



DECISION STATEMENT

NEIGHBOURHOOD PLAN PROCEEDING TO REFERENDUM

1. Tysoe Neighbourhood Development Plan

- 1.1 I confirm that the Tysoe Neighbourhood Development Plan (TNDP), as revised according to the modifications set out below, will require a further formal Reg.17A consultation in order to comply with the legal requirements and Basic Conditions set out in the Localism Act 2011, and with the provision made by or under sections 38A and 38B of the Planning and Compulsory Purchase Act 2004. Thereafter, it is hoped the Plan can proceed to referendum. A referendum could be held in December 2021 or January 2022.
- 1.2 I also declare that I have no personal or prejudicial interest in respect of this decision.

Signed

A handwritten signature in black ink that reads "JCP Careford". The signature is written in a cursive style with a horizontal line underneath the name.

John Careford,
Policy Manager (Enterprise, Housing and Planning)

1. Background

- 2.1 The District Council confirms that for the purposes of Regulation 5 (1) of The Regulations, Tysoe Parish Council is the "Qualifying Body" for their area.
- 2.2 On 4 November 2013, Tysoe Parish Council requested that, in accordance with section 5(1) of the Neighbourhood Planning (General) Regulations 2012 ("The Regulations"), the Parish of Tysoe be designated as a Neighbourhood Area, for which a Neighbourhood Development Plan will be prepared.
- 2.3 In accordance with Regulation 6 of the Regulations, Stratford-on-Avon District Council placed on their website this application, including a Parish boundary map, for a 6 week period between 28 November 2013 and 17

January 2014. In addition, it publicised the application by issuing a press release. Similarly, the relevant application, together with details of where representations could be sent, and by what date, was advertised within the appropriate Parish via the Parish Council.

- 2.4 The District Council designated the Tysoe Neighbourhood Area by way of approval of The Cabinet on 10 February 2014.
- 2.5 In accordance with Regulation 7 of The Regulations, the decision to designate the Tysoe Neighbourhood Area was advertised on the District Council website together with the name, area covered and map of the area.
- 2.6 Tysoe Parish Council consulted on a pre-submission version of their draft Neighbourhood Development Plan between 9 July and 16 September 2018 fulfilling all the obligations set out in Regulation 14 of The Regulations.
- 2.7 Tysoe Parish Council submitted their Neighbourhood Development Plan to Stratford-on-Avon District Council in April 2019 in accordance with Regulation 15 of The Regulations.
- 2.8 The District Council publicised the submitted Plan and its supporting documents for 6 weeks between 16 May and 28 June 2019 in accordance with Regulation 16 of The Regulations.
- 2.9 Mr Andrew Ashcroft was appointed by the District Council to independently examine the Neighbourhood Plan, and the Examination took place between November 2019 and January 2020, with the Examiner's report being issued on 14 February 2020.
- 2.10 The Examiner concluded he was satisfied that the Tysoe Neighbourhood Development Plan was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting the Basic Conditions, subject to the modifications set out in his report.
- 2.11 The Basic Conditions are set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990. To comply with the Basic Conditions, the Neighbourhood Plan must:
 1. Have regard to national policies and advice contained in guidance issued by the Secretary of State;
 2. Contribute to the achievement of sustainable development;
 3. Be in general conformity with the strategic policies contained within the development plan for the area;
 4. Be compatible with European Union (EU) and European Convention on Human Rights (ECHR) obligations; and
 5. Not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017
- 2.12 Following receipt of the Examiner's report, the Parish Council assessed each of the proposed modifications and asked that the LPA give consideration to alternative modifications to those recommended by the Examiner, in three specific circumstances:
 - Retention of the built-up area boundary for Lower Tysoe
 - Retention of a revised (smaller) strategic gap between Middle and Lower Tysoe, based on revised evidence
 - Retention of Herbert's Farm as a Reserve Housing site

