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26559/A3/EP/KV/bc

20<sup>th</sup> November 2020

Dear Sir/Madam,

**REPRESENTATIONS TO THE DRAFT BURTON GREEN NEIGHBOURHOOD PLAN (SUBMISSION STAGE CONSULTATION)**

We write on behalf of our Client, IM Land and welcome the opportunity to respond to the submission stage (Regulation 16) consultation of the Draft Burton Green Neighbourhood Development Plan (2019-2029) (the 'Draft Neighbourhood Plan').

IM Land has a land interest at Land East of Cromwell Lane ('the Site') which falls within the Neighbourhood Plan area.

The Burton Green Neighbourhood Plan will need to demonstrate it has met the 'Basic Conditions' as set out in Paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 (alongside procedural compliance matters). In order to meet the Basic Conditions, the neighbourhood plan must:

- 8(2)(a): Have regard to national policies and advice contained in guidance issued by the Secretary of State;
- 8(2)(d): Contribute to the achievement of sustainable development;
- 8(2)(e) Be in general conformity with the strategic policies of the development plan for the area (in this case, the Warwick District Council Local Plan (WLP), 2017);
- 8(2)(f) Be compatible with and not breach European Union (EU) obligations; and
- 8(2)(g) Meet prescribed conditions and comply with prescribed matters (namely the plan not breaching the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017).

Our representations below reflect these basic conditions. We set out our response to the Neighbourhood Plan consultation in policy order below.

The representation should be read alongside the attached representations submitted to the previous Regulation 14 Consultation (December 2019 - January 2020). These comprise a main Representation document (**Appendix 1**) and the 'Cromwell Lane: Landscape and Visual Appraisal with Green Belt Review' (**Appendix 2**).



In summary, we consider that the Draft Neighbourhood Plan breaches the basic conditions and will require policy deletion and modification prior to being sent to referendum. The following policies should be deleted in full, for the reasons set out in full below:

- 5.1 Policy 1 – Development of Agricultural Land
- 6.5 Policy 5 – Valued Vistas and Landscapes.

The following further policies require more targeted amendment/further annotation, again as set out more fully below:

- 6.1 Policy 1 – Trees and Hedgerows
- 6.2 Policy 2 – Wildlife and Biodiversity
- 6.3 Policy 3 – Public Rights of Way
- 7.3 Policy 3 – Responding to Local Character
- 7.8 Policy 8 – Sustaining and Developing Private Transport
- 7.10 Policy 10 – Use of Renewable Energy
- 7.12 Policy 12 – Flooding

## **Vision and Strategic Objectives**

### **Strategic Objective 1 – Agricultural Land**

#### **5.1 Policy 1 – Development of Agricultural Land**

##### Draft Policy Wording

Policy 1 is an evolution of Regulation 14 Policy EL1 (Green Infrastructure). It seeks to restrict development on Best and Most Versatile Agricultural Land<sup>1</sup> (BMVAL) unless three tests are met:

- It can be demonstrated that development of the agricultural land conforms to national Green Belt policy;
- It is necessary and in the public interest; and
- No land of poorer quality is available.

##### Evidence Base

The Burton Green Evidence Reasoning Document states that the justification for this policy is that it supports the realisation of Strategic Objective 1 (the protection and enhancement of BMVAL) and that it takes into account:

- National Planning Policy Framework (NPPF) Paragraph 117 (Chapter 11 “Making effective use of land”)
- National Planning Practice Guidance (NPPG) Paragraph 002 Reference ID: 64-002-20190722; and
- WLP Policy NE5 (Protection of Natural Resources)

The Evidence Reasoning Document summarises the reasoning in [4.1.2] further refers to the development of land for housing and for HS2. A further reference is made to community support, in an apparent reference back to the description of community views under [3.2.2].

The Neighbourhood Plan has not been accompanied by any Agricultural Land Survey (Agricultural Land Classification) work or equivalent qualified assessment.

<sup>1</sup> It is noted that the definition of BMVAL within the Policy does not reflect the definition set out within the glossary of the NPPF.

### Basic Condition 8(2)(a), (d) and (e)

A draft neighbourhood plan policy of this kind must have correct regard to current national planning policy, for the purposes of basic condition 8(2)(a). If it fails to do so, it is likely to further breach basic condition 8(2)(d), by failing to contribute to (indeed preventing) the achievement of sustainable development. An additional breach will occur where the wording goes beyond a relevant strategic policy in the development plan for the purposes of 8(2)(e).

