

Hailey Neighbourhood Plan Submission Consultation

North Witney SDA

December 2018

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1. Introduction

- 1.1 This response to the Hailey Neighbourhood Plan is submitted by Turley on behalf of the North Witney Consortium.
- 1.2 Our clients control the majority of the North Witney Strategic Development Area allocated in the adopted West Oxfordshire Local Plan (2018) under Policy WIT2.
- 1.3 We support the recognition within the draft Neighbourhood Plan of the requirement to retain the proposed allocation of the North Witney site in order to be in general conformity with the adopted Local Plan. Accordingly, this consultation response focusses on key draft policies relevant to the Site and the local context. We do however have explicit concerns regarding elements of the draft Neighbourhood Plan which do not accord with national or adopted local planning policy, and its compliance with the basic conditions.

2. Response to Policies

- 2.1 The North Witney Land Consortium do not consider that the draft Neighbourhood Plan (“the draft NP”) in its current form meets the basic conditions of Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990.
- 2.2 This Section will set out the reasons for this through examining both the policies and supporting text therein.

North Witney Strategic Development Area Allocation

- 2.3 We support the recognition of the Neighbourhood Plan that – despite local resistance – in order to be in general conformity with the adopted Local Plan, it should include the delivery of the proposed North Witney SDA allocation. The following specific comments and concerns are however made.

Public Footpaths

Policy T6 Upgrading of Footpath 29, 30, 12 & 13

- 2.4 Parts of footpaths 236/11, 236/30 and 236/13 run through our client’s land holdings at North Witney. As per the Development Framework Supplementary Documents included at Appendix One of this Statement, the emerging proposals seek to retain the existing Public Rights of Way within the developable area of the site.
- 2.5 The North Witney Land Consortium have proposed an area of landscaping at the northern extent of the site to form part of the transition from the development to the agricultural land to the north. As such, we argue that it would not be appropriate to upgrade these stretches of the footpath to an all-weather footpath as it will have a greater landscape and visual impact than the existing low key nature of the public rights of way. There is no evidence to support such a suggestion within the draft Neighbourhood Plan.
- 2.6 The Infrastructure Development Plan (IDP) (updated in February 2018) supporting the Neighbourhood Plan, sets out that the mechanism by which the monies will be secured for this will be through S106 contributions and CIL when introduced. The Council have undertaken detailed viability analysis in order to inform the recently adopted Local Plan. The costs associated with the additional infrastructure works being sought by the Neighbourhood Plan IDP – including that of the North Witney footpaths – have not been costed as part of the District Council’s work.
- 2.7 Clearly if CIL is introduced and the Neighbourhood Plan is made in due course, then the Neighbourhood Plan group will be entitled to a proportion of CIL receipts and these can be used to realise the aspirations stated above – subject to the relevant consents being secured.

Policy T8 New Footpath

- 2.8 We noted in our previous representations that this Policy was unclear with respect to whether or not the policy seeks a footpath running alongside the proposed distributor road or whether a segregated footpath set back from the path is envisaged.

- 2.9 We note that no further clarification has been provided and consider that the proposed wording in its current form should make clear that the path can run immediately alongside the Northern Distributor Road, if considered appropriate at the detailed design stage.
- 2.10 This approach has been adopted following careful consideration for the current planning application for the Woodstock Road part of the wider SDA allocation (14/01671/OUT). This application seeks outline approval with all matters reserved except access. Whilst there remain some highway matters to be agreed through the application process, the principle of the footpaths immediately adjoining the highway is not a matter of dispute with the highways authority and therefore the draft Neighbourhood Plan should not take a differing view to that of the statutory consultees.
- 2.11 As such, it is considered that this approach is acceptable to Oxfordshire County Council (the relevant highways authority) and would be an appropriate approach for the remainder of the Northern Distributor Road.

