

Tollgate Partnership Limited

Colchester Local Plan Focussed Review Examination

Hearing Statement

Scope of the Focussed Review / Employment Policies / Retail Policies

December 2013

TOLLGATE PARTNERSHIP LIMITED
COLCHESTER LOCAL PLAN FOCUSED REVIEW EXAMINATION
HEARING STATEMENT

Project Ref:	20638/A5	20638/A5
Status:	Draft	Final
Issue/Rev:	01	02
Date:	04 December 2013	09 December 2013
Prepared by:	Peter Twemlow	Peter Twemlow
Checked by:	Paul Newton	Paul Newton

Barton Willmore LLP
7 Soho Square
London
W1D 3QB

Tel: 020 7446 6888
Fax: 020 7446 6889

Ref: 20638/A5/PT/PN/cc
Date: 09 December 2013

E-mail: peter.twemlow@bartonwillmore.co.uk

COPYRIGHT

The contents of this document must not be copied or reproduced in whole or in part without the written consent of the Barton Willmore LLP.

All Barton Willmore stationery is produced using recycled or FSC paper and vegetable oil based inks.

CONTENTS	PAGE
1.0 INTRODUCTION	1
2.0 TOLLGATE PARTNERSHIP LIMITED'S CASE	2
3.0 EXAMINATION ISSUE 1: SCOPE OF THE FOCUSSED REVIEW	3
4.0 EXAMINATION ISSUE 2: EMPLOYMENT POLICIES	7
5.0 EXAMINATION ISSUE 3: RETAIL POLICIES	10
6.0 CONCLUSIONS AND RECOMMENDATIONS	14

APPENDICES

1. TPL Representation to LPFR Issues & Options Draft (29th April 2013).
2. TPL Representation to LPFR Submission Draft (9th September 2013).
3. TPL Representation to LPFR Modifications Consultation (9th December 2013).

1.0 INTRODUCTION

- 1.1 This Statement has been prepared on behalf of Tollgate Partnership Limited (“TPL”).
- 1.2 TPL is an important stakeholder in Colchester with substantial land holdings in the town, in particular in the wider Stanway area on the western edge of Colchester. TPL are a family business that have, over the past 25 years, been responsible for the delivery of considerable commercial investment in this part of Colchester including the development of much of Tollgate Urban District Centre and the Tollgate Business Park.
- 1.3 TPL will continue to perform an important role within Tollgate and the wider future development and expansion of the Stanway Growth Area. As a result, TPL has a significant interest in the appropriate formulation of planning policy through the Development Plan process, and specifically the Local Plan Focussed Review (“LPFR”). It is important that in guiding future investment decisions, the relevant planning policy is clear, consistent and unambiguous; in line with paragraph 154 of the National Planning Policy Framework (“NPPF”).
- 1.4 For the purpose of this Statement, the ‘Local Plan’ comprises the Core Strategy (adopted December 2008); Development Policies DPD (October 2010); and the Site Allocations DPD (October 2010).
- 1.5 TPL has made representations to the LPFR on three occasions; the Issues and Options draft (29th April 2013), the Submission draft (9th September 2013), and the Modifications Consultation (9th December 2013). Copies of these are attached at **Appendix 1, 2 and 3** of this Statement respectively.
- 1.6 In line with the Inspector’s guidance, this Statement is confined to the issues raised in the original representations and those raised by the Inspector in his Notes dated 8th and 20th November 2013.
- 1.7 As participants in the Hearing we reserve the right to provide further comments on the other issues raised by the Inspector as necessary.

2.0 TOLLGATE PARTNERSHIP LIMITED'S CASE

2.1 TPL's case is relatively simple.

2.2 Firstly, they believe that there should be an immediate full review of the Local Plan rather than the LPFR. TPL believe that the approach adopted by CBC is unsound.

2.3 Second, and notwithstanding the unsoundness of the LPFR, the proposed changes to the individual employment and retail policies are not consistent with national policy as set out in the NPPF.

2.4 The objections are outlined in Sections 3, 4 and 5 of this Statement with recommended next steps and revisions to the LPFR provided at Section 6.

3.0 EXAMINATION ISSUE 1: SCOPE OF THE FOCUSED REVIEW

3.1 TPL's case in relation to the scope of the LPFR is outlined below with reference made to their previous representations and to the specific questions identified by the Inspector in his note dated 20th November 2013.

Background

3.2 TPL have made it clear from the outset via their representations, that a full review of the Local Plan is required. They have consistently challenged the approach that has been taken by CBC in reviewing a limited selection of policies.

3.3 TPL believe that there are a number of policies in the Local Plan that are not consistent with the NPPF. As a result, the delay in these policies being reviewed is not in accordance with the thrust of the NPPF and the requirement for Local Plans (and policies therein) to be consistent with it. Instead, CBC has chosen to consider only *"those policies that can be readily amended"* (Paragraph 1.4 of the Draft Submission LPFR).

3.4 Whilst CBC has increased the number of policies under review throughout the LPFR process, this does not go far enough in ensuring that all policies of the Local Plan will be consistent with the NPPF.

3.5 Whilst, the Inspector's Preliminary Comments, dated 8th November 2013, note that *"a full review now would mean the abandonment of the current focussed review and thus delay the implementation of some appropriate changes in response to the NPPF"* (paragraph 2.3) is factually correct, it does not make the process Sound. The NPPF is clear when full and partial reviews should be undertaken and it was made clear at the outset by TPL that a full review was necessary. The time that has subsequently elapsed in CBC pursuing the LPFR rather than a full review of the Local Plan has therefore been lost. As a result, TPL maintain that the approach to undertaking a review 'in part' is not supported in these circumstances by the NPPF (paragraph 153) and therefore maintain their opposition to this approach, as being Unsound.