- 2.13 In accordance with Schedule 4B of the Town and Country Planning Act 1990, the District Council must consider each of the Examiner's recommendations and the reasons for them.
Under Schedule 4B of the Town and Country Planning Act 1990, paragraph 12, where an Examiner has made a report, the local planning authority must:
- (a) Consider each of the recommendations made by the report (and the reasons for them); and
 - (b) Decide what action to take in response to each recommendation.
- 2.14 The District Council is not obliged to adopt the Examiner's recommendations (since the report is not binding) and it is open to them to reject any of the modifications provided the Council is satisfied that the Plan meets the Basic Conditions, is compatible with Convention Rights and other statutory provisions without the Examiner's modifications.
- 2.15 The District Council can make its own further modifications to the Plan after the Examiner has reported but only if they are needed to secure that the Plan meets the Basic Conditions, ensure it is compatible with Convention Rights or for correcting errors, as set out in paragraph 12(6) of Schedule 4B to the Town and Country Planning Act 1990. In terms of the three matters raised by the Parish Council:
- The District Council agreed with the Examiner that the built-up area boundary for Lower Tysoe should be omitted from the Plan.
 - Seeing as the Examiner did not object to a Strategic Gap per-se and recommended it be omitted due to its scale and lack of evidence, the Parish Council submitted evidence supporting a revised (smaller) gap, which officers were content to re-consult upon.
 - Seeing as Herbert's Farm was being promoted as a Reserve Housing site through the District Council's Site Allocations Plan, the Parish Council were of the opinion that the NDP and SAP were aligned on this issue. As such, officers were content to re-consult on this issue.
- 2.16 To this end, a further 6 week consultation was held in accordance with Regulation 17A of The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 between 22 October and 4 December 2020 on the matters relating to the Strategic Gap and Herbert's Farm.
- 2.17 Mr Andrew Ashcroft was then re-appointed by the District Council to Independently Examine the Reg.17A version Neighbourhood Plan. The Examination took place between January and April 2021, with the Examiner's report being issued on 4 May 2021.
- 2.18 The Examiner concluded he was satisfied that the Tysoe Neighbourhood Development Plan (as set out in the Reg.17A consultation) was capable of meeting the legal requirements set out in the Localism Act 2011, including meeting the Basic Conditions, subject to the modifications set out in his report.
- 2.19 The Local Authority must now consider each of the recommendations made in the Examiner's report and decide what action to take in response to each recommendation, in accordance with Schedule 4B s.12 of the Town and Country Planning Act 1990, as inserted by the Localism Act 2011. The LPAs response is set out in the table on the following pages.

Examiner’s Recommendations and Local Authority’s Response (Regulation 18(1))

[Text to be deleted ~~struck through~~; text to be added underlined]

Examiner’s Recommendation (incl. page number in the report)	Section/page no. in submission draft NDP	SDC Decision and reason	New text or amendment to original text, as applicable – as shown in Reg.17A version NDP
<p>Housing Policy 3 - Strategic Reserve Housing Sites (p.11 to p.16)</p>			
<p>Replace the policy with:</p> <p>“The Plan safeguards land at Herbert’s Farm as shown on Map 8, Site 3 (page 30) as a reserve housing site (with the potential for future residential development of up to 16 houses).</p> <p>The safeguarded site will only be released during the Plan period if it can be demonstrated through the submission of evidence that there is an identified housing need for their early release having regard to the criteria in Policy CS.16 of the Core Strategy 2011-2031.”</p>	<p>Section 6, Housing (p.32 of Reg.17A version NDP)</p>	<p><i>Modification Agreed</i></p> <p>The Examiner noted that the Roses Farm site had been deleted from the policy, but looked to retain the Herbert’s Farm site in the Plan. He also noted that the justification for the retention of Herbert’s Farm was due to the approach being consistent with the Council’s Site Allocations Plan (SAP). He acknowledged the completion of technical evaluation work to assess the potential impact of development on nearby heritage assets.</p> <p>The Examiner assessed the crucial relationship between the NDP and the SAP and the way in which the SAP addresses reserve housing sites in those parts of the District with made or advanced NDPs. He concluded he was content with the extent to which the Reg.17A version NDP had regard to</p>	<p>Amend Housing Policy 3 as follows, to take account of the retention of Herbert’s Farm as a Reserve Housing site:</p> <p>“This The Plan supports the safeguarding of safeguards land at Herbert’s Farm as shown on Map 8, Site 3 (page 30) <u>as a reserve housing site</u> This safeguarded site has <u>(with the potential for future residential development of up to 16 houses).</u></p> <p>The above <u>safeguarded</u> site will only be released during the Plan period if it can be demonstrated through the submission of evidence that there is an identified housing need for their early release having regard to the criteria in Policy CS.16 of the Core Strategy 2011-2031.”</p>

