

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
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Question 1: Which **Main Modification and/or supporting document** does your representation relate to?

Each Main Modification within the Schedule has a reference number. This can be found in the first column i.e. MM1, MM2

Any representations on a supporting document should clearly state which paragraphs of the document it relates to and, as far as possible, your comments should be linked to specific Main Modifications. You should avoid lengthy comments on the supporting documents themselves.

Representations on the Policies Map must be linked to specific modifications in that they reflect a change required as a result of a Main Modification.

Schedule of Potential Main Modifications	MM 2,29,33,39, and 69	<input type="text"/>
Sustainability Appraisal	para(s)	<input type="text"/>
Habitat Regulations Assessment	para(s)	<input type="text"/>
Policies Map or other supporting documents	Please specify	<input type="text"/>

Question 2: Do you consider this **Main Modification and/or supporting document**:

Legally Compliant?

YES

☐

NO

☒

Sound?

YES

☐

NO

☒

Question 3: If you consider the **Main Modification and/or supporting document** unsound, please indicate which of the soundness test(s) does it fail (please mark all that apply):

Not positively prepared

☐

Not justified

☒

Not effective

☒

Not consistent with national planning policy

☐

Question 4: Please provide details of either:

- Why you consider the **Main Modification and/or supporting document** to be sound or legally compliant; or
- Why you consider the **Main Modification and/or supporting document** to be unsound or is not legally compliant.

4.1 The “landscape-led design approach” in MM2 needs to be integrated with the Essex Design Guide Version 3 (2018) with a revised definition of Garden Land. The revised wording proposed (page 72) for paragraph 5.175 refers too loosely to relevant guidance in the Essex Design Guide. The Guide (at paragraphs 1.79 and 1.80) states

“1.79 Different local planning authorities have varying garden size standards for one and two- bedroom houses. 50m² is the most common, but applicants should consult the relevant District Council Planning Department.

1.80 These houses must be indicated as being either extendable or unextendable. In the case of an extendable house, the initial planning application must show the shape of an eventual extension, and the garden area must be calculated excluding the ground that would be occupied by the eventual extension. Unextendable houses will have the householder’s right to extend under the General Permitted Development Order withdrawn. Permitted Development (PD) rights to extend will also be withdrawn where the garden is less than 50m². In the case of unextendable houses some local planning authorities may allow communal garden provision. In such cases this will be to the standard for flats, i.e. 25m² per dwelling minimum, and a planning condition will be imposed that the garden is to remain communal in perpetuity.”

The proposed definition of Garden Land in the Main Modification by implication always includes and allows communal garden space, which the Design Guide provide is a matter for each local authority. Accordingly, the MM definition should be revisited to avoid uncertainty as to the curtilage of each dwelling, and shared access to and maintenance of communal amenity garden spaces. The incorporation of a Health Impact Assessment into the design of communal gardens should also be considered.

4.2 The revised definition of garden land in MM29 is imprecise. It reads:

Garden Land Private back gardens, private amenity green space on estates or private communal gardens that are entirely to the rear or within the curtilage of a dwelling or dwellings, as originally designed
Other GI Private gardens, green walls, green roofs, estate greenspace, etc

Without more careful referencing to the Essex Design Guide for communal gardens and plot drawings, and the deletion of “etc” the definitions are too loose and fail to provide the necessary clarity of guidance for landscape-led design approach.

4.3 MM33 provides a new or revised policy NE05 OPEN SPACE AND RECREATIONAL FACILITIES with a primary objective stated to be “ A. All open spaces, including the designated Urban Open Spaces, as identified will be protected and where necessary enhanced to ensure access to a network of high quality provision and opportunities for sport, play and recreation within the borough” This is linked

with the strategic policy NE02 relating to a network of GBI Neither provide for protection of access rights for the classes of users entitled to enjoy the network and spaces within it which is an existing priority and will become more important.. The Brentwood Gazette published on the 10th November 2021 announces a series of new walking and cycling schemes for residents to take more environmentally modes of transport, including a segregated on-road cycleway between Crescent Drive and Wilson's Corner. I made representations to the Local Plan Consultation in 2019 (the now deleted Policy R18) that a right of way to the woodland open space rear of the Community Hospital should be restored up to the rear of the Blood Bank site and a Section 106 Deed secured from Fairview Homes who had acquired the Regional Blood Bank site to improve the woodland open space and access. In the event, this site received planning permission on appeal reference APP/H1515/W/20/3247990. A Section 106 Agreement was made with Fairview as part of the appeal, but instead of directing resources at the open space woodland at Crescent Road the money (£83,000) was used at Courage Playing Fields. Policy R18 has now been deleted but my point about access to the open space has not been addressed. The cycling scheme could run from Shenfield Station via Friars Avenue Park Way, Worrin Road and Glanthams Road to Crescent Road and the woodland open space.

