

## **Duty to cooperate.**

### **Joint response, Cam Valley Wildlife Group and Somer Valley Friends of the Earth.**

1.1 There is a legal argument over whether or not the Duty to Cooperate applies to the drawing up of the Core Strategy, and it appears to be about the wording of the Act. Should it come down to conflicting wording in an Act, a judge or the Law Lords may well go back to the purpose and spirit of the law when making a judgement. Were the legal route to be pursued, it would take some time, which B&NES may wish to avoid. The degree of attention paid by B&NES to the purpose and spirit of the spatial policy framework, in foreknowledge of what the intention was, gives us cause for concern.

1.2 The purpose of the Duty to Cooperate appears to be to replace the role that the regional planning tier formerly played and to rationalise the planning framework where an Authority sits on the boundary of a former region. B&NES appears happy to reject the regional housing figures and any part of the RSS and RPG 10 with which it does not agree on the basis that the new national planning policy framework allows it to make its own decisions based upon local conditions. B&NES has used this premise as a basis upon which to work up and deliver its Draft Core Strategy regarding housing provision and economic performance. It seems to be eager to grasp the autonomous element of the new UK spatial planning framework, but not so eager to grasp the Duty to Cooperate, which is not a strictly autonomous role. We consider it not to be logical to be so selective, given the role of the Duty to Cooperate and the impact of failure to exercise this duty when creating and delivering a strategy capable of addressing national planning policy, particularly the relatively new PPS Climate Change.

1.3 B&NES has been aware of both the purpose and the spirit of the reorganisation of the spatial planning system for long enough to incorporate cross-boundary working, whether or not it was unsure of any cast iron requirement to do so whilst preparing its strategy. B&NES appears to put forward the view that it has exercised this duty with regard to Bristol, which suggests that it sees the sense in the role that the duty plays within the new national spatial policy framework, in respect of that boundary at least.

1.4 We take the view that if the plan is to be sound it must not be insular in preparation or delivery. We feel that the anticipation that there would be no regional tier was adopted by B&NES as its working basis and that this should have extended to cross-boundary working with each of the bordering authorities on a range of matters, as part of the new spatial planning 'package'.

1.5 We take the view that there are significant spatial planning matters that either require cross-boundary working to be addressed or that should have been addressed within a cross-boundary framework in order to create a sound policy that properly considers national policy, the impacts on neighbouring authorities and strategic elements as part of the wider planning process within which the individual Authorities' strategies sit.

1.6 We consider that it is possible that matters that are not spatial planning considerations may have influenced the willingness to engage with at least the spirit of the Duty to Cooperate, especially with regard to working with Mendip and Somerset.

1.7 We take the view that if the legal points remain disputed it would be prudent to assume, for practical purposes, that the Duty to Cooperate will be found to apply to the working up of

the Core Strategy and to ensure that the policies in the Strategy do not rule out alternative spatial approaches or land use that could have been built into the Core Strategy had cross-border cooperation with the bordering authorities been engaged with fully.

2.1 B&NES has evidenced its duty to cooperate by stating that it has engaged constructively, citing Bristol regarding cooperation (B&NES/21, point 2 ). We note that it has not named any other Authorities with which it has cooperated. We argue that consideration that the duty was upheld in respect of one neighbouring authority out of several does not mean that the duty has been upheld.

2.2 We question B&NES' engagement with Mendip, Somerset regarding the matters of the rail link between Radstock and Frome, development at Writhlington in Radstock, the impact on Mendip of the approach to development in Radstock centre, and consideration of a cross-boundary approach to the wider ecological network, including linkage of Nature Areas and calcareous habitat areas.

2.3 We question engagement with the other authorities sharing boundaries with B&NES on the matter of the ecological network which, among other things, will facilitate species movement through the landscape, including between the Nature Areas. This is a vital component of the response to the impact of climate change and is an approach aimed at preventing loss and collapse of ecological systems or their health. We consider these to be matters on which constructive engagement should and could have taken place.

3.1 B&NES has amended the Core Strategy (para 4.17) to allow for the possible reinstatement of a railway between Frome and Radstock. The inclusion of this route in the Joint Local Transport Plan appears to have been the result of representations to the West of England Partnership by Radstock Action Group and pressure from the transport lobby rather than the result of any cooperation between B&NES and Mendip; indeed, when the route was included, B&NES was already openly backing the Radstock Railway Land redevelopment scheme that its officer, Rab Smith, has confirmed, within the Inquiry, will prevent any terminus for this route from being constructed within Radstock. This also means that no terminus can be provided within B&NES should the RAD 1 railway land development go ahead; the site lies close to the B&NES/Mendip border.

3.2 We know that in 2005, a number of Mendip Councillors were keen to see the link re-opened and that B&NES was liaising with Mendip at that time through a railway group, also attended by North Somerset Railway Company and Norton Radstock Regeneration Company representatives. We are informed that meetings about the railway ceased before the Launch document and Visions were drawn up and that, crucially, they were not resumed. We consider it possible that B&NES was of the view that it was against its interests to pursue the re-opening of the line when this ran contrary to its financial and corporate interest in the development of Radstock Railway Land, and that engaging with Mendip on this matter within the process of developing the Core Strategy could lead to pressure to re-open the line. We consider that the re-opening of the line would be of mutual benefit to Radstock and Frome and villages along the rail corridor, particularly where halts were provided. We note that the decision to include the route in one of the route categories within the Joint Local Transport Plan (JLTP) has come about relatively recently. We would expect engaging with Mendip on strategic development matters in general to have brought the matter of the railway line to the fore at an earlier date.

