Kettering Site Specific
Part 2 Local Plan
Examination: Matters Statement
Matter 12: Natural Environment and Heritage

Prepared by Fisher German LLP on Behalf of the Thorpe Malsor Estate
Project Title:
Thorpe Malsor

Address:
Fisher German LLP
The Estates Office
Norman Court
Ashby-de-la-Zouch
LE65 2UZ

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1.1 These representations have been prepared on behalf of Thorpe Malsor Estate in respect of their land interests at land west of Short Lane, Thorpe Malsor (Figure 1). This land is a proposed ‘Open Space’ designation within the publication draft Part 2 Local Plan.

Figure 1 – Land at Short Lane

1.2 Whilst the Council have proposed the removal of much of the Open Space designation on the land (Figure 2) within their main modifications (MM50), something which is supported, we consider that the entire designation is unsound and thus should be removed, for reasons set out in the below representations.
1.3 We have significant concerns in the process undertaken by the Council, in terms of the lateness of the introduction of the designation, which was not included until the submission plan, and the lack of published supporting evidence during the Regulation 19 consultation, and as such are very concerned as to the prospect of judicial review if the Plan continues in its current form.

1.4 Moreover, we do not consider that our client’s land, being formed of a small number of private allotments, should be allocated as Open Space, having regard for the now published Open Space Audit and Needs Assessment (March 2020) methodology. This document has not fairly and accurately considered the site’s status as private allotments. The allotments are currently retained on the basis of ongoing lease arrangements; albeit there are vacant plots as there is little demand for them. Should ongoing terms not be agreed and existing leases end, the land will likely revert back to agricultural land, which does not require planning approval. On this basis, we consider the designation of the land as arbitrary, as it offers no tangible protections and is thus not effective.

1.5 On the basis of the below representations, we request that Main Modification proposed by the Council is retained, but also increased to remove the entire Short Lane Open Space designation.
Legal and Policy Context

2.1 The Council published the Publication version (Regulation 19) Kettering Site Specific Part 2 Local Plan in December 2019, for consultation up to February 2020. This is, by definition, a completed plan which the Council considered was sound and ready for submission to the Secretary of State for Examination. Following the close of the consultation, the Council considered the representations and submitted the Plan for Examination, including a list of proposed Main Modifications for the Inspector to consider.

2.2 In relation to the preparation of new development plan documents, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) outline the expected approach to be adopted, while the Town and Country Planning (Local Planning) (England) Regulations 2012 sets the legal framework with associated legislation.

2.3 The NPPF sets out at paragraph 16 that Plans should “be shaped by early, proportionate and effective engagement between planmakers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees”.

2.4 Paragraph 31 states “The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned” [our emphasis].

2.5 Paragraph 35 states “Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework.

2.6 When submitting a Local Plan, the PPG (Plan Making – Paragraph 034) states “Local planning authorities must make available each of the **proposed submission documents** that they intend to submit to the Planning Inspectorate for examination to enable representations to come forward that can be considered at examination, under regulation 19 of the Local Plan Regulations” [our emphasis]. This point is also raised at 1.21 of the Procedure Guide for Local Plan Examinations (June 2019).

2.7 The Town and Country Planning (Local Planning) (England) Regulations 2012 Part 6 Section 17 sets out that proposed submission documents encompasses the following:

e) “such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan”

2.8 Regulation 19 (Publication of a Local Plan) of the aforementioned legislation states that “before submitting a Local Plan to the Secretary of State under section 20 of the Act, the local planning authority must—

a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35, and

b) ensure that a statement of the representations procedure and a statement of the fact that the proposed submission documents are available for inspection and of the places and times at which they can be inspected, is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1)”

2.9 Section 35 sets out that a document is taken to be made available if it is made for available for inspection in person or by being published on its website.

2.10 The Procedure Guide for Local Plan Examinations at 1.8 states “as a minimum, the evidence base **should include all documents referenced in the submitted plan**”[our emphasis].
Matter 12 - Natural Environment and Heritage

Whether the Local Plan has been positively prepared and whether it is justified, effective and consistent with national policy and the JCS in relation to the natural environment and heritage.

NEH4 Open Spaces

Q20. Are the Open Space Audit and Needs Assessment and the Open Space Standards Paper referred to in MM6 now published and available on the website? Do their findings support the policies and proposals in the Plan?

3.1 No, the Open Space Audit and Needs Assessment and Open Space Standards paper do not support the policies and proposals in the Plan.

3.2 In respect of the majority of the Short Lane site, there is no evidence in any published Council document that this paddock land has any demonstrable value as Open Space. As such, and in accordance with the Council’s proposed Main Modification 50, this land must be removed.

3.3 In respect of the remainder of the site, which consists of a small number of private allotments (Open Space Audit and Needs Assessment Report Reference 478: Short Lane Allotments), these should also be removed. The Open Space Audit and Needs Report (March 2020) does not in our opinion correctly or accurately reflect the status of private allotments.

3.4 The private allotments comprise for 7no. allotments. Two of which are vacant, despite small rents, just three in full occupancy and two in part occupancy. The allotments are privately managed by the Estate.

