

RPS

REPRESENTATIONS TO MALVERN
NEIGHBOURHOOD PLAN
(REGULATION 15 SUBMISSION
VERSION) OCT 2018

ON BEHALF OF
GLEESON LAND AND WELBECK LAND
20th DECEMBER 2018





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Date: 20th December 2018

Our Ref: JBB7609.C6542

RPS Consulting Services Ltd
321 Bradford St
Birmingham
B5 6ET
United Kingdom

Tel: [REDACTED]
[REDACTED]

QUALITY MANAGEMENT

Prepared by:	Darren Oakley
Authorised by:	Paul Hill
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1 INTRODUCTION

- 1.1 These representations (submitted under Regulation 16 of The Neighbourhood Planning (General) Regulations 2012) have been prepared by RPS Consulting Services Ltd (RPS) on behalf of our client Gleeson Land and Welbeck Land in relation to the Malvern Neighbourhood Plan (MNP) 2015-30 (Regulation 15 Submission Version).
- 1.2 As the Town Council has been made aware from previous representations and attendance by RPS at a MNP workshop event, Gleeson/Welbeck have a substantial land interest within the Neighbourhood Plan Area (NPA) Land at North East Malvern, Malvern. The site is allocated in the South Worcestershire Development Plan (SWDP) as a strategic site under policy reference SWDP 56. Accordingly, all references to the site will be referenced, where appropriate, as 'the site'.
- 1.3 The site is currently the subject of an outline planning application (15/01625/OUT) in accordance with its allocation within the South Worcestershire Development Plan: Policy SWDP56.
- 1.4 Wherever possible, the representations are made in the context of whether or not in RPS opinion, the MNP meets the Basic Conditions as set out in 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.
- 1.5 In summary, the basic conditions set out in paragraph 8(2) of Schedule 4B that we refer to in our representations are as follows:
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,
 - (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,
 - (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,
 - (d) the making of the order contributes to the achievement of sustainable development,
 - (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
 - (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and
 - (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.
- 1.6 RPS would welcome further discussion with Malvern Town Parish Council on any aspects of the representations on the preferred options document and supporting evidence.

2 REPRESENTATIONS

- 2.1 The representations presented in this section follow the order of the policies as they are set out in the MNP.

SUSTAINABLE DEVELOPMENT

- 2.2 **Policy MSD1 Promoting and Achieving Sustainable Development.** RPS agree with the broad principle, but suggest that the first sentence is amended to reflect para 11(c) of the NPPF “...without delay...” rather than simply “...will be supported.” This will also ensure that the policy fully aligns with the claims being made in para 5.1.6 of the MNP with respect to the NPPF.

GREEN INFRASTRUCTURE

- 2.3 **Policy MG3: Key Views and Vistas.** RPS objects to this policy insofar as it relates to SWDP 56. The policy’s reference base is the October 2018 Visual Study Report. The plan associated with this report (VS2) indicates Key Viewpoints (KVR 32 & 33) across the site. Whilst the policy and associated plan does not identify Significant Views across the site, RPS is concerned that Plan VS2 will be used as a determining factor in the Town Council’s (and others) future comments and decisions on subsequent reserved matters applications for the site.
- 2.4 Attached at Appendix 1 is the illustrative masterplan which supports Policy SWDP 56, which is based on a considerable evidence base including an Environmental Statement stretching back over several years to get to a supportive officer committee resolution stage. The current outline application has been subject to an agreed viability assessment and additional policy burdens within the MHNP could threaten the overall viability of the scheme, should VS2 be used as a determining tool in guiding/influencing the future development of the site.
- 2.5 Out of necessity to ensure a viable development is possible for the site there have been many issues and factors (including a full LVIA) which have dictated the illustrative layout of the site and introducing a potential additional policy burden for the site, is highly likely to impact on the future layout proposals for the site and could seriously affect its overall deliverability and viability, should the Representative Views influence the layout of the scheme as such a late stage in the development management process.
- 2.6 RPS therefore recommend that it is made clear in the MNP that the landscape evidence base underpinning the MNP should not be used in determining future applications which relate to Policy SWDP 56.
- 2.7 Additionally, the wording of the policy states that the landscape should not be compromised. This goes beyond NPPF and in particular para 170 which merely refers to recognising the intrinsic character and beauty of the countryside and only protecting and enhancing valued landscapes.
- 2.8 **Policy MG3 Woodland, Trees, Hedgerows.** the 2nd paragraph (2nd and 3rd sentences) of Policy MG3 states that: “*Trees and hedgerows not to be retained as a result of the development are to be replaced on a like-for-like basis. Additional new trees and hedgerows will be planted on the site as part of a wider planting scheme to help reflect and enhance the landscape character of the site.*”

