

Broughton Parish Council

# **Broughton Neighbourhood Development Order**

A report to Kettering Borough Council on the Examination into  
the draft Broughton Neighbourhood Development Order

by the Independent Examiner  
Ann Skippers BSc (Hons) MRTPI FRSA FHEA AoU

28 May 2018

## Summary

Relatively few Neighbourhood Development Orders have been produced throughout England and Broughton Parish Council should be commended for their initiative in taking up this opportunity under a range of community rights introduced in the Localism Act 2011.

I have recommended a number of modifications be made to the draft neighbourhood development order for the BT Exchange, Church Street, Broughton to ensure that the draft order meets the basic conditions and the other requirements I am obliged to examine.

I recommend that the modifications specified in this report are made to the draft order and that the draft order as modified is submitted to referendum.

Following on from that, I am required to consider the referendum area. I can see no reason to alter or extend the referendum area from the designated Broughton Parish Neighbourhood Area. I therefore recommend that the area for the referendum be the same as the boundary of the designated Broughton Parish Neighbourhood Area as approved by Kettering Borough Council on 15 January 2014.

Ann Skippers  
Director, Ann Skippers Planning  
28 May 2018



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## **1.0 Introduction**

I have been appointed as the independent examiner of this Neighbourhood Development Order (NDO) by Kettering Borough Council (KBC) with the agreement of Broughton Parish Council.

As well as drafting this NDO, the Parish Council have also proposed a neighbourhood plan which I have been appointed to examine. The neighbourhood plan is subject to a separate examination report.

I confirm that I am independent of both the local planning authority and the Parish council. I do not have any interest in any land that might be affected by the NDO. I am a chartered town planner with over 30 years experience spanning the public, private and academic sectors and I am an experienced neighbourhood plan examiner. I therefore have the appropriate qualifications and experience to carry out this examination.

## **2.0 What is a Neighbourhood Development Order?**

A Neighbourhood Development Order is an order that grants planning permission in relation to a particular neighbourhood area specified in the order, for development specified in the order or for development of any class specified in the order.

NDOs may grant planning permission unconditionally or subject to conditions and limitations specified in the order. Conditions can include obtaining the approval of the local planning authority, in this instance KBC, and specifying the period within which applications must be made to the local planning authority for any such approval.

The qualifying body must submit a proposal for a NDO to the local planning authority. The proposal must be accompanied by a draft of the order and a statement that summarises the proposal and sets out why the order should be made in the terms it is proposed.

KBC must make the order if more than 50% of those voting in the referendum have voted in favour of the order and must do so as soon as is reasonably practicable after the referendum. However, if KBC consider the order would breach, or otherwise be incompatible with, any EU obligation or any of the Convention rights, they do not have to make the order.

### 3.0 The role of the examiner

The examiner must consider whether the draft NDO meets the basic conditions and various other requirements.

These other requirements are:

That the NDO area is wholly within the parish of Broughton, a neighbourhood area designated by KBC on 15 January 2014 and Broughton Parish Council is a qualifying body and authorised to act in respect of this area.<sup>1</sup>

A NDO may make provision in relation to all land in the neighbourhood area, any part of that land or a site in that area specified in the order.<sup>2</sup> In this case the NDO is for a site in the designated neighbourhood area specified and identified on a map in the draft order. It does not relate to more than one neighbourhood area.<sup>3</sup>

A NDO may not grant planning permission for any development that is excluded development.<sup>4</sup> Excluded development is defined in section 61K of the Town and Country Planning Act 1990. In essence it covers matters usually dealt with by County Councils such as waste and minerals, nationally significant infrastructure projects and development that would be subject to an environmental impact assessment. This NDO does not relate to any category of excluded development.

A NDO may not grant planning permission for any development where planning permission has already been granted.<sup>5</sup> This NDO complies with this requirement.

The basic conditions<sup>6</sup> are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order
- Having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest it possesses it is appropriate to make the order
- 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
- The making of the order contributes to the achievement of sustainable development
- The making of the order 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)

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<sup>1</sup> TCPA s61F (1) and s61J (1)

<sup>2</sup> TCPA s62J (1)

<sup>3</sup> TCPA s61J (5)

<sup>4</sup> TCPA s61J (2) and s61K

<sup>5</sup> TCPA s61J (4)

<sup>6</sup> TCPA Sch 4B, para 8 (2)

- The making of the order does not breach, and is otherwise compatible with, EU obligations and
- Any other prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

In relation to a conservation area, the basic condition applies only in so far as the order grants planning permission for development in relation to buildings or land in the area.

