

Representor number  
PSLP\_2048 to PSLP\_2052

# **MATTER 15 – THE NATURAL ENVIRONMENT**

## **TUNBRIDGE WELLS LOCAL PLAN**

Prepared by Pro Vision on behalf of Cooper Estates Strategic Land Limited

June 2022

Representor number  
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**TUNBRIDGE WELLS LOCAL PLAN**

MATTER 15 – THE NATURAL ENVIRONMENT  
PROJECT NO. 2133

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**DATE:**

JUNE 2022

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## 1.0 Introduction

- 1.1 This Hearing Statement has been prepared by Pro Vision on behalf of Cooper Estates Strategic Land Limited (“CESL”) who are promoting Land at Sandown Park<sup>1</sup> for a Care Community<sup>2</sup> within Use Class C2 to provide 108 Extra Care (“EC”) units with communal care and wellbeing facilities.
- 1.2 The Inspector will be aware through correspondence<sup>3</sup> on behalf of CESL, that we have long been concerned that plan-making by Tunbridge Wells Borough Council (“TWBC”, “the LPA” or “the Council”) has failed its legal duties. Our submissions in relation to Matter 1 concluded that the Local Plan Examination should not proceed as the Submission Plan is not legally compliant.
- 1.3 We do not seek to repeat these concerns, but in order to assist the Inspector we provide cross-references to the CESL representations and additional communications previously made where they relate to the specific Stage 2 Examination Questions.
- 1.4 This Representation responds to the Inspector’s questions within Matter 15<sup>4</sup> and has been prepared in the context of the tests of ‘Soundness’ as set out in Paragraph 35 of the National Planning Policy Framework 2021 which requires that a Plan is:
- Positively Prepared
  - Justified
  - Effective
  - Consistent with national policy
- 1.5 This hearing statement has been prepared in consultation with Gregory Jones QC, Francis Taylor Building, Temple. In summary, we have identified defects in the Council’ assessment of housing land supply, specifically that of specialist accommodation for older people. Flaws in the assessment will perpetuate the under-delivery of Extra Care in the Borough over the plan period. This is not positive nor effective planning for a key, and growing, part of the local community.

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<sup>1</sup> Regulation 22 version of the SHELAA (Jan 2021) – [Core Document 3.77n - Site 114](#)

<sup>2</sup> Specifically “EC accommodation” as a category of specialist housing for older people, as defined by the [Planning Practice Guide at Paragraph: 010 Reference ID: 63-010-20190626](#)

<sup>3</sup> Representation [PSLP\\_2048](#), full document at [SI\\_140](#)

<sup>4</sup> Examination document [ID05](#)

## 2.0 Matter 15 Issue 1 – Biodiversity Net Gain

**Q1. What is the justification for seeking to achieve a minimum [10% net gain in biodiversity](#)? What will be required of applicants?**

2.1 Biodiversity Net Gain (BNG) is required by the National Planning Policy Framework, and, by virtue of Part 6 of the 2021 Environment Act<sup>5</sup>. However, the requirement does not become mandatory until late 2023. The detailed delivery of BNG is still to be regulated for via secondary legislation, with the consultation to that recently closing<sup>6</sup>. Therefore, what is required of applicants in the interim and how BNG is to be assessed and justified is unclear.

**Q2. Is the requirement to achieve a 10% net gain achievable across the proposed site allocations?**

2.2 CESL point out that on Omission Site 114, currently at appeal, the Council has agreed that the appealed scheme can achieve a 21% level of biodiversity net gain<sup>7</sup> and this can be secured by condition<sup>8</sup>. However, it took much negotiation to get to this point, with the Council being unsure how BNG could be demonstrated as achievable on an outline application.

2.3 There is no evidence with the SLP which we have found which demonstrates how BNG will be achieved on allocation sites. For example the Woodsgate Corner site, which has a small developable area and little other land.

**Q3. Is it sufficiently clear to users of the Plan how and when off-site improvements will be permitted?**

2.4 Not clear.

**Q4. Policy EN9(1)(c) requires information to be provided in accordance with separate supplementary planning guidance. Is this requirement justified?**

2.5 This criterion is unclear. It is uncertain whether TWBC anticipate relying on NE information alone (and that having SPG status), or intend to generate their own, borough-specific, SPG on biodiversity.

