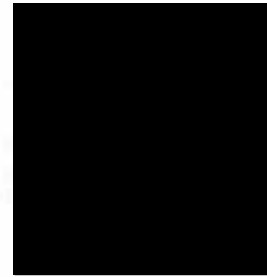


Planning Policy
Wychavon District Council
Civic Centre
Queen Elizabeth Drive
Pershore
WR10 1PT

15th August 2016



Your ref:
Our ref: IMG/csw/1004559

Dear Sir/Madam,

BREDON PARISH SUBMISSION NEIGHBOURHOOD PLAN CONSULTATION, AUGUST 2016

Carter Jonas LLP act on behalf of the owners of the land on the edge of Tewkesbury, the Croome Estate Trustees (the Trustees) and Mactaggart and Mickel, who have a promotion agreement with the Trustees for delivery of development on part of the land proposed for identification as a Local Gap (GAP 5).

The land being promoted by Mactaggart and Mickel (known as 'Land at Mitton') is on the eastern side of Bredon Road, in Wychavon District, but immediately abuts the built-up edge of Tewkesbury. The land extends to approximately 27 ha and is identified on the attached Site Location Plan, at **Appendix 1**.

The area adjoins a modern housing estate (Mitton) on its south western flank, whilst to the south and east is the extensive modern Tewkesbury Industrial Estate. The southern and eastern boundaries are defined by Carrant Brook towards which the land slopes from Bredon Road.

This representation raises a number of concerns with the draft Neighbourhood Plan and objects in the strongest possible terms to the inclusion of the Croome Estates Trustees land within GAP 5 (as currently defined on the Neighbourhood Plan Policies Map of the Submitted Neighbourhood Plan). Policy GAP 5 conflicts with policies SWDP 2 and SWDP 62 of the adopted South Worcestershire Development Plan and with the National Planning Policy Framework, which requires that neighbourhood plans must be in general conformity with the strategic policies of the Local Plan.

Carter Jonas made similar representations to the second draft Neighbourhood Plan consultation, on behalf of our clients. It is disappointing to note that the majority of the points raised in that representation have been ignored, and that the Submission version of the Bredon Parish Neighbourhood Plan (hereafter referred to as the BPNP) does not appear to have been amended or informed by consultation responses to previous versions of the Neighbourhood Plan.

The Trustees have taken legal advice in respect of designation of their land in the Bredon Parish Neighbourhood Plan in GAP5; the Counsel advice is attached to this representation at **Appendix 2**.

Policy Context

In our previous response, we noted that there were some important errors and omissions in the planning policy section of the draft Neighbourhood Plan, which referred to out of date plans. We note that the planning policy section of the submission version of the Neighbourhood Plan has been updated to rectify these errors and to reflect the recent adoption of the South Worcestershire Development Plan (2016).

Policy SWDP 2 of the adopted South Worcestershire Development Plan states that:

"1. As required by the Duty to Cooperate, due consideration will be given, including through a review of the SWDP where appropriate, to the housing needs of other local planning authorities in circumstances when it has been clearly established through the local plan process that those needs must be met through provision in the SWDP area."

Footnote 6 makes specific reference to land at Mitton, stating:

"Cheltenham Borough, Gloucester City and Tewksbury Borough Councils are preparing a joint Core Strategy (JCS). Land at Mitton (Wychavon District) and the Myth (Malvern Hill District) were not included as strategic allocations in the Submission version of the JCS (November 214). The South Worcestershire Councils will, however, continue to monitor progress on the examination of the JCS."

Paragraph 3.4 of the BPNP lists relevant policies of the SWDP, and BPNP Paragraph 3.5 identifies that;

'Of special relevance to the Neighbourhood Plan is Policy SWDP 2 (Development Strategy and Settlement Hierarchy), which sets out the principles that should apply to new development in south Worcestershire.'

There is an important omission in this list, which fails to identify Policy SWDP62, which deals with implementation. Policy SWDP62 states that:

"The implementation of the Plan (SWDP) will be monitored annually to ensure the strategy and objectives are being delivered. If at any time it is clear that the plan is significantly failing to deliver its objectives and key policies/proposals, a partial or whole Plan review will be commenced. On the basis of the current available evidence, it is envisaged that a partial Plan review may need to commence by the end of 2019 if the SWC are to ensure there is an up to date Plan for the area throughout the 2020's and beyond. It will be an option however for the SWC to consider taking actions other than a partial or full Plan review (such as the bringing forward of sustainable alternative/additional sites through the development management process) if a more rapid response is demanded/appropriate."

