

Congresbury Community Right to Build Order

**A report to North Somerset Council on the
Congresbury Village Hall Community Right to Build
Order**

**Andrew Ashcroft
Independent Examiner
BA (Hons) MA, DMS, MRTPI**

Director – Andrew Ashcroft Planning Limited

Executive Summary

- 1 I was appointed by North Somerset Council in January 2016 to carry out the independent examination of the Congresbury Village Hall Community Right to Build Order.
- 2 The examination was undertaken by written representations. I visited the site of the Order on 17 February 2016.
- 3 The Order proposes the development of a new village hall and community centre on the King George V Playing Fields at Congresbury. The proposed building would consolidate and expand existing social and recreational facilities on the site and introduce new car parking arrangements.
- 4 The Order has been significantly underpinned by community engagement. It seeks to achieve sustainable development and reflects a specific range of social, environmental and economic issues.
- 5 Subject to a series of recommended modifications set out in this report I have concluded that the Order meets all the necessary legal requirements and should proceed to referendum.
- 6 I recommend that the referendum should be held within the associated Congresbury neighbourhood development plan area.

Andrew Ashcroft
Independent Examiner
12 April 2016

1 Introduction

- 1.1 This report sets out the findings of the independent examination of the Congresbury Village Hall Community Right to Build Order ('the Order').
- 1.2 The Order has been submitted to North Somerset Council (NSC) by the Congresbury New Village Hall Development Trust in its capacity as the qualifying body responsible for its preparation.
- 1.3 Neighbourhood development plans and associated development orders were introduced into the planning process by the Localism Act 2011. They aim to allow local communities to take responsibility for guiding development in their area. This approach was subsequently embedded in the National Planning Policy Framework in 2012. The Framework continues to be the principal element of national planning policy.
- 1.4 This report assesses whether the Order is legally compliant and meets the Basic Conditions that apply to such proposals. It also considers the content of the Order and, where necessary, recommends changes to its contents and supporting text.
- 1.5 This report also provides a recommendation as to whether the Order should proceed to referendum. If this is the case and that referendum results in a positive outcome the development can proceed.

2 The Community Right to Build Order process and the submitted Order

Community Right to Build Orders

- 2.1 A wide range of community rights were introduced into legislation by the Localism Act 2011. The right most frequently applied by local communities is the preparation of a neighbourhood development plan. However, Neighbourhood Development Orders can grant planning permission for specific types of development in a neighbourhood area. A Community Right to Build Order is a particular type of Neighbourhood Development Order that can be used to grant planning permission for small scale development for community benefit on a specific site in a neighbourhood area.
- 2.2 Community Right to Build Orders need to be examined independently to ensure that they meet prescribed basic conditions.

The Order itself

- 2.3 The Order proposes the construction of multi-use village hall and community centre on land at King George V Playing Fields, Stonewell Drive, Congresbury.
- 2.4 The proposed building is shown to have a footprint of 926 square metres and is located to the immediate north of the existing tennis courts. It would occupy the site of the existing tennis pavilion and surrounding land.
- 2.5 The existing Recreation Club building is proposed to be demolished and its site would become the main car park for the remodelled set of facilities on the wider Playing Fields. The access into the proposed main car park would use the existing vehicular access off Stonewell Drive. The Order also proposes the construction of a three bay layby in Stonewell Drive.
- 2.6 The Order has been submitted by the Congresbury New Village Hall Development Trust ('the Trust'). The Order indicates that the Fields in Trust, the King George V Trustees, the Recreation Club Committee, the Congresbury Cricket Club, the Congresbury Football Club and the Congresbury Tennis Club support the project in their various capacities as landowners and tenants.

3 The Role of the Independent Examiner and Legislative Requirements

- 3.1 The independent examiner's role is to ensure that any submitted plan or Order meets the legislative and procedural requirements.
- 3.2 I was appointed by NSC, with the consent of the Trust, to conduct the examination of the Order and to prepare this report. I am independent of both the NSC and the Trust. I do not have any interest in land affected by the Order.
- 3.3 I possess the appropriate qualifications and experience to undertake this role. I am Director of Andrew Ashcroft Planning Limited. In previous roles I have had over 30 years' experience in various local authorities at either Head of Planning or Service Director level. I am a chartered town planner and have experience of undertaking other neighbourhood plan examinations and health checks. I am a member of the Royal Town Planning Institute.

Examination Outcomes

- 3.4 In my role as the independent examiner of the Order proposal I am required to recommend one of the following outcomes of the examination:
- (a) that the Order is submitted to a referendum; or
 - (b) that the Order should proceed to referendum as modified (based on my recommendations); or
 - (c) that the Order does not proceed to referendum on the basis that it does not meet the necessary legal requirements.
- 3.5 In relation to Community Right to Build Orders the examiner's report is binding. If the examiner's report recommends that the draft Order is refused the local planning authority must refuse the proposal. If the examiner's report recommends the draft Order is submitted to a referendum (with or without modifications) a referendum must be held by the local planning authority on the eventual making of the Order.

The Basic Conditions

- 3.6 As part of this process I must consider whether the submitted Order meets the Basic Conditions as set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. The basic conditions for an Order of this type are as follows:
- having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the Order; and
 - having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit that it possesses, it is appropriate to make the Order; and
 - 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; and
 - the making of the Order contributes to the achievement of sustainable development; and
 - the making of the Order is in general conformity with the strategic policies of the development plan in the area; and
 - the making of the Order does not breach, and is otherwise compatible with European Union (EU) obligations.

I have examined the submitted Order against each of these basic conditions, and my conclusions are set out in Sections 7 and 8 of this report.

Other examination matters

- 3.7 Schedules 4B and 4C of the Town and Country Planning Act 1990 (as amended) set out particular requirements for Orders of this nature. They include specific details in relation to enfranchisement rights.
- 3.8 Having addressed the various matters I am satisfied that all of the points have been met subject to the contents of this report.

