

# GUIDANCE NOTE

## & RESPONSE FORM

to accompany the Publication Draft Local Plan (2017)

**Please read these guidance notes before completing the response form**

### Introduction

Braintree District Council, Tendring District Council and Colchester Borough Council, have each published their own Publication Draft Local Plan for consultation. Section 1 is common to each plan. This response form can be used to respond to any part of the 3 Plans. It is important to specify which.

The 3 Plans have been published in order for representations to be made prior to submission of the documents to the Planning Inspectorate for examination. All representations will be examined by a Planning Inspector. The purpose of the examination is to consider whether the Plan complies with the legal requirements, the duty to co-operate and is sound.

#### **Each Local Plan has two parts:**

**Publication Draft Local Plan Section 1** - A set of strategic policies constructed in partnership between the three authorities and Essex

County Council. This means that the Section 1 policies are intended to apply across all three

Local Authorities. These policies include those relating to Garden Communities, housing supply, employment, shopping and the environment. You can send your response to any one of the authorities as all responses to Section 1 will be collated. Only 1 response to the 3 authorities is required.

**Publication Draft Local Plan Section 2** - relates to the specific district, contains more detailed policies and is used to determine planning applications. If you wish to comment on the Tendring Publication Draft Local Plan Section 2 you should send your comments to Tendring District Council.

If you would like assistance in completing your representation or have any other questions about the Publication Draft Local Plan please contact the Planning Policy Team by email [planning.policy@tendringdc.gov.uk](mailto:planning.policy@tendringdc.gov.uk) or by phone on 01255686177 and ask for Planning Policy.

## Part A - Personal Details

Please note that it is not possible for representations to be considered anonymously. Representations will be published on the Council's websites and included as part of the Publication Draft Local Plan submissions to the Inspector. Address and contact details will be removed from published responses. (Village/town shown).

The Council reserves the right not to publish or take into account any representations which it considers offensive or defamatory.

Please supply an email address if you have one as it will allow us to contact you electronically. Everyone who submits a representation will be added to the relevant consultation database (if not already included) so that we can keep you up to date with the plan. If you do not wish to be contacted in this way please state this clearly on the form.

If an agent or consultant has been engaged to act on your behalf please fill in both sets of details in full. Correspondence will be sent to the agent. If you are a landowner with an agent acting on your behalf, please ensure that your agent knows the site name and reference number which your site has been given.

## Part B - Representation

Please specify which section of the Publication Draft Local Plan your comments relate to, by choosing one of the following;

**Section 2 Tendring** } specific to each **Section**  
**2 Colchester** These plans are  
**Section 2 Braintree** authority.

Which part of the plan are you responding to (please use one form per submission):

**Paragraph:** for a representation on wording or paragraph content

**Policy:** for a representation on the wording or inclusion or omission of a policy

**Other:** for example a map inset number, site reference or the wording or content of tables or appendices  
Co-operate.

**Section 1** A response to this section will be reported to all 3 authorities.

## Legal Compliance and Duty to Co-operate

If commenting on how the Publication Draft Local Plan has been prepared, it is likely that your comments will relate to a matter of legal compliance.

The Inspector will check that the Plan meets the legal requirements

You should consider the following before making a representation on legal compliance:

- The Plan should be included in the current Local Development Scheme (LDS) and the key stages should have been followed.
- The process of community involvement for the Plan in question should be in general accordance with the Statement of Community Involvement (SCI).
- The Plan should comply with the Town and County Planning (Local Planning) (England) Regulations 2012 (the Regulations). On publication, the LPA must publish the documents prescribed in the Regulations; making them available on its website and at its principal offices. It must also notify the Local Plan bodies (as set out in the Regulations) and any persons who have requested to be notified.
- The LPA must provide a Sustainability Appraisal Report. This should identify the process by which it has been carried out, baseline information used to inform the process and the outcomes of that process.
- LPAs will be expected to provide evidence of how they have complied with the Duty to
  - Non-compliance with the duty to cooperate cannot be rectified after the Plan's submission. Therefore the Inspector has no power to recommend modifications in this regard. Where the duty has not been complied with, the Inspector has no choice but to recommend non-adoption of the Plan.

## Soundness

Soundness is explained in National Planning Policy Framework (NPPF) paragraph 182. The Inspector has to be satisfied that the Plan is positively prepared, justified, effective and consistent with national policy.

More details and further guidance on what is meant by the term 'soundness' can be found below and at; [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

## Positively prepared

This means that the Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.

## Justified

The Plan should be the most appropriate strategy when considered against reasonable alternatives, based on a proportionate, robust and credible evidence base.

## Effective

The Plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities, sound infrastructure delivery planning and no regulatory or national planning barriers. It should be flexible to changing circumstances

**Consistent with national policy** The Plan should be consistent with national policy. Departure must be clearly justified.

