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By hand to:

Councillor Mike Stubbs, The Leader
And, separately, Mrs Elaine Moulton, The Chief Planning Officer
Newcastle-under-Lyme Borough Council
Civic Offices, Merrial Street
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Copies to:

Mr Roger Tait, Head of Operations [one page of petition only included]
Mrs Helen Beech, Head of Planning Policy [one page of petition only included]
Mr Mark Bailey, Head of Business [one page of petition only included]

Date 03 February 2015

Dear Mr Stubbs and Mrs Moulton

**Keele – 10.49 ha (25.92 acres) Land at the Butts ('The Butts')
Joint Local Plan, Green Space Strategy
Submission and Petition**

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'**JLP**' means Joint Local Plan

'**NPPF**' means National Planning Policy Framework

'**PPG2**' means Planning Policy Guidance 2

1. Reasons for this submission & petition: The Council, at its 12 November 2014 meeting, identified The Butts 'as appropriate for alternative use or development once key strategy documents have been finalised'. It is reasonable to infer that 'alternative use or development' involves development, a material change of use, of the current open space use. Local residents and others who use The Butts are strongly opposed to its development. It is appreciated that, in the Council's website 'call for sites', it says:

'The submission of sites owned by the council is different to the council's role as the local planning authority. It does not mean that a decision has been taken by the council to sell or redevelop any of the sites it is proposing to submit, nor has a decision been taken to favourably change their current planning policy status through the Joint Local Plan.

The objective of the Joint Local Plan is not to protect to the private interest of a few, including the council's interest's as a landowner, but to plan in the wider public interest. Therefore, the sites submitted by the council will be subject to the same assessments as sites put forward by other land owners, to ensure that the process is carried out in a fair and objective manner, regardless of who owns the land.'

Despite this, very many Newcastle residents are inferring a sale of The Butts and/or housing development on it could be anticipated; this results in serious concerns at the possible loss of this important amenity. Hence, this submission and petition.

2. This submission & petition: is made (with the 302 signatories to the petition):

(a) Submission: In connection with any proposed development at The Butts both before and after adoption of the JLP;

(b) Submission: On 'Issues & Strategic Options' in the production of the JLP; and

(c) Petition: To record objection to the Council's decision identifying The Butts 'as appropriate for alternative use or development once key strategy documents have been finalised'; by **petitioning** the Council to revoke its decision or confirm its decision but identifying The Butts 'as suitable for continuing open space/Green Belt', not 'as appropriate for alternative use or development'

3. Background:

3.1 In November 2014 the Council responded to the JLP 'call for sites' by identifying numerous sites in the Council's ownership, inferentially suitable for development. The Butts is included in the 'call'. The inclusion of The Butts has resulted in local residents inferring a sale of it and/or housing development on it could be anticipated, with the loss of its important amenity.

3.2 I write to you as a concerned resident of Newcastle and for and behalf of others affected by the Council's decision. I **attach** 'Petition' (16 pages), signed by 302 persons opposing possible development of The Butts - originals to Mr Stubbs, copies to Mrs Moulton. The brief reasons for the opposition to development and the 'petition to revoke' (see para 2(c) above) are stated in the petition.

3.3 It is appreciated that development of The Butts cannot occur without planning permission and the overriding planning criteria are in the NPPF.

3.4 Newcastle's website timetable, for the JLP, says the period for 'Stage 3 – Issues & Strategic Options' is current and ends at the end of the 2nd quarter in 2015. Accordingly, this submission is also made on 'Issues & Strategic Options'.

4. Objections to development at The Butts generally:

4.1 Now & in the future: As The Butts is currently in the North Staffordshire Green Belt, development inappropriate to the Green Belt should not be permitted now or in the future. The criteria in the NPPF does not exclude the Green Belt policy in PPG2 (see para 5.1.3 below and para 5.1.2, *Timmings*). The PPG2 guidance remains relevant. For specific objections see para 5.1.

4.2 The JLP: I submit The Butts should be retained as Green Belt in the JLP; it is currently within the North Staffordshire Green Belt. The Butts has provided (for many decades) and should continue to provide opportunities for outdoor sport and recreation – evidenced by children's use, dog-walkers, walkers, sledging in the winter.

The Butts is an established significant and attractive natural landscape with important visual amenity and substantial biodiversity. For specific objections see para 5.2.

5. Objections to development at The Butts specifically:

5.1 Now and in the future:

5.1.1 The NPPF is a material consideration in planning decisions and The Government attaches great importance to Green Belts. The general extent of Green Belts across the country is already established (para 82 NPPF) - The Butts is currently in the North Staffordshire Green Belt. Once established, Green Belt boundaries should only be altered in exceptional circumstances, ... (para 83). As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (para 87). When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (para 88) - I submit that, having regard to the important characteristic of The Butts (I refer to in para 4.2 above) and the availability of undeveloped land in the JLP area, 'very special circumstances' cannot be established.

