

TEWKESBURY BOROUGH PLAN: EXAMINATION 2020

Matter 7 – Other Policies

Statement on behalf of Bromford Housing Association (BHA)
ID.347

January 2021

REPORT

Approval for issue

Authorised by:Senior
Director

Planning

2021-01-29

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Matter 7 – Other Policies

Main Issue

Issue: Whether the general housing policies in the plan are positively prepared, justified, effective, consistent with national policy and the JCS

7.1 *If relevant, do the other general policies in the TBP apply to the JCS Strategic Allocations in Tewkesbury Borough? If so, are they justified and effective in the context of Gloucester or Cheltenham (as the case may be), and if not, is this clear?*

7.1.1 No comment.

7.2 *To be effective, should the plan include a policy relating to proposals in the Green Belt based on national policy in the NPPF and to replace Policy GRB1 in the existing 2006 adopted Local Plan?*

7.2.1 No comment.

7.3 *Are the various AGR, TOR, RET, DES, HER, LAN, NAT, ENV, HEA, RCN, COM and TRAC policies in the plan positively prepared, justified, effective, consistent with national policy and, where relevant, the JCS? In some cases there are specific additional questions:*

TRAC2 Cycle network & infrastructure

- **Is a reference to e-bike charging infrastructure justified?**

7.3.1 To clarify, representations were submitted by PEP at the Regulation 19 stage in respect of the soundness of a number of other policies proposed in the TBP. In this regard, BHA wish to take forward these objections, unless specified.

Policy NAT1 Biodiversity, Geodiversity and Important Natural Features

7.3.2 No. BHA maintains its objections in relation to the approach being taken in relation to securing biodiversity net gain (BNG) on sites. To reiterate, BHA contends that as drafted, there is no recognition in the policy that ‘opportunities’ for delivering BNG will vary across sites in different parts of the Borough and that it may not be possible to deliver a measurable net gain, based on local site circumstances. On this basis, the policy (criterion 2) on BNG remains inconsistent with

national policy [NPPF 174c] which clearly expects plans to be based on the identification and pursuit of ‘opportunities’ for securing measurable net gains for biodiversity in their areas.

- 7.3.3 In addition, and related to the point above, BHA notes that the schedule of post-submission changes to the TBP [CD011a] proposes additional text to be inserted into the reasoned justification for Policy NAT1 (PM52). BHA notes the reason for PM 52 is ‘*to provide clarity over the application of the policy and how the Council intends to apply it prior to the enactment of the Environment Bill*’. However, the proposed text (to be inserted at the end of paragraph 8.32 of the TBP) includes references to those instances where on-site BNG may not appropriate or possible. On this basis, TBC, through the insertion of the modified text, clearly recognise that not all sites should or can deliver BNG as expected under Policy NAT1. Consequently, if the policy is not intended to explicitly require on-site BNG in all cases, then the wording of the policy should be amended to reflect this. Without such clarity being provided, the policy remains ambiguous and not soundly-based.
- 7.3.4 Furthermore, BHA also wish to raise two points in response to the modified text under PM52. Firstly, BHA would like to point out that much of the suggested text [CD011a, pages 26-27] appears to make statements that would be more appropriately located in a policy. For example, in relation to mitigation and compensation measures, this clearly represents policy wording that is being decanted to the role of supporting text.
- 7.3.5 And secondly, PM52 includes a reference to ‘...a minimum net gain of 10%...calculated using the DEFRA biodiversity metric...’. However, the emerging legislation in the Environment Bill clearly states that the requirement, once enacted, will be for ‘10%’ and is not expressed as a ‘minima’¹. This is an error that needs to be corrected as its mis-interprets the intentions in the draft Bill.

Policy ENV2 Flood Risk and Water Management

- 7.3.6 In relation to flood risk management, BHA wishes to maintain the objections as submitted at the Regulation 19 stage. BHA maintain that the criterion seeking the provision of ‘multi-functional’ drainage systems is expressed as an absolute requirement and does not acknowledge potential circumstances where this may not necessary, justified or possible to achieve, as recognised in national policy [NPPF, paragraph 165d]. On this basis, BHA seek a modification (for example, by

¹ Environment Bill 220 2019-21 (as amended in Public Committee), dated 27th November 2020, Schedule 14 (Biodiversity gain as condition of planning permission) Part 1 (Biodiversity gain condition), s90A, page 213

inserting the wording 'where possible' into the criterion) in order to bring the policy criterion into line with national policy, thus ensuring that the policy is soundly-based.

