

# NORTON ST PHILIP PARISH COUNCIL

## **Comment on Planning Application 2023/0643/FUL**

Erection of 27no. dwellings including 8no. affordable housing

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## **1.Consultation**

In its comment on the previous, identical, withdrawn application (2020/2053) the PC welcomed the applicant's commitment, made at the Public Meeting on 6th January 2020, to work with the PC and community on amendments to the proposals put forward at that time. The comment noted that the PC looked forward to engaging constructively with the applicant and noted areas where it would wish to see changes. However the applicant made no efforts to engage with either the PC or community before submitting amended plans to that application in 2023. Following the submission of those amended plans the applicant attended the PC Meeting on 8th February 2023 and spoke in the Public Participation session, drawing attention to the affordable housing provision associated with the application, the energy efficiency of the planned houses and stated that the proposals had a lot to commend them.

The applicant subsequently attended the PC Meeting on 8th March 2023 and spoke to the 2020/2053 application in the extended Public Participation session. Over 100 NSP residents also attended. There was no support shown for the proposed scheme.

This application (2023/0643) is identical to the withdrawn 2020/2053 at the time of its withdrawal.

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## **2. Principle of development**

Development of part of the application site (the Mackley Triangle/site 2a) has twice been refused at Appeal, in 2001 and 2015.<sup>1</sup> Since then three further applications have been withdrawn before determination.<sup>2</sup>

Both Appeals were dismissed on the principle of development, harm to the conservation area, landscape and character of the area - not the quantum or design of the homes. Application no 3 was withdrawn in June 2020; the fourth application (identical to this one) was submitted in November 2020 and withdrawn in April 2023; the fifth application was submitted in July 2022 and withdrawn in April 2023. These last 3 applications were for both the "Triangle" and "South" sites; the initial 2 (both refused at Appeal) were for the "Triangle" site only.

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<sup>1</sup> APP/Q3305/A/01/1060390 & APP/Q3305/A/14/2221776

<sup>2</sup> 2019/2976;2020/2053;2022/1522

The applicants case is that as the LPA cannot currently demonstrate a 5 year supply, the 'tilted balance' is engaged; the submitted planning statement concludes that:

*"No "significant" or "demonstrable" adverse impacts have been identified. There would be no demonstrable harm to highway safety or capacity. There would be no increased risk of flooding onsite or elsewhere. There would be no harm to landscape or ecological assets that cannot be mitigated. As such, planning permission should be granted without delay."* [para 6.2]

The PC considers that this is a fundamental misunderstanding of both statute<sup>3</sup> and the NPPF, which make clear that the statutory development plan is a material consideration, even in the context of the tilted balance. This has recently been clarified by Mr Justice Holgate in the Flitch Green case. He rejected the developer's argument that the tilted balance should have been applied without taking into account development plan policies that were deemed to be out of date due to the housing land shortfalls. He ruled that the provisions of the NPPF remain subordinate to the principle established by statute that, when considering planning applications, first regard must be had to the terms of development plan policies. Justice Holgate's judgment was subsequently upheld by the Court of Appeal in 2021; that Judgment also rejecting the idea that the decision maker's consideration of the 'tilted balance' and section 38(6) must be performed separately, noting *"no support for it is to be found in statute or in authority. Indeed, it seems contrary to authority."*

This approach is supported by evidence from recent Appeals within the former Mendip, now Somerset East district. These Appeal decisions which gave substantial weight to the character and appearance of the area are referenced in section 7.

This does not appear to be the applicant's only fundamental misunderstanding of National Planning Policy. The Planning Statement asserts that limited weight should be given to the adopted spatial strategy as:

*"planning permission should be granted for schemes provided any harm arising from the development significantly and demonstrably outweigh the planning benefits."*<sup>4</sup>

If that were the case, the PC would agree with the applicant that *"planning permission should be granted without delay"*. However the reverse is true and the PC has identified significant harms which are set out in this comment together with clear and fundamental conflicts with the adopted development plan.

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<sup>3</sup> S38.6 of the Planning & Compulsory Purchase Act 2004-*"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

<sup>4</sup> Planning Statement para 5.11

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### 3. Adopted Local Plan

#### LPP1

LPP1 was adopted in 2014 and contains both the spatial strategy and development policies for the current Plan period. These Policies continue to apply and carry weight. They direct development across the rural part of the district as well as the 5 towns. The ‘Vision’ of LPP1 is

*“New development, primarily focused in the towns, has made efficient use of land but has been used to reinforce the distinctive character of each place.”*

In order to achieve this, the strategic objectives of LPP1 were to concentrate the majority of jobs, housing, cultural activity and services within the district’s towns. The strategy is explicit, *“The majority of development will be directed towards the five principal settlements.”*<sup>5</sup>

In the rural area, the aim of CP1 was to provide housing clearly related to identified local needs.<sup>6</sup>

Hence the majority of development was to be focused on the 5 towns, with the rural area taking an “appropriate’ proportion to meet local needs and sustain the rural economy, particularly where people can access local employment.

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 however NSP has seen 117 completions and commitments in the Plan period. This is well over 250% of the ‘minimum’ and an increase of almost 40% in the village housing stock in 12 years. This conflicts with the adopted spatial strategy which is to secure proportionate development at the same level across the rural villages, and was recognised by the Inspector in the 2015 Appeal Decision<sup>7</sup>.

