

Colchester Local Plan Focussed Review – Examination

Inspector's Post Hearing Note 1 – January 2014

1. Introduction

1.1 At the end of the hearings on 8 January 2014, I indicated that I would write to the Council to set out my preliminary conclusions on matters that I found unsound and what further changes should be the subject of consultation which might enable me to make recommendations for modifications to make the Review sound. This is the purpose of this note and I set out below a number of detailed changes to policies and text in the Focussed Review. However, whilst I consider that such changes are worthy of consultation, I am by no means certain that any such combination of detailed changes can create a sound set of policies without a more comprehensive review beyond the scope of the submitted document and this Examination.

1.2 Accordingly, I am also inviting the Council to consult on alternative, more substantial changes, namely the exclusion from the Review of all the Employment and Retail policies in case, in the light of representations received, I conclude that my suggested detailed changes (which still require some clarification by the Council) would not result in a coherent and unambiguous set of policies for the development plan taken as a whole.

1.3 I would remind the Council that it has the option of withdrawing the Focussed Review in its entirety if it considers that the delay, further work and cost does not justify the likely benefit of the outcome. Given the need to consider any further representations and decide how to proceed, I will not be undertaking further reporting following submission of this note to avoid potentially abortive work. If the suggested consultation is pursued, it is unlikely that I will be able to complete the report until late April because of commitments to other Examinations/hearings.

1.4 I have tried to set out in detail the possible changes that might make the Focussed Review sound. The Council should however highlight any other consequential changes that are required. I suggest that the new changes for consultation are printed in a different type or colour to make them stand out from what is already in the Review. In relation to the further clarification required from the Council in relation to the DP5 (see set out in 2.14- 2.19 below) I leave this to the Council to undertake and include in the consultation. It is not my intention to comment further on the merits of any clarification/revised wording provided by the Council in advance of the consultation. However, to ensure that my suggestions have been understood and to avoid anything being unintentionally left out, I would be content to briefly review a draft of the consultation schedule prior to publication to check for omissions, but without commenting on the merits of any additions made by the Council.

1.5 Before completing my report and making recommendations I will take into account the representations received in response to the consultation on further changes. I will not, however, take into account any representations which do not directly relate to the merits of the proposed changes.

1.6 I would like to reiterate what I said in opening at the hearing. The Focussed Review process has proved more challenging to most parties than might have been anticipated and revealed unexpected complexity. I have been endeavouring

to limit the scope, cost and duration of the Examination consistent with the intended limited scope of the Review. I have suggested the alternative for consultation regarding retail and employment with this objective in mind.

1.7 It would be helpful if the Council could keep me updated with how it intends to proceed and the timescale for consultation.

2. Employment policies

2.1 With respect to employment provision, there is an overlap between policies CE1, CE3 and DP5 and with further policies not in the Review. The variety of different policies dealing essentially with the same topic does not make it straightforward to assess whether the proposed changes are sound or how to remedy any unsoundness. I have sought to work within the existing multiplicity of policies, given the intended limited scope of the Review, but a simpler and more coherent approach should be considered as part of the future overall plan review. If, however, following consultation on the detailed changes suggested below I were to conclude that a coherent set of sound changes cannot be made, then all the employment policies would have to be removed from the Focussed Review as set out in the alternative option for consultation.

2.2 At the hearing, much attention was paid to how NPPF paragraph 22 should be interpreted. This paragraph supports the regular review of land allocations. This has not been done as part of this Focused Review. Accordingly, any revised policy wording regarding employment sites can only be a short term expedient and the policies will need to be reviewed again as part of the overall review of the plan. At that stage, the allocations being made/retained will only be those that are really needed and the focus will be on making development happen rather than trying to cover various possibilities for planned development not taking place. Given that the allocations have not been reviewed, it is not straightforward to apply the wording of the NPPF to the employment policies.

