**TRAFFORD CORE STRATEGY EXAMINATION**

**WRITTEN STATEMENT PREPARED BY TURLEY ASSOCIATES ON BEHALF OF THE PEEL GROUP**

**FURTHER CONSULTATION ON POLICY L5: CD 12.71**

**UNIQUE REFERENCE NUMBER: 1045**

**9TH May 2011**

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**General Comments**

Peel have considered the Council's paper CD 12.71 which sets out the Council's proposed further changes to the climate change elements of Policy L5 and seeks to provide further explanation of how this policy is intended to be operated.

Peel's objection to the Policy as it appeared in the publication draft of the Core Strategy argued that there was no justification for the additional burdens on development which Policy L5 sought to impose in respect of carbon emission reductions over and above those set out in the Building Regulations and that this element of the policy should be deleted. The Council's proposed additional changes to the policy do not allay Peel's central concerns and Peel's objection to the policy therefore remains.

In addition Peel considers that the need and justification for this policy have been further reduced by statement in the Government's "Plan for Growth" that the government is announcing regulatory requirements for zero carbon homes to apply from 2016 and that, to ensure it remains viable to build new houses, the Government will hold house builders accountable only for those $CO_2$ emissions that are covered by Building Regulations. (See Peel's comments in respect on the Inspector's Note 5).

The higher targets, at 5% and 15% above the current Part L requirements, will actually achieve relatively modest additional benefits in terms of carbon emissions. In addition, given that paragraph L5.8 advises that the higher targets will cease to apply when Building Regulations exceed these (which will be by 2016) any benefits flowing from the

policy will also be short term. In Peel's view the prospect of securing these short term and modest benefits simply does not warrant the imposition of the significant additional costs and delay for developers in the preparation and promotion of planning applications which are an inevitable consequence of the policy and which are likely act as deterrent to new development and investment in Trafford.

If carried forward into the adopted plan the policy is likely to result in development, which meets all of the national requirements, as set out in Building Regulations, being refused permission because the proposal cannot satisfy the higher local targets and cannot support the requisite payment to the Allowable Solutions Fund. In Peel's view such an outcome would be wholly in conflict with the Government's commitment (also set out in the" Plan for Growth") to introduce a ***powerful presumption in favour of sustainable development.*** Hence Peel would invite the Inspector to conclude that the policy is in conflict with national policy and that its continued inclusion in the Core Strategy would render the plan unsound.

**Detailed Considerations**

The Inspector's preliminary conclusions in respect of Policy L5 were that it was unsound and that both the policy and its supporting text needed to be rewritten "in a manner that its requirements can be easily and clearly understood, its mechanisms for delivery are realistic and transparent, and its implications for development are transparently and realistically taken into account, both in isolation and as part of the overall package of cost imposed on development by the Core Strategy" (Inspector's Note on Matters Arising from Session 8).

In Peel's view the further changes proposed by the Council do not achieve any of these objectives with the policy and its justification still lacking transparency and being very difficult for developers to understand and apply. Without repeating the points made in Session 8 we would make the followed detailed comments;

- As it stands the policy will almost certainly mean that developers will require specialist consultant support on each development project thereby increasing costs.
- The policy is still very much focused on the obligations that are to be imposed on a developer and there is no indication that a development which achieves or exceeds the carbon reduction targets would derive any actual benefit – for

example by having a lower requirement under some of the other development cost-generating policies - from such an achievement.

- As a general principle the Policy should make it clear that developments which are carbon neutral or carbon positive should not attract any S106 obligations in relation to energy issues as this would be likely to affect viability in an adverse way.

- In general the policy does not appear to be any more flexible that the earlier version. Whilst it is noted that there has been considerable investment in the evidence base the objectives and legislative context which guided the development of these studies have changed and are likely to undergo further changes, for example through the ongoing work by the Zero Carbon Hub (a government/ house building industry representative body) to inform the government on the most appropriate mechanisms to achieve Zero Carbon Development which is due to report later this year.

- The Government has recently adopted a key recommendation by the Hub which effectively eases the zero carbon targets to a more practical level. This announcement (and further changes) will be implemented through continued modifications to the Building Regulations 4.