Policy C1 Community Facilities

- 2.12 Our previous representations noted that the policy was subjective in terms of quantifying the aspiration for new residents with respect to community facilities. The Policy as now drafted states:

*“All of the proposed housing developments, including North Witney, shall ensure that new residents have at least the same access to community facilities **within the HNP Area** as existing residents.*

This shall be achieved through funding and, where appropriate, provision of land in proportion to the size of each new development to ensure:

- *Easy access to facilities including health-care, schools, pre-schools and nurseries, school facilities and allotments, play areas, pubs, restaurants and places of worship.*
- *Easy access to a multifunctional community building suitable for activities such as playgroups, older persons day-centres, clubs and societies.*
- *Primary healthcare facilities within an appropriate distance of each community.*
- *Provision is made in land or funding to satisfy local demand for allotments.”*

- 2.13 Whilst the site is located within Hailey parish, we note that it is more closely related to Witney itself, and the facilities that are within it. We therefore consider the policy wording should reflect this rather than referring purely to community facilities within the HNP Area. The draft Neighbourhood Plan notes that the existing community facilities located in Hailey Parish are too small and poorly located to service the needs of the new development; however, seemingly no consideration has been given to the availability of community facilities in Witney which are better positioned and accessed to serve the North Witney community in any case. We therefore consider that current

community facilities in Witney will be sufficient to meet the new residents' needs and as such, consider this policy in its current form should acknowledge the role of Witney in allowing future development to meet these requirements. This matter can of course be fully considered at the planning application stage.

2.14 However, we welcome the introduction of flexibility to the policy in terms of allowing a “*multi-functional community building*”. The North Witney Land Consortium has identified that the new primary school which would be delivered on site could also be developed as a new community hub which could potentially serve the development with local facilities and services such as a community hall, if required. This is welcomed owing to the viability and sustainability associated with their management and maintenance to ensure future viability.

2.15 Furthermore, we welcome that the policy has been amended so as not to dictate a need for any community facility to be readily accessible from the existing homes of Hailey Parish. As we set out in our previous representations, the development is more closely related to Witney. Furthermore, such community facilities should be provided in order to meet the needs of the proposed development, not to address any existing shortfall – which is not readily evident from the Neighbourhood Plan.

2.16 The District Council's Infrastructure Development Plan (2015) indicated that a number of new community facilities may be required as a consequence of the North Witney development. These include:

- Provision for new community facilities as part of large-scale development across the district
- Enhance library provision
- Children's play areas
- New and/or enhanced cemetery provision across the District
- Informal open space – provision of and improvements to including accessible natural green space across the District
- Additional outdoor playing pitch provision and changing facilities in Witney
- Replacement of Windrush Leisure Centre, Witney.

2.17 However, notably, Policy WIT2 of the adopted Local Plan does not stipulate a requirement for the provision of a community facility (as stipulated in the draft Neighbourhood Plan). We consider that, therefore, there is not sufficient evidence to support the community facilities dictated by this draft policy. Importantly, these additional requirements have also not been costed and assessed as part of the viability work undertaken in support of the Local Plan.

2.18 We consider the requirement for a number of these in turn below.

Playing Pitch Provision

- 2.19 The draft Policy seeks to require the provision of at least 5.6 hectares of playing pitches on the North Witney site. The quantum of pitches required is based on a standard of 1.6ha per 1,000 population which is itself based on the recommendations of the WODC Playing Pitch Strategy (2014).
- 2.20 The draft Neighbourhood Plan is therefore assuming the North Witney development population will exceed 3,500 residents. However, we would like to highlight again that the policy allocation for North Witney states that the site will deliver ‘about 1,400’ homes and, in addition the mix of the development has not been confirmed at this stage. It is therefore premature to seek to calculate the exact population which can expect to be generated by the new development. As such, it is considered that it is inappropriate for the Neighbourhood Plan to state an exact figure of requirement prior to any consent.
- 2.21 Furthermore, it is notable that the adopted Local Plan does not secure an exact level of provision (Policy EH5) for playing pitches despite the Playing Pitch Strategy also forming part of its evidence base. Instead Policy EH5 of the Local Plan requires that *“where appropriate, development will be expected to provide or contribute towards the provision of necessary improvements to open space, sports and recreational buildings and land.”* It is considered that the wording of the Local Plan allows sufficient flexibility to respond to changing requirements depending on existing local capacity and needs and the most appropriate form of provision, be it on site, offsite or joint provision as part of school facilities. It is therefore considered that the proposed Neighbourhood Plan Policy should be amended to better align itself with the Local Plan, or indeed, the policy should preferably be deleted.

Play Area Provision

- 2.22 This Policy is generally supported and it is noted that the North Witney development will need to deliver play areas on site and these would be interspersed across the development area. The proposals would be subject to public consultation through reserved matters applications following grant of outline planning permission for the development of the site.

