

Mr. John Slater  
John Slater Planning Limited  
c/o Melton Borough Council

Our ref: 01285378.1  
Your ref:

17<sup>th</sup> January 2022

Dear Mr Slater,

**STATHERN NEIGHBOURHOOD PLAN 2020-2036: RESPONSE ON BEHALF OF MR MATTHEW ATTON, TO 'CONSULTATION ON MELTON BC RESPONSES TO EXAMINER'S QUESTIONS AND MARRONS PLANNING LETTER DATED 22<sup>ND</sup> APRIL 2021'**

**Introduction**

1. We write in response to your Further Comments document (dated 4 May 2021) and the two Further Notes issued by you (dated 10 November 2021 and 17 December 2021), offering the opportunity to respond to Melton Borough Council's written submissions following the hand-down of the judgment of the High Court on 29 November 2021: *Melton Borough Council v SSHCLG* [2021] EWHC 2792 (Admin). We are grateful for the opportunity to make further submissions.
2. These submissions respond directly to the Council's written submissions (dated 17 December 2021)<sup>1</sup>, as invited by the Examiner's Note of 10 November 2021<sup>2</sup>. In doing so, it is necessary to address various points raised in the Further Comments document (dated 4 May 2021), notably paragraphs 14-19.
3. Our response is structured as follows:
  - 1) Response to the Council's General Submissions on the Adoption/Publication of the Local Plan
  - 2) Response to the Council's Specific Submissions at Pages 3, 7 and 10 on Policy C1(B) and Policy SS2 of the Local Plan
  - 3) The Council's Proposed Modifications to Policies H1 and H2 of the Submission Version of the Neighbourhood Plan
  - 4) Further Necessary Modifications to Policy H1 and H2

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<sup>1</sup> We shall refer to the Borough Council as "the Council" throughout, and Stathern Parish Council as the "Parish Council"

<sup>2</sup> The Council's Response document is not paginated/enumerated, so we have referred to the page numbers, and where applicable the paragraph numbers used in the original.

## **1) Response to the Council's General Submissions on the Adoption / Publication of the Local Plan**

4. The Council's submission, pages 4-10, includes a full citation of the text of our initial letter (dated 22 April 2021) and responds to our submissions at that stage.
5. The letter of 22 April 2021 necessarily pre-dated further developments in the High Court litigation under s288 of the Town and Country Planning Act 1990, notably the issue of a Second Witness Statement by the Council on 27 July 2021.
6. The Second Witness Statement explained, for the first time, the exact nature of the Council's error on or about 10 October 2018. Paragraphs 20 and 22 explained how the Council's Officers omitted the relevant word "windfall" from the wording of Policy SS2, when generating the Publication Version of the Local Plan for the purposes of the Council's website and for printing. In doing so, the Second Witness Statement further explained that the amendment was not made expressly by the Officers, including pursuant to the terms of any delegation by Full Council. The Witness Statement also confirmed at paragraph 24 that the Council's Officers themselves then used this incorrect Publication Version in the determination of planning applications and during the course of the s78 appeal. This cumulative set of circumstances obscured the correct adopted version of the Local Plan, until that clarification on 27 July 2021.
7. Following that clarification during the s288 proceedings, it is now accepted that the adopted version of Policy SS2 for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 8(2)(e) of Schedule 4B of the Town and Country Planning Act 1990 should read as follows (with our own underlining of the relevant fuller phrase and bolding of the single additional word, which is also in inverted commas in the adopted version).

*Service Centres and Rural Hubs will accommodate approximately 35% of the Borough's housing residual requirement\* (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale residential 'windfall' development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

8. The majority of the Council's submissions and comments at pages 1 to 10 essentially record the Local Plan history.
9. Given that the factual history is agreed, we shall not comment further on the Council's actions in respect of the Local Plan or during the s78 appeal proceedings. These will be the subject of further submissions to the Planning Inspectorate.

