

**IN THE MATTER OF LAND TO THE NORTH OF ASTON ROAD,
HADDENHAM, BUCKINGHAMSHIRE**

**AND IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION
BY LIGHTWOOD STRATEGIC LTD REFERRED TO THE SECRETARY OF STATE
UNDER SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

PINS REF: APP/J0405/V/15/3014403

LPA REF: 14/02666/AOP

**SUBMISSIONS ON THE IMPLICATIONS OF THE QUASHING OF
CHAPTER 6 OF THE HADDENHAM NEIGHBOURHOOD PLAN
ON BEHALF OF HADDENHAM PARISH COUNCIL**

INTRODUCTION

1. By a letter dated 17 March 2016 the Secretary of State invited comments from the parties to the above Application on *“the implications, if any, of the quashing of Chapter 6 (“Housing and Development”) of the Haddenham Neighbourhood Plan”*. The Parish Council is grateful for the opportunity to comment on this issue and these submissions are made on its behalf.

FACTUAL BACKGROUND

2. On 30 May 2013, the Parish Council applied to the Defendant for the whole of the Haddenham Parish Ward to be designated as a neighbourhood area. Over the next two years, the Parish Council undertook the very substantial task of preparing the Haddenham Neighbourhood Plan (“the HNP”), following which it was submitted by Aylesbury Vale District Council (“the District Council”) for independent examination. In May 2015, the Independent Examiner recommended that, with certain modifications, the HNP should proceed to a referendum. The modifications were made and a referendum was held on 16 July 2015. At that referendum, the turnout was 51.3% and over 86% of those who participated voted ‘yes’. The HNP was therefore ‘made’ by the District Council on 11 September 2015.

3. Chapter 6 of the HNP was, however, quashed by an Order dated 7 March 2016 in proceedings brought by the Applicant. Those proceedings had challenged the making of the HNP on four grounds, which may be summarised as follows:
 - a. Ground 1: The Examiner of the HNP erred in his interpretation of the basic conditions test in paragraph 8(4) of Schedule 4B to the Town and Country Planning Act 1990 (“the TCPA”).
 - b. Ground 2: The decision to make the HNP was unlawful as the Strategic Environmental Assessment was defective in its explanation of the selection of the preferred option for Policy HD5.
 - c. Ground 3: The decision to make the HNP was unlawful as the Strategic Environmental Assessment unreasonably failed to consider a reasonable alternative to Policy HD5.
 - d. Ground 4: The site allocations made in the HNP proceeded on the basis of two material errors of fact, which were subsequently uncorrected by the Examiner, namely: an error in the scoring of Site 009A (Ground 4A); and an error in the scoring of Site 003 (Ground 4B).
4. Both the District Council and the Parish Council filed acknowledgments of service indicating their intention to contest the Applicant’s claim. By an Order dated 11 March 2016, Mrs Justice Patterson ordered that the claim be listed for a “rolled up hearing” (i.e. a permission hearing with a substantive hearing to follow immediately if permission were granted). That hearing was listed on 9 and 10 March 2016.
5. On 1 March 2016, the District Council indicated to the Parish Council that it would consent to judgment on the claim. A Consent Order (a copy of which is appended to these submissions) was subsequently drafted and, as indicated above, on 7 March 2016 the High Court quashed Chapter 6 of the HNP by consent. As set out in the Schedule to the Consent Order, the District Council consented on the basis of Ground 4B alone and made no other concessions.
6. Notably:
 - a. Ground 4B related to an error in the scoring of Site 003, which concerned only the relative accessibility of the site to village facilities – an issue about which local

residents who voted in the referendum would have been quite aware from personal experience, irrespective of any numerical score attributed to the same; and

- b. The HNP was made following a referendum in which it achieved an overwhelming majority, with over 86% of those who participated voting 'yes'.

7. The decision of the District Council to consent to judgment came as an immense disappointment to the Parish Council. As the Schedule to the Consent Order makes clear, the Parish Council does not consider that the making of the HNP was infected by any error of law. However, once the District Council had decided to consent to judgment, the Parish Council simply could not afford the financial risk of continuing to defend proceedings.