2.3 I consider that the currently proposed combination of changes to CE1, CE3 and DP5 do not create a justified and coherent set of policies in the development plan as a whole to promote economic growth consistent with aim of the NPPF. In particular, the proposed wording to DP5 would hinder rather than help the flexibility sought. The repetition of similar points (but in slightly different ways) across the 3 policies creates confusion and is unnecessary. Notwithstanding the changes I have suggested below, I remain concerned as to whether there will be sufficient clarity as to intended appropriate uses in specific employment zones as a result of any remaining inconsistency between DP5 (as revised) and the unchanged allocation policies. This matter is the one most likely to cause me to conclude that I cannot achieve a sound set of changes and that all the employment policies will have to be removed from the Focussed Review.

2.4 There may be several different ways to try and achieve a sound outcome via detailed changes, but I invite the Council to consult on the following changes, which minimise repetition.

2.5 Policy CE1, 4th paragraph:

The Council will ~~seek to protect and enhance~~ support employment throughout the Borough ~~and will take a flexible approach to proposals contributing to economic growth and job creation~~. Development that will increase employment capacity in accessible locations will be encouraged. ~~Whilst Proposals for development that will result in a loss of employment capacity will not normally be supported, need to be supported by evidence~~

~~that there is no reasonable prospect of a site being used for the allocated employment use.~~

2.6 This policy primarily expresses an overarching aim to support employment and economic growth. It does not need to deal with more detailed development management issues.

2.7 Policy CE3 last paragraph:

Pending the review of employment allocations in the forthcoming review of the Local Plan required by ~~in accordance with~~ the National Planning Policy Framework, where there is no reasonable prospect of a site being used for an allocated employment use, applications for appropriate alternative commercial* uses in Employment Zones will be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.*

(changes subject to previous consultation as MAJ8 in CD23.)*

2.8 In any final recommendation relating to this paragraph I would incorporate change MAJ8 already consulted on. I consider that the wording resulting from the above further change and MAJ8 would be sound given that it is essentially repeating the 2nd part of NPPF, paragraph 22. It rightly does not stipulate that this is the only way that alternative uses would be allowed (it is not the only "gateway" to change), nor does it specifically require the applicant to demonstrate the "no reasonable prospect test", since the Council should ensure that it is well informed about local market conditions. I see this as a useful temporary wording to enable one element of a flexible approach to be adopted pending the full review. Because policy CE3 is primarily concerned with allocations (employment zones) it is appropriate that this policy includes the "no reasonable prospect" test to relating to such allocations.

2.9 With regard to DP5, I am now satisfied that, subject to further changes, it can be retained to complement the other employment policies. The list of appropriate employment uses in the first part of the policy should be retained. The fact that they are not proposed to be changed in the Review is because the policy was already flexible and prior to the NPPF had taken a fairly comprehensive approach to what was acceptable within employment zones.

2.10 My understanding is that the proposed deletion of the 2 middle paragraphs of the policy is intended to undo the application of the more restrictive list of uses applying to some of the site specific allocations and allow the full list of uses in DP5 to apply. This is what is signalled in the *Non Technical Summary* of the Focussed Review (p3) but was not actually done: - *The relevant revised policies will note that the new policies supersede those aspects of Site Allocations policies NGA3 and STA3 in so far as they relate to retail and employment....*

2.11 It would have been far preferable for the Council to have followed through the consequences of the change to DP5 by making changes to NGA3 and STA3 (or any other allocations, if appropriate) as part of the Focussed Review. But consistent with my approach not to let this Examination become protracted by including additional policies within the Review, I am not suggesting changes to those allocation policies now. If they were to be brought within the scope of the review I would have to consider the soundness of all the policy requirements and the allocation generally and such considerations would clearly embrace consideration of the overall spatial strategy. However, the lack of clarity that may persist if the Focussed Review is adopted is currently a concern.

2.12 At the hearing, the Council suggested some wording for the missing note (referred to above) as follows:

As a result of changes made to Policy DP5 through the Focussed Review process (2014) there are consequential inconsistencies in site allocations policies including STA3 and NGA3. When considering planning applications the updated policy position as set out in DP5 will apply.