In relation to listed building, the basic condition applies only in so far as the order grants planning permission for development that affects the building or its setting.

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 also set out two other conditions that need to be considered.

Regulation 32 gives effect to Schedule 2 of the Regulations. That Schedule amends the Conservation of Habitats and Species Regulations 2010<sup>7</sup> by stating that:

“A neighbourhood development order may not grant planning permission for development which –  
 (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and  
 (b) is not directly connected with or necessary to the management of the site.”.

Regulation 33 gives effect to Schedule 3 of the Regulations. That Schedule states that “where the development described in an order proposal is Environmental Impact Assessment (EIA) development, the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act - Having regard to all material considerations, it is appropriate that the neighbourhood development order is made.”.

The examiner must also consider whether the draft order is compatible with the Convention rights.

Having considered these various matters, the examiner must make a report on the draft order. The report must recommend:

- That the draft order is submitted to referendum or
- That modifications specified in the report are made to the draft order and that the draft order as modified is submitted to referendum or
- That the proposal for the order is refused.

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<sup>7</sup> By inserting a new Regulation 78A

The only modifications an examiner is entitled to make are those the examiner considers need to be made:

- to secure the draft order meets the basic conditions and/or
- is compatible with Convention rights and/or
- complies with the other provisions
- to specify a period
- to correct errors.

If the report recommends that the order can proceed to referendum, with or without modification, then the examiner must also recommend whether the area for the referendum should extend beyond the neighbourhood area to which the order relates. If the examiner recommends the area should be extended, then a recommendation as to what the extended area should be, is also made.

The 'default' position is that the examination will be undertaken in the form of the consideration of written representations. However, a hearing can be held should the examiner consider that oral representations is necessary to ensure adequate examination of the issue or a person has a fair chance to put a case.

In this instance, after considering all the submitted documentation and written representations received, and asking a written question (see Appendix 2) I decided it was not necessary to hold a hearing.

I made an unaccompanied site visit on 6 March 2018.

#### **4.0 What does this NDO seek to do?**

This draft NDO *“will consent:*

- a) Delivery of a strategic site for locally identified open market housing need,*
- b) Deliver a development of a minimum of 5 and a maximum of 7 dwellings consisting of small “mews” flats and/or terraced houses of 1 or 2 bedrooms*
- c) will have special regard to the enhancement of our Conservation Area in Church Street.*
- d) will contribute to the achievement of sustainable development and identified need for Broughton.”*

Although the draft NDO does not specify the site address at this point, it is clear from the document and a site plan within it that the draft order relates to the BT Exchange, Church Street, Broughton.

A section then follows that indicates the NDO will comply with the Broughton Neighbourhood Plan Development Design Policy 3, Building Regulations and “will specifically apply the following NDO Design Principles”.

The Neighbourhood Plan has not yet been made and so the contents of draft Development Design Policy 3 can be incorporated, but there is little mileage to refer to a policy that has not yet been examined or adopted and is therefore likely to a high possibility of change.

All development must adhere to the building regulations and so this reference is unnecessary.

The NDO includes two examples of site layouts, but makes it clear these are not binding or prescriptive.

## 5.0 Consultation

The Consultation Statement explains that the pre-submission consultation required by the Neighbourhood Planning (General) Regulations 2012 took place between 14 June – 26 July 2017.

In addition the Neighbourhood Plan refers to the proposed order and pre-submission consultation on the Plan took place between 1 December 2016 – 19 January 2017. A questionnaire designed to encourage and assist responses to the earlier consultation stage for the Plan included two questions specific to the proposed NDO. I therefore consider that awareness of the NDO is likely to be greater than just the pre-submission consultation.

The pre-submission consultation on the draft NDO was publicised through social media including Facebook and Twitter and on the village, Parish Council and KBC websites. Other consultees were also notified of the consultation.

