



This matter is being dealt with by
Richard Cooke
Bridgeway House, Bridgeway,
Stratford upon Avon, CV37 6YX
DX 16202 Stratford upon Avon
T +44 (0)178 941 6400

Mr. John Slater
John Slater Planning Limited

Our ref: 01285378.1
Your ref:

3rd February 2022

BY E-MAIL ONLY

Dear Mr Slater,

STATHERN NEIGHBOURHOOD PLAN 2020-2036: URGENT RESPONSE ON BEHALF OF MR MATTHEW ATTON, TO MBC's RESPONSE TO EXAMINER'S CORRESPONDENCE DATED 18.01.22

We write urgently following receipt of the Council's representation at 1700hrs yesterday (2 February 2022).

For the first time, the Council have proposed three combined Modifications together:

- 1) Policy H1 to have additional wording to support applications for development of land "adjacent the Limits to Development"

We would support this specific Modification as it is consistent with Policy SS2.

- 2) Policy H2(a) to have additional wording to support applications for up to 10 dwellings "within or adjoining the Limits to Development"

We would also support this Modification as it is consistent with Policy SS2.

- 3) Policy H1 however to include wording that applications for development within the Reserve Site "be acceptable subject to complying with the terms of Local Plan Policy C1(B)".

We would not support this Modification, given the omission of any reference to Policy SS2 – and the apparent attempt to treat this land differently from all other land adjacent to the Limits of Development covered by Modification 1 above.

- 4) The Council also acknowledge that the further wording of "Land outside the defined Limits to Development will be treated as open countryside, where development will be carefully controlled in line with local and national strategic planning policies" could lead to inconsistency in interpretation. The Council do not propose a specific modification in this respect, but it appears to be suggested that this could be deleted or modified to prevent such inconsistency.

It is unclear why the Borough Council have only proposed the three Modifications together in this manner at this very late stage. They did not raise them in this collective manner earlier when they could have been the subject of further submission by interested parties, notably our client.

The Council explain (page 1, paragraph 4) that the proposed Modifications arise from the Council's consideration of the section 288 appeal (i.e. the High Court Judgment). Yet the Council made no reference to Modifications 1 to 3 in their submissions of 17 December 2021, which would have been the appropriate point to have done so. Your letter of 10 November 2021, paragraph 4 asked the Council provide their response to the judgment at that stage and we understood the submission of 17 December 2021 to be their full response.

We are particularly concerned that proposed Modification 3, when read alongside proposed Modifications 1 and 2, is so plainly contrary to the basic conditions that its inclusion would amount to an error of law. It is based upon an interpretation of Policy SS2 and C1(B) that is incorrect. The Council's stated justification for their approach is internally contradictory and illogical.

Whilst we are very mindful that the letter of 18 January 2022 called for "final submissions", the unusual nature and timing of the Council's proposed Modifications 1-3 (read together) has also created a situation of obvious procedural unfairness. Due to the timing of the Borough Council's Proposed Modifications, our client has effectively been prevented from making submissions on highly material matters, which the Council should have raised at a much earlier stage in the examination.

We therefore respectfully request that this brief written submission be considered as a late representation in accordance with the NPIERS Guidance, paragraph 1.12.1 and 2.8.5.

We also respectfully submit that the Council's Proposed Modifications 1-3 would merit a hearing as a specific issue, pursuant to Schedule 4B, paragraph 9, to ensure adequate examination of the issues and a fair chance for interested parties to put their case, given the complexity of the issues and the development of the Council's position in their submissions. This would be in line with the NPIERS Guidance 1.17.2

Response to the Borough Council's Proposed Modification 3

The Borough Council's Proposed Modification 3 appears to seek to ensure that small-scale development (less than 10 houses) is supported on all sites adjacent to the Limits to Development, except on land within the Reserve Site designated by Policy C1(B).

This does not comply with the basic conditions 8(2)(a), (d) and (e).

In fact, the Council's stated justification is illogical and internally contradictory given four important admissions in their statement yesterday (2 February):

1) Policy C1(B) and Delivery of STAT 1 and STAT 2

The Council acknowledge that the only purpose of Policy C1(B) is to "specifically cater for circumstances should there be a failure of the allocated housing sites to deliver." [Council's Response to Section 2 (page 1, paragraph 3)]

Yet, in the very next sentence, the Council accept that delivery has already been achieved through the grant of permission at STAT1 and the construction of STAT 2.