4. The SWC consider that any one of the following circumstances would require a review of the plan to commence or sustainable alternative/additional sites to be brought forward, as appropriate;

- a. A failure of policies SWDP 2,3,4,5 and 7 when assessed against the plan objectives set out at Annex B to the Plan and in particular a failure to deliver the amount of development required by SWDP 3.*
- b. Evidence established through another authority's Local Plan process that its unmet strategic housing requirements can only be accommodated within south Worcestershire.*
- c. Changes in national planning policy and guidance or new planning evidence that mean one or more of the Plan's policies is not up to date.*
- d. Evidence in the Authorities' Monitoring Report that one or more Plan policies are not achieving the Plan's objectives or are working contrary to the effective planning of the South Worcestershire area.*

Circumstance a. or b. could result in the need for land at Mitton to come forward for development. It is clear from the work undertaken for the SWDP and Joint Core Strategy that the land at Mitton has considerable merit as a sustainable development location, which may well be needed to meet the future housing needs of Wychavon District and or/Tewkesbury Borough.

We suggest that Paragraphs 3.4 and 3.5 of the BPNP should be amended to note that both Policy SWDP2 and Policy SWDP62 are of special relevance to the BPNP.

The Cheltenham, Gloucester and Tewkesbury Joint Core Strategy Examination (CGT JCS) is currently taking place. The first hearings were held in December 2015. Following those hearings, the Inspector published an Interim Report in May 2015.

The Inspector's Interim report identifies a housing shortfall in Tewkesbury and the need 'to consider the potential for additional strategic allocations in this general locality.'

Specifically, the Interim Report noted in respect of Land at Mitton that:

- i. *'The sites lie outside the Green Belt, within Broad Location T1, in an area of mainly medium to low landscape sensitivity, which is unaffected by AONB' (paragraph 162);*
- ii. *'The Mitton sites are closer to the Tewkesbury urban settlement than to any other Town or village and, in terms of sustainability, are better related to Tewkesbury Town than elsewhere. Mitton clearly has the capacity and potential to contribute to meeting Tewkesbury's needs and its exclusion from the Gloucestershire housing market should not be an obstacle to its delivery' (paragraph 164);*
- iii. *'Accordingly I recommend that the JCS authorities engage in constructive discussions with Wychavon District Council with a view to seeking their agreement on the release of land at Mitton to contribute towards Tewkesbury's housing requirement' (paragraph 166).*

Further, the Inspector's Interim Report also noted that:

'If Wychavon agrees to allocate part or all of these sites for Tewksbury's needs in a future Local Plan review, this should be set out in a Memorandum of Understanding. Any such commitment to allocate, together with the type and scale of development, should be set out in the Memorandum of Understanding.'

Following the publication of the Inspector's Interim Report, further Examination hearings into the CGT JCS took place in July 2016. The Inspector concluded the hearings by recommending that Tewkesbury Borough Council should work with Wychavon District Council to have the land at Mitton designated for JCS supply.

As set out above, Wychavon District Council and Tewkesbury Borough Council have now agreed to work on a Memorandum of Understanding. The Memorandum of Understanding will provide a clear commitment to the identification of the site, enabling the site's allocation through a future Local Plan Review of the South Worcestershire Development Plan.

Bredon Parish clearly recognises the relevance and importance of the GCT JCS because Policy NP 1 states that development proposals on sites allocated under the strategic policies of an adopted local plan will be supported, and footnote 22 specifically notes that this includes the Gloucester, Cheltenham and Tewkesbury Core Strategy. The Parish Council's attempts to address the emerging JCS housing requirements are

welcomed. However, it is not possible for a Local Planning Authority to formally allocate land outside its own boundaries.

We respectfully request therefore that the wording of the second paragraph of Policy NP 1 is amended to replace the word 'allocated' with 'identified'; Development proposals on sites *identified* under the strategic policies of an adopted local plan will be supported."

This important wording change would enable the Parish Council's policy to be effective, and to ensure that Policy NP1 is not in conflict with the strategic policies for the area.

POLICY NP2 – GAP5

In addition to the issue that, as submitted, the designation of GAP5 conflicts with Policies SWDP2 and SWDP61, we are concerned that the Trustees' land, falling partly within GAP 5, cannot be said to prevent settlement coalescence or indeed to safeguard land that is important to the setting of a village.

Policy NP 2 states that:

'The Neighbourhood Plan defines Local Gaps on the Neighbourhood Plan Policies Map in order to prevent the coalescence of settlements, and to protect their character and rural setting.

Land within the defined Local Gaps will be kept open and free from development. Development proposals may, however, be permitted if they do not harm, individually or cumulatively, the functions and purposes of a Local Gap, or its open character.

This policy will not apply to any sites which have been allocated under the strategic policies of an adopted Local Plan.'