Local Plan Approach

3.6 The NPPF sets out the requirements for Local Planning Authorities in preparing Local Plans. This is built on the requirement that it is *"highly desirable that local planning*

authorities should have an up-to-date plan in place" (paragraph 12) and that the planning system should be *"be genuinely plan-led"* (paragraph 17). Local Plans should be consistent with the NPPF and in order to achieve this *"can be reviewed in whole or in part to respond flexibly to changing circumstances"* (paragraph 153). During the examination of Local Plans, consideration should be given to a Plan's 'Soundness' and whether the plan has been Positively Prepared, is Justified, is Effective and Consistent with National Policy (paragraph 182).

- 3.7 The key test in this instance relates to the LPFR's consistency with national policy and whether the approach to undertake a partial review of the LPFR is consistent with guidance set out in the NPPF.

The Reason for Reviewing Local Plans

- 3.8 Paragraph 213 of the NPPF is clear that Local Plans may need to be revised to take into account the policies in the NPPF and that this process *"should be progressed as quickly as possible, either through a partial review or by preparing a new plan"*. TPL accept that there is a need to review the Local Plan and make subsequent revisions where necessary, however they consider that the NPPF does not support the selection criteria and process adopted by CBC in terms of the policies to review at Stage 1 of the LPFR and which to leave for Stage 2.

- 3.9 The intention of a Local Plan review (either partial or in full) under paragraph 213 is to ensure that the whole Plan and the individual policies within it are consistent with the NPPF. To therefore review only policies that can be 'easily' amended is fundamentally flawed. Indeed, there is nothing in paragraphs 153 and 213 that would point to such an approach. As we have set out in our representations we believe that there remain a number of policies that are not consistent with the NPPF or indeed the Council's updated evidence base documents.

The Age of the Local Plan

- 3.10 In the background work supporting the LPFR process and as set out at paragraph 1.3 of the Issues & Options draft, CBC claim that only a *"limited review"* is required as a full set of policy documents have only recently been adopted. Paragraphs 153 and 213 of the NPPF does not look to the age of Local Plan, as a reason for a review, rather, a 'change of circumstances' (paragraph 153) or consistency with the NPPF (paragraph 213). It stands that the LPFR approach is not consistent with national policy insofar as

it neglects to review a number of key policies that conflict with the NPPF, albeit in relatively recently adopted DPDs.

- 3.11 Notwithstanding the above comments, the DPDs that comprise the Local Plan are not considered to having 'only recently been adopted' (as asserted at paragraph 1.3 of the Issues & Options consultation draft). The Core Strategy was adopted in 2008, and the Development Policies and Site Allocations DPDs adopted in 2010.
- 3.12 It is therefore likely that under the two stage approach adopted by CBC in the LPFR, there will be policies within the statutory development plan that would remain inconsistent with the NPPF and the updated evidence base (such as the Retail and Town Centre Uses Study (NLP; March 2013) for at least a further 3 years. This is not consistent with paragraph 213 of the NPPF.
- 3.13 CBC's approach to progressing a partial review cannot be 'justified' as required by the NPPF (and is not in consistent with national policy (as required by paragraph 182 of the NPPF).
- 3.14 Paragraph 1.3 of the Proposed Submission LPFR (which has not subsequently been amended) is clear that this 'change' is the publication of the NPPF. It therefore stands that the LPFR must include those policies and sections of the Local Plan that need to be reviewed as a result of the NPPF's publication.
- 3.15 In addition, reviewing individual policies of the Local Plan carries the risk of there remaining an inconsistent and contradictory Development Plan. CBC's approach to which policies to review is informed entirely by which policies can easily be reviewed and amended at this time. What has not been considered is whether the policies that are currently under review will have implications on the policies left unchanged until a full review (Stage 2) can be completed. We refer to some specific issues in Sections 4 and 5 of this Statement, and reiterate that this approach is not considered to be Sound.
- 3.16 On these grounds, CBC's approach to the LPFR is not considered to be Sound. A full review of the Local Plan should have been undertaken.

Ensuring an Efficient and Effective Local Plan Review

- 3.17 Finally and in summary, the NPPF requires local planning authorities to take forward "*efficient and effective reviews*" of their Local Plans (paragraph 217). By undertaking this two stage LPFR process, CBC is embarking on two extensive series of consultation

publications and two examinations. Although this Stage 1 review will result in an 'easy win' in terms of some policies being reviewed, amended and adopted, a number of policies will remain as they are and for longer as the progress of Stage 2 is predicated on the timing and success of the Stage 1 review. This approach is therefore not considered to be efficient in terms of the overall Local Plan review goals.

- 3.18 Regarding the effectiveness of the current LPFR approach, it is expected to bring increased uncertainty (as related policies are both reviewed and not reviewed) and, as is explored in Sections 4 and 5 of this Statement, policies with clear inconsistencies with the NPPF are left for future review. The thrust of the NPPF is to endorse Local Plans and facilitate a *"practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency"* (Core Planning Principle 1; paragraph 17). TPL remain concerned by the inconsistencies that will remain between the Development Plan and the NPPF as a result of the LPFR and the subsequent issues that this will have on their own development proposals and others' coming forward in Colchester. This reinforces that CBC's approach to the LPFR is not Sound and that the focus, in order to ensure an efficient and effective review, should be on undertaking a full review of the Local Plan at the earliest possible opportunity.

