

## **Brentwood Local Plan**

### **Response to Schedule of Potential Main Modifications**

Prepared by Strutt & Parker on behalf of S&J Padfield & Partners [ID 6122]

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## **1. Introduction**

- 1.1. This Statement is submitted by Strutt & Parker on behalf of S&J Padfield & Partners (S&J). S&J have a particular interest in Policy E10 of the BLP, which proposes allocation of the land at Codham Hall.
- 1.2. Representations have previously been submitted by Strutt & Parker throughout the preparation of Brentwood Borough Council's (BBC) Local Plan (BLP), including through the Examination process.
- 1.3. Comments are provided on:
  - MM7 (Policy MG05: Developer Contributions);
  - MM10 (Policy MG06: Local Plan Review);
  - MM22 (Policy BE11: Strategic Transport Infrastructure); and
  - MM111 (Policy E10: Codham Hall Farm).
- 1.4. These are considered in turn.

## 2. MM7 – Policy MG05: Developer Contributions

- 2.1. MM7 proposes changes to Policy MG05 (Developer Contributions) that require contributions to infrastructure “*as set in the Infrastructure Delivery Plan...where such contributions are compliant with national policy and the legal tests*”.
- 2.2. ‘Legal tests’ currently include *inter alia* those set out in Regulation 122 of the the Community Infrastructure Levy Regulations 2010 (‘the CIL Regulations’), namely: a planning obligation may only constitute a reason for granting planning permission for the development if it is:
  - (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
- 2.3. Whilst the caveat proposed within MM7, referring to the need to comply with legal tests (i.e. CIL Regulations) is welcomed, the tying of the contributions to the Infrastructure Delivery Plan is considered to be somewhat problematic as:
  - a) we are given to understand the IDP is a live document and subject to change; and
  - b) the IDP is not subject to a level of scrutiny to ensure that the contributions it demands are justified, reasonable and viable, in the same way that a Local Plan or CIL Charging Schedule would be.
- 2.4. We suggest that, rather than expressly refer to the IDP within the policy, it would be appropriate for the IDP to be cited in supporting text as a document that may help inform determination of appropriate, CIL Regulations compliant contributions in the determination of planning applications.
- 2.5. MM7 also proposes introduction of text to the BLP recognising that early delivery of certain strategic and necessary infrastructure will be necessary in advance of all contributions having been collected from developments that will come forward later in the plan period, in order to support the level of growth planned. MM7 suggests it will therefore be necessary to obtain funding from alternative sources and to collect developers’ contributions retrospectively for these projects. We concur with this view.

2.6. MM7 goes on to propose the following policy wording for inclusion in MG05 in relation to the above circumstances:

*“In those instances, the Council and its partners including relevant landowners / developers will consider forward-funding wholly or partly to deliver critical infrastructure items. Therefore, in order to appropriately recover such forward-funding, when planning applications for development which will be enabled by and/or benefit from such infrastructure do come forward, the Council may seek retrospective planning obligation contributions from all relevant development, at the appropriate contribution rate, even if those applications are not made until after the relevant infrastructure has been completed and/or fully or partially funded. Where an item of infrastructure has been forward funded or provided by a relevant landowner/developer, the retrospectively collected planning contributions may be used to reimburse to such landowner/developer”.*

2.7. We consider the Council’s above modification is required to ensure that the BLP will ensure effective delivery of requisite infrastructure, and in a manner that does not entail certain developments being required to make a disproportionate financial contribution towards this. We also consider the proposed modification help ensure the BLP can be considered justified in its approach to the issue of infrastructure contributions.

