



The Planning Inspectorate

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# **Report to South Derbyshire District Council**

**by A J Mageean BA (Hons) BPI PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 29 June 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

## **Report on the Examination of the South Derbyshire Local Green Spaces Plan**

The Plan was submitted for examination on 24 May 2019

The examination hearing was held on 12 September 2019

File Ref: PINS/F1040/429/3

## **Abbreviations used in this report**

CA	Conservation Area
HRSR	Habitat Regulations Screening Report
LP-P1	Local Plan Part 1
LP-P2	Local Plan Part 2
LGS	Local Green Space
MM	Main Modification
NDP	Neighbourhood Development Plan
NPPF	National Planning Policy Framework
PPG	Planning Practice Guidance
SAC	Special Area of Conservation
SDLGSP	South Derbyshire Local Green Spaces Plan

## **Non-Technical Summary**

This report concludes that the South Derbyshire Local Green Spaces Plan (SDLGSP) provides an appropriate basis for the planning of Local Green Spaces in the District, provided that a number of main modifications [MMs] are made to it. South Derbyshire District Council has specifically requested that I recommend any MMs necessary to enable the Plan to be adopted.

All the MMs were subject to public consultation over a six-week period from 4 February to 17 March 2020. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Amendments to Policy LGS1 and supporting text to ensure that the policy is effective and consistent with the adopted Part 2 Local Plan; and
- Deletion of proposed Local Green Space sites 84 (The Bowling Green, Castle Street, Melbourne) and 144 (Kings Mill Lane, adjoining Primary school, Weston on Trent) to ensure that the plan is justified and consistent with national policy.

The Report also identifies where the geographic illustration of sites is not justified or consistent with national planning policy, and it will be necessary for the Council to make consequential changes to the policies map to ensure that the SDLGSP is effective.

## Introduction

1. This report contains my assessment of the Proposed Submission Local Green Spaces Plan (SDLGSP) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework 2019 (NPPF) paragraph 35 makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The SDLGSP which was submitted in May 2019 is the basis for my examination. It is the same document that was published for consultation in February 2019.

## Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. My report explains why the recommended MMs, all of which relate to matters that were discussed at the examination hearing or were set out in my post-hearing correspondence with the Council, are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the accompanying Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out a sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to my conclusions in this report.

## Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted plan. In this case, the submission policies map comprises the set of plans identified as Local Green Spaces (LGS) Maps as set out in The Proposed Submission Local Green Spaces Plan.
6. The policies map is not defined in statute as a part of the development plan document and so I do not have the power to recommend main modifications to it. However, a number of the proposed MMs require consequential changes to the policies map. This includes the deletion of sites 84 (The Bowling Green, Castle Street, Melbourne) and 144 (Kings Mill Lane, adjoining Primary school, Weston on Trent). There are also instances where the geographic illustration of the Local Green Spaces is not justified or consistent with national planning policy, and amendments are required to ensure that the Plan is effective and justified. Examples include the amendment of site boundaries at sites 2 (Aston Drive, Midway), 5 (Springwood Farm Road, Midway), 93 (East of High Street and

south of Askew Grove, Repton) ,116 (East of The Hayes, Findern) and 159 (Walton Playing Field, Walton on Trent).

7. Changes to the submission policies maps were published for consultation alongside the main modifications and given 'MM' references. However, because the changes to individual maps are not defined as main modifications, I have removed them from the schedule in the Appendix to this report. When the SDLGSP is adopted, in order to comply with the legislation and give effect to its policies, the Council will need to update the adopted policies map to include all the proposed changes discussed throughout the remainder of this report.