The Council therefore accept that Policy C1(B) no longer serves any purpose in this location. Put another way, there has been a major material change of circumstances since the Local Plan was adopted with Policy C1(B). That is a highly material factor in the application of basic condition 8(2)(e) to Policy H1.

There is no reason at all to restrict the consideration of applications on this site only to consideration of Policy C1(B). All applications must be subject to consideration under Policy SS2 in exactly the same way as land on any other site adjacent to the Limits to Development (i.e. settlement boundary/built envelope).

2) Constraints on Windfall Development Within Boundaries and Sustainability of Land Within Policy C1(B)

The Council also accept that there are constraints on the opportunities for windfall development within defined village envelopes due to lack of availability and environmental impact, including in Stathern given its conservation area. That is why Modifications 1 and 2 are necessary [Council's page 1, paragraph 5]

The Council therefore acknowledge that building adjacent to the settlement boundary ensures that there will be "less impact" in environmental terms.

The most obvious example of land with "less impact" (indeed in many respects "no impact") is land within the Reserve Site. This was expressly recognised as free from such constraint, (1) through the fact of the Reserve Site designation and (2) by the Inspector in the s78 appeal: see DL24-25.

3) Policy SS2 as the Relevant Strategic Policy

The Council then correctly acknowledge that Policy SS2 is the relevant strategic policy for land outside the built envelope, for the purposes of basic condition 8(2)(e). They further identify that this strategic policy directly supports windfall development outside but adjacent to the settlement boundary (page 2, paragraph 1).

To attempt to suggest that Policy SS2 should not be taken into account on land within the Reserve Site is wholly contrary to basic condition 8(2)(e), and further directly contrary to basic condition 8(2)(a) and (d).

4) NPPF 69c and National Policy Support for Windfall Development

The Council also correctly acknowledge that outside the defined built envelope, proposals need to be considered not just against the Local Plan but also the NPPF.

The whole purpose of Policy SS2 is to give effect to NPPF paragraph 69c and 71, i.e. to provide flexibility in the housing supply by promoting development of small-scale sites. It would be entirely contrary to basic condition 8(2)(a) and (d) to fail to acknowledge this support for the land within the Reserve Site.

Conclusion

Our proposals for the modification of Policies H1 and H2 were necessarily focussed on land within the Reserve Site, consistent with the request that we respond to the Council's submissions of 17 December 2021, which we understood to be its full response to the High Court Judgment.

We remain of the view that our proposed wording adding to H1 the wording "C1(B) or SS2" would be consistent with the basic conditions, and would properly reflect the major material change of circumstances since the adoption of the Plan: STAT 1 and STAT 2 have now come forward and Policy C1(B) therefore no longer serves any purpose.

The Council have now introduced a separate proposed modification that correctly accepts that Policy SS2 must be given effect on all land outside the settlement boundary. They then seek to add a further exception for the Reserve Site – although this is the most sustainable site.

There is no justification to include policy text which treats small-scale proposals of under 10 units on this sustainable site any differently from any other land adjoining the settlement.

We would therefore respectfully submit that Proposed Modification 3 cannot be included in the Neighbourhood Plan, unless direct reference is made to Policy SS2 at the same time.

The Council's proposed Modification 1 adding "adjacent the Limits of Development" could comply with the basic conditions, in so far it expressly recognises that Policy SS2 provides support for development in all such locations. However, that would be strictly subject to removal of the Modification 3 wording.

We agree with the Council that the remaining wording could lead to some inconsistency in interpretation and an appropriate modification would be its deletion.

We have therefore set out proposed wording for Policy H1 as below:

"Development proposals within the Neighbourhood Plan area will be supported on sites within and adjacent the Limits to Development as identified in Figure 2 above (including the Reserve Site) where it complies with the policies of this Plan, especially Policy SS2. ~~Land outside the defined Limits to Development will be treated as open countryside, where development will be carefully controlled in line with local and national strategic planning policies."~~

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R Cooke', with a long horizontal stroke extending to the right.

Richard Cooke
Associate Director

Direct Line: 01789 339 964
Direct Fax: 0178 941 6500
E: richard.cooke@marrons-planning.co.uk