Pre-submission consultation on NDOs has four elements to it; firstly a draft NDO must be publicised to bring it to the attention of those living, working or carrying out a business in the neighbourhood area. Secondly, consultation with any body, the so-called 'Schedule 1 bodies' that the qualifying body consider might be affected by the proposal. Thirdly, any consultation body in the Table in Schedule 1 depending on the type or category of development. Fourthly, consult the owner and tenant of the land. Lastly a copy must be sent to the local planning authority.

The Consultation Statement confirms that consultation has taken place with the landowner.

Regulation 23 consultation took place between 18 October – 29 November 2017 at the same time as the Regulation 16 consultation on the draft Broughton Neighbourhood Plan.

I am satisfied that the requisite consultation has taken place.



## 6.0 Compliance with the basic conditions

This section of the report deals with the draft order as a whole and the extent to which it meets the basic conditions. The draft order needs to meet all the basic conditions to proceed to referendum.

### ***National policy and guidance***

The principal document in which national planning policy is contained is the National Planning Policy Framework (NPPF). The NPPF sets out a range of core planning principles which underpin both plan making and decision taking.

The NPPF explains that “neighbourhoods should develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development, plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed.”<sup>8</sup> In this case, the draft order is consistent with the draft neighbourhood plan.

Broughton Parish Council have taken the opportunity indicated in the NPPF<sup>9</sup> that neighbourhood planning can be used to grant planning permission through NDOs for specific development that complies with the order.

The draft order for redevelopment of a site within the village boundary for housing development aligns with “the strategic needs and priorities of the wider local area” referred to in the NPPF.<sup>10</sup> The order does not promote less development than Borough level policies or undermine the strategic policies of KBC.

The NDO explains that a shortage of smaller open market dwellings suitable for younger people or older people looking to downsize to stay in the village has been identified.

In addition this site, although currently operational, lies outside, but is adjacent to a relatively recently designated Conservation Area and is regarded by the community as an opportunity to enhance the character and appearance of the Conservation Area. An existing building on the site does not make any positive contribution to the character and appearance of the adjacent Conservation Area. Its demolition and replacement with new development presents an opportunity for the site to be redeveloped and for new development to make a more positive contribution.

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<sup>8</sup> NPPF para 16

<sup>9</sup> *Ibid* para 183

<sup>10</sup> *Ibid* para 184

The provision of a mix of housing, widening opportunities for home ownership and the creation of sustainable, inclusive and mixed communities is supported by the NPPF.

I saw at my site visit that the site does not make a positive contribution to the character and appearance of the Conservation Area. There is therefore an opportunity for this site to be redeveloped and for new development to make a positive contribution to local character and distinctiveness in line with the NPPF.

Given the nature of this particular draft order, I also need to ensure that any proposed conditions have regard to national policy as set out in the NPPF.<sup>11</sup> This indicates that planning conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

These six tests must all be satisfied in the making of any decision to grant a planning application. Given the nature of the NDO process I will apply them to my examination of the extent to which the proposed conditions comply with this aspect of national planning policy.

Subject to any modifications needed to ensure the conditions do comply with this aspect of the NPPF, I consider that having regard to national policies and advice contained in guidance issued by the Secretary of State it would be appropriate to make the order.

***Special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit that it possesses***

The site does contain an existing building, the BT Exchange building, but it is not a listed building. Therefore the basic condition relating to the desirability of preserving any listed building or its setting or any features is not applicable to this particular NDO.

***Special regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area***

The site does not fall within the Broughton Conservation Area, but lies adjacent to its boundary. Therefore the basic condition relating to the desirability of preserving or enhancing the character and appearance of any conservation area is not applicable to this particular NDO.

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<sup>11</sup> NPPF para 206

### ***Contributing to sustainable development***

The NPPF explains that “the purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.”<sup>12</sup> It goes on to explain that there are three dimensions to sustainable development; economic, social and environmental.

The site is currently operational and therefore provides infrastructure necessary to support the economy and wider community. Given the site’s location adjacent to a Conservation Area and the likelihood that it will be occupied for the foreseeable future by BT, the draft order will ensure that once the site’s operational lifetime has ended, this site is less likely to fall into neglect. This will contribute to the economy.

The provision of a supply of new homes and the size and type identified as being required by the community means that the draft order provides an opportunity to help deliver the supply of housing needed to meet the needs of current and future generations.

