

Daventry District Local Plan Examination

Matter 8 – Community and Wellbeing

Prepared by Fisher German LLP
on Behalf of the Cottesbrooke Estate



Project Title:

Cottesbrooke Estate – Land North of Brixworth Road

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01 Introduction

We write on behalf of our Clients, *Montrose Trustees Limited*, in respect of their land to the North of Brixworth Road, Creaton. This area is delineated on the emerging Local Plan Part 2 Policies Inset Map for Creaton as a Local Green Space (LGS) reference: Local Green Space 167. The identification of the land in the emerging Local Plan as Local Green Space is not sound, nor is it supported by the owner of the land.

The playing field is currently maintained by Creaton Playing Fields Committee, not the Parish Council.



This proposed designation was introduced by the Regulation 19 version Local Plan. While the Council had run an informal consultation on proposed Local Green Space designations previously, the land at Brixworth Road, Creaton was not included, nor was the landowner party to conversations held by the Council at this time. It is noted that during this period, other landowners were informed of the proposed designation of their land as Local Green Space. We therefore consider that the process has been prejudicial and unfair in that the Council have not afforded equal opportunity to comment.

Furthermore, the landowner of the Brixworth Road site was only informed of the proposed designation following commencement of the Regulation 19 consultation. Clearly this was the Plan the Council intended to submit for Examination, and as such, even if the Council had been minded to agree with our representations, they were not likely to alter the designation at this stage. In particular because this would have required the Council to conduct further consultation and meant the Plan would not have been submitted before the January 2019 deadline, after which the Plan would have been examined against the updated NPPF (as per the NPPF transitional arrangements). Whilst we have tried to agree a position with the Council ahead of the Examination, the Council have not engaged with us, nor responded to our queries.

Notwithstanding the above concerns, the designation should be removed as it does not conform with national policy contained within the NPPF (2012), set out within these Representations. To ensure the Plan is sound, the designation should be removed.

02 Matter 8 – Community Wellbeing

Local Green Space Policy (Policy PA1)

7 Was the methodology used to identify the proposed Local Green Space designation and their boundaries, consistent with national policy

No, the methodology used by the Council in designating our Client's land as Local Green Space has not been consistent with national policy or guidance. Moreover, the process adopted by the Council in designating the land at Brixworth Road, Creton has been inherently unfair and led to a designation which is unsound.

To fully articulate our concerns with the methodology utilised by the Council, it is first necessary to set out the process the Council followed, including how and when our clients land was designated.

October to December 2012

Issues Consultation

Due to several parishes stating that they didn't have the resources to prepare a Neighbourhood Plan, the Council began to discuss the possibility of introducing an 'Annex' to the Local Plan to deliver rural designations such as LGS. This would enable the delivery of designations to areas without them incurring cost or resource of producing a Neighbourhood Plan, which some Parishes had suggested was a barrier.

January to March 2016

Issues and Options Consultation

The Council ask a specific question, "Issue 57: Parish Annex and Local Green Space" relating to the principle of including LGS designations within the Local Plan Annex.

