



**BRENTWOOD
BOROUGH COUNCIL**

Brentwood Pre-Submission Local Plan (Regulation 19)

January 2019

COMMENT FORM

From Tuesday 05 February to Tuesday 19 March 2019 we are consulting on the next stage of the Brentwood Local Plan: Pre-Submission Local Plan (Regulation 19). You can view and comment on the consultation document online at:
www.brentwood.gov.uk/localplan

Alternatively, please use this form to share your views on the contents of the document.

All responses should be received by 5PM Tuesday 19 March 2019.

Please return forms either by attaching completed forms by email to **planning.policy@brentwood.gov.uk** or alternatively by post to Planning Policy Team, Brentwood Borough Council, Town Hall, Brentwood, Essex CM15 8AY.

How to complete the representation form:

This form consists of two sections – Section A: Personal Information, and Section B: Your Representation. Please note that your representation cannot be accepted without completing information identified in Section A.

The Local Plan Pre-Submission (Regulation 19) consultation consists of more formal and technical questions focused on the four Tests of Soundness and whether the Local Plan is compliant with relevant legislation. Comments are to be focused on three core areas – is the Plan positively prepared (referred to as ‘soundness’), does the Council adhere to the Duty to Cooperate, and is the Plan legally compliant (addressed by question 3 of this comment form). These terms are defined below:

- a) **Soundness:** Local Planning Authorities must prepare a Local Plan based on relevant and appropriate evidence base. They are required to publish these documents on their website. The evidence used to develop the Brentwood Local Plan can be found on the Council’s website under Evidence Base.
- b) **Duty to Cooperate:** Throughout the plan-making process discussions have taken place with various statutory consultees and neighbouring authorities. A summary of these meetings can be found within the Duty to Cooperate Statement, published as part of the Regulation 19 consultation. This is a live

document and will be updated prior to being submitted to the Secretary of State.

- c) **Legally Compliant:** Local Planning Authorities must prepare a Local Plan which adheres to the requirements as set out in the National Planning Policy Framework (NPPF), planning practice guidance, and other relevant planning regulations & legislation.

Question 4 of this comment form asks for further information on your opinion of the Plans 'soundness'. According to the National Planning Policy Framework (NPPF) para 35, Local Plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements and whether they are sound. Plans are 'sound' if they are:

- a) **Positively prepared** – providing a strategy which as a minimum seeks to meet the area's objectively assessed needs, and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and consistent with achieving sustainable development
- b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in the NPPF.

Please keep in mind the information provided above to assist with correctly completing your comment form. For additional information on what the difference is between a Regulation 18 and Regulation 19 Local Plan consultation, please view the FAQ's published on-line www.brentwood.gov.uk/localplan

Data Protection

All personal information that you provide will be used solely for the purpose of the Local Plan consultation. Please note whilst all addresses will be treated as confidential, comments will not be confidential. Each comment and the name of the person who made the comment will be featured on the Council's website.

By submitting this form, you are agreeing to the above conditions.

Section A: Personal Details

Title	Mr
First Name	Samuel
Last Name	Dix
Job Title (if applicable)	Principal Planner
Organisation (if applicable)	Smith Jenkins on behalf of McColl's Retail Group plc
Address	5 Warren Yard Wolverton Mill Milton Keynes
Post Code	MK12 5NW
Telephone Number	01908 410422
Email Address	sam@smithjenkins.co.uk

Section B: Your Representation

Please complete a separate sheet for each representation that you wish to make. You must complete 'Part A – Personal Details' for your representation to be accepted.

Representations cannot be treated as confidential and will be published on our Consultation Portal. Any representations that are considered libelous, racist, abusive or offensive will not be accepted. All representations made will only be attributed to your name. We will not publish any contact details, signatures or other sensitive information.

Full Name	Smith Jenkins on behalf of McColl's Retail Group plc
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Question 1: Please indicate which consultation document this representation relates to?

The Local Plan

Sustainability Appraisal

Habitat Regulations Assessment

Question 2: Please indicate which section of the indicated document identified above that you are commenting on (where applicable please clearly state the section / heading or paragraph number).

Figure 7.6 / Policy PC03

Question 3: Do you consider the Local Plan is:

Sound?

