

From: Alasdair Thorne <Alasdair.Thorne@marrons.co.uk>
Sent: 04 September 2024 16:24
To: localplans@charnwood.gov.uk
Cc: David Pendle
Subject: Main Modifications to the Charnwood Local Plan 2021-2037 Consultation Representations obo Richborough
Attachments: Richborough HA39 Shepshed Quarry Main Mods Representation inc App.pdf

Good afternoon,

I am emailing to submit Written Representations to the Consultation on the Main Modifications to the Charnwood Local Plan 2021-2037.

The attached Representations have been prepared by Marrons on behalf of Richborough in respect of the Land fronting Ashby Road and Ingleberry Road, Shepshed (HA39).

Please may I request receipt of this email and the attached document.

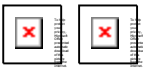
Kind regards,
Alasdair


Alasdair Thorne
Associate Director


D 0115 945 3769
M 07929 849 116
E alasdair.thorne@marrons.co.uk



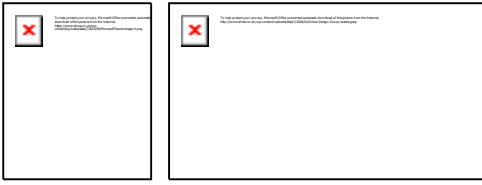
Marrons
No 1 Colmore Square, Birmingham, B4 6AA
DX721090 Birmingham 43



 *I'm empowered to work in ways that best suit the needs of our clients, colleagues and life, be that email, phone, video or in-person - which means I may work outside of traditional business hours. I do not expect that you will read, respond to, or action this email outside of your usual working pattern.*

 *As a sustainable business, we try to minimise paper use so please use email where possible - although signed original documents should be returned as instructed.*





FRAUD PREVENTION

Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details have changed. Please always speak to the lawyer acting for you to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send money.

Marrons is a business name of Shakespeare Martineau LLP. Shakespeare Martineau LLP is a limited liability partnership registered in England and Wales with number OC319029, is authorised and regulated by the Solicitors Regulation Authority with number 442480, with its registered office at No.1 Colmore Square, Birmingham, United Kingdom B4 6AA. Shakespeare Martineau LLP is a subsidiary of Ampa Holdings LLP (registered number OC435936).

Any reference to ‘partner’ in relation to Shakespeare Martineau LLP is a reference to a member of Ampa Holdings LLP or an employee or consultant of Shakespeare Martineau LLP with equivalent standing and qualifications and are authorised by Shakespeare Martineau LLP to execute and to bind that entity accordingly. The members of Shakespeare Martineau LLP are Ampa Holdings LLP, Mark Beesley, Lesley Davis, Verity Kirby, Suzanne Leggott, Alex Smith, Hannah Tait and Victoria Tester. Service of documents by fax or email is not accepted.

You should carry out your own virus check before opening any attachment. Shakespeare Martineau LLP accepts no liability for any loss or damage, which may be caused by software viruses or interception or interruption of this email. Please be aware of cyber crime. Shakespeare Martineau LLP will not be liable if you transfer money to an incorrect bank account. We will not accept, or provide, bank details sent by e-mail alone. Please do not reply to or act upon any email you might receive purporting to advise you that our bank account details have changed. Please always speak to the person you are dealing with to check any changes to payment arrangements. We will also require independent verification of changes to any bank account to which we are asked to send money.

This email is CONFIDENTIAL (and may also be privileged or otherwise protected from disclosure) and is intended solely for the person(s) to whom it is addressed. If you have received it in error please notify the sender immediately and delete the original message from your system. You must not retain, copy or disseminate it. We do not accept any liability for any loss or damage caused as a result of computer viruses and it is your responsibility to scan any attachments.

Please consider the environment before printing this email.

CHARNWOOD BOROUGH COUNCIL MAIN MODIFICATIONS TO THE CHARNWOOD LOCAL PLAN 2021-2037 CONSULTATION

REPRESENTATIONS ON BEHALF OF RICHBOROUGH

Introduction

1. These representations are made on behalf of our client, Richborough, who are promoting emerging allocation HA39 Land fronting Ashby Road and Ingleberry Road, Shepshed in the Charnwood Local Plan 2021-2037.