The strategic aim for proportionate growth in the rural areas was subject to close scrutiny at the Examination stage of LPP1. The Examining Inspector considered that *“in a rural area such as Mendip it is perfectly legitimate for the Council to adopt a strategy of concentrating development in the principal towns as these are the most sustainable locations for growth.”*<sup>8</sup>

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<sup>5</sup> Core Policy 1 (1a)

<sup>6</sup> Core Policy 1 (1b)

<sup>7</sup> APP/Q3305/A/14/2221776 paras 31 & 80

<sup>8</sup> para 33

He concluded that the proposals for proportionate growth struck “*a reasonable balance between the need to provide sufficient development to support rural settlements without causing unacceptable harm to their character.*”<sup>9</sup>

CP2 provides detail of how new development should be directed across the district; in particular that it should come from either sites within Development Limits defined on the Policies Map or through allocations in line with the principle of the proportionate growth in rural settlements, informed views of the local community and the contribution of development since 2006 towards identified requirements.

CP4 sets out that growth in rural villages will be at a scale commensurate with the existing housing stock in line with Core Policies 1 and 2, whilst allowing for the possibility of supporting “*viable schemes which extend the range of community infrastructure allowing local people to secure more of their everyday needs locally.*”

This application does not attempt to claim that it is in line with the strategic policies CP1,2 or 4. Instead it submits that these Policies carry little weight in the light of the District’s Housing Supply position. It also recognises that the proposed site is in the “open countryside”<sup>10</sup>; considered the least appropriate place in the strategic hierarchy to develop

Development Policy DP1 recognises that natural and heritage assets create an important sense of place and identity. The Policy seeks to ensure these are maintained and where possible enhanced.

Development Policy DP4 requires that proposed development should be compatible with the character of the landscape.

The PC submit that further large scale development conflicts with Core Policies 1,2 and 4 and with Development Policy 1 though 9. The resultant harm should be weighed in the planning balance.

## **LPP2**

The LPP2 Inspector’s Report was issued on 1st September 2021. This confirmed the allocation of NSP1 in Norton St Philip for 27 dwellings as being part of the provision of an additional 505 dwellings in the north-east part of the District. MDC adopted LPP2 in December 2021. Following that the PC commenced a Judicial Review of that decision which was heard in the High Court in October 2022. The judgement was issued in

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<sup>9</sup> Para 34

<sup>10</sup> Planning statement para 5.11

December 2022 and upheld the claim on the grounds that the Inspector had misinterpreted LPP1 in considering it contained a “strategic expectation” that the 505 dwellings should be allocated in NE Mendip and furthermore that alternative sites outside of the North East of the District had not been considered.

The Order instructed MDC to remove site NSP1 (as well as the other ‘505’ sites) from LPP2, the Policies Map and other relevant documents. This was done in January 2023; the rest of LPP2 remains adopted and carries full weight. No weight can be given to the former allocation of NSP1 including LPP2’s previous consideration of the suitability of the site for development. The misinterpretation of LPP1 and subsequent misdirection renders this meaningless; the Inspector and Council were simply starting from the “wrong place”.

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## **4. Five 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, other 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.”*

The proposed benefits are considered at Section 12 of this comment.

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## **5. 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 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 development policy relating to Local Green Spaces was unlawful and the decision to hold a referendum 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 (a companion document to the draft NP) 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

The proposed site lies in a Green Corridor as identified in Figure 11 in the Character Assessment. This explains that development within Green Corridors should enable them to remain open and continue to fulfil their visual importance so that they do not present a hard edge but blend into their green surroundings with appropriate soft landscaping and layout.

Important views in the village are shown in Figure 10 of the Character Assessment. These include the view into the High Street and Conservation Area at the “Gateway to the Village” as described in both the 2001 and 2015 Appeal Decisions.

The PC are currently undertaking a new Regulation 14 Consultation which ends on June 25th. All issues and concerns raised will be considered and responded to prior to the PC submitting the Plan to Somerset Council.

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## **6. Greenspace Designation**

The Triangle site is 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.”*

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## 7. 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. [April 2023]. In dismissing the Appeal, the Inspector considered the adopted Core Policies in the light of the district’s current Housing Supply . She noted:

*“The Council acknowledges that it is unable to demonstrate a five year supply of housing land, based on the local housing need figure. Accordingly the policies related to the delivery of housing are out of date and the presumption in favour of sustainable development applies, as defined in paragraph 11 of the National Planning Policy Framework (the Framework). I will consider this further as part of my planning balance.*

*However, whilst the policies may be out of date, it does not follow that they are inconsistent with the Framework’s policies or do not carry any weight. Indeed, paragraph 219 of the Framework states that due weight should be given to them*



*according to their degree of consistency with the Framework. LP1's overall spatial strategy to focus most development in the main towns and seek proportionate growth in the rural areas, is a sustainable pattern of development that accords with the Framework's objectives. Accordingly I give LP1 Core Policies 1, 2 and 4 substantial weight."* [Paras 13&14]

The Inspector went on to consider the need for proportionate growth in the rural villages. She concluded:

*"Whilst it is clear that the housing requirement is a minimum, and the 15% growth level is a guide, the provision of 81 additional dwellings already exceeds the 65 dwelling figure defined by the spatial strategy. The appeal scheme would increase this by up to a further 49 dwellings. Overall, this cumulative growth would result in Rode's housing stock increasing by around 30% since the start of the plan period. This would be significantly higher than the proportionate 15% envisaged by the spatial strategy, which, in my view, would result in an excessive amount of unplanned development in this location."*

The planning balance is clearly considered in paras 60-66 of the Decision with the Inspector summarising that the harm significantly outweighed the benefits of the proposal and would thus not constitute sustainable development.