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		<p>national policy in respect of the delivery of strategic and non-strategic policies in the Parish.</p> <p>The Examiner was satisfied that the NDP was setting out to support the delivery of strategic policies in the neighbourhood area, through housing allocations and the proposed reserve site. He noted the approach to reserve housing sites mirrors the approach in the emerging SAP and was satisfied the approach in the NDP did not inhibit the development of the strategic approach in the emerging SAP.</p> <p>The Examiner considered the reserve site was addressed in an updated fashion to that which was included in the Reg.15 version NDP and addressed the issues he raised in his initial examination report. Taking account of all information available to him, the Examiner was satisfied the modified approach met the basic conditions test for the following reasons:</p> <ul style="list-style-type: none"> · The policy now offers enhanced assurance about its eventual delivery in the event it is released as a reserve site 	

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		<ul style="list-style-type: none"> • The approach in the NDP is now more aligned with the wider package proposed in the emerging SAP and the relationship between the approach in the two plans is much more consistent than at the time of the first examination • The policy now provides a specific methodology for the eventual release of the site which marries with that in the SAP and has a clear and functional relationship with the equivalent policies in the Core Strategy. <p>Officers are in agreement with the Examiner on this issue and as such, the policy has been amended to comply with the Examiner's proposed modifications. It is considered the Policy as amended is in conformity with Local and National Policy and meets the Basic Conditions tests.</p>	
<p>Replace the final four sentences of paragraph 6.4.0.1 [Explanatory text] with:</p> <p>"The development of the site will need to incorporate a satisfactory and safe vehicular</p>	<p>Section 6, Housing (p.32 of Reg.17A version NDP)</p>	<p style="text-align: center;"><i>Modification Agreed</i></p> <p>The Examiner proposed consequential amendments to the supporting text to shift the ways in which technical and heritage issues should be addressed and make specific reference to the</p>	<p>Amend para 6.4.0.1 by replacing the final four sentences as follows:</p> <p>"The site could not receive planning permission unless satisfactory, safe access could be assured. We acknowledge that the site lies partially</p>

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<p>access. It will also need to address a series of issues relating to heritage assets in this part of the village. These matters have been addressed in the District Council's Heritage Impacts Assessment report of potential reserve sites in the District. In this context the Parish Council considers that any harm can be ameliorated by sympathetic design and careful use of materials. Moreover, any potential development of the site could be undertaken without affecting the future functioning and viability of the working farm itself as development is only anticipated on a small area fronting Saddledon Street. In this context the existing farm buildings could be relocated elsewhere on the wider farm holding."</p>		<p>Heritage Impact Assessment work recently undertaken by SDC.</p> <p>Officers are content with the proposed changes to ensure accuracy of the explanatory text in line with the proposed changes to the associated policy. As such, the changes as proposed are agreed. The changes ensure conformity with National and Local Plan policy and meet the Basic Conditions test.</p>	<p>within a Conservation Area and therefore it offers a less than perfect opportunity for development. However, we also believe that any harm can be ameliorated by sympathetic design and careful use of materials. Moreover, any development at the site could be undertaken without affecting the future functioning and viability of the working farm itself as development is only anticipated on a small area fronting Saddledon Street with the existing farm buildings being replaced elsewhere on the farm site."</p> <p>[N.B. See first column for proposed replacement text – no need to duplicate here].</p>
Natural Environment Policy 6 – Strategic Gap (p.16 to p.21)			
<p>Replace the policy with: "The Plan defines a Settlement</p>	<p>Section 8, The Natural Environment (p.49</p>	<p><i>Modification Not Agreed</i></p> <p>The Examiner noted the proposed</p>	<p>Replace Reg.17A Policy and Examiner's proposed revised Policy wording with PC's suggested wording listed below (to</p>