4 Procedural Matters

4.1 In undertaking this examination I have considered the following documents:

- the submitted Order.
- the Order Basic Conditions Statement.
- the Order Consultation Statement (and its appendices)
- the representations made to the Order.
- the adopted North Somerset Replacement Local Plan 2007
- the adopted North Somerset Council Core Strategy 2012
- the emerging North Somerset Council Sites and Policies Plan Part 1 2016
- the National Planning Policy Framework (March 2012).
- Planning Practice Guidance (March 2014 and subsequent updates).
- recent Ministerial Statements (March, May and June 2015).

4.2 I carried out an unaccompanied visit to the Plan area on 17 February 2016. I looked at the Order site and its wider context. My site inspection is covered in more detail in paragraphs 6.10 to 6.15 of this report.

4.3 It is a general rule that examinations of this type should be held by written representations only. Having considered all the information before me, including the representations made to the submitted Order, I was satisfied that it could be examined without the need for a public hearing. I advised NSC of this decision early in the examination process.

5 Consultation

Consultation Process

- 5.1 Community Right to Build Orders require full and proper public consultation to have taken place with the local community on the emerging proposal. This is particularly important as the making of any such Order process replaces the need for the submission of a traditional planning application.
- 5.2 In accordance with the Neighbourhood Planning (General) Regulations 2012 the Trust has prepared a Consultation Statement. This statement is thorough, comprehensive and professionally-prepared. It follows the format and style of the other Plan documents. It is supported by two tables which provide a very significant level of detail. This includes specific information on the consultation process that took place on the draft version of the Plan between September and October 2015. These details set out how the emerging Order took account of the various comments and representations.
- 5.3 The initial elements of the Consultation Statement set out details of the means by which the local community has been advised of the emerging proposal and the mechanisms and opportunities by which comments could be made. The Statement provides comprehensive details about the following consultation activities:
- the initial village survey; and
 - the survey results; and
 - specific consultation sessions; and
 - engagement with key stakeholders and user groups; and
 - the involvement of the Parish Council; and
 - the presentation on the project to the annual parish council meeting in 2014; and
 - the use of local newspapers/magazines/the village newsletter; and
 - the development and use of a website; and
 - the direct engagement of the St. Andrews Primary School in the project; and
 - the use of the library/noticeboards and shop windows to advise local residents about the Order proposals
- 5.4 It is clear to me that consultation has fundamentally underpinned the Order's production. Advice on the process has been made available to the community in a positive and direct way by those responsible for its preparation. Consultation and feedback has been at the heart of the Order process throughout the various stages of its production.
- 5.5 Table 2 of the Consultation Statement has been particularly informative to my examination of the Plan. It sets out the general range and nature of the issues raised at the pre-submission phase of the Order and includes the Trust's response to those points. The latter part of the table lists the individual comments made.
- 5.6 From all the evidence provided to me as part of the examination, I can see that those promoting the Order have adopted an inclusive and comprehensive approach to

seeking the opinions of all concerned throughout the process. On this basis I am fully satisfied that the consultation process has complied with the requirements of the Regulations.

Representations Received

5.7 Consultation on the submitted plan was undertaken by the District Council for a six-week period and which ended on 12 February 2016. The consultation exercise generated a significant degree of interest from local persons and public or other statutory bodies. The representations from local people included comments both of support and objection to the Order proposals and covered a wide range of issues.

5.8 In summary the local representations were as follows:

Support for the Order proposal

- the proposal is long overdue
- it will enrich village life
- existing meeting places are outdated
- the site is a safe option located off quiet roads
- a community café is needed
- the proposal is centrally located within the village
- it is accessible on foot
- it is a good, modern design

Objections to the Order proposal

- difficult access for cars
- additional traffic on the Causeway
- noise and disturbance
- parking spaces are inadequate
- loss of play and amenity open space
- the scale/height of the proposed building
- the costs associated with its development/a potential 'white elephant'
- flooding and drainage
- loss of village character
- impact of lighting
- loss of mature trees
- the operational efficiency and control of the shared facilities

5.9 Comments were made on the Order by the following list of statutory bodies:

- Somerset County Council
- North Somerset Council
- The Coal Authority
- Congresbury Parish Council
- The Environment Agency

- Historic England
- Wessex Water
- Natural England
- Sport England
- Ministry of Defence
- Mid Somerset Flood Risk Management Team
- North Somerset Levels Internal Drainage Board

In some cases, I have incorporated comments from these bodies into the proposed modifications set out in section 8 of this report.

6 The Order and the Development Plan Context

The Order Site

- 6.1 The site area covered by the Order extends to 0.21 hectares. The site is currently occupied by the tennis pavilion (a single storey, wooden Alpine structure) and surrounding land to the immediate north of the existing open tennis courts. The Order proposes the demolition of the adjacent main pavilion building and the future use of its site for a 22 space car park to service the new facilities.
- 6.2 The Order site itself sits within the wider King George V Playing Fields and which currently includes the cricket pavilion, the tennis pavilion, a cricket pitch and associated practice nets and children's area. There is an existing vehicular access into the wider playing field site off Stonewell Drive
- 6.3 The wider playing field sites is surrounded by residential properties and their associated access roads. In particular, Dolemoor Lane lies to the north-west, The Causeway lies to the north-east, and Stonewell Drive and Stonewell Park Road lie to the south.

