Appendix 1

Oundle Neighbourhood Plan

OPINION

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1. This Opinion has been requested by [redacted] ('the Examiner') the independent examiner of the Oundle Neighbourhood Plan ('the ONP') following a hearing on 29 October 2019.

2. At that hearing a number of fundamental legal flaws were raised which render the ONP unlawful and contrary to the basic conditions, both of which would prevent the ONP from progressing. The Examiner requested that an Opinion be produced for the benefit of the Neighbourhood Plan Examination.

3. [redacted] is instructed by Persimmon, [redacted] is instructed by Gladman. This Opinion, as part of the Neighbourhood Plan Examination library, is public.

4. This Opinion will set out why the Plan is unlawful and cannot progress any further. In summary this is for the following reasons:

    - The amendments made to the Plan after the Regulation 14 consultation process were material amendments which changed the nature of the Plan. This required the Town Council to carry out a further Regulation 14 consultation and consult statutory consultees.

    - By failing to do the Town Council circumvented the legal requirements as to consultation, and undermined the statutory purpose of the Consultation Statement. This was also contrary to the Planning Policy Guidance on Neighbourhood Plans.

- The SA procedure was legally flawed and the conclusions reached were not based on the evidence before the Town Council. In some cases the conclusions reached were directly contrary to objective evidence before the Town Council.

Introductory Matters

5. The factual background will be well known to the Examiner and we will not repeat matters which are set out in detail in our Regulation 16 Statements. However for ease of reference it is worth setting out the facts that are particularly relevant to this Opinion.

6. On 22 March 2018 Oundle Town Council ('the Town Council') published a Regulation 14 version of their Neighbourhood Plan ('the Reg 14 Draft Plan). The Reg 14 Draft Plan allocated a number of sites for development. These included Land East of St Christopher's Drive (a Persimmon site), and Land East of Cotterstock Road (a Gladman site).

7. In May 2019 the Town Council published their Sustainability Appraisal Report ('the SA') in support of the neighbourhood plan.

8. Under Section 9 'Next Steps' the Report set out that:

> *This SA Report will be consulted on with the public and the statutory consultees. A copy of the Neighbourhood Plan will be made available on the Town Council's website during the SA Report consultation.*
>
> *Following consultation, comments received will be reviewed and any necessary changes made to the Neighbourhood Plan and SA Report.*
>
> *The Oundle Neighbourhood Plan will then be submitted to East Northamptonshire District Council.*

9. We are instructed that this further consultation was not carried out. Instead in May 2019 the Town Council submitted their Reg 15 version of the Plan ('the ONP'). to East Northamptonshire District Council ('ENC').

10. A number of modifications had been made between the Reg 14 Draft Plan and the ONP:

- Deletion of Land East of Cotterstock Road as a housing allocation;
- Deletion of Land East of St Christopher's Drive as a housing allocation;
- Increase in capacity of Land South of Herne Road from 45 units to 120 units;
- Identification of important views on the policies map;
- Amendments to the settlement boundary.

Legal Principles

11. The process for bringing forward a Neighbourhood Plan is primarily set out in Schedule 4B of the Town and Country Planning Act 1990 ('the 1990 Act'), and Part 5 of the Neighbourhood Planning (General) Regulations 2012 ('the 2012 Regs').

i) Basic Conditions

12. Para 8 (2) of Schedule 4B of the 1990 Act sets out the basic conditions that a Plan must meet to progress to referendum:

> *A draft order meets the basic conditions if—*
>
> *(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,*
>
> *(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,*
>
> *(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,*
>
> *(d) the making of the order contributes to the achievement of sustainable development,*

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

ii) Consultation Requirements

13. Para 4 of Schedule 4B of the 1990 Act sets out the principles for consultation that are then applied in Regulation 14 of the 2012 Regs. At para 4 (3) it sets out:

"The power to make regulations under this paragraph must be exercised to secure that:

(a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for a neighbourhood development order may be submitted to a local planning authority, and

(b) a statement containing the following information in relation to that consultation and participation must accompany the proposal submitted to the authority—

i. details of those consulted,
ii. a summary of the main issues raised, and
iii. any other information of a prescribed description."

Emphasis Added

14. Regulation 14 of the 2012 Regs then sets out the pre-submission consultation and publicity requirements:

Before submitting a plan proposal [or a modification proposal]1 to the local planning authority, a qualifying body must—

(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—

(i) details of the proposals for a neighbourhood development plan or modification proposal

> *(ii) details of where and when the proposals for a neighbourhood development plan or modification proposal may be inspected;*
>
> *(iii) details of how to make representations; [...]*
>
> *(iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised; [and]*
>
> *(v) in relation to a modification proposal, a statement setting out whether or not the qualifying body consider that the modifications contained in the modification proposal are so significant or substantial as to change the nature of the neighbourhood development plan which the modification proposal would modify, giving reasons for why the qualifying body is of this opinion;*
>
> *(b) consult any consultation body referred to in paragraph 1 of Schedule 1 whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan [or modification proposal]; and*
>
> *(c) send a copy of the proposals for a neighbourhood development plan [or modification proposal] to the local planning authority.*

15. The references to 'modification proposal' were introduced into Regulation 14 by the Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017. The reference relates to modifications made to a made Plan after referendum under Schedule A2 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act'). That procedure has no relevance to amendments made prior to the making of a Plan, and no relevance to this Opinion.

16. Regulation 14 (b) makes reference to consultation bodies referred to in paragraph 1 of Schedule 1. This paragraph sets out all the relevant consultation bodies for a neighbourhood plan. The list includes – the Local Planning Authority, Natural England, the Environment Agency, English Heritage, the sewerage undertaker, the water undertaker, the strategic highway authority etc.

17. The Planning Policy Guidance for Neighbourhood Plans ('the PPG') gives advice at paragraph 49 as to the pre-submission consultation:

> **At what stage does the pre-submission consultation take place on a draft neighbourhood plan or Order?**

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Before the formal pre-submission consultation takes place a qualifying body should be satisfied that it has a complete draft neighbourhood plan or Order. It is not appropriate to consult on individual policies for example. Where options have been considered as part of the neighbourhood planning process earlier engagement should be used to narrow and refine options. The document that is consulted on at the pre-submission stage should contain only the preferred approach.

