

8th October 2021
Delivered by email only

Ref: ARES3004

Planning Policy
Bath & North East Somerset Council
Local_Plan2@bathnes.gov.uk

Dear Sir/Madam

REPRESENTATION TO THE BATH & NORTH EAST SOMERSET LOCAL PLAN (CORE STRATEGY AND PLACEMAKING PLAN) PARTIAL UPDATE CONSULTATION DOCUMENT (REGULATION 19)

This response to the consultation on the Bath & North East Somerset Local Plan Partial Update Document is submitted by Turley on behalf of 'Stadium for Bath', and follows previous representations made last year to the previous Issues consultation in 2019, and the subsequent Regulation 18 consultations in 2020 and early 2021.

CONTEXT

The Stadium for Bath project group comprises the three founding members who will deliver the project: Bath Rugby, Bath Rugby Foundation and Arena 1865. From the outset, Stadium for Bath has been determined to create an outstanding stadium not only for elite sport but also for the city and its many communities.

We make specific representations in respect of land that forms part of the Recreation Ground, Bath. The site currently benefits from positive allocations in both the Core Strategy Policy B1(8) (adopted July 2014) and the subsequent Placemaking Plan (the 'PMP') Policy SB2 (adopted July 2017).

In the past few years, considerable work has already been undertaken to establish links with key stakeholders, including BANES, Bath Recreation Ground Limited, Resident's Associations, local Amenity groups and societies, Historic England, the Environment Agency and other consultees, as well as with individual residents in the immediate vicinity of the Recreation Ground site. This work has been underpinned by the supportive planning policy framework contained within the adopted development plan.

Due to the current pandemic, a decision was made last year to pause the Stadium for Bath project. There is however an ongoing commitment to continue with the project at the appropriate time.

The Pinnacle
20 Tudor Road
Reading
RG1 1NH

T 0118 902 2830 turley.co.uk

UPDATING A DEVELOPMENT PLAN

In line with the National Planning Practice Guidance (NPPG), to be effective plans need to be kept up-to-date, including reviewing policies and spatial development strategies to assess whether they need updating and that policies remain relevant¹.

When considering whether policies should be updated, local authorities can consider a range of information; including whether there have been changes in local circumstances, conformity with national planning policy and significant economic changes which could impact on viability². As we submit in these representations, the recent judgment regarding the 1922 Conveyance is not a material change in circumstances but does reinforce the fact that legal matters should not be conveyed through planning policy.

It is vital to ensure that policies are up-to-date and provide relevant and appropriate policy wording in order for development to be brought forward effectively.

CURRENT CONSULTATION

We note that following the Regulation 18 consultation earlier this year, a report was taken to Council on 22nd July 2021³, and which provided an update on the propose approach to the adopted development plan framework for the Rec. We replicate three paragraphs of particular note from the Officer's Report on this matter considered by Members at the meeting below:

"9.3 One option of particular note is whether the scope of the LPPU should have included amendments to the policies on Bath Recreation Ground. As part of the Reg 18 options consultation in January/February 2021, the Council put forward 3 options for review of the Local Plan policies that relate to the Bath Recreation Ground (Policies SB1 & 2) for the reasons set out in that document. The greatest number of comments (over 1,600) were received on Rec policy options which therefore warrants further explanation of the way forward. The 3 options were;

- 1. Option 1 - No change to the existing policy wording but review it in the Full Local Plan*
- 2. Option 2 - Review the policy wording through the Local Plan Partial Update*
- 3. Option 3 - Delete the policy/allocation through the Local Plan Partial Update and revisit it in the Full Local Plan*

9.4 Many of the comments received advocated removal of the Rugby Club stadium from the Recreation Ground and relocating it elsewhere. Having considered the issues and the comments received, the Council's preferred approach is, however, to pursue Option 1. This is because Core Strategy Policy B1 is a strategic policy and integral to the district wide spatial strategy. For the reasons given in para 3.5 above, it is considered that any review of the spatial strategy, including whether the principle of a stadium on the Rec should be maintained or whether the stadium should be located on another site, can and should be undertaken as part of the preparation of the new Local Plan. This will allow the Council to consider the future of Bath Recreation Ground in a holistic and strategic way, having regard to the impact upon the whole city and wider area.

¹ NPPG Paragraph: 043 Reference ID: 61-043-20180913

² NPPG Paragraph: 046 Reference ID: 61-046-20180913

³ <https://democracy.bathnes.gov.uk/documents/s67338/Draft%20BNES%20Local%20Plan%20Partial%20Update.pdf>

9.5 In the interim, the Council will continue to rely on the current policy which was found sound by independent inspectors at both the Core Strategy and Placemaking Plan examinations when this issue, and the wording of the policy, were specifically considered.”

