

Braintree District Council

Local Plan Examination of Section 2

Main Matter 1

- Response Legal Requirements and Overarching Issues relating solely to the policies within BLP Section 2

June 2021

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Legal Requirements

1 Does BLP Section 2 meet all other legal requirements, specifically:

Does the content and timescale for preparation of BLP Section 2 accord with the latest version of the Local Development Scheme?

- 1.1 In terms of timescale, the latest version of the Council's Local Development Scheme ('LDS') was approved at Local Plan Sub-Committee on the 13th May 2021 ([BDC003b](#)). Paragraph 3.27 of the LDS sets out the timetable for the production of the Local Plan which has been updated to include the adoption of the BLP Section 1 which took place in February 2021 and the current estimate for the section 2 examination in July 2021, with adoption in the winter. The LDS has been kept regularly updated both during the production of the Local Plan and since its submission in order to provide an up-to-date picture.
- 1.2 In terms of content, the BLP Section 2 sets out the detailed allocations of land for housing, employment, retail and other major land uses as well as strategic and non-strategic development management policies. When considered together with the BLP Section 1 this achieves the stated purpose of the Local Plan in the LDS to set out strategic and non-strategic allocations, and policies to be used in the determination of planning applications (paragraph 3.8 of the LDS).

Has BLP Section 2 consultation complied with the Statement of Community Involvement and public consultation requirements in the Town and Country Planning (Local Plan) (England) Regulations 2012?

- 1.3 The Council's Statement of Community Involvement ([SDBC007](#)) sets out the consultation requirements for the Local Plan process. Both sections of the Local Plan have been consulted on in the same manner and in accordance with the requirements of the SCI between 2015 and the submission of the Local Plan in October 2017.
- 1.4 It should be noted that during the examination of BLP Section 1 the Inspector concluded in paragraph 28 of [IED011](#) June 2018 that;
- "I find no evidence that the NEAs failed to consult on the Plan in accordance with their Statements of Community Involvement, as required by section 19(3) of the 2004 Act."*
- 1.5 The BLP Section 1 Planning Inspector's final report addresses all matters of compliance relating to the SCI and public consultation requirements at paragraph 26 of the [Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Plan](#), 10 December 2020. And at paragraph 128

the Inspector states that;

“I conclude that the duty to cooperate has been met and that, with the recommended main modifications set out in the Appendix, the North Essex Authorities’ Shared Strategic Section 1 Plan satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.”

Submission documents [SDBDC/006 Consultation Statement](#) - Updated January 2018, and [SDBDC/006a Addendum](#) - October 2019, describe the processes undertaken under Regulations 18, 19 and 20 of the Town and Country Planning (Local Planning) (England) Regulations 2012, as well as the adopted [Statement of Community Involvement \(SCI\), 2013](#). As such, and given the findings of the BLP Section 1 Inspector, the Council considers that it has complied with its SCI, as the legislative consultation requirements.

- 1.6 The Inspector should note that the SCI was updated in 2020, to take into account The Coronavirus Act 2020. When the provisions within this Act were extended to December 2021, the SCI was updated in [February 2021](#) to take this into account. These changes were a temporary change to the way the Council consults and makes documents available for public viewing due to the current pandemic, as well as more permanent changes to reflect the use of more electronic communication with residents and stakeholders.

Has BLP Section 2 been subject to a Sustainability Appraisal (SA) and have the requirements for Strategic Environmental Assessment been met? Is it clear how the SA influenced the final plan and dealt with mitigation measures?

- 1.7 Yes, the BLP Section 2 has been subject to a Sustainability Appraisal (SA), which incorporates a Strategic Environment Assessment (SEA). The [‘Braintree District Publication Draft Local Plan Section 2 – Sustainability Appraisal Report](#) (June 2017)’ (BDC/025/1/2) (hereafter ‘SA report’), along with its appendices (BDC/025/2/2) and [non-technical summary](#) (BDC/024) was submitted with the BLP Section 2.

SEA requirements

- 1.8 The SA has adequately and appropriately assessed the likely environmental, social and economic effects of the Plan in conformity with the requirements of the SEA Regulations (and the SEA Directive). Table 1.1 of the [SA Report](#) (pp10-11) sets out the requirements of the SEA Regulations and where these have been addressed within the report. The assessment has used sustainability objectives appropriate to the district and assessed the policies and reasonable alternatives, where they existed, in sufficient detail to assess the likely significant effects. A clear and consistent methodology, as set out in Chapter 2 of the [SA Report](#), was applied at each stage of plan-making and all reasonable alternatives under consideration at each stage were assessed to the same level of detail.