Paragraph: 049 Reference ID: 41-049-20140306

Emphasis Added

18. Regulation 15 of the 2012 Regs sets out the documents that must accompany a submitted Plan. These include a basic condition statement, and also a consultation statement which is defined at Regulation 15(2) as:

> *In this regulation "consultation statement" means a document which—*
>
> *(a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan or neighbourhood development plan as proposed to be modified;*
>
> *(b) explains how they were consulted;*
>
> *(c) summarises the main issues and concerns raised by the persons consulted; and*
>
> *(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan or neighbourhood development plan as proposed to be modified.*

19. Regulation 16 of the 2012 Regs sets out the consultation process that must be carried out by the local authority after the plan proposal is submitted:

> *As soon as possible after receiving a plan proposal [or a modification proposal] which includes each of the documents referred to in regulation 15(1), a local planning authority must—*
>
> *(a) publicise the following on their website and in such other manner as they consider is likely to bring the proposal to the attention of people who live, work or carry on business in the neighbourhood area—*
>
> > *(i) details of the plan proposal [or the modification proposal];*
> >
> > *(ii) details of where and when the plan proposal or the modification proposal may be inspected;*

(iii) details of how to make representations;

(iv) [in the case of a plan proposal,] a statement that any representations may include a request to be notified of the local planning authority's decision under regulation 19 in relation to the neighbourhood development plan; and

(v) the date by which those representations must be received, being not less than 6 weeks from the date on which the plan proposal or the modification proposal is first publicised; and

(b) notify any consultation body which is referred to in the consultation statement submitted in accordance with regulation 15, that the plan proposal or the modification proposal has been received.

iii) SEA Directive: General Principles

20. For the ONP to be found in conformity with basic condition (f), it is incumbent on the relevant bodies to ensure that the ONP is able to meet the legal requirements for SEA as set out in the SEA Directive.

21. The purpose of the Directive is to provide a high level of environmental protection by incorporating environmental considerations into the process of preparing plans and programmes. The SEA Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regulations").

22. Neighbourhood plans are land use plans whose existence is provided for by legislation and which set the framework for the future development consent of projects. Therefore they fall within regulation 5(4) of the SEA Regulations. Where it is considered that a neighbourhood plan is likely to have a significant impact on the environment, as here, it is required to undergo SEA (or SA incorporating SEA as is the case here).

23. Article 4(1) of the Directive requires that the SEA and the opinions expressed by the relevant authorities and the public, (as well as the results of any transboundary consultation where relevant), are taken into account during the preparation of the plan and before its adoption or submission to the relevant legislative procedure. Here, in

addition to the requirement to satisfy the basic conditions, the trigger point to ensure that the SEA Directive has been complied with would be the submission to ENC for a referendum to be held on the ONP. Of course, if the neighbourhood plan satisfied basic condition (f) it would also be in compliance with the SEA Directive so in reality there is only one point at which compliance with the SEA Directive needs to be considered (the basic conditions stage).

iv) Consultation on SEA

24. Article 6(2) provides that consultees "*shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan… and the accompanying Sustainability Appraisal*". Accordingly, it is clear that consultation is not a matter that can simply be addressed through a tick-box exercise, it must be a genuine opportunity for responses from consultees to influence both the plan and the SA through the plan-making process.

25. Article 6 is reflected in reg. 13 of the SEA Regulations. This provides (so far as relevant):

> *"13.— Consultation procedures*
>
> *(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report ("the relevant documents") shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.*
>
> *(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall–*
>
> *(a) send a copy of those documents to each consultation body;*
>
> *(b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive ("the public consultees");*

> *(c) inform the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained; and*
>
> *(d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent.*
>
> *(3) The period referred to in paragraph (2)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents."*

v) "Reasonable Alternatives"

26. There is a requirement to assess reasonable alternatives by reg. 12(2) of the SEA Regulations, which provides:

> *"(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–*
>
> *(a) implementing the plan or programme; and*
>
> *(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme."*

27. This requirement has been subject to a significant amount of litigation. The relevant principles were summarised by Hickinbottom J (as he then was) in R (RLT Built Environment Ltd) v Cornwall Council [2016] EWHC 2817 (Admin) at paragraph 40:

> *"In R (Friends of the Earth England, Wales and Northern Ireland Limited) v The Welsh Ministers [2015] EWHC 776 (Admin) at [88], after considering the relevant authorities (including Heard v Broadland District Council [2012] EWHC 344 (Admin), and Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2014] EWHC 406 (Admin)), I set out a number of propositions with regard to 'reasonable alternatives' in this context. That case concerned the law in Wales, but it is derived from the same SEA Directive and the regulations that apply in Wales are substantially the same as the SEA Regulations. The propositions, so far as relevant to this case, are as follows:*
>
> > *'(i) The authority's focus will be on the substantive plan, which will seek to attain particular policy objectives. The EIA Directive [i.e. Council Directive 85/337/EC] ensures that any particular project is subjected to an appropriate environmental assessment. The SEA Directive ensures that potentially environmentally-*

preferable options that will or may attain those policy objectives are not discarded as a result of earlier strategic decisions in respect of plans of which the development forms part. It does so by imposing process obligations upon the authority prior to the adoption of a particular plan.

(ii) The focus of the SEA process is therefore upon a particular plan – i.e. the authority's preferred plan – although that may have various options within it. A plan will be 'preferred' because, in the judgment of the authority, it best meets the objectives it seeks to attain. In the sorts of plan falling within the scope of the SEA Directive, the objectives will be policy-based and almost certainly multi-stranded, reflecting different policies that are sought to be pursued. Those policies may well not all pull in the same direction. The choice of objectives, and the weight to be given to each, are essentially a matter for the authority subject to (a) a particular factor being afforded particular enhanced weight by statute or policy, and (b) challenge on conventional public law grounds.

(iii) In addition to the preferred plan, 'reasonable alternatives' have to be identified, described and evaluated in the SEA Report; because, without this, there cannot be a proper environmental evaluation of the preferred plan.

(iv) 'Reasonable alternatives' does not include all possible alternatives: the use of the word "reasonable" clearly and necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.

(v) Article 5(1) refers to 'reasonable alternatives taking into account the objectives... of the plan or programme...' (emphasis added). 'Reasonableness' in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an 'alternative' to the preferred plan, is not a 'reasonable alternative'. An option which will, or sensibly may, achieve the objectives is a 'reasonable alternative'. The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no 'reasonable alternatives' to it.

(vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does not have to be included in the SEA Report or process.'"

28. As further noted by the Court of Appeal in Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681:

> *"In Heard v Broadland District Council…at paragraphs 66-71, Ouseley J held that where a preferred option – in that case, a preferred option for the location of development – emerges in the course of the plan-making process, the reasons for selecting it must be given. He held that the failure to give reasons for the selection of the preferred option was in reality a failure to give reasons why no other alternative sites were selected for assessment or comparable assessment at the relevant stage, and that this represented a breach of the SEA Directive on its express terms. He also held that although there is a case for the examination of the preferred option in greater detail, the aim of the Directive is more obviously met by, and it is best interpreted as requiring, an equal examination of the alternatives which it is reasonable to select for examination alongside whatever may be the preferred option."* *(paragraph 10, emphasis added)*

29. Ashdown Forest also establishes that "*where the authority judges there to be reasonable alternatives it is necessary for it to carry out an evaluation of their likely significant effects on the environment, in accordance with regulation 12(2) and paragraph 8 of Schedule 2… In order to make a lawful assessment… the authority does at least have to apply its mind to the question*." (paragraphs 37 and 42, emphasis added).