SUBMISSIONS

General Comments

8. In response to the District Council's decision to consent to the quashing of Chapter 6 of the HNP, on 3 March 2016 the Parish Council issued a statement setting out its views on this unexpected turn of events. The most relevant parts of the statement for present purposes are as follows:

"This is hugely disappointing for the Parish Council and the volunteers who put so many hours into the preparation of the HNP and the Parish Council would like to thank all those who have supported it throughout, in particular those who have withstood the scrutiny imposed on them by this legal process.

The future of Neighbourhood Planning being undertaken by volunteers in their communities appears to be under threat if they cannot be protected by the bodies that are there to support them through the process and beyond. Neighbourhood Planning is now likely to turn into a costly process that is carried out by professionals for those communities with sufficient funding and will be beyond the reach of many smaller communities. This surely goes against the principles of localism on which the neighbourhood planning policy was founded."

"HPC ... calls for urgent action by Central Government to prevent a situation where developers and land traders with deep pockets can employ lawyers to comb Neighbourhood Plans for the inevitable minor errors and oversights as the Independent Examiner described, and then pursue unrelenting legal action contesting those Neighbourhood Plans until the will or financial ability of communities who created them to defend those plans is exhausted.

This is clearly not the intention of the legislation, the NPPF, and if it is allowed to become common practice would eradicate Neighbourhood Plans which are so vital to the government's Localism approach."

9. These comments were not a knee-jerk reaction to this decision, but measured in their insights into the serious consequences for neighbourhood planning, not just in this District, but in many others.

The Status of the HNP

10. The effect of the quashing of Chapter 6 of the HNP is to excise that Chapter from the development plan, leaving the remainder of the HNP in force. The policies within Chapter 6 of the HNP therefore no longer attract the statutory priority afforded by section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the PCPA").
11. But that does not mean that the spatial strategy set out under Chapter 6 is written out of history. That spatial strategy (which allocated housing sufficient to meet the local authority's best assessment of housing need at the time) was endorsed overwhelmingly by the local community in the referendum on the HNP. It remains the authentic voice of localism and how Haddenham residents wish to shape and direct sustainable development in their area, ensuring that the best located sites are developed and that other sites are protected from development. As noted above, over 86% of those who participated in the referendum voted in support of the HNP; and it is their view which is what localism is meant to be all about, so that those who live locally can shape and direct development in their own neighbourhood.
12. The Applicant's site is not one of the best located sites, and the reasons for limiting the allocation under Policy HD5 to up to 85 dwellings remain sound: as set out in paragraph 7.26 of the Sustainability Appraisal/Strategic Environmental Assessment, that number was one that *"will have positive effects on housing without undermining the character of the village or the Conservation Area or creating traffic problems that cannot be effectively accommodated"* and a *"reasonable compromise that will enable a viable, sustainable development scheme to come forward that will win the support of the local community at the referendum"*. The Applicant's scheme of up to 280 dwellings flies in the face of this.
13. In consequence, although the spatial strategy under Chapter 6 of the HNP no longer has the status of development plan policy, the reasons behind that spatial strategy (as endorsed so

emphatically by the local community at referendum) remain a highly material consideration in favour of refusing planning permission.

Site specific matters

14. The quashing of Chapter 6 of the HNP has no impact on the site specific objections to the Applicant's proposal summarised at paragraphs 70 to 85 of the Parish Council's Closing Submissions.
15. We therefore reemphasise the Parish Council's view that the proposal is in a relatively unsustainable location which is likely to be heavily reliant on the private car, that there is no certainty that the proposed bus service will succeed, and that there is no certainty that the proposed footway along Aston Road can acceptably be delivered.
16. We also reemphasise the very significant heritage harms which would be occasioned by the proposal, harms which engage the "statutory strong presumption" against planning permission being granted, harms to which "great weight" must be given under paragraph 132 of the NPPF, and harms which mean that the proposal runs counter to the imperative recognised by paragraph 5.1.1 of the HNP to "*limit the impact on the Conservation Area and its rural setting from external developments, including impacts on approaches, both long and short views into and out of the village to open countryside, and traffic through, the village core*".
17. These site specific issues are undiminished by the quashing of Chapter 6 of the HNP and in themselves provide compelling reasons for refusing planning permission. These same site specific issues caused the Inspector when examining the draft Aylesbury Vale District Local Plan in 2002 to delete this same site from the draft plan. This planning history was not disclosed by the District Council's Officer to their Strategic Development Management Committee when it considered the planning application.