Policy HEA1 Healthy & Active Communities

- 7.3.7 In relation to Policy HEA1, BHA wishes to maintain the objection as submitted at the Regulation 19 stage, with respect to the requirement for submitting Health Impact Assessment Screening Statements in support of planning applications on developments of 100 or more units.
- 7.3.8 To reiterate, BHA contend that there is no legal or national planning policy *requirement* to submit health impact assessments in support of residential development. BHA notes that Planning Practice Guidance (PPG) identifies HIAs as 'a useful tool' to use where there are expected to be significant impacts², but does not advocate their inclusion in local plan policies. Furthermore, whilst BHA acknowledge that some types of development can impact on people's health, BHA also contend there is no evidential basis submitted in support of the TBP to demonstrate that residential developments of 100 dwellings or more are likely to cause significant impacts on the public's health as a matter of principle. The selection of 100 dwellings or more as a threshold is therefore considered to be arbitrary.
- 7.3.9 Consequently, in line with the previously submitted Regulation 19 representations, this is a matter that should be treated on a 'case-by-case' basis rather than through a prescriptively-based, unjustified policy approach. Therefore, the requirement for HIA screening statements based on site thresholds (100 dwellings or more and/or 10,000sqm or more) is not soundly-based and should be deleted from the policy.

Policy RCN1 Public Outdoor Space, Sports Pitch and Sports Facility Provision

- 7.3.10 In relation to Policy RCN1, BHA wishes to maintain the objection as submitted at the Regulation 19 stage, with respect to the lack of detail on how off-site contributions for open space will be treated locally (in Tewkesbury Borough).
- 7.3.11 To reiterate, BHA contend that the policy criterion is not effective or consistent with national policy and is also not consistent with the JCS policies (INF3, criterion 2, or INF4, criterion 2).

² Paragraph: 005 Reference ID:53-005-20190722 Revision date: 22 07 2019

7.3.12 On this basis, a modification is required to make the policy sound, and BHA suggest that a reference to both the JCS policies should be inserted into Policy RCN1 to clarify that the approach in Tewkesbury Borough with regards to off-site contributions will apply the provisions of Policy INF3 and INF4 of the JCS.

Policy RCN3 Allotments & Community Gardens

7.3.13 In relation to Policy RCN3, BHA wishes to maintain the objection as submitted at the Regulation 19 stage, with respect to the requirement for 'contributions' to the provision for allotments and/or community gardens.

7.3.14 To reiterate, BHA contend that the policy criterion highlighted above is not consistent with national policy. This is because, firstly, there is no requirement either in the NPPF or the JCS that requires contributions to be made specifically for the provision of new allotment space as part of new residential development. Secondly, when addressing the need for open space (inc. allotments), plans should also take into account 'opportunities for new provision' [NPPF, paragraph 65]. Therefore, planning policies should not be based solely on need but should also reflect on the potential for sites to be able to accommodate new allotment space. In this context, whilst a need may exist it may not be practicable or viable for individual sites to accommodate new allotments. However, these considerations are not incorporated into Policy RCN3, as drafted.

7.3.15 Consequently, and in line with the Regulation 19 representations, BHA contend that TBC is seeking to establish a 'blanket' approach to contributions for allotment provision in Policy RCN3 that offers limited flexibility to account for different local circumstances depending on the specific location of the proposed development. On this basis, the policy is not soundly-based (not justified or consistent with national policy).

Policy TRAC2 Cycle Network and Infrastructure

7.3.16 In relation to Policy TRAC2, BHA wishes to maintain the objection as submitted at the Regulation 19 stage, with respect to the justification and national policy support for prioritising cycling infrastructure in favour of any other form of transport provision, now being proposed through the non-strategic policies set out the TBP. TBC has not provided any additional information or made any modifications to address the soundness concerns raised in the representations.