Development Plan Context

- 6.4 The development plan context is extensive and has provided a clear framework for the emergence of the proposal set out in the submitted Order.
- 6.5 The North Somerset Core Strategy was adopted in April 2012. It covers the period up to 2026. A successful High Court challenge resulted in several policies being remitted back to examination stage. However, none of these policies are relevant to the proposed Order, and its remaining policies are unaffected. The adopted North Somerset Replacement Local Plan 2007 will shortly be superseded in part by the emerging Sites and Policies Plan part 1 and at a later date (with regards to site allocations) by the Sites Allocations Plan. The emerging Sites and Policies Plan (Part 1 – Development Management Policies) contains detailed policies that complement the Core Strategy. It covers a range of development issues including development in conservation areas, extensions to dwellings, development in the countryside, retailing, accommodation for older people, minerals planning and design. The publication version was the subject of consultation in February 2015. The Plan was submitted in July 2015 and examination hearings were held in November 2015. Consultation on the proposed main modifications to the submitted plan was held between 14 January and 2 March 2016. Given the very advanced nature of this Plan I have given significant weight to its policies.
- 6.6 The Core Strategy sets out the overall direction of growth and development for the North Somerset area. Whilst its policies are of a strategic nature the following directly relate to the Order proposal:
- CS2 Delivering Sustainable design and construction
 - CS3 Environmental impacts and flood risk
 - CS4 Nature Conservation

- CS9 Green infrastructure
- CS11 Parking
- CS12 Achieving high quality design and place making

6.7 The Sites and Policies Plan Part 1 produces a more detailed series of policies that will underpin the approach already set out in the Core Strategy. Policies that have a particular relevance to the Order proposal are as follows:

- DM1 Flooding
- DM8 Nature Conservation
- DM9 Trees
- DM24 Safety, traffic and provision of infrastructure associated with development
- DM25 Public rights of way, pedestrian and cycle access
- DM28 Parking Standards
- DM29 Car Parks
- DM32 High Quality Design and place making
- DM69 Location of sporting, cultural and community facilities.

6.8 During the examination NSC provided me with an update of its emerging Site Allocations Plan Part 2. It identifies new residential allocations to meet the Core Strategy housing requirement as well as reviewing existing sites and designating others for employment and other uses. It also safeguards areas for local green space, strategic gaps, or other protective designations. This emerging Plan identifies the King George V Playing Fields as local green space. Local Green Spaces are proposed to be protected by an emerging Policy SA7 in the emerging Plan. The Plan is available to comment on from 10 March 2016 until 28 April 2016. The approach to this site follows on from the identification of the wider playing fields site as an amenity area in Policy ECH/1 of the 2007 Plan.

6.9 NSC have advised me that whilst the wider Playing Fields meets the NPPF criteria for the designation of local green space it is not proposing any objection to the Order given that the Site Allocations Plan is at a very early stage. This is an entirely practical and appropriate approach. I have not given any weight to this emerging policy as part of this examination.

Site Visit

6.10 I carried out an unaccompanied visit to the Order site in particular and to Congresbury in general on 17 February 2016.

6.11 I drove to Stonewell Drive and then walked into the wider Playing Fields through the existing pedestrian and vehicular access. I saw the various buildings on the site and the tennis courts. I looked at the outline of the building proposed in the Order against the existing facilities on the wider Playing Fields and in relation to the position of the surrounding residential properties to the north, east and south.

6.12 I then walked along both Dolemoor Lane and the Causeway to view the potential impact of the proposed building from those aspects. Thereafter I walked into the village centre along Paul's Causeway. I saw that this provided a convenient, safe and

attractive route between the Order site and the village centre. There were several other people enjoying both the sunshine and a pleasant walk that morning.

- 6.13 I saw the range of facilities available in the village centre.
- 6.14 I also took the opportunity to walk along Station Road/Weston Road and in doing so I saw the Old School Rooms.
- 6.15 From the village centre I walked back to Stonewell Drive via High Street, Brinsea Road and Stonewell Lane. In taking this route I saw the War Memorial Hall and Social Club.

7 The Order as a whole

7.1 This section of the report deals with the submitted Order as a whole and the extent to which it meets the basic conditions. The submitted Basic Conditions Statement has helped considerably in the preparation of this section of the report. It is a well-presented, informative and concise document.

7.2 The Order needs to meet all the basic conditions to proceed to referendum. This section provides an overview of the extent to which the Plan meets the basic conditions. The submitted Basic Conditions Statement is very thorough and I will only highlight certain key elements in this section of the report.

National Planning Policy and Guidance

7.3 The key elements of national policy relating to planning matters are set out in the National Planning Policy Framework (NPPF) issued in March 2012.

7.4 The NPPF sets out a range of core land-use planning principles to underpin both plan-making and decision-taking. The following are of particular relevance to the submitted Order:

- a plan led system empowering local people to shape their surroundings.
- not being simply about scrutiny but instead a creative exercise in finding ways to enhance and improve the places in which people live their lives.
- seeking to secure high quality design and a good standard of amenity.
- actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling.
- taking account of and supporting local strategies to improve health, social and cultural well-being.

7.5 Community right to build orders sit within this wider context both generally, and within the more specific presumption in favour of sustainable development, which is identified as a golden thread running through the planning system. Paragraph 16 of the NPPF indicates that neighbourhoods should both develop plans that support the strategic needs set out in local plans and plan positively to support local development that is outside the strategic elements of the development plan.

7.6 There are a variety of aspects of the NPPF which provide a context for the Order. However, the key element to which the Order needs to have regard is Section 8 (Promoting healthy communities). Paragraph 69 of the NPPF identifies that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Paragraph 70 goes on to identify that in order to deliver the social, recreational and cultural facilities and services the community needs, planning policies should plan positively for the provision and use of shared space, community facilities (including meeting places and sports venues) and ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

7.7 Paragraph 71 identifies the particular importance of Community Right to Build Orders. Local planning authorities (here NSC) are advised to take a positive and collaborative approach to enable development to be brought forward under such Orders. The importance of working with communities to identify and resolve key issues is also highlighted.

7.8 Para 73 comments that high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. It is clear that the Order is intending to improve current access to sport, recreation and community facilities in Congresbury in line with this aspect of the NPPF.