**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 whole .....the 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) **Appeal Ref: 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) **Appeal Ref: 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.”*

These decisions clearly and fundamentally undermine the Applicants claim that the Housing Supply position:

*“ means that the adopted policies are demonstrably ineffective in providing for sustainable development and it is necessary to breach these conditions to provide for sustainable development.”* <sup>11</sup>

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## 8. Biodiversity

### **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*

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<sup>11</sup> Planning Statement para 5.17

*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<sup>12</sup>:

*"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 3.2 of the application Planning Statement claims to offer "Significant biodiversity and ecological enhancements to the site and the Ponds Country Park area." The PC submits that a country park may be welcome within an urban setting but is certainly not needed in a rural village surrounded by countryside. It is difficult to see how biodiversity and ecology can be enhanced by the building of 27 homes and associated hard landscaping.

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<sup>12</sup> DP5 section 2

Paragraph 5.86 of the application Planning Statement claims that the site has "a relatively low value in terms of biodiversity" and dismisses "the low value grass land that currently exists." (para 5.84)

According to The Wildlife Trust's "Glorious Grasslands":

*"'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."*

### **Biodiversity Net Gain (BNG)**

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 therefore 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 Survey and Report which is technically complex and not within the remit of the PC.

In particular the PC is concerned that the Biodiversity Net Gain Report (Arbtech Jan 2023) states, in the Summary findings on p2:

*"The currently advised areas would result in a 25.47% net gain in habitat units and a 39.58% net gain in linear units, exceeding the 10% target for the development."*

The PC would argue that these figures are based on questionable assumptions as follows:

#### **1. Tree Belt:**

The applicant proposes removal of the Tree Belt on Laverton Triangle with sections to be planted with "whips and feathers" to a depth of up to 10m, although the Planning Statement states at para 5.68 *"In terms of the tree belt, it is proposed to retain (where possible) and re-plant a new tree belt along this boundary with a minimum width of 6m"*.

The new "whips and feathers" replacing mature trees and hedging would take at least ten years to reach maturity and should therefore not be included in the workings for

BNG.

The PC have prepared a separate document concerning the potential loss of the Tree Belt. This has been submitted by the PC as part of its comment on both this application and 2023/0644. As the Tree Officer notes in his comment, the PC first requested that the LPA issue a TPO for the Tree Belt in 2017; a request it has repeated on several occasions since when the Tree Belt has been threatened.

The Tree Officer's Holding Objection to this application concludes on Page 8, "It can be demonstrated that the proposed development will cause considerable harm, resulting in the loss of trees, fragmentation of hedges and damage to the local natural features resulting in biodiversity loss." This would seem to be in direct conflict with the BNG figures.

## **2. Hedgerow:**

The Council Environment Team's Landscape Architect concludes in his Objection on Page 4 point 25, *"I consider that the proposed scheme remains harmful... It will... cause major harm to the character of Mackley Lane through the loss of existing hedgerow."*

The PC challenges the baseline figures in the BNG calculation which appear to show a loss of only 0.03 km (30 metres) of hedgerow in this development. Our own calculations are that up to 100 metres in length will in fact be lost. Additionally, the metric does not appear to take into consideration the width of the hedgerows which ranges from 2m to 6m.

## **3. "Advised areas" relationship:**

Approximately one third of the "advised areas" in the report - the SUDS/ponds area, where there is most opportunity for biodiversity gain - is not owned or controlled by the applicant. As the Report itself states:

"The creation management of the habitats on site to the appropriate condition in the BNG metric would need to be finalised and then secured for at least 30 years - linked to the application through a planning obligation in Section 106 (S106) agreement. A management and monitoring plan would also be required for this."

Since there appears to be no formal arrangement between the owners of the SUDS/ponds area and the applicant it is difficult to see how this undertaking would be possible.

## **4. SUDS marginal planting:**

The considerable "proposed marginal planting" shown in the second map (below) of the Evaluation is erroneously shown as a gain when in fact it already exists (although it is not shown on the Habitat Baseline Map). Evidence exists in the many photographs taken of the site in recent years. This existing planting has also been omitted from the BNG Metric A-2 Site Habitat Baseline but is treated as a 0.2135 hectare gain in the A-2 Site

Creation (shown as Wetland).

