



**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
BEFORE THE HONOURABLE MR JUSTICE HOLGATE**

AC-2023-LON-000843
(formerly CO/323/2022 & CO/709/2023)



This order supersedes the orders dated 16 December, 2022; 17 July, 2023; 21 September, 2023 and 19 February, 2024

In the matter of an application for Planning Statutory Review

AC-2023-LON-000843

NORTON ST PHILIP PARISH COUNCIL

Claimant

-and-

SOMERSET COUNCIL (FORMERLY MENDIP DISTRICT COUNCIL)

Defendant

-and-

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

(2) LOCHAILORT INVESTMENTS LIMITED

(3) REDROW HOMES LIMITED

Interested Parties

On an application by the Defendant to vary the order of 16 December 2022, which was superseded by the order of 21 September 2023

ORDER by the Honourable Mr Justice Holgate

1. The claim for statutory review be allowed.
2. Policies MN1, MN2, MN3, NSP1 and BK1 of Mendip District Local Plan 2006-2009 Part II: Sites and Policies ("LPP2"), their supporting text and other related text, tables and diagrams, as set out in Schedule 1 to this order, shall be remitted to the Defendant.
3. The remitted parts of LPP2 shall be treated as not having been adopted as part of the local development plan. The rest of LPP2 is unaffected by this order.
4. The Defendant shall publish a revised version of LPP2 on its website within 28 days, which explains the effect of this order, and shows the remitted parts of the plan as being struck through.
5. The Defendant shall amend the Policies Map within 28 days so that it properly reflects the terms of this order and any consequential changes to LPP2 as set out in Schedule 1.
6. The Defendant shall:
 - a. review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2

of Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies and the judgment of the court;

- b. in light of their review, prepare and publish modifications to LPP2 which allocate sites to meet the additional requirement. The preparation and publication of these modifications shall be in accordance with requirements of section 19 of the Planning and Compulsory Purchase Act 2004 ("2004 Act"), and Regulations 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012;
- c. submit the proposed modifications to LPP2 to the First Interested Party, who shall appoint an Inspector to carry out and report on an independent examination of them, which shall be carried out in accordance with section 20 of the 2004 Act; and
- d. once it receives the Inspector's report, the Defendant must make a decision in accordance with section 23 of the 2004 Act.

6ba. To give effect to sub-paragraphs 6a, 6b and 6c above, the Defendant shall: (1) undertake a call for sites for the allocation of 505 dwellings within 28 days, allowing 42 days for responses; (2) publish its regulation 18 statement with proposed allocations by 28th February 2024; (3) publish its regulation 19 draft plan for representations by 30th June 2024 and (4) submit draft modifications of LPP2 to the Secretary of State for examination by 30th September 2024

7. The Defendant shall pay the Claimant's costs in the sum of £35,000.
8. There be no order for costs on the Defendant's application to vary the order of 16th December 2022.
9. All parties shall have liberty to apply to vary or modify this order on notice.

Schedule 1

The table below sets out the amendments and deletions that are to be made to LPP2 in accordance with paragraph 2 of the order.

Relevant part of plan	Amendment / deletion
Para. 3.19	Amend affordable housing totals
Para. 3.24	Delete entire paragraph
Para. 3.36	Delete final sentence
Para. 3.45	Delete "and around Midsomer Norton"
Table 1	Delete section dealing with Land adjacent to Midsomer Norton and amend total number of dwellings accordingly
Table 2	Delete rows dealing allocations in NE Mendip and sub-total
Para. 3.56	Amend housing totals
Table 3	Amend totals for Primary Villages, delete row dealing with growth "Adj. Midsomer Norton", and amend overall totals
Table 4a	Amend figures in the "Planned Growth" and "Change from Policy CP2" columns for the "Villages & rural" row, to account for the reduction in allocations. Delete the row for NE Mendip District and delete footnote 2. Amend the total figures
Table 4b	Amend figures in the row dealing with Primary Villages, to account for the reduction in allocations. Remove the row

	for “Sites adj Midsomer Norton”. Amend total figures
Para. 3.59	Amend figures to reflect removal of allocations in the North East.
Page 35	Delete “10.6 Midsomer Norton”
Section 10.6 (pp. 95 – 103)	Delete all text and policies
Paragraph 11.2.2	Delete the final sentence
Para. 11.2.3	Delete paragraph and bullet point relating to allocation
Pages 108 and 109	Delete Policy BK1
Para. 11.20.3	Delete final sentence
Para. 11.20.4	Delete paragraph and bullet point relating to allocation
Pages 145 - 146	Delete Policy NSP1

