

**alan wipperman & co.
property & town planning
response to the brentwood district local plan submission copy for
ms maxine armiger.**

**Response to the Brentwood District Local Plan Submission Copy 2018 as Agent for
Ms Maxine Armiger**

**This Response Statement should be read in conjunction with the Response Form
and Cover Letter as also submitted of which it forms part.**

**The Council's Local Plan Submission Development Plan Document identifies a
housing need for some 7,752 dwellings over the Plan period 2016-2033. Confirmed
by the Housing Delivery Test from the National Planning Policy Framework 2018.
See also Policy SP02A referred to below, where there will be a lower annual rate of
delivery expected to 2023 than for the later period of 2023-2033:**

*("Provision is made for 7,752 new residential dwellings (net) to be built in the borough over the
Plan period 2016-2033 at an annual average rate of 310 dwellings per year to 2022/23, followed
by 584 dwellings per year from 2023/24-2033).*

**The identification and allocation of the Sow N Grow Nursery Site and the land
adjoining at 346 Ongar Road is a good example of positive and proactive plan-
making reflecting the status and priority of the land as previously developed land
where it can be sustainably be redeveloped.**

**The exceptional circumstances that direct that the Green Belt Boundary should be
amended have been recognised by the Local Planning Authority and are supported.**

- 1 The Sow N Grow Nursery with dwellings as shown in Appendix 1 has been promoted for some years now as a potential highly sustainable development site for release from the Green Belt to meet local housing needs. It also tidies up a site of poor visual quality that makes no contribution to, or has any function or purpose that contributes to the Green Belt.
- 2 Progress in pre-application advice discussions has been made, first by Bellway Homes and then by the Armiger family. However pre-application discussions have been delayed and put in abeyance by changes to National Planning Practice Guidance issued by Sir Eric Pickles, when housing need was not to be considered a very special circumstance for green belt development. The release of green belt land for development should be way of development plan as the National Planning Policy Framework 2018 now makes clear as policy, in para. 136:

"Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans".

- 3 Accordingly, the Armiger family have deferred further pre-application discussions pending the adoption of this Local Plan as certainty is required before further progress and investment can be made in the site. Their intentions to redevelop remain firm as confirmed by their continuing investment in the pre-application

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process, in recent site acquisition, and in their management of the commercial and residential tenant occupiers.

4 Investment has been made by buying-in the now de-commissioned O2 telecoms mast and site in anticipation of development at some considerable expense, together with the negotiation and agreement with the current and past commercial tenants to short term tenancies for five year terms or less, all to allow for redevelopment. These tenancies will soon expire. Expenditures on topographical surveys, drawings and pre-application advice has also been incurred.

5 The Armiger family's site remains available and capable for early development in the Plan period. It would be suitable for small builder construction, at less than a hectare (0.93 hectares), and so readily accord with the National Planning Policy Framework 2018 by which this emerging Local Plan will be assessed as a post January 2019 Plan. See in particular para. 214, Annex 1 to the NPPF:

“The policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.

6 Furthermore the land to the north of the trackway within the Allocated Site as shown on page 234 of the Local Plan is owned by Mrs Dunbar, and as garden land beyond and outside of any defined urban area, also falls to be previously developed land. (See Annex 2. Glossary to the NPPF 2018). Mrs Dunbar also wishes to see the land she owns developed and is also willing to bring her land forward for development quickly after the adoption of the Local Plan, and within the first five years.

8 This Submission Copy Local Plan takes full account of the NPPF 2018 – see para. 1.24 of the Local Plan.

9 Para. 2.16 also confirms brownfield sites in the Green Belt will be brought forward where appropriate. This has been achieved with regard to the Sow N Grow site and land adjoining, despite 89% of the District being Green Belt. (See para.2.54 of the Local Plan).

10 The Plan also has developed a strategy for development that provides for a mixture of new and extended settlements which is supported in the Growth Corridor, but also recognises the limited potential of other settlements as demonstrated with the more modest and appropriate allocations for Pilgrims Hatch. This is supported.

11 The Settlement Hierarchy has been well defined and Pilgrim's Hatch is properly considered as an Urban Neighbourhood as part of Settlement Category 1. This is supported. (Para.s 2.10 and 2.11).

12 The calculations and housing supply requirements as calculated in para.s 4.16 and 4.17 are supported as a reasonable minimum target for the District over the Plan period as the National Housing Delivery Test applies and is confirmed as met. The need for a 20% uplift to accord with the NPPF 2018 to achieve 456 dwellings per annum is supported.