A reference to national policy within the text of a neighbourhood plan policy must therefore correctly reflect the wording and scope of that national planning policy and cannot seek to go beyond or frustrate it: see the Court of Appeal's judgment in *R(Lochailort Investments) v Mendip DC* [2020] EWCA Civ 1259, [29], [33]-[37]. This applies with particular force where the national policy in question is "Green Belt", which is already a restrictive form of national policy and should not be subject to any "gloss" or expansion.

Basic condition 8(2)(a) also requires efforts to be made to avoid unnecessary policy duplication and confusion. NPPF 16(d) requires that "d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals." NPPF 16(f) requires "f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant)." These are underscored by PPG 41-041.

Policy 1 has been prepared on the basis of a flawed understanding of national planning policy. Its wording incorrectly conflates the protection of BMVAL with the protection of the Green Belt and the promotion of the effective use of land/brownfield. These are separate national planning policy topics, with different objectives. The policy text, the supporting Basic Conditions Statement and the Evidence Base document have all failed to observe this formal separation.

Green Belt Policy is not an environmental designation. It is primarily a spatial policy, with its fundamental aim being to prevent urban sprawl. Green Belt boundaries can be altered where exceptional circumstances are demonstrated, where the need for such changes has been established in a Local Plan: see NPPF paragraph 136.

NPPF paragraph 117 falls within a separate Chapter 11 "Making effective use of land". This is a policy which promotes efficient density where sites are identified for development. Neither Paragraph 117 of the NPPF, or the NPPG paragraph referenced, refer to BMVAL.

National Policy covering BMVAL is set out only in Paragraph 170 of the NPPF, which states that planning policies should contribute to and enhance the natural and local environment by, inter alia, recognising the intrinsic character and beauty of the countryside, and wider benefits from natural capital and ecosystem services – including the economic and other benefits of BMVAL (Grades 1, 2 and 3a).

This test is reflected in WLP Policy NE5 which expects development proposals to demonstrate that they avoid BMVAL unless the benefits outweigh the need to protect the land for agricultural purposes.

### Modification Required

We consider that the Policy 1 wording merges Green Belt policy and BMVAL references, in a manner which fails to reflect that both are already covered by national planning policy and the development plan policies (e.g. NE5). This is not a scenario where the Policy could lawfully extend beyond the protections conferred by national planning policy already. To remove any such constraint (or confusion), the policy should really be deleted wholesale.

In the alternative, three major modifications are required (although the resulting amendments would leave a policy which would simply duplicate national planning policy and whose purpose would be questionable):

First, the Policy 1 should be amended to remove all reference to Green Belt policy given that the policy text is not consistent with national policy.

Second, the requirement that development 'it is necessary and in the public interest' is vague and imprecise and again wholly inconsistent with national policy, and the development plan.

Finally, the requirement to demonstrate there is no poorer quality land available is akin to a sequential test. This is flatly contrary to Paragraph 170 of the NPPF, which does not require this in relation to BMVAL. This requirement should be removed or amended to reflect the fact that 'poorer quality land' may not be as suitable or as sustainable.

In summary, the resulting wording of this agricultural land policy should be amended to reflect the text of WLP Policy NE5 and the express wording in NPPF paragraph 170. The attempts to graft on additional spatial restrictions are a direct breach of the basic conditions 8(2)(a), (d) and (e).

## **Strategic Objective 2 – Natural Environment**

### **6.1 Policy 1 – Trees and Hedges**

#### Draft Policy Wording

Policy 1 requires development proposals to, wherever possible, maintain and protect existing veteran and mature trees, woodland and ancient hedgerows (as set out in Map 4). Map 4 is a low resolution, small-scale map, which indicates only the general location of hedgerows and not trees.

The policy text contains no reference to existing hedgerow quality, failing to reflect NPPF 170-175 and standard ecology/biodiversity practice.

#### Evidence Base

There is no additional mapping work in the supporting evidence base, including the Evidence Reasoning document.

#### Basic Condition 8(2)(a) and (d)

As set out above, NPPF 16(d) and PPG 41-041 that policy text must be "clear and unambiguous". This extends to the provision of illustrative material and plans. Failure to meet these requirements will result in breaches of basic conditions 8(2)(a) and (d).

#### Modification Required

Map 4 should be annotated further to set out exactly which hedgerows have been included.

It would appear that the green dashed line simply seeks to show all hedgerows within the Neighbourhood Plan area and, if this is the case, it should be made clear that the requirement to seek to maintain/protect will not apply if the hedgerow is of insufficient quality.