3.5 The Report at Section 2.2 states that “only sites publicly accessible are included (i.e. private sites or land, which people cannot access, are not included)”. In addition, at Section 8.3, the Report states that “All allotment sites are managed and operated by either allotment associations or parish councils.” However, the land at Short Lane is privately owned with no public access. Access is restricted to those who currently have access to an allotment under a lease arrangement with the Estate, who
manage and operate the private plots. On this basis, we are not sure why the land has been included at all, as this is clearly in contradiction with the reports outlined methodology.

3.6 It appears that there is additional work which has not been published with the Open Space Audit and Needs Assessment Report. Clearly the Quality and Value scores have a number of factors attributed to them, though no individual site proformas have been published in support of the evidence document for detailed analysis.

3.7 Furthermore, as stated, the allotments at Short Lane are private allotments and as such are not afforded the protections given to statutory allotments. As such, these could be removed as and when the respective leases end. In the circumstance that terms could not be agreed for the continued lease of the land then the allotments could be reverted back to agricultural use under the provisions of section 55 2E of the 1990 Town and Country Planning Act, in which case it would be no different from any of the neighbouring land. This could occur regardless of any designation included in the Local Plan. With two vacant and overgrown plots at present these could be removed now.

3.8 Your attention is drawn to the conclusions of the Daventry Part 2 Local Plan Inspectors report (Appendix 1 – Relevant Extracts), where a similar situation occurred. The Council sought to allocate private land as Local Green Space. This land was currently used as playing field, and as such the Council sought to protect it under Local Green Space provisions. It was argued however that such an approach was not appropriate, as the lease was the only thing retaining such a use, not any Local Plan designation. In the event that agreeable terms could not be agreed, then it was likely the field would be reverted to an agricultural use, and as such the designation would in essence be arbitrary, as it was not within its power to retain the land, given the provisions of section 55 2E of the 1990 Town and Country Planning Act. The Inspector states at paragraph 113 of the Report that "In reaching that view I have taken account of evidence that, due to leasehold arrangements on the site, the landowner could remove public access and / or alter the use of the playing fields from the purpose for which it is demonstrably special". Given the higher, playing field, Local Green Space designation could not retain a use in such circumstances, it is considered a lesser Open Space designation would not be appropriate. It is not clear how a differing approach would be appropriate or effective in this case.
3.9 It is noted that criterion IV of NEH4 states that “Open spaces will be managed and maintained to respect their primary use and functionality” [our emphasis]. Clearly, in this case, the use and thus the value attributed to the land by the evidence base is due to the presence of the private allotments. This use and functionality are not linked to any local plan designation, and thus the policy would not be effective in this regard.

3.10 Considering the above, we do not see any benefit or justification in the designation. As per the above, the allotments, which is the sole reason the Council propose to designate the site as Open Space, will only continue if agreeable lease terms can be agreed. Should the leases not be continued, then the land will likely revert to agricultural as per the rest of the landholding, regardless of any designation. There would be no specific value to this land above land in the local vicinity and as such the designation would be entirely arbitrary. On that basis we do not consider the designation of our client’s land as Open Space to be sound, as it is not effective and as such a similar approach should be adopted as that which was applied by the Inspector in Daventry.

3.11 Notwithstanding the above, the requisite evidence which supports the designation was not published at Regulation 19 and thus cannot be reasonably used to support the policy. As such and as set out in previous sections, this designation has no legitimate evidence basis and as such is unsound, as it is not justified. Should the Council consider to allocate land as Open Space, relying on evidence not consulted upon at Regulation 19, we consider it to be highly valuable to legal challenge. We do not feel the removal of this designation would unduly impact on the Plan or its strategic aims, not least because this was a policy not deemed necessary until Regulation 19 stage and is a non-strategic policy. There remains the opportunity for local neighbourhood plan groups to develop such designations through forthcoming Neighbourhood Plans. Decision makers would be able to consider the role of the Open Space Strategy and whether it amounted to a material consideration in any decisions.

Q21. How in practical terms will it be determined whether new development would ‘compromise the stability of the open space network’? Is the intention to refuse any new development that would affect an open space as shown on the Maps? Is the first part of the policy (criterion i to v) relevant to decision makers? Does criterion iv concern open spaces?

3.12 It is assumed that this is the intention of the policy to place restrictions on the development of land allocated as Open Space, though as per the lack of supporting evidence, the application of the
policy itself is not particularly clear. Clearly certain forms of development may be acceptable and an integral part of an existing use. This policy is unclear, and as such considered not effective. Paragraph 16 of the NPPF is clear that Plans should “contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals”. This is not the case in either the submitted or amended policy and as such should be deleted.
Appendix 1

Report on the Examination of the Settlements and Countryside Local Plan Part 2 for Daventry District 2011-2029 (Relevant Extracts)
Planning and Compulsory Purchase Act 2004
(as amended)
Section 20

Report on the Examination of the Settlements and Countryside Local Plan Part 2 for Daventry District 2011-2029

The Plan was submitted for examination on 19 December 2018
The examination hearings were held between 11 and 27 June 2019

File Ref: PINS/Y2810/429/4
provides additional detail which is a positive approach to provide certainty of the expectations in terms of the requirements of Policy D3 of the WNJCS including to inform master-planning.