## **2) Response to the Council's Specific Submissions at Pages 3, 7 and 10 on Policy C1(B) and Policy SS2**

10. The Council's Submissions contain three separate sections commenting on the Appeal Decision Letter, the High Court Judgment and the interpretation of Policy C1(B) of the Local Plan.
11. These address various matters raised in the Further Comments document at paragraphs 14-19:

- Page 3 (responding to paragraph 19 of the Examiner's Further Questions (4 May 2021).
  - Page 7 (responding to our paragraph 20 in the initial letter of 22 April 2021)
  - Page 10 (responding to our paragraph 36)
12. Page 3 (responding to Examiner's paragraph 19) refers collectively to Local Plan Policy C1(A) and C1(B) and Draft Neighbourhood Plan Policies H1 and H2. It is expressly limited and does not explain how these should be applied in a decision: *"[T]here will not be a resolution of the implications for the site until the remitted appeal is re-determined. Most importantly it does not address the question of how policies C1(A) and C1(B) should be read with H1 and H2."*
13. Page 7 (responding to our paragraph 20) is broader. It goes further, seeking to make submissions on how Policy C1(B) should be applied in a future decision:
- "Housing targets may be minimum housing targets, but the exceedance of the minimum housing target by the development of reserve sites is not permitted in circumstances under which the provisions of Policy C1(B) continue to apply.*
- Also, we consider that the conclusion reached at DL20 is an unfortunate misinterpretation of Policy SS2. The last sentence of the paragraph states:-*
- In my view, this [a concession that the scheme would accord with Policy SS1] is the most significant factor as the proposal is only for nine dwellings, and this scale of development is clearly supported by Policies SS1 and SS2 in particular.*
- This conclusion was founded upon an understanding that SS2 did not include the word 'windfall'. As the s288 appeal has exposed, the inclusion of that word creates a mutual exclusion to allocated sites including this one in question. Also it does not address the consequences of a decision that allows a reserve site to be divided into small parcels and consumed immediately even if the limitations which govern its release continue to apply. This decision would undermine Local Plan's approach to reserve sites."*
14. Page 10 (paragraph 36) is similar to Page 3 in seeking to limit the Council's response, although it then states that the Council *"still have concerns about the implications associated with the unknown outcome of the new appeal for the site."*
15. We have considered how to respond to these submissions, which address the decision-making context and are highly contested in the context of the s78 appeal.
16. The exact interaction between Policy C1(B) and Policy SS2 (with the term "windfall" added) is a matter for detailed further submission as part of reconvened appeal proceedings. The Council's disagreement with the Appeal Inspector's DL14, DL20 and DL23 (page 7) therefore cannot be fully resolved through this examination, but only through further written submissions as part of that separate statutory process (e.g. Statement of Case and further Statement of Common Ground).
17. A Neighbourhood Plan examination must itself necessarily be limited to consideration of the Neighbourhood Plan policy text pursuant to paragraph 10(1)-(3) of the Schedule 4B of the Town and Country Planning Act 1990:

*(1) The examiner must make a report on the draft order containing recommendations in accordance with this paragraph (and no other recommendations)*

*(2) The report must recommend either—*

*(a) that the draft order is submitted to a referendum, or*

*(b) that modifications specified in the report are made to the draft order and that the draft order as modified is submitted to a referendum, or*

*(c) that the proposal for the order is refused.*

*(3) The only modifications that may be recommended are—*

*(a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),*

*(b) modifications that the examiner considers need to be made to secure that the draft order is compatible with the Convention rights,*

*(c) modifications that the examiner considers need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,*

*(d) modifications specifying a period under section 61L(2)(b) or (5), and*

*(e) modifications for the purpose of correcting errors.*

...

18. However, the Council's submissions touch upon whether the Submission Version of the Neighbourhood Plan's Draft Policy H1 and Policy H2 meet the basic conditions in their current drafted form, and if not, what modification can be proposed.
19. As we originally noted in our initial letter (22 April 2021) paragraphs 6 and 36, and already stated above, the Council's publication and maintenance of the Local Plan on its website from 10 October 2018 until 11 March 2021 have necessarily prevented the making of submissions on this version of the Local Plan, at the time of our Regulation 16 Submissions (December 2021), given that this document was only first published online on 11 March 2021.
20. This is therefore the first occasion that detailed submissions can be made on the compliance of Draft Policies H1 and H2 with the adopted version of Policy SS2 including "windfall" text, and the necessary modifications to ensure general conformity with this strategic policy for the purpose of basic condition 8(2)(e).
21. We emphasise that all of our earlier submissions set out in the original Regulation 16 submission remain applicable. This applies in particular to paragraphs 25 to 62 in respect of our objections to the current drafting of Policies H1 and H2, and the way in which these seek to exclude any development outside the "Limits to Development" in their current submitted form.
22. Although our initial Regulation 16 submissions, paragraphs 39, 40, 42, 55 cited the Published Version of Policy SS2 (without the inclusion of the term 'windfall' in inverted commas), the addition of that text " 'windfall' " does not alter our submissions:

