greenfield sites with the associated destruction of habitat is in direct contradiction to these objectives.

Norton St Philip is still a small rural settlement with very little of the night-time light pollution experienced in Mendip towns. But light pollution is also beginning to have a harmful effect on the countryside and wildlife in this rural community. The pleasure of star gazing adds to the quality of village life and to the health and feeling of wellbeing of many village residents.

10. Drainage/flood risk

The proposed drainage scheme places a heavy reliance on a natural soakaway. Little is known about the route of this underground, naturally occurring fault. It appears from the Drainage Statement that there has been no investigation into its capabilities or capacity. For a major development scheme to depend so heavily on a conveniently located fissure is extremely concerning.

All the foul sewage from the proposed development is to be discharged into the existing 6” sewer. This already takes the foul waste from the existing development and several other properties along Vicarage Lane. There are grave concerns locally about the ability of the existing sewer pipe to take the discharge from the proposed development.

11. Traffic

The village lies on the busy north/south route between Bath and Frome and east/west between Midsomer Norton and Trowbridge.

There are bottlenecks in the village on the High Street and Bell Hill; more houses in the village will result in more traffic. More traffic will mean more jams and stationary traffic.

LPP1 para 6.65 states

“New development must aim to ensure that the environment is not exposed to pollution and that it does not impose burdens on natural systems or human health that would be detrimental to their wellbeing.”

The High Street is already congested without the addition of further traffic from the development and the narrow street and high walls will retain the pollution. Eight more houses (each with 2 or 3 cars) will exacerbate an already existing problem.

There is no significant employment in the village and there is already significant out commuting. Any further development is likely to result in further out commuting.

The only bus serving the village is the D2 bus service which runs between Bath and Frome in both directions. This service was drastically reduced in April 2023 with 7 services cut in each direction. As a result for instance there is no service leaving Bath between 16.00 and 17.30 on weekdays; the next service leaves Bath at 18.50.

In the morning rush hour 2 buses have been cut in each direction; the buses towards Bath leave NSP at 07.36, 08.46 and 09.56. Towards Frome there is no weekday service between 07.13 and 09.55. This reduction in service has already resulted in an increase in full buses and hence more car use.

The proposed access to both the existing development (including the Co-Op) and application site is via a single narrow road.

In regard to this, the PC has concerns over:

- Road widths. These appear to be less than the statutory minimum in several places
- Sightlines are poor, especially at junctions within the existing development
- Gradients on the potential new road at 1:10 may be greater than permitted
- Junction splay. At the Fortescue St/ High St junction, the left-hand splay is 11m. It should be a minimum of 25m.
- Parked traffic on the High Street further reduces visibility, particularly when unloading is taking place to the Co-Op.
- The PC consider that, especially bearing the above points in mind, access for emergency vehicles is inadequate.
- There are well recognised issues with congestion in the High Street and its junctions with Fortescue Street and Bell Hill. Any increase in traffic will increase these problems.

12. Benefits Proposed by Applicant

A. Viability of village school

The school is currently at near capacity. The recent Ofsted report rated the school “Good” in all categories except Personal Development which was rated “Outstanding”. The intake for 2023 is over 50% oversubscribed. The PC rejects any suggestion that the school is “at risk”.

B. Much needed new homes

There is no identified local need for market homes as appear to be proposed in this development. Furthermore, the latest analysis from Mendip’s Housing Team indicates no local need for affordable housing.

The PC would however welcome the provision of affordable housing to meet the local need identified in the 2018 and 2023 Housing Surveys. This is for genuinely affordable “Entry Level” housing for discounted sale or rent for those with a local connection.

C. New public open spaces

The village already has 3 large open spaces which are well used:

- 1) Church Mead is an iconic village green.
- 2) The Fortescue Ponds area and associated footpaths, maintained by the Fortescue Fields Management Company.
- 3) An area of Shepherds Mead has recently acquired Village Green status.

There is no need for any further facility. Furthermore, the application does not set out a management scheme for the proposed public open space. Clarity is needed on this; the PC would wish to be consulted on how effective long term management could be provided.

D. Several new footpaths

The village already has many footpaths which criss-cross the village and are well used. The PC has previously raised concerns with the applicant about the width of the stepped access from Church Mead to Fortescue Street. At 2m wide this is narrower than the 2.5m width specified in the S106 for the original development. The specification for this footpath was that it was to be constructed to be *“2.5m wide to allow 2 pushchairs to pass while remaining on the footpath”*.

The footpath has not been constructed as planned. Had it been so there could have been a stepped path alongside a step free.

The applicant is suggesting as a benefit something that was an obligation in a S106 associated with a previous permission. Therefore this should not, in the PC's view, be considered as a benefit.

13. Sustainability

The NPPF refers to the three dimensions to sustainable development - economic, social and environmental.

There would be some economic elements arising from this proposal through the delivery of new homes. However, the original Fortescue Fields development included a measure of commercial development, with the shop, doctor's surgery and 4 commercial units. With the exception of the shop these were subsequently redesignated as private dwellings. This application has no commercial element; thus there is little long term economic gain other than, as the Planning Statement states, *“Induced jobs will also be created once the development is occupied (gardeners, building and site maintenance, cleaners etc.)”*

The village has grown at a faster rate than any other village in Mendip District. This has had an effect on the social sustainability and sense of community in the village, which needs time to adapt to its increased size and population.

The Planning Statement submitted with the application for the existing brownfield development (2010/0493) recognised the importance of sustainability, concluding that:

“Of greatest importance, it is a major enhancement to the natural and historical environment, significantly improves the quality and character of the countryside and for the existing village community. It will be evident from the Design and Access Statement and drawings that this is an exemplar scheme, which ensures the highest quality of development. Its whole approach has been to support an existing community and certainly contributes to the creation of a safe sustainable, liveable

and mixed community. It is not a town centre site, but is a serviced village centre site”

No such claim could be made for the environmental or social sustainability of this greenfield application.

14. Summary

The PC accept that the current application is different to those previously dismissed on Appeal, withdrawn or refused.

The 2015 Appeal was dismissed and the 2021 application refused on the basis that development in this location was, in principle, unacceptable and considered environmentally and socially unsustainable. They were not dismissed or refused because of the quantum of development proposed.

As set out in the PC’s response above, there are many significant material planning considerations which make this application unacceptable both in principle and also in matters of detail.

Limited or no weight should be given to most of the ‘benefits’ proposed by the Applicant; they are not required by the community, are not directly related to the development (and therefore it would be unlawful to take them into account in the planning balance) or they are not considered benefits at all.

The environmental harm arising is substantial and significant. This includes significant and permanent harm to landscape character and appearance and substantial harm to the setting and heritage significance of the Conservation Area and Grade I and Grade II listed buildings.

The PC is committed to the protection of the historic character and appearance of the village for this and future generations. The harm which this proposal would cause to the village’s heritage assets provides a clear reason for refusal. Furthermore there are adverse impacts which would significantly and demonstrably outweigh the benefits (drainage, highways, biodiversity). The PC submits that these factors heavily tip the planning balance into refusal of planning permission.

The PC **objects** to this Application.

Norton St Philip Parish Council
June 2023