Response to Inspectors Questions

- 3.19 We summarise our response to the Inspectors questions, insofar as they relate to TPL's case below within the wider context set out above.

Any further comments on the appropriateness of this approach [not to undertake a full review]?

- 3.20 We note CBC's proposed modifications (MAJ1 and MAJ2) and whilst we welcome the increased clarification that these provide, we reiterate that the wider approach is fundamentally flawed, for the reasons set out above. Although the NPPF does allow for the partial review of Local Plans, this is not considered to be a Sound approach in this instance where a number of non-conforming policies are omitted from the review, even though they are clearly inconsistent with the NPPF and are closely related to policies that are being reviewed.

4.0 EXAMINATION ISSUE 2: EMPLOYMENT POLICIES

4.1 TPL's case in relation to the Employment Policies identified for review is set out below. This Case builds on representations submitted by TPL to earlier draft LPFR documents and refers directly to the Inspector's questions raised in his note of 20th November 2013.

Background

4.2 Notwithstanding TPL's view, set out in Section 3, that a full review of the Local Plan is required, they have responded to proposed changes to employment policies in the Local Plan in previous representations during the LPFR process.

4.3 Policy CE1 is in two parts relating to employment and retail issues. The latter is discussed in Section 5 of this Statement. In terms of it as an employment policy, it seeks to protect existing and allocated employment land. TPL supported the increased flexibility added to the policy through the LPFR process, in particular the support for other non B-class employment uses and those that contribute to economic growth and job creation. This is considered to be consistent with NPPF paragraph 22.

4.4 TPL do however question how Policy CE1 can be reviewed and adopted if a key part of it, relates to a fundamentally flawed retail hierarchy, which is not being reviewed as part of the LPFR. This is discussed further in Section 5 of this Statement, and also reiterates TPL's concerns that the partial review approach is not appropriate, and importantly, not Sound.

4.5 Policy CE3 relates to the role of Employment Zones and appropriate land uses therein. TPL supports the changes that have been made previously and the recent modification that proposes the wording 'appropriate alternative uses' (MAJ8). This is considered to be consistent with NPPF paragraph 22 (and Policy CE1 as amended). TPL also support the clarification that is provided by the proposed entry of 'Economic Development' in the Glossary of terms (MIN13).

4.6 Policy DP5 is along the same lines as Policy CE3 and TPL similarly support the proposed changes which increase the flexibility of the policy and provide consistency with the NPPF and other LPFR policies. The Inspector has sought clarification on the circumstances where alternative uses will be permitted (i – v). We consider that whilst the policy wording is not necessarily inconsistent with the NPPF, clarity is required in

line with the Inspector's questions. At this stage we reserve the right to comment on any suggested rewording until such time as the publication of CBC's Pre-Hearing Statement. In terms of the requirements for contributions being made to alternative employment and for training to be provided, TPL consider this to be inconsistent with NPPF, paragraph 22 and should be deleted, along with references to Appendix 3, in order to make the policy Sound.

Response to Inspectors Questions

4.7 We set out below, our response to the Inspectors questions, insofar as they relate to TPL's case.

i) Do the proposed changes relating to employment policies ensure that the plan enables economic growth and development in a sustainable manner consistent with the NPPF?

4.8 TPL consider that the proposed changes ensure that this is the case and that these are supportive of and consistent with the core principles of the NPPF.

ii) Do the proposed changes result in policies which are consistent with each other and any relevant unchanged policies in the development plan?

4.9 The proposed changes to the employment element of Policy CE1 and Policy CE3 are considered to be consistent with each other and importantly NPPF, paragraph 22. Subject to clarification and rewording, Policy DP5 is also considered to be consistent. Notwithstanding, TPL's fundamental position on the need for the LPFR to encompass a full review of the Local Plan in order to be considered Sound, they feel that these policies are generally consistent with the other relevant unchanged policies in the Local Plan.

4.10 TPL reiterate that Policy CE1 lends support to the Centres Hierarchy at Table CE1a of the Local Plan. As set out in their representations and then further in Section 5 of this Statement, TPL consider that this hierarchy is fundamentally flawed. This aspect of the Policy is not being considered in the Stage 1 LPFR and therefore it is technically not consistent with other policies, the NPPF nor is it Sound.

iii) Are the policies clearly expressed to be effective?

- 4.11 Insofar as these policies support economic growth and development and they reflect NPPF, paragraph 22, they are considered to be effective. TPL consider that Policy DP5 is still restrictive and cannot be justified against the NPPF in terms of its effectiveness, due to a lack of clarity on their intention and the restriction on promoting non-employment uses that can contribute to economic growth and development.

5.0 EXAMINATION ISSUE 3: RETAIL POLICIES

5.1 TPL's case in relation to the identified retail policies is set out below. This case builds on representations submitted by TPL to earlier draft LPFR documents and refers directly to the Inspector's questions raised in his note of 20th November 2013.

Background and TPL Position

5.2 Notwithstanding TPL's view, set out in Section 3, that the process of this LPFR is flawed and that a full review of the Local Plan is required, they have responded to the proposed changes to retail policies in the Local Plan.

5.3 Table CE1a relates to CBC's Retail Centres Hierarchy. TPL strongly object to this, in particular the continued identification of 'Edge of Centre Locations' as a 'Centre Type'. This is not consistent with the requirements of paragraph 23 of the NPPF or the definition of 'Town Centre' or 'Edge of Centre' in the glossary at Annex 3 of the NPPF. Any (minor) additions that CBC has made have not addressed this fundamental flaw in this policy. As a result, this policy is considered to be Unsound due to a patent departure from the NPPF.