- [39]: Policy SS2 still supports proposals which represent “sustainable development” consistent with Policy SS1 as a separate route to permission from Policy C1(B) and Policy SS3. This SS2 support encompasses a small-scale proposal (e.g. 9 units) on part of the land which has been designated as a reserve area under Policy C1(B), but not allocated under Policy C1(A)
  - [40]: Paragraph 4.2.17 also remains in two parts and provides two routes to development, including: “...schemes may be permitted where they represent sustainable development”. The text makes clear that the Local Plan supports “Schemes of up to about 10 dwellings may be appropriate within or on the edge of Service Centres....”
  - [42] and [55]: As for [40], the two part structure to Policy SS2 remains
23. In short, we do not consider that the additional text “ ‘windfall’ ” changes the thrust of our submissions that Policies H1 and H2 conflict with basic condition 8(2)(a) (national policy), (d) (sustainable development) and critically (e) (conformity with strategic policies).
24. In summary, we shall address certain points raised in the Council’s page 7 in a focussed fashion here, in order to provide a full response to the Council’s written submissions of 17 December 2021 and properly address the material changes in circumstances since our original Regulation 16 representations, notably the High Court judgment.
25. We shall then address the necessary modifications to Policies H1 and H2, as proposed in the submissions from the Council (12 April 2021) and Parish Council (13 April 2021).

#### Response to the Council’s Submissions on Policy C1(B)

26. The Council’s submissions at page 7 are wrong in certain key respects. This has a direct bearing on how Policy H1 and H2 should be modified, because the Council are proceeding on an incorrect approach to the effect of Policy C1(B):
- (1) Policy C1(B) does not create a situation where the *“exceedance of the minimum housing target by the development of reserve sites”* is not permitted.
  - (2) The inclusion of the word “windfall” does not create *“a mutual exclusion to allocated sites including this one in question”*
  - (3) A grant of permission for a site of 9 houses as a small-scale site, consistent with Policy SS2 does not have the consequence that *“a reserve site [can] be divided into small parcels and consumed immediately even if the limitations which govern its release continue to apply.”*
27. All of this is clear from the High Court judgment.
28. The High Court chose not to make a final ruling on whether the development of a small portion of the area covered by a reserve site designation Policy C1(B) necessarily renders that site incapable of being “windfall development”: see paragraph 8. It left that question open to a further Inspector on the reconvened appeal.
29. The High Court did however reject the Council’s submissions on how Policy C1(B) should be interpreted in its own right, which closely reflect the submissions set out above at paragraphs 52-54.

30. The Council's later description in its Response at page 10 is incorrect in suggesting that the judgment was confined to the question of *"adopting the erroneous construction of the inspector, did he interpret policy C1(B) correctly?"* and answered *"The judgement concludes that the Inspector was entitle[d] to construe the incorrectly worded policy as he did."*
31. On the contrary, the High Court made clear that it did not agree with the Council's submissions on the interpretation of Policy C1(B) on a free-standing basis, as well as in the context of the Published Version of SS2:

*52. It is apparent from the decision letter that the Inspector reviewed the terms of the policies put before him. He was faced with what he recognised was a conflict between Policies SS1 and SS2 which he considered supported the application, and Policy C1(B) which opposed it. He is criticised for his approach to Policy C1(B) because he read it as being positively worded. Mr Leader submits that it is a policy which limits development, and cannot be read as the Inspector read it. I disagree.*

*53. It is not unusual to find that planning policies might pull in different directions in certain circumstances. What the Inspector had to do (as I rather inelegantly put it in the course of argument) was square the circle. The terms of SS2 were (apparently) clear in their support for small scale development so long as it was sustainable. True this was the development of part of a reserve site, but the Inspector was entitled to note that there was no cap on numbers in these policies, and that SS1/SS2 and the Framework generally encouraged sustainable development. It was argued that to allow the development of part of a reserve site left open the prospect of other such small developments of parts of reserve sites effectively nullifying the purpose of policy C1(B). The Inspector recognised that this development ran counter to C1(B), but made it plain that any further development had to be considered on its own merits, and with an eye to the overall proportionality and sustainability of development in Stathern.*

