

Burntwood Neighbourhood Plan Examination

4th December 2019

**Request for Clarification from the Examiner to Burntwood Town Council
and to Lichfield District Council**

Further to reviewing the Burntwood Neighbourhood Plan and supporting information, I would be grateful for the assistance of both Burntwood Town Council (re: all Questions except Question 1) and Lichfield District Council (re: Question 1 (LDC 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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1) European Obligations
(matter for clarification by Lichfield 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.

The Neighbourhood Plan was screened for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA). Whilst the original conclusion was that neither an SEA nor a HRA were necessary, further stages of Appropriate Assessment, comprising a Shadow HRA and a subsequent HRA Addendum were undertaken on a precautionary basis. This followed advice from Natural England.

Further to all of the above, neither Lichfield District Council 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 this into account, please can Lichfield 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 ?***

2) Comments on Regulation 16 Representations *Optional Response from Burntwood Town Council*

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 Burntwood Town 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 Burntwood Town Council

3) Policy B1

- *Do you agree with Lichfield District Council's representation in respect of Policy B1 ?*
- *The Policy appears prescriptive – please can you point me to evidence that the approach set out, which appears to restrict the uses supported, is deliverable ?*
- *Do you agree with the comment that the requirement for a Health Centre should be dropped from Site B, given that the site was rejected by the Primary Health Care Trust ?*
- *Do you agree with the comment made in a representation that the Policy for Site B should include scope for residential development as part of the mix ?*
- *Please can you point me to information to demonstrate how the delivery of the proposals identified at the bottom of page 37 and top of page 38 will "be prioritised" ?*

4) Policy B3

- *The four Neighbourhood Centres together cover large areas which include existing residential uses. Policy B3 appears to support only a very limited range of uses within these areas and does not support residential development. Please can you point me to evidence that justifies the apparently prescriptive and restrictive approach of Policy B3 ?*
- *Please can you point me to information in respect of how "health and vitality" will be measured, who by and on what basis, in respect of any proposal for a non-retail use within a key retail frontage ?*

5) Policy B4

- *Please can you point me to information justifying the Policy requirement for a shop to remain vacant whilst it is marketed ? Would it be reasonable for an unviable shop to seek to attain at least some income whilst being marketed ? Please can you point me to evidence that in all circumstances, leaving a shop vacant for 12 months “is not too long a period...to deteriorate or become a negative feature in the local area” ?*
- *Given point a) please can you point me to information that justifies the need for point b) ? Also, who will judge point b) and on what basis ?*

6) Policy B5

- *Do you agree with Lichfield District Council's comments re: this Policy ?*
- *Please can you point me to information in respect of what “appropriate use” comprises, who will judge this and on what basis ?*
- *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 B6

- *Please can you point me to information in respect of when a development will “break the skyline” ?*
- *Please can you point me to information in respect of the definition of a “larger development.”*
- *Please can you point me to evidence that it will, in all circumstances, be possible for residential development to provide “changes of direction” and why it is necessary for all residential development to provide “a sense of enclosure.”*

- *Please can you point me to information in respect of the definition of a “wherever possible” in part 3. This appears as an onerous requirement, please could you also point me to evidence in respect of deliverability.*
- *Please could you point me to evidence that all existing boundaries of local stone, traditional brick, cast iron or hedge planting are worthy of retention and capable of repair ?*
- *Please could you point me to evidence that all “internal boundaries, structures and other features” are worthy of recording and being incorporated into all new residential development ?*
- *Please can you point me to evidence in respect of “the best of the varied, local building styles in the Bruntwood area” ?*

8) Policy B7

- *Do you agree with Lichfield District Council’s comments in respect of the first paragraph of Policy B7 ?*
- *The rest of the Policy appears in direct conflict with national policy’s approach to non-designated heritage assets, as set out in the National Planning Policy Framework. Please can you point me to evidence in justification of this conflicting approach ?*

9) Policy B8

- *Please can you point me to information in respect of how all new development can deliver the requirements of the Policy and why the requirements are necessary, directly related to and reasonably related in scale and kind to development ?*

10) **Policy B11**

- *Do you agree with Lichfield District Council's comments in respect of Policy B11 ?*
- *The Neighbourhood Plan protects parks and sports and recreation facilities and designates areas of Local Green Space. Please can you point me to information in respect of why the sites shown on Map 8 warrant their own designation over and above the protection for public open spaces and recreational areas that already exists, and the national or local policy basis the designation has regard to/is in general conformity with ?*
- *Please can you point me to evidence to demonstrate that all of the land at Bleak House Farm, as identified as Protected Open Space, comprises public open space, or that there are provisions in place for it to become so ?*
- *Map 8 is unclear to the naked eye. Please can you point me to a list of the spaces identified along with precise boundary plans ?*

Thank you for consideration of all of the above.
