

Part B – Please use a separate sheet for each representation

Name or Organisation: Avison Young on behalf of St Modwen Developments & Tortworth Estate

3. To which part of the Local Plan does this representation relate?

Paragraph Policy Policies Map

4. Do you consider the Local Plan is:

4.(1) Legally compliant	Yes	<input checked="checked" type="checkbox"/>	No	<input type="checkbox"/>
4.(2) Sound	Yes	<input type="checkbox"/>	No	<input checked="checked" type="checkbox"/>
4 (3) Complies with the Duty to co-operate	Yes	<input checked="checked" type="checkbox"/>	No	<input type="checkbox"/>

Please tick as appropriate

5. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Local Sites Allocation Policy PS33 Northwest of Berkeley

Paragraphs 59 & 76 of the NPPF outline that land with permission should be developed without unnecessary delay to ensure that LPAs are delivering a sufficient number of homes.

With regards to the Local Plan’s soundness, we take this opportunity to reflect on whether the Plan is efficient (in accordance with the NPPF as set out above) and effective in delivering sustainable development. In particular, we assess the proposed requirement for a development brief for site allocations, including smaller sites like the 10-unit allocation at Hardwicke (HAR17), as well as draft allocation PS33 at Land Northwest of Berkeley.

We note that the Ministry of Housing, Communities & Local Government (formerly the Department for Communities and Local Government) prepared the guidance titled 'Planning and Development Briefs: A Guide to Better Practice' in 1998. Although no longer in use this document gives clear advice on the preparation and use of site-specific planning and development briefs and should be noted. Crucially it notes when a development brief or masterplan might not be appropriate, suggesting that they are sometimes prepared unnecessarily at the cost of valuable local authority staff time. It cites a masterplan may be inappropriate where:

- the development plan together with any supplementary planning guidance provides an adequate basis for determining a planning application, taking all site-related factors into account;
- the local authority has no firm requirements for the site; or
- acceptable proposals are anticipated or are already being discussed with developers (e.g. where standard approaches to development are thought to be acceptable or where an acceptable planning application has been submitted).

We consider that application ref. S.20/0100/FUL meets the aspirations otherwise cited for it within the draft allocation text as illustrated above and is in the latter stages of determination with all on-site technical issues having been addressed. We would therefore suggest that an acceptable planning application has been submitted to the LPA and a development brief or approved masterplan is surplus to requirement.

The cost and time involved in preparing a planning brief should always be compared against the likely cost and time of securing acceptable development without it. The survey of users of briefs (developers, landowners, etc), conducted as part of the research, suggested that even when developers submit a proposal which fully complies with a planning brief, they may still have to go through a lengthy negotiation period over the planning application. The resources spent preparing such briefs may not reduce the amount of resources spent in negotiation, casting doubt on the utility of the brief.

Separately, as outlined within our previous representations, we would reiterate that the site is relatively small scale and deliverable within a single phase, as outlined within the submitted Design and Access Statement (and wider application pack). We therefore would deem a development brief or masterplan to be surplus to requirement in this case and would encourage the Council to remove its requirement from the proposed allocation wording.

To summarise the above, we consider that the requirement for development briefs or masterplans to accompany all allocated sites is excessive and ineffective in delivering sustainable development. Simply, the resource and time to develop, consult on, adopt and sometimes the rigorous requirements of, development briefs could potentially delay or deter the redevelopment of sustainable sites in the District needed to ensure the Council has an adequate housing and employment land supply for the plan period.

(Continue on a separate sheet /expand box if necessary)

6. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound.

It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

The requirement for masterplans/development briefs to accompany planning applications for allocated sites should be removed for small scale sites which can be delivered in a single phase. If it is retained, it would unnecessarily delay development coming forward within the District and exacerbate Council resourcing issues.

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7. If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing session(s)?

No, I do not wish to participate in hearing session(s)

Yes, I wish to participate in hearing session(s)

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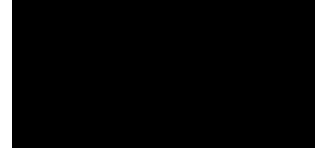
As above, we consider that in the specific instances of development brief and infrastructure requirements, the Plan is not sound and contrary to national guidance on plan preparation. We therefore would welcome the opportunity to discuss this in further detail.

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.

9. Signature:



Date:



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The Soundness of Infrastructure Requirements - Core Policy CP6

Core Policy CP6 provides draft guidance regarding infrastructure and developer contributions. An Infrastructure Delivery Plan (IDP) has also been prepared by Arup and forms supporting evidence for the local plan but does not form part of it as outlined within paragraph 2.9.30.

The NPPF provides overarching guidance on development contributions in paragraph 34, stating that:

"Plans should set out the contributions expected from development. This should include setting out the levels and types of... infrastructure (such as that needed for education, health, transport,

flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan."

Paragraph 35 goes on to advise that when being examined, plans will only be considered 'sound' if they are 'positively prepared' which includes providing a clear strategy to meet an area's objectively assessed needs and is 'justified' by being based on proportionate evidence.