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<p>Gap between Middle Tysoe and Lower Tysoe (as shown on the Policies Map) within which new development will be strictly controlled to safeguard the separate and distinctive identity of the two settlements.</p> <p>Development proposals within the Settlement Gap should ensure the retention of the open character of the countryside between the two settlements. Proposals for the re-use of rural buildings, agricultural and forestry-related development, playing fields, other open land uses within the Settlement Gap will be supported where:</p> <ul style="list-style-type: none"> • they would preserve the separation between the two settlements and retain their individual character and appearance; and • they would otherwise take account of the spatial plan for the parish as set out in Housing Policy 1 of this Plan." 	<p>of Reg.17A version NDP)</p>	<p>Strategic Gap (SG) had been drawn to take account of natural boundaries and extended in a westerly direction to the immediate north of Middle Tysoe. The Examiner was not satisfied that a geographically defined SG needs to incorporate the proposed parcel of land to the west of Meadow Lane for the following reasons:</p> <ul style="list-style-type: none"> • The overall extent of the SG would be disproportionately large and beyond that necessary to protect the existing separation between Middle and Lower Tysoe • Any development on land west of Meadow Lane would be seen as an extension of Middle Tysoe rather than as an isolated development which would result in coalescence of the two settlements • The parcel of land [the subject of a representation made by Loxton Developments] is set back from Tysoe Road and is farther away from Lower Tysoe than the existing built development in Middle Tysoe <p>The Examiner noted that the proposed SG incorporated land which were proposed as potential reserve housing</p>	<p>be part of new Reg.17A consultation):</p> <p>"Development proposals should ensure the retention of the open character of the countryside between Middle Tysoe and Lower Tysoe.</p> <p>Proposals for the re-use of rural buildings, agricultural and forestry-related development, playing fields, other open land uses and minor extensions to existing dwellings in the area between the two settlements off Tysoe Road will be supported where they would preserve the separation between the two settlements and retain their individual character and appearance."</p> <p><u>"Development proposals should ensure the retention of the historic open character of the countryside between Middle Tysoe and Lower Tysoe. Proposals for the re-use of rural buildings, agricultural and forestry-related development, playing fields, other open land uses and minor extensions to existing dwellings in the area between the two settlements off Tysoe Road will be supported where they would preserve the separation</u></p>

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		<p>sites in the previous version SAP in 2019, but were not being pursued as reserve sites in the current Preferred Options SAP 2020.</p> <p>He was not satisfied that it was appropriate for the NDP to identify a SG which would interfere with the outcome of the SAP process. However, he reasoned it would be appropriate for the paddock to the north of Middle Tysoe to be included within a SG given its recent planning history and the fact the land consolidates the existing gap between Middle and Lower Tysoe.</p> <p>The Examiner recommended that the proposed SG be reduced in extent to exclude the land to the west of Meadow Lane, which would create a defensible area which, in his view, would still fulfil the PC's ambition to have a geographically defined SG.</p> <p>The Examiner recommended an amended format for the policy itself, to remedy the 'hybrid' nature of the policy as written in the Reg.17A NDP and to take account of the wider approach to development in the countryside as identified in the Core</p>	<p><u>between the two settlements and retain their individual and distinct character and appearance. Other forms of development not specifically listed in this policy will not be supported within the open countryside between the two settlements."</u></p>

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		<p>Strategy and Housing Policy 1 of the NDP. He also recommended changing the policy title to 'settlement gap' to ensure that its purpose is clear and has a 'local application' in the neighbourhood area.</p> <p>Officers are satisfied that the modifications suggested by the Examiner would provide added clarity to the policy and would ensure the Neighbourhood Plan conformed to Local and National Policy and met the Basic Conditions tests.</p> <p>However, the Parish Council fundamentally disagrees with the Examiner's recommendation in relation to the treatment of the settlement gap. The PC is of the opinion the gap as proposed by the Examiner is too small and would not prevent coalescence of Middle and Lower Tysoe in a westerly direction. As such, they wish to re-consult on an amended 'gap' policy in line with the Examiner's recommended modification through the first Examination (i.e. no gap set out geographically on the proposals map, but dealt with through policy wording, only).</p>	