The draft order provides an opportunity, through an appropriate and high quality design-led scheme to enhance the character and appearance of the adjacent Conservation Area. In addition, there are opportunities to ensure that the redevelopment of the site undergoes any necessary remediation work and that new development is of a high quality.

Overall the draft order promotes development that has been identified as needed for younger and older people to be able to live in the community reinforcing the community as one that is both inclusive and mixed. The site itself is close to the centre of the village and located conveniently for services and local amenities. The draft order provides an opportunity for redevelopment to take place and environmental improvement to occur.

Therefore I consider that the making of the order would contribute to the achievement of sustainable development.

### ***General conformity with the strategic policies in the development plan***

The relevant development plan for the area includes the North Northamptonshire Joint Core Strategy (JCS) 2011 – 2031 adopted in July 2016 and the saved and retained policies of the Local Plan 1995 (LP).

The site falls within the village boundary and there is therefore no objection in principle to such development on this site.

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<sup>12</sup> NPPF para 6

LP Policy RA3 refers to “Restricted Infill Villages” of which Broughton is one. It supports new residential development within the village boundary and where there is no loss of open land designated on the Proposals Map. The policy also seeks to ensure that the proposal is appropriate in terms of its size, form, character and setting of the village, the local community and its environment as well as conservation of energy and materials.

Turning now to the JCS, a number of specific policies are of relevance. These include Policy 2 which refers to the need for development to complement the surrounding historic environment through (appropriate) form, scale, design and materials and to ensure that proposals appreciate and understand the impact on heritage assets and their settings. Policy 4 refers to the protection and enhancement of biodiversity. Policy 5 encourages sustainable drainage systems. Policy 6 seeks to maximise the use of previously developed land and to ensure the risk of contamination is addressed and, where necessary, remedied. Policy 8 sets out a number of place shaping principles. Amongst other things, Policy 11 confirms that sites can be identified to meet locally arising needs.

The draft order supports development on a site within the village boundary for locally identified housing need. The conditions in it will help to ensure that the details of the scheme will be acceptable and provide a high quality of development.

I consider the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority.

### ***EU obligations***

I am required to consider whether the NDO breaches or is otherwise incompatible with, EU obligations.

The Basic Conditions Statement refers to Strategic Environmental Assessment (SEA) as a Screening Report by KBC confirmed that a SEA would be needed. Although a SEA has been submitted in respect of the neighbourhood plan, NDOs do not require SEAs as the SEA Directive only applies to plans and programmes.

However, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (often referred to as the Environmental Impact Assessment (EIA) Directive) may be of relevance to NDOs.

The process of EIA is governed by the Town and Country Planning (EIA) Regulations 2017. There are also various transitional arrangements as the 2017 Regulations revoke earlier Regulations.

PPG<sup>13</sup> advises that EIA is a procedure to be followed for certain types of proposed development. This is “to ensure that decisions are made in full knowledge of any

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<sup>13</sup> PPG para 078 ref id 41-078-20140306

likely significant effects on the environment and that the public are given early and effective opportunities to participate in the decision making procedures.”<sup>14</sup>

PPG<sup>15</sup> advises that a NDO that grants planning permission may not be made by the local planning authority in respect of Schedule 1 development. For Schedule 2 development, an order proposal may be made as long as EIA procedures have been followed, the basic conditions and other legal requirements are met and the order receives a majority at referendum.

I do not consider that the proposed development in the draft order to be Schedule 1 or 2 development and therefore it does not fall within the remit of the Regulations and is not likely to have a significant effect on the environment.

Regulation 33 of the Neighbourhood Planning (General) Regulations 2012 prescribes a further basic condition that must be met where the development described in an order proposal is EIA development. As I have found that this is not the case, this basic condition is not applicable to this particular draft order.

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (often referred to as the Habitats Directive) aims to protect and improve Europe’s most important habitats and species. Part 9 of the Neighbourhood Planning (General) Regulations 2012 (as amended) introduces Schedule 2 which makes provision in relation to this Directive. The Schedule amends the Conservation of Habitats and Species Regulations 2010 so as to apply its provisions to neighbourhood development orders. A new Regulation 78A states “A neighbourhood development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.”.

There are no European sites within or adjoining the parish or affected by the proposed development.