Allotment Provision

- 2.23 The Policy seeks to require the delivery of 84 allotments either on site or within easily accessible distance. The principle of the requirement for onsite provision is included within the policy allocation. However no specific quantity is identified by the Local Plan policy; this is in part owing to the flexibility within the policy with regard to the residential development to be delivered – an approach supported by ourselves.
- 2.24 The supporting text to the policy correctly notes that most allotment strategies recommend a minimum provision equivalent to 15 allotments per 1,000 households. It continues to advise that in the Neighbourhood Plan Area, there is a short waiting list for allotments, where provision is currently 30 allotments for just under 500 households (or four times the average recommended level of provision). For the Neighbourhood Plan group, this is considered sufficient justification to seek to replicate the level of provision experienced elsewhere in the Parish.

- 2.25 As previously discussed, whilst the site falls within Hailey Parish, it is more closely related to Witney than Hailey. It is therefore considered inappropriate to seek to replicate the level of provision experienced by the existing residents of Hailey Parish for the new development which will effectively form an extension to Witney and as such, possesses a different character to that of the existing development in the Parish.
- 2.26 Furthermore, owing to development pressures, it is pertinent that the quantum of development on the site is maximised, simultaneously providing high quality homes and related facilities. It is considered that the proposed requirement will result in additional non-developable area on site which could potentially reduce the development capacity of the site and result in the proposed development failing to achieve the development envisaged by the Local Plan. Such imposition would result in the Neighbourhood Plan failing the test of being in general conformity with the Local Plan given it would result in an under-delivery of development on the site and would potentially result in the Council failing to deliver its housing requirement.
- 2.27 Furthermore as discussed above in respect to the requirements for the provision of playing pitches, it is inappropriate at this stage to seek to anticipate the potential population of the North Witney development and tie a specific level of provision to this figure. The proposed Policy wording should be updated to reflect, or deleted entirely.

Burial Ground Provision

- 2.28 This policy seeks to secure provision for suitable Burial Ground capacity as part of the development of North Witney community facilities. Whilst it is sensible to assume that an increased population will result in an increased demand for use of the Burial Ground in Hailey, it is of course necessary to recognise that this will only be sought by a proportion of the new population. Furthermore, as highlighted previously, the site is more closely related to Witney and as such, some demand may fall within this location. The policy should be deleted.
- 2.29 Furthermore, should the District Council introduce CIL, the Parish Council or Neighbourhood Plan Group following the Neighbourhood Plan being made, would be entitled to a proportion of the receipts; as such, these could be used towards securing additional burial grounds if required. Given the nature of such a use, appropriate buffer distances would be necessary which would further constrain the development capacity of the site. Similarly the locational requirements for a burial ground, including appropriate tranquillity, will not necessarily be appropriately met within the North Witney SDA site.
- 2.30 As discussed previously within the context of allotment provision, such provision will reduce the development capacity of the site and result in the proposed development failing to achieve the level of development envisaged by the Local Plan. As noted earlier, this would result in the Neighbourhood Plan failing the test of being in general conformity with the Local Plan owing to the fact it would prohibit the Council's ability to deliver its housing requirement. Should improvements be required, the Parish Council or Neighbourhood Plan Group could appropriately seek to use any CIL receipts gained towards meeting this requirement.

Health Care

- 2.31 This policy seeks to require the North Witney community facilities to consider *“the inclusion of an NHS surgery/ Health Centre, preferably integrated into the Community Centre”*.
- 2.32 No requirement for the provision of health care is dictated in the Local Plan Policy WIT2. Importantly the Clinical Commissioning Group will have been consulted in the preparation of the Local Plan and no requirement has been identified that has led the Council to require the provision of new health care facilities on site.
- 2.33 As noted in the supporting text to the policy, most residents seek health care from one of the three GP surgeries in Witney. We note from the NHS website that all three surgeries state that they are currently accepting new patients. We maintain our position stated in previous representations that given the North Witney development will be located in closer proximity to the existing medical facilities, the three medical practices in Witney will be sufficient to meet the future needs of the development. Should improvements be required to the existing services and facilities then these could be appropriately met through financial contributions via CIL or Section 106 Obligations as appropriate subject to meeting the necessary tests.

Policy E3 Local Green Spaces

- 2.34 We welcome the fact that the policy no longer seeks to designate a series of areas as Local Green Spaces. As noted in our previous representations a number of these areas were relevant to our client’s landholdings area.

