Uffington and Baulking Neighbourhood Plan

CONSULTATION STATEMENT: APPENDIX 2

Advisors' and Developers' emails

January 2016 – April 2018

Note: References in the **Comments** column reflect the concepts and draft policies of the Plan at the time of the consultation event. References in the **Responses** column refer to the final NP report.

ADVISOR A

Date	Comment	Date of response	Response
1/8/17	Valued Views: I am writing on behalf of my client, [names redacted] a resident of Uffington, with regard to the proposed "Valued Views" policy of the Neighbourhood Plan. The Valued Views map shows the views which are proposed to be protected under this policy. One of these views falls across my client's land at Dragon Hill. The said view is annotated "Woolstone Road east towards Dragon Hill". My client wishes to object most strongly to this being included within this policy and to the existence of the policy in general, which I will come to later. The view in question is nothing more than a gap in the existing hedge, which belongs to my client, across his paddock towards his 1970's bungalow (which during the consultation of previous planning applications has come under	2/8/17	The state of play regarding the Neighbourhood Plan Steering Group (NPSG) progress on landscape, valued views and green spaces, to which you referred in your email, is as follows: i. We have commissioned an independent Landscape Character Assessment, which will assess each parcel of land in the plan area for its suitability for development with respect to landscape considerations. ii. The map of the proposed 'Valued Views' is in the process of being revised as a result of comments made - these will include your own comments - and will also be informed by the LCA when that is completed in September.

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	some criticism for its appearance). At its furthest there is a distant glimpsed view of the rear the Manor House, however, this is substantially obscured by the rear of the modern red brick infill "South Paddock House" which is hardly an architectural wonder. We are unable to see how this view contributes to the setting of the plan and warrants specific protection. I have advised my client that inclusion of this view in the policy, or perhaps the policy itself, would place an unnecessary control over his land which would constitute a breach of his Human Rights under Article 1 of 1st Protocol of the Human Rights Act 1998 (Protection of Property) (please see High Court / Court of Appeal Cases: Canary Wharf and Malster vs Ipswich). Coming back to the policy in general, it appears to be a back - door attempt at establishing a "Green Belt" around and through the village. As such it will be impossible for the plan to meet the Basic Conditions as it is clearly intended to restrict or frustrate any development beyond a point intended by the Local Plan and government guidance. I understand that "Local Green Space" designation has already been investigated by the steering group and also found to be unusable for that purpose. I would, therefore, like to request that either this view be removed from the policy or the policy be scrapped. If the steering group are not prepared to do this I have advised my client to commission his own Landscape Assessment of this view for submission to the Inspector and, in extremis, consider making a claim for Judicial Review. In the meantime, my client will contact other affected land owners with the suggestion that, again in extremis, a class action should be brought		iii. Designation of any local 'green spaces' has not yet been addressed in the plan development. These three topics are closely linked and we will consult the community again on proposed policies once they have matured and before we form our final conclusions and submit the draft plan for inspection. We would be happy to meet with you and your client if that would be helpful but would also encourage you both to engage in the community consultation events that have been taking place and are planned to continue through the plan development process. In the meantime, we will pass your email to our consultants, who are carrying out the LCA. We also refer you to our web site which is designed to keep the community up-to-date about progress on the Neighbourhood Plan: www.ubwnp.net (See also meeting held on 16 August 2018 referenced in Appendix 8)

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	against the Neighbourhood Plan. I have advised my client to plant some Cypress trees to fill to gap in the hedge, blocking the said view. Please could you advise me of the Steering Group's response. I would also like to be added to any Neighbourhood Plan news email group so as to keep abreast of matters which may affect my client's property. I understand that a Landscape Assessment is currently underway. I would like to request that this email be passed to the landscape assessor, whom I assume is a Landscape Architect? I would also like confirmation that this has been done.		

ADVISOR A

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7/2/2018	<u>REQUEST UNDER THE FREEDOM OF INFORMATION ACT</u> 1. It is with great regret that I make this request to Uffington and Baulking Neighbourhood Plan Steering Group. The request is made as the information which I requested informally has been refused this morning. 2. I emailed the Chairman Rob Hart on 16th and 17th December 2017 raising concerns as to the methodology which was used to determine the classification if sites within the Landscape Capacity Assessment, in particular Table 8 of the LCS. I have further suggested that the methodology has been unfairly weighted and requested justification for of that methodology. Since then we have exchange many further	13/2/2018	In response to your freedom of information request, I attach all correspondence between myself and Neil Davidson of Lepus Consulting regarding your questioning of their scoring matrix used to determine landscape capacity of the land parcels in the Uffington and Baulking Neighbourhood Plan area. Following the first email trail, there was a telephone call requesting they provide more detail. The subsequent email trail resulted directly from that single telephone call. I will record the following in our Consultation Statement in response to your engagement. I believe the matter is now closed. **Topic**: Raised objection and requested information