EXAM 81: Schedule of Main Modifications

Policy DS3: Housing Allocations

Main Modification MM29

2. MM29 sets out the range of modifications to yield across various allocations. HA39 is unchanged at 151 homes and Richborough are content with that position noting the figure is not a minimum or maximum.
3. EXAM 58J sets out the trajectory for individual sites and expects HA39 to commence delivery in 2031/32 with 25 dwellings to be completed in that monitoring year and as a result HA39 is not expected to contribute to the five year supply on adoption. Richborough disagree with this position and are actively preparing a planning application. In light of this Richborough expect delivery to commence in 2029 in the final year of the 5 year supply period.

Main Modification MM27 and MM53

4. MM27 adds a significant set of explanatory text prior to Policy DS3: Housing Allocations. The Main Modification sets out that:

“The design and layout of development can contribute to managing its impact on, and accessibility to, infrastructure. We expect the design and layout of development on our allocated sites to be considered comprehensively with development at nearby sites, especially with regards to the following clusters of adjacent or adjoining sites:

- ***Syston – sites HA1, HA2, HA3 and HA8***
- ***Loughborough – sites HA15, HA16 and HA17.***

- **Loughborough – HA18 and LUC3 (Loughborough Science and Enterprise Park)**
- **Shepshed (West) – HA32 and HA34**
- **Shepshed (South) – HA39, HA40 and HA41**
- **Barrow upon Soar – HA45 and HA46**
- **Queniborough – HA64 and HA65**

Proposals should respond positively to opportunities for integrating infrastructure provision between sites, including in respect of site access arrangements, other highways and transport requirements and landscaping and other green infrastructure.”

5. The Framework requires policies to be clearly written and unambiguous, so it is evident how a decision maker should react to development proposals (paragraph 16d).
6. The wording introduced by MM27 does not form a specific policy but seeks comprehensive design and layout with adjoining allocations. This was not a requirement of the site specific policy for HA39 and was there has been no specific discussion through the examination hearings about such a requirement for HA39.
7. MM53 proposed to add an additional bullet point to the site specific policy for HA39 as follows:

We will support development proposals at site HA39 that [inter alia]:

- **Have regard to and do not prejudice the delivery of adjacent/adjoining sites HA40 and HA41 with regards to site-specific highways and transport requirements and reasonably and appropriately provides for or facilitates such requirements to be delivered in the future, as necessary.**
8. Whilst similar bullet points are also proposed for HA40 (MM54) and HA41 (MM55) no explanation is provided in the reasoned justification to explain what issue necessitates the modification. As drafted the text requires HA39 to ‘reasonably and appropriately provide for or facilitate’ the ‘delivery of site specific highways and transport requirements’ necessary for the delivery of HA40 and HA41 in the future. This is onerous and excessive and there is no evidential position to justify such an unreasonable policy requirement of HA39.
 9. We appreciate that the policy requirement referred to in paragraph 8 above was unlikely to be the intention of the modification author but the wording of the policy sets the requirement and not the intention.
 10. Highways and transport matters can be dealt with on a site by site basis under INF1 and INF2 as proposed to be modified. MM27 and MM53 provides no additional function other than to seed confusion when reading the drafted policies.

11. The absence of any discussion on this modification and how it relates to HA39 at the examination hearings means we have no understanding that would allow us to helpfully propose alternative wording. For this reason the modification proposed by MM53 (and MM54/55) should be deleted as they are not necessary to ensure the policy is positively prepared, effective and justified.
12. Further to the above, and as currently drafted MM27 is entirely unclear and as a result unsound.