- 13 Para. 4.21 confirms a pragmatic approach for housing delivery during the first five years of the Plan, seeking to achieve 310 dwellings per annum to 2023 and some 41 units per annum windfall. (See para. 4.17 of the Plan).
- 14 These appear potentially conservative assessments when the Sow N Grow site and adjoining land is considered as an example. Policy R07 seeks to achieve only 38 dwellings on the site of Sow N Grow Nursery and dwellings and the part of 346 Ongar Road. This will be referred to further below but more can be achieved close to perhaps 50 dwellings.
- 15 If this site is an example, there could be more potential dwellings achievable from use of smaller sites, sooner, during the Plan period, and this target could be therefore be exceeded.
- 16 Nevertheless the approach is supported.
- 17 It is noted Policies BE18 and BE20 seeks to protect and improve green and blue infrastructure and therefore the existing allotments and the trackway giving barrow access and egress will need to be protected to the rear of the Sow N Grown site. This is also in separate land ownership so this needs to be respect in any development policy for the allocation. (See ownership plans in Appendix 1 and below).
- 18 It is not considered that this requires an amendment or criterion to be added to Policy R07 as it can be dealt with as a matter of detailed planning control in the pre-application/application process under emerging policies BE18 and BE20.
- 19 It is understood that Policy BE21 will only apply to garden land not forming part of an allocated site for development.
- 20 **If it is considered, by the Examiner that as drafted amendment is required, then it is requested that there is a clarification by way of an explanatory paragraph to exclude the application of Policy BE21 to parts of sites in garden land use, such as identified in Policy R07.**
- 21 Likewise para. 5.174 refers to the NPPF 2018 and the exclusion of gardens from the definition of previously developed land. However Annex 2 Glossary to the NPPF 2018 states with regard to previously developed land, land that is excluded includes:
- “land in built-up areas such as residential gardens, parks .. “*
- 22 As land in site R07 includes residential garden land to the Bungalow and dwelling at Sow N Grow Nursery, and also to 346 Ongar Road, which is currently outside the development/settlement boundary and in the countryside/green belt, it will be previously developed land. When it is brought into the settlement boundary and out of the green belt upon adoption there may be a need to clarify the application of this explanatory paragraph which forms part of the emerging Local Plan; as referred to above.
- 23 **If the Examiner agrees, there should be a further clarification to para. 5.174 to exclude gardens outside built up areas to accord with the definition in the**

NPPF 2018, and to provide certainty where part of allocated development sites become part of built up areas.

- 24 Policy HP01 is noted. However, HP01B states:
- “Where a development site has been divided into parts, or is being delivered in phases, the area to be used for determining whether this policy applies will be the whole original site”.*
- 25 Where an allocated site is in two or more separate ownerships and separated by a physical barrier or legal ownership, this criterion may be difficult to apply and could delay or halt development. For example, the land at Sow N Grow Nursery is separated from the land at 346 Ongar Road by the access-way to the allotments and the access-way is understood to be unregistered land owned by a third party, a foreign national of unknown abode. There may not be the ability to co-operate and undertake development for the entire allocated site as a single entity as this Policy envisages.
- 26 **If the Examiner agrees, it would be preferable that there should be a further clarification or explanatory paragraph to Policy HP01B to allow for smaller sites in separate ownerships, say under 1 hectare) to be excluded from the Policy. This would facilitate quicker delivery of such sites. It would also better accord with the NPPF 2018. (See para. 68 of the NPPF 2018, noting the Sow N Grow part of the site is less than 1 hectare (about 0.93 hectares) – in particular also para. 68a and the requirement for 10% delivery of sites of less than 1 hectare, with the further smaller separate parcel at 346 Ongar Road).**
- 27 Policy HP03B requires a residential density of at least 35 dwellings per hectare and **this is supported**. On the Sow N Grow and adjoining land identified in Policy R07 the total area exceeds one hectare but only 34 dwellings are suggested for the site. This is considered not to fulfil the site potential for the further reasons given above and below. See also the proposed layout plan submitted for pre-application advice in Appendix 2.
- 28 **If the Examiner agrees, then the words “at least” should be inserted into the potential site capacity of the Sow N Grow site to better reflect Policy HP03B.**
- 29 Para. 7.20 confirms there will be 47.39 hectares of new employment land allocated in the District, and this will exceed requirements. There is therefore no need to retain poorly arranged and constructed buildings providing poor quality employment land uses, especially on allocated development site for badly needed housing. (Such as at the Sow N Grow Nursery site part of the allocated site).
- 30 **The employment land policies and land allocations are supported as sound.**
- 31 The Plan, in para. 8.85 confirms the main purposes of the Green Belt as set out in the NPPF 2018:
- “i. to check the unrestricted sprawl of large built-up areas;
ii. to prevent neighbouring towns merging into one another;
iii. to assist in safeguarding the countryside from encroachment;
iv. to preserve the setting and special character of historic towns; and*

v. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land”.