108. Notwithstanding the above, there is a lack of certainty as to how the requirement in criteria B iv. of Policy ENV6 to provide opportunities for ‘more intensive’ recreation would be met and therefore, the wording of the criteria in that regard is not justified. MM23 is, therefore, required to ensure that the policy is effective and justified by addressing that shortcoming through removal of reference to ‘more intensive’. The modification also incorporates revised wording to Part C to ensure consistency with the national policy approach to the historic environment and heritage assets given the proximity of Daventry Country Park to the Grand Union Canal Conservation Area.

Policy PA1 - Local Green Space & Appendix I - List of Local Green Spaces

109. Paragraph 76 of the NPPF states that local communities through local and neighbourhood plans should be able to identify for special protection, green areas of particular importance to them. It goes on to state that by designating land as Local Green Space, communities will be able to rule out new development other than in very special circumstances. Paragraph 77 sets out the criteria for designation of areas of Local Green Space and in that context, those put forward by the Plan are identified on Inset Maps of the Policies Map and listed under Appendix I with Part A indicating those designated by the Plan and Part B providing a list of those already designated through NPs.

110. Having regard to the evidence and my own observations of the locations listed in Appendix I, the designation of the areas of land identified is justified and meets the criteria in paragraphs 76 and 77 of the NPPF except for Local Plan References 141 (Orchards and Pasture, Great Brington), 165 (Martin Moor Woods, Off Brampton Lane, Boughton), 167 (Playing Field, Brixworth Road, Creaton) and 191 (Pocket Park, Glebe Lane/Daventry Road, Staverton).

111. Orchards and Pasture, Great Brington does not meet the criteria for Local Green Space designation as although it is of some historic interest as reflected in its inclusion in a Conservation Area, it is currently in agricultural use with limited public access. In that respect, it is not supported by sufficient evidence of it being a green area that is demonstrably special.

112. Martin Moor Woods, off Brampton Lane, Boughton does not meet the necessary criteria to be designated as Local Green Space. It is located some distance from the community it predominantly serves, notwithstanding some recent development at Buckton Fields on the opposite side of the road.

113. The Playing Field, Brixworth Road, Creaton is not suitable to be designated as Local Green Space. In reaching that view I have taken account of evidence that, due to leasehold arrangements on the site, the landowner could remove public access and / or alter the use of the playing fields from the purpose for which it is demonstrably special. I, therefore, cannot be certain that the use of the site would endure beyond the plan period as required by national policy.
114. The Pocket Park, Glebe Lane/Daventry Road, Staverton although referred to as a pocket park is little more than a highway verge with a bench and there is no evidence in that respect that it is demonstrably special.

115. As Local Green Space designations are not appropriate for Local Plan References 141, 165, 167 and 191, MM33 amends Appendix I accordingly to delete those sites to ensure that Policy PA1 of the Plan is justified and accords with national policy in so far as it seeks to protect the Local Green Spaces listed in the plan. Necessary changes to the designation of areas of land deleted from Appendix I are identified in amended Inset Maps for Boughton, Creaton, Great Brington and Staverton published alongside the consultation on the MMs.

Conclusion on Issue 3

116. In summary, I conclude that the environmental and other spatial designations and associated policies of the Plan as previously set out, when incorporating the MMs referred to, are consistent with the WNJCS. The aforementioned policies, subject to the MMs, would be positively prepared, justified, effective and consistent with national policy and therefore, are sound.

Issue 4 - Are the other individual policies clear, justified and consistent with national policy and the WNJCS, and will they be effective?

Policy HO6 - Rural Workers Dwellings

117. Policy HO6 of the Plan supports the provision of permanent rural workers dwellings where an essential need is identified in accordance with national policy. However, MM7 to Policy HO6 is required to insert a new Part B and alter the associated supporting text. The modification would allow a new rural enterprise to be supported by temporary accommodation for a period of up to three years in circumstances where an essential need for the function of a rural business is identified. The modification, thereby, would ensure that the policy provides an effective and positive approach to supporting economic growth in rural areas and sustainable new development that is consistent with national policy in accounting for circumstances where a new rural enterprise would be unable to prove viability of the business until well-established.

Policy HO7 - Rural Exception Site Selection

118. Policy HO7 of the Plan provides a supplementary approach to Policy H3 of the WNJCS which supports the provision of affordable housing through rural exception sites subject to specific criteria being met. In doing so, it incorporates a sequential approach of prioritising sites relative to the settlement hierarchy where a proposal may meet the needs for more than one related settlement. The policy would, therefore, direct proposals for rural exception sites to the most accessible and sustainable locations and is justified given the interrelationship between rural settlements in Daventry District which includes many villages having some reliance on others for access to services and facilities. The definition of affordable housing is provided in the Glossary of the Plan and accords with the NPPF and the WNJCS, albeit with flexibility in the wording to not reflect a closed list and thereby, account for changes to definitions in national policy.