5.4 The Inspector recognises the Centres Hierarchy as "*an integral element of the spatial strategy*" (paragraph 5.1 of the Inspector's Questions note, 20th November 2013), stating that any change in it will have implications on other matters which are not addressed in the Stage 1 LPFR. We disagree with the subsequent conclusion that as a result Table CE1a is not considered within this review, reiterating the shortcomings of this approach to undertake a partial review of the Local Plan and that this will ultimately lead to further delay (and confusion) with this matter directly and the other matters that are implicated by any proposed change.

5.5 It is therefore imperative, in our view, that the Centres Hierarchy is considered at the Examination and as part of the LPFR in order that the principle of the term 'Edge of Centre' as a Centre Type be dismissed and that Policy CE1 (which reinforces the existing hierarchy) be amended to take this position into account.

5.6 In light of TPL's view of Table CE1a, the proposed inclusion (and now suggested exclusion) of Northern Gateway as an 'Edge of Centre' site is considered to be a non-issue. Fundamentally, TPL consider the inclusion of any of these sites as Centres to be fundamentally flawed. If considered at the Examination, we suggest that the Northern

Gateway site be excluded, along with other Edge of Centre sites. We are not aware that CBC has undertaken a sequential approach to inform the identification of these sites (as required by paragraph 23 of the NPPF).

- 5.7 Policy CE2b relates specifically to District Centres. As TPL have stated in their representations to the LPFR, they object to the lack of support that this lends to development within Urban District Centres. TPL identified three fundamental flaws with the Pre-Submission LPFR, namely that; a retail impact assessment was required for retail schemes above a particular size in Urban District Centres; that 'local need' is identified; and that Urban District Centre proposals do not compete with Colchester Town Centre. As a result, TPL concluded that Policy CE2b was flawed and was not Sound by virtue of it being inconsistent with national policy.
- 5.8 Following the Inspector's Preliminary Comments, Policy CE2b has been amended to take these comments into consideration. These changes are welcomed by TPL who would now suggest that reference to the NPPF (paragraphs 24 and 26) is included to ensure consistency with national policy.

Response to Inspectors Questions

- 5.8 We set out below our response to the Inspectors questions, insofar as they relate to TPL's case.

i) Any comments on this approach [to not review and/or amend the retail hierarchy]?

- 5.9 As stated above, TPL have strong reservations that CBC's general approach to the LPFR is Sound. Although TPL agree, in principle, that reviewing the retail hierarchy is an integral issue and cannot be effectively and consistently done without reviewing a number of other policies, it cannot be overlooked completely at this Examination. This is due to the flawed classification of 'Edge of Centre' as a 'Centre Type'. As stated above, Table CE1a and the Centres Hierarchy is endorsed through Policy CE1, which is being reviewed as part of the Stage 1 LPFR.

ii) Is the approach proposed to local thresholds (applying within some centres and seeking to avoid competition with Colchester town centre) justified as an exception to the NPPF by local circumstances or evidence? Would the deletion at MAJ16 in CD23 make CE2 consistent with the NPPF?

- 5.10 The NPPF supports setting local thresholds for undertaking impact assessment, but only in terms of proposals that are not located in Town Centres (NPPF definition, so inclusive of District Centres). The deletions at MAJ16 do make this consistent with NPPF, paragraph 26.

iii) Should I be excluding any detailed consideration of these changes [to edge of centre definition] since they relate to the hierarchy of centres?

- 5.11 As stressed by TPL, the general approach to the LPFR is not considered to be Sound as a number of policies being reviewed at Stage 1 are linked to other policies that are not currently under review, and vice versa. Where the NPPF is irrefutably clear (as is the case with the definition of 'Edge of Centre'), changes should be made and noted at this stage of the LPFR.

iv) The Focussed Review treats retail the same as other town centre uses and all are required to be within 300m of the town centre core, whereas the NPPF allows non-retail town centre uses to be within 300m of the town centre boundary. Is the Focussed Review more or less flexible than the NPPF and if so is this justified?

- 5.12 Without any evidence of local circumstances dictating otherwise, TPL feel that the NPPF definition should be used to avoid inconsistency and maintain the flexibility that is intended to be afforded to Main Town Centre Uses.

v) The Focussed Review maintains the existing policy that such edge of centre locations are to be preferred to locations in the Urban Gateways and Urban District Centres. Is this locally justified?

- 5.13 TPL strongly maintains that the approach taken with regard to the Centres Hierarchy is fundamentally flawed. The NPPF is clear on the definition of a Town Centre (including District Centres), Edge of Centre and the role of the retail hierarchy. To include Edge of Centre as a Centre Type is not Sound and this should be considered as part of the Stage 1 LPFR and changes to this Policy made.

vi) Would the possible change MAJ14 in CD23 make this paragraph sound? Should it say town centres or simply centres?

- 5.14 TPL are firmly of the view that MAJ14 does not make this paragraph Sound. This is not consistent with national policy insofar as there are two clear areas of conflict. Firstly, Main Town Centre Uses should be located in Town Centres (including District Centres)

and not just 'the Town Centre' as is proposed. Secondly, NPPF paragraph 24 looks to Edge and Out of Centre sites together where no sites are available in Town Centres. Again, CBC's wording gives unprecedented support to sites on the edge of Colchester Town Centre above development within other defined centres, an approach that is not consistent with national policy.

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 From the case outlined in Section 2 and the response provided to the Inspector's issues and questions in Sections 3, 4 and 5, we have identified that the LPFR cannot be considered Sound in the context of the guidance provided in the NPPF. This relates to the approach taken to the partial review as well as individual policies in the Local Plan.

