

Our Ref: F205443

14th July 2020

Neighbourhood Planning
Milton Keynes Council
Civic Offices
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Dear Sir/Madam,

Representations On The Castlethorpe Neighbourhood Plan 2020-31 Submission Plan (As Modified April 2020) Regarding The Designation Of Gobbey's Field As A Local Green Space Under Policy CAS8

We write on behalf of Keynes Investments Ltd, and wish to raise an **OBJECTION** to the proposed designation of Gobbey's Field as a Local Green Space (LGS) in the Castlethorpe Neighbourhood Plan 2020-31 Submission Plan (As Modified April 2020).

We previously made representations objecting to the inclusion of the site as LGS in the Draft Plan in March 2020, requesting its removal. However, as the Parish Council have now included the site in the Submission version of the plan, we wish to object in the strongest terms, and to make representations in response to the Parish Council comments about the designation of the site in their "Modifications to Castlethorpe Neighbourhood Plan 2020 Consultation Statement".

Our previous objections remain valid and are reproduced in Annex A – the content of the objections remains robust and relevant to the consideration of this site.

The following updates these objections in the context and with the benefit of the Parish Council response to our submissions:

Response To The Parish Councils Comments In The Consultation Statement

We are disappointed that the Parish Council has largely repeated the comments originally made in the Draft Plan in the Submission version, rather than attempting to address the points we raised in the previous consultation.

The Parish Council state that the original Plan Inspector considered:

“...that because the village is not identified for development, the need to protect it from development by designating it as an LGS was not justified. This is an incorrect statement because, if NPPF para 11d footnote 7 is engaged, then, unless all conditions in para 14 are fulfilled, there would be a presumption in favour of sustainable development as has happened in nearby Hanslope. This is the reason that the parish council has sought designation to protect this green space in perpetuity.”

(Paragraph 1.1)

The Parish Council are inferring that this is an attempt to protect the land on the basis of preventing future development rather than attempting to designate a piece of land which is worthy of the LGS status. This is entirely at odds with the objectives of the NPPF which requires land to only be designated as LGS where it is worthy of such protection. The Planning Practice Guidance makes clear that LGS designation *“should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name.”* It has already been confirmed by two Examiners that the land is not worthy of the LGS designation.

The Parish Council state:

“As Modifications were being made to the Plan, it was decided to review the LGS status of Gobbey’s. A resident offered the Parish Council summary data of usage from his security CCTV which faces the field and incidentally records activity in the field. It should be stressed that the video is at a distance where no individuals can be identified so there is no breach of GDPR. The relevant guidance is “Where the image is of a crowd and does not focus on one individual or a group of individuals, it is unlikely to be personal data as the individuals will not be identifiable. Data protection law will not therefore apply.” In any case, only the people count and type of use of the field has been made available to the Parish Council in the form of Excel tables which will be submitted in a separate document. The tables show that there is significant usage of

the whole field, about half of recorded usages being outside the public right of way, the path, and therefore the Parish Council decided to submit Gobbey's Field for designation as an LGS this time with robust empirical evidence."

(Paragraph 1.3)

Leaving aside the GDPR issue, which is not a planning matter, the Parish Council appear to be stating that they do not have a copy of the video survey, only the data that has been taken from these videos by the resident. They do not therefore have the primary source of this evidence, nor does there appear to be any attempt to validate the data or make it available for scrutiny. This is not an appropriate foundation for the Council to advocate a position on this land. At present, we are being asked to consider the proposals on the basis we have no access to the primary data, no recognised methodology to the assessment and no agreed or independently validated definition by which to assess the footage; what we have is a member of the public's interpretation.

Furthermore, the Parish Council state that the video is at a distance where people's faces cannot be identified. If the video is not clear enough to see people's faces then it is probably unlikely to be clear enough to properly see what they are doing. With all due respect the data which is relied upon has significant flaws in both its collection and analysis. It is certainly not "*robust empirical evidence*" as the Parish Council claim. It is as vague and ambiguous as the data submitted under the previous two examinations which were dismissed by the Examiners.

