

**Ross-on-Wye Neighbourhood Plan Examination**

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

**Request for Clarification from the Examiner to Ross-on-Wye Town Council  
and to Herefordshire Council**

*Further to reviewing the Ross-on-Wye Neighbourhood Plan and supporting information, I would be grateful for the assistance of both Ross-on-Wye Town Council (re: all Questions except Question 1) and Herefordshire Council (re: Question 1 (Herefordshire 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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**1) European Obligations**  
***(matter for clarification by Herefordshire 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 Guidance<sup>1</sup>).

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

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

A Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA) were submitted alongside the Neighbourhood Plan. Neither Herefordshire Council nor any of the statutory consultees (Historic England, Natural England<sup>2</sup> and the Environment Agency) 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 Herefordshire 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 Ross-on-Wye Town Council***

Neighbourhood Planning Independent Referral Service (NPIERS) Guidance<sup>3</sup>  
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 Ross-on-Wye Town Council to comment on any of the representations made during Regulation 16 consultation, should it wish to do so.***

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<sup>3</sup> NPIERS “Guidance to Service Users and Examiners”

**Questions for Ross-on-Wye Town Council**

**3) Policy EN1 and EN2**

- *Please could you point me to information in respect of how “being clearly of its time” will be judged, who by and on what basis ?*
- *National and local policy requires heritage assets to be conserved in accordance with their significance. Please can you point me to information in respect of how a decision maker should interpret “particular importance” and “especially within” in respect of the Conservation Area and the rest of the Neighbourhood Area. As worded, the Policy infers that good design is considered less important outside the Conservation Area – is that the intention of the Policy ?*

**4) Policy EN3**

- *Please can you point me to the justification for the Policy’s direct conflict with national and local policy in seeking to prevent all development except rural exception sites outside the settlement boundary ?*

**5) Policy EN4**

- *The phrases “can be supported” and “could be supported” are ambiguous. Is the Policy intended to provide support ?*

**6) Policy EN5**

- *For clarity, please could you confirm whether the intention of the Policy is to support any form of development that in any way includes the methods referred to (as set out), or it is to support the use of the stated methods themselves ? (ie, taken to its extreme, a nuclear power station might make use of waste reduction)*

7) **Policy EN6**

- *Please can you point me to information in respect of what would comprise acceptable harm and what would comprise unacceptable harm (or to information that would provide a decision maker with a clear indication of this) ?*

8) **Policy EN7**

- *Please can you point me to national policy or national guidance, or any evidence, which enables an adopted policy in a development plan to apply to something to which it cannot apply ?*

9) **Policy EN8**

- *The first part of the Policy is clear. In respect of the second part, please can you point me to national policy or guidance that supports the prevention of any development at all that may have an impact on a view (as per 4.5.4 in the Explanation) along with detailed information demonstrating when the Neighbourhood Plan would expect such an approach to be taken ?*
- *“Protecting” a view suggests no change. Views change all of the time (hourly to seasonally). Please can you point me to substantive evidence in respect of the precise details of each of the extensive views to be protected, having regard to changes and which provides for sustainable development having regard to national policy. Alternatively, would a requirement to ensure that key views are “respected” by all development achieve the aims of the Policy ?*
- *Please can you point me to information in respect of what development “might” impact on key views, who will judge this and on what basis ?*

10) **Policy EN9**

- *Please can you point me to evidence in respect of the deliverability of the requirement for any development affecting green infrastructure to enhance green and open space provision and provide good connections, having regard to Paragraph 56 of the National Planning Policy Framework ?*

11) **Policy EN10**

- *Please can you point me to information in respect of what a decision maker would do if it were not possible or appropriate to retain boundary treatment features ?*

12) **Policy H3**

- *Please can you point me to evidence in respect of the terms of reference, legal agreements, funding etc of the Ross-on-Wye Community Land Trust ?*

13) **Policy H4**

- *The Policy would prevent any housing in the town centre that doesn't comprise a flat above a ground floor (which conflicts with the Explanation). Is this the intention of the Policy ?*

14) **Policy E1**

- *Please can you point me to information in respect of how a decision maker is expected to apply the term "especially" ?*

15) **Policy E3**

- *Please can you point me to evidence to demonstrate that the third bullet point of the Policy does not effectively restrict any new use or change of use to a tourism or cultural use ? Please can you point me to information in respect of how other uses would demonstrate such enhancement and why it is necessary, directly related to development and deliverable for them to do so ?*

16) **Policy A1**

- *Please can you point me to evidence in respect of the deliverability of the requirements set out for all development and information in respect of how a decision maker is expected to interpret the phrase “in particular.”*

17) **Policy A2**

- *Please can you point me to information and evidence in respect of who will seek opportunities and who will deliver the four requirements (bullet points) and how ?*

18) **Policy A3**

- *Please can you point me to information in respect of how “prejudice” will be judged ?*

19) **Policy A4**

- *Please can you point me to a definition of “charging point” and evidence that the cost of a residential charging point will be £100/minimal.*
- *Please can you point me to evidence in respect of the stated “national commitment to replace carbon fuel road vehicles with electric vehicles” ?*

- ***Please can you point me to evidence of the stated “commercial advantage for places that provide charging points” ?***

20) **Policy SC1**

- ***Please can you point me to information in respect of which new developments will finance community facilities and provide new facilities, including why is this necessary, directly related to the developments and reasonably related in scale and kind to the developments ?***

21) **Policy SC6**

- ***Please can you point me to the justification for all development proposals to include provision for broadband and ducting linked to the national network, including why is this necessary, directly related to development and reasonably related in scale and kind to development ?***

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

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