

# Stathern Neighbourhood Plan 2020-2036

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## Further Comments of the Independent Examiner

**Prepared by**

**JOHN SLATER BA(Hons), DMS, MRTPI**

**John Slater Planning Ltd**

**4<sup>th</sup> May 2021**

## Introductory Remarks

1. As you will be aware, I have been appointed to carry out the examination of the Stathern Neighbourhood Plan. On 16<sup>th</sup> March 202, I issued my Initial Comments document wherein I asked a number of questions of both the Parish Council and Melton Parish Council. I am grateful for the responses received from both.
2. I asked for these documents to be placed in the public domain by being published on both the Parish Council's and the Borough Council's websites. Whilst I had not invited third party comments on the submissions, I have received a letter from Marrons Planning, on behalf of the owners of the site known as STAT3, which is a local plan reserve site off Blacksmith End. That letter is attached as Appendix 1. That letter introduces a matter that I had not previously been aware, related to a change to the wording in the online version of the local plan from the previously published version of the Local Plan Policy SS2. I will expand on the significance of that omission in the relevant paragraph of this statement.
3. The Borough Council's response to my Initial Comments alerted me to the fact that a challenge under Section 288 had been lodged against the Planning Inspector's decision which allowed the development on part of the STAT 3 site. The Council stated that it would keep me apprised of progress but without any timescales attached.
4. The letter from Marrons Planning confirmed that the challenge would be rebutted on behalf of the owner. I had already intended to pursue this matter with the Borough Council in order to understand the grounds of the challenge which would allow me to assess the implications of that new uncertainty for this examination. It has since been raised in the Marrons Planning's letter.
5. The final section of the Marrons Planning's letter sought to offer their views on a number of other matters which had been raised by the two parties in their responses, which I have noted.
6. In addition, I have also received a further unsolicited letter from another landowner, Mr Bell offering his views on the Parish Council's response to my questions relating to his site. This is attached as Appendix 2

## Procedural Points

7. It is for the examiner to decide how a neighbourhood plan examination is to be conducted. The purpose of seeking clarification by asking a number of questions was to elicit information which will help me with my examination. In this case, I had not invited further representations or rebuttals on the responses which I had received from other parties. To do so is merely to prolong the examination and I feel confident that I can attribute the appropriate weight to be given to any response. If I had wished to invite the participation of third parties in the clarification process I would have done so. To allow some parties to have an opportunity to submit their comments on these responses could be

inequitable and put other parties, who may have felt that they were not been in a position to be able to offer comments on the principal parties' responses to my questions, at a disadvantage.

8. However, I am conscious that by asking for the documents to be placed in the public domain, I had not instructed the hosts of the websites to include an explicit statement that further comments would not be invited or considered. Now that these letters had been received, I need to consider the implications for my examination.
9. I am guided in how neighbourhood plan examinations are expected to be run by advice contained in the Neighbourhood Planning Independent Examiners Referral Service's document entitled "Guidance to Service Users and Examiners". The process I have followed to date, is set out in Section 10 of that document, entitled Written Clarification, described in paragraphs 2.10.1 to 2.10.4.
10. Marrons Planning have relied upon an earlier paragraph within the guidance dealing with Late Representations. This states that these may be acceptable where there has been a material change in circumstances. The examples quotes include "a change in the status of a document the representations have relied upon or a judgement from a court case that has been relied upon."
11. The advice is that the submission of new evidence should be by exception and should be fully justified.
12. In this case I am satisfied that the publication of the information on the wording of Policy SS3 on the Melton Borough Council website is a matter that I need to consider in more detail. Also, the grounds of, and the implications arising from the Section 288 challenge could affect my reasoning and recommendations related to the question of limits of development and Policies H1 and H2 and the planning status of the appeal site, as well as the rest of the reserve site, where the Inspector's decision may well have been a material consideration.
13. The letter from Adrian Bell does not raise issues of the same significance and is essential a rebuttal of the Parish Council's views and whilst I note its comments, I will not be inviting any further submissions.

### **The Melton Local Plan**

14. The published version of the Policy SS2 includes the following paragraph:  
*"Service Centres and Rural Hubs will accommodate approximately 35% of the Borough's housing residual requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale residential development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities."*

15. According to the information posted on the Melton Website the word “windfall” had been erroneously omitted and the relevant paragraph of Policy SS2 should have read:
- “Service Centres and Rural Hubs will accommodate approximately 35% of the Borough’s housing residual requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, **and by encouraging small scale windfall residential development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.**”*
16. This change could have significance to how the appeal decision covered by STAT 3 is considered, as if it is part of an allocated site. It could arguably not be treated as a windfall site.
17. The Marrons Planning’s letter goes on to raise a number of important issues regarding the status of the omission of the word “windfall” in terms of the plan as adopted in the Adoption Statement.
18. As well as having a number of specific questions, I would invite the Borough Council to respond to each of the comments made in Marrons Planning’s letter on this matter up to paragraph 36, in order that these matters are fully addressed.
19. In addition, I have a number of specific questions that I would request the Borough Council to answer:
- Was the word “windfall” included in earlier versions of the Policy SS2 including the version that was the subject of public examination by the Local Plan Inspector? Can I be provided with copies of the respective paragraph as the plan evolved. Did Marronss make representations on the wording of that policy during public consultation?
  - Did the specific reference to “windfall” appear in the version of the document that was approved by Full Council, when it was resolved that the plan be adopted?
  - Has the Borough Council has received any legal advice as to the status of the omission and its subsequent re - insertion via a note on the Local Plan website?
  - Is the inclusion of the “windfall” into Policy SS2 material to the Borough Council’s Section 288 challenge to the planning appeal decision.

