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London Borough of Tower Hamlets

Response to the Isle of Dogs Neighbourhood Plan Regulation 14 Consultation

19th April 2017

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1.   Summary

1.1 The Council is supportive of the aims and intentions of the majority of the draft Neighbourhood Plan.

1.2 We consider the draft Plan to be in general conformity with the current Local Plan, as per the requirements of the Neighbourhood Planning 'Basic Conditions'. However there are some concerns that the policies, as currently worded, may not meet the other required Neighbourhood Planning 'Basic Conditions', in particular as they do not directly address land use or development.

1.3 We understand that you have received planning/legal advice and it would be useful for you to share that with us.

1.4 The below note provides a summary of the Council's comments. Council Officers are able to provide further comments and clarifications where required.

1.5 The Council response has focused on the policies document but we have also provided some comments on the evidence base documents and supplementary information.

1.6 The note contains:
- Brief overview of the legal framework for Neighbourhood Planning
- Overarching Comments
- Policy Specific Comments which cover both whether the policy meets the Neighbourhood Planning 'Basic Conditions' and comments relating to other Council functions.

2.   Neighbourhood Plan Legal Framework

2.1 Statutory Requirements:

14. Before submitting a plan proposal to the local planning authority, a qualifying body must—

(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—
(i) details of the proposals for a neighbourhood development plan;
(ii) details of where and when the proposals for a neighbourhood development plan may be inspected;
(iii) details of how to make representations; and
(iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised;

(b) consult any consultation body referred to in paragraph 1 of Schedule 1 whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan; and

(c) send a copy of the proposals for a neighbourhood development plan to the local planning authority.

2.2 We assume the Forum has met these requirements; however confirmation is required of consultation of the specified bodies.

2.3 <u>Soundness:</u>
2.4 The Neighbourhood Plan must meet the basic conditions:

1. Having regard to policies and guidance issued by the Secretary of State: *This includes policies and guidance relating to Neighbourhood Planning as well as requiring that the policies in the Neighbourhood Plan must not constrain the policy objectives of the NPPF and they should not promote less development than that set out in the Development Plan.*
2. The making of the NDP contributes to the achievement of sustainable development.
3. The NDP is in general conformity with the strategic policies of the development plan.
4. The NDP does not breach, and is otherwise compatible, with EU obligations.

2.5 A consideration of how the plan meets these conditions is outlined within sections 3 and 4.

3. <u>Overarching Comments:</u>

3.1 **Structure:**
- While there is no set way to write a Neighbourhood Plan, we suggest it would be useful to sit the policies within the 'back-up' document, so that it provides introductory sections, aims / objectives / vision – which will help provide a strong narrative through the document of what the policies are seeking to achieve.
- It might also be useful to have a separate evidence base document or a series of topic based evidence base documents.
- Consideration should also be given as to what text should be in the policy and which should be in the supporting text or evidence base etc. It may help to revise the existing 'policy', 'explanation', 'justification' structure as there is some overlap between 'explanation' and 'justification'. Could instead have 'policy', 'supporting text' (explains in further detail how the policy will be implemented) and 'justification' which in short outlines why the policy is considered necessary and the evidence to support it. This could then link to the evidence base documents.

3.2 **Relevance:**
- Guidance is very clear that policies 'must address the development and use of land… Wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable. For example, set out in a companion document or annex.' Neighbourhood Planning PPG Paragraph: 004.
- Some of the policies do not relate to development and use of land and consideration should be given to their separation into another document or annex.

3.3 **Positivity:**
- Development Plans should be 'positively prepared' – this means they should include the 'presumption in favour of sustainable development'. NPPF paragraphs 11 – 16.
- Currently some of the policies could be seen as negative and this could be resolved through rewording.
- It may also be helpful to outline out how each policy contributes to the environmental, economic and social elements of sustainable development as per the NPPF.

3.4 **Evidence:**
- Further evidence is needed to support some of the policies and there needs to be clearer links between the policies and the evidence e.g. footnotes linking to the evidence base or clearer justification text.