4.4 Shenfield is an area deficient in open space. In connection with the development of the Brentwood Community Hospital on Crescent Drive, the South West Essex Primary Health Care Trust transferred the woodland area comprising 3.7 hectares (9.14 acres) under a Transfer dated the 14th October 2011. The Transfer was made pursuant to a Section 106 Agreement with a commuted sum for land management. The Council covenant not to use the Property transferred other than as woodland open space. The woodland was severely damaged by a storm in October 2013 . Subsequent disclosures by the Land Registry and investigation of the historic title (summarized in the representations I made in 2019) show that annexed to the Council's title, has the benefit of Glanthams Park estate covenants enforceable against other landowners who are also successors in title to plots in the Glanthams Park Estate, but who have enclosed parts of the unadopted area of Glanthams Road making vehicular access to the woodland open space impossible. The Glantham Park Estate covenants are pre-1926. In the High Court case a year ago Bath Rugby Club Limited –v- Greenwood and others [2020] EWHC 2662 (Ch) , dealing with a pre-1926 covenant, the Judge held that *“the covenant is enforceable, by virtue of the doctrine of annexation of the benefit of the covenant”*. This strengthens the legal basis of my 2019 representations

4.5 It would be a patent absurdity to have strategic policies in the Local Plan, which forms a key part of the Council's Policy Framework, that open spaces will be protected, and where necessary enhanced, and that all GBI spaces will be well managed when the legal rights held by the Council as landowner for an easement and enforcement of building scheme covenants over the unadopted part of Glanthams Road which would enable essential access and management of its woodland open space are so neglected as to frustrate the Council's own policy, and potentially consign the access to over 9 acres of open space to unlawful encroachments. The Plan should make clear provision to protect and enhance access for suitable classes of users to such spaces.

4.6 MM39 Affordable Housing. The first criterion in revised Policy HP05-Paragraph D introduced by MM39 is too absolute. It is always possible for dwellings to be acquired by a Registered Social Provider, including the Council , but it may not be practicable for providers to manage especially in the case of a small number and the financial negotiations can also lead to an impasse

4.7 MM69 Community Facilities. The scope of the amended strategic policy 10 for community facilities and services proposed by MM69 is flawed. It is expressed with tautology to be any “provision that provides social recreational and cultural facilities to meet the day to day needs of the community”. It includes any registered Asset of Community Value which have a statutory definition which is slightly different namely:

“a building or other land should be considered an asset of community value if:

- *its actual current use furthers the social wellbeing and interests of the local community, or a use in the recent past has done so; and*
- *that use is not an ancillary one; and*
- *for land in current community use it is realistic to think that there will continue to be a use which furthers social wellbeing and interests, or for land in community use in the recent past it is realistic to think that there will be community use within the next 5 years (in either case, whether or not that use is exactly the same as the present or past); and*
- *it does not fall within one of the statutory exemptions”*

The revised policy is stated, at present, to be read in conjunction with BE05, but MM16 provides that Policy BE05 and supporting text paragraphs 5.53 to 5.56 be deleted, so I assume that there is a formatting error and the reference should be to BE15. However, that cross reference provides little guidance regarding the loss or change of use of a community facility or service. The policy for community facilities and services proposed by MM69 needs to be revised. It may be right and proper to provide that an AVC will be a material consideration in the determination of a planning application but policy guidance as to the weight to be afforded to the social impact value of the loss of the asset or facility in such determination should be included.