3.3 We consider it possible that B&NES was hoping that the (NR.2/ RAD.1) railway land

development would go ahead before the JLTP was finalised, thus avoiding the need to consider cross-boundary cooperation regarding the spatial plan for Radstock whilst drawing up the Core Strategy. We note that the B&NES Local Plan site-specific policy, NR.2, did not specifically rule out rail. The Planning Inspector's report on the plan made it plain that, in the opinion of the Planning Inspectorate, the inclusion in that policy of the safeguarding of a sustainable transport route did not preclude return of rail (see 0822, Issue 1, Appendix 2, report para 7.127). Constructive engagement with Mendip may have required that Mendip be satisfied that a rail route within the site was not ruled out. NRR board members, even recently, were claiming that their development did not rule out return of rail; the evidence supplied by B&NES to the Inquiry and the various planning application papers do not support this view.

4.1 Somer Valley Friends of the Earth has questioned the spatial strategy that B&NES is pursuing regarding Radstock. We have pointed out that the topography, historic settlement pattern, rural feel of the town and the constricted vehicle-dominated centre combine to produce an atypical town which does not fit with the generic view of sustainable development in towns. The alternative strategy of increasing self-reliance in the individual settlements of Radstock has not been considered by B&NES.

4.2 We have pointed out elsewhere that the schools are associated mainly with the settlements and housing away from the centre. There are job opportunities in industrial areas away from the centre and the main job generation opportunities flagged up by B&NES for the Somer Valley area are closer to the Clandown settlement of Radstock than to Radstock centre and on the opposite side of Midsomer Norton, which lies to the west of Radstock. In addition, the town of Frome in the adjacent authority lies much closer to the Writhlington settlement of Radstock than does Bath and there is a proportion of travel to work out of Radstock east on the A 362 (Frome direction).

4.3 Without the involvement of Mendip, examination of the scope for increasing self reliance or self containment of Writhlington, close to the Mendip border, and the role that this could play is addressing the impact of climate change and socio-economic matters, is limited.

4.4 We consider that the benefits of development at Writhlington as part of an alternative spatial approach to development in Radstock should have been addressed. We have pointed out elsewhere our concern that this opportunity appears to be ignored in favour of a spatial plan not well suited to the character and nature of the town of Radstock. We are concerned that the selected spatial plan is not evidence-based and has not been supported by any independent investigation.

4.5 We are concerned that the motivation behind the chosen strategy for Radstock may be unduly influenced by the documented B&NES aim to realise the asset value of B&NES-owned land in Radstock and the delivery of the former B&NES Major Project entitled, *Norton Radstock Regeneration Company*; we are concerned that B&NES is unduly influenced by the wish to deliver a scheme in which B&NES has corporate and financial interests through the vehicle which B&NES set up to deliver the project, the Norton Radstock Regeneration Company; and we are concerned that B&NES has chosen not to investigate alternative approaches through cross-border working, and has instead continued to pursue its preferred spatial approach for the town, provided to it by arrangement through close working with NRR, for which B&NES provided, by secondment, a general manager who was also the leader for that project within B&NES; we are concerned that the interests of SWRDA and pressure to deliver a regeneration project that provides a return in investment has taken higher priority than planning policy and consideration

of harmful impacts of the project at local, regional and national levels. For supporting information, see Appendix A.

4.5 Although B&NES could argue that an outline approval for a development on the NR.2 site was given in 2007 and permission was in place from 2008, we consider it remiss not to have investigated alternatives leading up to the Launch of the Strategy (in 2007) and beyond, in order to provide flexibility or a spatial contingency. It should be noted that the developers did not show at outline how the conditions of consent could be met and there were significant uncertainties regarding both the viability of the scheme and the legality of the permission, of which B&NES was put on notice through solicitor letters from an environmental lawyer on behalf of a client in 2007, which requested return of the application to committee for reconsideration before grant of permission by officers using delegated powers; this delegated decision included consideration of a crucial bat report that was 'missing' when the decision was made, which was not, therefore, subjected to public scrutiny but was subsequently heavily criticised. It should also be noted that the recent costing of the road infrastructure is almost twice the size of that used for the financial feasibility study in 2007 and that the infrastructure costed in 2007 was more extensive than the infrastructure to be provided now; it also included a footbridge over a river. We do not find this discrepancy to be credible; it suggests strongly that the original costing was far too low and that the project was not financially viable, which was a matter on which that the committee felt a need to be satisfied in order to grant approval. The costing was released immediately prior to the committee decision without opportunity for public scrutiny. It was the legal opinion of Barrister David Wolfe that B&NES had acted unlawfully with regard to the outline application decision to give consent, in 2008 (procedural unfairness). Constructive engagement with Mendip may have required that Mendip be satisfied with the financial viability of the scheme and may have led to consideration of development at Writhlington as part of an alternative spatial strategy for development at Radstock.

4.6 We are not aware of liaison between B&NES and Mendip regarding the impact of the Radstock redevelopment/regeneration proposals and the associated spatial plan to deliver further housing and traffic in the centre. One matter that concerns us is that this former B&NES Major project, and the knock-on developments in central Radstock that were part of the regeneration case, are associated with significant increases in traffic and changes to the road network in order to accommodate it. The significant impact of this on the neighbouring authority appears not to have been the subject of engagement with Mendip. We understand that there is some concern within Mendip regarding the impact upon traffic in the village of Kilmersdon. Somer Valley Friends of the Earth has already pointed out that the town centre sites were identified years before they were presented in the SHLAA, published after the Draft Core Strategy was published.

4.7 We are not aware of any evidence that B&NES has actively engaged with Mendip in the lead-up to the Core Strategy Launch Document in late 2007, nor through the Core Strategy process leading to publication of the Draft Strategy and the March 2011 changes, on the matters of development at Writhlington, the railway link, the ecological network, or the impact on Kilmersdon in Mendip of the road proposal that accompanying the development plans for Radstock redevelopment. The planning application for the railway land development, supported openly by B&NES, was received in 2006 and approval was given in March 2007. The Visions consultation did not take place until winter 2007/2008, the Spatial Options document was published in November 2009. The outline application expired in March 2011, the month that further changes to the Draft Strategy were proposed by B&NES.