April 2017

Workshop with Daventry Town Council and Parish Councils

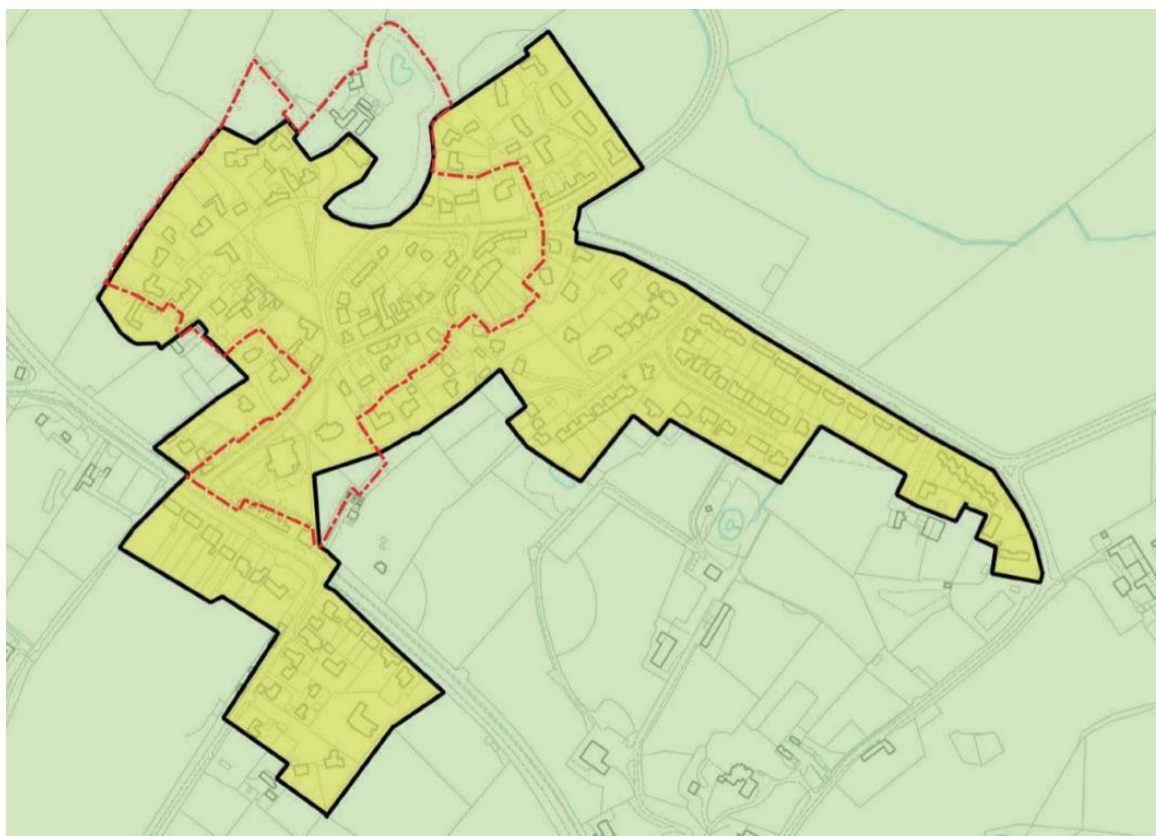
Outlined that LGS designations were the "main contender"¹ for inclusion within the Annex. Following the workshop, the invitation to nominate LGS was extended to all Parish Councils who were not present at the workshop. This meant all Parish Councils had the opportunity to designate Local Green Space by the middle of 2017. Landowners were also invited to make representations at this stage, but presumably they were only the landowners whose land had been nominated at this stage. At this point there were 165 green spaces nominated by the Town Councils and 13 Parish Councils. Of these, 99 were deemed suitable for inclusion in the Emerging Draft Consultation. This did not include land within Creton.

¹ Paragraph 2.3 of the Council's evidence document Local Green Space Assessments v2 (BNE02)

November 2017 to January 2018 Consultation on Emerging Draft Consultation

No designation of LGS within Creaton (see below).

Creaton Parish Council respond to the consultation with eight nominated sites to be designated as LGS, including the Brixworth Road site. The comments of the landowner were not sought, and the Parish Council confirmed on their submitted representation that the landowner had not been notified.



Creaton inset – Emerging Draft Daventry Local Plan (2017)

March 2018	The District Council contact the Parish Council for details of site boundaries and ownership requesting a response by mid-April. The Parish Council respond a few days later to confirm they would provide the information.
August 2018	The Parish Council provide a response to the District Council, but only provide the contact details for the Playing Field Committee, not the landowner.
13 th August 2018	Proposed Submission Part 2 Plan published for consultation. The land is included as a proposed LGS.
15 th August 2018	The District Council contact the Estate informing them of the inclusion of their land as a LGS and that they have until the 5 th October 2018 to make representations.

11 th September 2018	A member of the Creaton Playing Fields Association complains at a Parish Council meeting that the group had not been consulted in advance of the Parish Council's nomination of the playing fields as Local Green Space.
5 th October 2018	Proposed Submission Part 2 Plan Consultation closes. Representations are submitted by Fisher German on behalf of the landowner in respect of the designation.
6 th December 2018	The Council agree to submit the Local Plan to the Secretary of State unamended.
19 th December 2018	Plan submitted for Examination.

