



Solihull MBC Local Plan Publication Stage Representation Form

Ref:

(For
official
use only)

Name of the Local Plan to which this representation relates:

Solihull MBC Local Plan

Please return to psp@solihull.gov.uk or Policy and Engagement, Solihull MBC, Solihull, B91 3QB BY Monday 14th December 00:00

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This form has two parts –

Part A – Personal Details: need only be completed once.

Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

Part A

1. Personal Details*

**If an agent is appointed, please complete only the Title, Name and Organisation (if applicable) boxes below but complete the full contact details of the agent in 2.*

2. Agent's Details (if applicable)

Title	Messrs	Mrs
First Name		Glenda
Last Name	Benton & Neary	Parkes
Job Title (where relevant)		Director
Organisation (where relevant)		Tyler Parkes
Address Line 1	Please refer to agent	66 Stratford Road
Line 2		Shirley
Line 3		Solihull
Line 4		
Post Code		B90 3LP
Telephone Number		
E-mail Address (where relevant)		

Part B – Please use a separate sheet for each representation

Name or Organisation:

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

Paragraph **603-608 & 226** Policy **BL1** Policies Map

4. Do you consider the Local Plan is :

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

Objection on behalf of Messrs Benton & Neary (10463)

Policy BL1 – West of Dickens Heath and Justification (paragraphs 603 to 608) and Paragraph 226 Summary of Residential Allocations

1. **On behalf of our Clients Messrs Benton & Neary we have been instructed to make representations to the Solihull Local Plan Review 2020.**
2. **Policy BL1 is unsound on the basis that insufficient evidence has been provided to demonstrate there is a mechanism to facilitate relocation of the existing sports provision south of Tythe Barn Lane to a suitable site in the vicinity and thereby facilitate development on the site, contrary to the deliverability and developability requirements for site allocations set out in National Planning Policy Framework (NPPF) Appendix 2: Glossary and it fails to satisfy NPPF paragraphs 67 and 175.**
3. Paragraph 226 comprises a summary table of residential allocations, including site BL1 West of Dickens Heath with a capacity of 350 dwellings on a 23ha site, to be delivered in delivery phases I and II. Footnote 34 on page 71 explains that the delivery phase indicative delivery periods are as follows: I = years 0-5, II = years 5-10 & III = years 10 -16. It is therefore anticipated that part of site BL1 will be delivered in the first 5 years of the plan, meaning it

	must be 'deliverable', with the remainder coming forward for development between 2026 to 2031 so it must be 'developable'.
4.	It is contended that the proposed site allocation is not demonstrably deliverable or developable contrary to the NPPF. To be considered 'deliverable' NPPF Appendix 2: Glossary, requires the sites are <u>'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years...'</u>
5.	Planning Practice Guidance (PPG) paragraph 007 reference ID: 68-007-20190722, revision date: 22 July 2019) advises that robust up-to-date evidence is required. To be considered 'deliverable' sites which would require further evidence including those which: <i>'have outline planning permission for major development; are allocated in a development plan; have a grant of permission in principle; or are identified on a brownfield register'</i> .
6.	Evidence, to demonstrate deliverability, may include: <ul style="list-style-type: none"> • <i>'current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;</i> • <i>firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;</i> • <i>firm progress with site assessment work; or</i> • <i>clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.'</i>
7.	In terms of longer-term, post 5 years, to be considered 'developable' the NPPF Glossary requires that, <i>'sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged.'</i> PPG paragraph 019 reference ID: 68-019-20190722, revision date: 22 July 2019, requires that, <i>'...if longer-term sites are to be included, for example as part of a stepped requirement, then plan-makers will need to demonstrate that there is a reasonable prospect that they are likely to come forward within the timescale envisaged...'</i>
8.	NPPF paragraph 31 states that: <i>'The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals'</i> .
9.	Policy BL1 requires that: <i>'...2. Development of the site should be broadly consistent with the principles as shown in the concept masterplan below, which include:...iv. <u>Relocation of the existing sports provision south of Tythe Barn Lane to a suitable site in the vicinity'</u></i>
10.	Draft Submission Solihull Local Plan (SLP) Policy P20 'Provision for Open Space, Children's Play, Sport, Recreation and Leisure' states that, <i>'...3.</i>

Existing facilities that are of value to the local community for recreation, play, sports, visual amenity, nature conservation or that make an important contribution to the quality of the natural and historic environment or network of green infrastructure will be protected, unless:

...iv. the proposed development provides equivalent or better replacement open space, sport, or recreation facilities in size, quality and accessibility within an accessible location for existing and potential new users; or

v. the development results in a substantial community, recreational, play or sports benefit that clearly outweighs the harm resulting from the loss of the existing open space/facilities...

4. Where existing provision is not being protected then the Council will require appropriate compensatory measures. The alternative provision should be at least the equivalent in terms of size, quality, accessibility, use, visual amenity, natural capital value, and supported by a management plan to ensure ongoing viability of provision. The creation of new and/or Enhancement of open space or buildings shall be in accordance with Policy P15 – Securing Design Quality and Policy P10 – Natural Environment...'