2.13 I remain unclear as to what the Council originally intended or now intends.

2.14 Is it the list of appropriate employment uses (a) to (f) that is intended to apply to the site allocations, replacing any more specific list contained within those allocations?

2.15 Is the change intended to apply only to STA3 and NGA3 (as originally signalled in the Non-Technical Summary) or other allocations as the Council's wording now suggests? The suggested wording is unacceptably ambiguous. Either the list in DP5 is intended now to apply wherever there is a designated employment zone or only to named allocations. Council to clarify and explain. Some new supporting text may be required in this regard.

2.16 How does the list (a) – (f) in DP5 now relate to the distinctions between primary and secondary land uses for employment zones in Table CE1b?

2.17 Does the proposed new text on page 22 remain correct? Does any other text need deleting?

2.18 The Council should set out a revised wording to be included in policy DP5 after the list a) - f). It should be worded positively and unambiguously eg:

Following changes to this policy in the Focussed Review (2014) the above list (applies to all employment zones - if that is the Council's intention) (and) supersedes the more restrictive list of uses suitable for employment zones in policies ??? (...and supersedes Table CE1b for employment zones - if that also is the Council's intention).

2.19 Whilst STA3 and NGA3 contain specific lists of uses similar, but not identical to that in DP5, other locations contain a variety of wording to guide or restrict the type and scope of different types of employment. The Council's suggested wording would leave it unclear as to whether these details are intended to be superseded. From a cursory review, I see that a number of the allocation policies, including NGA3 and STA3, seek to preclude or limit new town centre uses, such as offices, which the general application of DP5 would allow. I am concerned that this would raise possible conflict with national policy relating to centres and the sequential test and/or an unpicking of the existing spatial strategy, which is not part of the Focussed Review. The Council needs to be clear as to its intentions.

2.20 The third part of DP5 which needs changing are the circumstances where a change from an employment use will be allowed. The current list (i) – (iv) can be read as all having to apply. The "no reasonable prospect" test which the Focussed Review introduces from the NPPF is not justified as an overarching "gateway" test, but is only one circumstance in its own right. The Council accepted that criterion (v) relating to *maritime character* was not required because it is covered by existing policy DP23. Its retention here adds unnecessary complexity to the wording. I consider that (i)- (iv) are alternatives, but that (iii) and (iv) can be combined. I therefore suggest the following:

Sites and premises currently used or allocated for employment purposes will be safeguarded for appropriate employment uses ~~unless there is no reasonable prospect of a site being used for that purpose~~. Any use that may have an adverse effect on employment generation will only ~~Alternative uses will be permitted unless~~ where the Local Planning Authority is satisfied, ~~as appropriate~~, that:

(i) The supply, availability and variety of alternative employment land is sufficient to meet Borough and local needs;
or

(ii) ~~There is no reasonable prospect of the site being used for employment purposes~~ Evidence can be provided to demonstrate that no suitable and viable employment use can be found, or is likely to be found in the foreseeable future;
or

(iii) There are substantial benefits (eg environmental or economic) which outweigh the loss of employment or employment potential from the site.

~~(iii) There would be substantial planning benefit in permitting an alternative use, for example in removing a use which creates residential amenity problems such as noise or odours;~~

~~(iv) There are demonstrable economic benefits to the area that would result from allowing redevelopment, for example by facilitating the retention of a business in the area through funding a new site or premises; and~~

~~(v) The traditional maritime character of the coastal areas would not be adversely affected.~~

2.21 The final part of DP5 is a largely an existing paragraph concerning existing businesses on sites where redevelopment takes place and contributions to alternative employment and training. New text is added encouraging training schemes. These requirements or encouragement could be read as applying to all the circumstances where alternative employment is permitted, but that would not be justified. New scenario (iii) suggested above would allow the balancing of a range of benefits against any harm and these do not need setting out in the policy or text. Whilst the new text on training only seeks to "encourage", rather than require, it sits uncomfortably with the rest of DP5. I have not seen the evidence that there is a local need for training schemes. I therefore consider that all of the last paragraph of DP5 should be deleted.