KBC has issued a screening report confirming that a Habitats Regulation Assessment would not be required for the draft order. I consider that the development in the draft order is not likely to have a significant effect on any European site.

I have also considered whether any other Directives are of relevance and I conclude they are not given the particular circumstances of this draft order.

I therefore consider that the making of the order would not breach, and is otherwise compatible with, EU obligations.

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<sup>14</sup> PPG para 078 ref id 41-078-20140306

<sup>15</sup> *Ibid* para 008 ref id 4-008-20170728

## **Convention rights**

I consider that the draft order has had regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) and that it complies with the Human Rights Act. No evidence has been submitted to me to indicate otherwise. I conclude that the submitted Order does not breach, nor is in any way incompatible with the ECHR.

## **7.0 List of modifications**

This section of the report comments on the details of the draft order. It makes a series of recommended modifications to ensure that its various components meet the basic conditions.

### **Modification 1 (the grant of permission)**

**On page 5 of the draft order, change the order to read:**

***“This NDO grants outline planning permission for the delivery of a strategic site at the BT Exchange, Church Street, Broughton and as shown on the map on page [X] of this Order for locally identified open market housing need for a minimum of 5 and a maximum of 7 dwellings consisting of small “mews” flats and/or terraced houses of 1 or 2 bedrooms.”***

Reasons for the modification

The modification ensures that the order grants planning permission. It inserts a reference to the site address and a map showing the site in the interests of clarity and to increase certainty. It removes other criteria which are unnecessary in the interests of clarity and certainty.

### **Modification 2 (conditions)**

**On page 5 of the draft order, add the following conditions to read:**

***“In order to secure a satisfactory development, this Neighbourhood Development Order imposes the following conditions:***

- 1. The development hereby permitted shall be begun either before the expiration of 6 years from the date of the order, or before the expiration of 4 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.***
- 2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 6 years from the date of this outline permission.”***

- 3. Details of the access, landscaping, appearance including the materials to be used, layout, including space for the parking of vehicles and cycles and bin storage, and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.**
- 4. All applications for approval of reserved matters submitted pursuant to this outline permission relating to layout, appearance, scale and landscaping shall be accompanied by a statement explaining how the design principles specified in the order have been incorporated.**
- 5. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings in relation to existing ground levels have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved levels.**
- 6. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing, by the local planning authority to ensure the amenity of local residents is protected. The Statement shall provide for:
  - i) a scheme for recycling/disposing of waste resulting from the demolition and construction works;**
  - ii) delivery, demolition and construction working hours;**
  - iii) measures to control the emission of dust and dirt during construction.**The approved Construction Method Statement shall be adhered to throughout the construction period for the development.**
- 7. No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to, and approved in writing, by the Local Planning Authority.**
- 8. No development shall commence until an assessment of the risks posed by any contamination carried out in accordance with the current or equivalent British Standard and Model Procedures has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has**

***not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority.***

***The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.***

- 9. Development shall not commence until a scheme for the provision and implementation of surface water drainage incorporating sustainable urban drainage schemes and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall be constructed and completed in accordance with the approved details and prior to first occupation of any of the dwellings.***
  
- 10. The development hereby permitted shall not be occupied until details of the boundary treatment have been submitted to and agreed in writing by the local planning authority and shall have been constructed in accordance with those agreed details.***
  
- 11. No development shall take place until a scheme for assessing, and where necessary mitigating, the effects of the development on ecology and for biodiversity enhancements has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out as approved, in accordance with the approved programme, and shall be permanently retained for the lifetime of the development.***
  
- 12. No development shall take place until a scheme of onsite foul drainage up to the proposed point of discharge has been submitted to and approved in writing by the local planning authority. The element of the approved scheme required to drain each dwelling shall be completed before the occupation of each dwelling. Suitable access should be safeguarded for the maintenance of foul drainage infrastructure.***

Reasons for the modification

Whilst the order is clear in listing a number of matters on page 7 and requiring details to be agreed before any commencement of development, there is a lack of detail and precision. Furthermore there is no implementation element to any of the details requested.

In making what are quite detailed modifications, I am mindful that all the matters are covered on page 7 with the exception of foul drainage (condition 12). I therefore have made these modifications to ensure that the order contains the clarity and



precision to enable the development to proceed in line with the NPPF<sup>16</sup> and to have regard to the advice in PPG and to ensure the order contributes to the achievement of sustainable development.

