

Town and Country Planning Act 1990 (As Amended)

Fairford Neighbourhood Plan 2016 – 2031
Pre-Submission Consultation

Representations on Behalf of: *Cygnets Investments*

30 January 2017



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1.0 Introduction

- 1.1 Neame Sutton Limited, Chartered Town Planners, is instructed by Cygnets Investments to prepare representations on the Fairford Neighbourhood Plan Pre-Submission Consultation ("the Draft Plan").
- 1.2 These representations are being prepared as a result of email correspondence received by Neame Sutton from the Neighbourhood Plan Steering Group dated 19 January 2017 advising of the publication of the Draft Plan and inviting comments by 31 January 2017.
- 1.3 The remainder of this document sets out Cygnets Investments' representations and deals with the following matters:
- Section 2 – General comments in relation to Legal Compliance
 - Section 3 – Detailed representations in relation to the Draft Plan
 - Section 4 – Detailed representations in relation to the Draft Sustainability Appraisal
 - Section 5 – Concluding remarks
- 1.4 For the avoidance of doubt and as a major landowner within the Fairford Neighbourhood Plan area should the appointed Examiner wish to hold a public hearing session Cygnets Investments would like to address the Examiner directly in relation to the matters raised in these representations.

2.0 General Points in Relation to Legal Compliance

- 2.1 This section deals with a number of general points that Cygnets Investments would like to raise in relation to the matter of legal compliance.
- 2.2 As a starting point it is a fundamental requirement of the Neighbourhood Planning process that the Draft Plan is able to meet with the basic conditions set out in Paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (As amended by Section 38A of the Planning and Compulsory Purchase Act 2004). The basic conditions are:
- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan);
 - b. Having special regard to the desirability of preserving and listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order (or neighbourhood plan);
 - 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 (or neighbourhood plan);
 - d. The making of the order (or neighbourhood plan) contributes to the achievement of sustainable development;
 - e. The making of the order (or neighbourhood plan) 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 (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations; and,
 - g. Prescribed conditions are met in relation to the order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).
- 2.3 A Neighbourhood Plan cannot proceed to be made unless all of the above basic conditions are complied with.
- 2.4 In this case and for the reasons set out in Sections 3 and 4 of these representations it is clear that the current Draft Plan has not met a number of the basic conditions and cannot therefore proceed to Examination in its present state.
- 2.5 Furthermore the Town Council has not produced any form of Basic Conditions Statement setting out how the Draft Plan has sought to comply with the basic conditions. If the Draft Plan is to proceed to Examination this is a requirement as confirmed by the National Planning Practice Guidance ("NPPG") and set out in Regulations 15(1)(d) and 22(1)(e) of the Neighbourhood Planning (General) Regulations 2012 (As Amended).
- 2.6 In the interests of transparency and as a matter of good practice the Town Council should have prepared a Basic Conditions Statement to be published alongside the Draft Plan so that those submitting representations could clearly see how the document has met the basic conditions.

- 2.7 As set out in Section 4 of these representations there are fundamental errors in the approach taken by the Town Council in preparing its draft Sustainability Appraisal ("SA") that result in the document failing to comply with the requirements of the relevant regulations.
- 2.8 Finally, Cygnets Investments would like to highlight that as a major landowner within the Fairford Neighbourhood Plan area that is directly affected by at least one of the proposed policy designations in the Draft Plan it has not had any contact or engagement from the Neighbourhood Plan Steering Group prior to the 19 January 2017.
- 2.9 Paragraph 048 (Reference ID: 41-048-20140306) of the NPPG dealing with Neighbourhood Planning makes it clear that the Qualifying Body (Fairford Town Council) should involve landowners and the development industry in preparing Neighbourhood Plans. The NPPG goes on to state that:
- 'By doing this qualifying bodies will be better placed to produce plans that provide for sustainable development which benefits the local community whilst avoiding placing unrealistic pressures on the cost and deliverability of that development.'*
- 2.10 Had the Town Council involved Cygnets Investments in the earlier stages of preparing the Draft Plan a number of the points that are raised in these representations may not have arisen. The consequence of not involving Cygnets Investments until this late stage is that there are now fundamental and unresolved issues with the Draft Plan that will need to be properly represented to the Examiner in due course.

