

Reference ID SPL343

Taylor Wimpey

# North Warwickshire Local Plan Examination

Matter 2: Other legal compliance

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**2.2 Noting objections to the LP during its preparation, have consultees had appropriate opportunity 'to input into the process before decisions are made' (SCI, paragraph 6.7.5)?**

**2.3 Have all interested parties had appropriate opportunity to comment on evidence supporting the LP?**

- 1.1 A response has been made in Matter 5 relating to the process by which the Council prepared its evidence base to support Policy LP5 (Meaningful Gap) after the Local Plan was prepared and approved by the Council for its Regulation 19 Consultation.
- 1.2 Having established the basis and extent of Policy LP5 and consulted on this through the Regulation 19 process, responses were duly made by 31 January 2018. Following this process, the Council produced its up-dated evidence base on this issue in the form of its *Assessment of the Meaningful Gap and Potential Green Belt Alterations (CD6/10)*. This was dated January 2018 and published in February 2018 and representations were invited on this document by March 2018. RPS responded to this document. The Council's Consultation Statement simply notes that the Regulation 19 consultation process took place between December 2017 and 16 March 2018.
- 1.3 Following this process, it appears that the production of evidence has clearly followed the policy formation and must raise serious questions over the robustness of the process and extent of the Meaningful Gap policy.
- 1.4 The introduction of the Council's Assessment states that the purpose of the study is to *"determine whether each parcel fulfils the objectives of the Meaningful Gap designation, and whether they have the potential to serve the purposes of Green Belt, as defined in the National Policy Framework (NPPF)"*.
- 1.5 Whilst detailed observations were made on this work by Taylor Wimpey's Landscape Consultants Randal Thorpe through the consultation process, it is clear that the decision to include Taylor Wimpey's land interests to the west of the M42 within the Meaningful Gap, were concluded prior to its own evidence base which was the document determining whether it fulfils the objectives of the policy designation.
- 1.6 Given this it is difficult to see how SCI paragraph 6.7.5 has been appropriately complied with.

**2.5 Have the requirements of HRA (the Conservation of Habitats and Species Regulations 2010 as amended) been satisfied, including with regard to recent case-law? [CD1/7, INSP2]. 2.6 Is it clear how the findings of the HRA have influenced the LP? 2.7**

- 1.7 The Habitat Regulations Assessment ('HRA') (CD4/3) pre-dates the judgement of 12 April 2018 in *People Over Wind and Sweetman v Coillte Teoranta* and thereby the measures to avoid or reduce effects of plans or programmes on protected habitats have been screened out as opposed to being considered through an appropriate assessment.
- 1.8 As paragraph 44 of INSP2 acknowledges, paragraph 5.7 of the HRA notes that consideration

has been given to the potential for mitigation measures through the LP to avoid significant adverse effects to the Cannock Extension Canal Special Area of Conservation. However, paragraph 5.10 of the HRA explains that such effects, in combination with others, have been considered in the subsequent Appropriate Assessment.

- 1.9 The Councils' response NWBC11 at paragraph 5.1 references a note prepared by LUC and refers to an attached advice note prepared by LUC for the Borough Council. The note provides advice that the HRA (CD1/7) is legally compliant in LUCs view (although the note itself indicates that this is not a legal opinion). This includes taking into account the recent Case C-323/17, People Over Wind, Peter Sweetman. v. Coillte Teoranta, where it was determined that mitigation should be considered only at the Appropriate Assessment stage, and not as part of the initial screening stage
- 1.10 Whilst the Council makes the case that it is compliant with the recent case law the response from LUC is unclear and, given the implications, a legal opinion would have been preferable.
- 1.11 At paragraph 1.5 of LUC's response it indicates that, most of the policies that were screened out were done so because they would not result in development and that others that did result in development that were screened out were done so because in LUCs view they would not result in likely significant effects.
- 1.12 RPS, considers that this response is incomplete and does not provide the full answer to the question. What would have been helpful, along with a legal opinion, would have been a simple table explaining this process on a policy by policy basis. For example, which policies LUC believe were screened out completely whether they involved development or not and assessment could then be made in relation to whether there are any secondary HRA implications from those policies and those that did involve development whether mitigation was a factor considered before the decision was taken that they were not likely to have significant effects.