5.1 The failure of B&NES to engage with Mendip regarding the ecological network could be considered to be evidenced by the illustration of the Green Infrastructure Network (Diagram 20, subject to Policy CP7). There are no corridors linking B&NES with Mendip in Somerset apart from one strategic corridor through Midsomer Norton. The diagram illustrates the A 362 as the green infrastructure route, but we think that B&NES must have intended to show the route of the cycle path in Midsomer Norton and a heritage rail route. We are inclined to think that had there been any cross-border working on this matter, the route would have been shown in the correct location. There is one nature area on a small portion of the border to the South West, a north-facing wooded slope. There are no other corridors, despite the presence of several important ecological features of note, including Bladock Gutter SSSI and the arguably nationally important RAD1 site. We are not aware of any liaison between B&NES and Mendip regarding the ecological network. We are not aware of any discussion on the importance of conserving the value of the Radstock Railway Land site with regard to local, regional and national biodiversity and as part of a network allowing the movement of species that require dry grassland sites, and calcareous grassland in particular. It sits at the hub of a network of linear and non-linear features of importance to calcicolous and other species. Calcareous grassland is very sparse in B&NES and only found 'naturally' in isolated pockets in general. Former railway routes are an important element of any strategic approach to nature conservation and the movement of species through B&NES. Connection to a wider network of calcareous and grassland sites in Somerset, Wiltshire and South Gloucestershire in particular does not appear to have been addressed at all. The impact on the biodiversity of a neighbouring authority as a result of the catalytic development proposed for the RAD.1 land does not appear to have been considered as a cross-border issue; it seems only to have been considered from an insular point of view. and priority given to the spatial plan for Radstock created by the Norton Radstock Regeneration company for B&NES as part of an agreed way of working together.

6.1 We consider that in the event that the Duty to Cooperate is found to apply to the process of drawing up the Core Strategy, the matter of failure to engage effectively and cooperatively with Mendip should be taken into account.

## Appendix A - B&NES interest, Radstock Railway Land Somer Valley Friends of the Earth

1.0 B&NES financial and corporate interests in the NR.2 (RAD.1) development and its relationship with the landowner, the Norton Radstock Regeneration Company, is a strong driver for project delivery. However, delivery of the project appears to be contrary to national planning policy and it appears to have been pursued without proper attention to alternatives. The main drivers appear to be financial and corporate.

1.1 Within the context of a long-standing spatial policy vacuum for Radstock, the Council set up a delivery vehicle, the Norton Radstock Regeneration company, in to deliver a major project. B&NES, with the backing of the South West Regional Development Agency, placed spatial planning into the hands of the company, which was also agreed as the preferred developer for B&NES-owned land. It was overseen by the full Council and also by the Economic Development and then Regeneration/Major Projects teams. The development of this land in the central area especially was tied in to delivery of the RAD1 site. Both the delivery of these sites and the use of roll-over funding from the RAD1 development to enable it were key to the case for regeneration that allowed B&NES to make the planning decision against the advice of its ecological consultants and the Planning Inspectorate. B&NES gave land and other resources to the company, including direct funding and provision of Council staff to manage it. It entered into claw-back agreements and stands to lose financially if the development does not go ahead. Evidence for this can be found in Council documents. SWRDA also had contingency assets in connection with the project, subject to claw-back, which have been passed to the Homes and Communities Agency, who is now putting forward funds jointly with B&NES to supply road infrastructure to enable the development project.

2.0 B&NES interests in the NRR redevelopment project in Radstock, Bath and North East Somerset is outlined below. This account has been informed by Council, NRR and SWRDA documents.

2.1 B&NES' involvement with this project is long-standing, and it has invested both financially and politically in the delivery of it. It has used this project to its advantage, but also stands to lose some of its investment should the project fold. The Council changed after the decision to approve the outline application, so the incumbent Council is not the same as the Council that made the original earlier decision, but has seen it permitted under delegated powers by Council Officers.

2.2 In 2001, SWRDA and B&NES senior Economic Development officers were taking the view that Norton Radstock Regeneration Limited (NRR) would consider B&NES land and the wider regeneration of Radstock as part of a regeneration scheme. B&NES had already given over some land to the company at nil cost (£1.00) and the B&NES Economic Development Director was leading on the project for B&NES - it was an economic development project.

2.3 B&NES councillors then took the view that NRR should not undertake development on its own and that it should consider B&NES' and other landholdings elsewhere in the town to maximise their asset value and realise their use in a comprehensive plan to 'regenerate' the town. Consultations in the form of the generation of wish-lists for cherry-picking were undertaken and used to give the project the veneer of a community-led project.

2.4 Consultants drew up plans for NRR, a private company set up by B&NES but not open to the public or public scrutiny, and there was close working with B&NES. B&NES provided land, funding, premises, officers, and new schools that would need filling. It used NRR to provide a development and spatial framework that allowed, in the name of regeneration, greater housing numbers than could otherwise have been justified. This would be achieved on the development site and also through follow-on developments using roll-over money from the development. These would be residential or mixed use developments in Radstock.

2.5 An economic theory based upon the imposition of an urban block structure to the town and an

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

extension of the central area was pretty much all there was to back up the case for benefits. The economic case was thin at best and was not sound; inconvenient economic information available to B&NES through a 2006 Ernst and Young study commissioned by B&NES was not used. The NRR Company project was not just a B&NES corporate project; it was a B&NES major project in which B&NES had corporate, financial, planning and political interests. B&NES was heavily invested in delivery of this project, which it had supported for a long time and had helped to design.

2.6 The delivery of the plan, considered vital by B&NES in the early days, had become even more vital as it went on due to its delivery being linked with the ability of B&NES to show it could deliver projects and regeneration and so be in a better position to secure future public funding for projects in B&NES. In addition, the claw-back of investment funding and relating to land provision would not be possible if the company folded. With no funds of its own, if the application was not successful, the only asset the company would have would be the railway land site itself.

