



## **Brentwood Local Plan**

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

**Prepared by Strutt & Parker on behalf of St Modwen [ID 5124] and S&J Padfield & Partners [ID 6122]**

**November 2021**

## 1. Introduction

- 1.1. This Statement is submitted by Strutt & Parker on behalf of St Modwen Developments Ltd. (SMDL) and S&J Padfield & Partners (S&J). Represented by Strutt & Parker, both parties have participated throughout plan-making process in respect of the Brentwood Local Plan.
- 1.2. SMDL and S&J have a particular interest in Policy E11 of the BLP, which proposes allocation of the Brentwood Enterprise Park (BEP).
- 1.3. As per our BLP representations and submissions to the Examination, the BLP is considered to be broadly sound. We are generally supportive of the proposed main modifications as set out in the Schedule of Potential Main Modifications, but consider that some further main modifications are nevertheless required to ensure the BLP is sound.
- 1.4. Comments are provided on:
  - MM7 (Policy MG05: Developer Contributions);
  - MM10 (Policy MG06: Local Plan Review);
  - MM22 (Policy BE11: Strategic Transport Infrastructure);
  - MM80 (Floodlighting and Illumination) and
  - MM109 (Policy E11: Brentwood Enterprise Park).
- 1.5. 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 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. the CIL Regulations) is welcomed, the tying of the contributions to the Infrastructure Delivery Plan (IDP) is considered to be somewhat problematic as:
  - a) we understand that the Council intends for the IDP to be a ‘live’ document and therefore subject to change; and
  - b) the IDP is not subject to a level of scrutiny to ensure that the contributions it demands are justified 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 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. As such, we support this element of MM7.

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

- 3.1. 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*”.
- 3.2. As currently proposed, the wording of MM22 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 unnecessary to make the development acceptable in planning terms, i.e. even if such a contribution were not in accordance with Regulation 122 of the CIL Regulations
- 3.3. MM22 should be subject to further modifications making clear that contributions to transport infrastructure will only be sought where they are directly related to 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 [...]”.*

#### **4. MM80 – Policy NE08 (Floodlighting and Illumination)**

- 4.1. Modifications to policy NE08 are proposed to make it clear that external lighting as part of proposed development will be supported provided *inter alia* it does not give rise to unacceptable impacts on night sky, or an unacceptable increase in sky glow. We agree that these modifications are necessary in order to make the BLP sound.
- 4.2. This change is necessary to ensure the policy is not overly restrictive in terms of external lighting. As previously worded, a decision-maker could have inferred that almost any external lighting would have been contrary to policy.
- 4.3. This main modification is justified and ensures the BLP will be effective in bringing forward development that may require external lighting by affording a decision-maker the opportunity to reach a planning judgment based on the circumstances of specific proposals.

## 5. MM109 – Policy E11 (Brentwood Enterprise Park)

5.1. MM109 comprises a number of elements, considered in turn as follows.

### **Proposed uses**

- 5.2. MM109 proposes that the development supported at site E11 comprises employment development principally for offices, light industrial and research and development, B2 and B8 uses, and sui generis employment uses. It also states other ancillary supporting development within classes C1, E and F1 or other sui generis ancillary supporting development may be permitted as a means of supporting these principal employment uses.
- 5.3. We consider the clarification of the uses proposed by MM109 is necessary to ensure the BLP is sound, and the proposed wording ensure this policy is effective, responding to the changes to the Use Classes Order that have occurred since submission of the BLP.

### **Infrastructure contributions**

- 5.4. MM109 proposes modifications to Policy E11 in relation to contributions that might be sought from the E11 development towards infrastructure. Our concerns in respect of this element of MM109 are similar to those set out in this representation in relation to MM22. Specifically, we consider that to ensure the policy is effective, justified, and provides clarity to decision-makers, the policy text should make clear that contributions will only be sought where they are 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.
- 5.5. MM109 proposes specific reference to a number of items of infrastructure that development of the E11 allocation may be required to contribute towards. This includes improvements to M25 J28. There are two concerns in relation to this. Firstly, it should be recognised that at this stage in the plan making process, and as per Sections 20(7B) and (7C) of the Planning and Compulsory Purchase Act 2004, main modifications to the BLP may *only* be made where they are *necessary* to make the BLP sound. We do not consider that lack of express reference to development at site E11 contributing to M25 J28 improvement could be considered to render the BLP unsound. There is no defect in the submitted BLP in this respect that may be cured through main modifications. The Planning and Compulsory Purchase Act 2004 does not permit a modification in such circumstances.

- 5.6. Secondly, there is no evidence to suggest that development of E11 would be unacceptable in planning terms without improvements to the M25 J28. Nor is it clear whether any such contribution could be deemed directly related to development at E11. As such, it is not considered that reference to contributions to improvements to M25 J28 within Policy E11 is justified, and this element of the proposed policy is thus unsound and should be deleted.
- 5.7. MM109 also proposes retaining reference within Policy E11 to contribution towards Early Years Child Care (EYCC) from development at E11. Policy E11 supports employment development and other ancillary uses at the site. No residential development of the site is proposed or supported by proposed policy. Essex County Council's Developer's Guide to Infrastructure Contributions (DGIC) was cited as the source of this requirement. However, the latest DGIC 2020 only requires contributions from residential development, not from employment development. Such an approach is entirely logical – if contributions were sought from both, then this would patently risk 'double-counting' the impact of development on EYCC.
- 5.8. Recent pre-application discussions with Essex County Council in respect of the proposed development of site E11 have confirmed that Essex County Council would not require a contribution to EYCC from employment development of the site.
- 5.9. Policy E11's requirement for contribution towards EYCC from development at E11 is not justified. A demand for such a contribution is not considered capable of confirming to national policy or CIL Regulations on planning obligations. As such, this element of Policy E11 should be deleted in order to make the policy sound.