*54. The Inspector's interpretation and application of these policies was a matter of planning judgement. He understood the nature of the conflict, reviewed the competing considerations, and reached a coherent conclusion. On the basis of the material before him, his decision was well within the bounds of what was reasonable, and I would have rejected the Council's case on ground 2. I note that his approach is not dissimilar to the approach taken by the Council's officers when considering the application.*

32. In short, the High Court judgment confirms the following incontestable points:
- (1) There is no numerical cap on numbers through any policy the Local Plan, including Policy C1(B): [Judgment paragraph 52 ("J/52")] and [J/53]
  - (2) Policy C1(B) is worded in a positive way. It does not say that a proposal on a much smaller area for a much smaller number (9 units) should be restricted: [J/52]
  - (3) Every case has to be approached on its own merits. The Council's argument that the reserve site will be "consumed immediately" is completely baseless: [J/53] and [J/54]
33. These observations by the High Court have a direct bearing on the modifications required for Draft Policies H1 and H2.

### **3) The Council's Proposed Modifications to Policies H1 and H2 of the Submission Version of the Neighbourhood Plan**

#### **Policy H1 and H2: As Proposed to be Modified**

34. We note that the Borough Council earlier suggested various modifications in their Regulation 16 Submissions (December 2020) and 12 April 2021 Further Submissions (with the proposed modification text underlined):

##### *Policy H1: Limits to Development*

*Development proposals within the Neighbourhood Plan area will be supported on sites within the Limits to Development as identified in Figure 2 above where it complies with the policies of this Plan. Land outside the defined Limits to Development will be treated as open countryside, where development will be carefully controlled in line with local and national strategic planning policies. Development outside the defined Limits to Development on the Reserve Site identified in the Local Plan will be acceptable subject to complying with the terms of Local Plan Policy C1(B).*

##### *Policy H2: Windfall Sites*

*Small residential development proposals will be supported subject to proposals meeting all relevant requirements set out in other policies in this Plan and where such a development:*

- a) is within the Limits to Development of the village of Stathern*
- b) helps to meet the identified housing requirement for the parish*
- c) where practicable provides safe vehicular and pedestrian access without causing unacceptable impacts that cannot be mitigated*
- d) it does not unacceptably harm the character of the area*
- e) where practicable has roof heights limited to those of surrounding buildings*
- f) does not result unacceptably in a loss of amenity for neighbouring occupiers by reason of loss of privacy, loss of daylight, visual intrusion or noise*
- g) where practicable retains existing important natural boundaries such as trees, hedges and streams.*

35. For present purposes, we shall focus on the amendment to Policy H1 and H2(a). We do not consider that these modifications will render the Policies compliant with the basic conditions, notably basic conditions 8(2)(a), (d) and (e).

#### **Conformity with Policy SS2**

36. In their proposed modified form, H1 and H2(a) of the Neighbourhood Plan do not comply with the adopted wording of Policy SS2, for the purposes of basic condition 8(2)(e). This is because it limits its reference to Policy C1(B) without referring to Policy SS2.
37. Policy SS2 is an important strategic policy in the adopted development plan. As we have set out above, it has a free-standing, independent character from Policy C1(B) and Policy SS3 – and provides a separate route to permission for small-scale development.

Policy SS2 has two parts, in respect of land at (i.e. within and on the edge of) Service Centres, such as Stathern.

38. Policy SS2, first, supports the development on land which has been specifically allocated under Policy C1(A) but, second, further supports the development of other land, including that which has merely been designated as part of a “reserve site” under Policy C1(B). We have enumerated these two parts as [1] and [2] below:

*Service Centres and Rural Hubs will accommodate approximately 35% of the Borough’s housing residual requirement\* (1822) on a proportionate basis. [1] This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and [2] by encouraging small scale residential ‘windfall’ development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

39. As can be seen later in the Local Plan, Policy C1(A) expressly uses the term: “Housing Allocations”. Policy C1(B) merely refers to “Reserve Sites”.
40. At the heart of Policy SS2 is the principle of flexibility, to support a continuous supply of smaller sites, consistent with national policy under NPPF 69c (formerly 68c): “*“local planning authorities should ...support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes.”*
41. Contrary to the Council’s page 7 submissions, it is vital to ensure that Policy H1 and H2 properly reflect the following points, for the purposes of basic conditions 8(2)(a), (d) and (e):
- (i) Policy SS2’s positive support for development outside but adjoining the settlement edge;
  - (ii) A small-scale development (9 units) on part of the land within a reserve site will serve the intended national policy and Local Plan function of being “ ‘windfall’ development”, to provide necessary flexibility in the supply, in a location which has been confirmed to be sustainable through the reserve site designation.