2.7 The project was managed by B&NES Sustainability and Economic Development department, monitored by Major Projects and External Bodies Overview and Scrutiny Panel, but not funded through the major projects budget. Funding came from a variety of Council funding sources including the Capital Programme, Major Projects underspend in 2005/06, B&NES Council revenue budgets 2005/06 carry-forward and 2006/07, and the B&NES Council base programme. The planning department was little involved in this process and did not contact the Market and Coastal Towns Initiative (MCTI) group (the wider regeneration idea was also connected with the MCTI initiative), even though this group was involved in creating a Community Plan, a planning document, which featured the NRR development.

2.8 Economic Development, backed by SWRDA (whose brief is economic development), appeared to pretty much run the show, with NRR undertaking even spatial planning functions within this economic development based project. A report commissioned by DEFRA and undertaken by BDOR on the B&NES MCTI experience (author Barry Pearce) noted a lack of partnership working and practices in B&NES and in particular a "silos mentality" on the part of B&NES planning and economic development departments and an associated tension between the two, with planning disinterested in the wider benefits of economic regeneration and economic development too focussed on its own agenda.

2.9 The regeneration process started when the two towns of Midsomer Norton and Radstock were awarded £2.9million of Government funding for a programme of projects that ran from summer 1997 to Autumn 2003. This was known as the Norton Radstock SRB Scheme. B&NES' role within the SRB was as the Accountable Body. It was originally responsible for approval of funding and negotiations with Government Office. The RDA subsequently replaced Government Office within the structure. The SRB scheme was a corporate Council-wide project, and the proposals for the NRR site constituted the flagship project within that framework. B&NES supported the scheme and provided land and funding. NRR had come about because the Single Regeneration Bid Partnership was split and could not agree on the way forward and it was a way of breaking the stalemate, first by putting all the power in the hands of the Steering Group, and then by making the steering group Directors of a private company, set up by B&NES using public money. The time taken to progress the project was much longer than expected, and B&NES continued to support and fund the company until 2006/2007. Three outline planning applications were submitted during the period from 1998 to 2006.

### 3.0 A time line 1998 - 2008

**3.1 1998 - 2001. B&NES steer on design and project management; B&NES setting up of a delivery vehicle, the Norton Radstock Regeneration company (NRR); planning applications by B&NES and NRR; a B&NES corporate project emerges; B&NES and SWRDA role in land acquisition; NRR given responsibility for regeneration of the Norton Radstock area.**

1998 - The Norton Radstock Single Regeneration Bid Community Partnership Steering group's role has been to action the wishes of the community partnership, but the Partnership has proved problematic and has resisted the emerging plans for the former railway land site. The Partnership is demoted to a Forum, with

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

the steering group assuming sole control, in order to move the project on against partner opposition. A B&NES' legal services officer is instructed by the SRB board (steering group) to set up NRR Ltd. It is set up, using public money, for the purpose of lodging the planning application. Legal advice is taken on setting up a Community Development Trust. B&NES submits an outline application for a masterplan not approved by the SRB board in the name of Norton Radstock Regeneration Ltd before the company is registered, then withdraws it. The correct masterplan is submitted after the company Norton Radstock Regeneration Ltd has been set up in 1999 and the B&NES Officer Team issues an apology.

October 2000 - the B&NES team manages both internally and externally commissioned scoping and design development work for the project with a focus on access and economy; B&NES is the accountable body and is contracted to ensure its proper management and defrayment of funds; B&NES is leading the Town Centre based developments by initiating action and forming partnerships for implementation

January 2001 - the B&NES Resources co-ordination committee resolve to give B&NES land to NRR at nil value to secure regeneration (the land is sold for £1.00); The Norton Radstock SRB scheme is an Economic Development scheme

February 2001 - the brief is agreed for land purchase and establishment of the Norton Radstock Regeneration Company. The Memorandum of Association for Norton Radstock Regeneration is entitled "Memorandum of Association Norton Radstock Regeneration (As amended by written special resolution dated 12 March 2001)" with, appended to an asterisk corresponding to another after its name, "Name changed by Certificate of Incorporation on Change of Name dated: (formerly Norton Radstock Regeneration Limited)".

February 2001 - March 2001, the South West of England Regional Development Agency (SWRDA) approves purchase of the land from multiple owners using a majority of Single Regeneration Budget (SRB) funding, which has come from the RDA and from B&NES. SWRDA sets conditions including that the Agency and NRR seek to agree terms for a 'public-public' joint venture agreement for the masterplanning and development of an enhanced Town Centre Scheme. B&NES reports that the SRB scheme is a corporate council-wide project with the proposals for the NRR site as the flagship project within that framework; it will be closely monitored by the RDA and the flagship regeneration project is considered vital to the long term regeneration of Radstock. B&NES Council resolved to allocate £207,200 within the B&NES Financial Plan towards land acquisition and gives its land for £1.00 subject to agreement that the Council's contribution could be returned through sale of the land. Rather than specify a time period, it is agreed that there will be a project and reporting mechanism established with reports to the Council, SRB Management Board and the RDA. NRR has been established by this time as the vehicle for acquiring the land and NRR will be the implementing body. B&NES also provides funding of £25,000 within the B&NES Financial Plan towards project management and coordination costs, which will include the appointment of a coordinator.

12 March 2001- NRR's Memorandum & Articles of Association are amended by special written resolution ; there is a name change noted, to Norton Radstock Regeneration from Norton Radstock Regeneration Ltd; the Unitary Authority can appoint two persons (one an officer and one a Local Councillor) as Stakeholder Company Members; the Town Council is entitled to one.

30 March 2001 - In an email from Clive Thomas, Strategic Director, Economic and Environmental Development, B&NES, BRB (British Rail Property Board) and CAIB are informed of his intention to immediately re-activate the preparation of a Compulsory Purchase Order due to failure of agreement by the deadline of 30 March, as they are reluctant to sell.

April 2001 - NRR acquires the railway land, according to the NRR archive on their website (Jeremy Smalley, the B&NES project officer, has a date of 22 nd February 2001 on a project form filled in 12 September 2002, however)

April or May 2001 - SWRDA appoints consultants to prepare a Development Framework for Radstock Town Centre.



Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

June 2001 SWRDA presses for moving the project on and announces its intention to progress the Town Centre Development Framework exercise, in concert with NRR, B&NES, SRB and the Agency's Market and Coastal Towns pilot study. B&NES officers and Councillors are well represented at NR SRB Forum meetings - officers include Jeremy Smalley, (Project Officer, B&NES), Ceinwen Davies (SRB Lead Project Officer and Town Centre Regeneration Manager, B&NES), Mel Clinton (SRB Co-ordinator, B&NES), Sara Manning (Project Officer, B&NES). Councillor Phyllis Gay (B&NES), who is keen to push the project forward, sends apologies to the meeting in June. All except Ceinwen Davies remain involved in the project up to the outline application, two being subsequently seconded to the Norton Radstock Regeneration Company from B&NES.

November 2001 - SWRDA and NRR meet and agree that NRR is a delivery vehicle for regeneration of not just the railway land, but the wider area of Norton Radstock; this is copied to both Clive Thomas (Economic Development Director) and Bill Cotton (Sustainability and something?) in B&NES - by February the regeneration is acknowledged as being in the context of the Market and Coastal Towns Initiative (MCTI).

October to December 2001 - the basis for a partnership agreement has been agreed between NRR and SWRDA and Heads of Terms for a joint venture have been drawn up. NRR puts the extant outline application on hold. The Chairman of NRR, Chris Dando, on 30 th November 2001 states in a letter to SWRDA that B&NES has a representative on the board. Cllr Phyllis Gay is a Council appointed member on the Board of the Norton Radstock Regeneration Company (she announces prejudicial interests regarding the B&NES Corporate and Financial review and Revenue and Capital Budget reports in the Full B&NES Council meeting of 22 Feb 2005 on that basis). B&NES is actively participating.

**3.2 2002- 2004. B&NES officers appointed to manage the Norton Radstock Regeneration Company; SWRDA, B&NES and NRR work together and have a memorandum of understanding; NRR company status 'commercial'; NRR appointed preferred developer' for B&NES landholdings; B&NES major project, the Norton Radstock Regeneration Company project set up; B&NES funds NRR and monitors the project; B&NES continues to fund the project under pressure from SWRDA**

January 2002 a project manager is appointed by B&NES to the Norton Radstock Regeneration company project, a B&NES project. This could be B&NES Officer, Jeremy Smalley, who is revealed later to be seconded part-time as a dedicated coordinator.

February 2002, SWRDA is corresponding with NRR c/o B&NES Council. NRR is operating out of B&NES offices. SWRDA reports that it is currently awaiting proposals from Jeremy Smalley, as a B&NES officer, for the appointment of consultants to take forward the masterplanning of the [Radstock] Town Centre, which it anticipates co-funding and managing with NRR and B&NES.

On 25th February, the Company reports that Norton Radstock Regeneration Company has been created with the support of the Regional Development Agency to help safeguard and regenerate this [old railway] land in a way that contributes to the overall economy and needs of the local community.

February and March 2002 - there is correspondence between SWRDA, NRR and B&NES senior officers (including the Chief Executive Officer). SWRDA advises that both the MCTI Initiative and the regeneration of Radstock Town Centre require the active participation of the Council and key stakeholders in their definition and delivery, and it suggests that regular steering group meetings are convened, to be attended by the relevant Council, NRR and Agency personnel with this aim in mind. The Chief Executive reports that Clive Thomas (Strategic Director, Economic and Environmental Development, B&NES) is leading on this matter for the Authority. Clive Thomas hosts a meeting of the three parties in his office to provide them with "an opportunity of considering the most appropriate partnership framework for the future".

March 2002 - Jeremy Smalley, the NRR Project Coordinator, refers to NRR as having been set up as a Community Development Company, which is in line with the intention in December 1998. An NRR Press release refers to it as a not-for-profit commercial operation independent of the SRB, local councils and

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

the Norton Radstock Regeneration Partnership. The NRR posting also reports that the infrastructure of the company has now been formalised to include a dedicated co-ordinator, Jeremy Smalley, who has been seconded for 2.5 days per week from B&NES pending a permanent appointment. The company is also recruiting a part time administrator. It notes that the [company] name has been slightly amended to the Norton Radstock Regeneration Company in order to further differentiate it from the Norton Radstock Regeneration (SRB) Partnership and confirm its commercial company status.

July 2002 - The NRR project appears in reports as a B&NES major project, but appears not to be placed in an Executive portfolio (no councillor supervision) or allocated a lead director (no responsible department). A memorandum of understanding is drawn up between NRR, B&NES and SWRDA, a tripartite agreement between "core partners". SWRDA's input is largely financial and strategic. B&NES input is through its regeneration expertise and pre-planning application advice, skills and other resources. The NRR Company input is that of developer and Community regeneration vehicle; a shared experience and commitment to support in all areas is agreed. B&NES will assist in acquiring land, via its compulsory purchase powers if necessary, develop a local plan with supplementary planning guidance that sets out a clear land use strategy for the town and a clear regeneration area, actively engage in the developing Masterplanning process through the Development Team, provide support to The NRR Company through Head of Service/Director attendance at Board of Directors meetings and through this representation make appropriate links to other Council projects initiatives and strategies and continue to be a part of The NRR Company by having one Councillor as a Member and Director of The NRR Company (Cllr Chris Dando, originally), handle development proposals for the Radstock Regeneration area through the Development Team to ensure cohesion and speedy decision making, closely liaise on Public Relation issues consulting on all press releases in relation to the Regeneration Project and agree an annual Communication Plan, and give appropriate recognition to its partners in all promotional site related literature. B&NES will, as a partner, maintain a close working relationship with SWRDA and The NRR Company, using the Memorandum of Understanding as a basis, by updating SWRDA on progress and the level of B&NES involvement.