If you think the content of the Plan is not sound because it does not include a policy where it should do, you should go through the following steps before making representations:

- Is the issue with which you are concerned already covered specifically by national planning policy? If so it does not need to be included?
- Is what you are concerned with covered by any other policies in the Plan on which you are seeking to make representations or in any other Plan?
- If the policy is not covered, how is the Plan unsound without the policy?
- If the Plan is unsound without the policy, what should the policy say?

Using the spaces provided please give details of why you think the Publication Draft Local Plan is not 'sound having regard to the legal compliance, duty to cooperate and the four requirements set out above. You should try to support your

**Tendring**  
District Council



representation by evidence showing why the Plan should be modified. **If your representation is over 100 words please include a summary of its main points in the box provided.**

It will be helpful if you also say precisely **how** you think the Plan should be modified.

Representations should cover succinctly all information, evidence and supporting information necessary to support/justify the representation and suggested modification, as there will not normally be a further opportunity to make submissions based on the original representation made at publication.

Where there are groups who share a common view on how they wish to see a Plan modified, it would be very helpful for that group to send a single representation which represents the view. In such cases the group should indicate how many people it is representing and how the representation has been authorised.

All the formal representations received during this stage will be submitted to and considered by the appointed independent Planning Inspector at the public examination on the Plan. The process is likely to include public hearings. The Inspector will determine the most appropriate procedure to adopt to hear those who choose to participate at this stage. If you would like to appear and speak at the hearings, please state this and explain in the space provided why you consider it is necessary that you participate.

Representations can be sent: • Via the

Council's online consultation portal:

<http://tendringconsult.objective.co.uk/portal>

- Via a representation form which can be downloaded from the website and returned via email to [planning.policy@tendringdc.gov.uk](mailto:planning.policy@tendringdc.gov.uk)
- or by post to:  
**Planning Policy, Tendring District Council  
Thorpe Road Weeley Essex CO16 9AJ**

For internal Use only	ID:		Rep No:	

Responses are encouraged via the council's online consultation system available on the website, see <http://tendring-consult.objective.co.uk/portal> However, this form can be returned electronically to [planning.policy@tendringdc.gov.uk](mailto:planning.policy@tendringdc.gov.uk) or in hard copy if necessary to:

# Draft Local Plan RESPONSE FORM

Planning Policy, Tendring District Council, Thorpe Road, Weeley, Essex, CO16 9AJ The consultation runs from 9am Friday, 16th June to 5pm on Friday, 28th July 2017

This form has two parts:  
Part A - Personal Details and Part B - Your comments

## PART A

### 1. Personal Details

Title **MRS**

First Name **PATRICIA**

Last Name **SARGENT**

Organisation **COMPANY SECRETARY  
TW LOGISTICS LTD**  
*(Where relevant)*

Address Line 1 **THE OLD SHIPYARD**

Address Line 2 **GAINSBOROUGH  
LINCOLNSHIRE**

Address Line 3

Post Code **DN21 1NQ**

Email

### 2. Agent's Details (if applicable)

		Title
		First Name
		Last Name
		Organisation
		Address Line 1
		Address Line 2

phone

# PART B

# REPRESENTATION FORM

**Please Note:** If your representation relates to Section One of the North Essex Strategic Plan / Garden Communities you only need to respond to one of the Local Authorities. All representations received by Braintree, Colchester and Tendring relating to Section One of the Plan(s) will be submitted together. You do not need to return this form if you have completed a response using any of the Council's online systems for this consultation. Duplicates will not be considered

**Please specify which section of the Publication Draft Local Plan your comments relate to by choosing one of the following:**

Section 1

Section 2

Section 2 Tendring  Section 2 Braintree

Colchester

**Which part of the section are you responding to? e.g.**

Paragraph/Policy/Map/Other

PP6, SAMU1, 9.1; SAE5, SAE6, 9.13; PPL2, Policies Map, Local Map (Lawford, Manningtree and Mistley)

**Do you consider the Local Plan is Legally compliant?**

Yes  No

**Does it comply with the Duty to Co-operate?**

Yes  No

**Do you consider the Local Plan is Sound?**

Yes  No

**If you do not consider the Local Plan is sound, please specify on what grounds:**

Positively prepared  Justified  Effective  Consistent with National Policy

**Enter your full representation here:**

## **LEGAL COMPLIANCE**

- (a) The legal duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to conserve or enhance the character or appearance of the Conservation Area, engaged by the plan making process as well as the determination of planning applications;
- (b) The Local Planning Authority's refusal to engage with Mistley Port during the preparation stage particularly poor treatment in the period April - May 2017.

## **SOUNDNESS**

### **PP6: Existing employment sites**

The application of the policy is not clear.