### Section 288 Challenge

20. The submission of the challenge to the planning appeal decision could have important implications to my examination. Is the Borough Council prepared to share the grounds of this legal challenge, so I that I can understand the extent to which it is material to my examination?

21. Secondly, I would like to understand the timetable for the case's consideration, if, as Marrons Planning's letter indicates, the challenge by the Borough Council is contested. Can the Borough Council give any indication of a likely timescale of any hearing in court?
22. If my recommendations were to reflect the granting of the planning appeal at Blacksmith End, in terms of say, the Limits of Development, does the Borough Council have a view on whether I should be considering placing the examination in abeyance, until the challenge has been heard. Whilst this question is directed to the Borough Council, I appreciate that the Parish Council may have a view as to whether the legal challenge should impact on the timing of its neighbourhood plan examination.

### **The Way Forward**

23. Most of the matters contained in this note require a response from the Borough Council, both in terms of addressing the matters raised in the Marrons Planning's letter and also to the specific questions I have asked. The Parish Council may wish to comment on the impact of the Section 288 challenge on the timing of this examination.
24. Upon receipt of the Borough Council's response, my intention is to offer Marrons Planning an opportunity to respond to the answers relating to the status of the changes to the wording of Policy SS2. I will issue that invitation, once I receive the Borough Council's response.
25. I understand that the Borough Council may need some time to prepare this information and I would suggest that a three-week period would be sufficient, but if additional time is required then I will consider an extension of time sympathetically. I am therefore requesting a response to this Note from both Melton Borough Council and Stathern Parish Council by **5pm on Tuesday 1<sup>st</sup> June 2021**.
26. I would also ask that the Borough Council forwards this document to Richard Cooke at Marrons Planning, as a reply to his letter, setting out how I am addressing the matters raised in his letter dated 22<sup>nd</sup> April 2021 and also to Mr Adrian Bell for his information. In addition, I would ask that this note be placed on the respective websites.

John Slater BA (Hons), DMS, MRTPI

John Slater Planning Ltd

Independent Examiner to the Stathern Neighbourhood Plan.

4<sup>th</sup> May 2021



## Appendix 1

This matter is being dealt with by  
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Mr John Slater  
John Slater Planning Limited  
c/o Melton Borough Council

Our ref: 01285378.1  
Your ref:

### SENT BY E-MAIL ONLY

22 April 2021

Dear Mr Slater,

## STATHERN NEIGHBOURHOOD PLAN 2020-2036 RESPONSE TO INITIAL COMMENTS OF THE INDEPENDENT EXAMINER

### Introduction

1. We act for Mr Matthew Atton, the owner of land at Blacksmith End.
2. We write further to your Initial Comments letter (dated 16 March 2021), in which you asked for comments from Melton Borough Council and Statherne Parish Council, including responses to Regulation 16 representations, and the subsequent issue of a document from the Borough Council (dated 12 April 2021) and two documents from the Parish Council (dated 13 April 2021).
3. The NPIERS Guidance to Service Users and Examiners identifies that circumstances may arise where representations may be permitted from participants after Regulation 16 (termed formally "late representations") in various circumstances including "A change in policy"; "The handing down of a relevant judgment"; "A relevant factual development (such as the grant of a substantial planning permission)" (Paragraph 1.12.1).
4. Paragraph 2.8.5 confirms that such a representation should be accepted where there has been "a material change in circumstances, including "a change in the status of a document the representation has relied on or a judgment from a Court case that has been handed down."

5. The Borough Council's and Parish Council's representations refer to several new matters, which, in our submission, would merit a further exchange of written representations (on a consecutive basis: initially from the Borough Council, followed by consultees such as our client):
  - 1) A new version of the Melton Local Plan (dating from 11 March 2021), published on its website in a manner contrary to the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) Regulations 2012;
  - 2) The Appeal Decision in APP/Y2430/W/20/3256174 Land at Blacksmith End (11 February 2021);
  - 3) The subsequent section 288 challenge to that appeal decision which has not yet reached the deadline for Acknowledgements of Service/Summary Grounds of Defence (28 April 2021), nor any decision of the Court on whether to grant/refuse permission to proceed;
  - 4) Various statements in the Borough Council and Parish Council Responses on Policy C1(B), SS2 and SS3 and Neighbourhood Plan Policies H1, H2 and ENV9;
  - 5) Statements by the Parish Council referring to Housing Needs Assessment and to Housing Land Supply in the same 13 April 2021 document;
  - 6) The Borough Council's explanation of the SEA and HRA Screening process in its 12 April 2021 document.
6. These matters have emerged following our Regulation 16 representations in circumstances in which we have not had an opportunity to address them at that statutory consultation stage.
7. There are also significant gaps in the published information by the Borough Council, on various of the above matters.
8. As we shall set out below, we are therefore requesting the right to make further written submissions following (a) a specific explanation by the Borough Council and (b) further developments (for example in respect of the section 288 claim). At the present time, we would respectfully submit that the new matters listed above raise a number of significant issues which would impact on the lawfulness of the examination procedure and any consequent decision.