How the SA influenced the final plan

- 1.9 The BLP Section 2 preparation was an iterative process, with SA undertaken at each relevant stage. The SA influenced the plan by describing and evaluating the likely significant effects on the environment of the plan and reasonable alternatives to inform the Council's decision making. As explained in paragraphs 2.21, 2.22 and 2.25 of the SA Report, the Council took account of the SA findings when deciding and developing preferred site and policy options. The SA was taken into account at decision recommending Local Plan Sub Committee and decision making Full Council meetings for the publication draft Local Plan, and for the Draft Local Plan. A detailed account stating which document went to which committed are in BDC004 Legal Compliance Checklist.
- 1.10 The reasons for selecting or rejecting site options, including both issues raised in the SA and other, non-sustainability considerations, are set out in Appendix 9 of the SA.

Mitigation measures

- 1.11 Chapters 4 to 10 of the SA Report present an assessment of each policy, site allocation, and reasonable alternatives to these on its own merit (although the assessment of site allocation policies highlights where the policy provides mitigation for adverse effects. Chapter 11 of the SA Report presents an assessment of the cumulative effects of the BLP Section 2 as a whole, along with the North Essex Authorities Shared Strategic Part 1 for Local Plans. This assessment sets out how policies within BLP Section 1 are likely to help mitigate many of the negative effects identified in the SA. For example, the cumulative assessment of SA objective 6 recognises that environmental protection policies in the Plan are likely to help mitigate adverse effects on biodiversity and geodiversity identified in relation to site allocations. This section also highlights the importance of the Essex RAMS in mitigating adverse effects on the integrity of European sites. It is considered that mitigation beyond that already included in the Plan would be focused on residual significant negative effects. Significant negative cumulative effects were only identified in relation to SA objective 16 (soil), as it was considered that it is not possible to fully mitigate the negative effects identified.

Have the requirements for appropriate assessment under the Habitats Regulations been met? Have the results of the Habitats Regulations Assessment been carried forward in the PDLP?

- 1.12 Yes, the requirements for appropriate assessment under the Habitats Regulations have been met. The 'HRA Report for Section 2 of the Braintree Publication Draft Local Plan (May 2017)' (BDC027) (hereafter 'HRA Report') was submitted with the BLP and presents the findings of both the screening and appropriate assessment stages of the HRA. When preparing its Local Plan, the Council is required by law to carry out a HRA.
- 1.13 The HRA screening concluded that there was potential for Likely Significant Effects the Colne Estuary SPA/Ramsar, Essex Estuaries SAC, and

Blackwater Estuary SPA/Ramsar as a result of the effect of recreational impacts in-combination with the Tendring District Section 2 Local Plan, Colchester Borough Section 2 Local Plan, and the Shared Strategic Section 1 Local Plan. As such, appropriate assessment was carried out, which concluded that, providing recommendations and mitigation requirements were implemented, there would be no adverse effects on the integrity of any European sites, either alone or in-combination. Natural England agreed with this conclusion (see EB083 of section 1 evidence base).

Carrying forward results of the HRA

- 1.14 The key recommendation made in the HRA report was for a Recreational disturbance Avoidance and Mitigation Strategy (RAMS) to be prepared jointly by the North Essex Authorities to mitigate the effect of recreational pressures on the above European Sites. The Inspector's post-hearing letter to the NEAs for BLP Section 1 (IED/022 paras 54-59) discusses the efficacy of the RAMS mitigation.
- 1.15 At para 7.63 of his letter (IED/022), Inspector Clews concludes: *"providing that a RAMS is prepared by Braintree District Council in partnership with Colchester Borough Council and Tendring District Council in accordance with the principles outlined above, is developed in close consultation with Natural England, and is ready for implementation prior to adoption, the Section 2 of the Braintree Publication Draft Local Plan will not result in adverse effects on the integrity of the Essex Estuaries SAC, Colne Estuary SPA/Ramsar, and Blackwater Estuary SPA/Ramsar either alone, or in-combination with other plans and projects as a result of recreational impacts."*
- 1.16 A RAMs policy, Policy SP2 - Recreational disturbance Avoidance and Mitigation Strategy (RAMS), was added to the Local Plan section 1 which seeks contributions from development toward mitigation measures set out in the RAMS strategy 2018-2038 which has now been completed and adopted.
- 1.17 An SPD has also been adopted on this matter in May 2020, allowing the relevant authorities in Essex to collect contributions from residential dwellings within the Zone of Influence to spend on appropriate mitigation. As such, it is considered that the results of the HRA have been carried forward and this is sufficient to avoid adverse effects on the integrity of any European sites.

Has the preparation of BLP Section 2 complied with the Town and Country Planning (Local Plan) (England) Regulations 2012?

