

Charnwood Borough Council Local Plan Examination
Matter 3 - Climate change and the natural and built environment
Hearing Statement - Nanpantan Ward Residents' Group, May 2022

3.30 Does the policy clearly reflect national policy?

The pre-submission version of the local plan is unsound in a number of respects. The following modifications need to be made.

1. **Introduce a policy to eliminate the identified open space shortfalls.** The local plan is not positively prepared as it fails to provide a strategy to meet the residents' objectively assessed needs with regards to open space (principally NPPF35(a), but also NPPF35(b), (c) and (d)).
2. **The Council must reaffirm its commitment to meet its deadline to remove open space shortfalls.** EV9 is not effective or justified since it fails to retain the open space target date set in CS15 in the 2015 Core Strategy (NPPF35(b) and NPPF35(c)).
3. **The Council's open space definition is not consistent with the NPPF definition.** EV9 attempts to narrow the NPPF definition of open space (NPPF35(d)).
4. **Communities should not be excluded from proposing initiatives for open space.** EV9 is not justifiable as there exist better alternative strategies that will provide more routes that lead to open space provision, protection and enhancement (principally NPPF35(b), but also NPPF35(a), (c) and (d)).

1. Introduce a policy to eliminate the identified open space shortfalls

- 1.1 By not addressing open space shortfalls, the pre-submission version of the local plan is at odds with NPPF35(a), that states

35. Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are 'sound' if they are:

(a) Positively prepared - providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs...

There is no attempt in the pre-submission version of the local plan to meet the 'objectively assessed needs' that are specified in the 2018 Open Spaces Strategy. The local plan is thus not positively prepared as required by NPPF35(a).

- 1.2 NPPF 98 requires that plans should seek to accommodate the open space provision determined in the Open Spaces Strategy.

Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.

The Council's 2018 Open Spaces Strategy recognizes the need for open space and identifies the shortfalls in Charnwood Wards and Parishes. However, that '*plans should then seek to accommodate [the provision]*' is being ignored.

As it stands, the Council is failing to deliver for its residents the benefits of open space that are well documented in academic research, by National Government (such as PHE), and also by Local Government, including CBC's OSS and its Corporate Strategy.

The local plan is not justified as there is no strategy even to reduce shortfalls, let alone work towards their removal (NPPF35(b)). As it does not meet NPPF98, the local plan is also not consistent with National Policy (NPPF35(d)).

- 1.3 It is important to note that the proposed EV9 considers open space only in new developments. Existing residents are being ignored. For example, where a Ward has a shortfall of 5ha, EV9 specifies that the area of new open space in a new development is based only on the number of new residents. This means that, after development, the community will still be short by 5ha. Applying the proposed EV9 policy means there would be no change to shortfalls. We must be able to do a lot better.

The proposed EV9 is not positively prepared (NPPF35(a)) as it makes no attempt to meet objectively-assessed open space needs. Neither is EV9 justified (NPPF35(b)) as there are alternative approaches that can be implemented that will work far better in meeting objectively assessed open space needs.

1.4 Action to be taken

The Council must become pro-active in resolving the open space shortfalls it has identified. To deliver real impact, the commitment has to be inscribed in policies.

The operational details of a suitable approach to resolve shortfalls are for the Council to decide and so are beyond the scope of the local plan. A suitable approach may be along the lines of the Citizen's Assembly that has been put in operation by Newham Council.

However, at the strategic level of the local plan, the Council must commit itself to work with residents, local interest groups, owners and developers to acquire, lease or otherwise designate land for open space. This includes being innovative in establishing suitable management approaches and funding streams that can deliver sustainable open space to meet the identified objective needs of the communities it serves.

To be effective (in compliance with NPPF35(c)), it is vital that the plans to reduce the open space shortfalls are in place by the end of 2023 so that they can be delivered by 2028.

1.5 OUTCOME - the following to be added to EV9

By 2028, the Council will meet the open space needs of our communities as specified in the Open Spaces Strategy. This will be achieved by developing open space plans for each Ward and Parish by the end of 2023. Each open space plan will specify the physical locations of the open space required to meet the 2028 target. The open space will be delivered by the Council working proactively with local communities, land owners and developers so that the necessary management, maintenance and funding resources can be identified.

If no open space plan is available for a Ward or Parish by the end of 2023, then the following will apply.