The supporting text to Policy NP 2 notes in paragraph 7.13 that;

'This policy is consistent with NPPF paragraph 184, which states that Neighbourhood Plan must be in general conformity with the strategic policies of the Local Plan.'

We suggest that in fact, Policy NP2 is **not** compliant with Policy SWDP2 of the adopted Local Plan in respect of the designation of Local Gap 5 between Bredon's Hardwick and Tewksbury, which includes Land at Mitton. The reasons for this are set out below.

In terms of the issue of settlement coalescence, the southern edge of the Trustees' land is over 1.5km from the wedge of Bredon's Hardwick. At its nearest point, the Trustees' land is 1.2km from Bredon's Hardwick. This is a significant distance, with intervening hedgerows and topography meaning that even with development on the Trustees' land, there would remain a clear physical and visual separation between the edge of Tewkesbury and the settlement of Bredon's Hardwick. Also relevant is that the northern edge of the Tewkesbury Industrial Estate and Northway residential area are within 1km and 1.1km (respectively) of Bredon's Hardwick.

We believe that there are simply no grounds for suggesting that the Trustees' land needs to be the subject of a gap policy to prevent settlement coalescence between Tewkesbury Town and Bredon's Hardwick.

In terms of the contribution that the Trustees' Land makes to the setting of Bredon's Hardwick, again, distance is an important consideration. Paragraph 7.10 of the Neighbourhood Plan suggests that each of the

proposed Local Gap areas helps '*...to maintain a clear separation between settlements in order to retain their individual identity.*' We would contend that much of GAP5 cannot be said to adjoin Bredon's Hardwick or contribute directly to its individual character.

As shown on the Viewshed Plan attached at **Appendix 3**, any residential development at 8m in height on the Trustees' Land would be difficult to view from Bredon's Hardwick, certainly once any landscaping scheme was established. Consequently, we would affirm that any development on the Trustees' land would have no material adverse, direct, impact on the character of Bredon's Hardwick.

Due to local topography, and with appropriate landscaping, much of the green corridor along the B4080 could be maintained following development on land at Mitton.

We are concerned that the Neighbourhood Plan is seeking to shoe-horn more general concerns about landscape impact and protection of the countryside into a Local Gap policy. Development on the Trustees' land would inevitably have some impact on the character of the immediate area, but such matters would be fully addressed at the planning application stage, taking into account the landscape character and policies in the Development Plan.

The Parish Council has sought to evidence Policy NP2 through a brief document entitled 'Assessment of Local Gaps in Bredon Parish', which was updated in May 2016. Paragraph 1.2 of the Assessment briefly addresses SWDP Policy 2, which deals with Significant Gaps. The Assessment notes that the SWDP identifies buffers (where felt necessary) to separate smaller rural settlements from urban areas. Contrary to the wording of the Assessment, the SWDP wording does not report restricting consideration to only those urban areas within the plan area. If deemed necessary and appropriate, the Councils (or indeed the SWDP Inspector) could have sought to introduce a Significant Gap between Tewkesbury and Bredon's Hardwick. The decision not to do so is telling, and of course ties in with the provisions made in the SWDP for potential housing development on the land at Mitton.

The Assessment suggests that the Neighbourhood Plan seeks to apply the same principles as the SWDP, but between rural settlements. Tewkesbury is not a rural settlement.

Paragraph 2.4 of the Assessment refers to the need for the ambition of the Neighbourhood Plan to be aligned with the strategic needs and priorities of the wider local area. Neighbourhood Plans should not undermine the strategic policies of the Local Plan. These references are of direct relevance to the District and Borough Council's need to meet objectively assessed housing need, and the identified role that the land at Mitton could play in meeting some of this housing need. We believe that Policy GAP5 therefore undermines Policy SWDP 2.

Turning to the criteria used to identify the Local Gaps:

- Test 1 – For the reasons set out above, the land at Mitton should be excluded from further consideration, as the SWDP makes specific reference to the potential role of this land in meeting future development needs.
- Test 2 – There is no 'significant danger' of Tewkesbury and Bredon's Hardwick coalescing, and it is certainly the case that any development on the Trustees' land would not result in settlement coalescence. We have already identified an anomaly, in terms of the suggestion that the Neighbourhood Plan is concerned with the relationship between rural settlements, and yet consideration is being given to the relationship between Bredon's Hardwick and Tewksbury. The range of other factors identified for consideration are not wholly unreasonable, it is how they are applied that is of concern. For example an attractive approach to the village might involve seeking to

protect some immediate fields, but seeking to prevent development along a 1.5km corridor, on the basis that this all forms part of the setting of Bredon's Hardwick is not a sustainable position and cannot be justified.

