Husbands Bosworth Neighbourhood Plan - Independent Examination

**Husbands Bosworth Neighbourhood Plan Examination**

**11th December 2019**

**Request for Clarification from the Examiner to Husbands Bosworth Parish Council and to Harborough District Council**

*Further to reviewing the Husbands Bosworth Neighbourhood Plan and supporting information, I would be grateful for the assistance of both Husbands Bosworth Parish Council (re: all Questions except Question 1) and Harborough District Council (re: Question 1 (Harborough District Council may also comment on other Questions if it wishes to do so)) in respect of clarifying a number of matters in writing.*

*In responding to the questions where I seek clarification, set out in bold/italics below, please do not direct me to any evidence that is not already publicly available.*

*Please can all responses be provided within four weeks of the above date. If this poses difficulties, taking into account the Christmas and New Year period, and more time would be helpful, please let me know.*

 *The questions set out are not, in any way, designed to criticise or to "catch-out", but they are simply drafted with the aims of 1) aiding my understanding of the Neighbourhood Plan; and 2) supporting the examination process as a whole. Please note that the questions are underpinned by the fundamental requirement for the Neighbourhood Plan to meet the basic conditions.*

 *Thank you in advance for any information you can provide.*

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**Independent Examiner**

**Husbands Bosworth Neighbourhood Plan**

**HDC response only – included for reference**

1. **European Obligations *(matter for clarification by Harborough District Council)***

National guidance establishes that the ultimate responsibility for determining whether a draft neighbourhood plan meets EU obligations lies with the local planning authority:

*• "It is the responsibility of the local planning authority to ensure that all the regulations appropriate to the nature and scope of a neighbourhood plan proposal submitted to it have been met in order for the proposal to progress. The local planning authority must decide whether the draft neighbourhood plan is compatible with EU regulations"* (Planning Practice Guidance1).

As you are aware, in April 2018, in the case People Over Wind & Sweetman v Coillte Teoranta ("People over Wind"), the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means if a likely significant effect is identified at the screening stage of a habitats assessment, an *Appropriate Assessment* of those effects must be undertaken.

In response to this judgement, the government made consequential changes to relevant regulations through the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018.

The changes to regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an Appropriate Assessment to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application.

These changes came into force on 28th December 2018. As the regulations are now in force, it is helpful to double-check that, wherever necessary, an Appropriate Assessment has been undertaken.

1 Planning Practice Guidance Reference ID: 11-031-20150209.

Screening was undertaken by Har borough District Council in respect of Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) and it was concluded that neither SEA nor HRA were required. These conclusions were supported by the statutory consultees, Historic England, Natural England and the Environment Agency. Further, neither Har borough District Council nor any of the statutory consultees have expressed any substantive concerns in respect of the Neighbourhood Plan's compatibility with European obligations.

***• Taking all of the above into account, please can Harborough District Council confirm that it has considered all relevant information and that it is satisfied ( or is not satisfied) that the Neighbourhood Plan is compatible with European obligations*** *?*

1. **Comments on Regulation 16 Representations *Optional Response from Husbands Bosworth Parish Council***

**Responses attached – thank you for providing the opportunity to comment.**

Neighbourhood Planning Independent Referral Service (NPIERS) Guidance2 Paragraph 1.11.4 states that:

 *"The qualifying body will normally be given the opportunity to comment on the representations made by other parties ... This may be particularly important where the matters concerned have not been raised at Regulation 14 stage. The opportunity for the qualifying body to comment on representations could be incorporated within an independent examiner's clarification note ... "*

***• Consequently, whilst not a requirement, I confirm that, in responding to this letter, there is an opportunity for Husbands Bosworth Parish Council to comment on any of the representations made during Regulation 16 consultation, should it wish to do so.***

2 NPIERS *"Guidance to Service Users and Examiners"*

Questions for Husbands Bosworth Parish Council

1. **Policy H3**

*• Please could you point me to information in respect of the difference between "particularly supported" and "supported" and how this might work with regards the implementation of Policy H3?*

**We are happy for the policy to state ‘supported’ rather than ‘particularly supported’ It was written as such to reinforce the strong community support for this type of housing, but we acknowledge the difficulty decision makers will have in differentiating.**

*• The term "significant minority" appears ambiguous. Please can you point me to information in respect of how a decision maker should interpret this in the context of Policy H3 ?*

**We are content for the policy to stipulate a ‘minority’ rather than an a ‘significant minority’ which will make it easier to apply.**

4) **Policy H5**

*• Building Regulations are subject to different regulations, statute and processes than those relating to land use planning policies. Please can you point me to any national planning policy or guidance or similar that supports or justifies Policy H5's requirement for certain Building Regulations to be met ?*

**We acknowledge the Ministerial Statement from March 2015 which addressed the issue of technical standards in neighbourhood plans. It is for this reason that the Neighbourhood Plan does not make it a requirement, but rather says that dwellings *should* be built to these standards.**