7.9 I am also satisfied that the Order has had regard to the following elements of the NPPF:

Design Quality – Paras 56-68

Climate change and flooding – Paras 93-108

Conserving and enhancing the natural environment – Paras 109-125

7.10 Given the particular circumstances of proposals submitted in an Order of this nature I also need to ensure that the proposed conditions have regard to national policy. This is set out in paragraph 206 of the NPPF. It indicates that planning conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

These six tests must all be satisfied in the making of any decision to grant a planning application. Given the nature of the Community Right to Build Order process I will apply them to my examination of the extent to which the proposed conditions comply with this aspect of national planning policy.

7.11 As submitted the Order conditions do not fully accord with the six tests. The majority of my recommended modifications in Section 8 relate to matters of clarity and precision. They are designed to ensure that the Order fully accords with national policy and is in general conformity with local planning policy. Where necessary I have proposed modifications to conditions taking account of the model conditions set out in Appendix A of Circular 11/95. Whilst the wider circular has now been superseded by the introduction of the NPPF in 2012 its specific guidance on model conditions remains.

7.12 In addition to the NPPF I have also taken account of other elements of national planning guidance including the Planning Practice Guidance and the ministerial statements of March, May and June 2015.

7.13 Having considered all the evidence and representations available as part of the examination I am satisfied that the submitted Order has had regard to national planning

policies and guidance in general terms. It sets out a positive solution to providing a modern and efficient village hall and community centre in Congresbury. It does so in a sensitive way and promotes a modern and efficient community and recreational facility.

Special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic merit that it possesses

7.14 In the submitted Order (Section 5) the Trust has indicated that the proposal has no direct or indirect effect on any listed building or any features of special architectural or historic merit that it possesses.

7.15 From the information before me at examination I am satisfied that this is the case. There is no information to the contrary. This basic condition is met.

Special regard to the desirability of preserving or enhancing the character or appearance of any Conservation Area

7.16 In the submitted Order (Section 5) the Trust has described the relationship between the site and the Congresbury Conservation Area. The Conservation Area includes key components of the historic village and is based around St Andrew's Church, High Street and Broad Street. Part of its southern boundary runs along the northern boundaries of the curtilages of properties in The Causeway.

7.17 As I indicated earlier in this report I walked from the Order site into the village centre (and the Conservation Area) as part of my visit to the site. I saw the transition as I moved into the conservation area along Paul's Lane. Having seen this relationship first hand, I am satisfied that the Order proposals meet this basic condition. They have no direct or indirect impact on the character or appearance of the Congresbury Conservation Area. There is no evidence to the contrary and Historic England has raised no objection to the Order.

Contributing to sustainable development

7.18 There are clear overlaps between national policy and the contribution that the submitted Order makes to achieving sustainable development. Sustainable development has three principal dimensions – economic, social and environmental. It is clear to me that the submitted Order has set out to achieve sustainable development. In the economic dimension it will provide employment opportunities for local people. In the social role it promotes a new and well-designed sporting and community building for local use. In doing so it provides the opportunity for the introduction of a community-run café into the village. In the environmental dimension it seeks to protect the natural, built and historic environment of the immediate area. In particular, it sets out a range of planning conditions that will restrict the use and occupancy of the building, that will restrict its opening hours, will require appropriate noise insulation of the building and will ensure that the necessary highway related works are in place before the buildings are used.

General conformity with the strategic policies in the development plan

- 7.19 I have already commented in detail on the development plan context in the wider North Somerset Council area in paragraphs 6.4 to 6.9 of this report.
- 7.20 Having read the Order, the associated documents and looked at the site and its surroundings on my visit I consider that the submitted Order is in general conformity with the strategic policies in the development plan. In particular I am satisfied that the Order would bring forward a community and sporting facility that would comply with Sites and Policies Plan policy DM69. It is a proposal that has sought to secure the implementation of that policy in Congresbury.
- 7.21 In addition the Order proposal is also in general conformity with several specific matters as addressed in the development plan. It addresses high quality and sustainable design (CS2/CS12/DM32), traffic and parking issues (CS11/DM24/25/28/29), drainage and flooding issues (CS3/DM1) and environmental and nature conservation matters (CS4/CS9/DM8/DM9). I comment in greater detail on these various matters in Section 8 of this report in general, and in relation to the proposed conditions in particular. Whilst the Order proposes built development on a site affected by amenity area designation in the 2007 Plan its intention is to bring forward a qualitative improvement in the amenity area provision as set out in policy ECH/1.

The making of the Order does not breach, and is otherwise compatible with European Union (EU) obligations.

- 7.22 In order to comply with the various components of European and environmental legislation NSC produced a screening opinion on the need or otherwise for the Order to be accompanied by a strategic environmental assessment. That process concluded that a SEA was not required. It concluded that the adopted Core Strategy had been accompanied by a full Sustainability Appraisal and which had also included a SEA. This process had ensured that there were no likely significant impacts from the implementation of the Core Strategy and that any necessary mitigation measures were in place. The screening opinion goes on to comment that there is general conformity between the draft Order and the adopted Core Strategy. NSC therefore concluded that the implementation of the Order would not result in any likely significant effects on the environment. I am satisfied that NSC followed the necessary processes in this matter including consultation with appropriate bodies. Natural England agree with the Council's conclusion. The report itself is both comprehensive and proportionate to the Order and its strategic context.
- 7.23 NSC has also undertaken a Habitats Regulations Assessment of the submitted Order proposals. The exercise considered whether significant effects would be likely regarding one of the four European Sites within North Somerset (the North Somerset and Mendip Bats SAC). The other three Sites are the Severn Estuary European Marine Site (SAC, SPA and Ramsar), Mendip Limestone Grasslands SAC and Avon Gorge Woodlands SAC. They were considered too remote from the area affected by the draft Order.
- 7.24 The Assessment identifies that it would be unlikely that the Order proposals (given their location, size and nature) would result in effects on the North Somerset and Mendip

Bats SAC. NSC conclude from the screening exercise that there are unlikely to be significant effects on European sites. As such no further HRA work such as Appropriate Assessment is considered necessary. Natural England agree with the Council's conclusion.