30. Finally, Ouseley J stated at paragraph 66 in Heard v Broadland that only an "*obvious non-starter"* is exempt from the requirement to be assessed as a reasonable alternative.

vi) PPG on SEA

31. The PPG makes clear that in order to demonstrate that a draft neighbourhood plan contributes to sustainable development, it should be supported by sufficient and proportionate evidence which shows how the neighbourhood plan guides development to sustainable solutions. Whilst there is no legal requirement for a neighbourhood plan to have a sustainability appraisal prior to it being found likely to have significant effects on the environment, preparing a SA incorporating the

requirements of a SEA is useful to help demonstrate that the plan is capable of delivering sustainable development, a neighbourhood plan basic condition. The PPG also makes clear that the material produced as part of the SA of the Local Plan may also be relevant to the neighbourhood plan (Paragraph: 072 Reference ID: 41-072-20140306). Where it is relevant, it is a material consideration that must be taken into account.

32. The PPG provides that where it is determined that a neighbourhood plan is likely to have significant effects on the environment and that a SEA is required, work should start at the earliest opportunity to ensure that the assessment process inform the choices being made in the plan:

> *"Where it is determined that a neighbourhood plan is likely to have significant effects on the environment and that a strategic environmental assessment must be carried out, work on this should start at the earliest opportunity." (Paragraph: 029 Reference ID: 11-029-20150209)*

33. The PPG also provides:

> *"Reasonable alternatives should be identified and considered at an early stage in the plan making process as the assessment of these should inform the preferred approach.*
>
> *This stage should also involve considering ways of mitigating any adverse effects, maximising beneficial effects and ways of monitoring likely significant effects"(Paragraph: 037 Reference ID: 11-037-20150209)*

34. As noted in RLT at paragraph 32:

> *"The SEA Directive seeks to address that issue by requiring SEA to be an integral part of plans and programmes, so that potentially environmentally-preferable alternatives are not discarded as part of the process of approving plans and programmes without proper consideration of the environmental impacts of the various options."*

35. The SEA should identify any likely significant adverse effects and the measures envisaged to prevent, reduce and as fully as possible offset them. Reasonable alternatives must be considered and assessed in the same level of detail as the

preferred approach intended to be taken forward in the neighbourhood plan. (PPG Paragraph: 038 Reference ID: 11-038-20150209)

36. It is therefore clear from the above that the SEA process must be evidence-based, it must inform and influence the plan at the earliest possible stage, consultation responses must be effective to help shape the options considered, the SA must demonstrate 'proper consideration' of the environmental implications of the various options, and reasonable alternatives are to be considered in the same manner of detail as the preferred approach.

vii) Requirement to Found Plan on Objective Evidence

37. The decision in R (Stonegate) v Horsham DC [2016] EWHC 2512 (Admin) is on all fours with the facts here. Stonegate concerned a claim under section 61N of the 1990 Act to challenge the decision to make the Henfield Neighbourhood Plan. The challenge was successful and Patterson J quashed the Council's decision to make the plan because of a failure to correctly carry out a proper SA. In Stonegate there was no evidence to support the view expressed for the rejection of one option over the preferred option beyond assertions by local residents. As Patterson J put it in paragraph 74:

> *"The problem here is that the absolute nature of the rejection of option C is unsupported by anything other than guesswork. At the very least, having received the Barratt decision letter the plan-making authority, the parish council could have contacted the highways authority to obtain their views on the capacity of the broader local highways network in the western part of Henfield. There is no evidence that that was done. There is no evidence that anything was done when the highways objections to residential development on the Sandgate Nursery site was withdrawn either. Until it is, the outcome of significant development on the western side of Henfield on the local road network is unknown. What is known is that the permitted site and the appealed site together do not provide any insuperable highways objections. Without further highways evidence though, the reason for rejecting option C as set out in paragraph 4.19 of the HNP is flawed, based as it is upon an inadequate, if that, evidence base. The requirement, under the Directive, that the alternatives are to be assessed in a comparable manner and on an accurate basis was simply not met."*

38. Which led to the conclusion at paragraph 76:

> *…….The obligation under the SEA Directive is to ensure that the consideration of reasonable alternatives is based upon an accurate picture of what reasonable alternatives are. That was not done here. Not only was the conclusion wrong but, in the circumstances, it was irrational, given the absence of an evidence base. Her flawed report then tainted the decision on the part of the defendant.*
>
> Emphasis Added

Opinion

i) Do the modifications to the ONP require it to go through further Reg 14 consultation?

39. It is important to first understand the amendments that were made to the Reg 14 Draft Plan. These seem to be described in the Consultation Statement as 'relatively minor'. However in our view these amendments are significant and material amendments which changed the nature of the Plan.

40. By removing two sites, increasing the dwelling yield at Land South of Herne Road from "up to 45 dwellings" to "up to 120 dwellings" and making associated changes to the proposed settlement boundary, the amendments changed the spatial strategy of the Plan. This is illustrated by the SA which at Section 6 sets out the various spatial strategy options which were considered.

41. The Reg 14 Draft Plan's spatial strategy was Option 1. The ONP spatial strategy was Option 3. This can only be described as a material amendment to the Plan, and clearly is one that has changed the nature of the Plan because there has been a radical shift in spatial strategy on the Town Council's own evidence.

42. The pre-submission consultation stage of a neighbourhood Plan is not a token exercise. It is a statutory requirement as made clear by the express language of para 4 (c) of Schedule 4B of the 1990 Act:

> *"The power to make regulations under this paragraph must be exercised to secure that:*

> a) *prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for a neighbourhood development order may be submitted to a local planning authority, and*
>
> Emphasis Added

43. The relevant regulation for this requirement is Regulation 14 in the 2012 Regs.

44. The Regulation 14 consultation process is a formal statutory requirement which **must** be carried out **before** a plan is submitted to the local planning authority.

45. The purpose of the Regulation 14 consultation process is twofold.

46. The first purpose (per Reg 14 (a)) is to inform the public to give them details of the proposed plan and allow them to make representations.

47. The second purpose (per Reg 14 (b)) is to consult any of the statutory consultation bodies that '*may be affected by the proposals'* and give them the opportunity to raise concerns or issues that arise in light of their individual statutory duties.

48. It is important to understand this dual purpose because it highlights why a qualifying body cannot rely on future stage in the neighbourhood plan process to legitimate not returning to Regulation 14 stage after making amendments.

49. Any consultation that occurs under Regulation 16 is different than that under Regulation 14 (and is carried out by a different body).

50. While the requirement to consult the public is similar (as seen from the similarity in wording between Regulation 14 (a) and Regulation 16 (a)) the requirements as to consultation bodies is not.