3.0 Detailed Representations in Relation to Pre-Submission Plan

Paragraph 4.8 – OBJECT – Failure to Meet Basic Conditions a), d) and e) :

- 3.1 Cygnnet Investments notes with interest that the key issues identified in this paragraph for the Draft Plan to deal with does not include any reference to furthering the objectives of the Cotswold Waterpark (“the Waterpark”) within which Fairford is located. The Waterpark comprises a unique location and opportunity for tourism, outdoor sport and, recreation that has long been recognised by Cotswold District Council (“the Council”) in terms of its potential in these respects.
- 3.2 By contrast the Draft Plan is silent in terms of the Waterpark yet it appears to wish to promote economic vitality and the long term viability of local services, facilities and town centre shops. The lack of any real regard for the Waterpark is perhaps most evident in the SA that ignores the relevant saved Development Plan policy (saved Policy UT.1) and its accompanying adopted Supplementary Planning Guidance (“SPG”).
- 3.3 The Draft Plan must therefore be amended to identify the Waterpark and the opportunity it presents to further some of the other key issues and objectives identified by the Town Council.

Policy FNP14 – Protecting the Area of Special Landscape Value – OBJECT – Failure to Meet Basic Conditions a), d) and e)

- 3.4 Cygnnet Investments wishes to raise strong objection to this draft policy for a number of reasons as set out below.

Adopted Local Plan Background:

- 3.5 The saved policies in the Cotswold District Local Plan include a specific policy provision in relation to the Waterpark (saved Policy UT.1). The policy sets out a detailed framework intended to further the potential of the Waterpark for a range of core objectives including: nature conservation; water-based sport, recreation, tourism, and other development.
- 3.6 The policy contains a series of detailed criteria to be applied to new proposals and is supported by a long established SPG that identifies broad zones across the Waterpark within which certain broad categories of use/activity will be acceptable in principle.
- 3.7 In specific relation to the area of the Waterpark to the east of Fairford that includes Lake 104 the SPG divides the lake into two zones (Zone A and B).
- 3.8 Within Zone A the SPG advises that low intensity uses that protect the residential amenities of settlements and enhance the quiet enjoyment of the countryside will be acceptable in principle. Within Zone B the SPG advises that a variety of recreational uses will be permitted including sailing, fishing, windsurfing, rowing, canoeing and, in some cases, water skiing. The long established planning history in the Waterpark including the eastern section around Fairford has also confirmed that tourist accommodation around the lakes is acceptable in principle within Zone B.
- 3.9 Copies of saved Policy UT.1 and the relevant extracts from the SPG are attached at Appendix 1 and 2.

- 3.10 It is clear therefore that within the Waterpark and specifically the zoning relating to Lake 104 (the subject of draft Policy FNP14) the adopted Local Plan acknowledges and makes provision for a range of recreation uses/activity in principle.
- 3.11 By stark contrast draft Policy FNP14 seeks to restrict the use of this area completely and in fact goes well beyond the established Local Plan position such that it cannot be considered to be in general conformity (Basic Condition e) refers).

Objective of Draft Policy FNP14 and Evidence to Support it:

- 3.12 The wording of the draft policy states that it is intended as a tool to protect the area due to its 'special landscape value' from development proposals that may otherwise be suited to a countryside location. The policy therefore actively seeks to go beyond saved Policy UT.1 on the basis of a special landscape value argument. The policy therefore purports to be landscape value based.
- 3.13 The evidence that underpins the draft policy is contained in the Landscape and Local Green Space Study (November 2016).
- 3.14 The introduction to the Landscape and Local Green Space Study confirms that it has been prepared by local residents of Fairford and sets out a series of aims including to deliver economic benefits from visitors.
- 3.15 As a starting point therefore the evidence that underpins the introduction of a landscape value based policy, which seeks to go well beyond the adopted Local Plan and indeed National Policy (as explained below) has been prepared by local residents without any professional input from a suitably qualified landscape architect nor does it follow any nationally prescribed or recognised methodology.
- 3.16 The fact that the draft policy seeks to go beyond national policy is evident because the Waterpark and Lake 104 in particular has never been classified as a valued landscape in the context of Paragraph 109 of the National Planning Policy Framework ("the Framework").
- 3.17 In fact the Inspector appointed to deal with the previous Appeal on the site on behalf of the Secretary of State confirmed in Paragraph 236 of his decision that:
- 'The site does not lie within an area designated for its landscape value; it is not within the AONB or within a special landscape area designated in the Local Plan.'*
- 3.18 The Council therefore rightly does not seek to afford this area any special protection within the saved policies of the Local Plan.
- 3.19 For the Town Council to seek to go beyond the Local Plan and indeed the detailed consideration of a previous Inspector it must have robust and professional evidence to support the level of protection that draft Policy FNP14 is seeking to impose on the landscape in this locality.