- 7.25 Having reviewed the information provided to me as part of the examination I am satisfied that thorough, comprehensive and proportionate processes have been undertaken in accordance with the various regulations. The reports set out a robust assessment of the relevant information. None of the statutory consultees have raised any concerns with regard to either neighbourhood plan or to European obligations. In the absence of any evidence to the contrary, I am entirely satisfied that the submitted Order is compatible with this aspect of European obligations.
- 7.26 In a similar fashion I am satisfied that the submitted Order has had regard to the fundamental rights and freedoms guaranteed under the European Convention on Human Rights (ECHR) and that it complies with the Human Rights Act. There is no evidence that has been submitted to me to suggest otherwise. There has been full and adequate opportunity for all interested parties to take part in the preparation of the Order and to make their comments known. Substantial changes were made to the emerging Order proposals in their early stages. On this basis I conclude that the submitted Order does not breach, nor is in any way incompatible with the ECHR.

8 The details of the Order

- 8.1 This section of the report comments on the Order in general, and its proposed conditions in particular. It makes a series of recommended modifications to ensure that its various components have the necessary precision to meet the basic conditions.
- 8.2 My recommendations focus on the range of conditions attached to the Order. In some cases, I have also recommended changes to the associated supporting text.
- 8.3 I am satisfied that the content and the form of the Order is fit for purpose. It is thorough and will provide a degree of long term guidance for the development of the site. Other than to ensure compliance with national or local policy guidance I do not propose that major elements of the Order are removed or that new sections are included. The Trust has spent considerable time and energy in identifying the issues and objectives that they wish to be included in the Order. This gets to the heart of the localism agenda.
- 8.4 It is entirely appropriate that conditions are associated with the promotion of an Order of this nature. A more traditional approach of pursuing a planning application for a proposal of this type would result in the imposition of an equivalent series of planning conditions. They provide clarity both to the developers and to the local planning authority and reassurance to local residents.
- 8.5 The proposed conditions address a series of amenity and environmental issues. Those issues overlap with many of the comments and representations made by local residents and organisations. I have looked in particular detail at local policies that address the following aspects:
- The proposed use of the building
 - Hours of operation/opening
 - Noise levels and controls
 - Car parking and vehicular access
 - Environmental/design/landscaping matters
- 8.6 I have addressed the conditions in the sequence that they appear in the Order. In some cases, there are overlaps between the different elements and issues addressed.
- 8.7 For clarity this section of the report comments on all the conditions whether or not I have recommended modifications to ensure that the Order meets the basic conditions.
- 8.8 Where modifications are recommended to the Order they are highlighted in bold print. Any associated or free-standing changes to the text of the Order are set out in italic print.
- The Order itself*
- 8.9 The Order is well-presented and sets out details of a proposal for a new multi-use village hall and community centre. It is precisely the type of project that might be expected to be pursued through this mechanism.
- 8.10 I am satisfied that the various procedural matters associated with community right to build orders have been satisfied in this case.

- 8.11 The Order is underpinned by a series of detailed conditions. These conditions are particularly important to the extent that they control the use of the proposed building in this primarily residential area. The remainder of this part of the report provides commentary on the conditions and the extent to which they meet national tests and the basic conditions.

The proposed conditions

- 8.12 Earlier sections of this report have set out the six tests for the proper application of planning conditions. I shall follow that approach in this part of the report and apply the various tests to the range of conditions. This will ensure full compliance with the requirement for the Order to have regard to national planning policy. I will also make an assessment of whether the conditions adequately address the range of issues that stem from the proper implementation of local planning policy.

Condition 1- Time limit

- 8.13 The condition in the Order requires that development shall begin within ten years of the Order coming into effect. Plainly this is a very lengthy period and well beyond the timescale of three years that is traditionally associated with planning permissions. The Trust argues that whilst the ten-year period may not be necessary it would be prudent to allow the necessary project funding to be secured.
- 8.14 Whilst I have a degree of sympathy with the proposed extended time period it has a significant potential to create both a long period of investment uncertainty. It would also introduce significant delay between a local referendum and the eventual start of work. A more realistic period of five years would be more appropriate, particularly as the Order project has already been in progress for several years. On this basis I recommend that the condition is modified to reflect this shorter commencement period. In doing so I have applied the standard wording from Circular 11/95.

Modified condition:

The development hereby permitted shall be begun before the expiration of five years from the date of the making of the Community Right to Build Order.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990

Condition 2 - Construction Management

- 8.15 The condition proposed in the Order requires a construction plan to be submitted to NSC for approval before development commences. It includes an appropriate range of traffic management, dust controls and the disposal of waste. Development thereafter needs to comply with the approved Plan
- 8.16 The condition is both appropriate and necessary
- 8.17 This condition meets the basic conditions as it meets the six tests for the use of conditions.

Condition 3 - Contamination

- 8.18 This condition properly seeks to safeguard the community during demolition if asbestos is found within the affected buildings. Considerable work in this regard has already been undertaken, and I have made the connection to the resulting report in the modified notes to applicant.
- 8.19 As drafted the condition fails to meet the six tests. It is unclear on what is required by the developer and fails to regulate the implementation of any control measures that may be necessary. I recommend that the condition is modified. In doing so I have recommended modifications that ensure that it takes on the same format as condition 2

Modified condition:

No development hereby approved, including the demolition of the Recreation Club building, shall take place until an asbestos survey and a demolition and remediation plan has been submitted to and approved in writing by the North Somerset Council. The necessary demolition and remediation works shall be carried out as approved.