51. A comparison of the wording between Regulation 14 (b) and Regulation 16 (b) shows there is a clear difference:

Reg 14 (b):

> *consult any consultation body referred to in paragraph 1 of Schedule 1 whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan*
>
> Reg 16 (b)
>
> *notify any consultation body which is referred to in the consultation statement submitted in accordance with regulation 15, that the plan proposal has been received.*

52. The only formal consultation of the consultation bodies that are listed in para 1 of Schedule 1 of the 2012 Regs is during the Regulation 14 pre-submission consultation.

53. Once the Plan is submitted to the local authority then the only further step under Regulation 16 is that consultation bodies are notified that a Plan has been received. This is not consultation.

54. If a plan is altered between Regulation 14 and Regulation 16 then there is no requirement to re-consult consultation bodies. Instead the burden is on each individual body to spot that the Plan has been substantially altered and provide further representations on the new Plan.

55. There is a high risk that most would instead assume on notification under Reg 16 (b) that the Plan remained the same and either not provide a further response or a generic holding response.

56. Furthermore the requirements under Reg 16 are only to notify those consultation bodies listed in the consultation statement (based on the previous Reg 14 consultation). Therefore if an amendment were made that meant the Plan would now affect a **further** consultation body (previously un-consulted) they will **not** be consulted or even notified.

57. This is not how the neighbourhood plan process is meant to operate and highlights the unlawfulness of the Town Council's approach.

58. By making major material amendments to the Reg 14 Draft Plan post-consultation the Town Council have both undermined the purpose of consulting the public (as those that were consulted previously would fairly assume the Plan they provided a response on would be the same), and entirely circumvented the requirement to consult statutory consultation bodies. They have submitted an un-consulted upon neighbourhood plan for examination. This is unlawful.

59. This point is reinforced by the PPG which clearly sets out at paragraph 49 that:

> *"…The document that is consulted on at the pre-submission stage should contain only the preferred approach."*

60. By changing the spatial strategy in the Final Plan it is clear that the document consulted upon at pre-submission stage was not the preferred approach. The Reg 14 consultation was therefore contrary to the PPG and thus also fails basic condition (a).

61. The failure to carry out a further Reg 14 consultation is compounded by the knock-on effects this has for other legal requirements in the neighbourhood plan process such as the Consultation Statement.

62. It is a requirement under para 4(3)(b) of Schedule 4B of the 1990 Act, and Regulation 15 (1)(b) of the 2012 Regs to produce a Consultation Statement.

63. This consultation statement must set out who has been consulted, how they have been consulted, and the issues that have been raised. It is a fundamental part of the neighbourhood plan process and allows for an Examiner to be aware of any issues with a draft Plan which might need further exploration.

64. The consultation statement that was submitted with the Final Plan however entirely relates to responses and issues raised with the Reg 14 Draft Plan. It is entirely silent on any issues that might arise out of the ONP which is entirely different in nature (and has not been consulted upon). By failing to carry out a further Reg 14 consultation the Town Council have entirely undermined the statutory purpose of the Consultation Statement, and rendered it mostly if not entirely irrelevant.

65. It is unclear why a further Regulation 14 consultation was not carried out by the Town Council. It seems that those preparing the SA for the Town Council were under the impression that a further consultation would be carried out as set out in Section 9 of the SA under 'Next Steps':

> *This SA Report will be consulted on with the public and the statutory consultees. A copy of the Neighbourhood Plan will be made available on the Town Council's website during the SA Report consultation.*
>
> *Following consultation, comments received will be reviewed and any necessary changes made to the Neighbourhood Plan and SA Report.*
>
> *The Oundle Neighbourhood Plan will then be submitted to East Northamptonshire District Council.*

66. This highlights the issues that arose out of the SA being produced after the Regulation 14 consultation when it should have been produced before or with the Reg 14 Plan. The SA assumes that the Plan would go through further Reg 14 consultation. So even on Town Council's own supporting documentation a further Reg 14 Consultation should have happened but did not.

67. The Town Council by failing to return to the Reg 14 stage for further consultation after carrying out significant and material amendments that changed the nature of the Plan acted unlawfully. They circumvented the requirement to consult statutory consultees and undermined the public consultation that was carried out. Furthermore this was both contrary to the PPG and undermined the statutory purpose of a consultation statement under Regulation 15.

68. For all these reasons the Town Council have failed to carry out the required consultation on the ONP, and if it were to proceed to Referendum it would be unlawful.

ii) Issue with the SA

69. In this instance, neither the final revisions to the SA or the present version of the Plan have been consulted on. Nor does the SA, and the Plan upon which it is

ostensibly based, reflect the evidence before the Town Council: the conclusions reached in some cases are directly contrary to the evidence before the Town Council. This makes the Plan highly amenable to legal challenge on the basis of the Stonegate decision, as well as contrary to basic conditions (a), (d) and (f).

70. In relation to the St Christopher's Drive site -as demonstrated through chapter 5 of RPS' representations – the Plan does not take account of evidence prepared by ENC over the course of its emerging Local Plan (contrary to the PPG's Neighbourhood Planning Chapter paragraph 009, which confirms such evidence is a material consideration, and paragraph 040 which confirms "*robust evidence should support the choices made and the approach taken*"). The conclusions in the SA, and the justification of the referred approach, are also directly contrary to evidence that was and is before OTC on: highways (the highways authority has confirmed access is not an issue), noise (see Spectrum report), flooding (there will be a requirement to provide greenfield run-off rates plus significant climate change mitigation), and biodiversity (ENC's ecologist confirmed the site is "of quite low ecological value"). In the case of noise, the St Christopher's Drive site was marked "significant negative" yet the non-technical summary of the SA says there was a lack of noise evidence. Most significantly, the SA fails to take account of the SA evidence prepared by ENC for its emerging Local Plan which, following a robust, methodical and criteria-based process, selected the St Christopher's Drive site as the best performing site in all of Oundle (at page 24 Table 4, included as Appendix 13 to RPS' submissions).

71. In relation to the Cotterstock Road site -as demonstrated through section 6.2 of Gladman's representations – the ONP reasoning for the de-allocation of the Site is unevidenced and irrational. The impact on highways is relied upon but in the SA at Table 11 on page 29 the site scores a minor positive for transport. While at para 6.5 of the SA the reason given for de-allocation is that the site is already allocated in the RNOTP which is wrong. The need for robust evidence is reinforced in light of the evidence of the ENC whose own evidenced SA for their emerging Part 2 Local Plan at Table 4 finds that the Cotterstock Road site is one of the three best performing sites, and thus allocates it. The Cotterstock Road site has been viewed as acceptable in the past (RNOTP), present (Reg 14 Draft Plan), and future (emerging Part 2 Local

Plan). De-allocation of this Site was, on the Town Council's own admission at 6.5 of SA, based solely on the level of public feedback received at the Reg 14 Stage. This is per Stonegate an unlawful approach.