### **6.2 Policy 2 – Wildlife and Biodiversity**

#### Draft Policy Wording

Policy 2 sets out that where the removal of woodland or hedgerows is involved in proposed development, that appropriate surveys should be carried out and submitted at application stage or prior to determination. The surveys should include detailed and adequate mitigation measures where harmful or negative impact has been identified.

#### Basic Conditions 8(2)(a) and (d)

Planning policy should not seek to place unnecessary administrative burdens on applications, especially those at outline stage, where a specific survey can be imposed by condition, pursuant to NPPF 54-56. There is no

overarching national policy (in NPPF Chapter 15 or elsewhere) which supports a blanket requirement for pre-application/pre-determination assessment.

The national validation requirements, and Warwick District Council's Local Validation List (May 2018) do not require surveys to be submitted with an application (NPPG Paragraph: 016 Reference ID: 14-016-20140306)

In cases where substantial removal is proposed, then surveys are conducted as a matter of course in any event.

#### Modification Required

We consider that the requirement to provide mitigation measures at submission stage, or prior to determination, is unreasonable, in breach of basic conditions 8(2)(a) and (d) because this information could be required by condition prior to commencement (for a detailed scheme) or prior to submission of reserved matters (for an outline scheme).

This requirement should be removed. In the alternative, the wording should be modified to make clear that certain details can be provided at a later stage.

### **6.3 Policy 3 – Public Rights of Way**

#### Draft Policy Wording

The Draft Policy states that the existing footpath network should be preserved and enhanced wherever possible. Any development which adversely effects footpaths, or the amenity of the users of these footpaths, will not be supported. This wording is restrictive and out of step with national planning policy.

#### Basic Conditions 8(2)(a) and (d)

NPPF 98 provides that "Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.". It therefore envisages greater flexibility and the scope for benefits to be delivered, even where an existing footpath is impacted or partially diverted, as this can be accompanied by suitable mitigation measures.

PPG 37-004 in turn refers to the The Defra Rights of Way Circular (1/09) which provides guidance on "recording, managing and maintaining, protecting and changing public rights of way". National policy therefore does not prohibit alterations to rights of way in all circumstances – instead, it reflects the statutory position that allows for broader flexibility.

#### Modification Required

In order to comply with basic condition 8(2)(a) and (d), we consider this policy should be more positively worded to state that "support will be given to opportunities that provide enhancements to the existing footpath network (and the amenity of its users)".

It should also provide further flexibility to state that "the existing footpath...should be preserved and enhanced wherever possible, or suitable mitigation measures provided" so as not to unduly restrict otherwise sustainable development in the area, in accordance with national planning policy.

### **6.5 Policy 5 – Valued Vistas and Landscapes**

#### Draft Policy Wording

Policy 5 sets out that development proposals must demonstrate how they are appropriate to and integrate with the character of the landscape setting whilst conserving and where appropriate enhancing the character of the landscape.

Further, development proposals should ensure that all valued landscapes shown in Map 6 and important vistas and sky lines are maintained and safeguarded particularly where they relate to heritage assets, rising land, village approaches and settlement boundaries.

Map 6 is said to show 5 different valued landscapes with an explanation of views into the landscapes within Table 1 below.

### Evidence Base

The valued landscapes have been designated by reference to "Vistas". Table 1 then provides a short text summary of the views. There is no assessment of landscape quality, nor any reference to landscape character assessment.

The "Valued Vista" viewpoints are then illustrated in the Neighbourhood Plan's Appendix 3, with a series of single photographs for each viewpoint.

The Neighbourhood Plan Steering Group have not provided any qualified, comprehensive landscape or visual impact appraisal work to accompany this exercise. Critically, there has therefore been no assessment of the impact of existing allocations which will give rise to development within the viewpoints.

The plan text, and the Evidence Reasoning document simply refer to Paragraph 170 of the NPPF, WLP Policies NE1 (Green Infrastructure) and NE4 (Landscape), and resident responses.

### Basic Conditions 8(2)(a), (d) and (e)

Paragraph 170 of the NPPF states that planning policies should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes...(in a manner commensurate with their statutory status or identified quality in the development plan). It is well-established that such areas must have a "demonstrable physical attribute rather than just popularity" and "beyond mere countryside" (Stroud DC v SSCLG [2015] EWHC 488 (Admin)).