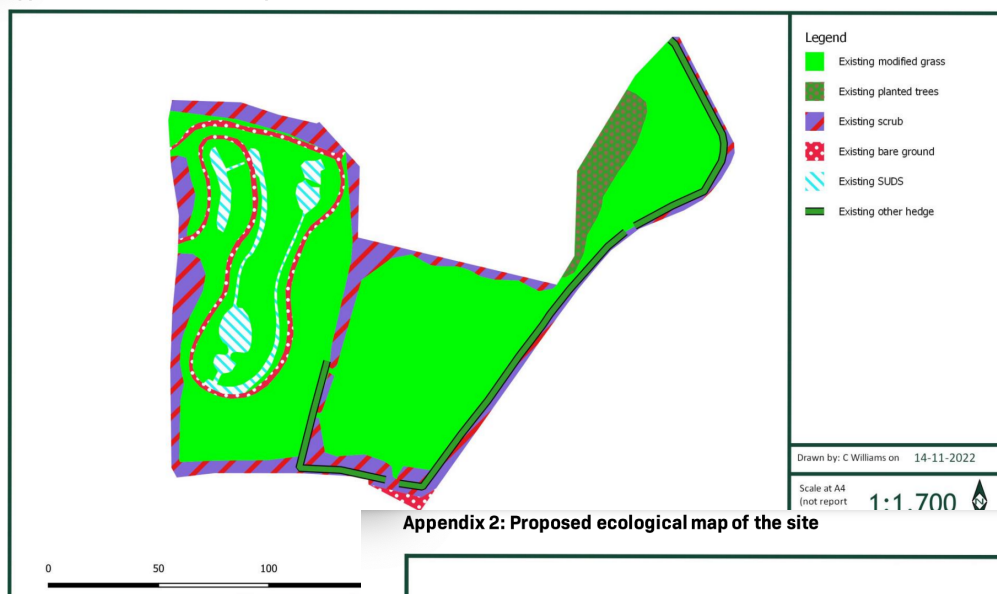
It appears that the existing SUDS marginal planting was not included in the remit to assess the Lavington (sic) Triangle Botanical Assessment for grasslands. It states (Page 2, 2.2 Remit):

"To undertake a botanical assessment over four small fields. With regard to areas proposed for development to identify if any grasslands of botanical value will be negatively impacted and to recommend proposals to avoid or mitigate this impact if possible. With regard to the SUDS system to identify measures which will improve that area's ecological value."

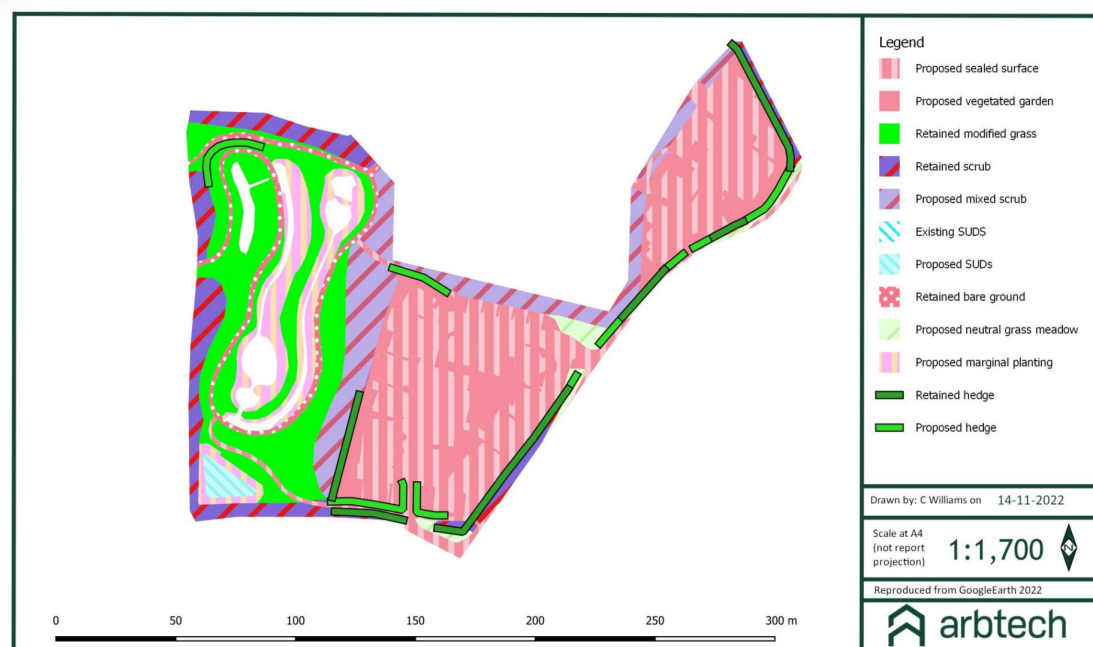
This limited assessment would therefore give the impression that the SUDS area lacks botanical diversity which a site visit would plainly show is erroneous.

The considerable "marginal planting" shown in the proposed maps included in the submitted BNG Evaluation Report (reproduced below) is erroneously shown as a gain when in fact it already exists (although is not shown on the Habitat Baseline Map). This should not therefore be included in the calculation.