- Test 3 – The second bullet under Test 3 states that for land to be designated as a Local Gap refers to the contribution the land currently makes to character and rural setting. As previously stated, it is very difficult to see how development on the Trustees' land would materially impact on these factors, and therefore it is very difficult to understand the justification being suggested by the Parish Council for identification of the subject land as part of a Local Gap.

In summary, we object in the strongest possible terms to the inclusion of the Trustees' land within GAP 5 as part of Policy NP2. Indeed, we do not support GAP 5 as a matter of principle, as it conflicts with the provisions of Policy SWDP2 and SWDP 62, and with the clear national and local mandate to deliver a step change in housing delivery in sustainable locations.

Summary

This representation is made on behalf of the Croome Estate Trustees (the Trustees) and Mactaggart and Mickel. The land being promoted by Mactaggart and Mickel (known as 'Land at Mitton') is on the eastern side of Bredon Road, in Wychavon District, but immediately abuts the built-up edge of Tewkesbury. The land extends to approximately 27 ha and is identified on the attached Site Location Plan.

The area adjoins a modern housing estate (Mitton) on its south western flank, whilst to the south and east is the extensive modern Tewkesbury Industrial Estate. The land is generally recognised as being capable of delivering a sustainable urban extension to Tewkesbury, with administrative boundaries having been the principal reason for the land not coming forward sooner.

This representation raises a number of concerns with the draft Neighbourhood Plan content and approach, and raises strong objection to the proposed inclusion of the Trustees' land within GAP5. In particular:

- The BPNP Policy NP1: Spatial Plan for Bredon Parish states that development proposals on sites allocated under the strategic policies of an adopted Local Plan will be supported, and notes that this includes the Gloucester, Cheltenham, Tewkesbury Joint Core Strategy. As set out above, it is not possible for local authorities to allocate land which is not in their area. Policy NP 1 should therefore be amended to say; 'Development proposals on sites *identified* under the strategic policies of an adopted local plan will be supported';
- The BPNP identifies Local Plan policies which are particularly relevant to the preparation of the Neighbourhood Plan. We request that paragraphs 3.4 and 3.5 of the BPNP are amended to include Policy SWDP62 in the list of relevant policies, and to amend the supporting text accordingly.
- Policy NP 1 of the submission Neighbourhood Plan seeks to strictly control development beyond the defined settlement boundaries. We generally accept this proposed approach, but contend that the Policy and supporting text must differentiate between open, isolated countryside and the land at Mitton that immediately abuts the built up area of Tewkesbury, a sustainable settlement with a range of facilities, services and employment opportunities.
- Neighbourhood Plan policies which seek to restrict the opportunity for development on the land at Mitton conflicts with the policies of the adopted Local Plan. Policy NP 2 specifically conflicts with Local Plan policies SWDP 2 and SWDP 62 and as a matter of principle therefore fails the basic

conditions test. Further, Policy NP 2 does not promote the principles of sustainable development contained in the NPPF.

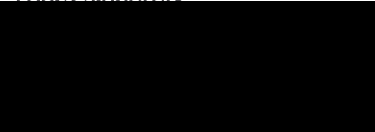
- Detailed comments on Draft Policy NP2 should be read in the context of more general concerns and objections to any policy or approach in the Neighbourhood Plan that seeks to restrict the potential for land at Mitton to come forward for development. We believe that the Trustees' land, falling partly within GAP5, cannot be said to effectively fulfil any of the stated functions of Local Gap land. It is not part of a gap separating rural settlements; its development would not lead to the coalescence of Tewksbury and Bredon's Hardwick; and the subject land is so visually detached from Bredon's Hardwick itself, it cannot be said to adjoin the settlement, or directly contribute to the character of the settlement;
- We are concerned that the Neighbourhood Plan is seeking to shoe-horn more general concerns about landscape impact and protection of the countryside into a Local Gap policy. Development on the Trustees' land would inevitably have some impact on the character of the immediate area, but such matters would need to be fully addressed at the planning application stage, taking into account the landscape character and policies in the Development Plan.

In conclusion, we object in the strongest possible terms to the inclusion of the Trustees' land within GAP 5 as part of Policy NP2. Indeed, we do not support GAP5 as a matter of principle as it conflicts with the provision of the policies of the adopted South Worcestershire Development Plan, and the clear national and local mandate to deliver a step change in housing delivery in sustainable locations.

The legal advice that we have received, and which is appended to this representation, advises that in its current form, due to its conflict with adopted Local Plan policies SWDP 2 and SWDP 62, Policy NP2 would be considered vulnerable to legal challenge.

We would be grateful if you would acknowledge safe receipt of these representations. We would also like to take this opportunity to register our interest to speak at the Neighbourhood Plan Examination.