(i) SS2 and Land Adjoining the Settlement Edge

42. As the Council noted in their own Regulation 16 representation, Policies SS2 (and SS3) expressly requires flexibility and supports development which adjoins the built up area:

*“We recommend a more flexible approach in order to comply with policy SS2 in the Local Plan. The SS2 policy (and SS3 for unallocated sites) indicate that development is allowed within and adjoining the built up area (and not just within). We are concerned that the current approach would be in conflict with the potential development of the reserve site (if needed) and consequently the strategic policies C1(B) and SS2. The examiners’ recommendations for three recent examinations (Gaddesby, Hoby with Rotherby and Ab Kettleby) issued after the adoption of the Local Plan seem to suggest this approach.”*



43. The three Examiner's Reports referred to above have examined compliance with Policy SS3 only (Gaddesby, Hoby with Rotherby and Ab Kettleby). All of those Reports post-date the adoption of the Local Plan and focussed amendments were made to reflect Policy SS3, including addition of references to the promotion of development adjoining settlement boundaries.
44. Our submissions here focus on Policy SS2, and the correct approach to Policy C1(B), as now clarified by the High Court judgment. This is a matter which does not appear to have been raised in any earlier Neighbourhood Plan Report within the neighbourhood area, especially in circumstances where planning permission have already been granted for the settlement's Housing Allocations under Policy C1(A).
45. Policy SS2 does not geographically restrict its support for development only to that within the built urban edge. It applies to land both within and adjoining that edge.
46. This is clear from the policy text itself and from the supporting text at 4.2.17: "*Schemes of up to about 10 dwellings may be appropriate within or on the edge of Service Centres*". Just as with Policy SS3 ("within or on the edge of settlements") it is clear that development should be encouraged where it is sustainably located. That will include development immediately adjoining the built-up area.
47. A restriction of development only to "within the limits of development" would not make any sense within a settlement such as Stathern where there are no sites within the built urban area which can be developed. The Parish Council have provided no evidence as to how the policy will operate effectively to deliver Sites within the boundary.
48. Policy H1 and Policy H2 therefore require express amendment to be in conformity with Policy SS2, at the very least on the area of land designated within Policy C1(B). This is particularly important given that the reserve site designation expressly recognises the locational sustainability of this land. This is necessarily the most sustainable land within the settlement area, save for the land within the allocations.
49. This has also been confirmed by the Appeal Inspector's decision, which although quashed, remains relevant in identifying that there are no environmental or technical bases for objection to development of the Site: DL24 and DL25. This is a matter which the Council expressly agreed during the appeal proceedings, including through the Statement of Common Ground.

(ii) The Windfall Character of Small-Scale Development on Part of the Land within a Reserve Site

50. In modifying Policy H1 and H2, it is essential that the policy text reflects the full provisions of Policy SS2 as a strategic policy for the purposes of basic condition 8(2)(e). It must reflect that Policy SS2 has two distinct parts for land at Service Centres: supporting the development of allocated sites (i.e. the sites are expressly identified under C1(A)) but also supporting small-scale level (under 10 units) on any other land, provided such development represents sustainable development under Policy SS2 and will have a 'windfall' character.
51. Contrary to the Council's submissions on page 7 of their Response, the word " 'windfall' " in the adopted version of Policy SS2 is not intended to have any restrictive effect on a smaller area of land within the Reserve Site. There is no express prohibition within Policy SS2 on the development of land which is located within a "reserve site" (under Policy C1(B)). Indeed, it would be an error of law to read such a restriction into the text of Policy SS2.