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	emails on the subject. 3. I understand that the Chairman contacted the consultants to request such justification and has received some responses although I further understand that he has requested further information from them. 4. I would like to request, under the Freedom of Information Act, copies of all the correspondence exchanged so far between UBNP or its Officers / Steering Group Members on the matter raised in may emails to the Chairman, Rob Hart, dated 16th and 17th December 2017		under Freedom of Information Act challenging LCS Landscape Capacity scoring matrix. Objected to the use of a 5x5 scoring grid with narrow bands of medium down the leading diagonal, flanked by narrow bands of med/high and med/low, flanked by broader bands of low and high as they believed it adversely affected the assessment of their land and felt it was an encroachment of their human rights. **Response**: Lepus Consulting engaged to question the use and construct of the 5x5 grid employed in their assessment methodology. They provided reference to 'Natural England's Landscape Character Assessment Guidance for England and Scotland - Topic Paper 6: Techniques and Criteria for Judging Capacity and Sensitivity', which provides the guidance recommending the use of a 5x5 scoring matrix and previous examples accepted by the South Oxfordshire District Council and Wycombe District Council regarding the construct of the scoring within the matrix. No change to the LCS undertaken. However, as part of the engagement with Lepus Consulting, prompted by this public engagement, the NPSG will consider including a policy regarding the need for an independent LVIA to be conducted on each potential planning application.

ADVISOR A

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1/3/18	Ref: The Landscape Capacity Assessment (LCS) I received an email dated 13th February 2018 from Rob Hart containing a response from your Landscape Consultants regarding the concerns I raised about the methodology used in the LCS in my emails dated 16th December 2017 and after to Rob Hart (all are attached and should be read prior to this representation). I am making this formal representation on behalf of [my clients] who are unhappy with the Consultants response and continue to feel that the LCS is and related policy are in need of amendment. The reasons are as follows, I will elaborate on each in turn. There is another point of objection which I will deal with at the end of this letter. Reasons: 1. The methodology of the LCS, in particular Table 8, is weighted in favour of finding sites to be of “Low Capacity”. 2. The LCS is a strategic “high level” study, however, it has been carried out at a site specific “low level”. Policy L1 (Landscape) is informed by the LCS, in particular Table 9, at an application site specific level, creating a situation of predetermination of the normal planning process. 3. The suggestion made by the authors of the LCS that a Landscape and Visual Impact Assessment should be submitted with any proposal for development, which was is understood from the Consultation Response to be under consideration by the UBNP Steering Group, creates an	18/3/18	Thank you for your communication with the Uffington and Baulking Neighbourhood Plan Steering Group, regarding the methodology used by the consultants employed to conduct an LCS on the plan area. We discussed the objection you raised at the most recent Steering Group meeting on 8 March 18, having previously sought advice from the Vale of White Horse District Council. In response, as you know, we will record this and your previous correspondence in our draft Communication Statement, including the investigation we have done to ensure the methodology used by Lepus Consulting is a recognised approach. You will be aware that there is further opportunity through the remaining plan making process to submit formal comments (both through Pre-Submission and Submission). Once submitted, if the Examiner has any concerns/queries on your objection, or indeed your previous correspondence, he/she may seek clarification from you. We will also ensure Lepus Consulting are able to assist in the examination process in case any detailed matters are raised. Thank you again for your engagement. (See also meeting held on 16 August 2018 referenced in Appendix 8)

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	unreasonable burden on applicants. Reason 1 As set out in the emails, it is felt that Table 8 of the LCS has been weighted in favour of the extremes of high and low, which in reality has caused many sites to be determined of "Low Capacity" and coloured red when they should be of a level higher. The explanation for this from your consultants is not accepted. They state there is "no method for determining landscape capacity that is purely quantitative". Whilst we accept this to a degree, we still wonder why Table 8 is not consistent with Table 5, and why no explanation for the difference has been given. Their responses appear to suggest that the construction of the the coloured bands of Table 8 are simply a matter of their own judgement. No further justification is given, other than it being how they have seen it done before in other documents which they referenced. Mr Hart acknowledges the extremes of Table 8 are prevalent in his email to the consultants dated 8th January 2018. Policy L1 seeks to place an additional restriction to development over all the land in the plan area. The land in question is all in private ownership and thus the owners enjoy the protection of Article 1 of the 1st Protocol of the the Human Rights Act 1998. Further, the right for an individual to develop their land (within the boundaries of planning law and policy) passed into case law in the *Malster* and *Canary Wharf* High Court cases. Thus, to achieve the intended restriction Policy L1 must be examined against this legislation. The UBNP has chosen to appoint consultants to carry out assessment of the said land to inform the plan of the		