9. We would also submit that the matters are also of sufficient complexity that a hearing or exploratory meeting would be merited under paragraph 9 of Schedule 4B, and the respective parts of the NPIERS Guidance (for example paragraphs 1.17.2).
10. We have copied the Borough Council and Parish Council.
11. In the text below, we shall refer to the Examiner's Questions by the notation "Q5" (i.e. Question 5) to denote the relevant paragraph in the Initial Comments.

### **Q5: The Correct Version of Policy SS2 of the Melton Local Plan and Paragraph 8(2)(e) of Schedule 4B of the Town and Country Planning Act 1990**

#### *Regulation 16 Representations*

12. In December 2020, we issued Regulation 16 representations which referred to the published version of the adopted Melton Local Plan, which we attach as Appendix 1 to this representation: see notably page 29.
13. Paragraphs 39 and 55 of those representations referred to the wording of the Policy SS2 as follows (with our underlining):

*Service Centres and Rural Hubs will accommodate approximately 35% of the Borough's housing residual requirement (1822) on a proportionate basis. This will be delivered by planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and by encouraging small scale residential development, where it would represent sustainable development under Policy SS1 above or would enhance the sustainability of the community in accordance with Policy SS3 - Sustainable Communities.*

This was an important part of our representations in respect of whether Policies H1 and H2 met the basic conditions, including notably basic conditions 8(2)(a), (d) and (e), and the extent to which these policies were in conformity with strategic policies in the development plan, and thereby had correct regard to national policy and contributed to the achievement of sustainable development, having regard to the NPPF.

*Publication (October 2018)*



14. The Published Version was published prominently on the Council's website as a full PDF in October 2018. It was expressly referred to through a weblink in the Adoption Statement. We have attached the Adoption Statement as our Appendix 2.
15. Our client's position is that this is the correct version of the adopted plan, in light of its publication under Regulation 26 and 35 of the Town and Country Planning (Local Planning) Regulations 2012.
16. Following publication, a development plan document cannot be removed from a Council's website, pursuant to Regulation 35, nor can it be withdrawn, revoked or modified after such publication, save under Sections 22, 25 and 26 of the Planning and Compulsory Purchase Act 2004 – none of which were applicable in this case. For the purposes of paragraph 8(2)(e), that is the only version that can be used in a neighbourhood plan examination.

*Officer's Report (23 January 2020)*

17. In our Regulation 16 representations, we referred to the Council's own Officer's Report (dated 23 January 2020) at Appendix 3.
18. In that Report, the Council's Officer's Report stated that Policies SS1 and SS2 read together provided a clear basis for permission on sites such as that owned by our client, adjacent to Stathern (see pages 9 and 10). The Council used the Published Version of SS2:

*"The application ...accords with Policy SS2 of the adopted Melton Local Plan and there are insufficient grounds to indicate this should be departed from."*

*"Policy SS2 provides support to sustainable development within Service Centres and Rural Hubs: i.e. that housing needs will be met by "planning positively for the development of sites allocated within and adjoining the Service Centres and Rural Hubs by 2036, and **by encouraging small scale residential development where it would represent sustainable development under Policy SS1 above** or would enhance the sustainability of the community in accordance with Policy SS3"*

*Thus Policy SS2 allows for small scale development in service centres such as Stathern either as sustainable development OR under the additional provisions of SS3 based on fulfilling a specifically identified*

*need (and subject to meeting the relevant criteria). This is reiterated at para 4.2.17 which states : Where no sites are allocated for new housing, schemes may be permitted where they represent sustainable development or demonstrably meet identified needs and/or help to sustain local services or facilities. Schemes of up to about 10 dwellings may be appropriate within or on the edge of Service Centres, schemes of up to about 5 dwellings for Rural Hubs, and schemes of up to about 3 dwellings for Rural Settlements.” [underlining in original] Appeal Decision: Land at Blacksmith End (11 February 2020).*

19. In Appeal Reference APP/Y2430/W/20/3256174, Inspector Forrett allowed our client’s appeal and granted permission, identifying that the correct version of the Local Plan was the Published Version of Policy SS2. He identified that this supports “small-scale residential development” where it would comply with Policy SS1. This version was expressly agreed by the Council’s Officers: see DL3.

