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Our Ref:
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VIA EMAIL to developmentplans@malvernhills.gov.uk

Dear Sir or Madam

Submitted Neighbourhood Plan Consultation – 13 January 2017 to Friday 24 February 2017

We are writing in objection to the proposed wording of policy K8 of the Kempsey Neighbourhood Plan. This representation has been made on behalf of our client who lives/works within the Kempsey parish boundary.

Proposed policy K8 seeks to protect existing community facilities within the parish. We have outlined below our concerns and objections with the wording of policy K8.

Basic Conditions

Paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 sets out basic conditions which need to be met before the neighbourhood plan can be brought to a referendum. We believe that policy K8 of the proposed neighbourhood plan fails basic conditions; A, D and E. Our justification for this claim has been outlined further in the following sections.

Requirement A (national policies) and D (sustainable development)

Conditions A and D seek to ensure that proposed policies have;

- 1) Special regard to national policies and advice contained in guidance issued by the Secretary of State; and
- 2) The neighbourhood plan contributes to the achievement of sustainable development.



We acknowledge that the general principle of policy K8 is in line with the NPPF, insofar that it seeks to protect valued community facilities. However, the NPPF at paragraph 22 also sets out that planning policies should avoid the long term protection of sites and that applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.

In addition, Paragraph 7 of the NPPF states that in considering the economic and social roles of sustainable development, the planning system should contribute to building a responsive economy and reflect the needs of the community.

The wording of policy K8 introduces a 12 month marketing requirement and other more onerous requirements that are not included in the recently adopted South Worcestershire Development Plan. Such additional restrictions are made without any clear justification.

Whilst we appreciate that the parish wishes to ensure the community have access to local facilities, Kempsey as a parish can be considered oversubscribed with community facilities in comparison to its size, and no evidence justifies the stricter protection of community facilities in the parish.

For example; there are six registered and active public houses within the parish serving a small community of just over 3,000 residents. All six public houses have been included within the neighbourhood plan as protected community facilities. These facilities have to compete, not only with themselves, but also other licensed premises, such as the local shop in Kempsey and a local Aldi (soon to open between Worcester and Kempsey).

The planning system should not overburden applicants and should be responsive (paragraph 7 and 22 of the NPPF). There is no evidence to suggest that the stricter wording of policy K8 is necessary for any unique local conditions which would permit non-compliance with paragraphs within the NPPF.

Policy 37 of the SWDP underwent lengthy examination to ensure compliance with the NPPF. The original submission version submitted to the Secretary of State in January 2013 included a two stage test: (1) is there alternative provision and if not will it be provided; **or** (2) is there evidence that demonstrates that the existing use is unviable and if so is there 1-2 years of marketing evidence.

The Inspector noted in his February 2016 report that;

“Policy SWDP 37 is concerned with the provision and expansion of community facilities and the criteria that will be used to consider proposals that would result in the loss of such facilities.



As submitted, some of its requirements are not clearly-defined, and others confusingly duplicate those of policies elsewhere in the Plan.”

The policy was then significantly changed, introducing a series of criteria and changing the conjunction from “and” to “or”, thereby making them mutually exclusive.

Such changes were made to ensure that the SWDP complied with the NPPF and the economic, social and environmental goals of sustainable development.

The proposed neighbourhood plan policy is seemingly a backwards step. Policy SWDP 37 had to be amended to comply with national guidance, and we strongly believe the same should apply to neighbourhood plan policy K8.

Requirement E (conformity with strategic policies)

As set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990, Condition E states that neighbourhood plans should remain in conformity with strategic policies contained within development plans for the area of the authority. Paragraph 156 of the NPPF confirms that policies relating to cultural and local facilities are considered strategic policies.

As a result, Neighbourhood plan policy K8 should conform with SWDP policy 37. As established above, Policy 37 of the SWDP has very recently been through a thorough examination, and following modifications, was considered sound and compliant with the objectives of the NPPF.

Policy 37 of the SWDP provides applicants with 5 mutually exclusive criteria to demonstrate that the community facility is no longer required and that a change of use is appropriate. It is a sensible policy that acknowledges that a community use could be lost if there is: (i) existing or proposed alternative provision; or (ii) excess provision of similar uses; or (iii) not economically viable; or (iv) not operationally viable; or (v) no other community operator could take it on following a marketing period.

Policy K8 of the neighbourhood plan provides 2 criteria for applicants: (a) is the use economically viable, and if not this needs to be evidenced by 12 months marketing; or (b) the proposal includes alternative provision

Policy K8 is a far more restrictive policy. It stifles the responsive multi-layered approach adopted by SWDP 37 and provides no justification for such additional restriction. As a result, we strongly believe that the current draft policy K8 is not in conformity with SWDP 37 and therefore the policy is not sound.



Clear and unambiguous

Paragraph: 041 Reference ID: 41-041-20140306 of the NPPG notes: “A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence.”

Policy K8 is particularly unclear as the supporting text notes that “this policy will also be used in conjunction with SWDP Policy 37: Built Community Facilities”. Given the significant difference between the two policies an applicant could reasonably comply with SWDP 37 but fail policy K8, leading to ambiguity and confusion for the applicant and the decision maker. We believe the policy should be altered to reflect the wording of policy 37 of the SWDP.

Recommendation

We believe the principle and purpose of policy K8 is justified, however we strongly recommend that the wording of the policy is aligned with the requirements of policy 37 of the SWDP. We believe that this is particularly important as the supporting text of the Kempsey Neighbourhood Plan states that policy K8 should be read in conjunction with policy 37.

Option A

Reword the policy to include the 5 criteria listed in SWDP 37 to ensure conformity and avoid confusion.

Option B

Remove the policy text and instead make reference to SWDP 37.

Either of these options will ensure that the Neighbourhood Plan is sound. We trust this consultation response will assist in the preparation of a sound Neighbourhood Plan.

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