- (a) In Wards or Parishes with no open space shortfalls, new developments must meet the standards set out in the Open Spaces Strategy.*
- (b) In Wards or Parishes with open space shortfalls, in addition to the contribution set out in (a) above, new developments must make a proportional contribution to the open space shortfall. This is to be calculated by multiplying the Ward or Parish shortfall by the area of the land proposed for development and then dividing by the total area of land identified in DS3 for development in that Ward or Parish.*
- (c) In Wards or Parishes where the land area identified in DS3 for development is less than the open space shortfall, then development will not be approved.*

2. The Council must reaffirm its commitment to meet its deadline to remove open space shortfalls

- 2.1 In the Council's 2015 Core Strategy, CS15 includes the statement, 'We will work with our partners to meet the strategic open space needs of our community by 2028.' This policy is no longer seen in EV9. Not only does this policy have to be reinstated, but it needs to be accompanied by the requirement that the Council will identify and implement a suitable approach that will deliver the physical sites needed to achieve the open space provisions specified in the Open Spaces Strategy (see section 1 above).

It is not justified (NPPF35(b)) to weaken the open space policy with regards to deadlines when more reasonable alternatives are clearly available (such as that in the 2015 Core Strategy). No longer having a target date to meet open space needs is very likely to result in open spaces policies not being effective (NPPF35(c)).

- 2.2 **OUTCOME - the following to be added to EV9:**

By 2028, the Council will meet the open space needs of our communities as specified in the Open Spaces Strategy.

3. The Council's open space definition is not consistent with the NPPF definition

- 3.1 The third paragraph in EV9 states that

*We will protect our open space, sport and recreation provision identified **on the Policies Map**, and any future provision made...*

This has changed from the previous local plan (where the term 'open space' was used). Equating open space only with what is shown on the Policies Map has the undesirable effect of ignoring informal open space. Informal open space is clearly included in the definition used by the NPPF.

All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.

It is not consistent with national policy (NPPF35(d)) to limit open space to only that identified as such on the Council's Policies Map. The wider NPPF definition should be used.

- 3.2 **OUTCOME - the paragraph in EV9 that currently reads:**

We will protect our open space, sport and recreation provision identified on the Policies Map, and any future provision made as part of new development, unless it can be satisfactorily demonstrated that:

- *the proposed development is ancillary to the existing recreational use of the site; or*
- *the provision is surplus to requirements as evidenced by an assessment of need; or*
- *alternative provision of an equivalent or greater standard will be provided in an accessible location nearby.*

to be changed to:

All open space, including informal open space, will be retained unless they are clearly surplus to requirements or replacement provision of at least equal quantity and quality can be provided in a suitable location in the same Ward or Parish.

4. Communities should not be excluded from proposing initiatives for open space

- 4.1 The final paragraph in EV9 is too stringent in specifying that only neighbourhood plans will be allowed to 'protect and enhance' open space. Many Wards in Charnwood do not have neighbourhood plans (and have little support available to produce them). It is surely not reasonable to exclude community and resident groups, or even individuals, from involvement in proposing open space initiatives.
- 4.2 There is also no mention in EV9 of how Local Green Space can be proposed, but this falls under 3.31 in the MIQs and will likely be discussed there.
- 4.3 Considerable support for the case that a broader approach should be taken can be found in the NPPF. First, the assumption of sustainable development in NPPF8(b), includes *a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, **with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being***
- 4.4 Further evidence can be found in NPPF84 that states *Planning policies and decisions should enable:*
*(d) **the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.***
- 4.5 Further, NPPF93(a) states ***To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;***
- 4.6 By allowing only neighbourhood plans to propose open space initiatives, many of the 'communities' referenced in NPPF 8(b), NPPF84 and NPPF93(a) will be excluded from involvement in protecting and enhancing open space.
- 4.7 **It is not clear how severely restricting the avenues by which open space can be 'protected and enhanced' is taking a positive approach to improving the quality of the Borough's open spaces and tackling the shortfalls. The proposed EV9 policy is not positively prepared as it is unlikely to help meet open space needs (NPPF35(a)), it cannot be justified as inclusive approaches will be more successful in protecting and enhancing open space (NPPF35(b)), it is unlikely to be successful in recovering shortfalls over the plan period (NPPF35(c)) and it will almost certainly fail to fulfil the social aspects of sustainable development (NPPF35(d)).**
- 4.8 **OUTCOME - The last paragraph of EV9 that currently reads:**
We will support neighbourhood plan groups in protecting and [enhancing] locally important open space, sport and recreation facilities through neighbourhood plans.
to be changed to:
*We will support neighbourhood plan groups, **community groups and residents' groups in proposing, protecting and enhancing locally important open space, sport and recreation facilities.***
Note that the changes proposed here may be unnecessary if the proposed changes in section 1 are implemented to a sufficient extent.