72. The Plan, and the preferred approach, have also been made contrary to the correct procedure as set out in national planning policy. Specifically, this is the failure to carry out the sequential and exception test, even though two of the allocated housing sites include land within Flood Zone 3, and there are other available sites that are entirely within Flood Zone 1 (such as the previously allocated St Christopher's Drive and Cotterstock Road sites).

73. The above renders the Plan contrary to the basic conditions for two reasons. There is, firstly, a failure to comply with reg. 13(2) of the SEA Regulations. It is imperative that a consultation is carried out when material changes are made that affect the sustainability of the plan, as here. Those who are affected by such changes must be given an opportunity to comment (reg. 13(2)(b)). The consultation responses are to be taken into account and must be capable of influencing the SA and the preferred strategy that is ultimately selected. This is a fundamental requirement of the SEA regime. It has not been achieved in this instance. A failure to demonstrate that this requirement has been satisfied would result in any subsequent plan being unlawful.

74. Secondly, the Town Council have failed to apply a consistent methodology in respect of the Reg. 14 Draft Plan and final versions of the ONP. Where changes have been made to the Reg 14 Draft Plan, those changes were not based on the available evidence and were not made following the correct procedure, taking into account all material considerations. Moreover, the chosen Spatial Strategy, Option 3, is contrary to the SA, which demonstrates that Option 4 scored better.

75. There is also very large question mark over the propriety of allocations as sites were selected based on land being transferred into the ownership of the Town Council (see Table NTS5 and Table 14 of the SA). The SA authors sought to downplay this at the Examination hearing, but the title of the relevant column is clear: the land transfers were reasons for selecting these sites. Even in the alternative, if the basis for the selection of sites is not land being put into public ownership (contrary to what the

Table clearly says) there is no quantifiable evidence in the SA that a new cricket pitch / allotments / cemetery extension land / festival field are in fact required.

76. Accordingly, it would be impermissible in the circumstances to carry on with the "retrofit" process, it is clear that the SA and the ONP are, at present, not fit from purpose. These concerns were raised not only by Persimmon, Gladman, and other developers, but also by ENC and statutory consultees (see comments of the Environment Agency, August 2019).

Conclusion

77. The Plan is currently unlawful and cannot proceed to referendum.

78. A number of significant amendments were carried out to the Plan after the Regulation 14 consultation stage. These amendments included, but were not limited to, changing the spatial strategy that underpinned the Plan. However no further Regulation 14 consultation was carried out.

79. The Regulation 14 consultation process is an express statutory requirement that has a dual purpose for both consulting the public and also statutory consultation bodies. It must be carried out prior to a Plan being submitted to a local authority.

80. Because of the significant changes made between the Reg 14 Draft Plan and ONP this required statutory consultation has not occurred. The consultation of the public has been downplayed, the required consultation of statutory bodies circumvented, and the statutory Consultation Statement undermined. If the Final Plan were to go to referendum it would be unlawful.

81. Furthermore, the Plan is contrary to the SEA Directive as it has failed to comply with reg. 13(2), it fails to meet the requirements as set out in the PPG and case law on SEA (the reasons are inadequate and not evidence-based), it fails to follow correct procedure as set out in the NPPF (the sequential and exception tests must be carried

out). Accordingly the Plan fails to demonstrate that it will achieve the delivery of sustainable development and is contrary to the basic conditions.

[redacted]
No5 Chambers

[redacted]
Kings Chambers

8 November 2019

Appendix 2

PLANNING POLICY COMMITTEE

Date: **29 July 2019**

Venue: **East Northamptonshire House, Cedar Drive, Thrapston**

Time: **7.00pm**

Present: **Councillors:** [redacted] **(Chairman)**
(Vice-Chairman)
(Deputy Leader of the Council)

[redacted]

138. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors [redacted].

139. MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 10 June 2019 were approved and signed by the Chairman.

140. DECLARATIONS OF INTEREST

The following declarations of interest were made in respect of agenda item 5 (Draft East Northamptonshire Local Plan – Oundle Housing Allocations):-

Councillor	Nature of Interest	DPI	Other Interest
[redacted]	Chairman of Greenway Board		Yes
	Ward Councillor for Oundle		Yes

141. QUESTIONS UNDER COUNCIL PROCEDURE RULE 10.3

There were no questions submitted under Procedure Rule 10.3.

142. PUBLIC SPEAKERS

At the invitation of the Chairman, a number of speakers addressed the meeting in respect of Agenda item 5 Draft East Northamptonshire Local Plan - Oundle Housing Allocations.

Appendix 2

143. DRAFT LOCAL PLAN PART 2 CONSULTATION – RESPONSES TO REPRESENTATIONS – OUNDLE HOUSING ALLOCATIONS

Further to the last meeting, the Planning Policy Manager submitted a report considering the policy implications arising from the representations submitted on the draft Local Plan in respect of the proposed housing allocations for Oundle.

The Committee was reminded that the Joint Core Strategy required a minimum of 645 new homes to be built up to 2031 in Oundle. After taking into account previous commitments and completions, the residual amount of housing development to be included in the draft Plan to ensure the minimum requirement for Oundle was circa 250 new homes, (based on the latest housing data available, which had been published as part of the housing land supply position, and reported to the Committee on 22 October 2018).

The draft Local Plan identified three locations for future housing provision in Oundle:

- Land north of Stoke Doyle Road (around 70 dwellings)
- Land east of Cotterstock Road (around 130 dwellings)
- Land east of St Christopher's Drive (around 100 dwellings).

The Council had been required to undertake a sustainability appraisal of its policies to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, would help to achieve relevant environmental, economic and social objectives.

The Committee received:-

- The evidence documents for the interim appraisal undertaken ((AECOM report and background paper prepared by the officers) which took into account a revised selection of housing sites arising from the Oundle Neighbourhood Plan (option 2).
- A more recent assessment of all shortlisted sites, prepared by DLP Planning.
- A Response received since the report was written from Anglian Water on the extent of new drainage infrastructure required for all these sites.
- A summary of the representations received by both organisational bodies and individuals, and officers' recommendations thereon.

The implications of the Neighbourhood Plan housing proposals were addressed in the officers' report to the Committee, which recommended endorsement of the allocations proposed in the draft Local Plan as being both sustainable and deliverable.

The Committee acknowledged that, whilst both ENC and Oundle Town Council agreed on the total number of new dwellings to be provided in the parish, there were strong feelings in Oundle in favour of the revised selection of sites proposed in the Neighbourhood Plan, and opposition to the sites proposed in the draft Local Plan. The officers were, however, firmly of the view that account had to be taken of the implication of development plan policy, especially the policy direction expressed in the Rural North, Oundle and Thrapston Local Plan which had been outlined in the recent findings of the examiner's report into the Glapthorn Neighbourhood Plan. The officers also felt that emerging plans had to be consistent with the National Planning Policy Framework.