20. We further draw attention to the following paragraphs:

DL14: The Inspector identified that the Melton Local Plan does not set a cap on development for Stathern. Nor does the National Planning Policy Framework;

DL20: Melton Local Plan’s Policy SS2 “sets out very clear support for small scale residential development where it would represent sustainable development under Policy SS1, for which the Council have confirmed the appeal proposal would accord with.”;

DL23: “There is clear and overriding support for a small-scale scheme through Policies SS1 and SS2. In my view, this support, together with the fact that the housing targets are minimum targets and not a ceiling for development”

21. We shall address the section 288 challenge to that decision below, in a focussed manner bearing in mind the early procedural stage which the claim has reached.

22. However, in accordance with the presumption of regularity, Inspector Forrett’s decision remains valid. It has not been quashed. It is a material consideration for the purposes of this examination.

23. We refer to the judgment in *Stonegate Homes v Horsham DC* [2016] EWHC 2512 (Admin) (Appendix 4) in which the High Court (Patterson J) emphasised that decisions by Inspectors on s78 appeals are capable of amounting to material considerations for Examiners, see [80]-[84], drawing in part on conclusions reached at [66] onwards in the SEA context.
24. At the core of the Inspector's reasoning is the recognition that there is clear development plan support for "small-scale development" at Service Centres, where this complies with Policy SS1.
25. We have addressed this principle in our Regulation 16 representations, and it is a matter which a number of other participants have referred to in their Regulation 16 submissions.

#### *The 11 March 2021 Version of Policy SS2*

26. In their response to Q5, the Borough Council have now separately referred to a new and, in our submission, incorrect version of the Melton Local Plan, for the purposes of paragraph 8(2)(e) of Schedule 4B of the Town and Country Planning Act 1990.
27. This version was only published online on 11 March 2021 – after the Regulation 16 representations period and in a manner that is not in accordance with the Planning and Compulsory Purchase Act 2004 or the Town and Country Planning (Local Planning) Regulations 2012.
28. The Council's response to Q5 however makes no reference to this change of circumstance.
29. In at least one other case (the response to Mr Bell's Regulation 16 submissions), the Parish Council have cited this different wording, to support submissions on Policy H2.

#### *Statutory Power*

30. The Borough Council must explain now publicly under what statutory power they have purported to publish a new version of the Melton Local Plan to that which was published on the website at the time of adoption and was present there for a period of more than 2 years between October 2018 and 11 March 2021, including during the Regulation 16 period for this draft Neighbourhood Plan.

31. Our position is that there is no such power, whether under the Planning and Compulsory Purchase Act 2004 or the Town and Country Planning (Local Planning) Regulations 2012.
32. The Borough Council's online explanation is entirely opaque and of questionable relevance in legal terms. It is merely said that: "*This error occurred between the adoption of the Plan by the Council on 10th October 2018 and it being sent to the printers.*"
33. The Council have provided no explanation of why an "error" in printing, could lead to an error in an electronic version. Nor have they provided any explanation as to how the relevant Officers of the Council discharged their duties consistent with the terms of any delegation by the Full Council.
34. We would respectfully request that the Council should provide their explanation to the examination, and provide their response to consultees.
35. Thereafter, we would request an opportunity to provide further submissions of our own as to the Council's stated position. We respectfully submit that this is essential for the lawful progress of this examination, and a correct consideration of basic condition 8(2)(e) in particular.
36. The fundamental point is that a consultee cannot be expected to address two separate versions of a development plan policy. The Council must explain their actions in a manner that is transparent and which properly addresses the legal basis for a step of this nature.

## **Q7: Section 288 Challenge**

37. We have set out in our submissions that we consider that the inclusion of a settlement boundary through Policy H1 would not meet the basic conditions. The Local Plan did not take this approach, making clear provision for a more flexible approach through Policies SS1, SS2 and SS3. We maintain that position.
38. The Neighbourhood Plan should however record the grant of permission at Land at Blacksmith End as set out above.
39. The Borough Council and the Parish Council have referred to a legal challenge on the basis of s288 of the Town and Country Planning Act 1990. The response of the Defendant to that challenge (termed an "Acknowledgement of Service" and "Summary Grounds of Defence"), the Defendant (the Secretary of State for Housing Communities and Local Government) and the Interested Party (our client) is due by 28 April 2021.

40. The Interested Party intends to defend that challenge on the basis that the claim is not arguable.
41. The Council's response appears to accept that no Report can be issued until the claim has progressed further. They state that they will keep the Examiner up-to-date as to the progress of the claim.
42. In the light of the timing of the Secretary of State's response, we would request that we are allowed to make further submissions on the defence to the claim and the progress of the claim, following 28 April 2021, i.e. at such a point when we can update the Examiner with the relevant documentation and any decision of the Court whether to grant/refuse permission for that claim.
43. The likely date of the court's decision is difficult to predict exactly in light of the current timescales in the High Court, although ordinarily such a decision would be made within one month of the deadline for Acknowledgements of Service and Summary Grounds of Defence.
44. At the present time, it would not be lawful or appropriate to ignore the fact of the s78 appeal decision in making any decisions as to the content of Policy H1, simply on the basis that it has been challenged. That would be to ignore the presumption of regularity.