#### **Site Allocation Boundary and Green Belt Release**

- 5.10. Throughout the BLP Examination, the case has been made to support further release of required land from the Green Belt to ensure the delivery of Policy E11 and wider planned growth. The changes we proposed entailed removal of additional land from the Green Belt to enable development of the following associated with BEP and, in the case of the A127 link road, enable the growth proposed by the BLP as a whole:
1. A127 link road.
  2. B186 access.
  3. Landscaping to the south.



- 5.11. The above three areas were described, as well as the exceptional circumstances which justified their removal from the Green Belt, in submissions to the BLP (see for example our response (Examination Document F119I) to Examination Document F80 Site Level Exceptional Circumstances for Green Belt Release prepared by the Council). This was supported by a Green Belt Assessment produced by Liz Lake Associates and submitted alongside our Matter 3 hearing statement (Examination Document G3P).
- 5.12. In short, the additional land we proposed to be removed from the Green Belt is to accommodate a new link road, (item T24 in the BLP Infrastructure Delivery Plan - one of the identified strategic highways mitigation measures to alleviate traffic flows and enable the delivery of planned growth in the wider borough); access to the BEP from the B186, identified by Essex County Council, the Highway Authority, as the most suitable access; and landscaping enhancements considered important to mitigating the wider Green Belt impacts of the BEP and providing a new, robust Green Belt boundary.
- 5.13. As per Examination Document F89 the Council concurred with these proposed modifications to the extent of land to be release from the Green Belt by the BLP in order to enable effective delivery of the BEP .
- 5.14. The Council's decision to remove this additional land as per Examination Document F89 was entirely justified, given:
- a) the importance of ensuring effective delivery of the BEP (and, in the case of the A127 link road, wider growth proposed by the BLP);
  - b) the lack of harm to the purposes of the Green Belt, and the potential to create a more robust boundary, through this release of additional land having been evidenced in submissions to the Examination; and
  - c) case law (e.g. *Compton*<sup>1</sup>) having confirmed that, provided the circumstances relied upon could rationally be considered to constitute exceptional circumstances which justify the release of land from the Green Belt, then the decision-maker is entitled to reach the conclusion that such changes to the Green Belt can be made through a Local Plan.
- 5.15. We note however that no modifications to the extent of alterations to the Green Belt are proposed in relation to E11 in the Policies Map published alongside the proposed main modifications.

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<sup>1</sup> *Compton PC, Ockham PC & Cranwell v Guildford BC, SSHCLG & Ors* [2019] EWHC 3242 (Admin)

- 5.16. It is recognised that the Policies Map is not defined in statute as a development plan document and so the Examination Inspectors do not have the power to recommend main modifications to it. Rather, the proposed changes will be made to the Policies Map upon adoption by the Council.
- 5.17. Nevertheless, we consider it is important for the extent of the allocation, and the extent of land to be removed from the Green Belt, as shown on the Policies Map to ensure effective delivery of the BLP, including the BEP. This is particularly important in the case of the BEP, given its importance in ensuring employment land needs of the Borough are met.
- 5.18. It is unclear why the Council has changed its position on this matter from that it set out in Examination Document F89, and we request the Council reconsider the proposed approach in respect of this.
- 5.19. As set out above and in previous submissions to the Examination, it is recognised that both provision of link/access roads and additional landscaping could constitute 'not inappropriate' development in the Green Belt, as per paragraph 150 of the NPPF. Given that the BLP still supports the delivery of the BEP, and that the need for the additional highways infrastructure to ensure delivery of this in particular has been made clear, it can readily be inferred that the A127 link road, B186 access, and landscaping to the south are all considered by the Examination Inspectors to be Green Belt compatible development.
- 5.20. However, our concern remains that a future decision-maker could consider these elements of the development do not meet the tests in paragraph 150 of the NPPF, and therefore constitute inappropriate development which should not be permitted in the Green Belt. As such, as currently worded, the BLP fails to provide certainty regarding delivery of this infrastructure to support the BEP and the wider aspirations of the BLP.
- 5.21. We consider the best remedy to this is to remove the additional land from the Green Belt, as noted above and in previous submissions.
- 5.22. However, in the event that the Council is not prepared to make such alterations to the Policies Map, we suggest an alternative approach would be to include additional supporting text within the BLP relating to this matter. Such text could explain that the A127 link road; B186 access; and landscaping to the south are all considered necessary to support the BEP (and in the case of the A127 link road, the wider objectives of the BLP), and to note that they are considered to be Green Belt compatible development as per paragraph 150 of the NPPF. This would assist in providing clarity to a future decision-maker as to how to

approach proposals that incorporated this infrastructure and landscaping on land remaining in the Green Belt.

- 5.23. Our suggested supporting text in this respect and in relation to Policy E11 is as follows, potentially after paragraph 9.206 of the BLP as proposed to be modified:

*“It is envisaged that development of the Brentwood Enterprise will be accompanied by landscape enhancements to the south of the allocation which will help mitigate the landscape impacts of the development, as well as provision of new vehicular access to the south-east of the site via the B186 and a new A127 link road to the north of the A127, all of which will be delivered on land which remains in the Green Belt. It is considered that these landscape enhancements, access and link roads are Green Belt-compatible development, as per paragraph 150 of the NPPF.”*