Considering the above, we have significant concerns over the way in which our clients land has been treated. We note from the Council's documentation that other landowners were informed early in the process, following the workshop in April 2017, of their intention to designate their land as LGS. What is also clear is that as part of this dialogue, sites were removed;

"Representations were also received from the Town Council and three parish councils (Boughton, Overstone and Yelvertoft) challenging the non-designation of sites and landowners objecting to or commenting on the proposed designation of their land. One parish council (Long Buckby) withdrew a nomination following contact with the landowner." Local Green Space Assessments Version 2 – June 2018.

It is unclear why Creaton Parish Council, despite a clear and obvious opportunity to do so, did not submit land during April 2017 (the Workshop) and the months that followed. It is clear from the Council's report that all Parish Councils had been invited to the workshop in April 2017 and those who did not attend were invited to submit nominations for Local Green Space.

Regardless, whilst we appreciate the Council may not have received nominations from Creaton at this time, the Council still had time to engage the landowner when the designations were brought to the Council's attention following the close of the Emerging Draft Consultation. We are certainly unable to accept this notification coming after the Council had published the Submission Plan for statutory consultation, over six months later. Unlike other landowners in the District, our client has not benefited from the opportunity to comment both through statutory consultation and informal consultations. There is no reasonable justification why the comments of the landowner could not have been sought in the months following the close of the Emerging Draft Consultation and ahead of the publication of the Submission Consultation after the nominations were made to the Council and this failure has inherently prejudiced our Client's position.

Clearly, in respect of our Client's land this is not in accordance with the NPPG, which states unequivocally that;

"the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space." NPPG Open Space Sports and Recreation Facilities Public Rights of Way and Local Green Space, Paragraph 019

The Submission Consultation is not an 'early stage' in the plan making process. The Council had opportunity to informally contact our client before this stage, but again this was not undertaken, although

such privilege was afforded to other landowners. Moreover, we note as a result of the consultation held with other landowners that sites were removed;

“Representations were also received from the Town Council and three parish councils (Boughton, Overstone and Yelvertoft) challenging the non-designation of sites and landowners objecting to or commenting on the proposed designation of their land. One parish council (Long Buckby) withdrew a nomination following contact with the landowner.” Local Green Space Assessments Version 2 – June 2018.

Clearly our Client has not had a reasonable opportunity to comment on the designation and has been treated unfairly when one looks at other such examples within the District. We do not consider that Regulation 19 consultation affords a reasonable opportunity to engage with the Council as the Council needed to submit the Plan before the January deadline. As such, we do not consider that the Council would have altered the Plan, even if they were minded to agree. The Council in their response to our Regulation 19 representations erroneously state that there had been *“opportunities through consultation on the Emerging Draft and Proposed Submission versions of the plan for landowners to comment on proposed Local Green Spaces”*. This is clearly incorrect. Given our representations clearly mentioned this, it indicates that our representations were not even properly considered at this stage. We therefore have significant concerns with the process undertaken by the Council and do not consider that it has been consistent with National Policy and Guidance.

8 Are there any factors that indicate that any of the proposed Local Green Spaces identified should not have been designated? If so, what evidence is available to support this position?

Yes, in respect of our Client’s land, there is clear evidence that the designation of the site does not accord with national policy, is not justified or effective, therefore it cannot be sound and should not be designated.

As outlined in our Regulation 19 representations, the designation of our client’s land is not compatible with the NPPF LGS criteria. The NPPF (2012) sets out at paragraph 76 that the LGS designation allows communities to identify and protect green areas of particular importance to them, through both Local and Neighbourhood Plans. Local Green Spaces should only be designated where they are capable of enduring beyond the end of the plan period and should be otherwise consistent with the local planning of sustainable development. At Paragraph 77 the NPPF sets out that the Local Green Space designation should only be used where the Green Space is;

- a) In reasonably close proximity to the community it serves;
- b) Demonstrably special to a local community in that it holds a particular local significance, for example because of its beauty, historic significance, recreation value (including as a playing field), tranquillity or richness of its wildlife; and
- c) Local in character and is not an extensive tract of land.