2.9 **Policy MG3**, as drafted, is not in general conformity with the SWDP, specifically Policy SWDP22, and consequently does not meet the Basic Conditions 2(e). As drafted the wording could be interpreted as meaning that all trees and hedgerows, regardless of value, quality or significance, would be expected to be replaced in all instances. If so, this goes beyond the provisions and remit of the development plan, in particular Policy SWDP2 (criterion E), which requires compensatory provision, "...*commensurate with the ecological/ geological value of the site...*" Furthermore, plans should also distinguish between internationally, nationally, and locally designated sites, in line with para 171 of the NPPF. As presently drafted, it could be construed that the MNP seeks to apply a blanket protection contrary to the development plan and national policy, which ignores situations where it is acceptable and/or appropriate to remove or reduce the coverage of trees and/or hedgerows for sound planning reasons in order to facilitate appropriate development. It is acknowledged that the reasoned justification does refer to "...*trees, woodlands and hedgerows of local value...*" at para 5.2.9 of the MNP, but this is not made sufficiently explicit in the policy.

HERITAGE

2.10 **Policy MHE1 Non-Designated Heritage Assets**: suggest that the word 'extent' is replaced by 'scale' in the last paragraph of the policy, to make it consistent with the wording in para 197 of the NPPF, and thus consistent with Basic Condition 2(e).

COMMUNITY INFRASTRUCTURE

2.11 **Policy MC2 Healthy Communities**. This policy seeks '*appropriate contributions*', by way of legal agreement or CIL payment, to improve the capacity of NHS facilities, where necessary. RPS object to this policy approach, on a number of grounds. Firstly, it is uncertain as to which development plan this policy is in 'general conformity' with. There would appear to be no adopted, up to date policies in the SWDP that provide a strategic policy relating specifically to the provision of GP Surgeries and Dental Practices and the need for that requirement to be viable and deliverable. The MNP therefore does not meet Basic Conditions 2(a) or 2(e).

2.12 Secondly, the policy as drafted is contrary to the remit of plans in that planning policies should seek to address potential barriers to investment, such as inadequate infrastructure and services, in line with paragraph 81(c) of the NPPF, rather than seeking to apply current shortfalls in provision as a reason for potentially resisting schemes at the planning applications stage. Consequently, the MNP does not meet Basic Conditions 2(a).

2.13 Thirdly, and related to the previous objection, it is not for the MNP to seek to address existing shortfalls in the provision of local infrastructure and facilities as this also goes beyond the remit of planning policy. The MNP therefore does not meet Basic Condition 2(a) or 2(e).

2.14 Fourthly, there would appear to be no evidence to justify the making of a specific policy seeking health facility contributions as part of new major residential development. In particular, this would include evidence to demonstrate that such an approach would ensure the viability and deliverability of new development sufficient to negate the need for viability appraisals at the planning application stage, in line with NPPF paragraph 57. To do this requires viability evidence to be up to date in relation to policies seeking contributions in support of new development. Such evidence would appear to be absent from the MNP and supporting documentation. The MNP therefore does not meet Basic Condition 2(a) or 2(e).

2.15 And lastly, the policy as drafted is overly prescriptive and onerous with respect to the provision of, or contribution towards, specific health facilities identified in the policy. If the policy were to be

made, then we would suggest that it reflects the need to ensure that development remains viable and deliverable. This could be done by deleting the wording, “...where necessary...” at the end of the first paragraph of Policy MC2, and replacing this with “...subject to viability considerations.” This would make the policy consistent with other policies in the MNP and elsewhere across the adopted development plan that include similar references to viability considerations (*Policy MH1 Housing Mix; Policy SWDP 14 Market Housing Mix; Policy SWDP 15: Meeting Affordable Housing Needs; Policy SWDP 5: Green Infrastructure*). Consequently, unless the policy is either deleted or substantially amended in line with our suggestions, we consider that the policy does not meet the basic conditions in that:

- MNP does not have appropriate regard to national policy (contrary to para 81c of the NPPF) and goes beyond the remit of plan policy (Basic Condition 2e); and
- MNP is not in general conformity with the strategic policies of the development plan (2a).

