

## Tewkesbury Borough Plan Examination

### Matter 7 – Other Policies

#### Participant Statement by Savills on behalf of Vinci St. Modwen and Defence Infrastructure Organisation

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**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?**

#### **Policy NAT1**

Policy NAT1 seeks to conserve and enhance biodiversity, geodiversity and important natural features.

The fourth paragraph of the Policy establishes a criteria-based framework within which development proposals will be considered. The opening sentence sets a wide ranging application of the policy, stating that this applies to any development which would cause any loss, deterioration or harm to any features, habitats or species of importance. This represents a very low bar and one which would capture the vast majority of planning applications. These applications would then need to satisfy all of the proceeding three criteria.

It is the requirement to satisfy 'all' of the criteria which renders the draft policy unjustified and therefore unsound.

As it is currently drafted, a very minor level of harm to a common and unprotected species would require a wide ranging and comprehensive assessment of alternative locations. Such an approach would not be:

- a) proportionate to the level of harm; and
- b) necessary if criterion 'c' was successfully implemented to mitigate the harm.

Taking these two separate criticisms of the policy in turn.

The tests applied and indeed much of the language used in the Policy is not dissimilar to those contained within the sections of the Habitats Regulations which relate to development which would result

in an unmitigatable harm to a European protected species or habitat (the ‘no alternatives’ and ‘IROPI’ test). A policy test which is appropriate to European protected species and habitats cannot justifiably be applied to all biodiversity interests.

Furthermore, not only are these tests not proportionate, there is no planning justification to require consideration of alternative locations for a particular development if the harm caused by the proposed development can be entirely avoided or satisfactorily mitigated. This principle is again a feature of the Habitat Regulations process and should not be applied more commonly outside the remit of these Regulations.

For these reasons we strongly recommend that the authority revisit the wording of Policy NAT1 and put in place an approach which provides a proportionate response to the biodiversity and geodiversity interests involved and replaces the requirement to accord with all three of the criteria under the fourth paragraph with an option to comply with the one criterion that is most suitable. In other words, replace the word ‘and’ at the end of criterion (b) with the word ‘or’. This change would enable the applicant to consider and demonstrate:

- how the development proposals could avoid, mitigate or compensate for the harm caused by the development; or
- how alternative locations have been considered and if so why they have been discounted; or
- that the benefits of proposed development outweigh the harm caused.

#### **Policy RCN1**

The fourth paragraph of Policy RCN1 protects against the loss of existing open spaces unless one of four criteria is satisfied. The purpose of the Policy is to ensure that local communities continue to have access to the sports facilities available in their local area. Indeed, this is what is inferred by the opening sentence of paragraph 9.13 in the reasoned justification which states that:

*“The Borough Council will also seek the protection of existing open spaces and facilities as important assets within the community”.*

We do not object to this principle, however, this section of the policy does not discriminate between facilities which are publicly accessible and those which are in private ownership and to which the public

have no right of access. Where a sports pitch has been constructed to serve the purposes of a particular group of people, such as a local employer but that need expires because the local employer no longer requires the provision, then logically there is no rationale for applying a protection through this Policy. Indeed, such facilities cannot be considered to be *“important assets within the community”*.

To take into account these circumstances and address this issue, we recommend the addition of a fifth criterion as follows:

*“The open space in question was in private ownership with no right of access to the general public”.*

**Savills**

**29 January 2021**