Rugby Borough Council
Planning Policy
PO Box 16
Rugby
Warwickshire
CV21 2LA

Our ref:

Date: 2 February 2024

Dear Sir/Madam

RUGBY BOROUGH LOCAL PLAN: ISSUES AND OPTIONS CONSULTATION

Thank you for consulting the Environment Agency at the formal Issues and Options stage in relation to the full review of the adopted Rugby Borough Local Plan (2011-2031), alongside the Sustainability Appraisal (SA) Scoping Report.

We have reviewed the October 2023 online versions of the reports and make the following comments for your consideration at this stage of the review process.

We note the Issues and Options report identifies the following most significant planning issues facing the Borough:

1. Land for employment uses
2. Rugby town centre regeneration
3. Pitches for gypsies and travellers
4. Houses in Multiple Occupation (HMO)
5. Climate Change Policies
6. Design coding and guidance
7. Land for housebuilding

In addition, we note since the adoption of the current Local Plan, the Environment Act 2022 has introduced the requirement for Biodiversity Net Gain (BNG). And your Council have also declared a climate emergency within the Borough.

<u>New allocation of sites for residential and employment development</u>
In answer to consultation question 3, we recommend any new or amended allocations are supported by an up to date, sound and robust evidence base. The supporting information should include evidence relating to flood risk (strategic flood risk assessment (SFRA)), water resources and foul drainage infrastructure (perhaps through a water cycle study (WCS)), etc.. We are separately working with your Council on the Level 1 WCS for Warwickshire.

We note a Level 1 SFRA has been prepared by JBA consulting in October 2022 to support this review and forms part of the evidence base. Overall, this Level 1 SFRA has broadly addressed the key elements expected and has referred to the relevant sources

of information. This should therefore ensure that development is steered towards the areas of lowest risk of flooding, whilst taking account of climate change. This should be used to inform the consideration of new sites and to update (where necessary) the flood risk and sustainable drainage policies in the review.

Whilst the WCS should ensure that your strategic growth can be accommodated in consideration of waste water infrastructure and water resources. Information on local treatment works and their ability to accommodate housing and employment growth should be set out in the WCS. This looks at physical capacity issues (e.g. network pipes) and environmental capacity (water quality of treated effluent) issues.

Where there is an identified constraint (amber or red) you should demonstrate that there is a solution (it may be already programmed or could be a possible future infrastructure upgrade) to help improve the capacity issue and enable the development to go ahead. This will require consultation with the Water Company. We have developed some general questions to assist this process which we will share separately following our review of the draft Level 1 WCS. The outcome of this may inform a 'phasing' policy within your plan where appropriate. It may also be necessary to produce an 'Infrastructure Delivery Plan' to set out any key milestones for waste water infrastructure upgrades and improvements. The evidence you produce should give a reasonable degree of certainty to all parties, helping demonstrate development is deliverable, and importantly ensure that your plan is 'sound'.

Note: Government Guidance states that sufficient detail should be provided to give clarity to all parties on when infrastructure upgrades will be provided, looking at the needs and costs (what and how much). The National Planning Policy Guidance (NPPG) refers to *"ensuring viability and deliverability – pursuing sustainable development requires careful attention to viability and costs in plan making and decision making*". Plans should be "deliverable".

With regards to potential strategic employment locations illustrated on page 17 of the Report, in terms of suitability of these broad locations, we note some of the sites may include areas identified as being at risk of fluvial flooding. Furthermore, our records show some of the broad locations to be near areas of suspected ground contamination including historic landfill sites.

From section 9 of the report, we note the Housing and Economic Land Availability Assessment has not yet been produced, therefore it is unclear which land will be put forward as potentially suitable for housing development. Whilst we note the broad potential housing locations illustrated on page 52 of the report and consultation question 33., we would reiterate the above and seek to ensure a strong and robust evidence base is used to inform the suitability of new site allocations.

We would welcome further discussion regarding new allocations for development.