PPG 41-040 makes clear that whilst evidence can be proportionate, it must also be robust. In the context of the protection of viewpoints and/or landscapes, this must entail a structured assessment of the relevant landscape character attributes and a correct understanding of the visual baseline and confirmed future changes. Otherwise, the policy will be of nugatory effect.

In particular, the plan authors must take into account future changes, which are provided for through higher tier plans and permissions. This applies with particular force where a major allocation has already been made. This applies as a matter of basic planning practice, pursuant to basic conditions 8(2)(a) and (d). However it also impacts upon 8(2)(e) as a neighbourhood plan cannot seek to restrict an allocation that has already been made in the development plan document. NPPF 29 specifies: "Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic policies".

### Viewpoints: the Cromwell Lane: Landscape and Visual Appraisal

The Examiner will no doubt wish to conduct a site visit in respect of the relevant viewpoints, to assess whether this policy meets the basic conditions.

The Cromwell Lane: Landscape and Visual Appraisal (**Appendix 2**) (provided at Regulation 14 stage and relied upon again here), is a comprehensive document, produced by qualified experts in landscape and visual assessment. We would respectfully commend it as a structured assessment of relevant landscape and visual matters in this area, which is located largely and specifically in the north/north-western corner of the neighbourhood plan area, in the area comprising the rear to Cromwell Road//Westwood Heath Road.

The current views can be seen within the attached Landscape and Visual Impact Assessment (an excerpt providing the views is provided as **Appendix 3** to these Representations). Although the viewpoints do not match exactly onto V2, V3 and V5, the document provides an important insight into the extent of built development in

this area and the consequent impact of further development and major allocations at H24 and H42 (set out further below).

### Allocations

Each of Views V2, V3 and V5 fail to reflect that there will be a significant housing allocation along Westwood Heath Road identified as part of the WLP. This is a serious omission, which reveals both the deficiencies in the evidence base and a clear breach of basic conditions 8(2)(a), (d) and (e).

In summary:

- Policy DS11 identifies Burton Green as a Growth Village;
- Policy DS20 identifies growth directions south of Coventry covering Burton Green,
- Site H42 Westwood Heath will provide 425 dwellings
- Site H24 Burrow Hill will provide 90 houses.

Site H42 is already the subject of a hybrid planning permission (reference W/17/2357) for the erection of up to 425 dwellings (detailed first phase of 129 dwellings with the remainder of the site being outline including details of access), convenience store, formal and informal open space, infrastructure provision and means of access onto Westwood Heath Road and Bockendon Lane, granted October 2018. Several discharge of condition applications have also been submitted/and or approved.

Site H24 is the subject of full planning permission (reference W/17/2086) for 90 dwellings with the provision of access plus all other associated infrastructure and enabling works, granted May 2018 (and it is understood this site is now under construction).

It is also noted that further land to the east of Site H42 is safeguarded for future development under WLP Policy DS21 (Safeguarded Land).

V2, V3 and V5 therefore seek to preserve landscapes and viewpoints without any proper regard to the extent of the upcoming change. V5 merely contains a single reference: "This view will be affected by the proposed Westwood Heath housing development towards the Coventry skyline."

### Required Modifications

Each of views V2, V3 and V5 will be impacted by consented development that is being advanced (including HS2). The policy wording has not been supported by any robust evidence, fails to reflect the above changes and will be of limited practice effect.

They do not provide the requisite evidence to demonstrate that this area has the required attributes to be classed as a valued landscape under NPPF 170a. Its retained inclusion would breach basic conditions 8(2)(a), (d) and (e).

In summary, Policy 5 should be deleted in full. In the alternative, V2, V3 and V5 should be deleted.

## **Strategic Objective 3 – The Built Environment**

### **7.3 Policy 3 – Responding to Local Character**

#### Draft Policy Wording

Policy 3 requires the provision of details of boundary treatments and landscaping.

#### Basic Conditions 8(2)(a) and (d)

As set out above, under NPPF 16(d) and 54-56, such details would ordinarily be provided as part of a suitably worded planning condition. An outline planning application may also require less information.

### Required Modification

To ensure compliance with basic conditions 8(2)(a) and (d), it should be clarified that these details may not be required at the application stage.

## **7.8 Policy 8 – Sustaining and Developing Private Transport**

### Draft Policy Wording

Policy 8 requires electric vehicle charging points for all new dwellings.

### Basic Condition 8(2)(a), (d) and (e)

WLP Policy TR1(d) which requires, *where practical* (emphasis added), the incorporation of facilities for charging plug-in.