Policy INF1: Infrastructure and Developer Contributions

Main Modification – MM156

13. The proposed modifications to Policy INF1 under MM156 seek to “*improve soundness and clarity with cross referencing to the full range of infrastructure in the Infrastructure Schedule, arrangement for transport improvements and collaborative working on transport.*”
14. In this regard, we would raise the need to provide further clarity in respect of the provision of the reasonable costs of the on and off-site infrastructure needed to mitigate the impacts of the development. As currently drafted, and subject to the acceptance of MM156, Policy INF1 fails to relate the highways infrastructure impacts of a development to those identified within any associated Transport Assessment submitted as part of a planning application. We consider that this is a central mechanism in the pursuit of understanding a sites direct impact on the road network and should be utilised to determine whether off-site transport infrastructure improvements/contributions are required.
15. We would therefore propose a further modification to INF1 as follows, inter alia:

*contributes to the reasonable costs of any infrastructure required to mitigate the impacts of the development strategy including through the pooling of developer contributions where it is demonstrated **through appropriate and robust evidence including Transport Assessments**, that the impacts can only be addressed in a comprehensive way including cumulative and cross boundary impacts; and*

Policy INF2: Local and Strategic Road Network

Main Modification – MM158

16. Significant redrafting and modifications have been undertaken in respect of Policy INF2. The policy sets out how specific and cumulative transport impacts of the Local Plan’s development strategy will be mitigated through the preparation of three Transport Strategies.

17. Modification MM158 refers to “*Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence and by the policy framework in the Local Plan*”.
18. Whilst in principle this approach may be appropriate, our clients are concerned that the mechanism by which the Transport Strategies are in reality being developed and adopted (as wholly separate from the Local Plan by Leicestershire County Council in its role as Local Highway Authority) is to support Leicestershire County Council’s (LCC) financial contribution requests detailed within their Charnwood Transport Contributions Strategy (CTCS). This approach does not allow for the proper testing and scrutiny that would come through a development plan or CIL process.
19. Separate representations are being submitted to that consultation, contained at Appendix 1, and the Inspectors will be well aware of their own view expressed in EXAM80 that such an approach should be a Development Plan Document (DPD) rather than any other document type such as a Supplementary planning document (SPD) or ‘standalone policy’ as claimed by LCC which is being consulted on 10th July to 23rd August 2024.
20. Furthermore, MM158 provides no clarity on how the policy should function alongside the CTCS, were this to be adopted by LCC and if this was the intention of the policy, nor how contributions requested on the basis of Policy INF2 are balanced against any contributions required through the CTCS.
21. We note that MM158 proposes to modify INF2 (inter alia) as below:

Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence and by the policy framework in the Local Plan.

Where improvements are being delivered to the MRN or SRN, we will look for these to include measures that deliver, as appropriate, improved facilities for walking, cycling and passenger transport.

We will support development that is supported by a robust travel plan and robust transport assessment of the impact of the development on the road network, including its relationships to any identified significant cumulative and/or cross-boundary traffic impacts, and that demonstrates such impacts can be proportionately and appropriately mitigated.

Where a transport assessment indicates that a proposed development will have an impact on significant cumulative traffic conditions across the Borough and/or indicates cross-boundary impacts, a proportionate contribution will be required to the reasonable costs of measures required to mitigate such impacts in accordance with Policy INF1 either through a financial contribution or scheme delivery.

22. We specifically note the reference to transport appraisals and would suggest that to avoid any lack of clarity that additional wording be included as below in relation to the Transport Strategies:

Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence, such as transport appraisals, and by the policy framework in the Local Plan.

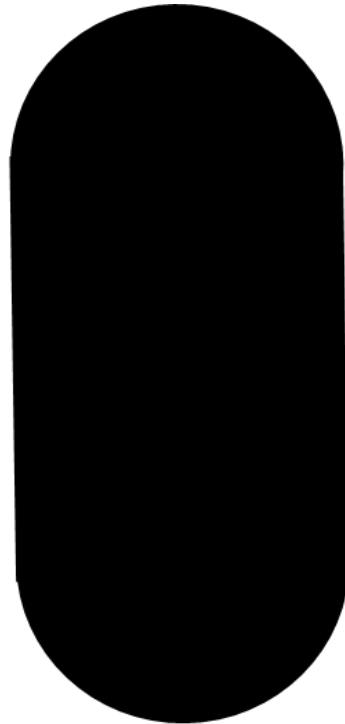
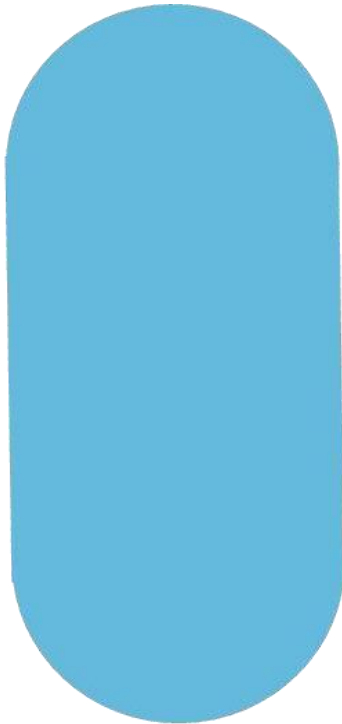