DESIGN

2.16 **Policy MD1 Building Design and Accessibility.** In relation to clause B, there is no requirement to undertake masterplanning or design codes as part of the preparation or submission of planning applications, nor do they replace the need for robust up to date plan policies. RPS would therefore suggest that wording is amended, as follows “...*masterplans and/or design codes should be used as appropriate to help...*” so the policy meets Basic Condition 2(a).

2.17 **Paragraph 5.6.6 (Reasoned Justification to Policy MD1).** RPS would suggest that the list of detailed designs set out (as 11 factors) is adequately dealt with within the SWDP policies and the Design Guide SPD. We suggest that this paragraph is more appropriately placed in a supplementary document in support of the MNP.

TRANSPORT

2.18 **Policy MT4 Electric Vehicle Charging Points.** It is recognised at national policy level¹ that Neighbourhood Plan policies are by definition, non-strategic. **Policy MT4**, as drafted, is too prescriptive and is not supported by either a strategic policy in the development plan or by the NPPF, or indeed by any robust evidence base that has been submitted in support of the MNP. More flexibility should be built into the policy to reflect the long-gestation likely in any transition towards a mature electric-vehicle market. Concerns exist that such an onerous policy could undermine the delivery of much needed new housing to meet local needs and the need to address acknowledged issues including housing unaffordability, which is a pressing issue in Malvern. Consequently, the policy needs to be sufficiently balanced and based on evidence. Given the lack of evidence, the policy should be deleted or additional wording along the lines of “...where appropriate...” or “...subject to viability considerations...” as per our comments made earlier, given that no evidence is presented to support the policy as drafted. Consequently, as drafted, Policy MT4 does not meet Basic Conditions 2(a) or 2(e).

INFRASTRUCTURE PROVISION

2.19 **Policy MI1 Development and Infrastructure.** We note the concerns highlighted in the MNP regarding the provision of existing infrastructure (set out in paragraph 5.8.4) and the proposed response in Policy MI1. When planning for the provision of infrastructure, the starting point for any non-strategic policy dealing with infrastructure provision in the NPA is the development plan, in

¹ NPPF, paragraph 18

this case the SWDP, and specifically Policy SWDP7: Infrastructure.

2.20 Without restating the policy in full, Policy SWDP7 refers to;

“...appropriate and proportionate infrastructure that is required to deliver the plan...Development will be required to provide or contribute towards the provision of infrastructure needed to support it...” (our emphasis).

2.21 Rightly, as drafted, no reference is made in Policy SWDP7 to the requirement to seek provision for infrastructure from new development that would otherwise address issues or concerns arising from deficiencies in existing infrastructure in an area, either perceived or actual. Any developer contribution sought from new development *must* specifically meet all three of the tests set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010, being; *necessary to make the development acceptable in planning terms; fairly and reasonable related in scale and kind to the development;* and (most importantly here) *directly related to the development*.

2.22 However, there is no reference to the three tests in either Policy MI1 or the reasoned justification to it. In fact, Policy MI1 actually states specifically, in the first paragraph, that:

“...development will be required to provide or contribute to the provision of infrastructure made necessary by that development or where it gives rise to the need for additional or improved infrastructure to mitigate its impact on existing provision...” (our emphasis).

2.23 The policy as drafted does not have appropriate regard to national policy and is not in general conformity with the strategic policies in the development plan. Furthermore, the policy is not legally compliant with the relevant obligations set out in the CIL Regulations (2010). Consequently, we consider that Policy MI1 fails Basic Condition 2(a) and 2(e) on these grounds. We suggest that the relevant policy wording and reasoned justification is either deleted or amended to ensure that any future contributions sought within the MNP area meet the three tests and ensure that the Policy MI1 accords with the strategic policies of the development plan for the local area, so as not to cause inconsistency or uncertainty in how the development plan policies for infrastructure are to be applied to the MNP area.