Overall, we consider that the emerging Local Plan in itself, as required by the NPPF, does not set out the contributions expected from development, including strategic sites, or the levels and types of infrastructure required. In the absence of clear policy requirements, it will be difficult to determine the viability of sites. We also consider that the emerging Local Plan remains ambiguous on what requirements fall under the Community Infrastructure Levy (CIL) versus s106 agreements. At this point, Core Policy CP6 does not appear to be robustly supported by proportionate evidence. In this sense, it is contrary NPPF paras 34 and 35.

SDC have also prepared an Infrastructure Funding Statement (IFS). The IFS is an annual report, published by the Council to provide a summary of all financial and non-financial developer contributions relating to Section 106 agreements within the district. The NPPG paragraph: 059 Reference ID: 61-059-20190315 provides the following expectations of the IFS:

"The government recommends that when preparing a plan strategic policy-making authorities use available evidence of infrastructure requirements to prepare an Infrastructure Funding Statement. This should set out the anticipated funding from developer contributions, and the choices local authorities have made about how these contributions will be used. At examination this can be used to demonstrate the delivery of infrastructure throughout the plan-period."

Contrary to the above, it is considered that the most recent IFS prepared by SDC fails to anticipate funding from developer contributions and how they will be directed.

Education Contributions

While it is cited as not forming part of the local plan, we take this opportunity to further interrogate the evidence presented in the IDP which is to be used *'to inform any review of planning obligations and support specific negotiations in relation to s.106 and s.278 agreements'*.

Specifically, we refer to the IDP's deficiency in providing a reliable evidence base for education contributions. The IDP's education contributions evidence base is based on data provided by the Local Education Authority.

The Community Infrastructure Levy Regulations 2010, regulation 122 (as amended by the 2011 and 2019 Regulations) sets out that planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, which are as follows:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

A recent appeal decision at Land off the A38, Coombe Hill, Gloucestershire (ref. APP/G1630/W/20/3257625; decision date 1st June 2021) provides an up to date view on the methodology for determining education contributions in the District. The Inspector found that the child product ratios had been exaggerated and the translation to pupil product

ratios overestimated by the County Education Authority. The capacity of existing schools was examined and there is no suggestion that the examination capacity should be limited to a single school planning area, as the County Council had done in this case. The site was also located on the cusp of several school planning areas, which were found to have sufficient school capacity. The Inspector ultimately took the view that there was no need for financial contributions towards educational infrastructure.

With regards to the Land Northwest of Berkeley site, as part of application ref. S.20/0100/FUL, there has been extended negotiation around the education contributions for the site which were being sought in addition to CIL, with County seeking the following on 16th February 2020:

- Early-years Contribution – Full (£434,620.80);
- Primary Contribution - £95,978.76;
- Secondary Contribution - £528,848.4

SDC have been unable to take a stance on education contributions at this point, having awaited the Coombe Hill appeal decision. This remains one of the outstanding points preventing the application from being determined to date and demonstrates the impact of an evidence base that is not sound or clear. In this manner, we consider that that the plan is ineffective in delivering sustainable development.

We would also note that SDC's most recent charging schedule (February 2017) outlines an expectation that Early Years, Primary and Secondary School infrastructure schemes should be funded, or part funded through CIL. Annex 2 '*Indicative Draft Regulation 123 List*' goes on to outline that generally, only new primary schools at strategic site allocations would be expected to be funded through S.106 obligations. In contrast, throughout the application process for ref. S.20/0100/FUL, County have sought contributions to education through S.106 agreements and continue to do so despite the development proposals not meeting the scale/criterion suggested in SDC's charging schedule. We therefore consider there has been an inconsistent approach to how education contributions are sought in the District. Consistency in planning decisions is vital because previous planning decisions are capable of being material considerations, meaning they set a precedent for subsequent development proposals in the District. The reasoning behind this was explained by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P & CR 137:

"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency [...]. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system."

If this ambiguous approach to contributions continues to be adopted in the District, we consider that it could unduly extend the determination process, as has been experienced in this case, as well as prejudice the efficient delivery of sustainable development more widely. We are actively discussing the particular point of CIL versus S.106 contributions with SDC in relation to education contributions for application ref. S.20/0100/FUL.

In light of the above, we consider that the evidence presented in the IDP cannot be wholly relied upon to provide robust and justified support, contrary to paragraph 35 of the NPPF and the CIL Regulations 2010, regulation 122.

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Core Policy CP6 does not set out the contributions expected from development, or the levels and types of infrastructure required contrary to national policy. The evidence base for the education contributions within the Infrastructure Delivery Plan is also considered to be unfit to underpin the Local Plan. We consider that revisions should be made on the basis of a robust evidence base to understand the infrastructure requirements for the District and clearly articulate this to developers.

Core Policy CP6 should also be revised to provide clarity about how any developer contributions will be secured whether through CIL or s106 agreements.

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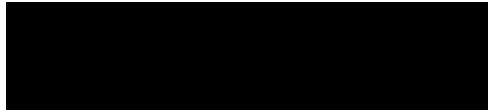
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