SWRDA will be represented by a member on the company Board, invest time and money in NRR, liaise closely on PR issues and communicate regularly with NRR and B&NES to ensure that progress is being monitored.

NRR's role includes using any 'surplus' finance created as a result of developing its existing and future landholding for re-investment into the regeneration of the Norton Radstock area via the setting up of a community development charitable trust.

B&NES contributions include land it holds within the master-planned area of Radstock, which is much more extensive than the railway land site, for regeneration purposes. The council will treat NRR as the preferred developer of its land holdings in Radstock and if Council land is sold the net proceeds will be re-invested for agreed purposes in the tripartite partnership. The area to be mater-planned is much larger than the town centre, encompassing much undeveloped land in and around Radstock.

September 2002 - B&NES Project Officer Jeremy Smalley in the Sustainability and Economic Development department fills out a project form for project MP02 0038, entitled "Norton Radstock Regeneration Company", noting that a project manager had been appointed in January 2002 and noting that a Team of B&NES staff were to be appointed, scheduled for that month. The project resources include a project manager, a project administrator, the local partnerships manager, and other B&NES staff inputs. The agreement of a five year business plan was dated April 2002. Masterplanning and community engagement is scheduled to take place from January to June 2003 followed by a new planning application submission in August 2003 and a planning decision in November 2003. The target date for completion of the project is 2005. One of the 'key milestones' recorded is that the brief was agreed for land purchase and establishment of the Company in February 2001. Project objective key outcomes were set out, and the final project submitted for outline consent in 2006 was described in the same manner. [The B&NES project envisaged developing the land through a community led company, which is in essence what happened, but without the support of the community. ]

November 2002 - Full Council reports that development of the NRR site is a B&NES key regeneration priority with historic support from B&NES and assistance to NRR to buy the site. NRR is requesting funding

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

for running costs from B&NES as a key partner at the behest of SWRDA. It is reported that the SRB Partnership [which included B&NES] initiated site purchase; that NRR was set up as a legal entity to take forward a planning application and land purchase; and that the land was purchased in March 2002 (NRR website says April) using SWRDA funds (via the SRB management board), B&NES funds, and that B&NES land was purchased for £1.00. NRR, acting on the advice of SWRDA and specialists, has decided against bringing in a private partner at this stage and will draw up masterplan without one [using public funds only].

B&NES Council is requested to provide investment funding of £225,000; it is resolved to provide this funding for running costs in order to deliver regeneration of the NRR site; to ensure the NRR company's viability; to complete the masterplanning; to seek outline permission (finally sought in 2006, but anticipated in 2004); to secure a viable delivery plan; and to secure a development partner.

December 2002 - The B&NES Council Executive report shows that the 2002/2003 capital programme includes grant funding of £309,000 for Norton Radstock SRB.

January 2003 - Major Projects Overview & Scrutiny Panel is monitoring this project; NRR General Manager and project officer are on secondment from B&NES' Sustainability and Economic Development Service, which recharges NRR for salary and associated costs. NRR has no independent means - B&NES pays its running costs. The Council is considering the role of B&NES-owned land through capital receipts to aid regeneration and transfer of the B&NES services to a new community building in the NRR regeneration proposals. Senior Councillors and SWRDA reps attend NRR board meetings as observers.

June 2003 Jeremy Smalley is still the project officer and is filling in monthly progress reports on the B&NES NRR Company project. Critical dependencies include council financial support, B&NES-owned land and other things. It is unclear which project actions will be performed by B&NES alone or NRR alone, but B&NES is involved in key decision-making and is closely monitoring the project.

November 2003 - SWRDA puts pressure on the Leader of the Council to ensure that B&NES continues to support NRR and fund its running costs, and notes NRR's close working with B&NES and SWRDA. SWRDA is providing financial support for the development of the masterplan and delivery on site and describes NRR's role as valuable.

January 2004 - the Executive member responsible for Economic Development describes B&NES as having a "high stake" in NRR. B&NES funding of NRR for 2003/2004 and request for 2004/05 funding noted. Cllr Darracott keen that project is delivered, whether financially viable or not.

September 2004, B&NES discusses the NRR business plan.

October 2004 - a review of the Governance arrangements of NRR has been completed (reported under 'Specific area NRR, Action Plan , 3.0, Measures to Improve Member/Public Confidence in the Council's management of major projects and to improve the integration of risk', in the Major Projects Overview and Scrutiny report May 2005, so the NRR plan is still a major project in October 2004.

December 2004 - NRR project appears to be listed in the B&NES Economic Development Strategy by this time; NRR putting housing model proposals and housing proposals to B&NES; NRR provides a valuation study of B&NES sites regarding existing and alternative uses to inform the business plan for the Community Resource building to take transferred B&NES services

**3.3 2004 - 2006. B&NES gives a contingency loan to NRR; SWRDA secures consultancy for work on NRR project; NRR provides a spatial planning role; B&NES plans to transfer services to building provided in NRR development to free up B&NES assets; option of restricting NRR brief to its own land rejected on grounds that B&NES needs to show the RDA it can deliver regeneration in order to secure further investment/ public money; B&NES shores up NRR financial stability in order to bring closer claw-back of its investments; further B&NES capital spend on the project proposed; Leader of Council says that B&NES supports the NRR scheme (around the time of receipt of the application, almost a**

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

year before the planning committee decision).

January 2005 - the project is being managed by NRR, but B&NES "Council has a number of direct interests" cited in the Major Projects Overview and Scrutiny Panel meeting. The Panel is still monitoring the project and the General Manager and Project Officer are still on secondment from B&NES (these are Jeremy Smalley and another, possibly Sara Manning). B&NES may incur costs if the Company is unable to continue to use its seconded officers for the remainder of the secondment period. B&NES approves a contingency loan to NRR, and a £90,000 allocation from the Capital budget is approved by the Full Council for the Norton Radstock Regeneration major project in the Corporate sector.

