

COLCHESER LOCAL PLAN FOCUSED REVIEW EXAMINATION
STATEMENT ON EMPLOYMENT POLICIES ON BEHALF OF THE
CHURCHMANOR ESTATES COMPANY PLC

Changes to Policies CE1, CE3 and DP5 and the Purposes of the NPPF's Paragraph 22

1. There is a fundamental issue here. The NPPF's paragraph 22 provides advice on two distinct planning matters. This first part relates to plan review, i.e. in that *"reviewing"* land allocations, LPAs should avoid giving continued protection where there is *"no reasonable prospect"* of the allocated use coming forward.¹ That cannot be a development management test. It does not sit with the second planning purpose, i.e. taking decisions on planning applications:
 - *"on their merits"*
 - having *"regard to market signals"*, and of
 - *"the relative need for different land uses to support sustainable communities"*.
2. The first part certainly cannot sit with the approach the Council identifies from the NPPF with its support for *"an expanded list for a wider range of employment uses in the Employment Zones"* beyond the 'B' Use Class. In addition, it could not be consistent with the largely, unchanged, Explanation that *"where the local need for employment land can be met elsewhere, alternative uses could be considered favourably"* (within the context of other policies in the LDF). Moreover, the *"ample capacity"* of the Strategic Employment Zones *"to accommodate projected business growth during the plan period"*, made clear in the second paragraph of Policy CE3's text, provides persuasive evidence that the situation in Colchester does not justify any special circumstances for departing from national policy.
3. The proposed application of that Plan review wording to new policy text is therefore inconsistent with national guidance and inconsistent with the Council's own position and thus not justified nor effective.
4. The proposed wording used in Policy CE1, i.e. *"need to be supported by evidence that there is no reasonable prospect of a site being used for the allocated employment use"*, the proposed wording used in Policy CE3, i.e. *"where there is no reasonable prospect of a site being used for an allocated employment use"*, and the proposed wording used in Policy DP5, i.e. *"unless there is no reasonable prospect of a site being used for that purpose"*, all therefore need to be deleted.

Policy DP5 and Lists of 'Appropriate Uses'

5. Proposed changes to Policy DP5 are explained in large part by the proposed amendment to the Explanation to the policy, *"Table CE1b and Policy CE3 ... set out the Council's approach to appropriate land uses within the employment zones. The 'B' Class has traditionally encompassed the majority of uses*

¹ It is part of the paragraph 161, Plan-making task of *"reappraisal of the suitability of previously allocated land"*.

considered to constitute employment uses in planning terms, but the NPPF supports an expanded list to increase flexibility for a wider range of employment uses in the Employment Zones”.

6. This is to replace text explaining that the lists of currently appropriate uses was to *“provide clarity on the associated and ancillary employment uses”*.
7. Thus DP5 proposes the deletion of the policy text in its existing second paragraph referring to *“specific policies setting out appropriate employment uses on strategic sites within the growth areas”* and that these are found in the Site Allocations DPD (and see paragraph 3.12 of the SA).²
8. The list of *“Appropriate employment uses”* in the first paragraph of DP5 must therefore be deleted as they would otherwise suggest limitations to the potential flexibility introduced by the NPPF. The Appropriate (Employment Zone) land uses in Table CE1b can remain since these define only the appropriate uses within the allocation. But the Explanatory text in the final two sentences of Policy CE1 needs deletion and replacement with *“Development Policy DP5 provides the approach to assessing applications for other uses in Employment Zones”*.
9. It is a case of the policy needing to catch up with its Explanation.

Policy DP5 and its Five ‘Indicators’

10. In terms of the five indicators (a) to (f), they can only be treated as such, i.e. ‘indicators’. Paragraph 22 of the NPPF requires *“applications for alternative uses ... (to) be treated on their merits”*. There cannot in that context be a ‘gateway’ test. Indicator (ii) thus falls away because of the NPPF’s approach. Indicators (i), (iii) and (iv) partly reflect the NPPF approach of merits, market signals and relative needs to support sustainable communities. But they are not phrased appropriately i.e. they require *“substantial”* or *“demonstrable”* benefits. The use of examples in (iii) and (iv) is inappropriate within the policy text and could be transferred to the Explanation.
11. Other than indicator (v) on which I do not have a view but suspect it may duplicate policy elsewhere, indicators (i), (iii) and (iv) poorly reflect the approach in the NPPF. The introductory sentence is not consistent with a sensible and pragmatic interpretation of paragraph 22, nor is indicator (ii).
12. However, rather than having no text or referring generally to the NPPF, the policy should state, *“Applications for alternative uses of land or buildings should be treated on their merits having regard to market signals, the relative need for the alternative use and the benefits arising”*.

² There might need to be a specific cross-reference added to relevant Site Allocation policies advising of the change to Policy DP5.