### **Q8: Melton Local Plan C1(B) and Neighbourhood Plan Policies H1, H2 and ENV9**

45. We welcome the Parish Council's acceptance in its Regulation 16 responses document that the Neighbourhood Plan must reflect the designation of the Site as a reserve site pursuant to Policy C1(B), which reflects the Borough Council's submissions to the Regulation 16 consultation, points 20-21.
46. Inclusion of reference to Policy C1(B) will not however be sufficient to render H1 and H2 compliant with the basic conditions, for as long as these policies still seek restrict smallscale development (under 10 units) outside the settlement boundary, contrary to Policy SS2.
47. As the Borough Council have observed, echoing Examiner's Reports elsewhere, it would not be consistent with basic condition 8(2)(e) to restrict development adjacent to the settlement boundary. Policy SS2 both permits and promotes development which complies with Policy SS1 – see the

Appeal Decision above. This kind of flexibility is entirely consistent with the NPPF, see paragraph 68c.

48. The Parish Council have suggested in their response that there are “adequate unprotected spaces within the Limits to Development which will come forward over time”. This statement is completely un-evidenced. The Parish Council are unable to point to a single site that will deliver.
49. If the Parish Council have any such information available, then it should have been published in advance of Regulation 14 and 16 stages, to allow for informed consultation thereupon. That has not taken place. H2 should not be permitted to proceed to referendum without modification to reflect Policy SS2. It must include provision to allow for sites adjacent to the settlement boundary. This must be applied to the area within STAT 3, without any restriction. STAT 3 has been identified as the most sustainable location for growth after STAT 1 and STAT 2.
50. Moreover, the Neighbourhood Plan cannot then seek to restrict the development of such a reserve site through additional designations.
51. We have already referred to the following policies which should be modified to remove any designations on the basis that these are un-evidenced, and out-of-step with designation as a reserve site:
  - Policy ENV3 (Sites and Features of Natural Environmental Significance)
  - Policy ENV5 (Biodiversity and Habitat Creation)
  - Policy ENV8 (Ridge & Furrow)
52. We would also add that we concur with the Borough Council’s proposal that Policy ENV 9 Important Views should be re-assessed given the proximity to STAT 3 – Regulation 16 Response, page 4, point 45. The most appropriate way to do this is to remove View 8 altogether.
53. We disagree with the Parish Council’s request to maintain this designation in its Response to the Regulation 16 representations where it is said that the view “has been identified through public consultation as being of importance”. That does not disclose any proper evidence base for such a designation.
54. In the instant case, the Parish Council are relying upon two arrows pointing in different directions from the road at one corner of the STAT 3 site. The description of the view is also very unclear: “8. From the edge of the village on Blacksmith End with views to open countryside and the escarpment”. There is no documentary evidence to support the “protection” of these

views, beyond single photographs. There is no NPPF support or local plan support for such an approach either.

55. Policy ENV 9 does identify that one cannot restrict all development within a view, in stating that this should only be where “possible”. However, it is important that the text of Neighbourhood Plan policies is clear, unambiguous and straightforward to apply (NPPF 16c). If there is no evidence for such a designation, and it conflicts with a local plan designation, then it simply should not be included.
56. As Inspector Forrett identified at DL24 of his decision, development of the Appeal Site (which covers 30% of the STAT 3 area) would not give rise to any unacceptable impacts in respect of “the development on the character and appearance of the area”. We refer above to Stonegate Homes v Horsham DC [2016] EWHC 2512, [80]-[84]. The Inspector’s reasoning on this issue is material in identifying that there is no basis for designation of important views in this location.
57. Accordingly, the appropriate modification would be to delete the View 8 from the list at ENV9 and both arrows from Figure 12.2.

## **Q10: Housing Needs Assessment**

58. We note that the Parish Council have sought to argue in response to Q10 that there is no residual requirement for development in Stathern.
59. That is said to be on the basis of a document entitled “Detailed Investigation into Rural Housing Need in Stathern, Leicestershire” document (January 2020).
60. We have addressed this in our Regulation 16 submission, paragraphs 87-88. We noted that this identified Blacksmith End as respondents’ preferred location for development after STAT 1 and ahead of STAT 2 (page 20-21, Section 7.8).
61. However we were not able to address the specific way in which the Parish Council have now addressed this in their clarification. We consider that the document indicates clear local support for development at Blacksmith End. However, it should not be read as a complete analysis of the full extent of housing needs.