52. The additional word “ ‘windfall’ ” (added in inverted commas in the adopted version) is simply attached to “small-scale residential development”. The term “site” is not used here, and certainly not “reserve site”. The adjective “windfall” is simply intended to distinguish land that is “allocated” (i.e. under C1(A) only) and all other land at the Service Centres (including that merely designated within “reserve sites” (under C1(B))).
53. The Local Plan Glossary refers to “*Windfall sites - Sites which have not been specifically identified for housing development through the planning process but which may come forward over the course of the plan period.*”
54. However, that is in the first instance simply a reference to NPPF 71’s approach to the calculation of an additional supply to “allocations”, and the calculation of “windfall sites as part of anticipated supply”, matching the NPPF’s own Glossary definition: “Sites not specifically identified in the development plan”.
55. Whilst a “Reserve Site” may be designated under Policy C1(B) (but not “allocated”), small-scale development of 9 units on land within part of that area will still be “ ‘windfall’ development, irrespective of its location within part of that reserve site.
56. This approach is fully consistent with the NPPF’s overarching support for housing growth under Chapter 5, a matter of great significance for the purposes of basic conditions 8(2)(a) and (d).
57. The only use of “windfall” in that document is in a positive sense – at paragraphs 68c which seeks to promote the delivery of small-scale sites: “*local planning authorities should ...support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes.*” The policy intention here is clear, to support small-scale sites (i.e. 10 units or less) coming forward given the advantages in respect of diversity of supply.
58. It is therefore incorrect to interpret Policy SS2 with the addition of the inverted commas ‘windfall’ text as any kind of prohibition on small-scale development within a reserve site. In fact, this wording positively supports such a proposal. This must be reflected in the wording of Policies H1 and H2.
59. As the Appeal Inspector correctly identified at DL14, there is “no cap on the amount of new housing in either the MLP or the Framework” (and DL23). The High Court endorsed that approach at [52].
60. Moreover, contrary to the third part of the Council’s submissions at paragraph 7 (“consumed immediately”), every application for small-scale development must be assessed on its own merits. There is no question of this frustrating the delivery of the rest of the land within the reserve site.
61. This applies with particular force where, as in the instant case, planning permission has already been granted for the C1(A) allocated sites within a Service Centre.
62. In these circumstances, it is completely contrary to Policy SS2 to include Neighbourhood Plan policy text which refers only to Policy C1(B).
63. Designation as a reserve site expressly recognises that this is the most sustainable area, save for the Housing Allocations under Policy C1(B). Express reference should be made to Policy SS2.

#### **4) Further Necessary Modifications to Policies H1 and H2**

64. Policy H1 can be modified to be compliant with Policy SS2 using a very simple modification:

*Policy H1: Limits to Development*

*Development proposals within the Neighbourhood Plan area will be supported on sites within the Limits to Development as identified in Figure 2 above where it complies with the policies of this Plan. Land outside the defined Limits to Development will be treated as open countryside, where development will be carefully controlled in line with local and national strategic planning policies. Development outside the defined Limits to Development on the Reserve Site identified in the Local Plan will be acceptable subject to complying with the terms of Local Plan Policy C1(B) or Local Plan Policy SS2' [proposed modification text underlined]*

65. Policy H2 should also be amended as follows:

a) *is within the Limits to Development of the village of Stathern **or within the Reserve Site area***

66. In respect of the other parts of Draft Policy H2 (as proposed to be modified):

- (i) A small-scale proposal of 9 units on the Reserve Site, consistent with Policy SS2, would contribute to the housing requirement of the neighbourhood area for the purposes of H2(b), given that it would be delivered well ahead of the larger permissions – consistent with NPPF 69c and 71;
- (ii) The Appeal Decision has confirmed that there will no conflict with H2(c)-(g) (as proposed to be modified) or that these matters can be addressed at the reserve matters stage.

#### **Conclusion**

67. For the above reasons, we consider that the Council's submissions at page 3, 7 and 10 adopt an incorrect approach, and do not properly reflect the earlier Appeal Decision Letter and the High Court judgment.
68. The Inspector's Report recognised that the Appeal Site is a sustainable location for development, with no environmental or technical constraints: DL24 and DL25 (which the Council agreed). Whilst that decision has been quashed, those findings remain material.
69. The High Court Judgment confirms that the Council's various submissions at page 7 on Policy C1(B) are incorrect. There is no cap on housing, the text is positively worded and every decision must be determined on its own merits.
70. In order to meet basic condition 8(2)(e) (and also 8(2)(a) and (d)), Policy H1 and H2 should therefore refer to the express support under Policy SS2 for small-scale development (10 units or less) on land within the Reserve Site area. This is essential to ensure conformity with this strategic policy within the Local Plan, having regard to national policy and to contribute to the achievement of sustainable development.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R Cooke', with a long horizontal stroke extending to the right.

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