

Oakenshaw Neighbourhood Plan Examination

1st June 2020

Request for Clarification from the Examiner to Greater Willington Town Council and to Durham County Council

Further to reviewing the Oakenshaw Neighbourhood Plan and supporting information, I would be grateful for the assistance of both the Qualifying Body, Greater Willington Town Council (re: all Questions except Question 1) and the Local Planning Authority, Durham County Council (re: Question 1, although Durham County 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 clarification is sought, set out in bold/italics below, please do not direct me to any evidence that is not already publicly available.

We are working in unusual circumstances. Given this, I do not intend to set a “response end-date,” but note that, if it is possible to respond at your earliest convenience then this will aid the timely conclusion of the examination process. Should you find that, for any reason, it is not possible to provide a response during this month (June 2020), please let me know as soon as possible.

The questions set out below are not, in any way, designed to criticise or to “catch-out.” Having read through the Neighbourhood Plan and all of its supporting information, I would like to reassure you that it is an impressive plan with clear aims and objectives, reflective of a significant and sustained collaborative effort. Noting this, my questions have been drafted with the simple aims of 1) aiding my understanding of the Neighbourhood Plan; and 2) supporting the examination process as a whole. Each question is underpinned by the fundamental requirement for the Neighbourhood Plan to meet the basic conditions.

Thank you in advance for taking the time to respond to this request.

Yours sincerely

Nigel McGurk

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

1) European Obligations ***(matter for clarification by Durham County 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 European Court of Justice 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.

Durham County Council published a Screening Report in respect of Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) in February 2020. This Report concluded that neither SEA nor HRA were required.

None 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 nor disagreed with Durham County Council’s conclusions set out in the Screening Report.

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

- ***Taking all of the above into account, please can Durham County 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) Optional Comments on Regulation 16 Representations ***(Optional Response from Greater Willington 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 Greater Willington Town Council to comment on any of the representations made during Regulation 16 consultation, should it wish to do so.***
- ***There have been representations in support of the allocation of land for the development of housing. Whilst there is no requirement for a Neighbourhood Plan to allocate land for development, would the Town Council like to make any comments in respect of these representations ?***

3) Policy H3

This and other Policies include the phrase “*will not be permitted*” and that Policy H1 states that “*permission will be granted.*” The Neighbourhood Plan cannot pre-determine the planning application process nor can it assume Local Planning Authority powers.

Please can you confirm (or otherwise) that it is the intention of these Policies to support (or to not support) the forms of development referred to, rather than to seek to grant or refuse planning permission?

² NPIERS “*Guidance to Service Users and Examiners*”

Policy H3 effectively supports the development of housing anywhere in the Neighbourhood Area outside the sensitive areas defined on Figure 4, so long as the character of the settlement and its surroundings are “protected and enhanced.”

Please could you point me to evidence justifying such an approach – for example an assessment of the Neighbourhood Area outside the village and sensitive areas, showing those areas appropriate/not appropriate for residential development. National and local policy already provides a framework in respect of the development of rural housing, but the more generalised approach set out in Policy H3 appears to be at odds with this – can you point me to any evidence to the contrary ?

4) Policy H4

The majority of Policy H4 sets out a local aspiration for the development of four or more dwellings. No site is allocated for these and there is no evidence of an agreed arrangement with a housing association, or other body, in respect of the resourcing, construction and management of any such development.

- ***Please can you confirm that this part of Policy H4 refers to a local community aim/aspiration, or alternatively, please can you point me to evidence/details in respect of the deliverability and viability of the development referred to ?***

5) Policy H5

- ***Please can you point me to any evidence base/justification underpinning the detailed parking standards set out in this Policy – for example, why are the standards appropriate (eg, why is it appropriate for both a 3 bedroomed house and a 2 bedroomed flat to provide two off-road parking spaces; or why might a development of 6 1-bedroomed flats not require off-road visitor spaces) ?***
- ***Why does the Policy refer to “curtilage” – which is a legal term and can comprise a very complex area of property law ? Is it perhaps the intention of the Policy to refer to the development site ?***

6) **Policy VC.1**

- *Has the feasibility study referred to been completed ?*

7) **Policy VC.2**

- *The Policy supports the provision and enhancement of community facilities and amenities. The wording makes it clear that such a development is for the community. However, the Policy goes on to require development to also “benefit the community as a whole.” Please can you point me to detailed information in respect of how such a thing would be defined, measured and determined ?*

8) **Policy Econ 1**

- *Please can you point me to the justification for a Policy approach that prevents small-scale extensions to accommodate home working in dwellings outside the settlement boundary, in conflict with national policy ?*

9) **Policy Econ 4**

- *The first part of the Policy relates to development. The second part refers to “community enterprise projects.” Please can you confirm, or otherwise, that this is a reference to a community aspiration rather than, for example, specific development projects that are supported by detailed evidence in respect of deliverability, viability and availability of land/resources etc. ?*

Thank you for your consideration of all of the above.