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		<p>In order to support the Parish Council in their views and provide them with the opportunity to work with the community on a different approach, in the spirit of Localism officers consider it appropriate to carry out a further Reg.17A consultation on a further revised settlement gap policy now the Parish Council has consulted again on this issues with the local community.</p> <p>Please see paragraphs 3.2 to 3.6 of this document for the District Council's reasoning for this decision.</p>	
Replace the extent of the Settlement Gap on the Policies Map with that in Appendix 1.	Policies Map (p.30 of Reg.17A version NDP)	<p style="text-align: center;"><i>Modification Not Agreed</i></p> <p>The Examiner proposed the replacement of the extent of the Gap on the Policies Map within the NDP with that shown at Appendix 1 to his report.</p> <p>Officers are in agreement with the Examiner on this issue and consider the Policies Map as proposed to be amended would provide added clarity to the gap policy and it is considered the revised Gap would conform to Local and National Policy and meet the Basic Conditions tests.</p>	Amend the Policies Map within the NDP to remove the cross-hatching and legend referring to a settlement gap between the two settlements of Middle and Lower Tysoe (to be part of new Reg.17A consultation). This would be in line with the Examiner's recommendation following Examination of the Submission version NDP.

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		<p>However, linked to the reasoning for the associated policy (above), despite this view, please see paragraphs 3.2 to 3.6 of this document which explain why SDC officers consider it appropriate to re-consult again on this issue.</p>	
<p>In para 8.7.0.3 [explanatory text] replace 'strategic' with 'settlement'.</p>	<p>Section 8, The Natural Environment (p.49 of Reg.17A version NDP)</p>	<p style="text-align: center;"><i>Modification Not Agreed</i></p> <p>The Examiner proposed consequential amendments to the supporting text on the matter of the revised language used to describe the proposed Gap.</p> <p>Officers are satisfied that the proposed changes to ensure accuracy of the explanatory text in line with the proposed changes to the associated policy would provide clarity. The changes would ensure conformity with National and Local Plan policy and meet the Basic Conditions tests.</p> <p>Despite this view, please see paragraphs 3.2 to 3.6 of this document which explain why the District Council consider it appropriate to re-consult again on this issue.</p>	<p>Amend the explanatory text as follows through new Reg.17A consultation):</p> <p>"8.7.0.1 This policy seeks to protect the essential countryside character of the important area between the settlements of Middle Tysoe and Lower Tysoe. Its ambition is to prevent coalescence between these separate settlements and to protect their distinctive individual character and setting. In doing so, it will conserve the way that the main settlements sit within the wider landscape, retaining the open agricultural landscape in order to keep a clear 'rural' buffer between settlements.</p> <p><u>8.7.0.2 To clarify what is meant by "coalescence" – this policy seeks to prevent any further diminution of the open countryside gap between the two settlements whether that be along</u></p>

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			<p><u>Tysoe Road or across the open countryside between Middle Tysoe and the western extent of Lower Tysoe on Lane End.</u></p> <p>8.7.0.2 <u>3</u> This policy does not seek to prevent development that may otherwise be suited to a countryside location. Nevertheless, it seeks to ensure that the scale, massing and height of proposals do not result in the integrity of the separation between existing settlements and other groups of built development being undermined. Development that is consistent with this policy might include minor extensions to existing buildings, the creation of playing fields, or other open land uses. As a policy it will have effect in a complementary fashion with other development policies'</p> <p>8.7.0.3 <u>4</u> Although not specifically intended to, the strategic <u>The settlement gap will also help to protect the church and school, both valuable heritage assets and listed buildings, from encroachment by development which would could compromise their settings. See also Built Environment Policy 1 Designated and Non-</u></p>

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			<u>Designated Heritage Assets and Map 4 page 13.</u> "

Assessment of the Neighbourhood Plan as a whole, against the three dimensions of sustainable development, as set out in the National Planning Policy Framework (NPPF):