Appendix 1: Habitat baseline map



Appendix 2: Proposed ecological map of the site



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## 9. Layout/Landscape Proposals

- One house is proposed entirely within the Conservation Area at the highest point of the Triangle, where it is elevated 3.5m above Frome Road. At 9m to the ridge, this house will be overbearing and dominate the street scene below it.
- The remaining 6 houses on the Triangle are positioned so that the Tree Belt will be reduced in depth by 5m.
- These houses are 9-10m to the ridge and are perched high above the existing development and will have a detrimental effect on amenity.
- The submitted Heritage report for the application claims at para 6.26 that *“The position and height of the proposed buildings relative to the boundary of the site are such that the proposed dwellings are unlikely to be visible in normal views from either Town End or Mackley Lane.”*
- The scaled Visualisations of the proposals submitted by the PC separately to this comment are telling; as is the lack of such visualisations submitted by the applicant.
- Further such claims for “glimpsed” views are made in the Heritage Report at para 6.28: *“The proposed dwellings will be set behind the existing hedgerow, screened by the landscaping proposals described above. There are also sizeable gaps between the proposed houses, so they will not appear as part of a larger terraced ‘block’.”*
- Plots 2-6, which stretch across the Triangle site, is a terraced ‘block’ of 5 houses.
- The parking layout will mean cars will be “head on” to the boundaries of existing houses on the Fortescue Fields development.
- The PC notes that although landscaping is proposed on the boundaries, the planting is of “feathers and whips”. These will take many years to perform a screening function.
- A new drainage pond is proposed next to the south west corner of the site. This is at considerable elevation above the existing ponds. The PC have safety concerns about this and assume that the LLFA will consider the practicality of this in their comment.
- The amended layout replaces the 15m Tree Belt with a 10m “landscape strip”, to be planted with “whips and feathers”. The PC rejects the validity of any of the reasons put forward by the applicant for the proposed destruction of the Tree Belt. The history of and requirement for the conditioned Tree Belt are set out in a separate report to be submitted to the LPA in connection with this application.
- There is a lack of adequate reference to the Tree Belt’s existence in the submitted “Tree Constraints Plan”. This must call into question the validity of this critical document.
- The proposals to widen Mackley lane, remove ancient important and protected hedgerow and trees, part of the historic (possibly medieval) retaining wall and build out into Frome Road are fundamentally opposed (see “Harms” section below).

The deletion of the site’s allocation from LPP2 should not mean that the criteria set for development in LPP2 should be ignored. These included, amongst others, the requirement that development should:

- *have particular regard to site layout, building height and soft landscaping, to minimise the visual impact of the development*
- *respect the rural character of the locality*
- *maintain the Laverton Triangle's role as a feature at this gateway to the village.*
- *in particular retain the belt of trees on the site.*
- *respect the elevation of the site compared to surrounding land.*
- *safeguard the amenity of neighbouring residential properties.*

None of these criteria are met in the proposed layout. This is made clear in the Note produced following a site visit made by the Planning Officer in October 2022, at which time the site was allocated in LPP2. This Note, which refers to the withdrawn application for this site (2022/1522) but, the PC submits, applies equally to this application as the layout on the Triangle is identical. This Note clearly sets out the Planning Officer's concerns about hedgerows, biodiversity, Tree Belt, access, retaining wall. In regard to layout and the Landscape Character, the Note advises:

*"The comments made by of Jennifer A Vyse at the March 2015 appeal decision around recognising the part the Laverton Triangle plays in the village character of that part of the village, are still valid.*

*It is likely that this could only be overcome by reducing the height (possibly bungalows?) and number of houses. Setting them much further back from the B3116 and corner to Mackley lane would reduce the impact of the buildings on the rural character of the landscape here. This may also apply to the higher parts of 2c.*

*Face the building with natural stone to blend in with the older building of Townsend rather than render.*

*Reduce the area of hard surfaces and high building that give Fortescue field and more town like feel.*

*Aim for a looser, greener more open cottage or small barn feel. Planting small native trees that naturally grow in the areas to break up the built areas."*

In order for this to be achievable the Planning Officer suggested the following changes:

*"Reduced number of houses to reduce impact on existing habitats and allow for buffer zones.*

*Single storey houses on higher ground to reduce impact on countryside landscape character of the village*

*Natural stone facing similar to the pre 1950's houses at Townsend*

*Increase permeability of the ground surfaces surrounding the buildings to reduce run off and increase water penetration of the site.*

*Plant a small tree or shrub in the gardens for wildlife, to bring the countryside further into the development and to shade in hot weather."*

None of the above suggestions have been taken up in the amended plans.



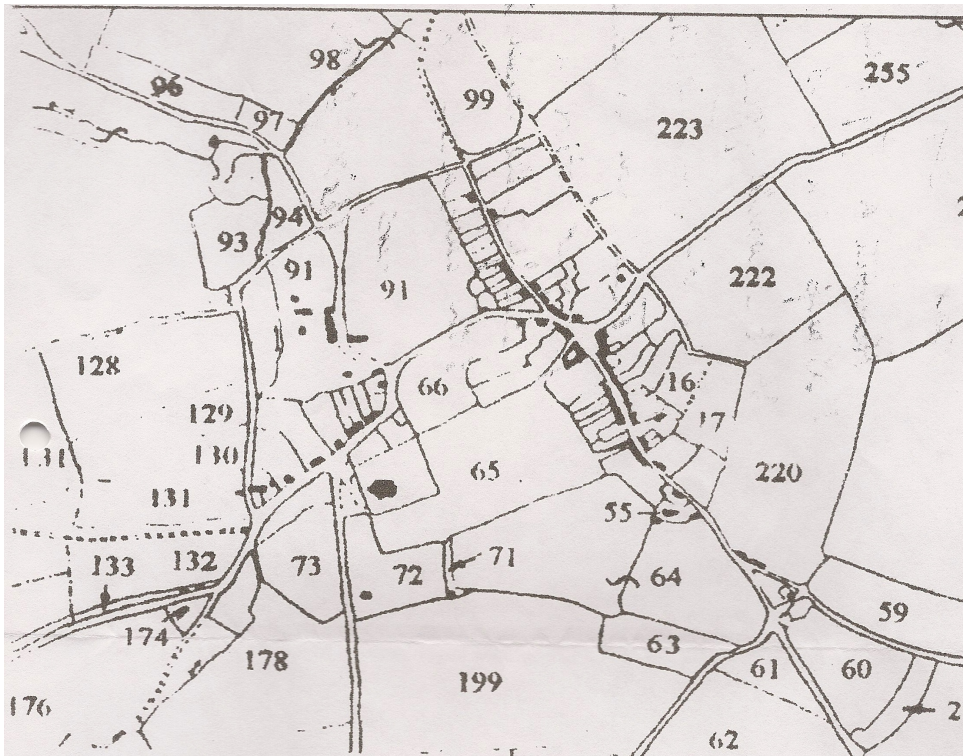
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## 10. Alterations to Mackley Lane