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	restrictions that will be created. This action is not questioned. What is questioned, however, is the assessment being unreasonable weighted in favour of restricting development. This weighing unreasonably interferes with the property rights of the individuals whom own the assessed land and is, therefore, unlawful. Mr Hart suggested to your consultants in his email dated 8th January 2018 that the weighting could be appropriate due to the sensitivity of the area (his perception). This is not accepted, nor was it confirmed by the consultants. The property rights of the landowners remain. The perceived sensitivity of the area by local individuals does not permit the unreasonable interference with private property rights which the weighting of Table 8 creates. The Consultants justification for their methodology, which appears to be no more than referencing other peoples work, is not accepted. The example references given are broad documents which assess much wider areas of land at a much higher level, as opposed to this situation, where assessment has been much more site specific. Reason 2 The LCS describes itself as *"an evidence document prepared at a high level with limited ground-truthing to review and confirm parcels that were less clearly definable from a desktop study alone"*. The authors further state in their email dated 8th January 2018: *"Impact assessment at the strategic scale is inherently high level and subject to critical review because there is inevitably some degree of judgement required.".* Despite this the assessment has been carried out at a site specific low level, some sites being smaller than 1 acre, quite the opposite of the example studies which the		

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	Consultants reference. The outcomes of this high-level assessment, in particular Table 9 and the LCS maps, then inform the low level, development proposal specific, Policy L1. This in effect creates a situation which is pre-determinative to the normal planning process. The Local Authority when determining an application on a specific site in the plan area (or the Parish Council upon their statutory consultation) would be faced with starting point as laid out in the wording of Table 9, which is extremely restrictive. This has the effect of creating a “green belt by the back door”, or perhaps with reference to the LCS maps a “Red Belt”! Paragraph 16 of the NPPF requires that neighbour plans should *“support local development”.* As written at present, Policy L1 fails to do this is it would cause almost all development proposals to fail. This point is acknowledged both within the LCS and in the emails from the consultants. They state: *“The findings of this report can be used by the NDP team to help inform planning policy. Any proposals in the plan area for new development should not rely on the capacity study report alone and instead should be accompanied by a suitable form of landscape appraisal such as that advocated in the Guidelines for Landscape and Visual Impact Assessment (3rd edition, 2013). ”* and *“The LCS report is not a singularly deterministic tool and refers to the need for a Landscape and Visual Impact Assessment (LVIA) to help inform land use planning decisions alongside the LCS. The LCS is a useful tool but does have limitations such as those cited above concerning the strategic nature of the exercise.”* In fact, Policy L1 relies directly on Table 9 of the LCS. The		

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	exact opposite of the directions of the LCS authors. It must be questioned whether or not the UBNP have commissioned the correct study. In light of the NPPF requirement to support development, perhaps a Landscape Character Assessment would have been more suitable. This would have allowed NP policy to steer the character of any development as opposed to restricting development, which as written, Policy L1 does. Reason 3 The consultants have suggested both within the LCS and in their emails that any development proposals should be accompanied by an LVIA, this matter is understood to be under consideration by the UBNP Steering Group. The cost of Landscape and Visual Impact Assessments varies greatly depending on the site specifics and the chosen consultant, at an absolute minimum cost of £1500 for a concise or abridged assessment. Costs of up to £15,000 are not uncommon. This cost would in effect be added to that of any standard planning application. There is no planning law or policy which would support this and as above, this would fail the NPPF paragraph 16 requirement to support development. Quite simply, an increase in planning costs of at least £1500 is a restriction to development. Perhaps the suggestion could be redirected, requiring either the Parish Council or the VWHDC to commission an independent LVIA for each planning application submitted. I feel, however, this idea would be as unwelcome as the applicant being required to do so. Other Matters The term “setting of the AONB” is widely used within the LCS methodology table for determining site classifications. The		

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	AONB was designated during in 1974. It is felt likely that at that time, the persons responsible almost certainly carried out assessments to define exactly where the AONB would be delineated. They chose the line to be the B4507, known locally as the top road. They chose not to include the Parishes of Uffington and Baulking, or any other Downland Parishes, despite almost certainly having local knowledge of them and the wider Vale of the White Horse. It is accepted that areas directly adjacent to the AONB might be found to be within its setting, and that some major planning applications, for instance wind pumps, will affect the AONB. However, it is felt that the designation “setting of the AONB” has been far too widely used within the LCS, with the effect of unreasonable pushing sites toward the “Low” end of the determination tables. The edge of Uffington is some 1.1miles for the B4507. From that point, and from White Horse Hill, St Mary’s Church is a dot on the Landscape and many of the “setting of the AONB” sites are simply too far away to be notable. It is, therefore, requested that this be reviewed. Conclusion For the reasons laid out above my clients wish to object to Policy L1 of the Uffington and Baulking Neighbourhood Plan and request that it be amended. The grounds of the objection are that, as currently written, the plan fails to accord with the requirements of NPPF paragraph 16 and unreasonably interferes with their Article 1 Property Rights. The plan, as written, is at risk of Judicial Review. Therefore, a formal hearing with the Inspector, when he is appointed, is		

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	requested and will be requested directly.		