**The justification is that many national housebuilders already construct dwellings to this standard, and it would be a very useful standard for housebuilders to voluntarily apply given the elderly and ageing local population.**

1. **Policy H6**

*• Please can you comment on the representation made on behalf of Leicester Diocesan Board of Finance, with respect to parts a) and b) of the Policy ?*

**We are content for the two criteria to be removed from the policy.**

**6) Policy ENV3**

*• Please can you comment on Harborough District Council's suggestion that the first line of the Policy could more clearly refer to "locally designated heritage assets."*

**We are content for this change to be made.**

**7) Policy ENV4**

*• Please can you comment on Harborough District Council's suggestion that part d) of the Policy appears vague; and could you point me to information that provides a decision maker with clarity in respect of how this part of the Policy should be implemented ?*

**We would be content for ‘the attraction of large numbers of people or excessive traffic’ to be deleted and believe that this would provide the clarity required.**

**8) Policy ENV7**

*• Please can you point me to national policy or national guidance, or similar, which supports the Policy's proposed control of each of the forms of lighting referred to via a land use planning policy ? How might the Policy be implementable ?*

**The guidance is provided by Leicestershire County Council https://www.leicestershire.gov.uk › field › pdf › LRERC\_Bats\_lighting**

**It would be an enforceable requirement and where this policy has been included in neighbourhood plans elsewhere, (most recently the Great Glen Review, examined in September 2019) the community has helped the enforcement team uphold the policy.**

**9) Policy ENV8**

*• Please can you point me to information in respect of the definition of "environmentally sound" and how a decision maker should interpret this ? • Please can you point me to information in respect of how a decision maker should interpret "considered favourably. on their merits. providing that conditions regarding ... are in place"?*

**Harborough District Council propose changing this to ‘environmentally sustainable’ and we support this amendment.**

 *• Please can you point me to the specific paragraphs of the evidence base which state that solar farms are not appropriate in the Laughton Hills Landscape Character Area, as Local Plan Policy CC2 refers only to preventing wind farms (more than three turbines/wind turbines exceeding 30 metres) ?*

**Refer to Local Plan 10.3.4 in CC2 – not specific to wind, “Laughton Hills Landscape Character Areas have limited capacity for accommodating renewable infrastructure” …..**

 **“In general, larger scale renewable energy, including *(but not limited to)\** commercial wind farms, is best accommodated in the Upper Soar and Lutterworth Lowlands Landscape Character Areas”**

 **\*(italic is our reading)**

**10) Policy CFA1**

*• Please can you comment on Harborough District Council's comments in respect of the facilities referred to.*

**We have commented in detail on the Regulation 16 response table. In general, the policy covers ‘community facilities and amenities’ and it is recognised that policy EC1 may also cover some of the businesses listed here.**

*• Please can you point me to information in respect of how /why, for example, the towpath, the village playing field, Totties' Teas, the Parish Council Office, the Methodist Church and the Gliding Centre might all be treated in the same way by the Policy; and how /why a decision maker might do this ?*

**We would prefer that the towpath is retained in the policy … it is a well-used and popular local resource that was identified in the consultation as an important local amenity. The policy contains three elements that require the facility or amenity to be retained unless no longer needed, or it is no longer financially viable or a better alternative in provided. This applies to the towpath as well as to buildings or structures.**

**The playing field is part of a larger complex that incorporates a play area; sports pavilion; Scout HQ etc and is seen as a single resource. However – if the policy on Open Space Sports and Recreation is introduced as proposed by Harborough DC, then the playing field can be covered by that policy.**

**11) Policy T2**

*• Please can you point me to evidence to demonstrate why the provision of 7kW cabling specifically comprises appropriate provision over the plan period ?*

**7kw is the current standard applying to residential vehicle charging points. It is the maximum voltage that is possible using current standard domestic electricity supply (single-phase 240 volt). It is possible that this standard will change over the Plan period, so we would be happy to add ‘or better if feasible’ after ‘7kw cabling’ to future-proof the Plan.**

**Government consultation on the future of electric car charging at home is contained in the following:**

***https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/818810/electric-vehicle-charging-in-residential-and-non-residential-buildings.pdf***

*Please can you also point me to information in respect of the deliverability of 7kW cabling, having regard to Paragraph 56 of the National Planning Policy Framework and evidence in respect of general conformity with the Local Plan ?*

**The NPPF supports the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles and that applications for development are designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. Para 105 says ‘If setting local parking standards for residential and non-residential development, policies should take into account: e) the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles.**

**In conjunction with the Government ‘direction of travel’ as indicated in the consultation indicated above, this shows support for the provision of home charging points.**

**The Neighbourhood Plan, by supporting measures to mitigate climate change is consistent with the Local Plan which outlines support for such development (CC1). Local Plan Objective 12 seeks to maximise energy efficiency.**