Prematurity

18. In addition to the above, it is to be noted that the District Council has assured the Parish Council that it will support them in preparing a replacement HNP (more specifically Chapter 6). The Parish Council is, therefore, applying for grant funding from the support programme to

enable them to appoint professional advisors to help with this task. The Parish Council is committed to begin preparing a replacement HNP with immediate effect and their goal is to submit the Plan for examination before Christmas. The Secretary of State should therefore be confident that the replacement HNP will be submitted for examination before the end of the year.

19. In the meantime, given the quashing of Chapter 6 of the HNP and the fact that the Vale of Aylesbury Local Plan (“the VALP”) is not expected to be adopted before the summer of 2017, there will remain a policy vacuum in respect of managing housing supply in a sustainable way in the District; and strategic settlements like Haddenham will be made vulnerable to very large but uncoordinated proposals. Accordingly, the Parish Council is proposing to the District Council that the VALP focuses on establishing a housing supply number for Haddenham, and leaves decisions on where and how that supply should be delivered to the Neighbourhood Plan. In the circumstances, therefore, it is clear that replacement Neighbourhood Plan can be brought forward expeditiously and considerably in advance of the adoption of the VALP.

20. With all this in mind, to approve this Application *now* would clearly prejudice the making of the replacement Chapter 6 of the HNP. In this regard, we are mindful of the Planning Practice Guidance, which states that *“arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits ...”*¹ That is clearly applicable in the current circumstances, since a development of up to 280 dwellings in this location is *“so substantial, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to”*² the emerging replacement to Chapter 6 of the HNP. The Parish Council recognises that the replacement to Chapter 6 has not yet reached the *“end of the local planning authority publicity period”*³. However, the circumstances of this case are highly unusual given the continued existence of the

¹ Paragraph 14 of the PPG Chapter on *“Determining a planning application”* ID: 21b-014-20140306

² *Ibid.*

³ *Ibid.*

remainder of the HNP, the limited basis on which Chapter 6 was quashed, and the ability of the Parish Council speedily to bring forward a replacement housing Chapter.

21. Accordingly, and in addition to the other matters raised above, the Parish Council asks that this Application be refused for reasons of prematurity.

CONCLUSIONS

22. The decision of the District Council to consent to judgment in the Applicant's judicial review was a profound disappointment to the Parish Council and those whom it represents. It pulled the rug from under the Parish Council, since the Parish Council simply could not afford to take the financial risk of defending the claim on its own. As a result, a Chapter of the HNP which the Parish Council considers to have been not only lawful but strongly in the public interest, expressing the wishes of local residents to shape and direct sustainable development in their area, no longer forms part of the development plan.
23. However, as explained above, the reasons behind the spatial strategy set out in Chapter 6 (as endorsed so emphatically by the local community at referendum) remain a highly material consideration in favour of refusing planning permission. And the site specific objections to the Applicant's proposal summarised at paragraphs 70 to 85 of the Parish Council's Closing Submissions are undiminished by the quashing of Chapter 6. In addition, the grant of permission on the Application would be premature, as set out at paragraphs 18 to 21 above.
24. The Parish Council, on behalf of the local community from which it has received such tremendous support, therefore urges you to defend both Haddenham and the spirit of localism by rejecting this hostile and harmful application.

PAUL STINCHCOMBE QC

NED HELME

39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD

31 March 2016