## **Assessment of Duty to Co-operate**

8. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council has complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
9. For a number of years South Derbyshire District Council has worked in partnership with other local planning authorities and partnership organisations when producing local planning documents. The SDLGSP seeks to implement the LGS policies set out in the Local Plan Part 2 (LP-P2), which in turn was prepared in the context of the strategic policies set out in the Local Plan Part 1 (LP-P1). These Plans were prepared in accordance with the Duty to Cooperate, whereby strategic matters have already been considered within the Local Plan. Nonetheless the Council has set out its continuing collaborative approach within the Consultation Statement May 2019 and supporting documents, including a Duty to Cooperate Statement. These show appropriate engagement with the necessary local planning authorities and various prescribed bodies.
10. I therefore conclude that, where necessary, the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the duty to co-operate has therefore been met.

## **Assessment of Soundness**

### **Background**

11. The process for identifying LGS was set out in the LP-P2 which was adopted in November 2017. However, whilst there was local interest and support for LGS and a range of sites were identified, in many cases the evidence base to support their designation was insufficient. LP-P2 Policy BNE8 therefore set out that designations should be made through this separate Development Plan Document, and through Neighbourhood Development Plans. The preparation of the SDLGSP was therefore progressed separately, focusing on the development of criteria for the designation of LGS sites, and on providing evidence on sites potentially suitable for designation.

### **Main Issues**

12. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearing, I have identified three main issues upon which the soundness of this Plan depends. This report deals with these main issues. It does not respond to every point or issue raised by

representors. Nor does it refer to every policy, policy criterion or allocation in the Plan.

### **Issue 1 – Whether Policy LGS1 is consistent with the adopted development plan and is effective?**

13. Regulation 8(4) of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) requires the submitted Plan to be consistent with the adopted development plan. As identified above, the SDLGSP is intended to set out the specific land use designations referred to in Policy BNE8 of the LP-P2.
14. However, as submitted the SDLGSP fails to clearly articulate its relationship with the relevant policy in the LP-P2. **MM1** is therefore necessary to address this issue by clarifying the direct relationship between Policy LGS1 and Policy BNE8. Subject to this MM I conclude that the SDLGSP will be consistent with the adopted development plan and effective in this regard.

### **Issue 2 – Whether the assessment criteria and process of identifying Local Green Spaces was justified and consistent with national planning policy**

15. Paragraph 100 of the NPPF states that Local Green Space designations should only be used where the green space is in reasonably close proximity to the community it serves; is demonstrably special to a local community and holds a particular local significance; and, is local in character and not an extensive tract of land. The Planning Practice Guidance (PPG) advises that whether to designate land is a matter for local discretion, but that the area will need to meet the criteria set out in the NPPF<sup>1</sup>.
16. In this case the assessment of potential sites for designation was carried out as a two-stage process. Potential LGS sites were identified by a combination of officer recommendations and community nominations. The Stage 1 assessment provided a broad sift of sites based on the criteria in the Framework. The Stage 2 assessment involved more detailed site appraisals, including exploring how the sites met the criteria of being demonstrably special to a local community and holding a particular local significance. This methodology was subject to public consultation in line with the Statement of Community Involvement. The assessment criteria are considered below.

#### *Site longevity*

17. The Council's Stage 1 assessment requires that LGS should be capable of enduring beyond the plan period. This is consistent with NPPF paragraph 99. The Council has therefore excluded sites that are allocated for development in LP-P1 or LP-P2. This is justified and appropriate because the land has been identified for another use. Similarly, the longevity of a site as LGS will be influenced by security of tenure. The exclusion of sites where short-term tenancy issues means that there is uncertainty about their future use is also justified.

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<sup>1</sup> Paragraph: ID: 37-013-20140306

### *Site size*

18. LGS designations should not relate to extensive tracts of land, though the PPG acknowledges that a degree of judgement will inevitably be needed<sup>2</sup>. In seeking to interpret the NPPF, the Council's Stage 1 assessment sets a threshold of 5 hectares, above which sites may constitute an extensive tract of land. It also recognises that this will be dependent on local circumstances. I am satisfied that, in doing so, the Council has assessed sites on a consistent and transparent basis, whilst allowing for local circumstances to be taken into account.