### **SAMU1: Edme Maltings Site (related paragraphs including 9.1 and policy/local map designations)**

- SAMU1 is not justified, is inconsistent with national policy and guidance, is ineffective as it is not flexible to changing circumstances and it fails to fulfil the legal duty under the 1990 Act;
- SAMU1 conflicts with employment land policy PP6 and conservation area policy PPL8;
- In particular, Policy PPL8 provides demolition proposals in Conservation Areas will be acceptable where "significance" is preserved from loss or enhanced;
- In relation to the conflict with PP6, the Listed Malting is identified in the current Employment Land Review (2016) for reuse for non-employment purposes, but otherwise the employment land designation is concluded justified;
- The housing implementation schedule is 2028-2033 therefore a mixed use allocation in 2017 sterilises the future potential for employment use or port related use without justification;
- The "EDME Masterplan" relied upon to justify past planning proposals is abandoned;
- SAMU1 (i): this criteria does not accurately reflect the legal duty in respect of Conservation Areas nor does SAMU1 provide any potential to conserve and enhance maritime heritage;
- The site is an existing employment site and 0.13 hectares of the existing employment site cannot contribute as a new employment land allocation;
- Accordingly SAMU1 allocation and policy should be deleted and/or substantially altered to be flexible, consistent with PPL8 and PP6 and legally compliant.

**SAE5/6: Land associated with Mistley Port/Marine (related paragraphs including 9.13 and policy/local map designations)**

- The reason for selection of the land shown on Map SAE6 for allocation, subject to policies SAE5 and SAE6, is recorded in supporting plan documents and is the same for both policies SAE5/SAE6:  
*“Reason for selection: Mistley Quay is currently occupied by Mistley Port, a commercial port handling a range of cargoes, including the transshipment of bulk malts. These operations are a source of local employment within the warehousing and distribution sectors. The industrial character of the quayside is an important part of the character of the wider Manningtree and Mistley Conservation Area and contributes to Mistley’s unique sense of place. As such, the Council is safeguarding this land for port-related development only. The port has the potential to achieve modest growth to meet future demands by developing value-added processing and dredging the channel adjacent to Mistley Quay to allow larger shipping.”*
- In 2010 the Conservation Area boundary was extended to include the land, (identified as “Northumberland Wharf” in the boundary extension decision). The Conservation Area Management Plan 2010 recorded “Northumberland Wharf” was designated as *“This area demonstrates the significance of the river to the development of Mistley and its port.”* Port use therefore conserves and enhances significance for heritage purposes;
- Strategic Allocations for Employment (SAE policies) comprise policy for new development sites expected to deliver jobs principally in the B category of the Use Class Order, namely office, light industrial, distribution and storage: port related development is sui generis distribution and storage. Marine industrial development is potentially also sui generis B category Use Class Order but “leisure development” (indicated under SAE6 for “support” in contradistinction to “safeguarding” under SAE5) is not B category use: further the Strategic Allocation is justified for the strategic purpose of safeguarding the land allocation for new port-related development only;
- Policy SAE5/6 should be replaced and combined to form one coherent policy for land selected for allocation in the Local Plan 2013-2033 for the purpose of port-related development and shown on Map SAE6;
- The land is in employment use and should be allocated not as a “Strategic Allocation for Employment” (SAE) but as a “Strategic Allocation for Port Employment Use” (SAPE) and for clarification the registered title of the land should be used for identification “Land adjoining Baltic Wharf”, or alternatively “Northumberland Wharf” (as used in the Conservation Area extension): Mistley Marine is the name of the current occupier;

- Vehicular access “via Baltic Wharf” is identified as the “preferred” access route to new development on land shown on Map SAE6 in Policy SAE5, but not SAE6: as access via the track Anchor Lane is not possible/sound for a Strategic Allocation the combined policy criteria should continue to require the vehicular access route to be “via Baltic Wharf”;
- The land has been owned and occupied by the current owners/occupiers for nearly 25 years and used throughout the period for their own business purposes in the marine industry (transport and construction and related marine services). Self-evidently, this fact has meant the land has not been available on the open market to the adjoining port for use or development (or to any other marine operator). Given the passage of time, and other planning indicators, the land will now likely become available in this plan period. This means the safeguarding allocation policy needs to incentivise early release to the market within the plan period;
- Policy criterion PP6e currently cross-referenced within SAE5/SAE6 provides a basis for the sound site specific policy guidance that is essential but the cross-reference method is ineffective. A site specific policy based on PP6e policy should include amendment of building to site and of continued employment use to allocated port use;
- The previous allocation and safeguarding policy (including current saved Policy LMM1a) has not provided the market test policy criterion required to demonstrate there is no realistic prospect for use of a safeguarded allocation; this lack of a procedure requiring satisfaction has caused the ineffectiveness of previous policy attempts to deliver the port use;
- The land shown on Map SAE6 is now significantly reduced from the land formerly allocated and safeguarded in previous plans for Mistley Port Expansion and is restricted to the most essential part of the development site for storage abutting, and constituting a continuation of, the open storage at Baltic Wharf and shipping berths;
- In addition to providing site specific development criteria, and not repeating policy provided elsewhere in the Local Plan, the Strategic Allocation for Port Use for Land Adjoining Baltic Wharf and supporting text should be redrafted to plan positively for port-related development and set out why the Strategic Allocation for Port Use conserves and enhances the industrial character of the quayside / Conservation Area, particularly in the light of the 2010 extension decision;
- In support of the Strategic Allocation for Port Use, Mistley Port will propose revised supporting text and policy text and supporting evidence for the Local Plan Examination. In this regard, we will continue to seek the information we originally requested in relation to the drafting of text/policy, to which the Local Planning Authority would not respond.