- The evidence base contained in the 'back-up' document needs to be clearer on what it is providing evidence for/what its conclusions are/why it is required.
- Small query on the 'back-up document'. Pg 17 states: 'There is not a lack of money. Tower Hamlets as at the end of January 2017 had; £82 million of S106 receipts in the bank; £24 million of Community Infrastructure Levy in the bank (£76 million in total from approved developments)'. *Where is the £76m figure from?*
- It is unclear whether Estate Regeneration Briefing is an evidence base or an appendix to the plan and it would be useful for this to be clarified, so the purpose and function of the document are clear.
- The Planned Development document:
  - It would be useful to include a methodology explaining the approach used and how it links/relates to the Council's Infrastructure Delivery Plan and 5 year land supply figures.
  - It might be helpful to discuss school requirements in terms of 'forms of entry' as school sizes are variable.
  - It would also be useful to justify why the lower population and child yields have been chosen etc. i.e. if Quay House has been used as basis – this should be justified and the source of the data provided.
  - It is unclear whether hotels have been included as creating an increase in population and therefore resulting in a rise in social infrastructure need. If so, this would need to be justified.
  - We have undertaken a quick check of the sites against our data and they are broadly in line, bar the comments below:
    - We would consider it pre-emptive to include those developments at the consultation stage, such as the One Housing Group estates and North Quay. You may want to justify their inclusion, the likelihood of completion figures, and where the housing figures originated from.
    - Some of our figures vary from those provided. This is why we would suggest an alignment between this document and the 5 year housing land supply document.

3.5 **Applicability:**
- Guidance is clear that policies should be 'clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications.' Neighbourhood Planning PPG Paragraph: 041.
- Some policies, as currently worded, would be difficult to apply to planning decisions.
- The policies may also benefit from the inclusion of supporting text which provides further guidance on how they will be applied or assessed.

3.6 **The role of the Forum:**
- Need to consider how the Forum is referred to in the policies – as there is no guarantee it will still be in place. If the Forum were to cease to exist any policies which require the involvement of the Forum could not be implemented.
- If the purpose of the involvement of the Forum is to ensure wider public involvement / awareness, it may be better to consider how public consultation could be widened.
- The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.

3.7 **Deliverability:**
- National guidance is clear that 'the sites and the scale of development identified in a plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened'. Viability PPG Paragraph: 001
- There is a concern that some of the policy requirements may reduce the viability of schemes coming forward. Evidence may be required to demonstrate that this is not the case.

3.8 **Scale:**
- Some policies are ambiguous on the scale of development (all, major, strategic etc.) and/or nature of the development (residential, commercial, use-class etc.) the policy would be applied to.
- This creates ambiguity and may also suggest undeliverable burdens on small developments.

3.9 **EU requirements:**
- In line with the Council's Service Offer, we will undertake an SEA screening on the draft plan, although we consider it unlikely that it will suggest a full EIA / HRA is required.
- We would also encourage the Forum to undertake an Equalities Impact Assessment.

4.   Policy Specific Comments:

D1 – Density and Infrastructure. Applications for developments at levels above the maximum recommended densities in the London Plan should only be approved if supported by sufficient Infrastructure to sustain the increase in population in the Area.

D1.1

Basic Conditions:

- **Positivity / Sustainable Development:** We have concerns that the policy, as currently worded, is not in conformity with national legislation regarding the presumption in favour of sustainable development. By seeking to limit the density of development subject to very broad infrastructure requirements, the policy could be seen to counter the presumption in favour of sustainable development.
- It may be useful to outline why development over the density matrix level would not be considered to be sustainable (in relation to all three strands [environmental, economic, social]), without supporting infrastructure.
- **Conformity:** We have concerns that the policy, as currently worded, is not in conformity with the London Plan which clearly states that the density matrix should be seen in the context of optimising the potential of sites to deliver housing, in particular in opportunity / intensification areas (i.e. the Isle of Dogs). The London Plan / Housing SPG highlights the considerations which have to be addressed when seeking to exceed the density matrix. It may be more appropriate to word the policy in relation to these considerations.
- **Deliverability:** There is in particular a concern that requiring developers to not only compensate for the infrastructure impacts their own development will have, but also for any existing deficit, would be considered overly burdensome.
- **Nature of Development:** Not withstanding concerns about the broad soundness of the policy, would this only apply to residential development?
- **Applicability / Deliverability:** As currently worded it is unclear what developers will be required to do to meet the policy requirements. This is in particular because some terms require clarifying: 'all the infrastructure' and 'specifically identified and guaranteed'.
- The policy suggests that when submitting a planning application a developer would have to assess the current infrastructure deficit; the infrastructure deficit their development would create; and identify what infrastructure was coming forward to meet all of these shortfalls. This could be considered an overly onerous requirement on the developer, which would raise soundness concerns.
- It is the role of the development plan to ensure adequate infrastructure is in place to enable development to come forward. See Local Plans PPG Paragraph: 018. It may be more appropriate to seek to deliver this objective