 Part of Shakespeare Martineau

Representation to Leicester County Council's Charnwood Transport Contributions Strategy

Richborough

August 2024



1. Introduction

- 1.1. This representation is made in response to the ongoing consultation of Leicester County Council's (LCC) Charnwood Transport Contributions Strategy in which LCC has worked with Charnwood Borough Council (CBC) to develop a new draft strategy for securing contributions required from developers for key transport schemes that are needed to mitigate the cumulative impacts of development across the Borough.
- 1.2. The Charnwood Transport Contributions Strategy (CTCS) is at consultation on 10th July to 23rd August 2024.
- 1.3. These representations are made on behalf of our clients, Richborough, who have an interest in emerging allocation HA39 - Land fronting Ashby Road and Ingleberry Road, Shepshed in the emerging Charnwood Local Plan 2021-2037.

2. Charnwood Transport Contributions Strategy

- 2.1. The CTCS notes the proposal to produce the 3 area-based Transport Strategies for Charnwood and to attribute scheme costs on an area by area basis. These three Transport Strategy areas are:
 - Loughborough and Shepshed;
 - The North of Leicester; and
 - The Soar Valley.
- 2.2. The CTCS sets out that these Strategies are being developed around geographic areas which reflect the findings of transport evidence work and the nature of the transport mitigation package identified to mitigate the Plan's impacts. A primary purpose of the CTCS is to address cumulative and cross-boundary transport impacts of growth both within and external to the Borough.
- 2.3. The CTCS details that the cross-boundary dimension is especially strong in respect of the North of Leicester Transport Strategy, given the sensitivities of the transport network in this area identified throughout the evidence building process and noting the growth proposed within this area through the City of Leicester's emerging Local Plan.

- 2.4. Our clients have significant concerns in relation to the approach, legal basis and lawfulness of contributions sought as a result of the CTCS.
- 2.5. We have set out below a number of key issues and concerns we have in respect of CTCS.

Requirement for a Development Plan Document

- 2.6. It is our position, and the position of the Inspector's at the Charnwood Local Plan examination (EXAM80), that the CTCS must constitute a Development Plan Document (DPD) rather than any other document type such as a Supplementary planning document (SPD).
- 2.7. This accords with the policy set out in paragraph 34 of the framework that "Plans should set out the contributions expected from development" and paragraph 004 ID: 23b-004-20190901 of the planning practice guidance "Policies for planning obligations should be set out in plans and examined in public [and] it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these will not be subject to examination".
- 2.8. If there were any doubt about the above advice, the Local Development Documents are further defined under regulations 5 and 6 of The Town and Country Planning (Local Development) (England) Regulations 2012. How a policy outside of a DPD falls to be considered under Regulation 5 has been considered in *William Davis Ltd v Charnwood BC [2017] EWHC 3006 (Admin)* where a "housing mix" policy was quashed by the High Court who held that the policy regulated the development of land and, by virtue of the *Town and Country Planning (Local Planning) (England) Regulations 2012* reg. 5(1)(a)(i) and reg.5(1)(a)(iv), should therefore have been produced as a local development document.
- 2.9. Section 20 of the 2004 Act requires a DPD to be submitted to the Secretary of State for independent examination and to be assessed for 'soundness'. SPDs do not form part of the local plan and whilst they must be made the subject of public participation, the adoption of a local plan is a much more significant undertaking.