In response to consultation question 35, we recommend there is a policy to ensure that there are effective SuDS in each new development, as it is increasingly common for SuDS in such schemes to be designed poorly, examples of effective case studies can be found at https://www.susdrain.org/case-studies/

Rugby town centre regeneration

Following on from the above, we note section 4.4 of the report refers to the production of new site allocation policies for important redevelopment sites in the Town Centre Regeneration Strategy. In response to consultation question 8. in addition to the above

recommended evidence base documents and subsequent screening, the potential for land contamination on previously development sites should also be consdiered.

When considering land affected or potentially affected by contamination, we encourage engagement with the Environment Agency as early as possible in the planning process to follow the risk management framework provided in CLR11 - Model Procedures for the Management of Land Contamination (2004). CLR11 has now been replaced with Land Contamination Risk Management (LCRM) 2020, available on gov.uk.

Furthermore, we recommend developers of land affected by contamination should:

- Follow the risk management framework provided in Land Contamination: Risk Management, when dealing with land affected by contamination
- Refer to our Guiding principles for land contamination for the type of information that we require in order to assess risks to controlled waters from the site - the local authority can advise on risk to other receptors, such as human health
- Consider using the National Quality Mark Scheme for Land Contamination Management which involves the use of competent persons to ensure that land contamination risks are appropriately managed
- Refer to the contaminated land pages on gov.uk for more information

Biodiversity enhancements should also be considered in the town centre. This can include removing areas of hard standing to create more green/blue spaces and retrofitting SuDS on existing buildings.

Pitches for gypsies and travellers

We note paragraph 5.15 lists criteria for assessing the suitability of sites for use by gypsy and travellers. We welcome the inclusion of flood risk, contaminated land, water supply and foul disposal. However, in respect of flood risk, we consider this criteria wording could be strengthened and perhaps include the following suggested wording *'pitches should be located outside of the 1 in 100 year, plus an allowance for climate change, flood extent'.*

The flood risk exception and sequential tests can allow for pitches to be located in flood risk areas which should be avoided. While it is true that larger flood events could still occur that impact the users of the site, the 100 year plus climate change flood event is well established as the standard 'design flood'. Allowing development within the design flood extent increases the risk to future occupiers and potentially flood risk elsewhere.

In answer to consultation question 13. from an ecological perspective, we would encourage allocation of sites for pitches to ensure land is planned effectively and environmental degradation is reduced.

Houses in Multiple Occupation (HMO)

In addition to the consultation questions, HMOs often have ground-floor sleeping accommodation. This puts those on the ground floor at the highest risk of flooding. Therefore, in areas within the 1 in 100 year plus climate change, we recommend HMOs should:

1. When they are new build, have finished floor levels set a minimum of 600mm above the 1 in 100 year plus climate change level; or

2. When they are change of use, raise finished floor levels to 600mm above the 1 in 100 year plus climate change. If this is not possible, a water exclusion strategy and flood resistant construction should be put in place and there should be no

ground floor sleeping.

Climate Change policies

We encourage all policies in the local plan review align with national net zero targets and mitigation policies.

The UK has set out in law the target of achieving net zero by 2050. The Climate Change Act (2008) states that 'it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.' To achieve this, the annual rate of GHG emissions will need to be cut by over 260 million tonnes (Mt) CO2e (carbon dioxide equivalent) from 2019 levels to less than 90 Mt CO2e in 2050 (CCC, 2019a).

There is a statutory duty on Local Planning Authorities (LPAs) to include policies in their Local Plans designed to tackle climate change and its impacts. Section 19 of the Planning and Compulsory Purchase Act 2004 states that 'Local development plans must include policies designed to secure that the development of and use of land contribute to mitigation of and adaptation to climate change'.

Revisions to the National Planning Policy Framework (NPPF) in 2021 include a requirement to promote a sustainable pattern of development, by mitigating climate change and adapting to its effects (para 11a). The NPPF also states (para 134) that enhanced local policies and government guidance on design should be given 'significant weight'.

