

Moreton, Bobbingworth and the Lavers Neighbourhood Plan Examination

23rd March 2019

**Request for Clarification from the Examiner to Moreton, Bobbingworth and
the Lavers Parish Council and Epping Forest District Council**

I have now completed my initial review of the Moreton, Bobbingworth and the Lavers Neighbourhood Plan and supporting information.

Further to this, I would be grateful for the assistance of both Moreton, Bobbingworth and the Lavers Parish Council and Epping Forest District Council in respect of clarifying a number of matters in writing. Question 1 is for Epping Forest District Council and subsequent questions are for the Parish Council.

In responding to the matters where I seek clarification, set out in bold/italics below, please do not direct me to any evidence that is not already publicly available. I note that it may be that it is not possible to direct me to any evidence, as none is available.

I note that the Epping Forest Local Plan Examination in Public is currently taking place and that this has a significant impact on resources. Taking this into account, please can all responses be provided to me by no later than the 26th April. If however, responses can be provided sooner, I note that this will support the timely conclusion of the Examination.

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Moreton, Bobbingworth and the Lavers Neighbourhood Plan**

1) European Obligations (Sweetman Judgement) **(for Epping Forest District 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 Court of Justice of the European Union 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. This post-dated the submission of the Neighbourhood Plan. However, as the regulations are now in force, it is important to ensure that, where necessary, an *Appropriate Assessment* has been undertaken.

I note that Epping Forest District Council has not raised any concerns in the above regard. I also note that Epping Forest District Council, in providing a Screening Opinion, stated that Natural England has confirmed that a Habitats Regulations Assessment is not required.

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

Given this and taking the above post-submission changes to regulations into account, please can Epping Forest District Council confirm whether or not it is satisfied that the Neighbourhood Plan is compatible with European obligations.

Please can you provide a copy of the written confirmation from Natural England in respect of its consideration that a Habitats Regulations Assessment is not required.

2) Comments on Regulation 16 Representations ***Optional Response from Parish 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...”

I would like to provide the Neighbourhood Forum with the opportunity to comment on any of the representations made during Regulation 16 consultation. I note that this is an opportunity and is not a requirement.

I also note that the Parish Council wrote to Epping Forest District Council in response to the Local Planning Authority’s Regulation 16 representation. I confirm that I have received a copy of this letter further to the closing of the Submission Consultation stage and that there is no need to re-provide this information.

Should the Parish Council wish to respond (further) to Regulation 16 representations, as above, please do not direct me to any evidence that is not publicly available.

Please also note that the questions below refer to representations made.

² NPIERS “Guidance to Service Users and Examiners”

3) Policy MBL 1.2

As set out, Policy MBL1.2 relies upon Policy H3 in the emerging Local Plan, but also conflicts with that Policy in numerous ways (for example, emerging Policy H3 establishes locational criteria that Policy MBL1.2 does not; Policy MBL1.2 requires enhancement, etc).

Please can you direct me to evidence in support of the Neighbourhood Plan's different approach to the emerging District-wide Policy upon which it is also reliant ?

4) Policy MBL 2.1

Many people work from home. The use of residential space for business purposes is commonplace and is not normally something that requires planning permission.

Does Policy MBL 2.1 mean to refer to planning applications for commercial and/or business use ?

Notwithstanding the above, please can you direct me to evidence in respect of what "subsidiary" means – for example, a definition, or evidence of how "subsidiary" would be measured/who by/on what basis - in the context of Policy MBL 2.1 ?

5) Policy MBL 2.3

The Policy would only allow agricultural land to be “*taken out of production*” when “*significant development*” is necessary.

Please can you direct me to evidence in respect of how “in production” is defined and quantified ?

Please could you also direct me to evidence in support of an approach that appears to be in conflict with the National Planning Policy Framework, which simply promotes “the development and diversification of agricultural and other land-based rural businesses.”³

6) Policy MBL 4.1

The Policy refers to the “*potential*” for development to “*damage the highway and its borders.*”

Please can you direct me to evidence in respect of why this is a land use planning matter that might be addressed by the implementation of Policy 4.1 ?

7) Policy MBL 4.2

Essex County Council, in its representation, refers to the Neighbourhood Plan’s departure from adopted car parking standards⁴. The County Council recognises that there is a need to take local circumstances into account in respect of determining car parking standards, but that these should be supported by “*local evidence*” providing “*adequate justification*” for any departure from adopted standards.

Please can you direct me to evidence in justification of Policy 4.2’s proposed departure from adopted car parking standards ?

³ Ref: Paragraph 28, National Planning Policy Framework (2012).

⁴ Ref: Essex County Council Parking Standards, Design and Good Practice (2009).

8) Policy MBL 4.3

As well as public rights of way, this Policy refers to “*green corridors*” and the “*living landscape*.”

Please can you direct me to evidence in respect of why public rights of way in the Neighbourhood Area comprise “green corridors in the living landscape” ?

9) Policy MBL 5.1

As set out, the Policy serves to prevent renewable energy installations that would result in any degree of harm to the landscape or residential amenity.

Please can you direct me to evidence in support of a move away from national policy’s approach to sustainable development (which allows for the balanced consideration of both the potential harm and the potential benefits arising from a development proposal) ?