March 2005 - SWRDA confirms that it has a budget of £500,000 for consultancy work for Radstock, which SWRDA procures for NRR - it does not pay the money to NRR directly. SWRDA confirms that the partnership principles between NRR, B&NES and SWRDA still remain, but that B&NES did not sign the memorandum of understanding and some of the drafting does not reflect current circumstance [ B&NES did approve the memorandum, however, at the Council Executive meeting of 12 th July 2002 ].

27th September 2005 - NRR project is still a B&NES major project - a Major Projects Update report item states that "This report provides a summary of progress in respect of all the projects currently managed by the Major Projects Directorate." The report contains update reports on the Radstock Schools project and the NRR [Company] project. Cllr Crossley, Leader of the Council, appears to link these in his 'blog' on the internet. The report also contains details of the steps to be taken in the NRR project over the next six months, including the establishment of financial independence, the production of proposals and a business case for a community resource building for relocation of council and other services [to free up Council-owned land and property], the submission of a planning application plus completion and a Development Agreement, and the production of a Draft Town Centre Development Framework. It appears that NRR is still performing a spatial planning role for B&NES.

There is, however, conflicting information given to the meeting - the minutes state that the response to a panel member's question was that "Norton Radstock Regeneration" was not currently in the major projects portfolio but "managed by the NRR community", yet it was also minuted that the Update report was noted, and so it was accepted by the Councillors that the NRR project was being managed by the Major Projects Directorate. It is possible that the project is now defined not as a major project but as a Regeneration project, or a Development project, and is therefore not in the Major Projects portfolio but is still managed by the Major Projects Directorate, which, when some reorganisation has gone on in 2006, becomes the case. It is also possible that the question was awkward and the answer misleading.

2nd November 2005 - Council Executive meeting the plan is to free up of B&NES-owned land and release its asset value through transfer of B&NES services to new civic building in the NRR/Bellway development. This is described as revenue and capital cost neutral. NRR is to include B&NES-owned land in its masterplanning for no cost (B&NES strategic planning exercise being done free through NRR and Bellway) and the Council will give support for the continuing negotiations with the developers. Executive Councillor for Economic Development (Cllr Darracott) acknowledges council officer input so far into the project. There is recognition of the project's strategic role in revitalising the area. The Council is to work with NRR on regeneration plan for Radstock Town Centre utilising the Company's land value in conjunction with Council Land holdings. The option to leave NRR to work solely on development within its own ownership boundary is dismissed on the grounds that the RDA requires demonstration of an active council role in planning and delivering comprehensive long-term regeneration (ie NRR/Bellway/B&NES working together to deliver a strategic planning aim and to secure future investment including public funding by the Regional Development Agency). The Council will work jointly with NRR (partnership).

January 2006 - Major Projects & External Bodies Overview & Scrutiny Panel meeting - the regeneration of Radstock is an NRR project and an effective Council role in securing regeneration. There is an approved loan of £90,000 to NRR within Council's capital programme in order to promote NRR's financial stability, NRR is delivering Council corporate improvement priorities and the Council is considering budgeting for a contingency loan to NRR for 2006/07 (B&NES has a financial interest in getting application out of the way

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

and agreement with Bellway sorted, so that Bellway can take over from B&NES as the provider of running costs to be clawed back. B&NES offices will cease to be on secondment with wages paid by B&NES, and the project can progress to planning consent and nearer to the point where B&NES gets its land contribution returned and claw back the wage costs, thus returning revenue to B&NES and removing some B&NES financial risk). It reports that there is tie-in with release of council-owned land for further regeneration and that NRR's work is forming a basis for strategic planning and informing the planning framework. There is reliance on NRR to deliver regeneration within a B&NES policy vacuum for Radstock and the surrounding area (as NRR claims in its application documents, I believe).

The minutes of the meeting record that the main issues for the council related to the NRR project are Finance, the proposed Civic Building and Wider Regeneration of the town centre; loan contingency for 2006/07 approved to ensure delivery of the project. Norton Radstock Development appears under New Capital Proposals with risks/downsides connected with withdrawing funding, the need to have a development strategy, the need to engage Government Agencies through delivery and showing active Council engagement in regeneration. B&NES is using NRR to provide spatial planning for the wider Norton Radstock area. Appendix 2 says that Major Projects Major Projects sees itself as as an enabler implementing the Council corporate objectives to develop Norton Radstock and other urban areas. It would seem that NRR's role at this point is still delivering B&NES corporate objectives regarding developing Radstock and providing a handy spatial framework for B&NES to use in the forthcoming Local Development Framework. There is a need to demonstrate to Government Agencies that B&NES can deliver.

February 2006 - the Council Executive considers that there is not currently a physical regeneration framework or masterplan for the town centre, that a significant amount of regeneration work and consultation has been undertaken and that drawing upon this work to establish a set of regeneration principles will provide a starting point for a physical regeneration framework for the town centre. It considers that these principles can be fed into any subsequent production of formal planning documents for the town. It is proposed to spend further Capital Programme money on the NRR project, but the major projects spend and the NRR spend are logged separately, suggesting that the NRR project is no longer a major project. However, a new organisational structure is being introduced to Major Projects. This starts at the February meeting with the introduction of a small Economic Development team and with associated reports on NRR progress under the heading of Economic Development and even the Norton Radstock Vision under the heading of Economic Development (The Vision should rightly be a planning document informing the Local Development Framework).

Then there is a further change in organisation. This results in the NRR project being a Development and Regeneration project under the new Assistant Director of Development and Regeneration, Jeremy Smalley (ex NRR project officer, project coordinator and then NRR General Manager seconded from B&NES Sustainability & Economic Development Services), who is under John Betty, Major Projects Director in the new structure. The NRR project is not mentioned in John Betty's report to the Chief financial Officer, who uses the Director's reports to appraise the robustness of their budgets, despite being reported on in the Major Projects reports.

It appears that the budget for the NRR project, a major project, has been controlled by the Executive and other bodies dealing with various corporate matters, yet the project has been monitored through the Major Projects Directorate and managed through Economic Development.