The Environmental Assessment of Plans and Programmes Regulations 2004 creates a legal duty and requirement that a plan's cumulative climate impacts are assessed and taken into account. This includes assessing the consistency of proposed policies with all relevant climate objectives and targets.

To assist in your preparation of robust climate change options we encourage you to review the RTPI /TCPA Guide : The Climate Crisis – A Guide for Local Authorities on Planning for Climate Change RTPI | The Climate Crisis

You may also wish to refer to the Tyndall Carbon Budget Tool Tyndall Carbon Budget Reports (manchester.ac.uk)

In response to consultation question 21., we would support the inclusion of a minimum tree canopy policy for new development, where appropriate, and would encourage measures are set out to ensure the policy will not be misused. The planting would need to be in appropriate locations, be correctly spaced apart and be native species of local provenance.

In response to consultation question 22., we advise if sites were to be identified for Biodiversity Net Gain, connectivity between green/blue spaces in the area should be prioritised.

In response to consultation question 23. If the country park would be an appropriate and high-quality habitat (not largely amenity grassland or open water) then this could be acceptable. However, sites for Biodiversity Net Gain should prioritise connecting existing green/blue spaces first where possible and it should be ensured that any new sites have connectivity, instead of creating isolated habitats.

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In response to consultation question 24, we should require developers to prioritise the delivery of biodiversity net gain within close proximity to the development.

In response to consultation question 25, in line with our the EAs own commitments we would encourage all new residential developments to be net zero. To assist, we would particularly encourage developers to explore opportunities for waste management and resource efficiency, including things such as green roofs, green walls, solar panels and rainwater harvesting facilities.

Similarly, in response to consultation question 26., we would support requiring all new non-residential developments to be net zero also.

In response to consultation question 28., building Regulations include a standard 125 litres of water per person per day. Rugby is designated as an area in 'serious' water stress. As such, we recommend a more stringent water efficiency level is included within policy, for new residential development to be designed to achieve a maximum usage of 110 litres per person per day. There is still scope to go beyond this recommended water efficiency standard.

The tighter water efficiency standards can be justified with reference to the following guidance documents:
(https://www.gov.uk/guidance/housing-optional-technical-standards) and the Environment Agency publication - Water Stressed Areas final classification 2021 'https://www.gov.uk/government/publications/water-stressed-areas-2021-classification. This identifies areas of serious water stress where household demand for water is (or is likely to be) a high proportion of the current effective rainfall available to meet that demand.

We encourage you to also include policy requirements for grey water recycling and rainwater harvesting for new developments (designed at an appropriate scale). This would help create places resilient to climate change, contribute toward achieving net zero emissions and reduce the demand for water. Further information is available from Waterwise - RWH and GWR Myth Busting – Waterwise

In terms of other climate change policies that the review should consider, we would encourage inclusion of robust and forward thinking flood resistance policies that match the commitment to the declared climate emergency. We provide examples of some of the measures that are needed to ensure appropriate consideration is given to flood risk and are consistent with the SFRA:

- All major developments must be assessed in respect of the level of flood risk from all sources taking into account the impact of climate change. If development in areas at risk of flooding is the only option following the application of the sequential test, it will only be permitted where the type of development is appropriate to the level of flood risk associated with its location with reference to the latest SFRA flood zone maps and advice on appropriate uses within these zones from the Environment Agency and/or Lead Local Flood Authority. The type of development must be appropriate both at the time permission is sought and at the end of the lifetime of the development, taking into account the latest climate change guidance. The NPPG refers to Environment Agency guidance on considering climate change in planning decisions which is available online: https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances (new allowances were published on 27 July 2021). Please refer to our 'Area Climate Change Guidance' for more information on how to consider and

incorporate allowances in development proposals. Other LPAs have found it useful to include the following table which summarises the climate change allowances for certain types of development:

Development Vulnerability	Allowance (lifetime)
Essential Infrastructure	Higher Central - 2080's
Highly Vulnerable and More Vulnerable (residential), and some Less Vulnerable (commercial, and non-residential development where a period of at least 75 years is likely to form a starting point for assessment (see NPPG)	Central - 2080's
Water Compatible and temporary (shorter lifetime)	Central - 2050's

This advises that an allowance should be added to 'peak river flows' to account for 'climate change' which should be specific to a river 'management catchment'. The design flood level (1% with climate change) should then be used to inform the Sequential Test including appropriate location of built development and ensure 'safe' development.