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<sup>5</sup> See <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted>

<sup>6</sup> See <https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/>

<sup>7</sup> Statement of Common Ground [para 9.55](#)

<sup>8</sup> Agreed draft [Condition 26](#)

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**Q5. What is the justification for requiring a payment to the Council to cover the cost of independent reviews of Biodiversity Gain Plans.**

2.6 No clear justification has been given. .

### **3.0 Matter 15 Issue 2 – Environmental Protection**

**Q1. Is the Plan consistent with paragraph 179 of the Framework insofar as the protection and enhancement of biodiversity and geodiversity is concerned?**

3.1 No comment.

**Q2. What is the justification for the 7km zone around the Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC') referred to in Policy [EN11](#)? Is the zone of influence likely to change?**

3.2 No comment.

**Q3. Where windfall housing developments fall within the 7km zone, how will the mitigation referred to in Policy EN11 be provided? Will the policy be effective?**

3.3 No comment.

**Q4. Is it clear what is meant by 'adversely affects' for the purposes of Policy [EN12](#)? Is the policy effective?**

3.4 No comment.

**Q5. What is the justification for the 25m buffer referred to in the supporting text (paragraph 6.171) to Policies [EN12 and EN13](#)? Will this be appropriate in all instances?**

3.5 No, this will not be appropriate in all instances (if at all). We read the policy as seeking a 25m buffer when no tree survey information has been submitted with the application. In those limited cases, the Council states it will seek a precautionary buffer. However, where a tree survey is submitted with the application, then the minimum buffer of 15m as advised by National England should suffice. No sufficient evidence has been provided to justify this approach.

3.6 Notwithstanding the above we note the 6 May 2022 Secretary of State's Call-in Decision to Sandford Park, Newbury<sup>9</sup> discusses the relationship of that proposal to Ancient Woodlands(AW)<sup>10</sup> and concluded that a 15m buffer to AW trees "would be adequate to

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<sup>9</sup> W/20/3265460, decision available [here](#)

<sup>10</sup> At paragraphs 16.105-16.123

*safeguard the rooting areas of the trees within the ancient woodland, provided any access to, or works within, these areas are limited” (para 16.121). Therefore, we consider that a 15m buffer, being that advised as sufficient by Natural England, and which is applied nationally, should be sufficient. As such, we consider the requirement for a precautionary 25m buffer in Tunbridge Wells as unsound.*

**Q6. What is the justification for seeking to ‘protect’ existing green, grey and blue infrastructure? Will Policy [EN14](#) be effective in maximising opportunities for new infrastructure?**

3.7 No comment.

**Q7. Is Policy [EN20](#) consistent with paragraph 175 of the Framework, which states that plans should allocate land with the least environmental or amenity value, and where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality?**

3.8 It is clear on the evidence that some of the proposed allocations fail to comply with this policy. The Strategic Housing & Employment Land Availability Assessment (SHELAA) submitted alongside the Regulation 22 version of the plan confirms that a number of the proposed allocations include land assessed as Grade 2 in the Agricultural Land Classification (ALC), whereas Omission Site 114 is accepted by the Council as poorer, at Grade 3.

3.9 The Grade 2 ALC sites include part of the allocations at SS1 (Land at Capel and Paddock Wood)<sup>11</sup> and SS3 (Tudeley Village)<sup>12</sup>. In addition, sites within the AONB are preferred over sites outside of it. Sites in the Green Belt resulting in a very high level of harm are preferred over sites with a lesser impact.

3.10 As stated in previous representations, the strategy underpinning the plan is flawed and the conclusions are not supported by a sound or robust evidence base.

**Q8. What are the suggested changes proposed to Policies [EN21](#) and [EN22](#) in the submission version Local Plan? Why are they necessary for soundness?**

3.11 No comment.

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<sup>11</sup> See Exam Document [CD3.77e, page 1](#)

<sup>12</sup> See Exam Document [CD3.77e, pages 6-16](#)



**Q9. What is the justification for requiring development to accord with the Council's latest SPD on noise and vibration? Do these specifications form part of the development plan for the area?**

3.12 The approach appears incompatible with the case law (see e.g. *R (Skipton Properties Ltd) v Craven District Council* [2017] EWHC 534 *Davis v Charnwood DC* [2017] EWHC 3006 (Admin)).

**Q10. Does the Plan contribute to and enhance the natural and local environment by remediating contaminated and unstable land, as required by paragraph 174 of the Framework?**

3.13 No comment.

#### **4.0 Matter 15 Issue 3 – Biomass and Renewable Technology**

**Q1. What is the justification for including a specific policy ([EN23](#)) on biomass technology in the Local Plan?**

4.1 No comment.

[AL/RTW18](#) – FORMER NORTH FARM LANDFILL SITE/NORTH FARM INDUSTRIAL ESTATE

**Q2. What are the mix of uses proposed at site [AL/RTW18](#) based on?**

4.2 No comment.

**Q3. Is the allocation developable within the plan period?**

4.3 No comment.

## **5.0 Matter 15 Issue 4 – Water and Flood Risk**

**Q1. Does Policy [EN24](#) provide an appropriate mechanism to ensure that infrastructure is put in place to support new developments as and when required?**

5.1 No comment.

**Q2. Is Policy [EN25](#) consistent with paragraph 168 of the Framework, which states that applications for some minor developments and changes of use should not be subject to the sequential and exception tests, but in some cases should still meet the requirements for site-specific flood risk assessments?**

5.2 No comment.

**Q3. Are the requirements in Policies [EN25](#) and [EN26](#) justified, effective and consistent with national planning policy?**

5.3 No comment.