Reasons

1. The order of 16 December 2022 was amended by paragraph 6 of the order dated 14 July 2023. Subsequently, an order was sealed on 21 September 2023 which superseded the order of 16 December 2022 (but wrongly referred to paragraph 6ba as a second paragraph 6b). I have therefore treated this application as being to amend the order sealed on 21 September 2023.
2. I have been concerned about the lateness of the defendant’s application to amend the court’s order and the adequacy of the information supplied. This has necessitated a good deal of email correspondence and the provision of additional information and evidence by the defendant in stages. It is only on the basis of the more detailed explanations eventually provided, together with the defendant’s assurances that the necessary resources, including staff, consultants and funding, have been secured to ensure compliance with the order as proposed to be varied, that I agree to the revised time limits set by this order.
3. The material eventually provided by the defendant is sufficient, just, to persuade me to make the order sought. But the defendant’s overall delay in this matter is of great concern. It must be understood that the court expects the revised time limits to be adhered to and thereafter the statutory process of examination and final decision-making concluded expeditiously.
4. The defendant’s decision to adopt LPP2 depended upon the Inspector being satisfied that the plan met the statutory requirement of being “sound”. That in turn depended upon the making of main modifications *inter alia* for allocating an additional 505 dwellings. However, the particular modifications which the defendant decided to adopt were found by the High Court to be unlawful. Accordingly, the whole of LLP2 was liable to be quashed (see e.g [2022] EWHC 3432 (Admin) at [65], [74], 79], [115] and [118] and [2023] EWHC 1776 (Admin) at [14] to [19]. Up until the Planning Act 2008 the only order the court could have made would have been to quash the plan and the Council would have had to recommence the whole process again from the beginning. However, the 2008 Act amended the law so as to allow a more nuanced form of order to be made, namely remitter with directions, to enable a plan to be made compliant with the law, and avoid the need to make a quashing order. But such an order is made on the basis that the authority will comply with it.
5. Section 113(7) and (7A) of the 2004 Act enable the High Court to *remit* the plan, or part of a plan, with directions as to the action to be taken by a defendant *in relation to that plan*. The plan is remitted, i.e. sent back, to the plan-making authority so that the authority will take the steps necessary to make *that plan* lawful.
6. The order of 16 December 2022 was clear. It was addressed to the Council,

which includes its members. The relevant parts of the plan were remitted. The defendant was ordered *inter alia* to reconsider allocations to meet the district-wide requirement for an additional 505 dwellings and to prepare and publish *modifications to LPP2* to meet that requirement in accordance with the statutory provisions set out in para 6b of the order and thereafter to comply with paras 6c and 6d in relation to those modifications of *LPP2*. The email correspondence between the parties and the court on the drafting of that order is entirely consistent with that interpretation of the order itself.

7. But the defendant proceeded on the basis that it could comply with the court's order of 16 December 2022 through the preparation of a new Somerset Local Plan. That reading of the order was wholly untenable, as is also the suggestion that the absence of time limits in the original order permitted that approach. The absence of time limits did not alter the clear meaning of the language used in the order. That required modifications to be made to *LPP2*, and not the preparation of some other plan, in order to rectify the unlawfulness in the adoption of *LPP2*.
8. When the second claim for judicial review was made, the defendant was advised by their leading counsel instructed in those proceedings that they had not complied with the court's order of 16 December 2022 and that the statutory procedure for making modifications to *LPP2* would have to be followed as set out in that order. The order of 14 July 2023, which resulted in the sealed order of 21 September 2023, incorporated time limits for compliance with statutory stages leading to the submission of draft modifications to *LPP2* to the Secretary of State for examination.
9. It is regrettable that no substantive work was carried out by the defendant by July 2023 to comply with the order of 16 December 2022. If the modification process had been put in train at the beginning of 2023, it is reasonable to infer that a draft set of modifications would have been submitted for independent examination before the end of 2023.
10. It is necessary for this order to be made to correct typographical errors in the order sealed on 21 September 2023 and in the order made on 19 February 2024.

DATED: 11 MARCH 2024

BY THE COURT