The PC has profound objections to the proposals to widen Mackley lane, remove ancient important and protected hedgerow and trees, part of the historic (possibly medieval) retaining wall and build out into Frome Road.

The PC notes that the Transport Addendum submitted with the revised application states at para 4.9 that “*minor earthworks are proposed*” . These works involve removal of a substantial (2m?) section of ancient retaining wall and reducing the level of the Triangle by up to 2m. Together with the road widening at several points along Mackley Lane these cannot be considered minor.

This is an ancient and characterful lane that is clearly defined on the 1638 map (below):



Mackley Lane is a much loved narrow characterful lane used by walkers, cyclists and horeseriders. It leads to a network of other similar lanes. The proposals will be immensely damaging to this character, changing it from a rural lane to an urban road.

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## 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. Thirty 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; after the 17.30 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.

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## **12. Proposed Benefits**

- The PC would welcome the provision of more affordable housing. Of the 117 dwellings permitted in the Plan period to date, only 8 have been ‘affordable’. The Housing Surveys carried out for the Neighbourhood Plan in both 2018 and 2023 demonstrated a need for discounted market sale/shared equity housing for local people. It should be noted that average house prices are high in Norton St Philip and so even with a 20% reduction the price would be out of reach of someone buying their first home on an average salary in Mendip of £25,000. To be truly affordable starter homes, the price would need to be in the range of £200- 250,000. The lack of genuinely affordable housing in the village has had an effect on the demographic, in particular with younger people having to move away because of affordability.
- The PC thus has concerns that a discounted market price might still be out of the reach of most local people trying to buy their first home, and welcomed the applicant’s commitment, made at the Public meeting on 6<sup>th</sup> January 2021<sup>13</sup>, to work with the Housing Officer in an effort to ensure the affordable houses are affordable for local people. The Housing Officer confirmed in January 2023 that there are 10 applicants who have stated Norton St Philip as an area of preference, but none have

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<sup>13</sup> Following the submission of the (withdrawn) 2020/2053

- stated the village as their first choice. 8 applicants have Norton St Phillip as their second preference, and 2 applicants have put the village as their third preference.
- The Housing Officer set out the Council's approach to Affordable Housing in NSP in an email to the Planning Officer in March 2023. This is included in this comment as an Appendix. From this email it would appear that affordable housing is to be provided by means of an off site contribution. The PC wishes to bring forward Exception Sites for affordable housing targeted at local people; this is included as a Policy in the draft Neighbourhood Plan, currently at the Regulation 14 stage.
  - The PC welcomes the proposed housing mix, with the majority of the houses being 2 or 3 bedrooms. This would go some way to redress the balance of recent development, which has been heavily weighted to 4/5 bedroom houses. Notwithstanding this, 2 bed new build houses in the village are currently on the market for sale at £625,000.
  - Viability of Village School. The Planning Statement claims that *"this scale of development is considered by the Council to be necessary to sustain the village school."*<sup>14</sup> . The school (which is a First school, not a Primary) 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 50% oversubscribed. The PC rejects any suggestion that the school *"continues to be at risk from falling pupil forecasts"*<sup>15</sup>.
  - New Footpaths. The village already has many footpaths which criss-cross the village and are well used. Notwithstanding the development proposed, there is no need for further footpaths.
  - The economic benefit to the shop and local businesses would be limited.
  - MUGA and Allotments. The applicant states that the permitted MUGA and allotments will be delivered as part of the development. This is the fifth time the applicant has proposed these benefits- as part of 2013/2052, 2019/2976, 2020/2053, 2022/1522 and for this application. The 2015 Appeal Inspector noted that *"The provision of the MUGA would be a social benefit of the developments proposed in that it would also be accessible to existing residents."* However a 2015 village survey completed by over 50% of village households showed practically no support for the provision of a MUGA and allotments as shown by the result below:

