

Email:
Tel:

BY HAND

19th March 2019

Local Plan Consultation
Brentwood Borough Council
Town Hall
Brentwood
Essex CM15 8AY

Dear Consultation Team,

I mentioned at the Public Consultation in the Baytree Centre that I wanted to propose a Modification to Policy R18. I enclose response form with a Legal and Historical note and supporting documents in support of the Modifications I propose.

When I left the Council's Legal Service in May 2015, I left the papers with Christine Stephenson and recommended that Counsel's advice be taken, but nothing was done. The proposed redevelopment of the Regional Blood Transfusion Centre in Policy R19 provides an opportunity to restore the infrastructure and the open space, with buffer screening on Crescent Drive and vehicular access from Glanthams Road.

The 2011 Transfer of the Open Space to the Council provided for a footpath on the eastern side of the Community Hospital. I mention in paragraph 19 of the Not that the Policy Site boundary is incorrect and should be regularised.

The Lawyers for NHS Property may have more historic documents, in particular pre-registration deeds. On first registration the registered estate is vested in the proprietor together with all interests subsisting for the benefit of the estate. The land has the benefit of appurtenant rights whether registered or not.

The 2011 Transfer was made with limited title guarantee, and excluded rights otherwise conferred by Section 62 Law of Property Act 1925 and the rule in Wheeldon -v- Burrows. I infer that the Conveyancers acting for the NHS at that time were unaware of the full factual position. No doubt the site owners will research records and take legal advice : I am happy to assist if that is considered appropriate. I enclose a second copy of this letter and enclosure for you to forward to the representatives of the land owner for this purpose.

Yours faithfully,



**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****Philip****Last Name****Cunliffe-Jones****Job Title**
(if applicable)**Organisation**
(if applicable)**Address****Post Code****Telephone Number****Email Address**

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 | Philip Cunliffe-Jones |
|-----------|-----------------------|

Question 1: Please indicate which consultation document this representation relates to?

The Local Plan

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Sustainability Appraisal

☒

Habitat Regulations Assessment

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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).

Policy R18 – Development principles : vehicular access should be from Glanthams Road and there is no need for public open space to be provided on site if the adjoining woodland open space transferred to Brentwood Borough Council in 2011 is restored to the vision of Percy Bayman with public access via footpaths and Glanthams Road.

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**

Summary

- (i) The site of the North Thames Regional Transfusion Centre, (Draft Policy R18) proposed for residential redevelopment is now in an area of relative deficiency of open space. This was not always so however, but during the period of statutory control by the NHS, land management of access to open space was sadly neglected. The annexed historical and legal note with supporting documents show that the title to the land has appurtenant rights which should be exercised in conjunction with the Council in order to enforce rights over estate roads to the woodland open space and thereby to give proper and sustainable effect to NPPF policies.
 - (ii) Vehicular access should be taken only via private road section of Glanthams Road, restored to the full width legally available under the easement and estate covenants appurtenant to the freehold title. The legacy of Percy Alfred Bayman who planted trees and shrubs in the hospital grounds as well as gifting land should be respected and restored by enforcing the estate covenants appurtenant to the land title.
 - (iii) The restrictive covenant referred to in paragraph 2 of this reply may be modified by the application to the Upper Tribunal Lands Chamber but it should be noted that while statutory powers have enabled covenants to be overridden, that protection will cease on sale. A more significant issue is the existence of a building scheme satisfying the criteria laid down by the Court of Appeal in Birdlip Limited –v- Hunter benefitting the site and also benefitting the Council owned open space. It seems the draft policy is predicated on a developer taking out indemnity insurance and packaging a residential development without reconnecting to the Glanthams Park estate road or facilitating access to the woodland open space. This would be inimical to the policies and purposes of the NPPF.
 - (iv) The proposed policy R18 does not take an integrated approach to housing and open space facilities, does not protect or enhance rights of way or take into account the possibility of adding to high quality rights of way.
 - (v) The developable area of the R18 site together with the need for on site open space should be reappraised along with the restoration of Glanthams Road, particularly as the site is within an area well served by public transport and could have a significant uplift in the average density beyond what is already proposed.