- 2.10. LCC's failure to recognise this fundamental requirement in law is a fundamental failure in the preparation of the CTCS. As a result, the approach taken is entirely unacceptable.

Developer Contributions on a per Dwelling Basis

- 2.11. The approach of a per-dwelling contribution request within the CTCS replicates the CIL charging regime, in our view, without including any of the necessary safeguards that are otherwise applied. If adopted it would in effect represent a tax on development which directly conflicts with the purposes and safeguards of CIL and its application towards funding of infrastructure directly related to the development in question. The approach being pursued within the CTCS is therefore considered unlawful.
- 2.12. Furthermore, as set out above, it seeks to introduce policy which ought to be contained within a development plan into a non-DPD. Such an approach bypasses any independent examination and the assessment for 'soundness'. Moreover, the CTCS seeks to unacceptably include a formulaic approach to the collection of monies secured by S106, contrary to paragraph 34 of the NPPF and PPG.
- 2.13. Additionally, it seeks to require the provision of monies which do not meet the test of materiality and which have been tested previously and struck down in the Supreme Court case of *Elsick*¹. This is clearly unacceptable.
- 2.14. Moreover, the CTCS through its formulaic approach and per dwelling contribution approach fails to differentiate between mitigation of the existing situation and those related to the likely impact of the development in question. This does not meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations) which requires planning obligations be:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.*

¹ *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited* [2017] UKSC 66

- 2.15. This failure stems from the lack of detailed assessment and justification within the CTCS in relation to the impacts of individual allocations and how the identified mitigation funds are linked to the individual allocations.
- 2.16. As set out in detail within ADC Infrastructure's Review of the Charnwood Transport Contributions Strategy, it is clear that the approach within the CTCS to determine that the proposed development collectively will have a 'severe' impact and therefore each individual development would have a severe impact is not justifiable. The CTCS references a 'significant cumulative traffic and other transport problems' within paragraph 6.4 rather than the severe impact required by NPPF paragraph 115. This is a clear error in the fundamental methodology utilised to inform the CTCS.
- 2.17. Moreover, there are clear examples where applications have been considered by LCC as the Local Highways Authority and consider the impact to not be severe, but then as a result of the CTCS have sought contributions to offset the severe impact judged collectively. This cannot be a correct approach.
- 2.18. Turning to other matters that must be considered alongside the CTCS, there is no consideration within the Strategy as to any requirement for additional highways improvements that would be required to support current and future application in respect of the individual allocation outside of those mitigation packages identified within the Strategy. These improvements, and associated funds, which would sit outside the contributions requested by LCC for the CTCS improvements, would remain to be secured through S106 Agreements in line with the CIL Regulations. There is also clear potential for double counting.
- 2.19. In respect of the funds being sought for each strategy area, the CTCS is clear at paragraph A5 of Appendix 1 that "*the proposed contribution for each strategy area will not be sufficient to fully fund the identified components of that strategy in practice.*" This is fundamental to how the CTCS would operate and its failures. If, as the CTCS sets out, there remains insufficient funding to deliver the transport strategies then there is no confirmed mechanism for the mitigation measures to be implemented, and therefore clear questions over timeframes of delivery and whether mitigation schemes will be delivered at all.
- 2.20. Adding to this is the acknowledgement within the CTCS that further work is required, and is ongoing, in respect of the road, walking and cycle infrastructure improvement

schemes to be delivered. How this has been balanced against the cost estimates, dwelling contribution requests and the necessity of the contributions remains in question.

2.21. It is noted at paragraph 1.5 of the CTCS that the document will be reviewed and updated to reflect any relevant new and/or more detailed evidence and proposals to address the cumulative and cross-boundary impacts of growth that have implications for the levels of developer contributions being sought, to ensure that these remain justified and proportionate over time. However, there is no clear mechanism for when or how this review will take place. Any such review could indicate that contributions sought could increase at any time and provides a clear lack of clarity about the longer term position and viability of infrastructure projects.