More broadly, account should be taken of the impact of the COVID pandemic and national research. The Grimsey report suggests COVID-19 has accelerated a cultural shift around what people want to see from their high streets and town centres, which was underway before the pandemic, such as the desire for experiences over ‘stuff’, and concerns over societal issues like sustainability. As the report observes, the pandemic has therefore “paved the way for a post retail landscape to emerge” (p.4), whereby “we’ve spent an enormous amount of energy over the last decade trying to work out how to keep an outdated model on life-support. It’s time we expended that same energy and commitment on looking to the future” (p. 21). To build back better in the future, the authors subsequently urge us to see our high streets and town centres as being about more than just retail; instead offering ‘community hubs’ which provide “health, education, culture, housing, leisure, art and crafts, along with some shops” (p.4). The Charity Commission has published research on the impact of the Covid pandemic on the charity sector. As a consequence of the pandemic 38% of charities said they had moved services online. This was as high as 63% for charities with income over £500,000, whereas for charities with income under £10,000, it was only 24%.

It is of particular importance in this context that the Local Plan guides decisions to ensure a proper application of the public sector equality duty. Since the beginning of 2020 there have been at least 12 High Court and Court of Appeal decisions in planning litigation that include challenges based on the PSED. It has come to be an increasingly important part of planning decision making. The equality objective in the 2010 Act most relevant to the planning functions of a local authority is the requirement in Section 149(3) to pay particular attention to the need to:

- Remove or minimize disadvantages suffered by persons who share a relevant protected characteristic;
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life

A revised strategic policy should give context to this legal duty in the application of the policy to protect Community Facilities.

Please continue on a separate sheet if necessary

Question 5: Please set out what change(s) you consider necessary to make the **Main Modification and/or supporting document** sound or legally compliant, having regard to the matters that you identified above.

5.1 MM2 para 217 SO2 , after the words “human health” add: “ **The Use of Landscape in Urban Spaces contained in the Essex Design Guide shall apply, and where new flats and 1-and 2-bedroomed dwellings are created, Communal Gardens should provide visual amenity and outdoor space for residents. Also, soft landscaping should be prioritised over areas of hard standing and areas should not be dominated by vehicle parking: , appropriate planning conditions shall secure maintenance. Consideration should be given to including outdoor seating, playing areas and health impact assessments. The definition of Garden Land in Policy NE02 shall apply.”**

5.2MM29 Definition of Garden Land and Other GI: *Delete **Garden Land** Private back gardens, private amenity green space on estates or private communal gardens that are entirely to the rear or within the curtilage of a dwelling or dwellings, as originally designed*
Other GI green walls, green roofs, estate greenspace, etc

Substitute: **Garden Land:** land within the residential curtilage of dwellings, Communal Gardens, and amenity green spaces in residential developments laid out in accordance with planning permissions and conditions

Other GI: Green Walls and Green Roofs as set out in the Essex Design Guide

5.3 Reasons: The interpretation of planning policy is ultimately a matter of law. There is recent Judicial Guidance on the meaning of Garden Land in Urban areas (Dartford Court of Appeal [2017] EWCA Civ 141) and also on Section 55 (2)(d) of the Town and Country Planning Act 1990, : "the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;..." (Sage [2021] EWHC 2665 (Admin))

The amendments I recommend tie the policy wording positively to references in the Essex Design Guide and avoid the possibility of confusion over separate and shared private residential amenity spaces.

5.4 MM33.Amend the first sentence in Paragraph A in NE05 as follows:

All open spaces, including the designated Urban Open Spaces and the Woodland Open Space rear of Brentwood Community Hospital, will be protected and where necessary enhanced with the Rights of Way network also enhanced if necessary to

ensure access for all users to high quality provision and opportunities for sport, play, recreation and exercise within the borough.

5.5. Reasons.

5.5.1 There is an urgent and specific need to restore the public use of, and access to the Woodland Open Space at the rear of the Brentwood Community Hospital, an area deficient in open space. The 9.7 acre open space is not currently designated as an Urban Open Space but should be - the land is held by the Borough Council pursuant to a Section 106 Agreement which also provides for a footpath connecting the open space and Glanthams Road to Crescent Drive. The current initiative for a cycle-way from Crescent Drive to the High Street could be extended and walkers, including dog walkers and cyclists would also benefit along with residents visiting the Community Hospital on foot. The revised wording proposed allows for circular walks and rides around Brentwood's Open Spaces depending on the classes of user.

5.5.2 The Council is a local authority for the purpose to Sections 25-29 Highways Act 1980 and can enhance the Rights of Way network under those statutory powers.