6.2 Whilst the LPFR is considered to be currently Unsound as a whole, we recommend that some changes could be made in order to make the following policies and LPFR Sound:

- That the complete Local Plan, including all policies in the Core Strategy and the Development Policies DPD and the Site Allocations DPD, is considered for review.
- That clarity is required regarding Policy DP5 and the circumstances where alternative uses will be permitted.
- That Policy DP5 is amended to delete the reference that requirements for contributions being made to alternative employment and for training be provided.
- That Policy CE1 is amended to remove 'Edge of Centre and other Accessible Locations' from the centres hierarchy as this is not consistent with the definition of 'Town Centres' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF.
- That the supporting text to Policy CE1 is revised to correctly apply the sequential approach in the consideration of sites within Urban District Centres to be consistent with the NPPF (paragraph 24).
- That Policy CE2b is amended to be consistent with paragraphs 26 and 27 of the NPPF. This includes treating retail proposals within Urban District Centres consistent with their 'in centre' location.

6.3 The changes we recommend are considered to be justified, effective and consistent with the NPPF.

APPENDIX 1

TPL REPRESENTATION TO LPFR ISSUES & OPTIONS DRAFT (29 APRIL 2013)

20638/A3/PT

29th April 2013

**COLCHESTER LOCAL PLAN FOCUSED REVIEW: ISSUES AND OPTIONS CONSULTATION
(MARCH 2013)**
REPRESENTATIONS BY TOLLGATE PARTNERSHIP LIMITED

BACKGROUND

1. We act on behalf of Tollgate Partnership Limited ("TPL") and have been instructed to submit representations in relation to the Colchester Local Plan Focused Review ("Local Plan") Issues and Options Consultation (March 2013).
2. TPL is an important stakeholder in Colchester, and in particular within the wider Stanway area. TPL have been responsible for the delivery of considerable commercial investment in the west of Colchester, including the development of much of Tollgate Urban District Centre and the Tollgate Business Park.
3. TPL will continue to perform an important role within Tollgate and the wider future expansion of the Stanway Growth Area.
4. This representation highlights our client's key areas of concern with the current Local Plan consultation document.
5. As the Local Plan consultation represents the effective revision in part or as a whole of Colchester Borough Council's ("CBC") Development Plan, our comments are made in accordance with the guidance set out in Paragraph 182 of NPPF which describes the 'tests' for examining Local Plans. Paragraph 182 identifies that Plans are to be assessed as to whether they have been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. To be considered sound, the NPPF states that a Local Plan should be: Positively prepared; Justified; Effective; and, most importantly in this instance, consistent with national policy.
6. Our client seeks to ensure that the Local Plan is progressed as sound in order to comply with national planning policy. The following comments are set against this background and the Local Plan's performance against the soundness tests as set out in the NPPF. We have reviewed the Local Plan consultation document as well as the 'Sustainability Appraisal: Scoping Report', dated March 2013.



REPRESENTATION

7. We are aware that this document represents a review of CBC's existing Development Plan to ensure its compliance and consistency with the NPPF. At paragraph 1.3 of the Local Plan we note that you consider that only a *"limited review"* of the existing Development Plan Documents is required as CBC have only recently adopted a 'full set' of policy documents. The age or completeness of a Development Plan is not described in paragraph 213 of the NPPF as a reason to justify only a 'partial review'. On this basis, we consider that a full review of CBC's Development Plan is most appropriate.
8. Paragraph 1.5 of the Local Plan asks which policies in the adopted Core Strategy (December 2008) and Development Policies DPD (October 2010) require change or deletion and whether the Focused Review consultation has overlooked any of these. We highlight that the Site Allocations DPD (December 2010) as a whole has not been considered necessary for review as it is stated that this will be dealt with as part of a separate exercise, following the Local Plan review (paragraph 1.4). There are a number of key policies in the Site Allocations DPD that are not considered to be consistent with the NPPF and these should be reviewed at this stage to ascertain whether deletions or amendments are necessary and in order to ensure its Soundness. Alternatively, it would be correct to assume that, as per paragraph 215 of the NPPF, weight is only given to Site Allocations DPD policies *"according to their degree of consistency"* with the NPPF. This should be made clear.
9. Turning to specific policies and notwithstanding the above comments and our consideration that a complete review of the Development Plan is required to ensure the Soundness of the Local Plan as it progresses, we highlight the following key policies that we consider need to be assessed as part of future iterations of the Local Plan. At this stage we are only establishing those policies that we consider need to be reviewed and potentially deleted or added to, in order to ensure consistency with the NPPF. We reserve the right to make more detailed representations as part of future Local Plan consultations.
10. We agree with the identification of Development Policies DPD **Policy DP5** (Appropriate Employment Uses and Protection of Employment Land and Existing Businesses). In particular, this requires review in light of NPPF paragraph 22 and to avoid the long term protection of sites allocated for employment use, where there is *"no reasonable prospect"* of that use coming forward. We do however note that Core Strategy **Policy CE3** (Employment Zones) needs to be reviewed in future Local Plan iterations, as do the employment policies of the Site Allocations DPD (namely **Policy SA STA3**).
11. The second key policy area that TPL consider to require review, and which has been overlooked completely in the short list of identified policies to be reviewed, are those that relate to retailing and 'town centre uses'. The NPPF establishes clear guidance relating to these uses (paragraphs 23 to 27 and also 150 – 158 in terms of plan-making) and we consider it prudent to assess these policies in relation to this. On this basis, we note that Core Strategy **Policies CE1** and **CE2** (including parts **CE2a**, **CE2b** and **CE2c**), Development Policies DPD **Policies DP6** and **DP7** and Site Allocations DPD **Policies SA TC1** and **SA STA3** should be reviewed.
12. Critically, Core Strategy **Policy CE1** identifies 'Edge of Centre Locations' as a 'Centre Type' within the defined retail hierarchy. This is not consistent with the requirements of paragraph 23 of the NPPF or the definition of 'Town Centre' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF.
13. On the basis that in order for the emerging Local Plan to be justified against the evidence base or consistent with national policy, and to comply with the tests of soundness as set out in the NPPF (paragraph 182), we recommend that the following changes are considered as the Local Plan progresses.