YES

NO

Legally Compliant?

YES

NO

Compliant with the Duty to Cooperate?

YES

NO

Question 4: If you consider the Local Plan unsound, please indicate your reasons below (please tick all that apply):

The Local Plan has not been positively prepared

The Local Plan is not justified

The Local Plan is not effective

The Local Plan is not consistent with national planning policy

Question 5: Please provide details of either:

- Why you consider the Plan to be sound, legally compliant, or adheres to the Duty to Cooperate; or
- Why you consider that the Local Plan is unsound, is not legally compliant, or fails to comply with the Duty to Cooperate

Smith Jenkins Ltd act for McColl's Retail Group plc.

On behalf of our client we are instructed to make representations to the pre-submission draft of the Brentwood Local Plan, which we understand has been publicised for comment under Regulation 19 of the Town and Country Planning (Local Plan) Regulations.

The site

McColl's headquarters are located on Ashwells Road, Brentwood. The site accommodates a range of office buildings, car parking, servicing and grounds. The site's planning history consists of several applications made in the 1990s for extensions to car parking and buildings, the retention of a satellite dish, and the change of use to a day nursey (the latter of which was refused). The site is known to have accommodated companies such as the Eastern Electricity Board prior to McColl's Retail Group acquiring the freehold, and as such is a well-established area for commercial use that has not been formally acknowledged in the Development Plan until recently.

Local Plan

The site is identified in Figure 7.6 pre-submission Local Plan under the "existing employment sites in the Green Belt", which is duly covered by Policy PC03. Our client considers that Policy PC03 of the pre-submission Local Plan is "unsound" as it is not positively prepared, effective, justified, or consistent with national policy as required by Paragraph 35 of the NPPF.

It is common for Local Authorities to seek to retain control over employment land by restricting its loss with reference to certain criteria. However, at least three of the four criteria contained in Policy PC03 are unduly onerous and should be reconsidered, particularly in the context of Paragraphs 120 and 121 of the NPPF with which the Local Plan must be consistent.

Evidence

Paragraphs 120 and 121 explain how alternative uses of land should be encouraged to reflect changes in demand and the circumstances of high housing demand, which is commonly accepted as severely affecting the Borough. This context is important given the Borough's recent performance of 51% against the Housing Delivery Test and land supply of just 4.1 years. Our client's site at Ashwells Road is not presently allocated for a specific purpose, although would be in due course by the emerging Local Plan. Paragraph 121 explains that in this instance a positive approach to alternative uses should be taken where this would not undermine key economic sectors or sites. The Council has not produced any analysis of the role our client's site plays in the Borough's economy and it is assumed that it has simply

been identified in Figure 7.6 for completeness rather than any meaningful contribution. Indeed, there is no reference to the site in the 2010 Employment Land Review although it is noted that the site was identified in the 2018 Economic Futures report prepared by Lichfields. Nevertheless this appears to have simply been a 'cataloguing' exercise of all sites in lawful employment use. There is no regard to the site's usefulness for this purpose; an analysis that would have been carried out in the Employment Land Review, were the site to have identified in that document.

In reality the office space at Ashwells Road is out-dated, under-occupied and ill-suited to the demands of modern business. McColl's Retail Group plc are actively seeking an alternative headquarters and are concerned at the manner in which Policy PC03 would restrict their ability to achieve this. We therefore request that the site be removed from Figure 7.6 given it has not been formally analysed in accompanying analysis and that there is a surplus of employment land in the plan anyway.

It is also unclear where why the Council have disaggregated existing employment sites not previously allocated into those that are in the Green Belt and those that are not. The Green Belt should be irrelevant to whether employment land is protected or not and indeed the Lichfields report does not distinguish along these lines. It is unknown whether the Local Authority consider that our client's site shares characteristics with other employment sites in the Green Belt. This therefore also requires further justification.

Policy PC03

Notwithstanding our client's wish to see their site removed from Figure 7.6, we have serious concerns as to the soundness of the criteria in Policy PC03. We explain these concerns in detail as follows.

