

Ilmington Neighbourhood Plan Examination

2nd October 2019

**Request for Clarification from the Examiner to Ilmington Parish Council
and to Stratford on Avon District Council**

Further to reviewing the Ilmington Neighbourhood Plan and supporting information, I would be grateful for the assistance of both Ilmington Parish Council (re: all Questions except Question 1) and Stratford upon Avon District Council (re: Question 1 and to any other questions, but particularly those relating to; DC1; HG5; DC7; NE6; INF Policies; and ETA2) in respect of clarifying a number of matters in writing.

In responding to the matters 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 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.

Nigel McGurk

**Nigel McGurk BSc (Hons) MCD MBA MRTPI
Independent Examiner
Ilmington Neighbourhood Plan**

1) European Obligations
(matter for clarification by Stratford on Avon 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).

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 and this pre-dated the submission of the Neighbourhood Plan. As the regulations are now in force, it is important to double-check that, wherever necessary, an *Appropriate Assessment* has been undertaken.

A Strategic Environmental Assessment (SEA) was submitted alongside the Neighbourhood Plan (and a Habitats Regulations Assessment (HRA) was screened out) and neither Stratford on Avon District Council nor any of the statutory consultees (Historic England, Natural England² and the Environment Agency) have expressed any substantive concerns in respect of the Neighbourhood Plan’s compatibility with European obligations.

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

² Subject to the removal of the word “either” from Neighbourhood Plan Policy 2e.

- ***Taking the above into account, please can Stratford on Avon District Council confirm that it is satisfied (or is not satisfied) that the Neighbourhood Plan is compatible with European obligations.***

2) HG Policies (and DC1)

- ***As worded, whilst Policy DC1 suggests that some development within a site might be at a higher density, it infers that the overall density of a site should be up to 16 dph. Is this a correct interpretation ?***
- ***Please can you point me to evidence in respect of national and local policy, deliverability, viability and the effective use of land in support of the suggestion that achieving up to a 16dph density is appropriate ?***
- ***The “Mabels Farm” site is located within the setting of the Grade II Listed “Mabels Farmhouse” (located across the road to the south) and within the setting of the Ilmington Conservation Area. Please can you point me to any detailed information to demonstrate that any heritage related matters can be overcome in respect of the deliverability of the allocation ?***
- ***Please can you point me to the evidence that demonstrates at least 20 new dwellings can be provided at Site 1 without any additional congestion in Back Street (as per the Policy requirement) ?***
- ***Whilst partly referenced in supporting information/Design Guidance, the “balance between built and green areas” appears as a somewhat vague and subjective matter and any such “balance” varies considerably across the settlement. Please can you point me to information to demonstrate that reference to this within Policy HG3 provides for a clear and unambiguous Policy ?***
- ***Please can you point me to detailed information to demonstrate what the flooding issues are at Site 3; and to information to demonstrate that these issues can be overcome, such that the allocation is deliverable; and to information to demonstrate that 3 dwellings is appropriate for a site of just under 1 acre in size in this location ?***
- ***If there is no 5 year housing land supply and the Reserve site is sustainable, on what planning basis can it reasonably be prevented from coming forward if Site 1 has not been implemented ?***

- ***Figure 6 appears confusing. The responses from SoADC are indicative of this. Please can you clarify the need to include this Figure in the Neighbourhood Plan, as the majority of the Evidence Base has not been included ? Also, why is the Figure shaded, which has the effect of suggesting that it has some kind of raised status, which it does not ?***
- ***HG4. Noting that development plan policies must be considered as a whole, what is the difference between “support” and “support in principle” ?***

Design guidance provides guidance - it does not comprise policy.

Unlike say, a District-wide Supplementary Planning Document, the Design Guide is not an adopted planning document that has undergone rigorous examination. The Design Guide is very prescriptive and much of its content appears as though it comprises policy requirements (which it does not). Despite this, Policies HG5, DC1, DC3 and DP1 require all development to accord with the requirements of the Design Guide.