I have had regard to the NPPF<sup>17</sup> which states that planning conditions should only be imposed where they are:

- necessary
- relevant to planning and to the development to be permitted
- enforceable
- precise and
- reasonable in all other respects.

In addition, I have considered whether any conditions are needed to control matters which fall outside the scope of the reserved matters and are not already put forward in the draft order by the qualifying body. This is because the order is the planning permission and matters outside the scope of the reserved matters cannot be controlled at the time of the reserved matters application.

I turn now to the detail of each condition that I have recommended to be included.

The NDO sets out it is valid until 31 December 2031. The level of detail in the draft order means that it is akin to a grant of outline planning permission and I have treated it as such. It is usual for outline planning permissions to have shorter time scales. However, in this case the order explains that firstly, the site will be delivered in the medium to long term in line with the owner's operational strategy and secondly, phasing housing delivery in the neighbourhood plan area. In these circumstances, I consider there is a balance between permitting a longer than usual time period and ensuring that development of the site is not stagnated. For that reason I have extended the usual period specified under section 92 of the Town and Country Planning Act 1990 as I consider it appropriate on planning grounds to do so.

In relation to the references in the order on page 7 to materials, parking and bin storage, these matters are satisfactorily covered by condition 3 that requires details of layout and appearance to be approved. I have also specifically added a reference to these matters in this condition.

It is necessary to include details of finished ground floor levels as there is some uncertainty about existing ground levels in relation to the site itself and in relation to adjoining buildings.

Condition 5 makes reference to the design principles contained in the draft order on pages 6 and 7 to ensure that any scheme takes account of these matters to ensure the site is satisfactorily developed given its location and proximity to the

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<sup>16</sup> NPPF para 16

<sup>17</sup> *Ibid* para 206

Conservation Area and its relationship with adjoining residential properties. This will also reflect JCS Policy 2.

Condition 6 requires a construction method statement to be submitted, approved and implemented because of the proximity of the site to residential occupiers. It therefore is necessary to ensure their living conditions are not adversely harmed.

Condition 7 is to ensure that any finding of archaeological importance is recorded. This will also take into account JCS Policy 2.

Condition 8 is imposed to address potential contamination issues and deal with any pollution which might be discovered during construction work. This also takes account of JCS Policy 6.

Condition 9 requires details of surface water drainage to ensure satisfactory drainage of the site and to take account of flood risk. This also takes account of JCS Policy 5.

Condition 10 requires details of the boundary treatment because the site is surrounded by a number of residential properties to the western, eastern and southern site boundaries. Some of these properties have relatively small gardens or long stretches of garden that share a boundary with the site. Appropriate boundary treatment will help to ensure that the effect on their living conditions is acceptable.

Condition 11 is imposed to ensure that any effect on species or habitats can be properly assessed and any adverse effects mitigated and opportunities taken for biodiversity enhancement. This also takes account of JCS Policy 4.

Condition 12 covers foul drainage as this needs to be agreed and implemented to address any flood risk and in the interests of health. In addition a representation from Anglian Water indicates that there is an existing sewer within the site boundary and any layout should take account of this.

### **Modifications 3 and 4 (Design Principles)**

**Change the first paragraph on page 6 of the draft order to read: *“Any development on the site will be expected to take account of the following Design Principles referred to in condition 4 to ensure a build of highest quality and suitability whilst providing for the satisfactory delivery of a scheme that enhances the site given its proximity to the Broughton Conservation Area.”***

**Change the sentence *“Development on the site will require compliance with the following principles”* to *“Development on the site is expected to take account of, and incorporate, the following Design Principles, in line with the requirements of condition 4”***

## Reasons for the modification

Page 6 of the draft NDO contains references to the Neighbourhood Plan Design Policy 3, building regulations and a set of Design Principles which then follow. In terms of the references to Policy 3, any development would be assessed in relation to the relevant planning policies at that time and so this reference is unnecessary and does not provide the clarity sought by national policy and guidance. For the same reasons the reference to building regulations is superfluous and in any case this is not a planning matter.

