

**Windsor Neighbourhood Plan Examination**

**4<sup>th</sup> December 2019**

**Request for Clarification from the Examiner to Windsor Neighbourhood Forum and to the Council of the Royal Borough of Windsor and Maidenhead**

*Further to reviewing the Windsor Neighbourhood Plan and supporting information, I would be grateful for the assistance of both Windsor Neighbourhood Forum in respect of clarifying a number of matters in writing (re: all Questions except Question 1/1a) and the Council of the Royal Borough of Windsor and Maidenhead (re: Question 1/1a and 2, although RBWM may comment on other Questions if it wishes to do so).*

*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 any difficulties, taking into account Christmas and New Year 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. 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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**1) European Obligations**  
***(matter for clarification by the Council of the Royal Borough of Windsor and Maidenhead)***

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 Guidance<sup>1</sup>).

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 28<sup>th</sup> December 2018. As the regulations are now in force, it is helpful to double-check that, wherever necessary, that an *Appropriate Assessment* has been undertaken.

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<sup>1</sup> Planning Practice Guidance Reference ID: 11-031-20150209.

Neither the Council of the Royal Borough of Windsor and Maidenhead nor any of the statutory consultees (Historic England, Natural England and the Environment Agency) have expressed any substantive concerns in respect of the Neighbourhood Plan's compatibility with European obligations.

- ***Taking the above into account, please can the Council of the Royal Borough of Windsor and Maidenhead confirm that it has considered all relevant information and is satisfied (or is not satisfied) that the Neighbourhood Plan is compatible with European obligations.***
- ***Q1a) RBWM's representation refers, at the end, to Paragraph 7.1.16, but this does not relate to the comment made – please could you re-confirm Para number ?***

## **2) European Obligations**

- ***Was an HRA Screening Opinion published ? If not, how has the conclusion re: HRA on page 9 of the Basic Conditions Statement been reached ?***

## **3) Policy OS.01 and OS.02**

Local Green Space policy provides for the designation of open space that is demonstrably special to the community, subject to designation meeting the tests set out in the National Planning Policy Framework. The twenty areas of Local Green Space designated are supported by evidence in this regard.

However, a "blanket" approach is applied to other areas of land, preventing any form of development. Such an approach appears to run directly contrary to national planning policy.

- ***Please can you point me to national policy or guidance support for the first part of Policy OS.01 ?***
- ***Please can you clarify why part iii) of Policy OS.02 only relates to the "redevelopment of a major site" and what the definition of a redeveloped major site comprises ?***

- *Please can you point me to supporting information in respect of why a redeveloped major site with no open space should provide new open space within the new development regardless of the type of development and how much open space should be provided/what form should it take/who might access it ?*
- *Please could you confirm what an “appropriate location” is, as referred to in part iv) of Policy OS.02 ?*

**4) Policy BIO.01 and BIO.02**

- *Please could you confirm whether part i) of Policy BIO.01 is meant to apply to every development proposal, including for household extensions, ATM machines, shop signs etc ?*
- *Please can you point me to the circumstances whereby it would be “appropriate” to provide additional opportunities to access green spaces ?*
- *Please could you confirm, re: part ii) of the Policy, whether this is meant to be aimed at major residential development ?*
- *Please can you point me to evidence to demonstrate that it will, in all cases, be deliverable for any development facing a green route to provide green boundary treatments, established trees and green verges and habitats to facilitate the movement of wildlife, as per the requirements of Policy BIO.02 ?*
- *Please can you point me to evidence in respect of how new development can deliver part b) of the Policy and why would it be necessary for it to do so ?*
- *Please can you point me to evidence in respect of how all new development close to the River Thames can integrate and improve access to the blue infrastructure network and why it would be necessary for it to do so ?*
- *Please can you confirm which proposals need to comply with part d) of the Policy ?*

5) **Policy WAT.01 and WAT.02**

- *Please can you confirm whether the first part of Policy WAT.01 takes into account the fact that developers have the right to connect to the public foul water sewer as a matter of law<sup>2</sup> ?*
- *Please can you point me to evidence to demonstrate that it is necessary for all development to include SUDS ?*
- *Policy WAT.02 provides support for the contamination of controlled waters as long as there is some mitigation. Please can you confirm that this the intention of the Policy ?*
- *Please can you point me to justification for the 110 litre figure being relevant for all forms of development ?*