This CCTV survey is not in the public domain so it cannot be scrutinised. Annexe B of the Submission Plan states that the raw data has been provided in a separate document titled Observations Summary. However, we must raise a concern that the LGS Evidence Report which contains the Observations Summary and forms part of the evidence base for the Neighbourhood Plan Modification, and is cross referred to in the justification statements, was only placed in the public domain on the 7th July 2020, after we had been unable to identify it and requested a copy from Milton Keynes Council. It is our contention this document forms part of the submission required under Regulation 15 of The Neighbourhood Planning (General) Regulations 2012 (as amended). Therefore, we would question whether or not the consultation follows the prescribed period in Regulation 16(a)(v), having only been available for 10 days prior to the end of the consultation period.

In respect of the response, the Parish Council have attempted to respond to our concerns about a potential breach of GDPR as a result of the Video Survey by stating that it was filmed at a distance where people's faces cannot be recognised. Whilst GDPR is not a planning matter, reflecting upon data that refers to individuals without proper scrutiny could be seen as breach of the legislation. The Council have not responded adequately to this point so we will leave it to the relevant authorities to decide if there has been a breach.

The Parish Council states in Paragraph 2 that the field includes a SAM and has a rich ecology. It is acknowledged that the site includes part of a Scheduled Ancient Monument (SAM). However, this only covers a small area in the north western corner of the site and the Independent Examiner appointed by Milton Keynes Council confirmed that the remainder of the site does not have any historic significance. The biodiversity value of the land does not elevate it above the commonplace and it does not benefit from any special ecological designations. It is therefore incorrect to describe the sites ecology as "rich."

The Parish Council state that:

"The main thrust of the Parish Council's position is that the whole of Gobbey's Field has been used for recreational purposes for many decades and continues to be extensively used today as evidenced by the CCTV counts."

The two previous Examiners did not consider that the land has significant recreational value. The land has been in agricultural use for over forty years and there are no formal recreational facilities such as sports pitches or benches, nor supporting paraphernalia such as dog waste bins. It is simply a field with a public right of way running over part of it. This does not give the land special character or significance.

As detailed in our comments above, the "Video Survey" has no clear independence or objectivity, with no agreed methodology to the gathering of the survey data. These comments were made in our representations on the Draft Plan in March 2020 but have not been addressed by the Parish Council. There are also serious concerns about its legality. The main thrust of the Parish Council's position is therefore flawed.

The Parish Council state that Shepperton Close provides easy access to the site. However, Gobbey's Field can only be formerly accessed via the public right of way. There are no formal rights of access from Shepperton Close or Prospect Close.

The Parish Council argue at Paragraph 3 that *“there is precedent in other ‘made’ NPs for larger areas to be designated.”*

As discussed extensively in our representations for the Draft Plan which are resubmitted in Annex A, there were very special reasons for larger sites being designated in other Neighbourhood Plans which this site does not benefit from. The size of these other sites is not therefore relevant in assessing the suitability of designating Gobbey’s Field as Local Green Space.

As acknowledged by the Parish Council at Paragraph 4, it is not a requirement of the NPPF for a parcel of land to be significantly different to other parcels of land in order to be designated as LGS. Nevertheless, the field is not significantly different to other fields surrounding the village. There are public rights of way across many of the fields surrounding the village, and activities such as dog walking and informal recreation can just as easily be carried out on the other fields. Whether the land has been used for arable farming or not is not relevant, and as confirmed by the two previous Examiners the land does not have significant recreational value.

Section 2 of the LGS Evidence Report, April 2020 contains a list of sites which have been designated as LGS in adopted Neighbourhood Plans. The report states that this list has been provided to demonstrate that the size of Gobbey’s Field is “not excessive” for designation as LGS.

The NPPF and Planning Practice Guidance do not define *“extensive tract of land”* because as set out in the Planning Practice Guidance *“There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed”* (Planning Practice Guidance - Open space, sports and recreation facilities, public rights of way and local green space, Paragraph: 015 Reference ID: 37-015-20140306)

The Planning Practice Guidance does however make it clear that *“Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently, blanket designation of open countryside adjacent to settlements will not be appropriate.”* (Planning Practice Guidance - Open space, sports and recreation facilities, public rights of way and local green space, Paragraph: 015 Reference ID: 37-015-20140306)

In the case of Gobbey's Field, the Independent Examiner appointed by Milton Keynes Council considered the site to be an extensive piece of land because it is "*a large parcel of agricultural land*" and its designation would "*amount to a blanket designation of open countryside adjacent to settlement which would be contrary to national planning guidance*" (Report To MK Council, June 2017, paragraph 3.40).