Policy E4 Landscaped Buffer Strip

- 2.35 This policy dictates the following requirement:
- “In order to maintain some semblance of separation here, a landscaped buffer strip of hedging and trees around 50 metres wide should be established along both sides of the Hailey Road (B4022) between the existing built edge of Witney and Downhill Lane/ Foxburrow Lane residential areas.*
- 2.36 This requirement to provide a 50 metre buffer of hedging and trees at the point of access is considered not to be in general conformity with the Plan; the northern distributor road will require appropriate visibility splays and which the buffer will impede. As such, this requirement will impinge on the deliverability of the site.
- 2.37 Furthermore, this requirement will also reduce the developable area; as such, potentially compromising the Site’s ability to deliver 1,400 dwellings. The policy should be deleted and left to the Council to determine at planning application stage as there is no evidence to support it.

3. Conformity with Basic Conditions

- 3.1 Having set out the policy objections above, we will now assess the Plan against the “basic conditions” (see paragraph 8(2)(a) of Schedule 4B to the Town and Country Planning Act 1990. We will deal with each of these “basic conditions” in turn below.

8(2)(a) Having regard to national policies and advice contained in the guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan

- 3.2 In order to have regard to a policy as a matter of law, that policy has to be interpreted properly by the decision maker. A decision maker who misinterprets policy does not have regard to it and errs in law: see *EC Gransden v Secretary of State* (1987) 54 P. & C.R. 86, as renewed in *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983.
- 3.3 We consider that the central flaw in the draft Neighbourhood Plan is that a number of the proposed policy requirements will serve as an imposition to the Local Plan meeting its housing requirement. As mentioned previously, a number of the measures sought will restrict the developable area of the site which in turn, will render it difficult to maximise the development potential of the site without compromising quality. Furthermore the additional requirements proposed have not been costed as part of the viability work which informed the Local Plan and as such are potentially undeliverable.
- 3.4 To summarise, whilst the recognition that the North Witney SDA needs to be included to be in general conformity is supported, the wider implications of the Neighbourhood Plan’s requirements need to be considered.

The making of the neighbourhood plan contributes to the achievement of sustainable development

- 3.5 The presumption in favour of sustainable development is at the heart of the Framework. This is manifested particularly in paragraph 11 of the NPPF. This states that for plan making:

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

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

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

- 3.6 As such, there is a two stage process to achieving sustainable development, firstly the assessment of objective needs for an area and secondly, a determination whether the impact of meeting those needs would significantly and demonstrably outweigh the benefits.

- 3.7 For a neighbourhood plan to contribute to meeting sustainable development, it must deliver the housing required as a result of that two stage process. Paragraph 13 of the NPPF states:

“The application of the presumption has implications for the ways communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies”.

- 3.8 Thus, neighbourhood plans are required to support the strategic development needs identified by local planning authorities; as such, in order to be sustainable, a neighbourhood plan must meet the objectively assessed needs of the area as identified in an up to date Local Plan.
- 3.9 Whilst the Neighbourhood Plan correctly carries forward the North Witney allocation from the Local Plan and makes provision for other small scale developments to be brought forward, the proposed policy requirements are considered likely to impinge on the development potential of the North Witney site to meet the level of housing anticipated by the Local Plan. This is considered to prejudice the delivery of a sustainable, high quality development on site.

8(2)(e) The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area

- 3.10 As discussed above, whilst the Neighbourhood Plan correctly carries forward the North Witney allocation from the Local Plan and makes provision for other small scale developments to be brought forward, the proposed Policy requirements are considered likely to jeopardise the ability of the North Witney site to meet the level of housing anticipated by the Local Plan. This is considered to prejudice the delivery of a sustainable development on the site and renders the Plan non-conformist with the adopted Local Plan.
- 3.11 As discussed in relation to the specific policies in respect of the North Witney development, these are also considered not to conform to the requirements of the Local Plan.

8(2)(f) The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union obligations

- 3.12 We support the fact that the Plan is now accompanied by a Strategic Environmental Assessment Report and as such, the plan conforms with this basic condition.

4. Conclusion

- 4.1 For the reasons set out above, the draft Neighbourhood Plan does not meet all of the basic conditions. Further consideration must be given to the proposed policy requirements to ensure that they do not prejudice the delivery of the overall Local Plan and the allocations contained therein.
- 4.2 It is considered that the Council should not accept this Plan in its current form; the Plan must meet the concerns raised in Section Two of this Statement before it is accepted and must be underpinned by a robust evidence base and a proper, robust and transparent assessment of the proposed requirements in accordance with the NPPF and national guidance.

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