2.24 **Policy MI1 Development and Infrastructure:** Policy MI1(b) requires the submission of an Infrastructure Delivery Statement (IDS) to support planning applications on schemes over 200 dwellings. However, there is no reference to any such requirement within any adopted SWDP policies, in particular no reference to this in Policy SWDP7 of the SWDP. Nor is there any such requirement set out in the revised NPPF. Furthermore, there would appear to be no evidence in support of criteria b within the MNP or supporting documentation. The adopted SWDP sets out the policy approach to securing appropriate and proportionate infrastructure contributions, alongside other policy-related standards and requirements in support of new development.

2.25 The submission of additional documentation as suggested in the MNP is not necessary to ensure that infrastructure provision is properly addressed at the planning application stage in accordance with the adopted development plan when read as whole. It places additional and unnecessary burdens on the development sector and in the case of extant planning applications, it is likely to slow the delivery of housing development. Accordingly, the policy as drafted fails Basic Condition 2(a) and 2(e). The proposed requirement for separate statements as proposed in point a. and b. should be deleted from the MNP.

2.26 **Paragraph 5.8.1 (Reasoned Justification to Policy MI1).** We suggest that the MNP be updated

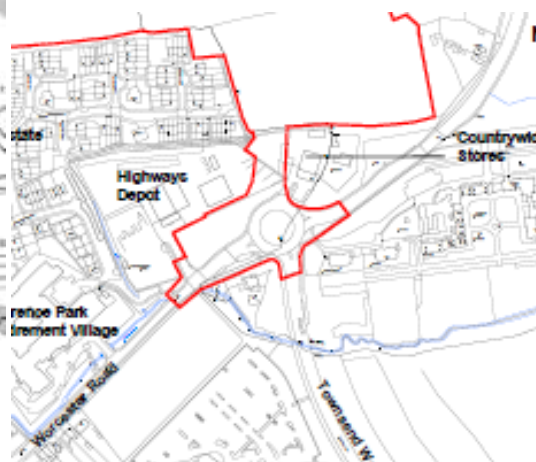
to reflect the revised NPPF issued in July 2018. In particular, the reference to paragraph 7 of the NPPF should be amended to refer to *paragraph 8* instead.

EMPLOYMENT LAND

- 2.27 **Policy ME1 Protecting Employment Allocations.** Policy ME1, as drafted, seeks to safeguard the SWDP adopted employment land allocations for future employment development. However, the policy also needs to recognise that economic circumstances might change in the future, meaning that adopted employment allocations may not come forward as anticipated. The policy is contrary to para 120 of NPPF which advises where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan, then alternative uses can be considered in specified circumstances.
- 2.28 This is recognised in Policy SWDP8 of the SWDP, which supports (criterion A) the provision of other uses that clearly demonstrate the potential for job creation. Policy SWDP8 (criterion E) also allows for other, non-allocated sites to come forward for employment use that can assist in mitigating delays or non-delivery of allocated employment sites elsewhere in the area. Consequently, Policy ME1 of the MNP, as drafted, is overly prescriptive and inflexible to potential changes in circumstances and so should be either amended to allow for situations where allocated sites do not come forward as anticipated, or more appropriately given the presence of SWDP8, this is policy duplication and should be deleted. This would ensure that the policy is more in general conformity with the strategic policies of the development plan (at Policy SWDP8) and would therefore meet Basic Condition 2(e).
- 2.29 **Policy ME3 Employment development within Existing Industrial Estates and Business Parks.** There is an inconsistency between the proposed extent of the industrial estate shown on Figure 5.8 of the MNP, the boundary of the Mixed Use Allocation in the SWDP (Policy SWDP56 North East Malvern), and the extent of the site currently the subject of a planning application (15/01625/OUT). It is apparent that there is an overlap between the adopted and proposed designations covering the site and the planning application site plan. This is illustrated on the extracts below.



North East Malvern Mixed Use Allocation (SWDP56)



Planning Application Site Plan (15/01625/OUT)



Extract from MNP (Figure 5.8 Industrial Estates and Business Parks)

- 2.30 We suggest that the designation of the existing industrial estate under Policy ME3 of the MNP should recognise the adopted SWDP Mixed Use Allocation under Policy SWDP56 and the planning application site plan boundary. Therefore, the portion of the industrial estate designation that overlaps the adopted Mixed-Use Allocation should be deleted and shown as being part of the adopted allocation. This would ensure that there is no potential for conflict between Policy SWDP56 (which allows for infrastructure provision in this location as well as mixed uses) and Policy ME3. This would also helpfully remove any potential inconsistency with Policy ME4 of the MNP.
- 2.31 It is also noted that the annotation for SWDP 56 on the MNP Key Diagram, does not cover the full northern extent of the SWDP allocation within the MNP boundary and should be amended to address this.