through the planning mechanisms which currently exist to identify infrastructure need and expected delivery i.e. a local infrastructure delivery plan, site allocations, encouraging developers to include infrastructure on their site (which would result in a reduction in CIL payment), and by developing a more specific Neighbourhood Priority Projects list which could indicate CIL spend priorities.

- **Clarity:** The policy currently includes a number of clauses which might be clearer if separated out. i.e. requirements around character, accessibility and infrastructure.

D1.2

<u>Basic Conditions:</u>

- **Conformity:** We have concerns that the policy, as currently worded, is not in conformity with national legislation regarding CIL. The policy must avoid 'double dipping' – whereby developers in effect "pay twice" for infrastructure – once via CIL and once via direct delivery. The CIL legislation is clear that in relation to securing strategic infrastructure the only role of developers is to contribute via CIL. It is then the Council's role to determine the spending of the CIL collection to support growth. The only exception to this is through site allocations where infrastructure will need to be considered as part of a development proposal.
- **Deliverability:** Not withstanding concerns about the broad soundness of the policy, the policy provides no safeguards to prevent all sites coming forward with the cheapest / easiest to provide form of infrastructure.
- **Scale:** Not withstanding concerns about the broad soundness of the policy, what scale of development would this apply to?
- **End Users**: Not withstanding concerns about the broad soundness of the policy, the policy cannot specify end users, as planning cannot control this (e.g. Scout facility or NHS). The Planning System can only specify required use-classes.
- **Role of the Forum:** The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.
- There may be alternative ways to deliver this policy such as through site allocations, <u>encouraging</u> developers to include infrastructure on their site (which would result in a reduction in CIL payment), and by developing a more specific Neighbourhood Priority Projects list which could indicate CIL spend priorities.
- **Clarity:** Does D1.3 refer to provision in D2? May be clearer if amalgamated and made a sub-clause. It is also unclear what 'shared' means. i.e. across two sites? Another developer contributing towards provision on another development? More clarity is also required on when it would be appropriate to ensure consistency of application.

Other Council Function Comments:

- Concerns that the infrastructure list is not supported by service plans / evidence from service providers. Need to ensure there is an ability to deliver a service before the infrastructure is required in policy. E.g. the police station.

D2 – GLA's Housing SPG. Strengthen the GLA's Housing SPG recommendations on density.

Basic Conditions:

- **Applicability:** the plan wording needs to be clarified so it is clear how this guidance will be applied to developments. Guidance provides further detail on how to apply a policy. Therefore if seeking to turn guidance into policy it will need to be reworded.
- The introduction regarding the 'Long Plan' and 'weighting' etc. should be removed from the policy wording.
- **Scale:** the policy needs to indicate which scale / nature of developments it applies to.

CIL1 – Neighbourhood Pot. Ensuring that at least 25% of CIL is available for the Area.

Basic Conditions:

- **Repetition**: Plans usually seek not to repeat policies which are already part of the development plan. Would suggest this is removed from policy and added to the introduction / a CIL section of the document / annex.

CIL2 – CIL for long term community financing. CIL to be invested to support the community long term.