Although it is not explicitly amplified in the supporting report, an accompanying document⁴ notes that there were some 1,587 responses (98.3% of all respondents) supporting Option 1 (no change); and just 27 favouring Option 3 (to delete the policy/allocation through the Local Plan Partial Update and revisit it in the Full Local Plan).

As detailed in our previous representations, we agreed with the Council that it was unnecessary to review the PMP Policy SB2, which provides an appropriate framework for the site. We note that that stance has continued through to this current consultation. We submit however that with the passage of time we do consider that it is necessary to review Core Strategy Policy B1(8) and the related town centre boundary.

It is apparent that the Council has resolved not to seek to amend either of these policies in this Partial Review.

In our submissions we continue to request minor amendments to the adopted development plan framework, which would assist all parties moving forwards, and reflect current site circumstances and updating of these site policies.

It is also necessary to amend policy B1(8) to remove erroneous text regarding non-planning matters which appears to be causing some confusion by members of the public. As we also explain below, matters of property law should not be confused with the role and purpose of the planning system.

Indeed, if this approach was to be taken to its extreme, any and all sites within the Local Plan should be reviewed on this basis and all conveyances and covenants would need to be declared on each site, with the council then making a judgment on these. This cannot be correct, and indeed is not the approach that the Council is taking. This site is therefore being considered differently to others in the Local Plan.

EXISTING PLANNING POLICY FOR THE RECREATION GROUND

In considering the approach to future planning policy at the Recreation Ground, we briefly set out the current policy context and the process that led to their adoption.

The principle of a new stadium at the Recreation Ground is well established in development plan policy, with specific policies contained with the Core Strategy (2014) and Placemaking Plan (2017) following detailed consideration at two Examinations-in-Public and the endorsement by two Planning Inspector's.

The Local Plan Review presents the opportunity to review these policies, but it is perhaps first helpful to briefly review the adopted policy framework and the process to date that led to their adoption.

Core Strategy

The adopted Development Plan facilitates the provision of a new stadium at the Rec. The Core Strategy (adopted July 2014) at Policy B1(b) (Bath Spatial Strategy) states that:

⁴ https://consultation.westofengland-ca.gov.uk/bath-north-east-somerset/lppu-options/consultation/published_select_respondent

“b At the Rec, and subject to the resolution of any unique legal issues and constraints, enable the development of a sporting, cultural and leisure stadium.”

However, this adopted policy is different to that originally intended by the Council, as contained within the Submitted Core Strategy document (December 2011), which stated:

“b. Enable the development of a new sports stadium and associated uses within the Central Area”

Further, the Recreation Ground was initially included within the defined Central Area. Discussions were held during the Examination and proposed changes to the policy were tabled informally between the Council and Third Parties.

On the 4th March 2013, Officers presented Members with a report to Full Council, in advance of public consultation. The policy drafting at that time was contained within the Officer’s report was amended by Members.

The Officer’s proposed drafting contained in Annex 2 of that report was as follows:

“RECOMMENDED CHANGE TO POLICY B1(8): RECREATION GROUND IN BATH

Adjoining the Central Area, at the Recreation Ground, and subject to the resolution of any unique legal issues and constraints, enable the development of a sporting, cultural and leisure arena. Associated uses may be acceptable but will be considered on their merits.”

At the Council meeting, Members resolved to amend the Officer’s proposed text (as is now adopted) as follows:

“At the Recreation Ground, and subject to the resolution of any unique legal issues and constraints, enable the development of a sporting, cultural and leisure stadium.”

In response to the subsequent consultation, our clients suggested that the wording should be as follows:

“(b) At the Recreation Ground, enable the development of a sporting, cultural and leisure arena. Associated uses may be acceptable but will be considered on their merits.”

It was however the Council’s amended proposed wording that was carried through into the now adopted policy in the Core Strategy. The defined Central Area boundary was also amended and as such the Recreation Ground was removed from it.

Placemaking Plan

In July 2017, the Council adopted the Placemaking Plan. Policy SB2 (Central Riverside and Rec) sets out a Vision for the Rec and the surrounding area and notes that there are a number of interrelated projects that have enormous potential to re-energise and re-define the important role and function that this area can play as a recreational heart to the city.