- The functional floodplain (Flood Zone 3b), taking into account the impacts of climate change and the lifetime of developments, should be protected from development and reinstated in brownfield areas wherever possible.
- Single storey buildings and basements will not usually be acceptable in Flood Zone 3 for the lifetime of the development taking into account the impacts of climate change. Furthermore, with reference to the NPPG *"Whilst the use of stilts and voids below buildings may be an appropriate approach to mitigating flood risk to the buildings themselves, such techniques should not normally be relied upon for compensating for any loss of floodplain storage. This is because voids do not allow water to freely flow through them, trash screens get blocked, voids get silted up, they have limited capacity, and it is difficult to stop them being used for storing belongings or other materials".*
- Where overnight accommodation is proposed, policies should seek to ensure applications demonstrate that the development has safe, pedestrian access above the 1% river flood level plus climate change. Pedestrian access should preferably remain flood free in a 1% river flood event plus climate change. However, in cases where this may not be achievable, it may be demonstrated that pedestrian access is acceptable based on an appropriate assessment of 'hazard risk' including water depth, velocity and distance to higher ground (above the 1% river flood level plus climate change). Reference should be made to DEFRA Hazard risk (FD2320) – 'Danger to People for Combinations of Depth & Velocity' (see Table 13.1 – DEFRA/EA Flood Risk Assessment Guidance for New Development FD2320, page 118, at: https://assets.publishing.service.gov.uk/media/602d040fd3bf7f721a23a993/Flood_risk_assessment_guidance_for_new_development_-_phase_2_technical_report_Full_Documentation_and_Tools.pdf
- All development must undertake an assessment on what environmental and flood risk betterment can be provided by the proposals. The assessment should

include but not be limited to, river restoration, enhancement including de-culverting, removing unnecessary structures and reinstating a natural, sinuous watercourse and creation of flood alleviation measures

- Finished floor levels must be set a minimum of 600mm above the 100 year river It is advised that Finished Floor Levels should be set no lower than 600mm above the 1% river flood level plus climate change with flood proofing techniques considered (where appropriate). For more information on property resistance and resilience techniques see the Ciria Guidance: New guidance: Code of practice for property flood resilience (C790) (ciria.org) and also: http://www.planningportal.gov.uk/uploads/br/flood_performance.pdf Some 'water compatible' and 'less vulnerable' development such as agricultural developments/structures, or stables etc, by their nature may be floodable and therefore the raising of floor levels may not be feasible/practicable. In these cases, we would suggest that any storage in these buildings, including any flood susceptible electrics, or items that may be damaged should be sited above possible flood levels, in order to prevent flood risk and associated pollution.
- Unless shown to be acceptable through exceptional circumstances, development should be set back at least 8m (from the top of bank or toe of a flood defence (in certain areas, this may be increased to 20m) of Main Rivers and Ordinary watercourses for maintenance access, the creation of space for future flood risk management measures and to create habitat corridors. This easement includes existing culverted watercourses. This is required regardless of the extent and location of the floodplain and should be taken into account when considering the developable area.
- Development shall be designed and located to minimise and reduce the risk of flooding to itself, third parties and be resilient and resistant to flooding. Developments must not impede flood flows, not increase the flood risk on site or elsewhere or result in a loss of floodplain storage capacity. An assessment of the ability of development to provide additional flood storage capacity and improve flow paths must be undertaken. The opportunity must be exercised to maximise the absorption of surface water run-off by the ground. Sustainable Drainage methods shall be incorporated into new developments, including treatment for water quality. We note the Level 1 SFRA identifies three high risk catchments in the Borough:
    a. Leam - confluence with River Itchen to confluence with River Avon
    b. Leam – confluence with Rains Brook to confluence with River Itchen
    c. Clifton Brook – source to confluence with River Avon.