HOUSING LAND

- 2.32 **Policy MH1 Housing Mix.** It is noted that Policy MH1 identifies ‘particular needs’ for certain types and tenures of housing, and the reasoned justification seeks to discourage the provision of larger properties (particularly five-bed dwellings). The MNP should have regard to national policy, which (at paragraph 62b of the NPPF) refers to the objective of ‘*creating mixed and balanced communities*’. The Housing Needs Assessment evidence base produced by Aecom in 2016 references on page 11 the largest detached units (5 bedroom plus) are not in significant demand and should be discouraged. However, this should not fetter the markets ability to create balanced communities, particularly on a large strategic site.
- 2.33 In addition, Policy SWDP14: Market Housing Mix (criterion A) seeks a mix of housing informed by the latest evidence. Policy MH1 is too prescriptive and does not recognise that the housing needs of an area can change over time and should be responsive to such changes and that larger strategic sites such as SWDP 56 should create and allow for a mix of residential properties, which may/will include larger dwellings as part of that mix.
- 2.34 Accordingly, Policy MH1 should be more flexible and responsive with regards to addressing the needs of the NPA at the point at which schemes are determined. Furthermore, references to the exclusion or discouragement of certain dwellings types within the reasoned justification to the policy is not justified given that the strategic policies of the development plan do not advocate any such approach, nor is there any substantive evidence to justify it. Consequently, the policy as

drafted fails Basic Condition 2(a) with regard to national policy and Basic Condition 2(e) with regards to general conformity with the strategic policies of the development plan.

PLAN DELIVERY AND IMPLEMENTATION

- 2.35 **Plan Delivery Paragraph 6.14.** RPS welcome the intention of Malvern Town Council to work with local stakeholders, including those in the business of building housing, to deliver high quality and sustainably built housing. TRPS is concerned to ensure this should be done in a constructive manner, as the Town Council has objected at all consultation stages to the strategic development site at Land NE Malvern and allocated as Policy SWDP 56. It would be helpful for this paragraph to be amended to provide examples of how the Town Council envisage working with the house building industry to deliver high quality housing development.

3 CONCLUSIONS

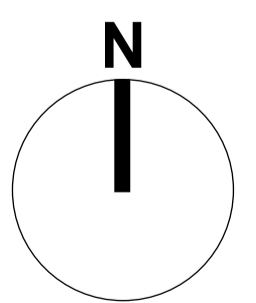
- 3.1 These representations, submitted under Regulation 16 of the Neighbourhood Planning Regulations (2012), have been made by RPS Planning and Development Ltd (RPS) on behalf of Gleeson Strategic Land/Welbeck in relation to the Malvern Neighbourhood Plan (MNP) 2015-30 (Regulation 15 Submission Version).
- 3.2 The representations submitted here seek to ensure that the MNP meets the Basic Conditions test set out in the relevant legislation and also facilitates appropriate development that delivers not only the objectives of the MNP but also the objectives and strategic policies of the development plan.

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-  Application Site
-  Existing Trees
-  Existing Hedgerows
-  Existing Settlements
-  Railway
-  Ponds
-  Proposed Residential Development
-  Proposed Community Centre
-  Proposed Local Centre
-  Proposed Employment
-  Proposed LEAP (Local Equipped Area for Play)
-  Proposed MUGA (Multi Use Games Areas)
-  Potential Vehicular Access
-  Proposed Playing Fields
-  Proposed Orchards
-  Proposed Allotments



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Welbeck Strategic Land LLP and Gleeson Developments Limited
 Development at North-East Malvern
 Malvern

ILLUSTRATIVE MASTERPLAN

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fpcr

masterplanning
 environmental assessment
 landscape design
 urban design
 ecology
 architecture
 arboriculture

FPCR Environment and Design Ltd
 Lockington Hall
 Lockington
 Derby DE74 2RH
 t: 01509 672772
 f: 01509 674565
 e: mail@fpcr.co.uk
 w: www.fpcr.co.uk