It was therefore logical for the Examiner to reach the conclusion that Gobbey's Field is an extensive tract of land. It is also perfectly logical for larger sites to not be considered as extensive tracts of land depending on their own characteristics. For example, the 19 ha site known as Bersted Brooks Nature Reserve given as an example by the Parish Council was not considered to be extensive because that is the size the nature reserve happens to be and it was all considered to be worthy of a LGS designation.

The example sites listed by the Parish Council were not designated as LGS on the basis of their size. They were all designated because they were considered to be in reasonably close proximity to the community they serve, demonstrably special to a local community, and local in character and not an extensive piece of land. Two previous Examiners have already confirmed that Gobbey's Field fails the final two of these tests.

Conclusion

On behalf of our client, Keynes Investment Ltd, we strongly object to the proposed designation of the land known as Gobbey's Field, Castlethorpe as Local Green Space because it fails parts b and c of NPPF Paragraph 100 as confirmed by the original plan Examiner in July 2016, and the independent Examiner appointed by Milton Keynes Council in June 2017. As we have robustly demonstrated above, no substantive evidence has been provided to demonstrate that these decisions should now be reversed.

An attempt to proceed with the designation will fail to meet to the basic conditions as set out in Paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended), as the plan does not have regard to national policies and advice contained in guidance issued by the Secretary of State.

We kindly request our objection is given due consideration, and the designation of Gobbey's Fields is withdrawn from the Submission version of the Neighbourhood Plan.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Frazer Hickling', written in a cursive style.

Frazer Hickling

Director

PHILLIPS PLANNING SERVICES

Enc.

Annexe A - Previous Representations at Draft Plan Stage – Page 8

Annex A - Previous Representations at Draft Plan Stage

Representations On The Sites Designation In The Neighbourhood Plan

The designation of the land as LGS was considered by the Examiner for the original Neighbourhood Plan in 2016, and again in 2017 by an Independent Examiner appointed by Milton Keynes Council. Both Examiners considered that the land was not suitable for allocation as LGS because it failed to meet the criteria of parts b and c of NPPF Paragraph 77. NPPF Paragraph 77 has now been replaced by NPPF Paragraph 100 in the updated Framework but the wording of the policy is almost identical.

It is our contention that nothing has changed since these decisions were made and there is no change in circumstances to now justify the designation of the land as LGS. We have set out our response to the points raised in Annex B - Local Green Spaces Study below.

1. Evidence that the Field is demonstrably special to the community, and that it holds a particular local significance

Historical Significance

The Draft Plan states that:

“The Field’s special character and particular local significance derives from the northern section of the Field containing part of the most important Heritage Asset, the Scheduled Ancient Monument (SAM Historic England registration 1011299), Castlethorpe Castle....”

The Scheduled Ancient Monument (SAM) only covers a small area of the north western corner of the site. This does not justify the entire land being designated as LGS on the grounds of historic significance. This has already been confirmed by the Independent Examiner appointed by Milton Keynes Council who stated that:

“Other than a small area at the northern corner of the field which forms part of the historic fishponds area, there is no evidence of any historical significance.”

(Report To MK Council, June 2017, paragraph 3.34)

There has been no material change in the evidence base since the site was last assessed which would justify an alternative conclusion.

It is also important to note that the SAM designation already provides the relevant part of the land with statutory protection so it is not necessary to designate it as LGS for this purpose.

Use Of The Land

The Draft Plan states that:

“Its special character and significance is further defined by regular, unhindered use as a recreational and leisure facility by villagers for at least 50 years.”

The two previous Examiners did not consider that the use of the land gave it special character and significance. The land has been in agricultural use for over forty years and there are no formal recreational facilities such as sports pitches or benches, nor supporting paraphernalia like dog waste bins. It is simply a field with a public right of way running over part of it. This does not give the land special character or significance, and the public right of way will continue to exist without the need to designate the land as LGS.

Ecology

Table A (Protected Species Sightings) lists some sightings of protected species on the site which are listed on the Biological Records Centre database.

It is recognised that all places have some form of ecological value. The existing biodiversity value of the land is noted but this does not elevate it above the commonplace. The site is not of primary ecological importance and does not benefit from any special ecological designations such as a Site Of Special Scientific Interest (SSSI) or a County Wildlife Site (CWS). Therefore, the ecological value of the land is not remotely sufficient to designate it as LGS.

2. Empirical evidence of its amenity value and usage by the community and that its usage is not, in general, restricted to the public right of way.