62. The survey was conducted in November 2019 (i.e. pre-pandemic / lockdown). It is described as being valid until January 2025, but there is no evidential basis for this projection and it fails to reflect the dynamic nature of the position. It is therefore important to approach any statements as to need with caution.
63. The Study purports to have investigated the affordable and open market housing needs of the village. Yet, although based on a survey of all 321 households, it only achieved a response rate of 39%. The Examiner will be aware of the extent to which low responses can serve to mask the full picture of need.
64. The survey identified a need for 7 affordable homes for local people which, when combined with the 5 households on Melton Borough Council's housing register (no duplicates), totals a need for 12 affordable homes. This need comprises 10 affordable rented and 2 affordable home ownership). The requirement is mainly for 1 bed homes but there is also a requirement for 2 bed properties.
65. From the consultation responses, the requirement for open market housing is identified as a further 6 dwellings (Table 7, page 27, Appendix 5).
66. The Local Plan identifies a residual requirement for 71 dwellings at Stathern, and this identified need is addressed through the STAT1 and STAT2 allocations. The Parish Council's response to the NP Examiner's questions acknowledges an overall requirement for 18 dwellings, as identified in the rural housing need study, which has identified an additional requirement. There therefore remains a residual requirement, which explains why Policy H1 and H2 cannot proceed to referendum without modification, to reflect Policy SS2.
67. The housing need survey identified public support to accommodate the requirement at Blacksmith End. This reflects the public support the Parish Council identified in the early stages of preparing the Neighbourhood Plan. Around 70 people attended a Neighbourhood Plan "Drop In" meeting in the War Memorial Institute on 20/09/19. The Parish Council's summary of the event records a strong view that future residential development at Blacksmith End is preferred and would be acceptable (see Page 9, Appendix 6).
68. Blacksmith End performed well in comparison with the STAT1 and STAT2 Local Plan allocations, with 30 out of 48 of the green dots (63%) placed to indicate residents would be happy to see the reserve site allocation (STAT3) developed, compared with just 13 (27%) for STAT1. Of the 73 red dots placed to identify where local residents would not wish to see development, 26 dots (36%) were placed on STAT1 and just 8 (11%) on reserve site STAT3. This public support for development at Blacksmith End is not adequately reflected in the Neighbourhood Plan as drafted.

## **Q11: Melton Local Plan Policy C1(B), SS2, SS3 and Neighbourhood Plan Policies H1 and H2**

69. The Borough Council's response to Q11 raises a number of further issues, including a reference to new documentation.
70. The Borough Council have identified that NPPF 78 requires that new development ensures that villages can grow and thrive, particularly where this support local services.
71. The Borough Council have referred to their intention to publish a new guidance note on Policy SS3. They state, quite notably, that they are "still figuring out how to interpret this policy".
72. The Borough Council's position should explain their position now, rather than simply refer to future intentions.
73. We understand that the Planning Scrutiny Committee met on Tuesday 20 April 2021 and it was agreed that a Report would be issued by June 2021 which would address a range of matters including "*d) Policy SS3 (unallocated sites) and reserved sites*".
74. If the Borough Council are already undertaking this work, then they should explain their position publicly. Sending a neighbourhood plan to referendum, at a time when the Council acknowledge that there is a need for provision for local housing need, to comply with national planning policy, would not be consistent with basic conditions 8(2)(a), (d) and (e).
75. The correct route, as set out in our Regulation 16 submissions would be to delete Policy H1 and to ensure that Policy H2 permits development in locations adjacent to the settlement boundary - such as our client's land at Blacksmith End. In the alternative, that policy should be deleted.

## **Housing Land Supply**

76. We have noted the Parish Council's reliance on a purported 11.6 year supply (a jump from 7.7 years in 2019).

77. The Parish Council's reliance on this figure as a new matter in support of the Neighbourhood Plan's policies means that consultees have not been able to address this factor.
78. The Examiner will be aware that such housing land supply figures are dynamic and should be approached with caution as a snapshot in time. A particular level of HLS Borough-wide should not serve as a basis to fail to plan for further growth and flexibility at the individual settlement level.
79. The increase in the 5YHLS is partly explained by the 2019 HDT measurement result (100%) and application of a 5% buffer. The 2019 5YHLS calculation was based on a 20% buffer (a legacy of the 2018 HDT result which was 84%). The most recent 2020 HDT measurement was 141%. Despite the HDT result, the Council has only exceeded its annual requirement in the last two monitoring years (2018/19 and 2019/20). Given that the Neighbourhood Plan is not intended for review for a further 5 years, it would be entirely wrong to try to fix such matters now on the basis of Borough-wide supply.
80. Table 2 and the trajectory identify 2,452 dwellings with planning permission, although para 2.5.3 of the report states the figure is 2,704. Only the higher 2,704 figure forms part of the 5YHLS calculation (a potential difference of 252 dwellings).
81. The Council's Report provides no firm evidence that the allocations without permission (654 dwellings in total) are likely to come forward in the five year period (for example no written agreements or other robust, up to date evidence). The Council acknowledges that removing these dwellings from the calculation would reduce the 5YHLS figure. The Council has included 215 dwellings from outline planning permissions in the supply figure. Again, no evidence has been provided that these dwellings can be relied upon. Removing these dwellings would further reduce supply.
82. A lapse rate of 6.43% has been applied, based on an assessment of lapsed permissions between 2009/10 and 2016/17. The rate applied is lower than we have seen elsewhere – lapse rates of 10-15% are more commonly applied.
83. The fundamental point, and one recognised squarely by Inspector Forrett, is there is no cap in the development plan upon the number of houses that can be delivered in Service Centres such as Stathern. Policy SS2 therefore expressly supports development where it would comply with Policy SS3.
84. What is essential, however, is that Neighbourhood Plan policies are not introduced which seek to freeze further growth and which prevent sustainable development from coming forward.