5.1.2 The PPG2 guidance remains relevant. In the recent Court of Appeal judgment *R (Timmins & Anr) v Gedling Bor Council & Anr* [2015] EWCA Civ 10, Richards LJ at para 24:

'24. There is no dispute as to the correct general approach towards the interpretation of the NPPF. Policy statements of this kind should be interpreted objectively in accordance with the language used, read as always in its proper context, which is not to say that such statements should be construed as if they were statutory or contractual provisions (see per Lord Reed JSC in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, [2012] PTSR 83, at paragraphs 18-19). The NPPF is on the face of it a stand-alone document which should be interpreted within its own terms and is in certain respects more than a simple carry-across of the language in the guidance it replaced (see *Europa Oil and Gas Limited v Secretary of State for Communities and Local Government and Others* [2014] EWCA Civ 825, [2014] JPL 1259, in particular at paragraphs 15 and 32). But the previous guidance, in this case the guidance on Green Belt policy in PPG2, remains relevant. In *Secretary of State for Communities and Local Government and Others v Redhill Aerodrome Limited* [2014] EWCA Civ 1386 the Court of Appeal rejected a submission that "any other harm" in paragraph 88 of the NPPF had a narrower meaning than in paragraph 3.2 of PPG2, which would have made it less difficult than under PPG2 to establish the existence of very special circumstances justifying a development. In so doing, the court said this (per Sullivan LJ at paragraphs 16-17):

"16. If it had been the Government's intention to make such a significant change to Green Belt policy in the Framework one would have expected that there would have been a clear statement to that effect. Mr Katkowski accepts that there is no such statement. In my judgment, all of the indications are to the contrary:

(i) While there have been some detailed changes to Green Belt policy in the Framework, protecting the Green Belt remains one of the Core planning principles, the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land open, the essential characteristics of Green Belts, and the five purposes that they serve, all remain unchanged. By contrast with paragraph 86 of the Framework, which does change the policy approach to the inclusion of villages within the Green Belt, paragraph 87 emphasises the continuation of previous Green Belt policy (in PPG2) in respect of inappropriate development: 'As with previous Green Belt policy'.

(ii) The Impact Assessment in respect of the Framework published by the Department for Communities and Local Government in July 2012 said that 'The government strongly supports the Green Belt and does not intend to change the central policy that inappropriate development in the Green Belt should not be allowed'. Under the sub-heading 'Policy Changes' the Impact Assessment said that

'Core Green Belt protection will remain in place'. It then identified four proposed 'minor changes to the detail of current policy' which would resolve technical issues, but not harm the key purpose of the Green Belt, 'as in all cases the test to preserve the openness and purposes of including land in the Green Belt will be maintained'. On the face of it, paragraphs 87 and 88 would appear to constitute 'central policy' which the Government did not intend to change.

(iii) That there was no intention to change this aspect of Green Belt policy is confirmed by the Inspector's statement in paragraph 19 of her decision: that the *River Club* approach to 'any other harm' in the balancing exercise [i.e. the approach under PPG2] is reflected in decisions by the Secretary of State since the publication of the Framework. We were not referred to any decision in which a different approach has been taken to 'any other harm' since the publication of the Framework.

17. I readily accept that these indications are not conclusive. The Framework means what it says, and not what the Secretary of State would like it to mean However, if the Framework has effected this change in Green Belt policy it is clear that it has done so unintentionally. Mr Katkowski did not submit that there was any material difference between paragraphs 3.1 and 3.2 of PPG2 and paragraphs 87 and 88 of the Framework. He was right not to do so. The text of the policy has been reorganised ... but all of its essential characteristics ... remain the same'

Timmins, at para 25:

'25 ... It is submitted that the policy of the former PPG2 with regard to inappropriate development has been carried over into the NPPF: there has been a process of condensation but the policy is unchanged (cf. the opening words of paragraph 87, "As with previous Green Belt policy ...") and the provisions of the NPPF should be read accordingly. The published Impact Assessment, referred to in the passage quoted above from the *Redhill Aerodrome* case, does not identify any relevant change of policy.'

5.1.3 Paras 2.6 & 2.7, PPG2 (PPG2 guidance remains relevant) say:

'2.6 Once the general extent of a Green Belt has been approved it should be altered only in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the authority has considered opportunities for development within the urban areas contained by and beyond the Green Belt. Similarly, detailed Green Belt boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally.

