

Case Name: *Lochailort Investments Ltd, R (on the application of) v Norton ST Philip Parish Council* [2020] EWHC 1146 (Admin) (11 May 2020)

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Commentary: The High Court has dismissed a legal challenge brought by a local developer, Lochailort Investments, to the decision of Mendip District Council ('MDC') on 2 September 2019 to accept the recommendations of the Examiner for the draft Norton St Philip Neighbourhood Plan ('NP') to proceed to a referendum.

The NP prepared by Norton St Philip Parish Council included a local green space policy ('LGS') proposing 10 sites to be designated as LGSs. The developer's legal challenge focussed on the Fortescue Fields South LGS and the Fortescue Fields South LGS.

The legal challenge was brought on 3 grounds. Ground 1 was that MDCs decision was unlawful as it was not taken with adequate regard to the national policies concerning designation of LGSs and misunderstood the strategic policies in the development plan. Ground 2 was that Policy 5 of the NP concerning LGSs was inconsistent with LGS and green belt NPPF policies. Ground 3 was that designating the Fortescue Fields South LGS and the Fortescue Fields South LGS as areas of "particular importance" and "demonstrably special" under the LGS designation criteria was irrational, inadequately reasoned, and unsupported by the evidence base.

As to Grounds 1 and 3, which were considered together, the High Court concluded that the Examiner had had proper regard to the NPPF policies on LGSs and there was a sufficiently robust evidence base upon which the Inspector could legitimately exercise her planning judgment on the proposed LGS designations. Importantly, the High Court stated, reading across the Supreme Court's comments in Hopkins Homes, that it could be assumed that specialist planning inspectors and NP examiners were familiar with the relevant policies and the failure to mention a specific policy is not, of itself, evidence that they have overlooked it. The High Court went on to state that NP Examiners are not writing examination papers in which they must demonstrate their knowledge to the reader and that the likely reason for the absence of any specific reference as to whether the LGS designations were capable of enduring beyond the end of the plan period was that this criterion was clearly met. The reasons challenge under Ground 3 also failed as the High Court considered MDCs reasoning was sufficient and intelligible and were unpersuaded that the developer had been prejudiced by the lack of more extensive reasons.

As to Ground 2, the High Court also rejected the developer's arguments concluding that the particular policy in the NP being challenged was sufficiently broad in scope so as to be interpreted and applied consistently with NPPF Green Belt policy.

Comment- This is an important judgment reiterating, among other things, the lower standard of review for NP examinations (examined against 'basic conditions') as compared to

Local Plans (statutory test of 'soundness') and clarifying the different roles and levels of scrutiny for Inspectors under the statutory schemes for NPs and LPs.

Case summary prepared by Paul Arnett