Recommended Changes to the Local Plan Focused Review: Issues and Options Consultation

14. For the reasons set out above, we propose the following changes:

- That the complete Development Plan, including the Core Strategy, Development Policies DPD and Site Allocations DPD, is considered for review.
- That all employment use policies are considered as part of this review and any amendments/deletions considered as part of future reviews to ensure consistency with the NPPF.
- That all retail / town centre uses policies are considered as part of this review and any amendments/deletions considered as part of future reviews to ensure consistency with the NPPF.

15. As explained above, TPL reserve the right to make further 'recommended changes' as the Local Plan Focused Review is progressed as part of future public consultation exercises.

BARTON WILLMORE LLP, 29th April 2013

APPENDIX 2

TPL REPRESENTATION TO
LPFR SUBMISSION DRAFT
(9 SEPTEMBER 2013)

20638/A3/PT/PN

9th September 2013

**COLCHESTER LOCAL PLAN FOCUSED REVIEW: DRAFT SUBMISSION CONSULTATION
(AUGUST 2013)
REPRESENTATIONS BY TOLLGATE PARTNERSHIP LIMITED**

BACKGROUND

1. We act on behalf of Tollgate Partnership Limited ("TPL") and have been instructed to submit representations in relation to the Colchester Local Plan Focused Review ("Local Plan") Draft Submission Consultation (August 2013).
2. This representation follows our earlier representation to the Issues and Options Consultation draft, dated 29th April 2013.
3. As explained in our previous representation, TPL is an important stakeholder in Colchester, and in particular within the wider Stanway area. TPL have been responsible for the delivery of considerable commercial investment in the west of Colchester, including the development of much of the Tollgate Urban District Centre, Tollgate Business Park and its surrounding major road and drainage infrastructure. It was also highlighted that TPL will continue to perform an important role within Tollgate and the wider future expansion of the Stanway Growth Area.
4. This current representation responds to the revised Draft Submission version of the Local Plan Focused Review, setting out our client's continued areas of concern with the current Local Plan consultation document.
5. We reiterate the introductory text submitted alongside our previous representation, that our comments are made in accordance with the guidance set out in Paragraph 182 of the NPPF which describes the 'tests' for examining Local Plans. Paragraph 182 identifies that Plans are to be assessed as to whether they have been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. To be considered sound, the NPPF states that a Local Plan should be: Positively prepared; Justified; Effective; and, most importantly in this instance, consistent with national policy.
6. Our client seeks to ensure that the Local Plan is progressed as sound in order to comply with national planning policy. The following comments are set against this background and the Local Plan's performance against the soundness tests as set out in the NPPF.

REPRESENTATION

7. As emphasised in our previous representation on behalf of TPL, dated 29th April 2013, we maintain the view that a full review of Colchester Borough Development Plan should be undertaken immediately and not deferred to a later date. This should include a review of the three adopted Development Plan Documents (DPDs), namely the Core Strategy, Development Policies DPD and Site Allocations DPD. Whilst we acknowledge that more of the policies in these documents are now being reviewed as part of Stage 1 of the focused review, we question the exclusion of the Site Allocations DPD and key policies in the other DPDs from this process.
8. Paragraph 1.4 of the Draft Submission Local Plan states that this current Stage 1 review seeks to consider and revise *“those policies that can be readily amended”*. Whilst, paragraph 213 of the NPPF does allow a partial review and for this to be progressed *“as quickly as possible”*, there is nothing that would justify this on the basis of how straightforward policies are to amend.
9. The primary requirement for the Local Plan review is to ensure the consistency of Colchester Borough Council's Development Plan with the NPPF. As explained in our April 2013 representation, there are a number of key policies in the Site Allocations DPD that are not considered to be consistent with the NPPF and these should be reviewed to ascertain whether deletions or amendments are necessary and in order to ensure its Soundness. Whereas paragraph 1.7 of the Local Plan review states that Site Allocations Policy SA STA3 will be superseded by any proposed changes in the review process, there is no provision for other policies in this DPD, including SA TC1. It should be made clear therefore as to the weight afforded to those policies that are not being reviewed (referring to paragraph 215 of the NPPF). The same can be said of excluded policies in the reviewed DPDs, namely DP6 and DP7, that we referred to in our April 2013 representation.
10. Considering specific policies reviewed within the draft Local Plan and notwithstanding the above comments and our consideration that a complete review of the Development Plan is required to ensure the Soundness of the Local Plan as it progresses, we make the following comments.

Policy CE1 (Centres and Employment Classification and Hierarchy)

11. TPL generally support the increased flexibility added to Policy CE1. They do however continue to **object** to the centres classification and hierarchy at Table CE1a. As highlighted in our previous representations, Policy CE1 / Table CE1a continue to identify 'Edge of Centre Locations' as a 'Centre Type' within the defined retail hierarchy. This is not consistent with the requirements of paragraph 23 of the NPPF or the definition of 'Town Centre' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF. Although the current draft Local Plan expands this to 'Edge of Centre and other Accessible Locations' this still does not comply with the NPPF 'Centre Type' definition.
12. The supporting text then wrongly applies the sequential approach (NPPF paragraph 24), effectively treating sites within Urban District Centres as edge or out of centre locations.