Members concluded that the local wishes in the Neighbourhood Plan should be tested during the forthcoming consideration by an Examiner, after the Section 16 consultation, which would extend to 27 August 2019.

RESOLVED:

That –

- Endorsement of the proposed housing site allocations for Oundle as set out in policies EN24-27 of the draft East Northamptonshire Local Plan; and

- Consideration of the officer responses to the representations as set out in Appendices 3 and 4 of the report be deferred until the outcome of the Examination of the Oundle Neighbourhood Plan is known. (All other work on the Local Plan would continue).

(Reason – To provide a steer to officers for the preparation of a pre-submission plan which meets legislative requirements).

144. SUSPENSION OF COUNCIL PROCEDURE RULE 8

At 9 pm, during the consideration of the above item, recognising that the meeting had lasted for two hours, it was

RESOLVED:

That Council Procedure Rule 8 be suspended to enable the Committee to conclude the business on the agenda.

145. NEIGHBOURHOOD PLANNING UPDATE

The Committee received a report from the Principal Planning Policy Officer providing feedback from the recent consultation regarding the King's Cliffe Neighbourhood Plan which was recently submitted for Examination, and progress in relation to the Neighbourhood Plans for Oundle, Warmington, Twywell, and Barrowden and Wakerley.

King's Cliffe: Six representations had been received on the King's Cliffe Plan – four from statutory consultation bodies and two from other parties. One was on behalf of Northamptonshire County Council, the owners of one of the development sites. This was allocated for the development of a day care centre, assisted living units and a surgery complex in the Plan. The representation suggested an amendment to the wording of the Policy to allow for a surgery but not to make it an essential requirement for the site. A further representation on behalf of the owners of another site objected to Policies H1, H2, BE1 and RC1 and had concerns about Policies TP2 and TP4.

The Examiner appointed to look at the Plan and the supporting documents had now published a report and a local referendum would be held.

The position with the other Neighbourhood Plans was as follows:-

Oundle: The submission version of the Plan had now been received, and whilst it raised a number of significant concerns, as detailed in the report, the Plan was now subject to

Appendix 2

Regulation 16 consultation over the period 12 July to 27 August, 2019 inclusive. During this time, in discussion with the Town Council, an Examiner would be appointed who would consider these concerns.
Warmington: The Plan was now subject to Regulation 16 consultation which would close on 29 July 2019.

Twywell: A Neighbourhood Area had been formally designated for Twywell on 9 May 2019, enabling work to begin on their Neighbourhood Plan.

Barrowden and Wakerley: The Plan had recently been Examined. Work was currently underway with the aim of concluding this document which was being co-ordinated by Rutland County Council.

RESOLVED:

That -

(1) The current stage in preparation of the King's Cliffe Neighbourhood Plan Development Plan 2018-2031 and the summary of Regulation 16 consultation representations in section 2.0 of the report; and

(2) The progress of other Neighbourhood Plans coming forward during 2019 be noted.

(Reason – to support the forthcoming King's Cliffe Neighbourhood Plan through examination and support other Neighbourhood Plans as these progress)

146. [redacted]

[redacted]

Chairman

Appendix 3

East Northamptonshire Council

Cedar Drive Thrapston Northamptonshire NN14 4LZ
[redacted]
www.east-northamptonshire.gov.uk

To all Members of the Planning Policy Committee

cc. Planning Management Committee, Neighbourhood Plan Examiner for Oundle, Oundle Town Council.

Please ask for	Direct Dial	Our Ref.	Your Ref.	Date:
[redacted]	[redacted]	Letter2PPC		12 November 2019

Dear Member,

Incorrect Record of Minutes of Planning Policy Committee meeting held on 29 July 2019

It has been brought to my attention that in the preparation of the minutes of the meeting held on 29 July 2019, the resolutions of minutes 143 and 145 were incorrectly recorded, contrary to the actual resolutions made at the meeting. The audio recording of the meeting has been examined to check the contemporaneous record, which confirms this.

Attached to this letter is a copy of the original minutes together with the revised set of minutes for which approval will be sought at the Planning Policy Committee at its meeting on 18 November 2019, to correct the record.

I would like to offer my sincere apologies for the clerical error and give a reassurance that a full review of how this came about has been undertaken. I have implemented further checking procedures to mitigate against any further occurrence.

This letter is being copied into members of the Planning Management Committee, the Neighbourhood Plan Examiner for Oundle and the mayor and clerk to Oundle Town Council.

Yours sincerely,

[redacted]
Democratic and Electoral Services Manager

Appendix 1:- Original, incorrect record of 29 July 2019 meeting

Appendix 2:- Corrected record of 29 July 2019 meeting, to be submitted to Planning Policy Committee on 18 November 2019

Appendix 4

PLANNING POLICY COMMITTEE

Date: **29 July 2019**

Venue: **East Northamptonshire House, Cedar Drive, Thrapston**

Time: **7.00pm**

Present: **Councillors:** [redacted] **(Chairman)**
(Vice-Chairman)
(Deputy Leader of the Council)

[redacted]

138. APOLOGIES FOR ABSENCE

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RESOLVED:

That –

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- Consideration of the officer responses to the representations as set out in Appendices 3 and 4 of the report;

be deferred until the outcome of the Examination of the Oundle Neighbourhood Plan is known. (All other work on the Local Plan would continue).

(Reason – To provide a steer to officers for the preparation of a pre-submission plan which meets legislative requirements).

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number of significant concerns, as detailed in the report, the Plan was now subject to Regulation 16 consultation over the period 12 July to 27 August, 2019 inclusive. During this time, in discussion with the Town Council, an Examiner would be appointed who would consider these concerns.
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RESOLVED:

That -

(1) The current stage in preparation of the King's Cliffe Neighbourhood Plan Development Plan 2018-2031 and the summary of Regulation 16 consultation representations in section 2.0 of the report; and

(2) The progress of other Neighbourhood Plans coming forward during 2019

be noted.

(Reason – to support the forthcoming King's Cliffe Neighbourhood Plan through examination and support other Neighbourhood Plans as these progress)

146. [redacted]

[redacted]

Chairman

Appendix 5

WITHOUT PREJUDICE

Extra Care / Affordable Housing and Compliance with Policy 30 of the North Northamptonshire Joint Core Strategy 2011- 2031(NNJCS)

Policy 30 of the NNJCS requires housing development to provide a mix of dwellings sizes and tenures to cater for current and forecast accommodation needs and to assist in the creation of mixed and inclusive communities.