  In line with the recommendations in the SFRA, it is essential that the review include cross boundary considerations for allocations which drain into the above catchment to minimise cross boundary cumulative development issues.
- When development occurs, a Flood Risk Assessment will need to be produced to appropriately consider the risk of flooding from all sources. Development must assess opportunities to reduce flood risk to third parties as part of its Flood Risk Assessment and implement those opportunities wherever possible
- All development must undertake an assessment and implementation plan on what Environmental and Flood Risk Betterment can be provided by the proposals. The assessment should include but not be limited to, River Restoration, enhancement including de-culverting, removing unnecessary structures and reinstating a natural, sinuous watercourse and creation of flood alleviation measures.
- Land that is required for current and future flood management will be safeguarded from development. Where development lies adjacent to or benefits from an existing or future flood defence scheme the developer will be expected to contribute towards the cost of delivery and/or maintenance of that scheme. As

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this may have an impact on the scope of what is possible to achieve in some areas it should be strongly highlighted at early stages and accounted for when completing the local plan.

Other Topics
In reply to consultation question 36, the following issues are also recommended to be covered in the review and in light of the Sustainability Appraisal Scoping Report:

Groundwater and Contaminated Land
In considering the baseline information and key sustainability issues to be considered as part of the Local Plan, land quality and groundwater quality should be considered together with surface water impacts.

The Borough is underlain by solid geology of the Mercia Mudstone Group in the north and west and by the Blue Lias and Charmouth Mudstone in the south and east. The central section of the area is underlain by the Rugby Limestone Member of the Lias Group. In terms of superficial deposits, these are mainly limited to the northern most two thirds of the site and predominantly comprise of the Dunsmore Sands and Gravels in the southern area and the Wolston Clay and Glacial Tills in the northern area.

There are no designated Principle Aquifers in Rugby Borough, however there are large parts of the area classified as Secondary Aquifer. These groundwater resources can be important for supporting local abstractions and supplying base flow to rivers. There are a number of licensed abstractions in Rugby Borough. There are no groundwater source protection zones designated in the Rugby Borough area.

Any development should follow the policies set out in the NPPF. This would include assessing the suitability of sites for redevelopment based on the environmental setting as well as previous site history and potential for contamination to be present. We welcome the development of brownfield sites through the planning regime and request that a good awareness of these issues be demonstrated by the applicant prior to planning permission being sought for any particular site.

We note that the consideration of development on brownfield land is included within Sustainability Theme SA20 of the Sustainability Appraisal Scoping Report – 'To improve efficiently in land use through re-use of previously developed land'. When considering re-development of land, the NPPF includes policy to address this -
'To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.'

Planning policies and decisions should also ensure that: *'The site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;'*

The Local Plan should therefore consider reference to this requirement to ensure that Brownfield sites are cleaned up to an appropriate standard (i.e. in relation to the protection of 'Controlled Waters' and Human Health receptors).

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We note the inclusion of Sustainability Theme SA21 – 'To maintain and improve water quality in the Borough'. In planning any development within the Borough where impact to groundwater quality may occur, reference should be made to 'The Environment Agency's Approach to Groundwater Protection' document. This sets out our position on a wide range of activities and developments, including:

- Storage of pollutants and hazardous substances
- Solid waste management
- Discharge of liquid effluents into the ground (including site drainage)
- Management of groundwater resources
- Land contamination
- Ground source heat pumps
- Cemetery developments