6) **Policy HER.01 and HER.02**

- *Design guidance is precisely that. Please can you point me to the statutory or national/local policy basis on which the Policy can require “conformity” with the WNP Design Guide ?*
- *Policy HER.01 seeks to impose a policy approach that is different to and conflicts with national policy set out in the National Planning Policy Framework. Please can you point me to the justification for this different approach ?*
- *As set out, Policy HER.02 effectively seeks to afford statutory status to non-statutory heritage assets. Please can you point me to the justification for an approach that conflicts with national policy ?*

7) **Policy DES.01**

- *Policies must be clear, precise and unambiguous. The phrase “reflect all relevant evidence” fails this test and the Policy does not meet the basic conditions. Please could you point out what, specifically, is the intention of this Policy ?*

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<sup>2</sup> Reference: Section 94, the Water Industry Act (1991).

**8) Policy VIE.01**

- *Please can you point me to information in respect of who will judge a “compromised” view or a “positive contribution” to a view and on what basis ?*
- *The views cover vast swathes of the Neighbourhood Area. Please can you point me to evidence to demonstrate that it is appropriate, having regard to Paragraph 56 of the National Planning Policy Framework, for the Policy to require any development that could affect a view (ie, potentially every development within the view zone) to provide the information required ?*

**9) Policy CW.01**

- *Please can you point me to evidence that all new development can link to pedestrian and cycle route networks ?*
- *NB, I note that Part b) is a statement, not a land use planning policy*

**10) Policy HOUS.01**

The Policy is not supported by RBWM on the basis that it appears vague and there is little information in respect of the impacts the Policy may have if implemented as set out.

- *Do you accept the Council's comments ?*

**11) Policy RES.01**

The Policy is not supported by RBWM on the basis that it appears vague and difficult to implement.

- *Do you accept the Council's comments ?*

12) **Policy RET.01**

- *Part a) of the Policy is not supported by a plan showing precise boundaries, is this meant to be the case ?*
- *Please can you point me to evidence supporting the percentage figure in Part b) ?*
- *Re: part c), please can you point me to evidence of what a “reasonable effort” comprises and any information supporting the retention of say, a non-viable unit in a non-viable use ?*
- *Re: part e), please can you point me to information in respect of what “clustering that would harm retail vitality” is, with reference to the need for the Policy to be implementable ?*

13) **Policy DR.01**

- *Please can you point me to information in respect of what the phrase “must utilise opportunities” means ?*
- *Please can you point me to information re: the deliverability of the Policy in respect of highway authority matters ?*
- *There is nowhere on Map 11 marked “Retail Area” – please can you point me to information in respect of where part b) applies?*
- *Please can you point me to information in respect of the basis upon which it is appropriate and deliverable for all development proposals in the “Retail Area” to enhance retail ?*
- *Please can you point me to information in respect of how Policy DR.01 can work alongside RET.01 if retail frontages are to be “protected and enhanced” ?*
- *Please can you point me to information in respect of when a proposal re: c) will be “relevant” ?*
- *Please can you point me to evidence supporting the viability and deliverability of part d) ?*

**14) Policy IH.01**

This Policy has been overtaken by events, further to the recent appeal decision to allow mixed use development to come forward on part of the site.

- *Does the Qualifying Body wish to withdraw Policy IH01 ?*
- *If the answer to the question above is, no, does the Qualifying Body agree with all of the comments provided on behalf of Salmon Harvester Properties Ltd (SHP) and if not, can you point me to evidence in support of Policy IH01 in the light of SHP comments ?*

**15) Policy LEGO.01**

The Policy is not supported by RBWM on the basis that it fails to take into account relevant designations, including Green Belt and the Windsor Park Special Area of Conservation and it does not meet the basic conditions. Also, it is not clear why parts b), c) and d) are included in the Policy – there is already a Park and Ride, buffer zone and Green Route and boundary that appears green.

*Do you accept the Council's comments and are there elements of the Policy you would seek to change ?*

**16) Policy RAC.01**

The Policy raises similar issues to Policy LEGO.01 and is not supported by RBWM as it does not meet the basic conditions.

*Do you accept the Council's comments and do you wish to retain the Policy or are there elements of the Policy you would seek to change ?*

**Thank you for consideration of all of the above.**