The Parking Standards Supplementary Planning Document (SPD) (2018) paragraphs 2.27-2.32 also sets out important considerations for the practical implementation of charging facilities and that draft policy 8 should make reference to this SPD.

### Required Modification

To ensure compliance with basic conditions 8(2)(a), (d) and (e), we consider the policy should reflect the wording of WLP TR1(d).

## **7.10 Policy 10 – Use of Renewable Energy**

### Draft Policy Wording

Policy 10 seeks to require new buildings to contribute to the achievement of sustainable developments in reducing the environmental impact through resource efficient designs and, where appropriate, locally sourced building materials.

### Basic Condition 8(2)(a), (d) and (e)

The NPPF (paragraph 34) states that development contributions should not undermine the deliverability of the plan. Based on the recently updated approach to viability assessments at the plan-making stage (as per National Planning Practice Guidance) this should take into account all of the expected contributions including any design standards or requirements.

### Required Modification

Policy 10 should be amended to reflect that a requirement for locally sourced building materials may not be feasible in certain instances, it may not be necessary, and that there are other potential options for supporting the transition to a low carbon future (NPPF Paragraph 148).

## **7.12 Policy 12 – Flooding**

### Draft Policy Wording

Policy 12 requires all proposals to provide information demonstrating how any mitigation measures will be satisfactorily integrated into the design and layout of a development.

Further, the Policy seeks to require all residential development to incorporate water efficiency measures to achieve the enhanced technical standard for water usage under building regulations.



### Basic Condition 8(2)(a), (d) and (e)

Continuing the same theme above, such details would ordinarily be provided as part of a suitably worded planning condition.

The NPPG is clear that all new homes already have to meet the mandatory national standard. Where there is a clear local need, local planning authorities can set out local plan policies requiring new dwellings to meet the tighter optional requirement (Paragraph: 014 Reference ID: 56-014-20150327). It is for a local planning authority to establish a clear need. No evidence or justification has been provided to show that these optional requirements are required in this location.

### Required Modification

The policy should be clarified such that these details are not be required at application stage.

The policy requirement to incorporate water efficiency measures should be deleted.

### **Hearing**

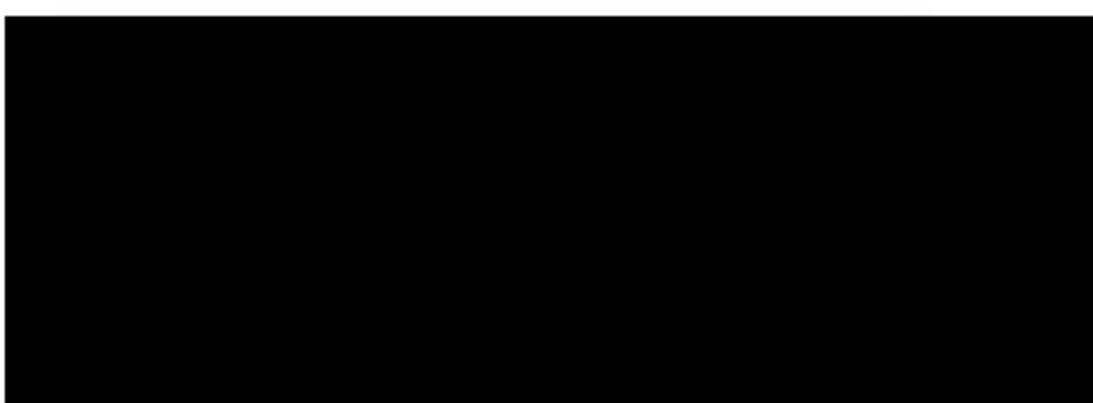
The Draft Neighbourhood Plan requires a significant number of modifications before it can proceed to referendum. In particular, 5.1 Policy 1 – Development of Agricultural Land and 6.5 Policy 5 – Valued Vistas and Landscapes reveal legal errors in the formulation of the policies and a failure to have correct regard to national planning policy.

We therefore respectfully submit that this is a case which would merit a formal examination hearing, pursuant to Schedule 4B's paragraph 9(2)(a) to ensure adequate examination of the issue and to ensure that our client is able to have a fair chance to put its case. Such a hearing could be conducted by video conference procedures, such as MS Teams, in line with the Planning Inspectorate's practice with a number of Examinations in Public.

### **Conclusion**

We trust that you will take these comments as helpful in progressing the Plan. Should you require any further information, please do not hesitate to contact me as per the details of this letter.

Yours sincerely



**ED PIGOTT**  
Senior Planner

Enc.