Non-mains foul drainage

Water quality impacts of installing non-mains foul drainage should be assessed during the planning process, along with other considerations as outlined on our non mains foul drainage assessment form. The order of preference for foul waste water, including non mains drainage, should be included. We recommend this is incorporated into policy. The following wording is offered as an example:

> *"Development should follow the hierarchy (order of preference for foul drainage connection), as set out in the National Planning Practice Guidance. The Council requires non mains drainage proposals to assess the potential impacts upon water quality to ensure no detrimental impact on the water environment".* (Wyre Forest adopted local plan)

Water Framework Directive (WFD)

The aim is to achieve 'good ecological status' on all waterbodies by 2027. Policy should require development to improve the ecological status of waterbodies within the plan area to meet the objectives of the WFD.

Policy could also emphasise that proposals should help to conserve and enhance existing watercourses and riverside habitats. Management, mitigation and compensation measures should aim to improve water quality and create or enhance riverine and aquatic habitats. Consideration should be given to opportunities to undertake river restoration and enhancement as part of a development to make space for water.

The following amended text taken from the adopted Wyre Forest DC Plan (Policy SP.30) is a good example of how to ensure WFD is included within policy:

> *"Proposals that would result in an unacceptable risk to the quality and / or quantity of a watercourse or groundwater body will not be permitted. Strategies to help avoid (preference), mitigate the impact of development on water quality will be required at planning application stage. Proposals should seek opportunities to improve water quality and help achieve good ecological Water Framework Directive (WFD) status".*

Waste

Any brownfield sites (including historic or active military installations) may be contaminated, and screening should consider existing waste management activities, a list of active permits and their locations is published on Data.Gov. There may of course

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be historic waste activities or more recent unauthorised waste dumping. A GIS Layer of known historical landfill sites is available.

Regarding any proposed development, regardless of the location, there will be a need to adopt low-waste generation and effective carbon neutrality in line with likely Government strategy. This would mean not relying on existing waste management capacity, and preferably provision of “Circular Economy” infrastructure, to turn more unavoidable waste back into useful economic resources, and minimise production of traditional “Residual” waste requiring disposal.

Regulated Sites

The general issue of safeguarding regulated activity (such as AD plants, landfill, composting and other waste processing facilities) from proposed new sensitive receptors using a buffer zone is becoming an increasing concern. Issues can involve both housing development increasingly close to an operating waste facility, with inevitable complaints over amenity, with pressure on the Environment Agency (as the regulatory body) to act. This can result in pressure to demand that a facility closes and relocates, however a facility may be providing local or even national waste management capacity, identified in adopted waste plans.

‘Safeguarding’ can also refer specifically to providing for appropriate future expansion of existing infrastructure, by preventing conflicting developments. We are seeing increasing pressure on waste facilities especially in urban areas, largely due to housing developments which result in an increase in complaints to ourselves as the regulator of those facilities. Changes to planning system now allow commercial properties to be converted to residential use, such as offices on industrial estates.

It should be made clear that the Environmental Permitting Regulation does not require ‘zero impact’, so conflict situations become inevitable.

The updated NPPF now makes reference to placing obligations onto the “Agent of Change” (i.e. the developers/applicants,) requiring them to ensure appropriate mitigations are put in place to protect neighbouring users from impacts:

“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

As such, this review should look to identify issues where this may be an issue and consider carefully the allocation of sites which are located within close proximity to permitted waste facilities. Failure to do so can result in unacceptable levels of noise, odour, vibration, dust, smoke, flies, etc. Your local plan policies should identify these high risk facilities, steer development away from such areas and ensure that if development is proposed in close proximity it is such that it is not of a ‘sensitive’ nature to such nuisances. Close liaison with the waste planning authority and the Environment Agency should be maintained to ensure the plan reflects joined-up working.

Summary

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It seems the broad potential site allocations at this Issues and Options stage have environmental challenges and opportunities. We look forward to working with your Council and all parties to support the levels of growth and economic investment in the Borough.

If you have any queries contact me on the details below.

Yours faithfully