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3.31 How would local green spaces be designated in the future?

The pre-submission version of the local plan is unsound in two respects. The following modifications need to be made.

1. **Leconfield meets NPPF101 and NPPF102 and so must be designated as Local Green Space.** It would be against National Policy not to confirm designation (NPPF35(d), but also NPPF35(a)) and the Council's own test that led to the refusal to designate is not justified (NPPF35(b)).
2. **A policy is needed to specify how Local Green Space will be designated.** To be positively prepared, the Council must seek to meet open space needs (NPPF35(a), but also NPPF35(b)).

1. Leconfield meets NPPF101 and NPPF102 and so must be designated as Local Green Space

- 1.1 **The Council agrees that Leconfield meets the site criteria of NPPF102.**
- 1.2 NPPF101 considers whether a site is 'capable of enduring'. Being 'capable of enduring' is tested against whether the site is identified for development in the local plan (NPPF Guidance Paragraph 0007) and whether the site has planning permission (NPPF Guidance Paragraph 0008). **Leconfield is neither in the local plan as a site for development, nor does it have planning permission. It therefore meets NPPF101.**
- 1.3 **Leconfield meets both NPPF101 and NPPF102 and so designation is consistent with National Policy.**
- 1.4 Rather than following NPPF101 and the guidance notes, instead the Council formulated a new test of its own (that it applied only at Leconfield) to assess whether Leconfield is 'capable of enduring'. It then used this test as the single reason not to designate. The Council's test was
if the planning application was approved [it would not] endure beyond the end of the plan period.
The Council's test considers only the outcome should the planning application be approved. The Council's test ignores that the planning application could be refused, in which case the site is capable of enduring. To be sound, a test must apply to the actual situation now, namely that the application is yet to be determined and so could be either approved or refused. As refusal remains one of the possible outcomes, the site is currently capable of enduring.
- 1.5 An example from the Open Spaces Society should make it clear why NPPF101 takes into account only planning permissions and not planning applications, *'Planning applications are short-term in nature and so divorced from the medium/long term considerations required in local plan making. As planning applications will come and go during the plan-making process, at what specific time in the process should the presence or absence of an application be taken into account?'*
- 1.6 Further, if planning applications were to be taken into account in Local Green Space decisions, the submission of such an application by any party could be used maliciously to scupper designation.
- 1.7 Not to designate Leconfield would be unsound for the following reasons.
 - (1) The site meets the NPPF101 and NPPF102 criteria and so it would be against National Policy if Leconfield were not designated as a Local Green Space (NPPF 35(d)).
 - (2) We are still at the point where the planning application is not determined. As refusal remains as one of the possible outcomes, the site must be capable of enduring. The Council's test is unsound as it considers only one of the two possible outcomes and so cannot be justified (NPPF35(b)).
 - (3) Nanpantan Ward has the largest *per capita* open space shortfall in the Borough and all remaining greenfield sites have been allocated to the LUSEP. Not protecting the site would mean the Ward's objectively assessed open space needs can **never** be met (NPPF35(a)), resulting in an outcome that would be incompatible with sustainable development (NPPF 35(d)).
- 1.8 **OUTCOME** - Confirm the Local Green Space designation of Leconfield.

2. A policy is needed to specify how new Local Green Space will be designated

- 2.1 The Council has not specified under what circumstances LGS applications will be considered, giving the impression that LGS applications are not welcomed. This is not in keeping with the requirement that a plan must be positively prepared as set out in NNPF35(a).
- 2.2 It is important to make available a route that allows community groups or residents' groups to propose sites for LGS designation. This is particularly important in the Wards in Charnwood that generally do not produce neighbourhood plans (and have little support to generate them) and so are unable to use this route to propose LGSs.

Specifying the avenues by which Local Green Space can be proposed would demonstrate a positive approach to tackling the Borough's large open space shortfalls (NPPF35(a)). Not specifying the routes to designation is not justifiable, as an alternative that identifies inclusive approaches is more likely to be successful in bringing forward candidate sites (NPPF35(b)).

- 2.3 **OUTCOME** - Add the following statement that has been adapted from the previous local plan.
The Council will respond positively to Local Green Space applications, identified in a Neighbourhood Plan, or proposed by community groups or residents' groups.