As we have set out previously in our Regulation 19 representations, the land does not qualify as LGS on the following key grounds. Firstly, that in relation to the requirement of Paragraph 76, the Local Green Space *“should only be designated when a plan is prepared or updated, and be capable of enduring beyond the plan period”*. As per our previous representations, the land is currently only available to the community as part of a short-term lease agreement. This has and continues to be renewed on an ongoing basis, subject to terms acceptable to our client being agreed. This cannot be guaranteed in perpetuity and requires both parties to continue willingly and therefore it cannot be assumed that it will continue

indefinitely, and certainly not beyond the the plan period. The lease arrangements have not, and will not span such periods of time. Should agreeable terms not be agreed, then the land would revert back to agricultural use, with access restricted as per other private land. It is therefore clear that the LGS cannot be said to be capable of enduring beyond the plan period. The site should therefore not be designated as Local Green Space.

Secondly, but not disconnected is the second criteria of paragraph 77 of the Framework. This is the requirement for the site to be demonstrably special to the local community. In this case, the supporting evidence is clear that this site's value to the community is based entirely and solely on its recreational use. The supporting evidence is clear that there are no other reasons for the site to qualify as demonstrably special. It is therefore the case that if the site was not available for recreational use, it would not qualify as LGS. This therefore brings the issue of the uncertain nature of the lease arrangement into question. Should agreeable terms for the continuation of the lease not be agreed by our client, the public would have no free access over the site (save for the public rights of way). It would certainly not therefore have the recreational value to the community to qualify it as demonstrably special. As such, as this use cannot be guaranteed beyond the plan period, or for any extended period of time, the LGS designation is therefore clearly inappropriate. There is no evidence available which suggests that the Rights of Way, which would remain, are demonstrably special in their own right and would require designation of the wider field as LGS.

The National Planning Practice Guidance Paragraph 017 of the Open space, sports and recreation facilities chapter is unequivocal that 'Designation does not in itself confer any rights of public access over what exists at present'. Therefore, designation would not ensure access to the wider site, beyond the existing Public Rights of Way that cross the site and would remain as per associated legislation. It is noted that the Council's supporting evidence states the School Grounds on Violet Lane were not designated due to, amongst other things, not being publicly accessible. This also applied to other nominated LGS sites in Creaton; the Grounds of Creaton Lodge, Paddocks and Central Open Space, Little Creaton and the Orchards. In fact, all of the failed Creaton LGS designations cite lack of public access as a reason to justify non-designation. Given the uncertain future of the public access here, we consider a similar approach to be entirely justified and consistent.

Whilst the site is currently delineated by post and rail -fencing, the land is clearly part of a larger field. We do not consider the existing boundary to provide a permanent boundary and should the aforementioned scenario come to pass that the site be returned to an agricultural use, could easily be removed and likely would be. Within months, the boundary would be unrecognisable and would have been fully incorporated into the wider landholding. Should the field be returned to agricultural use, then the Local Green Space designation boundary would be entirely arbitrary. As such we consider the site forms part of a larger landholding and should be classified as an extensive tract of land. It is noted that the field is a similar size to LGS171 Little Creaton which was classified by the Council as an extensive track of land. It is also noted that the Parish Council's submission has erroneously described the site to be bounded by low hedges. This is not the case.

Furthermore, we have considerable concerns with the evidence utilised by both the Parish Council and the District Council to underpin this designation. The Parish Council's supporting evidence, the Creaton Design Statement 2004 predates the NPPF (and as such the LGS designation) by 8 years and cannot be reasonably used to support a LGS designation. The Council's evidence on the matter appears to comprise just 60 words. Whilst the Council have confirmed in its evidence that the field is leased, they have not considered the circumstances which could arise if the said lease is not continued and justified the designation if this comes to pass. It is clear the Council have largely been led by the 2004 document and we do not consider that this is appropriate.

Considering the above, the field **cannot** meet the prescribed LGS criteria set out at paragraphs 76 and 77 of the NPPF. As such, the designation should be removed. It is noted that the Local Green Space criteria are absolutes, and any failure to satisfy the criteria should constitute non-designation. Furthermore, there is significant issue in the way in which the land has been allocated and has been clearly and inherently unfair and prejudicial to our client.