Basic Conditions:

- **Conformity:** We are concerned that as currently worded this policy is not in conformity with the CIL regulations. The CIL Guidance identifies that the decision on how and where to spend all CIL (including Neighbourhood CIL) rests with the Council subject to the need to consult all local people and the Neighbourhood Forums on the spending of the Neighbourhood Portion. The process of establishing Neighbourhood CIL in Tower Hamlets commenced in December 2016 Cabinet, which approved the adoption of the Local Infrastructure Fund (the Council's terminology for the CIL Neighbourhood Portion). This will see all local people, including the Neighbourhood Forum consulted regularly on the spend of 25% of CIL receipts to date and on-going, whether or not there is a Neighbourhood Plan in place. The first round of

consultation, which will allow local people to make known their infrastructure priorities and nominate specific projects, will commence in 2017.

- However, the CIL Guidance does specifically invite Neighbourhood Plans to set out its infrastructure priorities. This policy should be reworded as a priority to reflect that Long Term Community Financing is a Neighbourhood CIL priority for the Neighbourhood Forum. These priorities will then be taken into consideration during the CIL decision making process. Some Neighbourhood Plans provide further detail on the nature of the projects – to help ensure their deliverability. The Forum therefore may wish to provide further detail regarding this proposal.
- **Relevance:** As these policies do not directly address development and the use of land it would be more appropriate for them to be included in an Appendix instead.

CIL3 – CIL to project manage infrastructure projects. CIL to be spent helping to write the Long Plan and to pay for projects required to support development.

Basic Conditions:

- **Conformity:** We are concerned that as currently worded this policy is not in conformity with the CIL regulations. The CIL Guidance identifies that the decision on how and where to spend all CIL (including Neighbourhood CIL) rests with the Council subject to the need to consult all local people and the Neighbourhood Forums on the spending of the Neighbourhood Portion. The process of establishing Neighbourhood CIL in Tower Hamlets commenced in December 2016 Cabinet, which approved the adoption of the Local Infrastructure Fund (the Council's terminology for the CIL Neighbourhood Portion). This will see all local people, including the Neighbourhood Forum consulted regularly on the spend of 25% of CIL receipts to date and on-going, whether or not there is a Neighbourhood Plan in place. The first round of consultation, which will allow local people to make known their infrastructure priorities and nominate specific projects, will commence in 2017. The Forum's approval therefore cannot be required for the spend of Neighbourhood CIL.
- However, the CIL Guidance specifically invites Neighbourhood Plans to set out its infrastructure priorities, which this policy does. However the policy would need to reworded as a set of priorities. These will then be taken into consideration during the Neighbourhood CIL decision making process. Some Neighbourhood Plans provide further detail on the nature of the projects – to help ensure their deliverability.
- **Relevance:** As these policies do not directly address development and the use of land it would be more appropriate for them to be included in an Appendix instead.

CIL4 – All CIL for the Area. All CIL generated in the Area should be spent here.

<u>Basic Conditions:</u>

- **Conformity:** We are concerned that as currently worded this policy is not in conformity with the CIL regulations. The CIL Guidance identifies that the decision on how and where to spend all CIL rests with the Council, with only the 25% Neighbourhood CIL required to be spent in the Neighbourhood Area.
- **Relevance:** In addition these policies do not directly address development and the use of land.

ER1 – Right to vote to approve or reject final proposals
ER2 – Conduct of elections
ER3 – Resident participation in a transparent, inclusive, objective decision making process
ER4 – Right of return
ER5 – Tenants rights and costs
ER6 – Leaseholder and freeholder rights
ER7 – Estate small businesses, retailers, and community organisations
ER8 – Public profit reinvestment
ER9 – Recommendations for housing regeneration

<u>Basic Conditions:</u>

- **Relevance/Deliverability:** We are concerned that many of these policies do not address land use and development and therefore cannot be delivered through the planning system.
- ER1: This policy suggests that an application for an Estate Regeneration Scheme would have had to have undertaken a successful ballot in order to be considered a valid planning application. This would require an addition to the Local List (the requirements a planning application has to meet in order to be validated). Requirements on the Local List have to meet their own tests (Paragraph: 040 of the Making an Application PPG) and it is considered that requiring a local ballot would not pass these tests. In addition, the Planning system already has a consultation requirement and we consider it would be viewed as onerous for an estate regeneration schemes to be required to pass a stricter approval test than other schemes.
- ER2: This is not a planning matter. The planning system does not manage elections and there is no planning mechanism available to deliver this. It would not be possible to refuse a planning application if these stipulations had not been followed.
- ER3: As this policy seeks to manage the information available before an election, this is not a planning matter. The planning system does not manage elections and there is no planning mechanism available to deliver this. It would not be possible to refuse a planning application if these stipulations had not been followed.