Yours sincerely



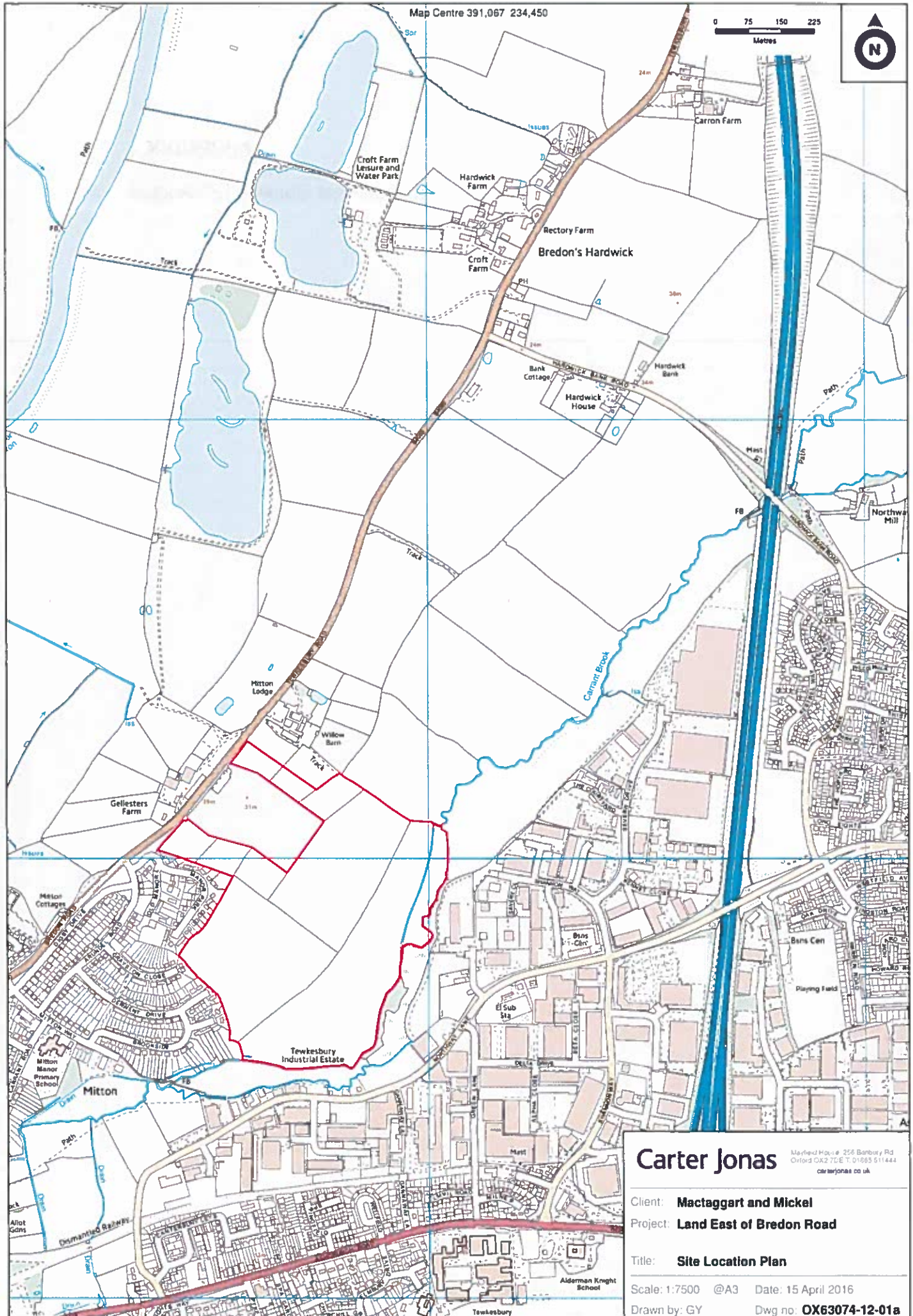
Ian Gillespie MRTPI
Partner
For and on behalf of Carter Jonas LLP



Enc: Site Location Plan
Counsel Advice
Viewshed Plan

APPENDIX 1

Site Plan



Carter Jonas

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Client: **Mactaggart and Mickel**

Project: **Land East of Bredon Road**

Title: **Site Location Plan**

Scale: 1:7500 @A3 Date: 15 April 2016

Drawn by: GY Dwg no: **OX63074-12-01a**

APPENDIX 2

Counsel Final Opinion 12th August

Bredon Parish Neighbourhood Plan

OPINION

Introduction

1. This Opinion is produced on behalf of Mactaggart and Mickel and Barratt West for the attention of Wychavon District Council ('the Council') in relation to the submission version of the Bredon Parish Neighbourhood Plan ('BPNP'). Counsel advise that there is a critical error in the BPNP, in that it seeks to prevent development at Mitton (ie. within Local Gap 5), which is contrary to the views expressed by the Examination Inspector for the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy ('JCS') in her Interim Report. The purpose of this Opinion is to explain that conclusion.