### *Presence of other designations*

19. The PPG sets out that where land is already protected by other designations, such as the Green Belt or a conservation area (CA), consideration should be given to whether any additional local benefit could be gained by designation as LGS<sup>3</sup>. The Stage 1 assessment criterion relating to existing policy protection (paragraph 2.7) reflects this point. It sets out that, where existing policy protection exists, LGS designation will only be considered where it can be demonstrated that additional and substantive local benefits can be secured.
20. More specifically, paragraph 2.7 recognises that local sports facilities are already offered a level of protection through LP-P2 Policy INF9. This Policy does allow for the loss of open spaces in exceptional circumstances subject to replacement facilities being provided. However, in some cases the nature and location of a site may be of particular local value, such as those associated with local schools or community groups. In these circumstances, re-located facilities may not have the same or equivalent community benefits. For effectiveness, this is made clear by **MM2**. As consulted upon, the schedule of recommended MMs stated that the deleted text in MM2 would be moved to Section 2 of the Plan. However, this is not necessary for soundness. MM2 therefore deletes text from paragraph 3.3 only.
21. The Council does allow for LGS designations to be made within CAs. This is on the basis that policy provisions for CAs could allow development, provided that it accords with the requirement that the character or appearance of the area is preserved or enhanced. As such, CA status alone may not offer adequate protection against the loss of an open space, particularly where its contribution to the character and appearance of the conservation area is not considered to be significant. Therefore, some sites located within CAs may have particular local value as LGS that justifies their inclusion. Therefore, with the MM identified, this assessment criterion is appropriate and justified.

### *Site access*

22. The PPG states that land could be considered for designation as LGS even if there is no public access<sup>4</sup>. Nonetheless, such land should have some local value in terms of wildlife, historic significance and/or beauty. In seeking to clarify the local interpretation of this guidance, the Stage 1 assessment criteria has

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<sup>2</sup> Paragraph ID: 37-015-20143060

<sup>3</sup> Paragraph ID: 37-010-20143060

<sup>4</sup> Paragraph ID: 37-017-20143060

excluded private residential land, gardens, paddocks and stables. Whilst this criterion appears more tightly framed than the PPG guidance relating to access, the guidance does recognise that whether to designate land as LGS is a matter for local discretion.

23. On this particular point, evidence gathered by the Council during the consultation indicates that, overall, such areas are not considered to be valued community spaces. Local views on the contribution and value of particular privately-owned sites may vary. However, excluding private residential land, paddocks and stables also ensures that designated sites are capable of enduring beyond the plan period and removes potential tensions between private property rights and wider community interests. Furthermore, where such spaces are of value in other regards, such as for their wildlife and conservation interests, other policy provisions are likely to be more appropriate. The assessment criterion is therefore appropriate and justified in this particular instance.

*Demonstrably special*

24. NPPF paragraph 100b) confirms that LGS designations should only be used where the identified or nominated sites are 'demonstrably special' to the local community and hold a particular local significance. This was considered as part of the Stage 2 assessment, once the Stage 1 sift had taken place. In this regard the evidence gathered from over the various rounds of consultation has been collated and is set out within the Sustainability Appraisal Technical Appendices. This includes evidence gained from the Local Green Spaces Topic Paper prepared in 2015 as part of the LP-P2 preparation, and the ensuing rounds of community engagement relating to the SDLGSP. I consider that the evidence relating to individual sites is sufficiently detailed and proportionate and that clear reasons have been given for why each site was proposed for designation.

*Conclusion*

25. Subject to the MM identified, I conclude that the assessment criteria used and the process for the identification of LGS was justified and consistent with national planning policy.

**Issue 3 – Whether the proposed Local Green Spaces are justified, effective and consistent with national planning policy.**

*Sites with short term lease arrangements*

26. During the examination evidence relating to the short-term nature of leasehold arrangements affecting Site 84 the Bowling Green, Castle Street in Melbourne and site 144 Kings Mill Lane in Weston on Trent was provided. These sites would be unlikely to endure beyond the Plan period and so their longevity as LGS at the present time is uncertain. Therefore, their designation is not justified or consistent with national planning policy and they are deleted by **MM3** and **MM4**.