### **3. MM10 – Policy MG06: Local Plan Review**

- 3.1. We support the proposed commitment to an early review that MM10 entails. We consider that, in principle, the commitment to an early review represents as a pragmatic response to the issue of the BLP failing to include strategic policies that address the minimum 15-year period required by the NPPF.
- 3.2. However, we note that MM10 proposes an early review policy that is focussed on ensuring objectively assessed housing needs are met in full, and that necessary transport infrastructure improvements are delivered to support this. It is silent on the issue of employment land provision.
- 3.3. We consider it is imperative that the Local Plan Review should consider not simply additional housing needs, but also any additional employment land that may be required to support these. Failure to do so would risk an imbalance between housing and employment provision, and the Local Plan review resulting in an unsustainable strategy for growth.
- 3.4. The PPG<sup>1</sup> calls for a range of factors to be considered to forecast employment land needs. One of which is demographically derived assessments of current and future local labour, which will inevitably be influenced by housing needs / supply.
- 3.5. Separately, in the event the Local Plan Review were to identify a need for additional housing (as appears highly likely) it will be necessary again to consider whether there are exceptional circumstances that exist to justify further Green Belt release. In doing so, as per paragraph 141 of the NPPF, it will be necessary to review whether there are suitable brownfield and underutilised land which could contribute to meeting housing needs. This will necessitate a review of employment land needs / supply at that juncture in order to satisfy this requirement.
- 3.6. In short employment and housing needs / supply are inextricably linked and it would be wholly inappropriate and undermine the achievement of sustainable development to review one without the other. Policy MG06 should be modified to include express reference to the need to review employment land provision at the same time as housing needs / supply, as part of the Local Plan Review.

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<sup>1</sup> Paragraph: 027 Reference ID: 2a-027-20190220

## 4. MM22 – Policy BE11: Strategic Transport Infrastructure

- 4.1. MM22 suggests changes to Policy BE11 (Strategic Transport Infrastructure) that would result in a requirement for, in effect, all development within the Borough to make “*reasonable and proportionate*” contributions towards mitigating the cumulative impacts of “*planned and other incremental growth*”.
- 4.2. The proposed wording of MM22 references the need for contributions from developments towards transport infrastructure to be reasonable and proportionate, but does not acknowledge the other tests of a legally-compliant contribution. As such, it could result in a decision-maker inferring proportionate contributions towards highway infrastructure should be required of developments, even if such infrastructure was not directly related to the development proposed and / or was unnecessary to make the development acceptable in planning terms( i.e. even if such a contribution would be contrary to Regulation 122 of the CIL Regulations).
- 4.3. To resolve this issue, MM22 should be subject to further modifications making clear that contributions to transport infrastructure will only be sought where they are directly related to the development proposal in question, and necessary to make it acceptable in planning terms. For example:

*“In order to support and address the cumulative impacts of planned and other incremental growth, allocated development within the Local Plan and any other development proposals shall (where appropriate **and having regard to all applicable legal requirements including Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)**) provide reasonable and proportionate contributions to required mitigation measures to strategic transport infrastructure, including [...]”.*

## 5. MM111 – Policy E10 (Codham Hall Farm)

- 5.1. In relation to MM111's suggestion that policy supports employment development which may comprise offices, light industrial, research and development (within Class E), B2, B8 and other sui generis employment uses, we support this modification. It is considered this modification is necessary to ensure that the policy is effective and respond to the changes to the Use Classes Order that have occurred since submission of the BLP for examination.
- 5.2. In respect of MM111's proposed approach to contributions, we consider the issue here is similar to that which we have addressed in our representation in response to MM22. The policy text should make it clear contributions should only be demanded where necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 5.3. It should also be noted that E10 comprises existing employment uses, and that contributions to infrastructure provision should only be in relation to any additional infrastructure requirements generated by future development of site E10.
- 5.4. MM111 proposes that Policy E10 includes a requirement for "*necessary off-site highway infrastructure improvements as may be reasonably required*" to M25 J28 and J29, and the A127 and B186, in accordance with policies MG05 and BE08.
- 5.5. We consider, however, that it is highly unlikely that any redevelopment of the E10 site would result in the need for a contribution to M25 J28 or to West Horndon Station in order to make development acceptable in planning terms. We do not consider that the proposed reference to these infrastructure items in the policy is justified. Furthermore, there inclusion could raise expectations for future decision-makers that proposals for redevelopment at site E10 will be required to make contributions to such infrastructure items, when in reality the CIL Regulations are likely to prohibit such.
- 5.6. Additionally, it should be recognised that, as per Section 20(7) of the Planning and Compulsory Purchase Act (2004), main modifications to the BLP should *only* be made where they are *necessary* to make the BLP sound. We do not consider reference to the M25 J28 and to West Horndon Station as proposed recipients of contributions from development at site E10 could be considered necessary, given the lack of any evidence to suggest that any development at site E10 could be likely to engender a need to make contributions to their improvement.