**12) Policy Tl Traffic Management**

 *• Please can you point me to evidence in respect of "the need" to minimise "any" increase in vehicular traffic?*

**Consultation analyses from July 2017 and March 2019, alongside the Questionnaire analysis from April 2018 demonstrate the depth of local feeling and highlight traffic-related issues. These documents are all available alongside the Consultation Statement.**

**Parish Council speed data has been collected on a daily basis since 2011 and supports the concerns of residents.**

**We would be content with the policy wording changing from ‘With particular regard to the rural highway network of the parish and the need to minimise any increase in vehicular traffic all development must…’ to ‘With particular regard to the rural highway network of the parish and to avoid a severe increase in traffic, all development must…’**

**13) Policy EC1**

*• Please can you point me to a definition of "strong presumption" and how this might be interpreted by a decision maker ?*

**We would be happy to remove the word ‘strong’ and to leave the sentence as ‘There will be a presumption against the loss of commercial premises …’**

*• Parts a) and b) appear vague and open to interpretation. Please can you point me to information in respect of how a decision maker should interpret them ?*

**We are happy to accept the variation proposed by Harborough DC and to change a) and b) to:**

**a) The commercial premises or land has not been in active use for at least 12 months; and**

**b) The commercial premises or land has no potential for redevelopment as demonstrated through a valuation or marketing campaign**

**This satisfies the local planning authority who will be the decision-makers when applying the policy.**

*• Please can you point me to a definition of "an activity that provides employment opportunities"? Could this comprise a home office for example ?*

**Yes, that would be a good example.**

**14) Policy EC2**

*• Please can you point me to information in respect what "other forms of commercial/employment development appropriate to a countryside location or there are exceptional circumstances" includes, as the Policy appears vague in this regard ?*

**This would follow paragraph 170 of the Framework, especially criterion b) and follow criteria b) to h) of the NP policy EC2. Local Plan policy GD3 provides useful additional examples**

*• Please can you point me to information in respect of how Part b) is meant to be interpreted by a decision maker? What happens, for example, if an application for employment use is submitted on a non-brownfield site in the settlement boundary?*

**The policy does not preclude development on non-brownfield land as long as it complies with other policies in the development plan. The policy wording is intended to express a preference for development in existing buildings or areas of previously developed land … but if this is considered hard to enforce the criterion can be removed.**

 *• Please can you point me to information in respect of how "complement existing businesses" should be interpreted by a decision maker and why this is a relevant and appropriate requirement ?*

**This refers to development complementing the design (character and appearance) of buildings through materials or design features such as the treatment of gable ends, rooflines etc.**

*• Please can you point me to information in respect of why part ii) of the Policy does not conflict with the rest of the Policy and the Neighbourhood Plan ?*

**We are content for this section to be deleted. On reflection it does not add anything to the policy.**

**15) Policy EC3**

*• Please can you point me to information in respect of whether the Policy would anticipate ( and support) a decision maker supporting an application to say, change a five bedroom home into a light industrial unit with one bedroom ?*

**The policy intent is to facilitate the expansion of dwellings for home working use.**

**It is likely that such a light industrial unit would fall foul of policy EC2 and would fail to comply with a) b) and c) in policy EC3.**

**If there is a better form of words that meets this policy requirement, we would be happy for it to be used.**

 *• Please can you point me to the definition of a "small scale building" that requires planning permission, as supported by the Policy in domestic gardens ?*

**This would be a building that of a suitable size and in proportion to the main building, which can be built without detrimental impact on the amenity of neighbours and in conformity with the rest of the policy.**

*• The Policy appears to support extensions requiring planning permission or new small-scale buildings requiring planning permission without reference to the development's impact ( as opposed to the work activity's impact) on the residential amenity of occupiers or neighbours. ls this the intention of the Policy?*

**Criterion c) in particular seeks to address this issue. We would want the building itself to be considered for its impact as well as the work activity.**

**It may be better for criterion b) to say ‘No significant and adverse impact arises to nearby residents or other sensitive land uses from noise, fumes, light pollution, or other nuisance associated with the work activity or development’.**

**16) Policy E4**

*• Please can you point me to evidence in support of the deliverability of the last sentence of the Policy, having regard to Paragraph 56 of the Framework?*

**Paragraph 56 sets the tests which must be met for a planning obligation to be sought. The determination of the application will be then dependent on the local development plan, and it seems reasonable to require such development to address the conditions referred to in paragraph e) of the policy E4.**

**The Local Plan policy GD8 on Good Design requires development to minimise the impact on the amenity of residents by ‘not generating a level of activity, noise, vibration, pollution or unpleasant odour emission, which cannot be mitigated to an appropriate standard and so would have an adverse impact on amenity and living conditions’. The NP policy E4 therefore is in general conformity with the Local Plan.**

Thank you for consideration of all of the above.