Reason: To ensure that the implementation of the development does not prejudice public safety and amenity.

Condition 4 – Existing Landscaping

- 8.20 This condition requires a landscaping proposal to be submitted to and approved by NSC. It is entirely appropriate for the Order site and its proposals.
- 8.21 In order to comply with the basic conditions in general, and the six tests for conditions in particular, I recommend that a reason is attached to the condition. I also recommend that the condition's title is modified to read 'Landscaping of the Site'. This will better reflect its purpose.

Modified reason associated with the condition

Reason: To ensure that the new development authorised by the Order is sensitively accommodated within the wider environment and its landscape.

Modify title to read 'Landscaping of the Site'

Condition 5 – Tree Protection

- 8.22 This condition sets out to protect trees to be retained on the site. The imposition of a condition of this type is entirely appropriate.
- 8.23 It meets the basic conditions.

Condition 6 – Foul and Surface Water Drainage

- 8.24 This condition follows the same format as conditions 2/3/4/5. In this case it requires drainage details to be submitted and approved. A condition of this type is entirely appropriate and necessary. Different variations of the same condition have been suggested by the North Somerset Levels Internal Drainage Board and the Mid Somerset Flood Risk Management Team.
- 8.25 As drafted the condition does not require that the works are implemented in accordance with the approved details. I have recommended a modification to remedy this point. In making this modification I have incorporated technical suggestions from the two bodies identified in paragraph 8.24 above. The condition as drafted also does not include a reason for its imposition. I have addressed this matter below.

Modified condition

No development shall be commenced until foul and surface water drainage details together with a programme of implementation and maintenance for the lifetime of the development have been submitted to and approved by the Local Planning Authority. Such works shall be carried out in accordance with the approved details.

Reason: To ensure that the development is served by a satisfactory system of surface water and foul drainage and in accordance with paragraph 17 and sections 10 and 11 of the National Planning Policy Framework, Paragraph 103 of the National Planning Policy Framework and the Technical Guidance to the National Planning Policy Framework (March 2015) and policy CS/3 of the North Somerset Core Strategy.

Condition 7 - Ecology

- 8.26 This condition sets out to safeguard protected species through survey work and any necessary protection. Plainly this is an important material consideration in the development of the site. However, circumstances have moved on and the Habitats Regulations Assessment (see paragraphs 7.23 and 7.24 of this report) has confirmed that the development proposed will be unlikely to impact on protected species.
- 8.27 On this basis I recommend a modification to the approach adopted in the condition so that it has a more general nature and is required to produce an ecological management plan for approval and implementation.

Modified condition:

No development permitted by this Order shall take place until an ecological management plan has been submitted to and approved in writing by the North Somerset Council. The approved management plan works shall be applied and carried out as approved.

Reason: To ensure the protection and enhancement of the ecological value of the site in accordance with policy CS4 of the adopted North Somerset Council Core Strategy 2012

Condition 8 – Flood Mitigation

- 8.28 This condition sets out a specification to be followed for the finished floor level of the new building. Such a condition is entirely necessary and appropriate.
- 8.29 It meets the basic conditions.

Condition 9 – Layout, Scale, Design and External Appearance

- 8.30 This condition requires prior approval of layout, scale, design and external appearance of the building. Whilst detailed drawings have already been produced this condition will ensure that the local planning authority and local residents will have appropriate clarity on its final design. A condition of this nature is entirely necessary and clearly relates to the Order proposals.
- 8.31 It meets the basic conditions

Condition 10 – Characterisation of Use

- 8.32 This is an important condition in the context of the Order. It sets out to define the main use of the building, and to identify that the associated café and bar area should remain an ancillary use. This condition reflects the site's location in a residential area. It also addresses a similar range of amenity issues to those raised by local residents during the submission consultation exercise (see paragraph 5.8 of this report)
- 8.33 As currently drafted the proposed condition falls short of the six tests for conditions. It fails to safeguard in perpetuity the community and recreational use of the building and on which the Order has been developed and community views have been sought. These uses fall within Class D2 of the Use Classes Order and which would otherwise allow the introduction of other uses without permission as permitted development.
- 8.34 There is also a need to ensure that the building does not become a café or a public house in its own right. However, the proposed wording in this respect lacks the necessary precision as required by Circular 11/95. As such it will be difficult to enforce. I recommend the following modifications to address these issues. This recommendation results in the introduction of a further condition to those already included in the submitted Order

New condition (Permitted Uses)

The premises shall be used for a village hall and a community centre and for no other purpose (including any other purpose in Class D2 (Assembly & Leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason: To provide clarity on permitted uses and to safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016

Modified condition (to read The use of the café and bar area)

The café and bar area within the village hall and community centre as approved by this Order shall remain as an ancillary use to the main community use of the wider building. The café and bar area should neither be used in its own right nor let out specifically for that purpose.

Reason: To ensure that the building is used as a village hall and a community facility and to safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

Condition 11 – Hours of Use

- 8.35 This condition proposes limits on the hours of opening of the proposed new building. As with the previous condition it is particularly important given that the Order site is located in a residential area. It also addresses a similar range of amenity issues to those raised by local residents during the submission consultation exercise (see para 5.8 of this report).
- 8.36 The condition proposes that the building is capable of being opened between 09.00 and 23.00 seven days a week. This reflects the wide range of uses that could potentially take place from the building. On the basis of my observations of the site and given other controls set out in the schedule of conditions this approach is reasonable. To ensure conformity with the model conditions set out in Appendix 1 of Circular 11/95 I recommend the following modified condition.

Modified condition:

The use hereby permitted shall not be open to the general public or any specific users outside the hours of 09.00 to 23.00.