Clause (a) of Policy PC03 comprises an exceptionally narrow range of circumstances where a non-B-class use may be acceptable on an existing employment site. This part of the policy is not effective because, in reality, there is very limited likelihood of a non-B-class employment-generating use being able to demonstrate that it cannot be located elsewhere in the Borough. Furthermore there is no indication of what is meant by "significant employment"; this requires justification as sites such as Ashwells Road are under-occupied yet are theoretically capable of accommodating a much greater number of employees.

Clause (b) is unsound because it is not positively prepared. Using a criteria that allows wholly affordable schemes to be brought forward on vacant employment sites represents a very poor approach to the social aspect of sustainable development. Paragraph 62 of the NPPF explains that affordable housing should contribute to the objective of creating mixed and balanced communities. Allowing wholly affordable developments on sites that are, by their nature, often enclosed and distinct from existing residential areas risks creating communities that are highly imbalanced and segregated. Grouping lower-income households together in this way should be strongly discouraged and certainly not explicitly encouraged as it is in clause (b) of Policy PC03. Furthermore, the policy is not effective as the existing use value of vacant employment sites will be prohibitive to the developers of 100% affordable housing schemes, particularly as such sites are likely to have abnormal costs associated with remediation.

Clause (c) of the Policy is, in principle, sound and it is very common for Local Plan policies to set out marketing requirements to ensure that employment stock is not lost unnecessarily. However, the supporting text for clause (c) of Policy PC03 (paragraph 7.22) reveals that in this instance the Policy is neither effective nor justified. Requiring 24 months of marketing is grossly excessive without

justification. The policy is not effective as it puts the Borough at risk of its employment sites deteriorating indefinitely whilst valuable redevelopment opportunities are put on hold due to the excessive marketing requirements. We would suggest that 12 months is a more than adequate time for robust marketing to be undertaken and would allow the Local Plan to be more adaptive to windfall opportunities.

Clause (d) is not justified in setting an unrealistically exhaustive approach for proving unsuitability for employment. In particular, applicants should not be forced to speculate on whether wholesale redevelopment would improve the prospects of a site. This is an enormously costly exercise compared with the other identified approaches of re-use, adaptation, and refurbishment. Clause (d) should therefore be restricted to these options and not include reference to redevelopment being explored.

We would suggest that in order to be sound, the above changes to the clauses within Policy PC03 should be made. The general provisions of the policy should read similar to the following:

“Within allocated employment areas, the Council will resist the loss of B-class uses. Redevelopment or change of use will only be permitted where one or more of the following criteria apply...”

Summary

Smith Jenkins act on behalf of McColl’s Retail Group plc, who wish to highlight significant concerns in respect of the soundness of the pre-submission draft of the Brentwood Local Plan.

Our client’s headquarters on Ashwells Road have been identified as an existing employment site to be protected under Policy PC03. This is despite no site-specific justification as to the role the site plays in the Borough’s employment stock. In reality the site is a poor form of employment development that does not require any particular protection. Our client is concerned that the policy as currently drafted would prejudice the possibility of them securing a new headquarters better suited to modern employment. We therefore respectfully request that their site is removed from Figure 7.6 of the Local Plan.

Notwithstanding this request, each clause within Policy PC03 requires modification in order to be sound. Our clients have no substantive comments on the remainder of the draft Local Plan but respectfully request that either the Local Authority or the Inspector modify Figure 7.6 and Policy PC03 in order to address the soundness concerns we outline above.

Question 6: Please set out what modification(s) you consider necessary to make the Local Plan sound or legally compliant, having regard to the matters that you identified above.

You will need to say why this modification will make the Local Plan sound or legally compliant. Please be as accurate as possible.

Our client’s site should be removed from Figure 7.6 and the criteria of Policy PC03 amended as per the above, in order to be sound against all four requirements of Paragraph 35 of the NPPF.

Question 7: If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the Examination in Public (EiP)?

NO, I do not wish to participate in the oral part of the EiP

YES, I wish to participate in the oral part of the EiP

Question 8: If you wish to participate at the oral part of the Examination, please outline why you consider this to be necessary.

Our representation concerns site-specific matters that require the landowner's perspective.

Please note that the Inspector (not the Council) will determine the most appropriate procedure to hear those who have indicated that they wish to participate in the oral part of the Examination.