10. Policy BL1 Justification paragraph 605 states, '*...The larger site is currently occupied by Highgate United FC, Leafield FC and Old Yardleians Rugby Football Club, and re-provision will be required for these sports pitches. Tythe Barn Meadows Local Wildlife Site (LWS) to the west will be retained, as will the integrity of Little Tyburn Coppice, a remnant ancient woodland. Tyburn Farm pastures have been confirmed as a LWS as part of the Local Plan Review process, it is the area north of Tythe Lane running up to the canal. The LWSs are expected to impact upon the ability to re-provide the playing fields within the site and therefore alternative options for their re-provision is being pursued...*'
11. The Concept Masterplan document, page 49, provides an illustrative concept masterplan prepared by SMBC with accompanying text. The SMBC illustrative masterplan shows retention of Shirley Town Football club land (north of Tythe Barn Lane), but it does not identify where Highgate FC and Old Yardleians Rugby Club would be relocated. The fourth paragraph of this supporting text states, '*...Further work is required to relocate the replacement of all of the displaced pitches and to identify links from the new development to Dickens Heath Village Centre.*'
12. The 'Developer Site Proposal' plan included on page 48 of the Concept Masterplan Document, suggests the replacement pitches could be accommodated to the north and east of Shirley Town football club (including on land currently occupied by Akamba Garden Centre and shown retained on the SMBC illustrative concept masterplan). However, the developer's proposal shows the replacement playing pitches on a 'Local Wildlife Site'. This would not be suitable, achievable or deliverable as it would be contrary to Policy BL1 v. which requires '*Retention of Local Wildlife Sites, with potential for enhancement and appropriate buffer to Tythe Barn Coppice ancient woodland...*'
13. The proposal to use a LWS for playing pitches would also be contrary to the requirements of Policy P10 'Natural Environment' part 18, which states in

respect of Local Nature Reserves, Local Wildlife Sites or Geological Sites that, *‘...Development likely to have an adverse effect on a locally designated site will be permitted only if the reasons for the development clearly outweigh the nature conservation or geological value of the site and its contribution to wider biodiversity objectives. Where development would have an adverse effect on a site of local value, developers will be expected to incorporate measures to enhance the site or to restore the links between sites to improve connectivity in the ecosystem network based on local evidence. Evidence of net gains to biodiversity will be required...’*

14. NPPF paragraph 175 states that, *‘When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused...’*

15. NPPF paragraph 67 requires that, *‘...planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability...’*

16. The proposal to develop the proposed site allocation BL1 West of Dickens Heath does not satisfy NPPF paragraph 175 part a) because the development can be avoided by directing development to suitable alternative deliverable and developable land.

17. It also does not satisfy NPPF paragraph 67 because there is no mechanism set out to demonstrate that there is a realistic prospect that the approximately 12.6ha of playing field land, which is proposed for loss, will be able to be relocated locally or viably, meaning the land is not available or suitable for development.

18. This is confirmed by ‘Solihull Metropolitan Borough Council Draft Playing Pitch Mitigation Strategy’ (PPMS), October 2020 prepared by consultants Knight Kavanagh & Page on page 45 which states:

‘One of the significant discoveries of the Mitigation Strategy is that replacement sites are for the most part yet to be identified should development of the allocated playing pitch sites go ahead, with the majority of the developers not having appropriate mitigation plans prepared. As such, the Council has appointed a land advisor to identify potential sites that may be suitable for the development of hubs in terms of size and location as well as in regard to their appropriateness.’

One aspect being explored is land within the greenbelt, whereby a policy within the emerging Local Plan allows for reasonable development for sporting use. To assist in enabling such land to be used to mitigate the loss of playing pitches (and supporting infrastructure), there may be a need to allocate suitable sites within future iterations of the Local Plan. Furthermore, compulsory purchase orders might need to be explored where the land does not already fall under Council ownership (and where negotiations with landowners are unsuccessful).

Once sites have been identified, it is recognised that further work is required to develop appropriate masterplans. These will not only need to conform with

planning policy but they must also work for all relevant partners (e.g. the clubs) and be sustainable and viable in the long-term.

Ultimately it will be the developers' responsibility to provide replacement provision; however, the Council is keen to work with them to ensure appropriate sites and mitigation proposals are brought forward. It was apparent that most of the developers were unsure about the scale of their mitigation responsibilities before this study was commissioned, making it imperative that the findings are relayed back to them to make it clear what is required.' (page 45)