- ER4: Planning policy cannot specify end users – this includes not being able to specify a specific right of return. The policy could be reworded to seek to protect the same quantity of car parking spaces or gardens etc but how they would be allocated is not a planning matter.
- ER5:
- ER5.1: Tenancy rights are associated with individuals (not the property) so are not managed via the planning system.
- ER5.2: In that this policy seeks to manage the information available before an election, this is not a planning matter. The planning system does not manage elections and there is no planning mechanism available to deliver this. It would not be possible to refuse a planning application if these stipulations had not been followed.
- ER5.3: This policy reads as if it is related to a tenant rather than the development. It would instead need to be reworded to relate to the land use. In addition, if it is seeking to require a like for like re-provision of social / affordable homes at the same rent levels, this would not strictly be in conformity with the existing Local Plan Development Management Policy DM3.6, which enables some flexibility in estate regeneration schemes. The draft Local Plan, seeks to take an approach which would require like for like re-provision, but this has not yet been examined or adopted. If the Neighbourhood Plan was seeking adoption before the new Local Plan, the examiner may seek evidence (demonstrating need and viability) as to why this policy seeks to be more prescriptive than the current LBTH Local Plan policy.
- ER6: Leaseholder rights are not planning matters.
- ER7: This would have to be reworded in relation to development and not end users. Could require discounted retail rents but would need sufficient evidence to suggest this is necessary and the viability of ER7.2 would have to be considered and whether it would result in a reduction of other provisions.
- ER8: This is not a planning matter. There is no planning mechanism to deliver this requirement as the 'public profit' is not managed by the planning system. The stock transfer is a separate legal contract and the planning system cannot control the spend of an external organisation (Canal and River Trust). The only mechanism which exists to ensure the community benefits from 'planning gain' is CIL / Sec106.
- ER9: The majority of these recommendations are not planning policy matters as they do not manage the development or use of land. Where they do influence development or use of land they would have to be redrafted to enable development schemes to be assessed against them. Alternatively they could be an annex to the planning policies but would then not be used in determining planning permissions.

Other Council Function Comments:

- Whilst it is considered that the majority of this section of the draft Plan does not meet the Neighbourhood Planning 'basic conditions', the Council has additional non-planning concerns about some of the specific proposals:
  - Some of the policies could have legal implications for the Council if applied to Council sites. In particular requiring below market rents may be in conflict with the best value considerations contained in the sec 123 of the Local Government Act.
  - From a strategic housing perspective, there are broad concerns about outlining such prescriptive requirements for Estate Regeneration Schemes. The nature of each estate and the aims for each regeneration scheme are considered to require bespoke principles and stipulations.
  - In addition to this overarching comment, it is considered that some of the specific proposals may have problematic consequences:
    - Providing leaseholders (resident and non-resident) and tenants with equal votes when each group has diverse interests, entitlements and concerns. This is not to say that leaseholders should not have a vote but the forum may wish to consider issues of proportionality.
    - Providing non-residents leaseholders / freeholders with the same right to return as resident freeholders and enabling leaseholders / freeholders to be gifted up to 100% equity might have unintended consequences which warrant further consideration.
    - The Council cannot guarantee that freeholders / leaseholders will be compensated at least what they paid – this is governed by national law and is based on market value. In the (unlikely) event of a falling market, a lower payment could occur.
- Given the concerns listed and the Council's view that the majority of this section does not meet the Neighbourhood Planning 'basic conditions', the Council would welcome further discussion with the Forum regarding how they are proposing to address the issues of Estate Regeneration within the next version of the Neighbourhood Plan and how this relates to the Council's Strategic Housing objectives and statutory requirements.