2.7 Where existing local plans are being revised and updated, existing Green Belt boundaries should not be changed unless alterations to the structure plan have been approved, or other exceptional circumstances exist, which necessitate such revision.'

5.1.4 The Butts has substantial and significant biodiversity, including wild birds. The NPPF, at para 109 says:

'109 The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;'

The NPPF, at para 119 says:

'119 The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.'

The European Directives include conservation of habitats and wild birds. Development of The Butts would be contrary to paras 109 & 119 NPPF and the relevant EU Directives.

5.1.5 Currently, the *Local Planning and Housing Bill*, sponsored by Sir William Cash, is before Parliament. Para 8 reads:

'8 Development on greenfield, green belt and brownfield sites

(1) Planning permission may not be granted for any greenfield or green belt sites unless all brownfield land in the relevant local authority area that is suitable for development has been developed and all necessary steps shall be taken to encourage the use of brownfield sites.

(2) The Secretary of State must make regulations defining "greenfield" and "brownfield" sites for the purposes of subsection (1).'

While not law, this Bill is evidence of intention in considering priority development of brownfield sites which is particularly relevant to planning policy in Newcastle and Stoke-on-Trent (the JLP area).

5.1.6 Summary of objections to development now and in the future at The Butts specifically:

The Butts has important and established recreational, landscape, visual amenity and substantial biodiversity facilities and features and is within the established North Staffordshire Green Belt;

The NPPF directs great importance to Green Belts, supported by PPG2;

Despite para 47 NPPF 'to boost significantly the supply of housing' this is in the context of 'as far as is consistent with the policies set out in [the NPPF]' which policies include attaching great importance to Green Belts and established Green Belts;

For these reasons development at The Butts should not be permitted now or in the future.

5.2 The JLP:

5.2.1 For the reasons I give, where relevant, in para 5.1 above (to avoid repetition) I submit that any suggestion that development of The Butts should be included in the 'second stage' (see *Solihull* below) would be inconsistent with the NPPF, specifically sections 9 (Protecting Green Belt land) and 11 (Conserving and enhancing the natural environment).

5.2.2 I note that the Court of Appeal in *Solihull Metropolitan Bor Council v Gallager Estates & Anr* [2014] EWCA Civ 1610 centres on whether Solihull Council carried out an objective assessment of housing needs (the first step in a two-step approach required by para 47 NPPF 'to boost significantly the supply of housing'). The Solihull Council had not carried out such assessment; accordingly, the redrawing of its Green Belt to include two new Green Belt sites was unjustified. I submit that this judgment does not affect my submission that The Butts should be retained in the Green Belt in the JLP. The second stage, in the two-step approach, is to give effect of the first stage (boost housing supply) in the Local Plan save only to the extent that that would be inconsistent with other NPPF policies. The preparation of the JLP will include the first stage (boost housing supply) but I submit that, in the second stage (to give effect to the first stage), policies in sections 9 and 11 and conservation of habitats and wild birds override any allocation of The Butts different from open space/Green Belt.

5.2.3 Summary of submissions on the JLP, 'Issues & Strategic Options', specifically: *Solihull* provides guidance on the two-step approach but does not assist on the possible use of The Butts in the JLP, other than the importance of avoiding inconsistencies with NPPF policies after 'boosting housing supply' (the first stage). Any suggestion that possible development of The Butts should be included in the second stage (to give effect to the first stage) would be inconsistent with the NPPF,

specifically sections 9 (Protecting Green Belt land) and 11 (Conserving and enhancing the natural environment).

6. Summary of this submission:

For the reasons submitted:

(a) Development: As The Butts is currently in the North Staffordshire Green Belt, development inappropriate to the Green Belt should not be permitted now or in the future, supported by sections 9 and 11 NPPF;

(b) The JLP: On 'Issues & Strategic Options' in the production of the JLP, The Butts should be retained as Green Belt in the JLP in implementing the second stage (giving effect to the 'boosting housing supply', first stage).

7. Petition (with the 302 signatories to the petition):

7.1 Newcastle Council is petitioned to revoke its decision to include The Butts 'as appropriate for alternative use or development' in the JLP 'call for sites' or to confirm its decision but identify The Butts 'as suitable for continuing open space/Green Belt', not 'as appropriate for alternative use or development'

7.2 The reasons for this petition are: (a) it appears the Council has had no regard, or insufficient regard, to sections 9 and 11 NPPF and PPG2; and (b) those reasons detailed in this submission

8. Acknowledgement: I invite you to acknowledge receipt of this submission, please; sae enclosed.

Yours sincerely,



Tim Cooper

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