The committee report refers to compliance with Policy 30 in paragraphs 7.87 through to 7.96 which leads to the conclusion that the application should be refused on the following basis:

> *"The applicant has failed to demonstrate that the proposed extra care provision would be a suitable alternative provision of affordable housing across the site and as such the proposal fails to comply with the requirements of the National Planning Policy Framework and Policy 30 d) and e) of the North Northamptonshire Joint Core Strategy".*

It is contended that with the additional mechanism before the Council, contained within the letter dated 6 November 2019 from [redacted], and the commitment to fully address affordable housing policy requirements in a section 106 obligation, the reason for refusal is addressed on the basis that:

- The application now fully complies with Policy 30 (d);
- Policy 30 (e) is not relevant or engaged in the decision making process on this application; and
- The application is now consistent with the requirements of the NPPF in meeting not only affordable housing requirements but also the needs of the elderly and people with disabilities (paragraphs 61and 64).

Policy 30(d) compliance

In principle, it is understood that a stand-alone residential development of 65 dwellings would require the provision of 26 affordable homes to be compliant with Policy 30(d).

However, throughout the application process the applicant has been made aware that there is an established need in the district for affordable extra care and that the site represents a good opportunity to secure this. In response to this it has been agreed with officers to make provision for affordable extra care on this site as part of the application and that this can be provided as an alternative to the affordable housing requirement of the 65 dwellings. As agreed, this would be suitable alternative in lieu of 26 affordable homes on-site. This position seems to be supported still by the council as evidenced by several comments in the Committee report.

This achieves the policy compliant 40% on-site requirement consistent with Policy 30(d).

The Committee Report does however fairly outline that there is some uncertainty from the LPA's position over the mechanism to secure the alternative provision via affordable extra care units, with the suggestion being that the applicant proposes that the land and the liability for providing the extra care is transferred entirely to the LPA. Whilst this was an option previously discussed, it was by no means the only solution to achieving the affordable extra care provision. This is not what is now before the Council in advance of making its decision. This is an important material fact. Furthermore we are open to discussions with the council to seek to utilise whatever provisions are reasonable to maximise the potential for delivery of the affordable extra care units.

The proposal currently before the LPA is that the applicant will be entirely responsible for securing the provision of the extra care facility and will enter into a 12 month marketing strategy from signing the S106 to seek to achieve this. Thus there is no responsibility, risk, or

liability being placed upon the LPA to secure the extra care component of the scheme. That is an important distinction and a material change of circumstance now before the Council.

Therefore the provision of the on-site extra care units with the liability placed upon the applicant to secure a Registered Provider (RP) to provide them, ensures policy compliance against Policy 30(d).

In respect of the delivery of the extra care units, the mechanism for this is explained in the letter of 6 November 2019 and not repeated, however, the key recognition here in respect of compliance with Policy 30(d) is that should the transfer of the extra care site to a RP not be achieved , the Council has the security that it will achieve a 40% policy compliant affordable housing scheme as part of the same application, within the 65 dwellings permitted, in accordance with Policy 30(d).

Thus if either the 65 extra care units or the 40% affordable homes provision are provided, the applicant is fully compliant with Policy 30(d) in both situations and the description of development is no constraint to this.

Engagement of Policy 30(e)

It is put in the Committee Report (paragraph 7.91 refers) that the application fails against Policy 30(e) to demonstrate whether the transfer of land for the extra care provision would be equivalent in financial terms to the provision of 40% affordable housing, and therefore it is not clear whether there is need for a commuted sum towards the provision of the extra care facility.

However, it is contended that Policy 30(e) is not engaged as a relevant policy for the determination of this application.

The interpretation of the any policy is a matter of law and Policy 30(e) clearly states that affordable housing will be provided on-site *unless* any one of the requirements in the latter parts of the policy are be met, such as demonstrating an equivalent value to an on-site provision. Thus, the true interpretation of the policy must be that the latter parts of it are only engaged if the proposal is not providing on-site affordable housing. This is not the case in this application for the reasons set out above.

Therefore, on the basis that Policy 30(e) can only be engaged where provision is proposed to be made off-site, it is not engaged or relevant for the determination of this application, where provision is made on-site.

Viability & Deliverability

It is set out in the Committee Report (paragraph 7.90 refers) that the applicant has not provided any viability information to demonstrate that the extra care provision is a viable option for the site and that as a result there is no reasonable prospect of the extra care provision coming forward. The relevance being that firstly if it were not provided weight should not be afforded to its provision, and secondly that an affordable housing contribution should have been required.

In addressing viability first, it is not a requirement of the applicant to demonstrate viability of any development where it is policy compliant. This is clarified by the Planning Practice Guidance on viability (paragraph 006 refers) and the information before the Council now demonstrates compliance with Policy 30(d), whether in the preferred form of extra care units or 40% of the dwellings proposed. However, the important and relevant information before the Council in respect of paragraph 7.90 of the Committee Report is that

- A mechanism to deliver a full policy compliant affordable housing scheme is offered should the extra care not be delivered; and

- Given the above mechanism, weight can still be given equitably to the provision of affordable housing and affordable extra care provision as the extra care is in lieu of policy compliant affordable housing that will be forthcoming if the extra care is not

On the basis of the above, it is not a requirement of the NPPF or PPG for the applicant to demonstrate viability where compliant with policy. On the basis of the additional information before the council, the proposal is now demonstrated as compliant with affordable housing policy and no viability case is required to be provided.

Compliance with the NPPF

It is set out in the Committee Report (paragraph 7.94 refers) that paragraph 64 of the NPPF allows for some exemptions when it comes to affordable housing and one of these is where specialist housing provision is proposed.

As a material consideration, paragraph 64 of the NPPF requires 10% of homes to be available for affordable home ownership. Exceptions to this are as the Committee Report sets out specialist housing, as being proposed in the application
The affordable extra care units is therefore a NPPF compliant exception to providing the 10% home ownership, and the LPA has accepted that in principle.

However, given that the Council now has before it a mechanism by which if the extra care facility does not come forward, a policy compliant 40% affordable housing scheme will be provided, the NPPF 10% home ownership will be provided in full. On this basis, the proposal before the Council is fully consistent with Paragraph 64 of the NPPF by way of emption from the 10% or by full provision of 40% affordable housing.

HOWES PERCIVAL

3 The Osiers Business Centre
Leicester, LE19 1DX
DX 710913 Leicester Meridian
www.howespercival.com
[redacted]

[redacted]
Principal Development Management Officer
East Northamptonshire Council
Cedar Drive
Thrapston
Northamptonshire
NN14 4LZ

BY E-MAIL AND POST

Our Ref : PDH/230874.0002/8847081
Your Ref :
Date : 6 November 2019

Dear [redacted]

Planning Application 19/01355/OUT - Outline planning application for the erection of 65 dwellings together with 65 Extra Care Facility Units at St Christophers Drive, Oundle

We refer to the above planning application and to the committee report that has been prepared for the 13 November planning committee.