3.20 The Landscape and Local Green Space Study contains no such evidence. In fact the only evidence that the Town Council is seeking to rely upon is the suggestion that the area is well regarded by local residents and well used by the local community. This does not amount to credible evidence that the area comprises a valued landscape under the terms of Paragraph 109 of the Framework.

3.21 Neame Sutton has extensive and direct experience of dealing with the incorrect application of the term 'valued landscape' or 'special landscape value' in relation to a number of development proposals across the country. Of particular relevance to the approach being taken by the Town Council is a case in Westbourne in West Sussex wherein the Council contended the appeal site comprised a valued landscape. In giving consideration to this point in his decision the Inspector concluded that:

*'The site does not have any landscape designations. There was debate at the Inquiry that considered whether the landscape was 'valued' as set out in Paragraph 109 of the Framework. There is no definition in the Framework that sets out what a valued landscape constitutes. **However, I consider that to be of value, the landscape needs to be something more than ordinary, which is a view that is shared by an Inspector of another appeal¹ that has been referred to by the appellant. I acknowledge that the landscape has local importance to the community of Westbourne, however, given the evidence before me, I am not of the view that the appeal site forms part of a 'valued landscape' that would benefit from the specific protection of Paragraph 109 of the Framework.'***

(Bold is my emphasis – see Paragraph 24 of Appeal Decision attached at Appendix 5)

3.22 It is not therefore sufficient for the Town Council to refer to the importance the site has locally and to the community of Fairford as being evidence to support the imposition of a policy restriction within draft Policy FNP14 that is tantamount to regarding the site as a valued landscape under the terms of Paragraph 109 of the Framework.

3.23 Furthermore and although the Draft Plan has been prepared in the context of the saved Local Plan policies when the relevant draft policy in the emerging Local Plan (draft Policy SP5) is taken into account it is clear that the Draft Plan is not in general conformity with its content and aspirations either.

3.24 In the absence of any robust or professional evidence Policy FNP14 is not in general conformity with the adopted Local Plan nor does it reflect the principles of sustainability set out in the Framework and therefore the Draft Plan fails the basic conditions, specifically Conditions a), d) and e).

3.25 The Landscape and Local Green Space Study does however contain a number of other significant inaccuracies, which further call into question its validity as evidence to support the draft policy.

3.26 Firstly reference is made to the fact that the existing consented development at Lakes 103, 103a and 104 is 'likely to exacerbate existing surface water flooding problems.' This statement is patently incorrect and without any foundation in evidence.

- 3.27 The development at Lakes 103, 103a and 104 that benefits from and extant and implemented detailed consent has been through considerable scrutiny in terms of the surface water drainage strategy required to be delivered as part of the development. It is clear from that detailed work, as confirmed by the Council's drainage engineers and the Environment Agency, that the proposal will not give rise to any unacceptable offsite impacts in terms of surface water drainage. Indeed it is a fundamental requirement of the Development Management process that new development proposals do not exacerbate existing surface water flooding problems elsewhere.
- 3.28 The inclusion of this statement in the Landscape and Local Green Space Study is misleading and does not add anything in terms of assessing the merits of the draft policy, which relates to landscape value and not drainage matters.
- 3.29 Reference is also made in the Landscape and Local Green Space Study to the use of Lake 104 including a statement relating to 'a jetty out into the lake was also a favourite resting place'. Part of the extensive planning history relating to Lake 104 includes a detailed Village Green application and subsequent public inquiry. The outcome of the inquiry was that the Village Green application failed and that the use of the land around Lake 104 with the exception of the PROW and permissive paths was undertaken without the landowners consent and not established as of right. Any references to the use of the land around Lake 104 that does not specifically concern the PROW or permissive paths should be deleted from the Draft Plan and the evidence base because it is both inaccurate and misleading. These statements equally do not provide evidence to support the introduction of a more restrictive landscape value based policy than that contained in the saved and emerging Local Plan policies.
- [Delineation of Area Covered by draft Policy FNP14:](#)
- 3.30 The Draft Plan identifies an extensive area to be covered by draft Policy FNP14, which as demonstrated by the representations above is not founded on any credible evidence and therefore fails to meet three of the basic conditions necessary for the Draft Plan to be made.
- 3.31 On this basis the whole of the area surrounding Lake 104 should be removed from the draft Policy FNP14 designation on the basis that the Town Council has no credible evidence to support a more restrictive policy on the land that goes well beyond the scope of the saved and emerging Local Plan. Local community importance placed on an area is not sufficient to demonstrate that it should be treated as a valued landscape.
- 3.32 Even setting aside the representations above the delineation of the area covered by the draft Policy is incorrect because it includes the north eastern shoreline of Lake 104, which forms part of the site that benefits from an extant and implemented planning consent.
- 3.33 The north eastern shore area includes the provision of a leisure building and associated car parking and landscaping together with the main highway access to the wider development on Lakes 103 and 103a. This area as a minimum should be removed from the draft Policy FNP14 designation.
- 3.34 Without the changes required by these representations the Draft Plan fails the basic conditions and cannot proceed to be made.