2.22. In response to the proposed per-dwelling residential development contributions for sites with each transport strategy area set out in Table A2 of the CTCS, it is noted at paragraph A4 that LCC would request the lower of the two calculated figures. However, this differs from the approach take to date by LCC in response to planning applications within the strategy areas where method (i) has been exclusively used and will have a significant impact on viability and funding requests. For example, those sites within the North of Leicester strategy area have been, to date, subject to a per-plot request of £35,800 rather than the £11,500 request from method (ii). How LCC will seek to balance this approach and the implications for applicants subject to these requests is yet to be seen.

2.23. We remain seriously concerned that the CTCS has not been prepared in accordance with the law or appropriately tested. Regardless, the document will lead to significant viability concerns for applicants across the borough.

CTCS and Policy INF2

2.24. The CTCS and its relationship with emerging Charnwood Local Plan Policy INF2 is not clearly articulated or understood within the strategy. CTCS paragraph 6.2 states:

“Whilst the policy is standalone, it is generally in accordance with (and supports the implementation of) the approach set out through the Plan’s proposed modified policies

INF1 and INF2 and Infrastructure Schedule (see Appendix A for reference) and in doing so is pursuant to paragraph 34 of the NPPF.”

2.25. We have already raised issue with the CTCS's inconsistency with the requirement of NPPF paragraph 34 and we will not repeat these matters again save to say it is not within the gift of the preparing body to decide whether the relevant and appropriate law applies to a policy.

2.26. In terms of Policy INF2, it is our position that the CTCS is not consistent with the policy, irrespective of the other material issues raised within this representation.

2.27. Policy INF2, as modified, sets out that:

“Specific requests for developer contributions to fund the delivery of the Transport Strategies will be informed by appropriate evidence and by the policy framework in the Local Plan

[...]

We will support development that is supported by a robust travel plan and robust transport assessment of the impact of the development on the road network, including its relationships to any identified significant cumulative and/or cross-boundary traffic impacts, and that demonstrates such impacts can be proportionately and appropriately mitigated.”

2.28. This wording within Policy INF2 follows the traditional approach to the seeking of contributions which would meet the conventional policy tests, and which could then be sought and taken into account where they meet the test of materiality. This would ensure that the contributions would be CIL compliant.

2.29. In contrast, the CTCS's approach of a per-dwelling contribution based on location relies upon no specific assessment or appropriate evidence as justification in conflict with the CIL Regulations and as previously struck down in the Supreme Court.

2.30. As a result of this inconsistency between the CTCS and Policy INF2 there is the clear potential for double counting of impacts and associated contribution requests. No details as to how this relationship would be managed are evident.

3. Conclusion

3.1. It is clear that the CTCS is unsound and unlawful in respect of the following matters:

- It seeks to introduce policy which ought to be contained within a development plan into a non-DPD;
- It seeks to impermissibly replicate the CIL charging regime without including any of the safeguards of that regime endorsed by Parliament;
- It seeks to impermissibly include a formulaic approach to the collection of monies secured by S106, contrary to NPPF policy and PPG guidance;
- It fails to differentiate between existing highways issues and those directly related to the allocations;
- It fails to relate the impacts of individual allocations to the mitigation measures being proposed and therefore the funds required;
- It seeks to require by policy the provision of monies which do not meet the test of materiality and is starkly comparable to the unlawful tariff-based approach in the City of Aberdeen, struck down in the Supreme Court case of *Elsick*;
- It does not provide for the full costs of the mitigation measures required to enable a clear mechanism for delivery;
- It fails to detail the timeframes for delivery of infrastructure and expresses the need for further investigation in respect of designs, costs and evidence base.

3.2. Overall, the CTCS must not replicate the CIL charging regime through a formulaic approach to the collection of monies. As it is currently being progressed as 'policy' but not within a defined DPD framework it is procedurally flawed. Additionally, it lacks justification for the per-dwelling contributions sought in direct conflict with the NPPF.

3.3. On this basis, LCC should abandon the CTCS and not seek to progress it any further nor continue to seek contributions in respect of pending applications on its behalf. The appropriate way forward should LCC wish to pursue contributions would be through the implementation of CIL or via a developer contributions DPD.



 **Marrons**

Certified



Corporation



Think before you print