Norton Radstock Regeneration Company's Annual report and accounts 2005/2006 says that representatives of Norton Radstock Town Council and Bath & North East Somerset Council each have one place on the Board so that these Councils can be directly involved and informed about the Company's activities.

Friday 28th April 2006 - Cllr Crossley, Leader of the Council, writes in his blog - supports the NRR scheme and thinks it is worth delivering. He also links it to the Council having just built two new schools in Radstock and needing housing for families

February - September 2006, Major Projects organisational structure changes see the NRR project as first an Economic Development project and then finally as a "Development and Regeneration Project" under Development & Regeneration and Vision for B&NES, as opposed to being an ordinary 'Project'. It is depicted diagrammatically as sitting within the organisational structure headed by the Major Projects Director, John Betty, and under the new Assistant Director of Development and Regeneration (Jeremy

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

Smalley).

September 2006 - Major Projects O&S quarterly report. Under the heading, Economic Development is the following entry:

Norton Radstock Regeneration - Planning Application documents submitted by Norton Radstock Regeneration Company/Bellway in August. Viability will be heavily influenced by planning consent conditions or requirements.

October 2006 - Cllr Paul Crossley, Leader of the Council, writes in his blog - with reference to a Full Council and a Council Executive meeting, he refers to B&NES reaffirming its support for the Norton Radstock Regeneration scheme.

21 November 2006 - Major Projects & External Bodies Overview & Scrutiny Panel - there is a senior management restructuring. Economic Development formerly comprised two "core " teams and four specialist teams working on a wide range of economic, employment, skills and partnership related initiatives; the core teams were the Policy & Projects and Local Partnerships Teams, whose work included development of local area partnerships and regeneration strategy. The officer report to the Major Projects Overview & Scrutiny Panel is presented. Under the heading, Economic Development, is the following: "Norton Radstock Regeneration Company- Planning Application is being considered - determination to follow Council decision on response to Local Plan Inspector's report. " The council's decision regarding a response to the Inspector's report had been to decline to take the recommendation of the Inspector to limit development to safeguard the wildlife, biodiversity and associated community value of the land, and instead provided a policy capable of delivering a project that NRR and B&NES' Economic Development preferred and that would result in failing to comply with national planning policy on wildlife and biodiversity.

**3.4 2007 - 2008. NRR land lies within the B&NES Major Projects Service Delivery package; associated with resource planning implications; negotiations ongoing; Economic Development involvement; planning application approved 2007 and permitted 2008.**

January 2007 - Major Projects Overview & Scrutiny Panel meeting, resource service planning document This notes that key short to medium term service actions need to be appraised against various criteria, and they include "Norton Radstock > Radstock Town centre, >NRR land [and] >Midsomer Norton high Street improvements". There are costings for Norton Radstock development. The NRR land still lies within the Major Projects service delivery package and has resource planning implications, even though an outline planning application has gone in from the company and its development partner Bellway Homes. B&NES still has an interest at this stage between receipt of the application in 2006 and approval and there are those viability issues mentioned in the September 2006 Major Projects O&S quarterly report to consider with regard to conditions agreed with B&NES.

6th February 2007 - Major Projects & External Bodies O&S panel meeting - Mel Clinton, who has long been involved with the project since the SRB days, is now the interim Head of Economic Development. The Major Projects & External Bodies O&S report Feb 2007, under the heading Economic Development, says "NRR - 'route map' established for counter offer and planning decision. Independent viability assessment and negotiation of counter offer underway. [Presumably, this has something to do with the difficulties of achieving a financially viable scheme and negotiations with Officers over conditions - a number of officers are unhappy with the scheme - conservation area (heritage) and wildlife/biodiversity appear to be chief amongst them.]

After the February 2007 meeting the Major Projects & External Bodies O&S panel is replaced by the Enterprise and Economic Development O&S panel - this coming about from a starting point of embedding an Economic Development Team within the Major Projects brief.

19 March 2007 - outline application to General Development Control Committee  
My notes:

Duty to Cooperate  
Joint submission, Respondents 821 & 822  
Cam Valley Wildlife Group and Somer Valley Friends of the Earth

A summary of a new Regeneration Case paper by the developers was included in the Update Report, which contained plenty of spin, information not presented before and misleading information such as that it was at the Community Planning Weekend that the people had mooted a 'Development Trust', which had led to NRR, a fabrication to sway councillors<sup>1</sup>. Whereas the outline application claimed a sustainable development that also delivered an opportunity for regeneration and included compliance with local and national policies on nature conservation and biodiversity, now it was flagged up solely as a regeneration initiative that delivered the original SRB objectives from 1996 with an ecological price and there was a distinct message, that it has taken a very long time to get to where we are now and there is no alternative but to go with this plan. As the original SRB objectives did not include protection of the special natural and cultural heritage flagged up in the NRR/Bellway application, they were closer to what the developers had actually produced. Economic Development made comment now, its comments having been absent from the original Officers report. It quoting selectively from 2004 reports and the later 2006 Ernst and Young report. However, most of the Ernst and Young report conclusions and recommendations worked against the case for the NRR project and so were not included. The report suggested an alternative approach to regenerating Radstock, when the final regeneration case tried to say that there is no alternative to what it was proposing. As all this came out at the very last minute, there was no opportunity to challenge it.

31st March 2008 - outline permission is given to NRR and Bellway Homes for development of Radstock Railway Land in accordance with the Design Code and the Ecological Mitigation, Compensation and Management Plan. The Delegated report issued with the consent acknowledges that the proposed development will not comply with B&NES planning policies on sites of nature conservation value, European protected species, priority B&NES species, and landscape features and habitats. The Section 106 includes as one of the parties Norton Radstock Regeneration Ltd, referred to also as Norton Radstock Regeneration Company.

END

Deborah Porter, Somer Valley Friends of the Earth 2011, adapted from a briefing to Grant Shapps in 2010