4.0 Detailed Representations in Relation to Draft Sustainability Appraisal

- 4.1 The Draft Plan is accompanied by a draft SA as required by the Neighbourhood Planning (General) Regulations 2012 (As Amended) and the Environmental Assessment of Plans and Programmes Regulations 2004 (As Amended).
- 4.2 One of the core requirements of the SA process is to identify those strategic policies in the Local Plan against which the Draft Plan should be in general conformity with (basic condition e) refers).
- 4.3 The schedule of policies set out on Pages 12 and 13 (Paragraphs 3.8 and 3.10 respectively) fails to identify either saved Policy UT.1 or emerging Policy SP5. Both of these policies are strategic in nature given the substantial area of Cotswold District over which they apply and the fact that Fairford sits squarely within the Waterpark.
- 4.4 The failure of the SA to even acknowledge the existence of these two strategic policies is symptomatic of the failure of the Draft Plan to give full and proper consideration to the location of Fairford within the Waterpark. As an indication nearly half of the designated Neighbourhood Plan area including the whole settlement of Fairford and all of the proposed policy designations set out on Inset Maps 1 and 2 are located within the Waterpark.
- 4.5 The Draft Plan cannot therefore be considered to have given proper or indeed any due consideration to the Waterpark, which is a fundamental failure and consequent conflict with Basic Conditions a), d), e) and f).
- 4.6 As a consequence the scoring matrix on page 26 cannot be regarded as reliable because it has no regard for the Waterpark and the strategic policy objectives set out in the Local Plan. The detailed commentary at Paragraph 8.16 is also silent on the matter of the Waterpark and its objectives. As a prime example where draft Policy FNP14 is considered a neutral impact is recorded under the heading of Economy and Enterprise. This cannot be right given the aspiration of draft Policy FNP14 to introduce a level of constraint reflective of Paragraph 109 of the Framework.
- 4.7 The matrix therefore needs to be completely revisited and all draft policies reassessed by reference to the presence of the Waterpark.
- 4.8 When considering alternatives the commentary on Page 34 states in the final bullet point that draft Policy FNP14 simple refines national and district policy in terms of landscape protection. This is incorrect. Draft Policy FNP14 seeks to go well beyond a simple refinement and looks to introduce a level of constraint in terms of valued landscape that is not supported by any credible evidence. Furthermore because the Town Council has ignored the presence of the Waterpark and the strategic policies in the adopted and emerging Local Plan that relate to it no consideration has been given to an alternative that relies on those policies without the additional and unfounded constraint proposed in draft Policy FNP14. Consequently the SA has failed to properly consider the alternatives as is required by the relevant Regulations.

5.0 Conclusion

5.1 These representations have demonstrated that the Draft Plan contains a number of fundamental flaws and issues in terms of Legal Compliance such that it fails the Basic Conditions and cannot proceed to Examination in its current form.

5.2 In summary the Draft Plan:

- Has failed to meet with the necessary legal compliance tests in terms of the absence of a Basic Conditions Statement and the inaccuracies and omissions within the draft SA;
- Fails to properly acknowledge all of the relevant strategic policies in the adopted and emerging Local Plan;
- Fails the basic conditions in relation to the introduction of draft Policy FNP14 without any credible evidence to support it; and,
- Introduces statements in its evidence base that are incorrect, misleading and, result in an inaccurate conclusion in terms of the merits of draft Policy FNP14.

5.3 The Draft Plan therefore fails the basic conditions and cannot proceed to examination unless significant changes are made as set out in these representations.