- 1.18 All requirements of the TCPA Regulations 2012 have been met. As set out above and in submission documents SDBDC/006 Consultation Statement - Updated January 2018, and SDBDC/006a Addendum - October 2019.
- 1.19 The Section 1 and Section 2 Plans were prepared and consulted on identically and are 2 parts of the same document. The Planning Inspector's Final Report addressed matters of compliance with the 2012 Regulations and

at paragraph 29 of the December 2020 Report on the Examination of the North Essex Authorities' Shared Strategic Section 1 Plan concludes that:

“The Plan complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations”.

1.20 This conclusion is equally applicable to the BLP section 2.

Does the policies map correctly illustrate geographically the application of policies in the BLP Section 2?

1.21 The Proposals Map (Inset 69) boundary is coterminous with the administrative boundary of Braintree District, and does not contain any proposals or land use policies which impact outside of that boundary. Individual inset maps are provided for many settlements within the District which provide clear and appropriate detail as to where policies within the Section 2 Local Plan would apply. A detailed key is also provided with the maps to show the relevant designations.

1.22 In addition, a separate key diagram has also been produced and is set out as picture 5.1 within the Local Plan. This provides a broad representation of the District and the main growth proposals contained within the Plan and is proposed to be amended to remove references to Garden Communities.

1.23 As a result of suggested main modifications of SDBDC008, the Council has prepared a set of updated inset maps which reflect the modifications, allocations and updated os basemap, should the inspectors wish for these to be made available.

Consistent with National Policy

Does BLP Section 2 accord with national policy for plan making in the NPPF, specifically:

Does BLP Section 2 contribute to the achievement of the three dimensions of sustainable development – economic, social and environmental?

1.24 The Local Plan contains policies to meet the economic, social and environmental aims of the NPPF in that it sets policies for the provision of homes, jobs, and economic development, as well as setting policies for the protection of the environment. Policies are also included for the provision of sports and health facilities as well as healthy living. The policies seek to achieve sustainable development by directing development to the most sustainable parts of the district.

**Has it been positively prepared and is it ‘aspirational but realistic’?
(paragraph 154 of the NPPF)**

- 1.25 The Local Plan has been positively prepared, and is aspirational. In particular, it is significantly more ambitious than the previous Core Strategy (2011) and represents a major uplift in housing and employment provision for the District, as well as ambitious green infrastructure, biodiversity, energy efficiency, broadband, electric charge point, self-build, renewable energy generation, climate change and sustainable travel policies.
- 1.26 It is, at the same time, realistic. It contains policies which seek to provide sufficient development to meet its identified need, and this level of growth is supported by a robust and credible evidence base. As such the proposals within the Plan are considered to be deliverable and therefore realistic.

Is BLP Section 2 consistent with the NPPF in all other respects? Or if not, what is the justification for any inconsistency?

- 1.27 The BLP Section 2 is considered to be fully consistent with the NPPF 2012 (it was submitted in October 2017 and under the transitional arrangements is subject to examination under the 2012 NPPF rather than any subsequent updates). Whilst the Local Plan is being considered under the 2012 NPPF it is also considered that the Plan is consistent, as far as possible, with the subsequent updates of the NPPF.

Are there any policies within BLP Section 2 which are Strategic Policies, and should they be identified as such?

- 1.28 The BLP Section 2 contains a number of policies which the Council considers to be strategic. They are;
- LPP1 – Development Boundaries
 - LPP2 - Location of Employment Land
 - LPP10 – Retailing and Regeneration
 - LPP17 – Housing Provision and Delivery
 - LPP18 – Strategic Growth Location – Land East of Great Notley, South of Braintree
 - LPP19 – Strategic Growth Location – Land East of Broad Road, Braintree
 - LPP20 – Strategic Growth Location – Former Towerlands Park Site, Braintree
 - LPP21 – Strategic Growth Location – North West Braintree
 - LPP22 – Strategic Growth Location – Land at Feering
 - LPP23 – Strategic Growth Location – Wood End Farm, Witham
 - LPP33 – Affordable Housing
 - LPP36 – Gypsy and Travellers and Travelling Showpersons
 - LPP50 – Built and Historic Environment
 - LPP67 – Natural Environment and Green Infrastructure
 - LPP82 – Infrastructure Delivery and Impact Mitigation
- 1.29 Unlike the NPPF 2019, the NPPF 2012 does not require Local Plans to explicitly identify which of its policies are strategic.

Do the policies in BLP Section 2 provide a clear indication of how a decision maker should react to a development proposal?

- 1.30 Yes. Each policy (as amended) in the BLP Section 2 is considered to provide a clear indication of how it should be applied in the determination of planning applications. A more detailed analysis is set out in other matters to consider specific policies but taken as a whole the Council considers that the BLP Section 2 provides a clear and concise direction on how development proposals should be considered.