2.22 With regards to the supporting text, I consider that the 4th paragraph (beginning ~~Exceptionally~~ *An alternative...*) should all be deleted. Marketing should not be a requirement for justifying an alternative use as it may cause delay - although applicants may want to use evidence of past marketing to show lack of demand. The paragraph also puts all the onus on the applicant to come up with the evidence, but pending a review of employment allocations, the Council needs to be alert to changing local circumstances.

2.23 In the 3rd paragraph, the word *alternatively* should be added before the last sentence to make clear this is an alternative, not part of one exception. Thus: *Alternatively* where the local need for employment....

2.24 The deletion of text on page 29 of the Focussed Review (as submitted) deletes a reference to Appendix 3 of the Development Policies DPD which sets out measures to mitigate the loss of employment land (but which was not itself deleted). The Council accepted that it should be deleted and my suggested deletion of the final paragraph of policy DP5 would reinforce the fact that Appendix 3 was no longer relevant. Accordingly, its deletion should be listed in the further changes.

3. Retail policies

3.1 As I have previously indicated and confirmed at the hearing, the classification and hierarchy of centres set out in Table CE1a relates to the overall spatial strategy of the plan which is not a matter that should be included in this Examination given the limited scope of this Focussed Review. Accordingly, it is not appropriate for me to consider the planning merits of the hierarchy/classification. Conversely, it is not appropriate for me to endorse this hierarchy, bearing in mind that the hierarchy appears at odds with the NPPF.

3.2 At the hearing, I suggested that I would want to exclude from the Focussed Review Table CE1a to avoid any uncertainty in the future as to the scope of this Examination. Bearing in mind that consultation has already taken place on the removal of the only clearly flagged change to Table CE1a (the proposed Northern Gateway) I could recommend the removal of the table without further consultation. However, I recognise that there are a number of references to the hierarchy of centres and the different roles of centres within various parts of the supporting text within the Focussed Review. It is impractical for me to try and unpick these parts and exclude them from the review. Accordingly, I consider that additional text needs to be added to make the position clear (under Table CE1a if retained or top of page 20,) as follows:

The Examination of the Focussed Review (November 2013 - April 2014) did not consider the consistency with national policy or local justification for the hierarchy and classification of centres set out in Table CE1a and referred to elsewhere in other text in this review.

Text top of page 20

3.3 I confirm my previous indication (Agenda 3.8 - 3.10) that the existing text and proposed changes in the submitted Review are unsound. Thus delete all of the existing and proposed text as set out in the paragraph at the top of page 20. Include new replacement text as follows:

In accordance with the National Planning Policy Framework, centres will be the preferred location for retail, office, leisure and entertainment uses. The sequential approach will be applied. Only if suitable sites are not available should edge of centre and then out of centre sites be considered.

(To be helpful, the consultation schedule should note: *This proposed change is slightly different from the wording of change MAJ14 in CD23 previously the subject of consultation in November 2013*).

CE2b District Centres

3.4 I confirm my previous indication (Agenda 3.14 - 3.15) that the proposed changes in the submitted Review are unsound. These unsound changes would be undone by MAJ15 and MAJ16 (the latter also removes the current requirement to meet local needs and not compete with the Town Centre which is also not justified). I consider that these changes would make policy CE2b sound. I am not persuaded that I should resist making these changes and exclude CE2b from

the Focussed Review simply because I am not reviewing the merits of the hierarchy/classification. However, if I conclude that all the detailed changes to retail policies would result in unacceptable ambiguity such that retail policies have to be excluded from the Review, then the change would not be made.