- 32 The land at Sow N Grow Nursery, the dwellings therein and the land adjoining included in the allocated site in Policy R07 is to be taken out of the Green Belt. It fails to meet or contribute to the relevant main purposes of the Green Belt (i), (ii), (iii) and will if released contribute to regeneration of this unattractive and poorly arranged site. **The release from the Green Belt and Green Belt policy is supported.**
- 33 **Policy NE12 is also supported as it would better reflect the use of previously developed land in the Green Belt.**
- 34 **Policy NE13A and NE13B are supported as it makes clear that allocated sites are being taken out of the Green Belt, providing that the benefits sought as set out in para. 8.114 are realistic and do not harm viability of development.**
- 35 **Policy R01, Dunton Hills Garden Village is not in principle objected to provided that no further development in dwelling numbers are allocated to this very large site.** At 2,700 dwellings these are a substantial number and part of meeting local housing need and these will take time to build and supply.
- 36 It is all the more important that smaller, readily developable sites, such as that at Sow N Grow Nursery and land at 346 Ongar Road can be brought forward quickly and readily and without undue constraints to accord with para. 68 of the NPPF as referred to above.
- 37 **Other larger housing site allocations are likewise not objected to, provided that there is no significant additional dwelling allocations added to them, either by way of additional land, or by way of significant additional density and dwelling provision, to the larger allocated sites.**
- 38 **Policy R07 is therefore fully supported, although the potential number of dwellings achievable on the site as defined in the Policy on Plan on page 342 appears to be an underestimate.**
- 39 It should also be noted that the site is best considered as being in two parts. The first being the Bungalow at the Nursery, and its garden; the further dwelling and garden; the remaining garden centre/plant sales buildings, together with the various business uses on the land comprising all of the Sow N Grow Nursery land up to the allotments trackway being one part. (This is shown as the ownership plan in Appendix 1 as submitted for pre-application advice. The site is now owned by Mr Derek Armiger, Ms Kim Armiger and Ms Maxine Armiger). The second part is the land owned by Mrs Heather Dunbar being part of the garden to No.346 Ongar Road, also as shown in Appendix 1, title plan.
- 40 The trackway to the allotments shown brown on the title extract plan for 346 Ongar Road is, I am advised, thought to be owned by an unknown person resident in Morocco, in an unknown location. The land is also thought not to be registered.
- 41 There is a right for access from the public highway along the trackway by wheelbarrow to the allotments. It is unlikely that this land can be readily acquired by either adjoining party or any third party developer, and so compulsory purchase

powers may be required to complete and use this land. This would give rise to delay and expense in developing out all of the defined allocated site shown on page 342.

42 Accordingly, I am instructed by all the Armiger family owners of the land at Sow N Grow Nursery, and also by Mrs Dunbar of 346 Ongar Road, to bring this to the attention of the Local Planning Authority and the Local Plan Examiner. Relevant ownership plans are in Appendix 1.

43 This need not have any impact on developing the defined and allocated site, save in detail, by retaining the access-way to and from the allotments. It should be noted that the land is in two separate ownerships and best developed separately to meet the Local Plan objectives and housing delivery as small sites below 1 hectare as referred to above.

44 Both landowners have instructed me to submit a Response to the Submission Copy Local Plan. Both landowners are willing and able to release land for development once the Plan is adopted. In the case of the Sow Grow Nursery site the Armiger family may develop the land themselves once certainty is provided.

45 It is likely that the Sow N Grow site could be redeveloped to provide up to 42 dwellings as demonstrated by the pre-application advice drawing submitted to the local planning authority and reproduced as Appendix 2.

46 Although no detailed assessments have been undertaken the land north of the trackway could be developed by way of a private drive access from the Ongar Road to deliver some 4-5 dwellings or more, subject to feasibility appraisals and pre-application advice.

47 **This suggests some 47 dwellings could be provided on the allocated site.**

48 **Accordingly if the Local Plan Examiner agrees, it would be appropriate to amend Policy R07 to state as shown in bold:**

*“provision for ~~around~~ **at least** 38 new homes of mixed size and type, including affordable housing”*

49 If agreed then **para. 9.117 needs to be amended to match.**

50 Para. 9.118 would not appear to require amendment as a further access can be provided to that part of the site at 346 Ongar Road separately; possibly by way of a private drive for a smaller development.

51 There is no objection to the provision of landscaping buffers proportionate to the park and garden as well as allotment amenity referred to in the Policy. This can be a matter of detailed design.