*Sites including private paddock and garden areas*

27. Site 116 (land to the east of The Hayes, Findern) includes a small area of private garden land. As submitted, the geographic illustration of the site is not justified as it does not reflect the Council's assessment criteria, nor would it be effective.



In order to ensure that the Plan is sound, an amendment to the policies map is therefore required in this location. For the same reasons similar amendments are required to remove a number of front gardens from site 2 (Aston Drive) and site 5 (Springwood Farm Road), both in Midway.

28. Additionally, modifications to site 149 Catherine Jonathan Playing Field in Egginton and 159 Walton Playing Field in Walton on Trent are required to remove an inaccessible area of privately owned land and part of a school playing field, both of which appear to have been included as cartographical errors. In order to be effective, the policies map should be amended to remove the land relating to these sites as illustrated on the Maps accompanying the MM consultation.

*Site 93: East of High Street and South of Askew Grove, Repton*

29. This elongated site is centrally located within the village of Repton and accessed by a number of footpaths. A representation from the landowner indicates that the northern segment is a private paddock, a position which was confirmed by the Council during the examination. The current boundary is therefore not justified as it is contrary to the Council's criterion relating to private paddocks. This segment should therefore be excluded from site 93 in order to ensure that the geographical illustration of the LGS is justified. The amendment is illustrated on the Map accompanying the MM consultation.
30. The whole site, including the northern segment, has been designated as LGS within the Repton Neighbourhood Development Plan (NDP), which was made in January 2020. The Repton NDP designates the same LGS's within this village as are proposed in the SDLGSP, though it does not appear that the designation criteria have been developed in parallel with the Council's methodology. This suggests that a more generalised approach following national policy and guidance has been adopted.
31. The NDP refers to the whole of site 93 as being a rural space in the heart of the village. I do not disagree with this assessment, though noted on my site visit that the northern segment, whilst bordered by one of the main footpaths, is clearly fenced off and separate from the main open area adjacent to Repton Brook. For the reasons given above I have already concluded that the Council's assessment criterion excluding private paddocks is appropriate and justified. In order to ensure that the geographic illustration of the LGS is justified (insofar as it reflects the Council's designation criteria) and is effective, the proposed change to the site boundary to exclude the paddock is necessary for the purpose of this examination.

*Conclusion*

32. Subject to the recommended main modifications, and the changes to the geographic illustration of the LGS discussed above, I conclude that the LGS are justified, effective and consistent with national planning policy.

## **Assessment of Legal Compliance**

33. My examination of the legal compliance of the Plan is summarised below.

34. The SDLGSP has been prepared in accordance with the Council's Local Development Scheme. Consultation on the SDLGSP and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
35. A Sustainability Appraisal has been carried out and is adequate.
36. The Habitats Regulations Screening Report (HRSR) February 2019 identifies the River Mease Special Area of Conservation (SAC) as having the potential (due to proximity) to be affected by development within the plan area. One proposed LGS site, site 168, Linton Orchard in Linton, is within the catchment of the River Mease. The HRSR concludes that the SDLGSP policies, both in themselves and in combination with other plans, strategies and programmes, will not have an adverse effect on this site. On this basis, an appropriate assessment is not necessary.
37. The SDLGSP includes policies designed to ensure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change. For example, Policy LGS1 refers to the fact that proposals on LGS should demonstrate consideration of how they will protect, restore and enhance biodiversity.
38. The SDLGSP complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.
39. I have had due regard to the aims expressed in S149(1) of the Equality Act 2010.

## **Overall Conclusion and Recommendation**

40. The Plan has a number of deficiencies in respect of soundness for the reasons set out above, which mean that I recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explored in the main issues set out above.
41. The Council has requested that I recommend MMs to make the Plan sound and capable of adoption. I conclude that, with the recommended main modifications set out in the accompanying Appendix, the South Derbyshire Local Green Spaces Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.

*AJ Mageean*

INSPECTOR

This report is accompanied by an Appendix containing the Main Modifications.