## Q6: SEA and HRA Report

85. Finally, the Council's response to Question 6 adverts to a flaw in its supporting documentation, submitted at Regulation 16 stage.

### *Habitats Regulation Assessment*

86. Although the Report is said to be an HRA Screening Report it contains no reference at all to Regulations 61 and 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations").
87. As matters stand, the Neighbourhood Plan has not been subject to HRA screening – and the addition of HRA to the title of an SEA document after the event cannot cure this. A new document must be produced.

### *Strategic Environmental Assessment*

88. Second, it is said that the SEA Screening Report was prepared on 23 September 2020, but not updated thereafter although its text clearly states:

*"This is the first screening of the draft NDP. Screening exercise will also be undertaken of the submission document and comments will be invited from the statutory consultation bodies on the conclusions contained in the final report."*

89. There is no record of this decision having been made. The Borough Council have simply said that they chose not to undertake it because the changes were not significant.
90. Screening is not a process that should be carried out in an un-documented manner. Again, the correct action would be to produce a new document, which correctly assesses the submitted plan.

## Conclusion

91. In summary, we respectfully request that the Examiner make the following procedural directions:

- 1) The Council should provide an explanation of the statutory basis and all relevant factual background to the publication of the 11 March 2021 Version of the Melton Local Plan, including (if applicable) confirmation that it will be withdrawn from consideration (having been issued without any lawful statutory power);
  - 2) All previous consultees should be allowed the right to respond to the Council's statement, following its explanation;
  - 3) Our client should be allowed to provide further written submissions on the High Court claim, following the deadline for Acknowledgements of Service on 28 April 2021;
  - 4) Further submissions to be provided on receipt of any decision by the High Court to grant/refuse permission for that claim to proceed;
  - 5) The Parish Council should provide an updated version of the Plan for ENV9 to reflect its acceptance that the Neighbourhood Plan Policy C1(B) must be reflected in Policy H1;
  - 6) The Borough Council should explain the reference to a further Local Housing Need Guidance Note and the intended timescale for publication;
  - 7) The Borough Council should provide an up-to-date SEA Screening Report and Habitats Regulations Assessment document.
92. We consider that a hearing would be merited, pursuant to paragraph 9 of Schedule 4B to allow our client a fair opportunity to put its case, and to address the various legal and policy issues identified above.

Yours sincerely

**Richard Cooke** Associate Director

Cc.

Melton Borough Council

Stathern Parish Council

Encs:

Appendix 1 – Published Version of the Melton Local Plan

Appendix 2 – Local Plan Adoption Statement

Appendix 3 – Officer Report for 19/01193/OUT (23.01.20)

Appendix 4 – R(Stonegate Homes) v Horsham DC [2016] EWHC 2512 (Admin)

Appendix 5 – Detailed Investigation into Rural Housing Need in Stathern,  
Leicestershire (Jan 2020) Appendix 6 – Stathern Neighbourhood Plan Consultation  
Summary (20 Sept 2019)

23 April 2021

John Slater Planning Limited

By email:

Stathern Neighbourhood Plan – Response to Examiner’s Initial Comments from the Parish Council on 13 April 2021

Dear Mr Slater

Apologies if the procedure does not provide for this, but I hope it is helpful to set out below a response to the comments made by the Parish Council on my Regulation 16 Response, which formed part of the Response to Examiner’s Initial Comments from the Parish Council of 13 April 2021.

For ease of reference, I have set out below the Parish Council’s comments in italics and then my response to these in emboldened font.

*“With specific reference to the land and redundant barns in Mr Bell’s ownership, MBC Planning Committee voted unanimously to refuse the recent planning application and Mr Bell has appealed that decision with the Secretary of State. SS2 does not give blanket permission for ‘new housing development within and adjoining the Service Centres’. It is permissive of sites allocated within and adjoining the Service Centres and then goes on to encourage ‘small scale residential ‘windfall’ development’ separately.”*

I agree and I did not propose that SS2 gives “blanket permission” of any kind. My point, which the

Parish Council overlooks, is that imposing a Limits for Development boundary is incompatible with Policy SS2 of the Local Plan, which allows development “adjoining” the Service Centres. Not allowing development outside a Limits for Development would rob the policy wording “adjoining” of any meaning. To ensure consistency with Policy SS2 of the Local Plan, Policy H1 of the draft Neighbourhood



Plan must be supportive of development proposals within and on the edge of the Limits for Development.

*“Part (b) of Policy H2 is entirely in line with Melton Local Plan policies SS1 and SS2. Policy SS2 Development Strategy meets the wider needs of the borough, specifically by using a proportionate approach for the different settlements, as supported by detailed calculations to define the amount of new housing required in each Service Centre and Rural Hub.”*

No further comment.