Historical overview

2. By the National Health Service Act 1946 local voluntary hospitals were brought into public ownership - the Act transferred to the Minister all hospitals with their endowments. Percy

Alfred Bayman had transferred to the Trustees of a charity known as the Brentwood District Hospital land shown and coloured pink blue yellow green mauve and brown on the plan annexed to a transfer dated the 15th day of June 1931. The Transfer included the benefit of covenants on the part of the Minister of Transport contained in a conveyance dated the 1st day of March 1929 and made between the Minister of Transport and Mr. Bayman. The Trustees of the Charity covenanted *to protect the neighbouring land being developed as a building estate and will not permit any building or wall on the land transferred other than the Hospital or any extension thereof including Nurses Homes Entrance Lodges or any buildings used in connection with the hospital.*

3. I have prepared a historical note with supporting documents, listed at the end of the note, and this note is an appendix to this reply to Question 5. It will be seen that there is a need to restore the private road which has been encroached upon, and paragraph 98 of the NPPF should be pursued to allow public use of Glanthsams Road along its full width. This would allow a footpath and cycle path and vehicles to use it to enable the woodland open space to be brought into positive use as a local public amenity. Glanthsams Road could remain a private Road connecting to Worrin Road with a footpath/cycle path created by order under the Highways Act 1980 Section 26. Generally, once an easement or right of way has arisen it will continue indefinitely unless it is extinguished or released. Failure to use a right of way is not of itself sufficient to allow abandonment to be inferred: in the case of *Benn-v-Hardinge* (1992) 60 P&CR 246 the Court of Appeal held that the failure to use the right for 175 years was not enough on its own to indicate an intention to abandon.
4. The site within Policy R18 has a boundary with number 17 Crescent Road which derives from the right to purchase granted in the Transfer of 1931 to Francis John Bassett (the brown land in that Transfer) to connect Glanthsams Road with Crescent Road. The site abuts Glanthsams Road at its South East corner, where adverse possession has taken place extending the gardens over several plots at Worrin Close. The land transferred by Mr. Bayman had the benefit of covenants in a building scheme for Glanthsams Park estate whereby plot owners covenanted not to obstruct the passage along any estate road and to contribute to the repair and maintenance of the footway and half the carriage way. Although neither Glanthsams Road nor the open space woodland have been maintained since the 1920s, this has been due to the intervention of statutory authorities. So the private estate covenants were suspended.
5. That position changes with the disposal of R18 policy site for residential development. The opportunity must now be taken to restore the private road and enforce the easements and covenants against obstructions to the passage along the unadopted part of Glanthsams Road and also encroachments onto the open space at the rear of Glanthsams Close, thereby enabling the woodland open space to be a public amenity in an area otherwise relatively deficient in open space. The developable area of the policy area R18 should be reviewed – there is little need for onsite public open space provision if the 9 and a half acres of woodland open space were restored and accessible.
6. Policies in the NPPF require the approach and modifications I put forward to the draft plan to achieve these planning policy objectives in the public interest. Paragraph 21 of the attached historical and legal note and the reply to question 6 refer.

Please continue on a separate sheet if necessary

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.

1. Development Principle Aa –Amount and type of development

Delete" around 55" and substitute *"up to 80, depending on the amount of on-site private open space and onsite land take for vehicular movement via Glanthams Road"*

Reasons: (a) The site is well served by Public Transport, and adjoins the Community Hospital. Paragraphs 122-123 NPPF support a significant uplift in the average density.

(b) The draft policy proposes on-site open space and main vehicular access from Crescent Road. These are wasteful of the immediate infrastructure which should be restored, allowing more efficient and sustainable use of the site, the adjoining road infrastructure and the adjoining woodland open space of over nine acres.

2. Development principle Ba. and Paragraph 9.166 should be deleted. Principle Ba should read: *The main vehicular access will be via the private road Glanthams Road which will be restored to its condition and width on the Appointed Day (1 July 1948).*

Paragraph 9.166 should read: *The site abuts the Private Road Glanthams Road.*

Reason: It is not an effective use of land to abandon this right of way and estate road

3. Development principle b – provision of on-site public open space – should be deleted. This should be replaced by the following:
b. *Prior to construction of residential units a scheme for restoration of the Woodland Open space to the South west shall be implemented by the clearance of dead wood and timber in conjunction with the local planning authority, with provision of direct access from the site to the woodland and footpaths.*

The last 14 words in the first sentence of paragraph 9.169 should be deleted

Reasons for deletion: As set out in paragraph 21 of the attached historical and legal note, the opportunity should, and I suggest must, be grasped firmly in the redevelopment of

Policy area R18 to restore the woodland open space as a local amenity to benefit the public as well all as future residents of the proposed redevelopment site. The last 14 words of paragraph 9.169 will be redundant if the modification to Development principle b is accepted, as the design of such a scheme will take an integrated approach and enhance access from the development to the open space. The existing wording implies sensitive boundary segregation rather than improved functional access to 2.54 hectares of woodland open space – a hugely valuable amenity if and when brought back into beneficial use.

Please continue on a separate sheet if necessary

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.

Please continue on a separate sheet if necessary.

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.