19. A report considered by members at the Cabinet meeting of 13th August 2020 entitled, 'Acquisition of land for new sports hubs in Solihull' states at paragraph 3.5, that, '*...the emerging recommendations of the PPMS have identified a potential requirement for the provision of approximately 34 hectares of additional playing field land, to be delivered by way of up to five new sports hubs in five key areas of the Borough. ...*' This includes 'Blythe' area of search to replace playing pitch loss from the proposed site allocation West of Dickens Heath.
20. Paragraph 3.6 of the Cabinet report states that, '*To support the provision of the areas of land required for the delivery of these hub sites, the Council has carried out a review of its existing land assets within these areas to identify whether any available Council-owned land would be suitable for the provision of the sports hubs. This review has, however, identified that unfortunately there is not considered to be sufficient land currently available and in the Council's ownership to meet the estimated requirements... it is therefore recommended that the Council should take a lead on the acquisition of the land required for the development of the new sports hubs.*'
21. Paragraph 3.7 of the report accepts that further investigative work to identify possible suitable sites is necessary and the Council has '*...commissioned a rural practice land agent to carry out an initial site search process and prepare a report identifying and evaluating other land within the indicative areas of search that could, potentially, be acquired for sports hub development, either by negotiation or, if necessary, by way of Compulsory Purchase Order (CPO), subject to further Cabinet approvals...*'
22. The report accepted that the site search will need to identify land which is in a sustainable location, close to homes, sports teams or schools and other organisations where users' headquarters are nearby. The evaluation of sites will also need to take into account, '*...relevant planning policy and other constraints, such as the size, shape, topography and means of access to the site; any ecological, arboricultural or heritage designations, flood risk or adverse neighbouring uses; and the availability and tenure of the site, including the anticipated willingness of the current landowner to sell and their value aspirations.*'
23. The recently commissioned site identification report will take time to complete, there will then be a need to '*...evaluate the options in more detail with a view to identifying a number of preferred options, and to enter into negotiations with the landowners of the preferred options with a view to negotiating provisional heads of terms for acquisition. These terms will be reported to Cabinet for further consideration prior to any such acquisition being completed, along with details of the proposed approach to funding and delivery.*' (paragraph 3.8)

24. Paragraph 6.3.1 states that, '*...The cost of acquiring the land for each sports hub (including costs associated with any potential CPO), and the cost of laying out and developing each sports hub, will be considered in detail in future Cabinet reports at the appropriate time. However, at this stage, it is envisaged that the sports hubs, and the required land, will be funded primarily through section 106 planning obligations and/or Community Infrastructure Levy associated with the delivery of the proposed housing developments. It is also proposed that the Council will explore any external funding opportunities that could potentially be opened up as a result of this proactive and strategic approach.*' The viability and deliverability of the proposed replacement 'sports hubs' are therefore not demonstrated as the cost calculations are an unknown and could not have been included in the Cushman and Wakefield 'Viability Study', October 2020.
25. It is submitted that there are significant time implication for the outstanding work necessary to demonstrate the deliverability and developability of proposed site allocation BL1, in terms of the replacement playing pitches including the following:
- identification of potentially suitable land parcels;
 - agreeing preferred options;
 - entering into negotiations with the landowner and the developer;
 - where considered necessary, seek member agreement to use Compulsory Purchase Orders to acquire land;
 - if/once land has been acquired, planning permission will be needed for the replacement playing pitches and ancillary facilities, accompanied by appropriate expert reports;
 - construction of the sports facilities; and
 - 'bedding in' of pitches which can take an extra 18 months following completion of construction before fixtures can be accommodated (page 14 of PPMS)
26. It is therefore evident that allocation of BL1 West of Dickens Heath is undeliverable and potentially unviable in the short to medium term, due to the unresolved need to replace significant areas of playing pitches.
27. It is contended that there are suitable alternative options to the proposal to allocate BL1 land West of Dickens Heath for 350 dwellings, for example: allocating more small and medium sized sites; allocating brownfield land; making more minor amendments to larger village boundaries to facilitate additional small-scale development; and ensuring densities of development on sites brought forward for development (including those removed from the Green Belt and included in the urban area) are developed at densities which make the most efficient use of land.

(End)

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.

28. Our Client contends that insufficient evidence has been provided to demonstrate there is a mechanism to facilitate relocation of the existing sports provision south of Tythe Barn Lane to a suitable site in the vicinity and thereby facilitate development on the site. This proposed allocation is, therefore, contrary to the deliverability and developability requirements for site allocations set out in NPPF Appendix 2: Glossary and it fails to satisfy NPPF paragraphs 67 and 175.
29. Our Client contends that evidence is required to justify Policy BL1 West of Dickens Heath, to robustly demonstrate that:
- the multiple complex land assembly issues have been overcome and there is agreement by all landowners to the site being brought forward on the development basis set out in the Concept Masterplan document; and
 - there is a fully developed strategy with mechanisms in place to ensure playing pitches are replaced to release the land for residential development.

If these issues of soundness cannot be overcome our Client recommends that paragraphs 225 and 226 should be amended to remove the estimated contribution of proposed site allocation BL1 from Delivery Phases I and II and Policy BL1 amended as necessary in the light of the findings of additional evidence gathering, negotiations with landowners, playing field search and masterplan work.

(End)

Please note In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.

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)

Please note that while this will provide an initial indication of your wish to participate in hearing session(s), you may be asked at a later point to confirm your request to participate.

8. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

To address the Council's Responses and the Inspector's Matters, Issues and Questions.

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:

Glenda Parkes

Date:

11/12/2020