CE2c Local Centres

3.5 The submitted Review deletes the reference to safeguarding local shops from this policy. Other references to local shops within the material included in the Focussed Review were not originally deleted, but were proposed to be deleted as changes MAJ4 and 5. To avoid any interference with Table CE1a, I am not minded to make the deletion in MAJ4. DP7 was excluded from the Review, but a change to delete references to local shops in that policy was proposed in MAJ3. I am not intending to bring DP7 into the Focussed Review because other changes might be needed to that policy.

3.6 Taking a very pragmatic approach, I consider that the submitted change to CE2c could be made in isolation (if retail generally is retained as part of the review) and therefore I am not requiring consultation on the removal of CE2c from the Focussed Review.

Glossary

3.7 The Glossary of the Focussed Review introduces a definition of *Urban Gateways* which reflects its status as shown in Table CE1a. Given what I have said above, I could not support this addition as it would be reinforcement of what I am proposing not to examine. It needs to be shown as deleted in the consultation.

4. Alternative changes for consultation

4.1 I am conscious that pursuing the changes suggested above is not without difficulty in achieving a clear and coherent set of amended policies within the context of the overall development plan, particularly in relation to how changes to DP5 might supersede parts of other policies and my exclusion of the merits of the centres hierarchy from the Examination.

4.2 Accordingly, I wish the Council to include in the consultation an alternative option which would remove any ambiguity as to what parts of the employment and retail policies were considered and endorsed as part of the Focussed Review and the relationship with policies not included in the review. The reason for including this alternative now within the present consultation is to avoid the possibility of requiring a yet further round of consultation.

4.3 Consultation on this option would enable me to recommend the removal from the review of all of the changes relating to employment and retail policies if in the light of representations I conclude that the detailed changes I have suggested would still result in unacceptable ambiguity or inconsistency when reading the development plan as a whole, and outweigh the benefit of making some changes to reflect the NPPF.

4.4 Because retail and employment policies are linked in policy CE1 it seems to me that they have to stand or fall together:

Remove from the Focussed Review all employment/retail/centres policies, tables and text - deleting pages 17 - 33 inclusive. NB The policies/text/tables within these pages would remain as part of the development plan as currently set out in the adopted Core Strategy and Development Policies DPDs.

It is preferable to use the above wording rather than show all these policies and text crossed out because that might imply that they are being deleted from the development plan which is not the intention.

5. Other policies

Policy H4 Affordable Housing.

5.1 The Council has already consulted on some changes. As indicated at the hearing, the only other change I consider necessary for soundness is the deletion of the words *plot size, scale and* from the last sentence of the new text relating to rural exception sites. These words are unnecessarily prescriptive and would not assist the proper implementation of the policy. With such exception sites, a proportion of market housing would provide a subsidy to facilitate the provision of affordable housing. Flexibility with regards to the size and type of any such market housing is appropriate to ensure that viability can be secured in the most effective way.

DP13 Dwelling Alterations, Extensions and Replacement Dwellings ER1 Energy resources, waste and recycling

5.2 At the hearing, the Council confirmed that it no longer wished to pursue any changes to the wording of the policies as adopted and wished that they should be excluded from the Focussed Review. The removal of these policies from the Focused Review needs to be included in the consultation. I suggest wording along the following lines:

DP13: Remove the policy and all the related text on pages 48, 49, 50 and 51 from the submitted Focussed Review. (NB This policy would remain part of the development plan as currently set out in the adopted Development Policies DPD.)

ER1 Remove the policy and all the related text on pages 56, 57, and 58 from the submitted Focussed Review. (NB This policy would remain part of the development plan as currently set out in the adopted Core Strategy DPD.)

5.3 With removal of the Council's support and in the absence of evidence to clearly justify the specific wording proposed in the Review, I would be minded to recommend their removal from the Focussed Review as the Council now wish, because the changes would not have been justified.

5.4 This note covers only those matters I am suggesting should be the subject of further consultation. It does not deal with matters where I consider that no further change is required or where the possible changes have already been consulted on in CD23.

**Simon Emerson
INSPECTOR
13 January 2014**