The Draft Plan states that data has been analysed from a residents security camera which captured footage of the lower 2.2ha of the field during part of 19 days between April and August 2019.

Firstly, before considering the evidence as presented, we must raise serious concerns over the evidence being presented as pertaining to a “Video Survey” from a domestic installation.

Guidance from the Information Commissioners Office (ICO) states that the use of CCTV must comply with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA), and information from CCTV must not be *“used for any other purpose than protecting your property.”* The fact information from the camera was used in this “Video Survey” of a public footpath on private land demonstrates that the camera has not been used for its intended purpose, and furthermore it is stated that the imagery captured, is being used as part of the evidence base. It is imperative that the Parish Council as a relevant authority has taken due diligence in considering the use and content of the CCTV footage provided by an individual member of the public, and confirms in writing as part of this process that the “Video Survey” was undertaken in accordance with the GDPR and DPA and that those in the video have given consent for their data to be used in this manner? Failure to do so will be referred to the ICO.

Secondly, in respect of the statements regarding this content, there is no clear independence or objectivity in the survey, with no agreed methodology to the gathering of the survey data, let alone its legitimacy in use. It is not clear why the data used is taken from part of 19 “random days over a five-month period”. Also, under whose supervision or authority has this survey been commissioned? To what standards has the data been assessed? Who decided the dates? The Landowner was not consulted on or notified of the survey and it does not appear that the Local Authority were consulted either.

It is also rather unclear what is being implied by the data and what its relevance is to the case being argued. Annex B states:

“Over 130 hours of footage clearly shows that about half of usage is not confined to the PROW, and that the whole Field is being used for a wide variety of exercise and leisure activities. This confirms the findings of the original paper survey.”

The findings of the original Paper Survey were not considered to be significant enough to demonstrate that the land is used for anything other than informal activities by either the original Plan Examiner, or the Independent Examiner. The original Plan Examiner gave the findings no weight, and the Independent Examiner considered the findings to be *“anecdotal.”* Therefore, even if it is considered that the camera survey has confirmed the findings of the Paper Survey, these findings were not considered significant enough to designate the field as a LGS in any event.

Furthermore, the data is not presented in a manner which is open to appropriate levels of interrogation. Table B (Video Survey Results) does not explain how the field was being used,

it only states whether individuals or groups were using the public right of way or *“the whole field.”* Other than dog walking, the commentary in Annex B does not explain what the field was actually being used for. It simply states that *“the whole Field is being used for a wide variety of exercise and leisure activities.”*

As stated by the Independent Examiner in 2017, *“there is no provision within the area for sports and games and any such use would be on an informal basis and is considered to be incidental to the main use of the field for agriculture”* (Report To MK Council, June 2017, paragraph 3.30).

With regards to dog walking, the commentary in Annex B states:

“In particular, dog walkers, one of the most common users, often let their dogs run freely across the Field and then followed the dog.”

In considering the value of the space, the previous Examiners acknowledged that dog walkers and other users have digressed from the rights of way into other areas of the field but did not consider this was sufficient to designate the land as LGS. The original Plan Examiner stated that:

“Whilst it is a field which allows formal and informal public access across it for countryside walks, dog walking etc. it is not dissimilar in this respect to many other areas of countryside adjoining villages”

(Examiners Report, July 2016, paragraph 6.4.26).

The camera survey does not therefore provide any appropriate new evidence demonstrating that the field has significant recreational value and is therefore worthy of designation as a LGS. Furthermore, in relying upon the evidence, the Parish Council should be providing this in the public domain for scrutiny.

3. Evidence that the size of the Field is not unreasonable in designation as an LGS

Annex B states that:

“There is no formal definition of the NPPF term “extensive tract of land”, leaving Examiners to interpret it.”

The original Plan Examiner concluded that the land *“...is a large field only the northern section of which is contained by development in The Chequers & Prospect Place.”* (Examiners Report, July 2016, paragraph 6.4.26). The Independent Examiner appointed by Milton Keynes Council concluded that *“...Gobbey’s Field is a large parcel of agricultural land which in my view amounts to an extensive tract of land”* (Report To MK Council, June 2017, paragraph 3.40). The situation has not changed and the land still fails the third test of NPPF Paragraph 100.