Sustainable Development Role (NPPF)	Neighbourhood Development Plan's Contribution
Economic	<p>The Neighbourhood Plan seeks to support the local economy through the protection and enhancement of existing employment sites and the promotion of flexible home working and proposals for small-scale mixed use development within the neighbourhood area, comprising commercial space and living accommodation.</p> <p>If implemented these policies will have a positive impact on the local economy, safeguarding jobs and local services and promoting flexible opportunities to work from home or in adapted work spaces.</p>
Social	<p>The Neighbourhood Plan sets a framework that will help to support the achievement of sustainable social development.</p> <p>The Plan promotes the retention and improvement of local community facilities (which are individually listed within Community Assets Policy 1). It also supports the development of new community facilities.</p> <p>The Plan looks to safeguard and promote improvements of locally important sites.</p> <p>Policies seek to promote the local distinctiveness of the area, and protect heritage assets within the neighbourhood area.</p>
Environmental	<p>The Neighbourhood Plan includes a number of policies that support environmental sustainability for the community.</p> <p>The Plan has policies that look to protect the Cotswolds Area of Outstanding Natural Beauty, dark skies, natural features, biodiversity, valued landscapes as well as designate areas of Local Green Space.</p> <p>The NDP includes policies to protect the natural environment for future generations which have a positive impact on the environmental sustainability of the plan.</p>

- 3.1 The District Council concurs with the view of the Examiner that:
- Subject to the modifications above, the Reg.17A version Tysoe Neighbourhood Plan would meet the Basic Conditions set out in paragraph 2.12 above; and
 - The referendum area should be coterminous with the neighbourhood area.
- 3.2 However, whilst the Parish Council accepts the Examiner's recommendation in respect of the retention of the Reserve Housing Site in the NDP, it fundamentally disagrees with the Examiner's recommendation in relation to the treatment of the strategic/settlement gap. The PC is of the opinion the gap as proposed by the Examiner is too small and would not prevent coalescence of Middle and Lower Tysoe in a westerly direction. As such, they wish to re-consult on an amended 'gap' policy in line with the Examiner's recommended modification through the first Examination (i.e. no gap set out geographically on the proposals map, but dealt with through policy wording, only).
- 3.3 In order to support the Parish Council and in the spirit of Localism, officers consider it appropriate to re-consult on a further revised strategic gap policy since the Parish Council has recently re-consulted with the local community on this issue, since this proposal had not been put forward as an option to the parishioners, previously.
- 3.4 Para 12(6) of Schedule 4B TCPA 1990 states:
- (6) The only modifications that the authority may make are—
- (a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),
 - (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights,
 - (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
 - (d) modifications specifying a period under section 61L(2)(b) or (5), and
 - (e) modifications for the purpose of correcting errors.
- 3.5 As to whether an LPA has the power to propose changes, there is guidance from the case of *R. (Kebbell Developments Ltd) v Leeds City Council* [2018] 1 W.L.R. 4625 where it was held:

"The power in paragraph 12(6)(a) allows the authority a broad discretion in considering whether a particular modification is necessary for the purposes of satisfying the 'basic conditions' in paragraph 8(2): whether the modification '[needs] to be made to secure that the draft order meets the basic conditions'. The question of whether such a modification is necessary, and, if so, what form it should take, requires the exercise of planning judgment. And so does the ultimate question of the 'basic conditions' being met or not, regardless of whether it has been necessary to make modifications to the plan to ensure that they are. To the extent that these are matters of planning judgment, they are for the local planning authority to resolve, subject to review by the court in accordance with the principles of public law. But the broad ambit of a legitimate planning judgment on the question inherent in paragraph 12(6)(a) suggests a generous view of the local planning authority's statutory power,

and that the court should be cautious before accepting an argument that the power has been exceeded."

- 3.6 As such, the Courts have held that the power in paragraph 12(6) is quite broad and allows the LPA to support the Parish Council in its re-consideration of a recommendation proposed by the Examiner of the Tysoe NDP in his original examination of the Plan.

4. Availability of Decision Statement and Examiner's Report (Regulation 18(2))

This Decision Statement and the Examiners Report can be inspected online at:

www.stratford.gov.uk/tysoenp

And can be viewed in paper form at:

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