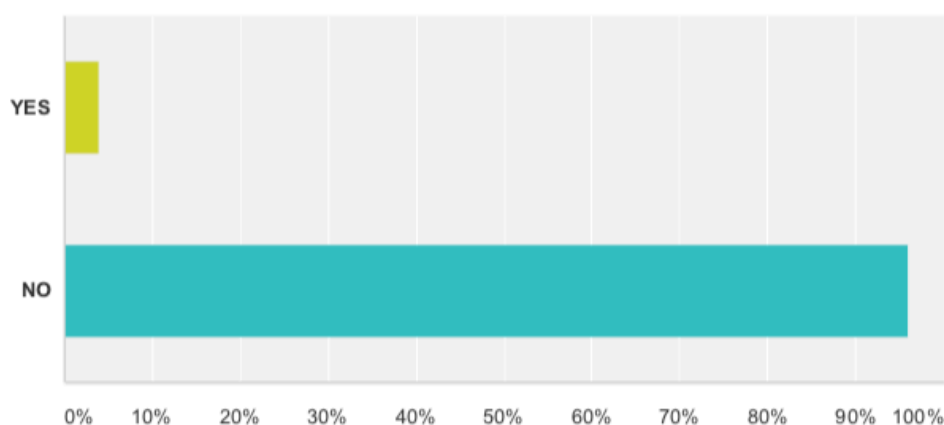
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<sup>14</sup> Planning Statement 5.18

<sup>15</sup> Planning Statement 6.1

**Q9 Are you in favour of permission being granted for up to 49 new houses on Fortescue Fields West site in return for the gift of land for a Multi use games area (MUGA) and a financial contribution towards it's building, and c.8 allotments?**

Answered: 198 Skipped: 3



| Answer Choices | Responses  |
|----------------|------------|
| YES            | 4.04% 8    |
| NO             | 95.96% 190 |
| Total          | 198        |

### 13.Harms

The applicant has suggested that would be “*no significant or demonstrable harm from the proposed development that would outweigh the clearly identified significant public benefits*”<sup>16</sup>

The PC does not accept this suggestion; it considers that there are significant identified harms on which it is possible to comment, as below:

1. The proposed development is outside the village settlement boundary. As Core Policy 1 para 3, “*Any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.*” The PC does not consider the limited economic benefits or the provision of the MUGA and allotments substantial enough to overcome this strict control.

<sup>16</sup> Planning Statement 4.10

2. Greenfield development is by its nature harmful and should only be considered if brownfield or previously developed sites are not available. The Draft Neighbourhood Plan allocates the brownfield Bell Hill Garage site for development.
  
3. The harms to the village's pastoral landscape setting. The Tree Belt report (submitted separately by the PC) includes the Applicant's own Landscape Report from 2009<sup>17</sup> which proposes a very different landscaping scheme to that now being suggested. (*"The landscape design principles for the development in the former factory site seek to ensure that the valued characteristics of Norton St. Philip, its attractive form and visual appearance, are retained and enhanced. The opportunity exists therefore, through design, to introduce built development and associated landscape that together will enhance the character of the village."*[para 9.2]) . This laudable aim has clearly been superseded by one which will cause significant and irreversible harm to the character and appearance of the village and its Conservation Area.
  
4. The landscape and visual impact of the proposed development is a material consideration. As the Council's Conservation Area Appraisal notes, the village "occupies an elevated position on a pronounced west-facing ridge overlooking the valley of Norton Brook"  
 The site sits just below this ridge and is prominent in views from the south and west. Accurate visual representations of the visual impact of this proposal as viewed from public rights of way are submitted separately to this comment and demonstrate the severity and extent of the landscape impact when viewed from the approaches to the village from the south and south west. As the 2015 Appeal Inspector noted:  
*"The impression of countryside when approaching the site from the south, and along Mackley Lane, is maintained right up to the junction with Town End, the presence of the Laverton Triangle site helping the countryside to flow into this part of the village. The previous Inspector concluded that :*  
*'The loss of the Laverton Triangle to built development would mean that the built boundary of the village would move markedly westwards, out into the open countryside. Houses on the field would be seen above the hedges, as the land lies above the adjacent roads. The built impact of the proposal would be seen as an incursion into the open countryside.'*  
*Whilst the appeal scheme would not extend any further west than the Fortescue Fields development, the other observations hold true today."*<sup>18</sup>

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<sup>17</sup> See NSP PC's Tree Belt Report, Appendix 4. See in particular Sec9 starting on p64

<sup>18</sup> Para 41

The impact of the current proposed scheme would be much greater than that considered at the 2015 Appeal as built development would move substantially further west into open countryside. The PC submits that this would be in clear conflict with DP1 and DP4.

5. Mackley Lane is a quiet single track country lane which leads to a network of similar narrow lanes much used by walkers, cyclists and horeseriders . Its junction with the Frome Rd. forms part of the 'gateway' to the historic village recognised by the 2015 Appeal Inspector. Widening the Lane and 'building out' its junction with Frome Road will have a significant negative impact upon the character and setting of both Mackley lane and the Conservation Area.
6. The widening of the lane will also require the removal of approx 140m of ancient hedgerow. The ecological and visual harm caused by this proposal is severe and in the PC's view cannot be mitigated. Ancient hedgerows support a diversity of plants and animals and old trees and dead wood provide very valuable habitats for a large number of invertebrate species. According to Buglife UK hedgerows adjacent to roads, green lanes, tracks and wooded ground tend to be particularly species-rich. A newly created hedge, as planned by the applicant, will not have the same value in terms of wildlife, landscape and historical significance as a long-established hedgerow.
7. The PC notes that the Transport Statement submitted with the revised application states at para 4.9 that "minor earthworks are proposed" . These "minor" works involve rebuilding the junction of Mackley Lane and Frome Road together with widening over 140m of Mackley Lane.
8. These works also involve removal of a substantial (2-3m?) section of ancient retaining wall. This despite the Landscape and Visual Impact Appraisal stating that *"The retention of the existing stone retaining wall and mature native hedgerow to the southwest of the B3110, along with a level difference of up to 2 metres between the site and the road, will reduce any effects on the Norton St Philip Conservation Area as a result of the proposals"*. Together with the road widening at several points along Mackley Lane these cannot be considered minor.
9. Further development outside the settlement area of NSP will have a negative impact on the functional green networks which link habitats and which allow wildlife to travel and sustain territories. Providing these green corridors is vital to protect and maintain the habitat and existence of the many forms of wildlife that can be seen in the area.