52 The location of the allocated site just within a Critical Drainage Area is noted as referred to in Policy R07. Initial inquiries of Essex County Council suggest that concerns arising will be minor and likely to be readily resolved by on site design details and if necessary on site mitigation and attenuation measures. These can be dealt with through the development control process.

- 53 **With the above minor amendments, and the noting of the ownership position, then Policy R07 and Allocated Site Plan and other references to the site in the Local Plan Submission Copy can be fully supported.**
- 54 **Without such amendments the Policy is still supported but it is considered, given the land ownership position, that this would better clarify the Policy, and therefore the implementation of the Plan.**
- 55 **With all the above amendments the Submission Copy Local Plan can then be fully supported.**
- 56 The Plan will then have been fully positively prepared and be **positive and proactive as required in the NPPF.**
- 57 There has been an effective review of brownfield sites and previously developed land. The evidence base confirms this. The inclusion of the Sow N Grow Nursery Site, as now defined, confirms this, as well as its inclusion in the Brownfield Register.
- 58 There has been an effective review of Green Belt Boundaries by the Local Planning Authority as required by the NPPF 2018 when preparing a development plan. The exceptional circumstances required for development plan boundary changes have been sufficiently been taken into account and amendments made. Locations of previously developed land in the Green Belt have been properly assessed in appropriate detail. The inclusion of the Sow N Grow Nursery Site and adjoining land as shown on Plan on page 234, as now defined, confirms this.
- 59 The sequential approach adopted has identified sustainable development opportunities. This indicates a sound plan has been prepared.
- 60 The methodology, review and approach and the policies to be adopted broadly reflect the adopted settlement hierarchy and the sustainable development opportunities, and provided there are no major changes in the allocations and numbers to the sites allocated, this can be supported even if it is not, by others, considered ideal.
- 61 In the High Court decision, Calverton Parish Council, Nottingham City Council, Broxtowe Borough Council, Gedling Borough Council v Peveril Securities Limited and UKPP (Totton) Limited, [2015] EWHC 1078 (Admin), it was confirmed there is no single way specified to undertake a green belt review in the NPPF. It would be a matter of planning judgment.
- 62 Para. 52 of the Judgement also states an ideal approach is not necessary to be legally sufficient for an Inspector at an Examination in Public, and by extension any planning decision maker:

“Although it seems clear that what I have called an ideal approach has not been explicitly followed on a systematic basis in the instant case, it is a counsel of perfection. Planning Inspectors do not write court judgments. The issue which properly arises is whether the Inspector’s more discursive and open-textured approach, which was clearly carried through into the ACS, was legally sufficient.”

- 63 Accordingly the Local Plan is supported. It need not be ideal in all respects. However the selection of the Sow N Grow site is evidence of a sound Plan with regard to housing site allocation and delivery, and green belt boundary changes. This site allocation is supported.
- 64 It is based on good evidence and the Housing Delivery Test required by the NPPF. It is therefore positively prepared and justified. It is consistent with the NPPF.
- 65 It should also be effective over the Plan period. The Housing Trajectory is supported. (Appendix 1. Page 309 of the Plan).
- 66 The Plan appears legally compliant and there appears to have been adequate co-operation with adjoining local planning authorities.
- 67 **Accordingly the Plan is supported. Some minor amendments are suggested above but these are not considered essential. It is left for the Local Plan Examiner to consider and decide.**

Alan Wipperman BA MRICS MRTPI C Dip AF

13 March 2019

APPENDIX 1.

OWNERSHIP PLANS – THE ARMIGER FAMILY LAND EDGED RED.

(Note trackway to north not included).

Total area of land owned by Mr Derek and Ms Kim Armiger at Sow N Grow Nursery.



Siteplan® 1:1250



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LAND OWNED BY MRS DUNBAR AT 346 ONGAR ROAD.

LAND OWNED EDGED RED. LAND COLOURED BROWN HAS RIGHT OF WAY
(SEE TITLE EXTRACT).



"Except and Reserving unto the Vendor and her successors in title owner or owners for the time being of the land edged round in blue on the plan annexed hereto or any part thereof the right of foot and barrow way to and from Ongar Road Brentwood aforesaid over the land edged in green and hatched yellow on the said plan for all reasonable purposes in connection with the use and occupation of the said land edged round in blue or any part thereof."

NOTE 1: The land edged blue and edged green hatched yellow referred to is tinted yellow and tinted brown respectively on the filed plan

NOTE 2: The land tinted pink on the filed plan forms part of the land edged blue referred to in the Conveyance dated 6 June 1957 referred to above.

PRE-APPLICATION ADVICE PLAN – SEPTEMBER 2013.



Feasibility

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