5.5.3 To recapitulate on the bundle of my representations in 2019, a Building Scheme was created in 1904 with estate covenants over the area identified on the plan at Document 1- Worrin Road, York Road, Park Road (renamed Park Way in 1940) Priests Lane Glanthams Road and part of what is now Middleton Road. The Council Woodland Open Space has annexed to its title the benefit of mutual covenants also imposed on (inter alia) land at what is now Glanthams Close and 2 Worrin Road.

5.5.4 The encroachments which block the access to the woodland open space have taken place since 2003. Documents 10 and 11 in the bundle show planning records with a 40 foot right of way preserved at that time. The owners for Number 2 Worrin Road in their planning application represented that there was no right of way but this was incorrect.

5.5.5 The Council may exercise its statutory rights under Section 26 of the Highways Act 1980, rather than enforcing the pre-1926 covenants. Normally the exercise of powers in Section 26 Highways Act 1980 entitles a landowner to compensation but the mutual covenants under the Glanthams Park Estate scheme should disentitled the landowners who have encroached in breach of covenant

5.5.6 It is inimical to the integrity of the Local Plan to promote a policy for the provision and management of open spaces without ensuring access to the spaces for all users either entitled or with a legitimate expectation of access to a neglected area of nearly 10 acres of open space where the landowner is the Borough Council holding the land under Part IX of the Town and Country Planning Act 1990. The amendment I recommend is a positive step to restore public access over illegal encroachments, which current constitute an illegal obstruction, and establish a Borough wide policy with recreational benefits to walkers and cyclists as well as nearby residents.

5.6 Affordable Housing MM39 HP05 Amend Paragraph D as follows:

The Council will only accept off-site provision, or a financial contribution which will secure at least the equivalent amount of accommodation and also acceptable to a Registered Provider, in lieu of on-site provision where it can be robustly demonstrated that on-site provision is not reasonably

possible and that, in the individual case and to the satisfaction of the Council, the objective of creating mixed and balanced communities can be effectively and equally met through either off-site provision or a financial contribution.

Reason: It is particularly difficult in small housing schemes to address the requirement for affordable housing, although in theory always possible. This remains true in theory even if all the Registered Provider reject the opportunity. The Modification I suggest is more practical and makes clear that the financial level of a contribution in lieu is to secure the equivalent amount of accommodation rather than being merely an “appropriate” amount.

5.7 MM69 Policy PC14 Protecting and Enhancing Community Facilities

You will need to say why this change will make the Submission Version of the Local Plan sound or legally compliant. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as accurate as possible.

Paragraph A a and Ac delete “assets” and substitute “facilities”

Paragraph Ae revise to read:

Development proposals that would result in an adverse impact or unnecessary loss of community facilities will not be considered without a social impact report. Such reports shall take account of current guidance from the Equalities and Human Rights Commission. Proposals which would result in the loss of community facilities will not be permitted unless it can be demonstrated that:

- i. there are realistic proposals for re-provision that they will be replaced by alternative and well located facilities that will continue to serve similar and future needs of the neighbourhood and wider community;**
- ii . the loss is part of a plan which requires investment in modern facilities or a community hub**

Revise Paragraph 7.83 to read **“Community facilities and services includes any registered Asset of Community Value and can encompass any services that assist current or future needs and support communities’ health, social and cultural well-being.**

Reasons:

5.8 The revised wording gives the Local Planning Authority the flexibility to respond positively to changes resulting from the Grimsey Report, the Government repose and the impact of the COVID 19 pandemic on the charitable and voluntary sector.

5.9 The content of social impact reports will vary, but the Council will need to fulfill its Public Sector Equality Duty . The Court of Appeal has stressed how the fulfilment of duty depends on the specific context. In *Powell-v- Dacorum Borough Council* [2019] EWCA Civ 24 Lord Justice McCombe at paragraph 44 of the transcript held: *“In my judgment, the previous decisions of the courts on the present subject of the application and working of the PSED, as on all subjects, have to be taken in their*

context. The impact of the PSED is universal in application to the functions of public authorities, but its application will differ from case to case, depending upon the function being exercised and the facts of the case."

5.10 I suggest a broad definition of "Community facilities and services" which incorporates wording from the NPPF, paragraph 8 b).