ES1 – Use of empty sites. Encourage developers to release empty land on a temporary basis for community use (e.g. as a pocket park, market, etc.) pending the start of construction.

Basic Conditions:

- **Applicability:** Suggest this could be reworded slightly to require developers to submit a proposal, feasibility study and impact assessment for a meanwhile use on their site when they submit their substantive application. Sec106 conditions may then be able to be secured to require them to implement the temporary use if no work on site by 6 months.

- NB it is very difficult to word the policy in a way which could not be circumvented if developers did not wish to comply (but will create a very strong impetus).
- **Scale:** In order for this not to be considered onerous, this should only be applicable to sites over a certain size (maybe useful to include an evidence base list of potential sites – this could be used to ascertain size).
- **Uses:** Suggest that the policy should recommend low impact uses (1, 4, 5, and 6) rather than 2,3 and 7, to slim line the planning process. The level of assessment and detail required for the high impact uses will likely be considered too onerous by developers.
- **Role of the Forum:** The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.
- **CIL:** Any discount in CIL will be as a result of creating a piece of infrastructure, not as compensation for costs. Legally this could be construed as buying planning permission.

GR1 – Helping establish new residents' associations. Developers to help new large developments establish residents' associations from the outset.

Basic Conditions:

- **Relevance/ Deliverability:** It is not considered that this meets the tests regarding planning conditions in the NPPF: Paragraph 206: "Planning conditions should only be imposed where they are:
    1. necessary;
    2. relevant to planning and;
    3. to the development to be permitted;
    4. enforceable;
    5. precise and;
    6. reasonable in all other respects".
  The forum would need to demonstrate that this does meet these tests and that the Planning system would therefore be able to deliver this policy objective.
- **Role of the Forum:** The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.
- Could seek to achieve this via design? Such as requiring noticeboards, shared amenity space etc. The London Plan Housing SPG contains guidance for improving resident interaction via design.

3D1 – 3D model for planning. Encourage more effective planning using 3D models.

Basic Conditions:

- **Relevance:** This seeks to influence LBTH, rather than applications, so should be included in an annex – could be combined with the list in CIL3?
- **Rights of Light:** Some concern regarding including this issue within a planning model – as this cannot be a planning consideration.

Other Council Function Comments:

- The Council is undertaking its own assessment of the benefits of a 3D model and do consider it would be a useful tool. There are however some significant barriers regarding data ownership / legality and the ongoing cost of developing the model.

3D2 – 3D model for applications. Developers to use 3D modelling in their applications.

Basic Conditions:

- **Scale:** 10 units is a fairly low threshold – may need greater evidence as to why this is necessary.

Other Council Function Comments:

- The Council is undertaking its own assessment of the benefits of a 3D model and do consider it would be a useful tool. There are however some significant barriers regarding data ownership / legality and the ongoing cost of developing the model.
- The draft policy doesn't make it clear whether developers or the Council will be responsible for the cost of adding the development to the model.

BBA1 – Fibre to the premises. New developments to have high quality broadband.

Basic Conditions:

- Need to consider whether this has already been delivered through the change in building regulations: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517789/BR__PDF_AD__R__2016.pdf
- If not considered to be delivered, the following comments apply:
- **Scale:** Would need to be proportionate – as worded would currently apply to all developments – even householder extensions etc.
- **Deliverability:** May need to test viability impacts of this and evidence.

- **Evidence Base:** Need to demonstrate that in-building infrastructure is slowing internet speeds and may want to stress importance in high density developments.
- Maybe beneficial to tweak wording to stress that this is a form of future proofing (similar to Decentralised Energy Network policies) which ensure connectivity is possible once the infrastructure is available.

BBA2 – Broadband choice. New developments to have resilient broadband.

Basic Conditions:

- **Relevance/Deliverability:** It is not clear what the planning mechanism would be to deliver this policy requirement. It is not considered that this meets the tests regarding planning conditions in the NPPF: Paragraph 206: "Planning conditions should only be imposed where they are:
    7. necessary;
    8. relevant to planning and;
    9. to the development to be permitted;
    10. enforceable;
    11. precise and;
    12. reasonable in all other respects".
The forum would need to demonstrate that this does meet these tests and that the Planning system would therefore be able to deliver this policy objective.