- ***HG5. Please can you point me to national and/or local planning policy that would support the requirements of the Design Guide effectively taking on development plan policy status (noting the requirements of the above Policies and the “policy-like” content of the Design Guide).***
- ***Please can you point me to evidence to demonstrate that all the requirements of the Design Guide are, in all cases, viable and deliverable. Please point me to information in respect of how the requirements of the Design Guide can be controlled.***

3) DC Policies

- ***DC1. Is there a specific reason why the Policy seek to ‘preserve’ heritage assets when national policy refers to conservation ?***
- ***Is there a specific reason why the Policy repeats the requirements of other policies when the development plan must be considered as a whole ?***
- ***Parts g) and h) of the Policy appear vague. How will these requirements be judged, who by and on what basis ? Please can you point me to specific evidence to indicate how a decision maker can react to a development proposal in these respects ?***
- ***When will DC1.6 be ‘necessary’ ?***

DC2. National policy provides for appropriate housing in the countryside. Why does Policy DC2 seek to prevent (ie fail to refer to) some forms of housing in the countryside that are supported by national policy ?

DC3. What is a ‘modest’ development ?

DC5. When will it be appropriate/not appropriate to enhance the character of the landscape setting ?

The words “maintained and safeguarded” result in the second part of DC5 preventing any form of development within a “valued landscape.” Is this the intention of the Policy ?

What are the specific “important vistas and skylines” that must be maintained and safeguarded ?

DC6. Please can you point me to evidence to demonstrate deliverability in respect of the requirement for all development to be environmentally sustainable ? How might a household extension, an ATM or a new shop sign achieve the requirements of the Policy ?

Please can you point me to viability/deliverability information in respect of Policy 6.3 / 6.4 ? Please can you define ‘eco-friendly’ construction and indicate how this might be controlled ?

DC7. Please can you point me to evidence that demonstrates how the car parking standards can be delivered whilst at the same time meet all design aspirations (for example, how/why provision of say, 22 car parking spaces for 5*4 bed dwellings, or 5 spaces for a single 5 bed dwelling, would not result in a car-dominated development) ? Does 7.1 conflict with 7.3 and other design aspirations set out in the Neighbourhood Plan ?

The evidence base for the proposed “parking standards” appears to be derived from the Questionnaire (plus references to Core Strategy policies). Please can you point me to any additional evidence to indicate that the standards have emerged from a robust evidence base?

It might be argued that the proposed standards appear “excessive” (taking account of part C of Core Strategy Policy CS.26). Please could you point me to evidence to demonstrate that this is not the case (other than the Questionnaire) ?

4) **Policy HA1**

*HA1. Why is it relevant for all development to demonstrate this ?
Why will only 'public benefits' be considered in respect of heritage assets and not, for example, the desirability of sustaining and enhancing significance, putting assets to viable uses, economic vitality, contribution to local character etc ?*

5) **Policy LGS1**

How/why is reference to special character, significance and value to the local community consistent with managing development within Green Belts ?

6) **INF Policies**

Is it clear and unambiguous (and necessary) for the Policy to seek to impose a discharge rate requirement when there is disagreement on relevant bodies in this regard ?

Is the requirement to provide something "in perpetuity" deliverable ?

Please can you point me to evidence to demonstrate that, in all cases, opening up culverts where practicable will contribute to the achievement of sustainable development ?

Please can you point me to evidence in support of the requirement that no SuDS features should be provided in any area of flood risk, as required by INF1.3 ?

Please can you point me to evidence in support of all development needing to comply with INF2.1. Please can you define "heavy rainfall" and "subsequent to" (eg, one minute after, one day after etc ?)

Why is INF2.2/3 necessary, given the responsibilities of providers ?

Please can you point me to evidence in respect of the deliverability and viability of INF2.4 as it applies to all development; and how this might be controlled ?

7) **NE Policies**

NE1. Please can you point me to detail in respect of the specific ecological networks that should be retained ?

NE3. How will details “be encouraged” ?

Who will encourage connectivity and shelter and how; and how will development affecting hedgerows be encouraged to conserve them ?

NE4. Please can you point me to detail in respect of precisely where the orchards and remnant orchards to be protected are located ? Please can you define “orchard” and “remnant orchard” ?

NE6. Most external lighting does not require planning permission. Why is NE6 deliverable and how will it be controlled ?

8) **ETA Policies**

ETA1. What is an ‘appropriate scale’ ?

ETA2 How would the second part of the Policy be deliverable taking into account that it appears to rely on land in third party ownership ?

Thank you for consideration of the above
