



Government Legal Department

Thomas Ewings
Ashfords LLP
Tower Wharf
Bristol
BS2 0JJ

Planning and Infrastructure
Projects Team
Litigation Group
102 Petty France
Westminster
London
SW1H 9GL

BY EMAIL ONLY:

Thomas Ewings <ta.ewings@ashfords.co.uk>

DX 123243, Westminster 12

COPIED:

Tim Taylor <Tim@khift.com>
Kehinde Awojobi <kehinde.awojobi@somerset.gov.uk>

Your ref: TAE/SHX/351901-00008
Our ref: Z2513319

3 November 2025

Dear Mr Ewings,

Re: Pre-Action Protocol Letter: Land at Packsaddle Way, Frome, Somerset, BA11 2JU

Introduction

1. We act for the Secretary of State for Housing, Communities and Local Government (“the Secretary of State”).
2. This letter responds to your letter dated 20 October 2025 sent under the Pre-Action Protocol for Judicial Review, seeking to challenge the decision of Inspector M Chalk BSc (Hons) MSc MRTPI (“the Inspector”) dated 29 September 2025 (“the Decision Letter”).
3. The proposed statutory challenge under section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”) is considered to be unarguable and will be contested in full.
4. We have seen the pre-action response on behalf of People for Packsaddle (“PFP Response”) which responds to your proposed claim in detail. The Secretary of State adopts, insofar as relevant, the points made on behalf of the Interested Party. Considering that detailed response, this letter focuses on the key issues.

Response to the proposed claim

Legal Framework

5. For the purposes of this pre-action response, the relevant legal background is adequately summarised in your letter at §8.21-8.22 and the PFP Response at §32-35.



Response to submissions

6. The first issue which your proposed claim raises is the proper interpretation of policy DP16 of the adopted Mendip Local Plan 2014. The proper interpretation of the policy is that it applies to "...existing open, sport or recreational space, including allotments...". The policy means what it says in this regard and no further elaboration is needed.¹ Whether a site meets that description is a matter of planning judgment for the decision maker. It is an issue principally of policy application, rather than interpretation.
7. Once the policy is understood in this way, the lack of merit in the proposed claim is quickly revealed. You do not appear to dispute that the site is existing open space with recreational value for local people. That it is such a space, was the subject of "the testimonies of many residents during the inquiry" who described the "benefits they derive from the site as an attractive, peaceful, open and undeveloped space to take exercise, form social connections and experience nature close to their homes" (DL12). That was enough for DP16 to be engaged.
8. However, the Inspector also addressed your argument, relying on the supporting text to the policy at 6.149, that for a site to be protected by DP16 it either needed to be shown on the policies map or be a "new space". We do not consider this to be a pre-requisite for the applicability of DP16. The supporting text of the policy should not be interpreted as imposing additional requirements not found in the policy. However, even if we are wrong on this point, the Inspector addressed your argument in full.
9. The Inspector accurately summarised the wording of the policy at DL6 and noted 6.149 of the supporting text at DL7. He reached the planning judgment that the site could be considered a "new site that has come forward" due to the changes in circumstances described in the decision letter, as summarised in DL7–DL8. This approach was entirely consistent with the supporting text's recognition that the policy protection applies not only to sites identified on the policies map but also to new spaces. Neither the policy nor the supporting text is prescriptive as to the way a new space, i.e. one not already shown on the policies map, might come to be identified.
10. At §8.29 you assert that the reference in the supporting text to "new space" should be restrictively interpreted to be confined to "a piece of open land which was not known about at the time of the adoption of the Plan". The submission is inconsistent with the clear wording of the policy itself and goes beyond the wording of the supporting text. The supporting text does not import into the policy any temporal requirement as to when a space became known to the authority. There may be many reasons why a new space comes forward which was not shown on the policies map but nonetheless warrants protection as an existing open space.
11. Nor, contrary to the argument which appears to be being made in §8.30, does the policy wording or the supporting text require the condition/use of the site to have changed since the policy was adopted for it to be protected by DP16. Again, there is no support for such an interpretation in the words used in the policy or the supporting text.
12. There is no purposive reason to impose the restrictions on the application of the policy which you seek to impose and good reason not to. The purpose of the policy is to guard against the loss of open space. Interpreting the policy as applying to all such spaces which satisfy the wording in the policy itself, best supports that purpose.
13. At §8.31 you criticise the range of factors which the Inspector discusses in explaining why the site was a new space that had come forward. However, this is a challenge to the Inspector's application of the policy, not a point of policy interpretation. The decision letter did not need to expressly refer to every piece of evidence but to address the principal controversial issue: whether the site was protected by DP16. The Inspector gave adequate and intelligible

¹ In so far as any assistance is needed in understanding what is meant by the term open space, the supporting text at 6.141 of the plan provides an explanation.

reasons for concluding that it was so protected. Moreover, as pointed out by the Interested Party, these paragraphs of your letter provide an incomplete account of the evidence before the Inspector on these issues. On the available evidence, the Inspector had ample evidence to reach the view he did and did so as a lawful planning judgment.

14. Finally, the allegation of an error of fact is misconceived. You have failed to engage with the criteria for establishing an error of fact, see *E v SSHD* [2004] EWCA Civ 49, and failed to explain how these criteria are met here.

Relief

15. Even if, which is denied, there were any arguable error in the interpretation of Policy DP16, the Inspector's independent finding under paragraph 104 of the NPPF was determinative. Applying *Simplex GE (Holdings) Ltd v SoS* (1989) 57 P&CR 306, relief would be refused in any event.
16. There was no dispute that paragraph 104 of the NPPF applied on the basis that the site was an open space and imposed substantively the same policy test as DP16. The Inspector found the development to conflict with paragraph 104 of the NPPF. The Inspector concluded at DL49 that: "The value attached to the recreational enjoyment of the existing open space by residents is such that this harm arising from the development would in this instance significantly and demonstrably outweigh the very significant benefits that it would deliver." Therefore, the same harm arising from the conflict with DP16 was considered under para. 104 NPPF and considered to significantly and demonstrably outweigh the benefits of the scheme.
17. In these circumstances, the decision would have necessarily been the same, even if your concerns in relation to the application of DP16 were to be found to be correct.

Conclusion

18. For the reasons set out above, the Secretary of State considers the claim to be unarguable. Should proceedings be issued, the Secretary of State will oppose the claim and seek its costs.

Response to request for information and documents

19. The Decision was made considering all the material before the Inspector at the Inquiry.
20. The reasons for the decision are those given within the decision letter.

Address for further correspondence and service of court documents

21. If you intend to issue proceedings, please note the correct means of service is via email to the New Proceedings Inbox. This is by email to: newproceedings@governmentlegal.gov.uk.
22. GLD would be grateful if, where possible, all new proceedings were served electronically and hard copy documents are not also sent to our postal address. If you intend to issue a claim, please copy me into to any email serving the New Proceedings Inbox. This will ensure a timely response. My email address is set out in the signature of this letter.
23. Once new proceedings have been validly served, all subsequent service within these proceedings of documents should be effected on me as the GLD case officer.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Southey-Jensen', written in a cursive style.

Carolyn Southey-Jensen
For the Treasury Solicitor

D +44 20 7210 0544
E Carolyn.southey-jensen@governmentlegal.gov.uk