Reason: To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

- 8.37 In looking at the Order site and the surrounding area during the course of my visit it was apparent that there should be controls on the delivery of goods and supplies to the building to ensure that the Order proposals is in general conformity to the strategic policies of the development plan. Whilst the timing of deliveries may be heavily affected by the operational hours of associated companies and managerial decisions made by the Trust local residents have a reasonable expectation that the planning system would safeguard their amenities. This is particularly important given that delivery vehicles are traditionally bigger than the cars that will be otherwise going to and from the premises.
- 8.38 On this basis I recommend the introduction of an additional condition. This condition restricts deliveries to the traditional working day and to Saturday mornings.

New Condition (Delivery Times)

No deliveries shall be taken at or despatched from the site outside the hours of 09.00 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays

Reason: To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

Condition 12 – BREEAM Achievement

- 8.39 This condition requires that the new building is designed and constructed to meet a minimum BREEAM Level Very Good. As drafted the condition requires that the developer and the NSC agree the necessary arrangements for the assessment and implementation of the building.
- 8.40 I have considerable sympathy with the approach adopted in the submitted Order to secure a building that performs well on environmental and sustainability grounds. However, the condition does not meet the six tests for conditions. It lacks precision and would be difficult to monitor and where necessary to enforce. In any event the development may only commence in five years from the approval of the Order by which time new environmental standards may have been introduced to supplement, amend or replace BREEAM standards. On this basis I recommend that this condition is modified and to require that appropriate technical and environmental specifications are submitted to and approved by NSC before development commences. This does not mean that BREEAM Level Very Good or other standards should not be sought and achieved. It simply provides greater flexibility for all concerned as the project develops towards implementation.

Modified Condition (Building Efficiency)

No development shall take place until a detailed technical and environmental assessment setting out the design and efficiency elements of the building approved by this Order has been submitted to and approved in writing by North Somerset Council. The approved environmental works shall be applied and carried out as approved.

Reason: To ensure that the building is designed and constructed to appropriate environmental standards in accordance with policy CS2 of the adopted North Somerset Council Core Strategy 2012.

Conditions 13/14 - Plant Noise/Extraction Systems

- 8.41 Conditions 13 and 14 set out to control the scale and technical specification of plant and equipment of the proposed building including heating, extraction and ventilation and the resulting noise. Condition 13 seeks to address the resulting noise levels and condition 14 addresses the details of the various extraction systems.
- 8.42 The schedule of conditions would read better if the two conditions were reversed in their sequence in the Order.

- 8.43 Condition 14 as currently drafted reads well and complies with the six tests for conditions. It does not include a reason and I propose one as a recommended modification below.
- 8.44 Condition 13 seeks to ensure that the level of noise emitted from the various elements of plant shall not exceed background noise levels at the nearest noise-sensitive premises. Whilst I understand the approach this has been adopted it would not provide the degree of clarity and precision required. In particular, it would be difficult to monitor and enforce as it is dependent on an accurate assessment of background noise levels. I recommend the following series of proposed modifications to address these various matters:

Reverse the order of Conditions 13 and 14

Add the following reason to Condition 13 (now Extraction Systems)

Reason: To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan 2016

Replace Condition 13 (now Condition 14) with the following:

No development shall take place until a BS 4142: 2014 compliant technical and environmental assessment setting out the in combination noise output of the plant and equipment proposed in relation to condition (insert number) of this permission has been submitted to and approved in writing by North Somerset Council. The environmental works shall be applied and carried out as approved.

Reason: To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

Condition 15 - Landscape Implementation and Maintenance

- 8.45 This condition requires prior approval of landscaping and planting associated with the Order proposals. A condition of this nature is clearly necessary given the nature and the location of the site.
- 8.46 Whilst the condition addresses the key components of this matter its approach is imprecise. In addition, it addresses only soft landscaping issues rather than other materials which will also affect the quality and integrity of the wider proposal. Whilst condition 18 on highways matters addresses the technical design of access arrangements it does not cover the use of specific materials which are important in this sensitive location. I recommend that these matters are addressed in a series of modifications as follows:

Modified Condition

No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials, and all planting and other soft landscape materials.

New Condition

Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants (including species, plant sizes and proposed numbers/densities), and an implementation and replacement programme.

New Condition

All hard and soft landscape works shall be carried out prior to end of the first planting season after the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.

Reasons (for all three above): To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

Condition 16 – Tree Specification

- 8.47 The proposed condition sets out to control the range and nature of new tree planting as part of the Order proposals. A condition of this type is both appropriate and necessary and will complement other related conditions.
- 8.48 The condition makes specific reference to BS 8545. With minor modifications to its format I am satisfied that this element of the condition is necessary. As currently drafted the title of the BS note causes confusion. The wider reference to acknowledged national standards will provide appropriate technical detail and assurance to all concerned. As drafted the condition does not explicitly require the implementation of the approved scheme and the reason for the condition is imprecise. I recommend that these matters are addressed in the following modifications:

Modified condition:

Delete ‘Trees.... Recommendations’

Insert at end of condition ‘The schedule of planting shall be implemented as approved’

Modify reason to read: ‘To ensure that the new tree planting is properly implemented and is in accordance with policies CS4 and CS9 of the North Somerset Core Strategy and policies Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016.

Condition 17 – Lighting

- 8.49 This condition sets out to control external lighting in and around the Order site. A condition of this nature is both appropriate and necessary given the residential nature of the wider area and the proposed operating hours of the building itself.
- 8.50 As drafted the condition requires compliance with the Institution of Lighting Engineers Guidance Notes. Whilst working to such best practice is understandable this approach would be imprecise and would make monitoring and enforcement very difficult. To ensure that the condition meets the six tests and to relate in format and design to other conditions I recommend a modified version of the condition below. It requires prior

approval by NSC. I have cross-referenced this modified condition to the modified Informative Notes (see paragraph 8.56)

No development shall take place until an Institute of Lighting Engineers compliant technical and environmental assessment setting out the design, height, brightness and hours of operation of external lighting has been submitted to and approved in writing by North Somerset Council. The approved works shall be applied and carried out as approved.