13. This is clearly not consistent with national policy, in terms of adopting the 'Town Centre first' approach (NPPF paragraph 24) and as a result does not comply with the tests of soundness as set out in the NPPF (paragraph 182).

Policy CE2b (District Centres)

14. TPL **object** to Policy CE2b and are concerned by the lack of support it lends to development within the Urban District Centres and critically its inconsistency with the NPPF.
15. Policy CE2b states that *"new retail proposals over 2,500 sq.m in Urban District Centres should be supported by evidence that they meet the identified local needs and do not compete with the Town Centre"*. The first criticism with this is that it applies the floorspace threshold of 2,500 sq.m identified in the NPPF (paragraph 26) for development *"outside of town centres"*. As per the definition at Annex 2, this includes centres defined in the retail hierarchy, in this case Urban District Centres. As a result, development within the Urban District Centre, regardless of whether it exceeds a defined threshold, do not require any such assessment to be undertaken. This represents a misinterpretation of NPPF paragraph 26 and is therefore not consistent with national policy.
16. Notwithstanding the above point, Policy CE2b stresses that retail proposals in Urban District Centres must be supported by evidence demonstrating that they *"meet identified local needs..."*. The demonstration of capacity or need is no longer a requirement in a development management context. Instead, any planning application for proposed new retail floorspace (not within a defined retail centre) will need to demonstrate compliance with paragraphs 24 and 26 of the NPPF, relating to the application of the sequential test and requirement for an impact assessment.
17. The final criticism with draft Policy CE2b, and again notwithstanding the earlier points, is that this states that evidence will need to be provided in support of new retail proposals that demonstrates that these *"do not compete with the Town Centre"*. Whilst the NPPF does require an assessment of impact to be undertaken (for development not within a defined retail centre), the test is not whether 'it will compete', but whether this competition will have a *"significant adverse impact"* on defined centres (NPPF paragraph 27).
18. Policy CE2b is therefore not consistent with national policy and as a result does not comply with the tests of soundness as set out in the NPPF (paragraph 182).

Policy CE3 (Employment Zones) and Policy DP5 (Appropriate Employment Uses and Protection of Employment Land and Existing Businesses)

19. TPL **support** the amendments to Policies CE3 and DP5. In particular, TPL support the increased flexibility afforded to the development of allocated employment sites for other uses where there is no reasonable prospect of these sites being developed for employment uses (in accordance with NPPF paragraph 22). TPL suggest that this is supported with clarification of the uses that are appropriate in allocated employment sites and constitute 'economic development' as per the definition set out in the NPPF (Annex 2). This includes uses *"within the B Use Classes, public and community uses and main town centre uses"*

(but excluding housing development)".

20. On the basis that in order for the emerging Local Plan to be consistent with national policy, we recommend that the following changes are considered as the Local Plan progresses.

Recommended Changes to the Local Plan Focused Review: Issues and Options Consultation

21. For the reasons set out above, we propose the following changes:

- That the complete Development Plan, including all policies in the Core Strategy and the Development Policies DPD and the Site Allocations DPD, is considered for review.
- That Policy CE1 is amended to remove 'Edge of Centre and other Accessible Locations' from the centres hierarchy as this is not consistent with the definition of 'Town Centres' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF.
- That the supporting text to Policy CE1 is revised to correctly apply the sequential approach in the consideration of sites within Urban District Centres to be consistent with the NPPF (paragraph 24).
- That Policy CE2b is amended to be consistent with paragraphs 26 and 27 of the NPPF. This includes treating retail proposals within Urban District Centres consistent with their 'in centre' location.
- That the requirement to provide evidence that retail proposals "*meet identified local needs*" and that *they "do not compete with the Town Centre"* are removed. This is to ensure consistency with the NPPF.
- That a list of uses that are appropriate in allocated employment sites is provided, consistent with the NPPF definition of 'economic development'.

22. As explained above and in our previous representation, TPL reserve the right to make further 'recommended changes' as the Local Plan Focused Review is progressed as part of future public consultation exercises.

BARTON WILLMORE LLP, 9th September 2013

APPENDIX 3

TPL REPRESENTATION TO LPFR MODIFICATIONS CONSULTATION (9 DECEMBER 2013)

20638/A3/PT/PN

9th December 2013

COLCHESTER LOCAL PLAN FOCUSED REVIEW: MODIFICATIONS CONSULTATION
(NOVEMBER 2013)
REPRESENTATIONS BY TOLLGATE PARTNERSHIP LIMITED

BACKGROUND

1. We act on behalf of Tollgate Partnership Limited ("TPL") and have been instructed to submit representations in relation to the Colchester Local Plan Focused Review ("Local Plan") Modifications Consultation (November 2013).
2. This representation follows our earlier representation to the Issues and Options Consultation draft, dated 29th April 2013 and the Submission draft, dated 9th September 2013. This has also been prepared alongside TPL's Hearing Statement in advance of the January 2014 Local Plan Examination Hearing Sessions.
3. As explained in previous representations, TPL is an important stakeholder in Colchester, in particular within the wider Stanway area, and have been responsible for the delivery of considerable commercial investment in Tollgate. TPL will continue to perform an important development role within the area.
4. This current representation responds to the proposed modifications of the Local Plan Focused Review, following preliminary comments from the Inspector at the upcoming Examination in Public.
5. We confirm that that our comments continue to be made in accordance with the guidance set out in Paragraph 182 of NPPF which describes the 'tests' for examining Local Plans. Paragraph 182 identifies that Plans are to be assessed as to whether they have been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. To be considered sound, the NPPF states that a Local Plan should be: Positively prepared; Justified; Effective; and, most importantly in this instance, consistent with national policy.
6. Our client seeks to ensure that the Local Plan is progressed as sound in order to comply with national planning policy. The following comments are set against this background and the Local Plan's performance against the soundness tests as set out in the NPPF.