Annex B highlights several sites which have been designated in other Neighbourhood Plans which the Parish Council claim to be comparable to Gobbey’s Field. However, to argue the size of an LGS allocated somewhere else is sufficient to justify this designation is to ignore the fundamental principle that every case should be examined on its own merits, and when you explore the individual cases supporting these examples, the Parish Council argument is undermined.

The site known as Land East Of Tewkesbury Road was allocated in the Bredon Neighbourhood Plan. The Examiners Report states that this site was designated as LGS on the grounds of its recognised historic significance as forming an important part of the setting of a grade I listed building. This position was underpinned by an Appeal Decision which assessed this point. As confirmed by the two previous Examiners, Gobbey’s Field does not meet the test of historical significance justifying the designation of the whole site, therefore this is not a comparable site.

The site at Woughton which the draft plan refers to is the Grand Union Canal Corridor. The Examiners Report states that *“At 15.78 ha the proposed Grand Union Canal Corridor LGS is significantly bigger than the other identified LGSs. In addition, it is well beyond the size of a LGS anticipated to be ‘local in character and not an extensive tract of land.’”*

The report goes on to explain that the land was designated because it *“represents key elements of the eastern boundary of the Plan area and acts as an important visual and*

recreational facility within the wider area. Furthermore, whilst the Plan describes it as a single LGS it is in effect a series of separate LGSs each within its own separate context and environment.”

The Examiner therefore acknowledged that this land was considerably larger than what would normally be allocated as LGS. However, the land was designated because it is considered to be an important visual and recreational facility linked to the canal. The two previous Examiners have confirmed that Gobbey’s Field does not provide such a role.

The site at Bersted is known as Bersted Brooks Local Nature Reserve which is located in the parish of Arun in West Sussex. The site has Local Nature Reserve status and has attracted significant lottery funding. The Plan states that this was designated as LGS due to *“its significant recreational value, tranquillity and richness of its wildlife.”* The two previous Examiners have confirmed that this does not apply to Gobbey’s Field.

The size of a site is just one of the considerations which goes into the designation of LGS. Just because larger sites have been allocated as LGS in other Neighbourhood Plans it does not mean that all sites below that size are automatically suitable. The three sites relied upon in Annex B were all allocated largely due to their special significance. The two previous Examiners have confirmed that this does not apply to Gobbey’s Field. These examples therefore have no relevance to this case.

4. Evidence that the Field is substantially different to other fields around the village which could be considered “open countryside”.

Annex B states that:

“The Field is very different because of its central accessible location, and that it is substantially bordered by habitations on its perimeter by the village. It is completely bordered on the north and west sides and substantially on the east side.”

The field does not have a central location. It is located at the south east edge of the village. The land is not substantially bordered by habitations as confirmed by the original Plan Examiner who concluded that the land *“...is a large field only the northern section of which is contained by development in The Chequers & Prospect Place.”* (Examiners Report, July 2016, paragraph 6.4.26).

Annex B states that:

“Other fields around the village are not similar, with the exception of Castle Field which like the Field, is part of the SAM and substantially bordered by habitations. The other fields surrounding the village are neither central nor substantially bordered by habitations, and therefore could be considered as “open countryside”.

There are public rights of way across many of the fields surrounding the village as shown on the Ordnance Survey Map below.



This includes the adjacent field to the east, and the field on the opposite side of the residential development to the west. Gobbey’s Field is simply an agricultural field with a right of way through it. As stated above, the land is not centrally located or substantially bordered by habitations. It is not substantially different to other fields surrounding the village and activities such as dog walking and informal recreation can just as easily be carried out on the other fields.

Annex B states that there are multiple well used informal access points to the field from The Chequers, Shepperton Close and Prospect Place. However, the site can only be accessed via the public right of way. There is signage at Shepperton Close stating ‘*Private property, no trespassing, footpath use only.*’ One would have to jump over a fence to enter the site from Prospect Close, and the closed/locked gates along the western boundary do not form ‘informal access points’ to the site. The site is not therefore easily accessible other than via the public right of way.

The Planning Practice Guidance states that “...*paragraph 100 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a ‘back door’ way to try to achieve what would amount to a new area of Green Belt by another name.*”

The Independent Examiner appointed by Milton Keynes Council concluded that “*in view of the lack of evidence to justify the designation, if it were to be designated, this would amount to a blanket designation of open countryside adjacent to settlement which would be contrary to national planning guidance*” (Report To MK Council, June 2017, paragraph 3.40).