Factual Background

2. The BPNP proposes allocation of the land between the northern end of Tewkesbury and the southern edge of Bredon's Hardwick as one of several 'local gaps' (ie. Local Gap 5). Local Gap 5 includes the land at Mitton.

3. Policy NP2 of the BPNP makes clear that the purpose of these local gaps is *'to prevent coalescence of settlements and to protect their setting'* by ensuring that they will *'be kept open and essentially free of development'*.
4. Policy NP2 of the BPNP includes a statement that the policy will not apply to any sites that have been allocated under the strategic policies of an adopted local plan. At paragraph 7.13 it also states that Policy NP2 *'must be in general conformity with the strategic policies of the Local Plan'*.
5. Similarly, Policy NPI states that, *'Development proposals on sites allocated under the strategic policies of an adopted Local Plan will be supported'*. Footnote 22 confirms that this would include the JCS.
6. The pre-submission draft of the BPNP (dated March 2016) included criteria for assessing local gaps at section 3. The criteria was in the form of a 3-stage test, as follows:
 - i. **Test 1:** Does any land in the proposed Local Gap already have planning permission or has it been allocated for development in the SWDP (ie the South Worcestershire Development Plan)?

- ii. Test 2: Does the area play an important role as a buffer preventing coalescence between settlements, and if so, could be role be significantly harmed by development?
- iii. Test 3: Does the area make an important contribution to the character or rural setting of a settlement, and if so, could this be significantly harmed by development?

7. The explanatory text to 'Test 3' stipulates that *'contribution to character or rural setting might include helping to create an attractive rural backdrop for a key approach to the settlement, or providing important views into or out of the settlement of its environs'*.

8. The South Worcestershire Development Plan ('SWDP') was adopted on 25th February 2016. Policy 2(I) of the SWDP (at page 48) states as follows (the footnotes included in this text are as contained within the policy itself):

As required by the Duty to Co-Operate¹, due consideration will be given, including through a review of the SWDP where

¹ Section 110, Localism Act (2011) relating to unmet need

appropriate, to the housing needs of other local planning authorities² in circumstances when it has been clearly established through the local plan process that those needs must be met through provision in the SWDP area.

9. Furthermore, Policy 62 of the SWDP (at pages 271 – 273) makes clear that the plan has sufficient flexibility to bring in further additional sites.

10. On 31st May 2016 the JCS Inspector issued an interim report. The report identifies a housing shortfall in Tewkesbury and thus the need *'to consider the potential for additional strategic allocations in this general locality'* (per paragraph 155 of the JCS Interim Report).

11. At paragraphs 160 – 166 of the JCS Interim Report, the Inspector considered the land at Mitton and made the following findings:

² Cheltenham Borough, Gloucester City and Tewkesbury Borough Councils are preparing a Joint Core Strategy (JCS). Land at Milton (Wychavon District) and the Mythe (Malvern Hills District) were not included as strategic allocations in the Submission Version of the JCS (November 2014). The South Worcestershire Councils will, however, continue to monitor progress on the examination of the JCS.

- i. *'The sites lie outside the Green Belt, within Broad Location T1, in an area of mainly medium to low landscape sensitivity, which is unaffected by AONB' (paragraph 162);*
- ii. *'The Mitton sites are closer to the Tewkesbury urban settlement than to any other Town or village and, in terms of sustainability, are better related to Tewkesbury Town than elsewhere. Mitton clearly has the capacity and potential to contribute to meeting Tewkesbury's needs and its exclusion from the Gloucestershire housing market should not be an obstacle to its delivery' (paragraph 164);*
- iii. *'Accordingly I recommend that the JCS authorities engage in constructive discussions with Wychavon District Council with a view to seeking their agreement on the release of land at Mitton to contribute towards Tewkesbury's housing requirement' (paragraph 166).*

Opinion

12. The submission version of the BPNP directly conflicts with the findings of the JCS Inspector, per her interim report, in 2 clear ways.

Conflict 1: Contrary to the development plan

13. The local gaps within the BPNP are not intended to include land that has been allocated for development in the local plan (ie. the SWDP), per Policy NP2 and 'Test 1' of the criteria for assessing local gaps. Furthermore, Policy NP1 shows that the BPNP seeks to support the allocations within the SWDP. This is significant in that the BPNP seeks to allocate the land at Mitton as being free from development, per Local Gap 5. However, contrary to this, the JCS Inspector has recommended that this land be released for housing. There is, therefore, a clear conflict between these two emerging development plan documents in the treatment of the land at Mitton.