REPRESENTATION

7. We continue to affirm that a full review of the Colchester Borough Development Plan is most appropriate and required as part of the Focussed Review process. As we have clearly stated in our previous representations, we consider that a review of the three adopted Development Plan Documents (DPDs), namely the Core Strategy, Development Policies DPD and Site Allocations DPD is essential in order to comply with national planning policy. As this process progresses towards Examination, we continue to question the Soundness of the current approach and the exclusion of the Site Allocations DPD and key policies in the other DPDs from this process.
8. The justification for the partial review process is considered to be fundamentally flawed. This has been discussed in our previous representations and in detail in our Hearing Statement (December 2013) submitted on behalf of TPL.
9. Notwithstanding the above comments and our consideration that a full review of the Development Plan is required to ensure the Soundness of the Local Plan as it progresses, we make the following comments to the proposed modifications of relevance.

MAJ1

10. TPL welcomes the clarity that is provided in terms of the status of the Local Plan (and DPD's not reviewed) post-Examination. TPL do continue to **object** to the uncertainty that will arise as a result of some policies remaining unchanged and inconsistent with national policy (the NPPF) and changed policies in the Local Plan. We note that the proposed additional text clarifies that the review does *"not include any testing of the unchanged policies for conformity with the NPPF"*. TPL strongly object to this approach and add that these policies should have been tested alongside these other policies.

MAJ2

11. This relates to and is replaced by the proposed text of MAJ1.

MAJ4

12. We note that this modification proposes the removal of 'Local Shops' from the Centres Hierarchy (Table CE1a). Whilst this is not directly of relevance to TPL and their objection to the Review, the rest of the hierarchy is not looked at as this is considered to be too great an issue to be reviewed at this stage. For consistency, TPL continue to **object** and suggest that the Centres Hierarchy is looked at in its entirety at this stage.

MAJ7

13. Similar to Modification MAJ4, this modification proposes changes to the retail hierarchy and the Edge of Centre tier of this. TPL continue to strongly **object** to the centres classification and hierarchy at Table CE1a. As highlighted in our previous representations, Table CE1a continues to identify 'Edge of Centre

Locations' as a 'Centre Type' within the defined retail hierarchy. This is not consistent with the requirements of paragraph 23 of the NPPF or the definition of 'Town Centre' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF. Although the current draft Local Plan expands this to 'Edge of Centre and other Accessible Locations' this still does not comply with the NPPF 'Centre Type' definition.

MAJ8

14. This modification relates to Policy CE3 and the role of Employment Zones and appropriate land uses therein. TPL **supports** the changes that have been made previously and the recent modification that proposes the wording 'appropriate alternative uses' (MAJ8). This is considered to be consistent with NPPF paragraph 22 (and Policy CE1 as amended). TPL also support the clarification that is provided by the proposed entry of 'Economic Development' in the Glossary of terms (MIN13).

MAJ14

15. TPL continue to **object** to the proposed modifications at MAJ14. This is not consistent with national policy insofar as there are two clear areas of conflict. Firstly, Main Town Centre Uses should be located in Town Centres (including District Centres) and not just 'the Town Centre' as is proposed. Secondly, NPPF paragraph 24 looks to Edge and Out of Centre sites together where no sites are available in Town Centres. The proposed amended wording continues to give unprecedented support to sites on the edge of Colchester Town Centre above development within other defined centres, an approach that is not consistent with national policy.

MAJ16

16. TPL **supports** the deletions at MAJ16 as these do make this element of Policy CE2b consistent with NPPF, paragraph 26. Being dealt with in any other way, in the absence of any justification (which CBC has not presented) is not considered to be Sound and therefore the changes are necessary and welcomed by TPL.
17. On the basis that in order for the emerging Local Plan to be consistent with national policy, we recommend that the following changes are considered as the Local Plan progresses.

Recommended Changes to the Local Plan Focused Review: Issues and Options Consultation

18. For the reasons set out above, we continue propose the following changes:
- That the complete Development Plan, including all policies in the Core Strategy and the Development Policies DPD and the Site Allocations DPD, is considered for review.
 - That Policy CE1 is amended to remove 'Edge of Centre and other Accessible Locations' from the centres hierarchy as this is not consistent with the definition of 'Town Centres' / 'Edge of Centre' in the glossary at Annex 2 of the NPPF.
 - That the supporting text to Policy CE1 is revised to correctly apply the sequential approach in the consideration of sites within Urban District Centres to be consistent with the NPPF (paragraph 24).

- That Policy CE2b is amended to be consistent with paragraphs 26 and 27 of the NPPF. This includes treating retail proposals within Urban District Centres consistent with their 'in centre' location.

19. As explained above, TPL have prepared a Hearing Statement for the January 2014 Examination Hearings. This Statement contains further information regarding the general approach to the Local Plan Focussed Review and individual policies therein. TPL reserve the right to make further 'recommended changes' as the Local Plan Focused Review is progressed as part of the Examination and receipt of other parties' Hearing Statements.

BARTON WILLMORE LLP, 9th December 2013