Policy SB2 splits this area into sub-areas and identifies specific policy requirements under an area entitled “Riverside East (The Rec, including Bath Rugby Club, Bath Sports and Leisure Centre, the Pavilion, and other associated areas)”.

REVIEW OF EXISTING BATH POLICIES

This partial review presents an opportunity to consider the policy wording, as proposed to be taken forward into the Partial Review Local Plan, and importantly to address the confusion between planning and other property law considerations. Indeed, this current consultation highlights that confusion, and the purposeful attempt by third parties to seek to confound and delay.

'Legal issues and constraints'

We continue to see no merit in referring to the phrase “*subject to the resolution of any unique legal issues and constraints*” within the Core Strategy policy B1(8). These legal matters are not material planning considerations and would not be considered as such in the determination of any future planning application. Reference to them should be deleted.

It is our understanding that the wording was introduced to reflect that there were non-planning related matters our client would need to consider and address before the stadium could be constructed. They are not and cannot be a precursor to the determination of any planning application.

The position with the Charity Commission has been firmly resolved since the adoption of the Core Strategy, and a Town and Village Green application has subsequently failed. We do not repeat the specific circumstances of these outcomes in this response, as they are well known to the Council. In terms of the recent judgment there is a live appeal lodged and other resolutions possible regarding the 1922 Covenant. A hearing was held on 5th October and the outcome is awaited.

Put succinctly, the Council could not lawfully withhold granting planning permission for a scheme at the site due to any such issues remaining outstanding (even if they were), which as we noted previously, have now been resolved. As drafted, the policy would conflict with this well-established legal principle.

Fundamentally, however, we do not consider that there is any need for the planning system to take into account non-planning matters. Indeed, it would ultra vires to do so.

The phrase “*subject to the resolution of any unique legal issues and constraints*” should therefore be deleted in any update to the policy as these matters would be dealt with under other (non-planning) legislation.

The policy can now therefore reflect our clients suggested wording, with a slight variation in that previously suggested, as follows:

“(b) At the Recreation Ground, enable the development of a sporting, cultural and leisure arena. Associated uses may be acceptable and will be considered on their merits.”

Riverside frontage and associated uses

We consider that there is merit in referring to an active frontage to the river in the site policy, and consider that the Council would expect that in any planning application submission in any case.

As such, we consider that there should be an acknowledgement in the policy that ‘alternative uses’ will be looked at on their own merits, particularly when there are likely to be clear urban realm and vitality reasons for doing so (as suggested in the wording above). An array of uses could be proposed and there should be some flexibility in policy to allow for them to evolve in the future, which may allow for additional or alternative uses to be included, and would assist in the viability of the project.

In this regard we also request that the defined Central Area boundary is redrawn, and policy updated, to state that such town centre uses would be appropriately included within the west stand area, or that they are annotated with a simple line along this elevation. Indeed, this could possibly be shown as a simple annotation on a revised Policies Map, as a minor amendment to the current 'Key Active Frontage' annotation.

Playing field designation

The wider Recreation Ground is currently washed over by policy LCR5 Safeguarded Existing Sport and Recreational Facilities, as shown in the extract overleaf.



As part of this review we would ask that consideration is given to the current role of the Recreation Ground, the recent Charity Commission decisions, the governance of that land by Bath Recreation Ground Trust, and the emerging proposals for the new stadium, and as such, the appropriateness of this policy being applied to this site given other development plan policy aspirations.

SUMMARY

In summary, we request the continued support for a new stadium at the Recreation Ground. We consider that with the passage of time it is appropriate to update the site specific policies to reflect current circumstances, particularly policy B1(b) and would welcome the opportunity to discuss these with you. There is no requirement to delete this policy. Indeed, to do so would be unlawful and without merit.

It is quite apparent from the protracted pandemic that its effect on Bath will continue to run deep. It has changed the context for the Stadium for Bath project and for the wider city. Coming out of this pandemic there is likely to be a void in Bath's ability to be a viable centre for culture, recreation and tourism which will take a long time to fill.

Whilst the 'benefits' of a new stadium at the Recreation Ground (including heritage, cultural and economic benefits) may be essentially the same, their impact in terms of 'wider public benefits' will be much greater than pre-pandemic. It presents a unique opportunity to rejuvenate the City and be seen as a positive statement of intent in the years ahead, and as such should be robustly supported by the Council.

We trust that this response is of use and look forward to participating in future stages of the Local Plan consultation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tim Burden', with a small red mark at the end of the signature.

Tim Burden
Director

tim.burden@turley.co.uk

Appendix 1: High Court judgment regarding 1922 covenants