10. 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. Mendip District Council has declared a *Climate and Ecological Emergency*. In a 7 December 2020 posting on the MDC website the Leader of the Council 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 (including, in this application, the removal of ancient hedgerow) is in direct contradiction to these objectives.
11. As recognised by the 2015 Appeal Inspector<sup>19</sup>, harm can be caused to a Conservation Area (CA) not only by development *within* the CA but also by development within its setting. The PC considers that harm is caused to the CA by the proposals for both site 2a and 2c. Approximately a quarter of the Triangle sits within the Conservation Area. The height and scale of the proposed houses on the Triangle will result in harm to the CA and its setting to the north. Development of site 2c will cause significant harm to the setting of the Grade 2\* Parish Church, its churchyard (with many listed graves) and the Mead, all of which sit in the CA.
12. The importance and significance of the Mackley Triangle Tree Belt is set out in the Tree Belt Report submitted separately to this comment. The 2015 Appeal Inspector could not have been clearer in concluding : *“I am in no doubt that the replacement tree belt remains necessary in the anticipated location in connection with Fortescue Fields development.”*<sup>20</sup>
13. The submitted LVIA Appraisal notes at 7.2: *“the proposed development would further extend the area in which tranquility and the perceived qualities of the landscape would be reduced as a result of increased activity and lighting associated with residential development. In particular, the experience of Mackley Lane would be notably changed by the introduction of 2 new vehicular access points, including carriageway widening and an associated removal of the existing roadside hedgerow, through which domestic activity would be apparent and light-spill from dwellings would alter the characteristically un-lit rural lane.”* And at 7.4 *“The proposals are assessed as having major/moderate to moderate adverse effects on settlements and roads. Development will extend west beyond existing housing, along Mackley Lane, into existing farmland to the southeast of Norton St Philip. Located on the ridgeline, proposed housing will follow the existing pattern of development which currently keeps to high ground along High*

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<sup>19</sup> APP/Q3305/A/14/2221776/ 2224073 Paras 38,45,52-54

<sup>20</sup> Para 42

*Street, although this will increase its prominence from vantagepoints to the west of the village". The PC rejects the suggestion that they "will be minimised by; the proposed retention of the roadside hedgerow wherever possible; the use of the existing field gate entrance into the northern part of the site; proposed replacement hedgerow planting where stretches of hedgerow will be lost; and the sympathetic detailing of the interface of the development with the lane."*  
[para 7.4]

These are harms that, in the PC's view, cannot be mitigated for.

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## 14. Conclusion

The PC considers that this application is in fundamental conflict with both the adopted spatial strategy and development policies. The very real and serious harms that would result to the character, appearance and setting of the village and its Conservation Area far outweigh the purported benefits proposed by the applicant.

For the reasons set out above, the PC wishes to register its **fundamental objection** and requests the LPA to **refuse** this application.

Norton St Philip PC  
June 2023

APPENDIX- NOTE FROM COUNCIL HOUSING OFFICER



**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: 2020/2053/FUL & 2022/1522/FUL: Fortescue Fields, Norton St Phillip  
**Date:** 09 March 2023 08:00:07  
**Attachments:** [REDACTED]

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Hi Simon,

Sorry for the delay in responding and thank you for making us aware of the contact from Cllr Lund.

While I am not aware of the full concerns raised in the phone call, I can confirm that we remain of the view that seeking an off site contribution is the best way forward and we do not intend to provide additional formal comments on the applications at this stage unless you think necessary.

We have however again considered these schemes extensively and given much thought to the affordable approach presented by the applicants.

Our responsibility and starting point is always the consideration of housing need and the provision of Social Rented homes. Having again reviewed the most recent housing needs information obtained from the housing register for Somerset, there is not the evidence to demonstrate sufficient Social Rent demand in Norton St Phillip. Furthermore, we are unable to support the provision of discounted market homes for affordable housing provision as the values of these units, even with a discount on open market values, would be considered beyond the realms of affordability for the majority of local people. It should be noted that even if these units were alternatively to be secured for Shared Ownership, it is likely that Registered Providers would also raise concerns regarding affordability.

Therefore on balance, we are of the view that the most appropriate way to ensure that the schemes account for affordable housing provision in line with policy requirements is to secure an off site contribution to allow us to support registered providers to deliver truly affordable homes in the district in nearby locations where demand remains significantly higher.

As requested I have attached our previous comments and hope that this email confirms our view.

Happy to discuss anytime if helpful,

Many Thanks

Gemma

Gemma Mckeown  
Housing Development Officer  
Mendip District Council,