BBA3 – Mobile network resilience. New developments should not impact mobile phone networks

Basic Conditions:

- **Consultees:** It is for legislation to determine the statutory consultees not the NDP. Could change wording to request they are consulted – but the companies may not be in a position to respond.
- **Evidence:** May need further evidence that this is due to development, rather than strain on the network capacity.
- **Proportionality**: May be more justifiable if required that the loss of any such communications infrastructure, which could give rise to an unacceptable loss of connectivity to the wider area, should be re-provided.
- Policy could be used to encourage the provision of communication infrastructure within/on top of developments.

CC1 – Construction coordination. Developers to consult the community before finalising a construction management plan.

Basic Conditions:

- **Role of the Forum:** The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.
- An alternative way to deliver the objectives would be through requiring the Council to consult residents on CMPs . This would include consulting the Forum. The consultation would then sit within the Development Management Process.

CC2 – Construction communication. Communication with local residents and other stakeholders before changing normal working hours and methods.

Basic Conditions:

- **Relevance:** A change in working hours is secured via the Environmental Health Team, not planning (it is controlled via a separate set of laws). Therefore there is no planning mechanism to deliver this policy requirement – this should therefore be included in a separate annex.
- **Proportionality:** In addition, as this cannot be secured via the planning system, it may encourage more developers to undertake this if the requirements were narrowed or clarified.

CC3 – Control of dust and emissions during construction and demolition Sustainable Design

Basic Conditions:

- **Clarity:** It is unclear what 'data' is being referred to. If in relation to an Air Quality Assessment / Monitoring, it is the Council's role to determine the suitability of the Assessment and mitigation and to monitor the impact. The Air Quality Assessment will form part of the public documents consulted on alongside the development and the Forum will already be able to comment.
- The Neighbourhood Forum also has no formal role in the development management process beyond consultation. The Forum's agreement cannot be a condition for planning permission.

SD1 – Sustainable Design. Planning applications should include pre-assessments demonstrating how BREEAM standards (or any future replacement standards) will be met.

Basic Conditions:

- **Deliverability:** National Guidance is clear that the Home Quality Mark can only be voluntary – cannot be required. However, if the Forum were to consider that ensuring high quality development is crucial in the Neighbourhood Area due to the high density nature of local development, it could, for example, try to evidence the need to make it locally mandatory for developments exceeding the LP density matrix.

AQ1 – Air Quality. Minimising adverse air quality impact of planning and development.

Basic Conditions:

- **Scale:** Would need to be proportionate – as worded would currently apply to all developments – even householder extensions etc. This would be considered onerous.
- **Relevance:** Planning policy cannot impose the duties of a separate document (i.e. the Paris Agreement) that has no statutory status in a development plan. As an international treaty it does not form part of domestic law.
- **Deliverability:** requirements are too onerous. For example, due to the inherent uncertainty of air quality modelling, 0.1µgm-3 is too small to be considered significant as it could be within the general margins of error for modelling. Requiring developments to comply with such a requirement would be considered onerous and would not be compliant with NPPF presumption in favour of sustainable development policies.
- **Positivity and Sustainable development:** The policy needs to be more positively worded and in compliance with the NPPF definition of sustainable development, which also balances social and economic aims with environmental aims.
- **End Users:** Planning Policy cannot require end users to alter their behaviour. Could change to something like 'developments should enable occupants to take steps to adopt measures which will reduce their impact on air quality, by installing measures such as electric vehicle charging if they are providing parking spaces, adequate cycle parking, resident travel plans, membership to car clubs, electric taxi promotion'…

Other Council Function Comments:

- Policy seems to be conflating climate change policies and air quality. The Paris agreement is a climate change agreement. Zero emissions usually refers to carbon emissions. The two objectives do overlap but sometimes are in

conflict – for example some low carbon energy sources can have poor air quality impacts. The Forum could also include a separate climate change policy.

- Policy would need to refer to the UK National Air Quality Objectives or EU Objectives. The WHO standards do not form part of the UK's legal framework on air quality.