14. It is correct that the JCS Inspector cannot allocate the land at Mitton, being that it is outside the area covered by the JCS. However, the SWDP was adopted with a view that it would be reviewed to accommodate the housing needs of neighbouring authorities, where there was a clearly established need through the local plan process (per Policy 2(I)). That criterion has clearly been satisfied in this case in light of the JCS Inspector's Interim Report. Indeed, the JCS Inspector has recommended the release of this land, which should trigger a review of the SWDP.

15. Accordingly, whilst the land at Mitton is not allocated within the SWDP at the present time, it is clear that the mechanism has been engaged within Policy 2(I) for this allocation to come forward through a review of the SWDP. Indeed, Tewksbury Borough Council and Wychavon District Council are currently engaged with producing a Memorandum of Understanding that will provide a clear commitment to the identification of the land at Mitton.

16. In light of this, Counsel highlight the legal position where there is a conflict between two development plan documents, as set out at section 38(5) of the Planning and Compulsory Purchase Act 2004:

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document [to become part of the development plan].

17. If the BPNP were to be found sound in its current form, it would very likely be adopted prior to the adoption of the JCS and/or review of the SWDP in relation to the land at Mitton. Accordingly, it is highly likely that upon the review of the SWDP, the land at Mitton would be allocated (per the JCS Inspector's recommendation and Memorandum

of Understanding) and thus the BPNP would be significantly undermined.

18. It follows, therefore, that Local Gap 5 flies in the face of the JCS Inspector's Interim Report. Indeed, it is irrational for a neighbourhood plan to be advanced under circumstances where it is in conflict with the recommendations associated with a neighbouring local plan. Especially when the neighbourhood plan is intended to conform with the SWDP, which it is anticipated will allocate the land in accordance with Policy 2(I) and the Memorandum of Understanding. Indeed, this inconsistency would be contrary to paragraph 184 of the National Planning Policy Framework, which states as follows (with emphasis added):

Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as

possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them.

Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

19. Moreover, if the BPNP were to be adopted in its current form, it would be internally inconsistent, as it would mean that, on the one hand, the plan seeks to keep the land at Mitton free from development via Local Gap 5, whilst on the other hand it seeks to support the JCS (per Policy NP2), which currently relies on this land being released for development.

20. Furthermore, this conflict would also demonstrate a lack of co-ordination between the BPNP and the JCS/SWDP, which would be contrary to the following paragraph within the Planning Practice Guidance:

Can a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?

Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan (<http://planningguidance.communities.gov.uk/blog/guidance/local-plans/>).

A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition.

A draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan although the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- **the emerging neighbourhood plan**
- **the emerging Local Plan**
- **the adopted development plan**

with appropriate regard to national policy and guidance.

The local planning authority should take a proactive and positive approach, working collaboratively with a qualifying body particularly sharing evidence and seeking to resolve any issues to ensure the draft neighbourhood plan has the greatest chance of success at independent examination.

The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. *It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved by the decision maker favouring the policy which is contained in the last document to become part of the development plan.*

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Conflict 2: Important contribution to the character or rural setting of a settlement

21. In order to qualify as a local gap, Test 3 (as highlighted above) stipulates that the area must make an important contribution to the character or rural setting of a settlement and this could be significantly harmed by development. The JCS Inspector has concluded that the land at Mitton is in an area of '*mainly medium to low landscape sensitivity*' and that it is more sustainable than elsewhere. Thus, the JCS Inspector has clearly reached the view that the land at Mitton would not satisfy Test 3 and thus should not be allocated as a Local Gap. Thus there is a clear conflict in the underlying conclusions concerning the land at Mitton as between the JCS Inspector and the BPNP.

Amendment to the language of the BPNP

22. Finally, as a practical point, it is noted that policies NP1 and NP2 of the draft BPNP refer to the need to avoid '*allocated*' sites. The JCS cannot allocate land within the BPNP area. Accordingly, the BPNP should reflect this, and thus the references to '*allocated*' sites should be amended to '*identified*'.

Conclusion

23. In light of the 2 clear conflicts that have been identified between the BPNP and the JCS Inspector's Interim Report, Counsel advise that the logical step is for Local Gap 5 of the BPNP to be revised so as to ensure that it removes the land at Mitton. Indeed, if the BPNP were to be adopted in its current form, in light of these 2 conflicts, it would be highly susceptible to a legal challenge.

24. Counsel advise accordingly.

Anthony Crean Q.C.