*“Regarding the statement that the barns should be included in the Limits to Development, we refer to the MBC planning committee minutes (14.12.2020) explaining their refusal of Mr Bell’s current planning application: “The introduction of residential development that would occupy a detached location outside of the built-up confines of Stathern. The site is adjacent to the Conservation Area and contributes to the rural setting of the village of which the introduction of residential development and associated paraphernalia, by virtue of its scale, form and mass, would disrupt. As such, the proposal would have adverse impacts upon the character of the local area, wider landscape and Conservation Area. For these reasons, the proposal is considered to conflict 4 of 18 Responder Response with Policies EN1, EN6 and EN13 of the Melton Local Plan and as such would not represent a form of suitable windfall residential development as stated in Policies SS1 and SS2 of the Melton Local Plan.” In addition, a previous application appeal to the Secretary of State for the same site was dismissed in 2017: “The [two] dwellings proposed would make only a small contribution to housing supply and the local social and economic benefits derived would similarly be relatively limited. These benefits would be significantly and demonstrably outweighed by the environmental harm found in respect of the character and appearance of the area.””*

With respect to the Parish Council, quoting from the minutes of the Planning Committee Meeting does not address the point made in my Regulation 16 Response, which was that the Council’s ‘Areas of Separation, Settlement Fringe Sensitivity and Local Green Space Study’ (the “Study”) includes the barns within the settlement of Stathern. A copy of the relevant map was provided as Appendix 2 to my Regulation 16 Response and is replicated below. To expand on this point further:

1. The Study was commissioned by Melton Borough Council in 2015 and forms part of the evidence base for the adopted Melton Local Plan. The report was intended to inform the direction of growth and landscape and open space protection within the Borough. Towards this aim, the report carried out a number of reviews and assessments and made a number of recommendations.
2. The landscape analysis for Stathern is included on pages 192 – 202 of the Study.

3. Under the heading 'Landscape classification for the settlement fringe' the Study explains that "Based on GIS analysis and field survey, the following local landscape classification has been defined as a basis for the settlement fringe landscape sensitivity analysis for Stathern, having taken account of the work in 2006 and 2014 landscape studies."
4. Four 'Landscape Character Zones' (LCZs) are identified for the land surrounding the village of Stathern and these are shown visually on the plan on page 192 of the Study. Significantly, the barns (circled red in the map below) are not shown to be within the settlement fringe landscape but within the area shaded white which denotes the built confines of the settlement. Whilst the land surrounding the barns is within Landscape Character Zone 2 (LCZ 2), the barns themselves are not within this landscape zone.
5. At no point within the Committee report or during Members debate of the application at the Planning Committee meeting was this fact cited. It was not therefore taken into consideration by the Committee when reaching the decision from which the Parish Council have quoted.
6. With regard to the overall landscape sensitivity for LCZ 2 (Stathern North), the Study explains that the: - "Overall landscape sensitivity of this LCZ fringe to residential development is medium to low, due to the generally expansive nature of the landscape with few vulnerable features and a poorly integrated settlement edge, although areas of original vernacular settlement edge would be more sensitive by virtue of their intactness. The field pattern to the east of Blacksmith End is more intact along the road edge, with a medium scale in comparison to the large scale landscape to the west. Rising topography to the east, combined with woodland plantation provides containment of the settlement, with undeveloped skyline. Views to the west are expansive, with occasional landmark features such as church spires glimpsed breaking the skyline. This LCZ has a relatively low level of tranquillity and eroded landscape pattern which is influenced by the built edge."
7. The Inspector in the recent appeal decision concerning the adjoining site (APP/Y2430/W/20/3248878) observed with reference to this Study that "some development in the area is possible."
8. By contrast, the land on the opposite side of Tofts Hill (to the south) where the two new dwellings have / are being built is within LCZ 3 (Stathern Southeast) where the overall landscape sensitivity is deemed to be high.
9. In conclusion, it is important to reiterate that the barns are shown to be within the settlement and not the settlement fringe for the purposes of the Study.
10. Consequently, it is respectfully submitted that the proposed Limits for Development boundary depicted in Figure 2 to the draft Neighbourhood Plan should include, not exclude, the Barns in order to replicate the boundary shown in the Study and to comply with Appendix 1 of the Melton Local Plan.
11. This is consistent with the report to the Planning Committee of 27 February 2020 in relation to application 19/00741/FUL which recognised that the barns

are within the existing pattern of development. In his report, the Assistant Director of Strategic Planning and Delivery stated that:

“The application site lies on the eastern side of the village and as such, on the side of the village which does indeed lie at the very foot, of part of the aforementioned escarpment ... 2 of the houses proposed would be further up the slope than the existing properties on the same side of Toft’s Hill but would project no further up Toft’s Hill than the existing agricultural barn adjoining the site. Existing development on the opposite side of Toft’s Hill extends further up the slope before giving way to the cemetery. As such it would not represent a continuation of the pattern of development warned against.”

The reference to the “existing agricultural barn” is to the Barns and makes it clear that the LPA considers the Barns to fall within the existing pattern of development.

Please do not hesitate to contact me if you need any further information.

Yours sincerely

Adrian Bell