## **PPL2: Coastal Protection Belt**

As the supporting text explains, the Coastal Protection Belt designation is serving a dual purpose in respect of protecting land subject to the threat of coastal erosion and also of coastal land suitable for landscape protection. However, this dual objective is not divided within the policy and this leads to overly restrictive policy criteria where there is no coastal erosion threat, in particular in relation to existing developed sites within the Coastal Protection Belt (also known as previously developed land). The Coastal Protection Belt is a relatively extensive area. The policy does not explain how planning applications on existing developed sites washed over by the Coastal Protection Belt will be treated. An additional policy criterion should be added as **PPL2 (c)** to permit development on existing developed sites where there is no threat of coastal erosion and where the overall impact of the development proposal is to protect or enhance the landscape character of the Coastal Protection Belt. Currently, the policy closely reflects the national framework policy for coastal erosion areas.

## **Policies Map and Local Map (in particular Lawford, Manningtree and Mistley)**

Both map types are small format, especially the former (large scale map) which is also illegible and blurred. The maps are inconsistent. It is not clear which map bears policy designations. For example, the land shown on Map SAE6 coalesces with the foreshore and is not subject to policy designation on the Policies Map or the Local Map.

## **Reservation/Variables**

The registered green referenced in draft policy SAMU1/SAE5 is subject to permission to appeal to the Court of Appeal granted on 19 June 2017. The registered green is located in the middle of the vehicular road used by HGVs and other vehicles. This representation is made in the context of that appeal and is accordingly subject to the reservation to make any further representation necessary on the future of Mistley Port in relation to the registered green and/or on a failure to plan effectively for Mistley Port in the Local Plan 2013-2033 in accordance with the Assessment of Mistley Port (technical evidence base).

## **Legislation, Policy and Background Evidence**

Planning (Listed Buildings and Conservation Areas) Act 1990

NPPF/NPPG

Assessment of Mistley Port 2009

Conservation Area Management Plan 2010

Employment Land Review 2016

**If your representation is more than 100 words, please provide a brief summary here:**

Legal Compliance

- (a) The legal duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 to conserve or enhance the character or appearance of the Conservation Area;
- (b) The Local Planning Authority's refusal to engage with Mistley Port during the preparation stage particularly poor treatment in the period April - May 2017.

Soundness

Policies/Paragraphs

PP6: Existing employment sites

SAMU1: Edme Maltings Site (related paragraphs including 9.1 and policy/local map designations)

SAE5/6: Land associated with Mistley Port/Marine (related paragraphs including 9.13 and policy/local map designations)

PPL2: Coastal Protection Belt

Policies Map and Local Maps

Reservation/Variables

**Please specify the changes needed to be made to make the Plan sound / legally compliant**

Please see above full representation. Mistley Port will propose revised supporting text and policy text and supporting evidence for the Local Plan Examination. In this regard, we will continue to seek the information we originally requested in relation to the drafting of text/policy, to which the Local Planning Authority would not respond.

**Do you wish to participate at the oral part of the examination?**

**X Yes**  No

**If Yes - you wish to participate at the oral part of the examination, please outline why you consider this to be necessary**

Mistley Port is adversely affected by three of Strategic Policy Allocations: SAMU1, SAE5, SAE6.

**Please note the inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination.**

Did you raise the matter that is the subject of your representation with the LPA earlier in the process of the preparation of the Local Plan

**X Yes**  No

If yes which stage

**X Yes** Issues and Options  **X Yes** Preferred Options

Do you wish to be notified?

**X Yes** When the document is submitted for independent examination?

**X Yes** When the Inspectors Report is published?

**X Yes** When document is adopted?

**Braintree & Tendring: Return by 5pm 28th July 2017**

**(responses to section 2 Braintree and Tendring will not be accepted after this date. After this date responses to Section 1 should be sent to Colchester Borough Council)**

**Colchester: Return by 5pm 11th August 2017**