This firm was approached over a week ago by the applicant's, Persimmon Homes, with regards to the proposed delivery of the Extra Care Units which form part of the planning application. We have been working with our client's since then to devise the principles upon which the Extra Care Units would be delivered through the terms of a Section 106 Agreement that would be required in respect of the proposed development. We were at the stage of submitting our proposals to the Council for its consideration prior to the committee meeting, when the agenda was published recommending that the application be refused.

We confess to being wholly perplexed as to the reason for refusal which implies that the applicants have failed to demonstrate that the Extra Care provision would be a suitable alternative to the provision of affordable housing across the site. The intention of course is that the Extra Care provision will itself be affordable housing as well as providing extra care support and services to occupants meeting the needs of more vulnerable members of the community including the elderly. The scheme would therefore address two needs that the Council has identified through its own assessment of housing needs within the District. Indeed the Council have been insistent that our client's planning application would be supported if they included provision for affordable Extra Care Housing units within the scheme.

We enclose herewith the principles that we have devised with our clients (subject to agreement with the council) which would form the basis of seeking to provide the Affordable Extra Care Units on the

Howes Percival LLP is a limited liability partnership registered in England and Wales with registered number OC 322781 and is authorised and regulated by the Solicitors Regulation Authority. The term partner is used to refer to a member of Howes Percival LLP, or an employee or consultant of it (or any subsidiary of it) with equivalent standing and qualifications. A list of members' names is open to inspection at our registered office: Nene House, 4 Rushmills, Northampton NN4 7YB.

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UKAS MANAGEMENT SYSTEMS 120

site in accordance with the terms of the planning permission sought. You will note, however, that a cascade mechanism has been incorporated into the proposals which will guarantee the delivery of a fully policy complaint 40% affordable housing provision on the site, the subject of the residential development, in the event that a registered provider is unwilling to develop that part of the site identified for the Affordable Extra Care Scheme.

If it is the case, as seems to be inferred from the reason for refusal, and notwithstanding previous representations to the contrary, that the Council no longer want an Affordable Extra Care Facility on this site, then again our clients are in a position to deliver a policy compliant Affordable Extra Care provision within the 65 dwellings being permitted. However this proposal would appear to be the first scheme that the council will have permitted to meet the needs of people requiring extra care within affordable units managed by an accredited Registered Provider.

In the circumstances, and in light of the assurances given in this letter, we trust that the recommendation can now be changed to one of support and for approval of the application. In the alternative and at the very least, the application should be deferred in order that we can agree the terms of the Section 106 Agreement to deliver either the Affordable Extra Care Facility and/or the cascade of securing the 40% affordable housing provision on the site.

Yours sincerely

[redacted]

[redacted]

For and on behalf of Howes Percival LLP

Direct Dial [redacted]
E-mail

Section 106 Agreement – Ashton Road, Oundle, Northamptonshire

The following sets out the key principles for affordable housing delivery in relation to the site at Ashton Road, Oundle.

The key principle is to seek to provide Affordable Extra Care development as per the terms of the planning application. Given the uncertainty as to the willingness of any registered provider (RP) to invest in a development of this type, there are fall back provisions for the delivery of alternative forms of affordable housing in the event that the Extra Care Affordable Housing Scheme cannot be delivered by a willing RP. We have commissioned some evidence with a consultant to establish the interest for extra care RPs in the scheme. Our consultant approached the 20 market leading extra care RPs and they received interest in the scheme from three providers which we have approached and started a dialogue with.

The application drawings show the site split into two parts, with one part for the market housing scheme (65 units) and the other part to accommodate the Extra Care Affordable Housing Scheme. The following principles apply to secure the delivery of the Extra Care Affordable Housing Scheme.

- For a period of 12 months from the grant of planning permission (regardless of whether or not the planning permission is implemented) the owner will seek to secure a transfer of the freehold interest in the Extra Care Affordable Site to a RP. The Council may nominate RP's at any time who may be interested in taking a transfer of the Extra Care Affordable Site (also referred to herein as the "Site") and the Owner will work proactively with those.

- If the Site is transferred to an RP then the RP will then be bound by separate obligations as specified below, but having regard to the need to enable the RP to secure funding that may be required to make the delivery of the scheme more certain, for the benefit of all parties.

- In the event that despite reasonable endeavours the owner has not secured a transfer of the Site within the period specified or any extended period as the parties may agree, the owner will provide evidence to the Council of the reasonable steps they have taken to secure such a transfer.

- If satisfied with the evidence submitted the Council will then agree the alternative affordable housing provision. If not satisfied the Council can request further information. The Council could also request a further period of marketing if there are reasonable grounds for believing that would be successful in securing a buyer and the owner agrees.

- The alternative provision, if a transfer of the Site is not achieved, is the provision of a policy compliant Affordable Housing Scheme representing the Affordable Housing Requirement from the 65 residential dwelling plots.

- The parties shall agree what the affordable requirement would be by reference to the number and types of dwellings and their respective tenures.

- To establish the Affordable Housing provision, the owner will submit an affordable housing scheme with the first application for reserved matters approval.

- The affordable housing scheme will indicate which of the 65 dwellings would be affordable housing units in the event that the owner is unable to secure a transfer of

the Extra Care Affordable Housing Site to an RP and therefore has to provide on-site Affordable Housing.

- The delivery of the on-site Affordable Housing will be subject to the normal provisions relating to affordable housing delivery, transfer to RPs, nomination rights and the affordable tenure split that the Council requires as well as mortgagee protection clauses.

- The Site will then take free of the Extra Care Affordable Housing provisions but will clearly only have outline planning permission for that use. Should the Site be the subject of a future planning application for housing, then it would have an element of affordable housing in accordance with policy requirements applicable at that time.

- In terms of a successful transfer of the Extra Care Affordable Housing Site, which will be with the benefit of access and services to the boundary, the RP will be bound to obtain reserved matters approval and/or full planning permission within a specified period and thereafter to commence development and proceed with completion of the scheme within specified periods. The periods may be extended with the agreement of the Council, acting reasonably. The full extent of the obligations needs to be considered carefully so as not to prejudice third party funding and therefore delivery of the scheme by an RP.

- The Extra Care Affordable Housing will be covered by criteria regarding the need for occupiers to receive an extra care package with a minimum weekly requirement for extra care support/services. Only one person need be in receipt of an extra care package.

- Occupants of the extra care units will also require to be in need of extra care housing based on their income.

- As with the Affordable Housing provision, the extra care scheme will have to have safeguards for any mortgagee advancing monies to an RP to deliver the scheme.

- In the event of a default by the RP in providing the affordable extra care facility in accordance with the provisions within the Agreement there will be a restriction on the Extra Care Affordable Site so as to prevent it from being used for any purpose other than the provision of affordable housing with or without extra care as the council may approve and subject to planning permission granted by the Council.