Reason: To safeguard the residential amenities of the immediate area in accordance with Policy DM32 of the North Somerset Sites and Policies Plan Part 1 2016

Condition 18 – Highways and Access

- 8.51 This condition requires prior approval of technical highways and access details. Such a condition is both appropriate and necessary. It will overlap with the modified condition 15 (landscaping details). It also specifies that the development shall not be occupied until the works have been constructed.
- 8.51 I recommend three related modifications to provide further clarity to this condition. The first is to include the new car park in the schedule of details required. Its availability will be critical to provide the necessary off street car parking. The second is to require that the works are implemented as approved. The third is to break the condition into two separate sentences – the first addressing the approval of the details and the second preventing occupation of the building before the works are completed. I have also proposed a modification to the reason for the policy so that it accords with the reasons set out for other conditions.

Modified condition

Development shall not be commenced until details of the access for vehicles, cyclists and pedestrians and for the new car park including any works to Stonewell Drive and the proposed layby have been submitted to and approved in writing by North Somerset Council. The schedule of works shall be implemented as approved. The development shall not be occupied until the approved works have been completed in accordance with the approved details.

Reason: To ensure that the Order site operates in a safe and satisfactory way and does not have an unacceptable impact on the free and safe flow of traffic on the local highway network in accordance with policies DM 28, 29 and 32 of the North Somerset Sites and Policies Plan Part 1 2016

Condition 19 – Planning Obligation

- 8.52 The Order proposes a condition linking the Order to a future planning obligation.
- 8.53 All parties now agree that a condition of this nature is unnecessary. The new community/village hall is itself a community benefit and there is no other development with which it is associated either directly or indirectly. On this basis I recommend that the condition is deleted.

Delete condition

Other matters relating to conditions

- 8.54 This section of the report has generated modifications to existing conditions, has recommended that conditions are sub-divided and has introduced new conditions. I have sent a separate schedule to NSC and the Trust setting out a consolidated list of the conditions. I have also recommended that the revised schedule of conditions should be presented in the style, layout and format as advised in the Planning Practice Guidance (21a- 024-20140306)

Informative Notes

- 8.55 The Order sets out an informative note on the need for a Section 278 Agreement under the Highways Act 1980. This approach is helpful and provides clarity for all concerned. There are other matters that could usefully be included in an extended schedule of such notes. Some stem directly from my proposed modifications to various conditions. Others stem from comments received from the Environment Agency and from NSC. I recommend their incorporation into an extended schedule of informative notes as set out below. I have left the condition numbers deliberately blank so that they can relate to the revised numbering schedule (see paragraph 8.54 above)

Detailed work has already been undertaken on an Asbestos Survey and mitigation report at the time of the preparation of the Order. The development will be expected to follow its key principles and adopt its guidance in the discharge of condition (insert number) of this permission.

The Order anticipates a very high degree of environmental sensitivity in the design and construction of the new building. BREEAM Level Very Good is expected to be the standard to be achieved, although it is recognised that different environmental standards may apply at the time that the building is constructed. These matters will be expected to be addressed in the discharge of condition (insert number) of this permission.

The discharge of condition (insert number) will be expected to be underpinned by a detailed assessment of the impact of external lighting in general, and on the residential amenities of residents within close proximity to the site in particular. All assessments should be fully-compliant with the Institution of Lighting Engineers practice and guidance

The Environment Agency in its comments on the Order recommend that the applicant prepares a Flood Warning and Evacuation Plan for future users.

The site lies within a Flood Warning area. The developer is advised to contact the Environment Agency on 0345 988 1188 to sign up for the Floodline Warnings Direct service.

During any development works care should be taken so as not to cause interruption to the surface water drainage system of the surrounding land as a result of the operations on the site. Provisions must be made to ensure that all existing drainage systems continue to operate effectively and that riparian owners upstream and downstream of the site are not adversely affected. The developer is advised to contact the Environment Agency directly on this point.

In the event that demolition of the existing buildings takes place within the bird nesting season (March to August) the developer is advised to have the buildings checked for nesting birds by an ecologist within 24 hours of the commencement of demolition works.

The developer is advised that the buildings should be demolished in a precautionary manner in order to allow an assessment to be made of evidence of bats and the need for any necessary derogation notice.

The details to be submitted in order to discharge the conditions on external lighting (insert number) shall take into account the potential for bat habitats in the wider area.

9 Summary and Conclusions

Summary

- 9.1 The Order sets out a comprehensive and detailed set of proposals for a village hall and a community centre. It is underpinned with a range of technical and other documents. It has generated considerable levels of community interest and engagement.
- 9.2 Following my independent examination of the Order I have concluded that it meets the basic conditions for the preparation of a such orders subject to a series of recommended modifications.
- 9.3 This report has recommended a range of modifications to the conditions in the Order. Nevertheless, it remains fundamentally unchanged in its role and purpose. The proposed modifications to the conditions ensure that they comply with national planning policy and guidance and reflect more fully the local planning policies that have been promoted by NSC.

Conclusion

- 9.4 On the basis of the findings in this report I recommend to the North Somerset Council that subject to the incorporation of the modifications set out in this report that the Order should proceed to referendum.

Referendum Area

- 9.5 I am required to consider identify the referendum area for the area and whether it should be extended beyond the associated Congresbury Neighbourhood Development Plan area. In my view the neighbourhood area is entirely appropriate for this purpose and no evidence has been submitted to suggest that this is not the case. By definition the proposed village hall and community centre is a building for the local community and has no wider or strategic significance. I therefore recommend that the Order should proceed to referendum based on the approved neighbourhood area.

Andrew Ashcroft
Independent Examiner
12 April 2016