Policy DP5 and Other Requirements

13. We have concerns relating to the final paragraph of Policy DP5 and to additional suggested “*marketing*” requirements that would remain at paragraph 4.4 of the Explanation.
14. The future of any displaced business is addressed, in planning terms, through the assessment of whether “*the supply, availability and variety of alternative employment land (and premises)*” (or “*market signals*”) is sufficient to meet Borough and local needs. It cannot be an additional issue.
15. Making contributions towards training schemes, providing alternative employment land or other similar considerations will only arise where the relevant tests have been met but planning permission is otherwise to be refused. It is inappropriate to provide a ‘wish list’ outside of this context. The policy text is neither justified nor consistent with national policy.
16. The Explanation refers to ‘marketing’ as a tool to justify decision making. However, with an appropriate evidence base on the supply and take up of land and premises across the various B Class sectors, which has informed plan-making (see NPPF paragraph 161) and which is regularly updated through Monitoring and other Reports, there is no reason to defer decisions to a future date. That would be directly at odds with the purpose of planning, reflected in the first Core Planning Principle at paragraph 17 of the NPPF, i.e. “*plans ... should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency*”. In this way, “*development which is sustainable can be approved without delay*” (paragraph 15).
17. Finally, the Council introduced the limiting, and non planning defined term, “*commercial*” into the proposed change to Policy CE3. They propose through MAJ8 to delete it. This is supported. “*Commercial*” is not a term defined anywhere in planning legislation.³ In our representations to Policy CE1 we raised this matter. The Focused Review provides a Glossary of terms. It includes for the first time a definition for “*Urban Gateway*” but the Council has not drawn attention to this being an addition. It includes the phrase “*new commercial development*”. (In our response to retail policies, we raise issue about the position of such locations in a hierarchy of centres). The reference to “*commercial*” development can be traced to paragraph 4.4 of the Focused Review, i.e. the Core Strategy - Reasons for Proposed Changes, although nowhere in the Core Strategy’s reference to Urban Gateways is “*commercial development*” justified (i.e. see Explanation to Policy CE1 and within Policy CE2a). The ‘Urban Gateway’ text in the Glossary should be removed or redrafted deleting reference to commercial development.

Policy DP5 as Redrafted

18. The NPPF’s approach here is not to set a prescriptive list of “*appropriate uses*” and certainly not to limit them only to commercial uses. Thus the first paragraph

³ Although it is mentioned once in the NPPF at paragraph 23 (sixth bullet point) and appears to indicate uses distinct from retail, leisure, office and tourism.

needs to be deleted in addition to the Council's proposed deletion of the second and third paragraphs. The fourth paragraph should be redrafted as set out at my paragraph 12. above. The fifth paragraph should be deleted. The policy can then be more appropriately titled 'Alternative Use of Employment Land and Existing Buildings'.

19. The first three paragraphs of the Explanation could then reads as follows:

~~Table CE1b and Policy CE3 in the Core Strategy sets out the Council's approach to appropriate land uses within the employment zones. The 'B' Use Class has traditionally encompassed the majority of uses considered to constitute employment uses in planning terms, but the NPPF supports an expanded list is required to provide clarity on the associated and ancillary to increases in flexibility for a wider range of employment uses in the Employment Zones subject to relevant assessment, set forth in the Core Strategy Centres and Employment hierarchy. Hotels, offices, and assembly and leisure are noted as potentially secondary land uses within employment zones.~~

The ~~uses listed approach~~ in DP5 ~~are also is~~ likely to be appropriate for other sites and premises lawfully used for employment purposes, subject to their impact on residential amenity and other relevant policies in the LDF. New large-scale office development will be directed towards the Town Centre in accordance with the Core Strategy. Employment development proposals within the countryside will also need to have regard to the provisions of Policy DP9, Employment Uses in the Countryside (and DP17 Accessibility and Access).

The loss of employment land, whether in existing employment use or proposed for employment development within the Site Allocations DPD, could affect the LDF's ability to achieve its employment objectives. The Core Strategy establishes the scale and general location of land for employment purposes and states that as a general principle such land should be safeguarded. ~~The NPPF, however, has introduced a provision that planning policies-decisions should avoid the long term protection of sites allocated for employment use if the sites are not being so used if market signals and the relative need for an alternative use supports sustainable local communities. Further detail is however required as it may be that Local circumstances, reflecting a lack of viability of the existing operation, may give rise to proposals to find an alternative use.~~ Where the local need for employment land can be met elsewhere, it may be that alternative uses could therefore be considered favourably (within the context of other policies in the LDF).

20. The fourth paragraph (and Appendix 3 to this DPD) would be deleted together with the fifth (proposed for deletion by the Council). The final paragraph could remain as proposed set to be amended by the Council.

Policy DP5 and Consequential Change to Policy CE3

21. The Council's change to Policy CE3 at MAJ8, needs adjustment to reflect our above submissions, i.e. deletion of text from "where" to "use" and deletion of "appropriate" since the word adds no certainty to actual outcomes and the act of granting permission itself would determine whether the use is "appropriate".
22. The first full paragraph on page 22 of the Focused Review needs consequential amendment, e.g. the second sentence would now refer to 'how alternative uses would be assessed' and the word "commercial" deleted at the start of the third sentence.

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