Killian Garvey

Kings Chambers

12th August 2016

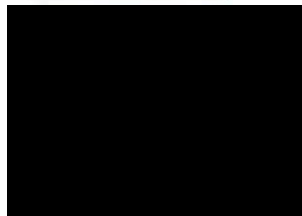
E. NICHOLSON

4.1.2014

Bredon Parish Neighbourhood Plan

OPINION

**Anthony Crean Q.C.
Killian Garvey**

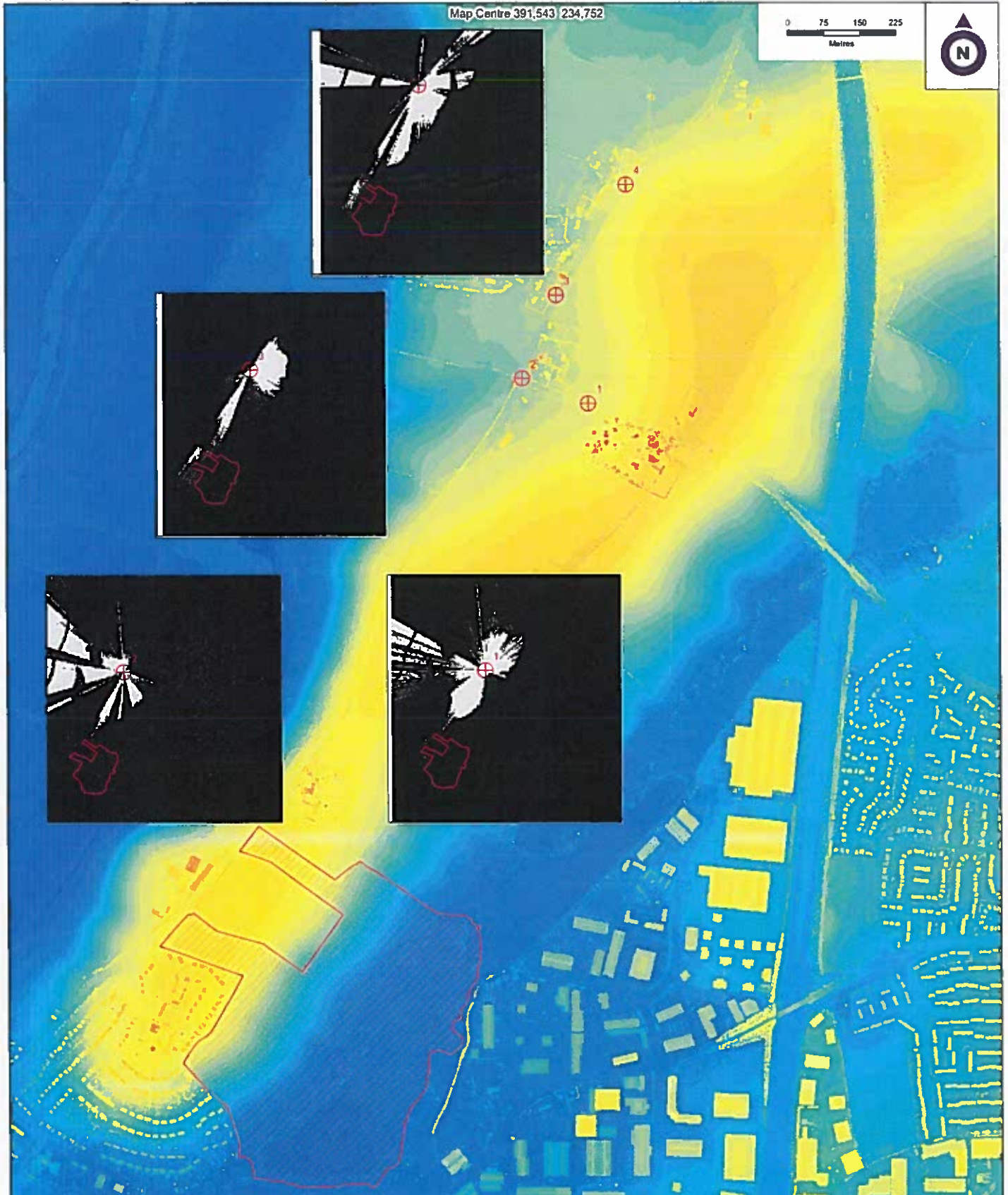


APPENDIX 3

North Tewkesbury Viewheads

Map Centre 391,543 234,752

0 75 150 225
Metres



Legend

-  Observation Points
-  Land owned by Croome Estate Trustees and promoted by MacLaggart & Mickel

Elevation(m)



Viewshed - Observer 1.8m, Target 8m

-  Unseen
-  Seen

Carter Jonas

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Client **Ian Gillespie**

Project **Land at North Tewkesbury**

Title **Viewshed - Observer 1.8m
Target 8m above base elevation**

Scale 1:7500 @A3 Date 15 April 2016

Drawn by AMW Dwg no. 1