7.3.17 However, despite the representations made at the Publication stage, BHA notes that TBC has submitted for the Inspector's consideration an additional 'modification' to Policy TRAC2 (to be

inserted into the second bullet point) with respect to e-bike charging infrastructure provision. This modification seeks to introduce a further infrastructure demand on new development on top of all the other infrastructure demands and contributions that applicants are expected to agree before consent can be secured.

- 7.3.18 On this additional modification, BHA raises two important points on soundness. Firstly, there does not appear to be any supporting evidence submitted by TBC to justify the modification, nearly reference to a comment made by Gloucestershire County Council. BHA does not therefore consider that sufficient evidence has been presented to justify the specific demand the provision of e-bike charging facilities as part of new development.
- 7.3.19 Secondly, the policy as drafted would seek such provision from all development in all circumstances, without any regard given to the specific nature, type, location or scale of development or any specific site constraints or issues that may make it not possible or difficult to provide such infrastructure. Therefore, the policy lacks sufficient clarity as to which type or scale of development would trigger the need for e-bike charging points. On this basis, the modification is to effective and so is not soundly-based.
- 7.3.20 In addition, as raised by BHA under separate Matter Statement (3A), BHA also contend the proposed (post-submission) modification now being put before the examination does not accord with the legislation that defines the remit and scope of any main modifications considered by the Inspector. This is because, as stated in the PINS Guide for Local Plan Examinations (paragraph 1.4 refers) the Planning Act³ allows ‘main modifications’ (MMs) to be made only if they are necessary to make the [submitted] plan sound and/or legally compliant, whilst other modifications can be made but only if they do not materially affect the plan’s policies as submitted (usually described as ‘minor modifications’). However, BHA contend that the modification proposed (PM71) does not seek to address soundness concerns, but instead seeks “...*the opportunity to expand this policy...*” [CD011a]. BHA contend therefore that this change is not seeking to address an issue of soundness in the policy as submitted.
- 7.3.21 Therefore, in applying the rules governing the scope of the examination process, BHA consider the modification proposed here would fall into the second (‘minor’) category of modification but would, if adopted, *materially change the policy* (Policy WIN1). Consequently, BHA strongly suggests that the Inspector should not be asked to consider the modification, as drafted, as it falls outside the

³ s23 of the Planning and Compulsory Purchase Act 2004

scope of the main modifications the Inspector is allowed to consider at this stage in the examination process as defined in law.

7.3.22 On this basis, BHA contend that the additional modification submitted at this very late stage in the plan-making process is not soundly-based but, most importantly, falls outside the remit of the examination process. Consequently, BHA see no reason to modify the policy criterion and request that the TBP is adopted based on the wording of the criterion as submitted for examination.

Policy TRAC9 Parking Provision

7.3.23 In relation to Policy TRAC9, BHA wishes to maintain the objection as submitted at the Regulation 19 stage, with respect to the wording of the penultimate paragraph of the policy which seeks the provision of facilities to enable the charging of plug-in or ultra-low emission vehicles.

7.3.24 To reiterate, national policy clearly expresses the need to ensure adequate provision of space is made for charging plug-in and other ultra-low emission vehicles [NPPF, paragraph 105e]. However, the national policy advice is set clearly in the context of setting local parking standards, which TBC clearly states is not the purpose of the TBP [CD001, paragraph 10.31]. BHA notes that national policy [NPPF, paragraph 110e] does support and encourage development to be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations, but this is in the context of ensuring that development does not lead to an unacceptable impact on highway safety or ensures that residual cumulative impacts on the road network are not severe [NPPF, paragraph 109], rather than requiring or supporting their the provision of charging points as a matter of principle.

7.3.25 Consequently, the policy criterion as drafted is not soundly-based as it is misconstruing the purpose and intention of the national policy highlighted above [paragraph 105, 109 and 110] and also seeks to apply it in circumstances that are not relevant to the TBP (as it is not seeking to set local parking standards for the Borough).

7.3.26 Furthermore, it is not clear whether this criterion has been tested in terms of its likely impact on the viability of the development to which it is to be applied (though the type of development is also not made plain in the policy either).

7.3.27 On this basis, BHA maintain that the wording should be deleted or modified to ensure the policy as a whole is sound.