Any scheme on this site cannot deliver enhancement of the Conservation Area for two reasons. Firstly, the site is not in the Conservation Area. Secondly, the statutory test for development in conservation areas or for development that might affect conservations areas is the preservation or enhancement of the character or appearance of the conservation area. Accordingly I have modified the first paragraph to reflect this statutory duty.

The draft order requires compliance with the 14 Design Principles specified. Given this is an outline planning permission where details of appearance and layout amongst other things are reserved matters, this wording should be altered in the interests of clarity and to provide a practical framework for decision making taking account of national policy and guidance and to ensure the order contributes to the achievement of sustainable development in particular.

Turning now to the Design Principles themselves, all 14 are worded well and relate to the quality and type of development sought.

### **Modification 5 (presentation of the order)**

I have made a number of modifications to the wording of the draft order. So that the draft order flows better following on from those modifications, **the NDO should be structured as follows:**

- **Front cover to include address of the site**
- **“Procedure and Policy” section to be retained, but will need some updating as the draft order progresses**
- **“Neighbourhood Development Order” section to be retitled “*Background to the Neighbourhood Development Order*”**
- **Retain “Neighbourhood Development Order” section, but change it as per modification 1**
- **Move the sentence “Examples of site layouts are detailed below however these are not binding or prescriptive..” and the two examples to after the Design Principles (as moved)**
- **Incorporate the conditions as per modification 2 underneath the grant of permission (modification 1)**
- **Change the title of the section “Neighbourhood Development Order Key Design Principles” to “*Design Principles*”**

- Insert modifications 3 and 4 and retain a) to n) after
- Delete the paragraph on page 7 that begins “In order to secure satisfactory development...” and the 11 bullet points that follow
- Change the title of the section that begins on page 8 to “*Relationship with the Neighbourhood Plan*”
- Delete the title “Neighbourhood Development Order” on page 9

Reasons for the modification

To make it clear and to offer certainty over what is required by the NDO in line with advice in national policy and guidance.

### **Modification 6**

**Change the sentence that reads “An Environmental Impact Assessment for this Neighbourhood Development Order is not required as it does not include a classification of development set out in Schedule1 and is less than the threshold size of 0.5Ha in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.” to read: “An Environmental Impact Assessment for this Neighbourhood Development Order is not required as it does not include a classification of development set out in Schedule1 and is less than the threshold size of 5Ha in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.”.**

Reasons for the modification

This modification is made as the text needs updating in the interests of accuracy.

### **Other modifications of a minor nature**

Note that the date on page 3 of the draft order will need to be altered to align with the conditions imposed and there may be other consequential amendments required.

## 8.0 Formal recommendation

I recommend that the modifications specified in this report are made to the draft order and that the draft order as modified is submitted to referendum.

The NDO does not have a significant impact on land or communities beyond the designated neighbourhood area. Therefore there is no need for the referendum boundary to extend beyond the designated neighbourhood area.

I therefore recommend that the boundary for the purposes of any future referendum on this Neighbourhood Development Order be the boundary of the designated Broughton Parish Neighbourhood Area as approved by Kettering Borough Council on 15 January 2014.

*Ann Skippers* MRTPI

Director, Ann Skippers Planning

28 May 2018

## **Appendix 1 List of key documents specific to this examination**

Broughton Neighbourhood Plan Neighbourhood Development Order

Basic Conditions Statement

Consultation Statement

Formal letter of determination of the need for Strategic Environmental Assessment under Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 and the need for Habitats Regulations Assessment in accordance with Article 6 of the European Habitats Directive 1992 and the Conservation of Habitats and Species Regulations 1994 from KBC dated 28 September 2017

Kettering Local Plan 1995

North Northamptonshire Joint Core Strategy 2011 – 2031

Conservation Area Appraisal adopted April 2014

## **Appendix 2 Questions relating to the Neighbourhood Development Order**

The following question was asked by email of 17 April 2018 and responded to by email of the same date and I include it here for completeness:

1. It would be most helpful to have confirmation that there are no other planning applications on the site covered by the NDO please.

It may be the case that on receipt of your anticipated assistance on these matters that I may need to ask for further clarification or that further queries will occur as the examination progresses. Please note that this list of clarification questions is a public document and that your answers will also be in the public domain. Both my questions and your responses should be placed on the Councils' websites as appropriate.

With many thanks.

Ann Skippers  
Independent Examiner  
19 April 2018