- Paragraph L5.5 introduces the concept of Low Carbon Growth Areas (LCGAs) and establishes higher carbon targets for these areas on the basis that more advanced carbon reduction strategies (such as decentralised energy) will be feasible. Peel objects to the basis on which it is proposed to designate such areas. This is because land is to be deemed to be within a LCGA on the basis that there is an existing or planned renewable energy or district heating facility in the locality; hence a development in that area is then required to achieve the higher carbon reduction targets even before any work has been carried out as to the practicality and costs of achieving connectivity to those facilities.

- Unless the energy infrastructure is actually in place and there is a clear understanding, at the start of planning a new development plot, of whether a proposed development will be able to connect to this infrastructure and what the unit costs of doing so are likely to be, it is difficult to see how this policy can work in practical terms without causing a great deal of uncertainty and, potentially, very significant additional costs to developers.

- Paragraph L5.8 is not clear as to whether the policy is stating that the targets as listed in table L5.1 become redundant once Building Regulations exceed these targets, or that each future revision of Building Regulations will then become the

benchmark from which the higher targets are established. This requires greater clarity.

- Peel welcome the Council's inclusion of additional text on scheme viability and stress that each scheme must be treated on its individual merits with regards to commercial and technical viability for the higher carbon targets.

- Paragraph 14.10 suggests that the higher targets within the LCGAs can be achieved by a combination of superior energy efficiency measures such as microgeneration and Area Wide Options (AWO) such as low carbon infrastructure. Peel would like to remind the council that investment returns in these LCGAs do not necessarily facilitate greater investment in such measures and that individual development alone cannot be reasonable expected to pay the initial capital costs for such infrastructure.

**Allowable Solutions Fund and S106 Contributions**

If, contrary to these representations, a policy requiring additional reductions in $CO_2$ emissions is retained, then an important element would be the reliance on the use of Section 106 Planning Obligations to provide flexibility where the policy requirements cannot be met on site or where viability is in issue. There is a concern, however, that, in view of the Community Infrastructure Levy Regulations 2010, this flexibility may become unavailable or severely constrained on or before 6 April 2014.

Briefly, Regulation 123 provides as follows:-

1. If a CIL schedule is not in effect by 6 April 2014, the entry into a Planning Obligation after that date to provide or contribute to an infrastructure project or type of infrastructure cannot constitute a reason for granting planning permission if 5 or more separate Planning Obligations have already been entered into which provide for the provision or funding of that project or type of infrastructure. The limit on 5 Planning Obligations would be likely to constrain significantly the ability, for example, to fund Allowable Solutions such as the "large scale stand alone renewable energy generating schemes" referred to in paragraph 14.15 of the draft Policy supporting text.

2. If a CIL schedule has taken effect prior to 6 April 2014 and a Planning Obligation is entered into to provide or fund an infrastructure project or type of infrastructure

which is not on a list on the Council's website as being funded by the CIL, then, as above, the Planning Obligation cannot constitute a reason for granting planning permission if 5 or more separate Planning Obligations have already been entered into which provide for the provision or funding of that project or type of infrastructure. (In other words, the position is the same as at 1 above but with effect from the date on which the CIL schedule takes effect).

3. If a CIL schedule has taken effect prior to 6 April 2014 and a Section 106 Planning Obligation is entered into to provide or fund an infrastructure project or type of infrastructure which is listed on the Council's website as being funded by the CIL, then the Planning Obligation cannot constitute a reason for granting planning permission, regardless of the number of other earlier planning obligations which have been entered into to similar effect.

The purpose of the above provisions is to encourage Councils to use CIL payments, and not Planning Obligations, for contributions to projects or types of infrastructure by several different developers but a key feature of CIL payments is that, to ensure fairness between developers, the CIL is a tariff payment which has to be paid by all developers save in very limited circumstances prescribed by the Regulations. So the scope for flexibility is greatly reduced, when compared with the negotiation of Planning Obligations.

In view of the above, there is a strong likelihood that, in under 3 years from today's date (and an even shorter period from the adoption of the Core Strategy), the policy will be ineffective because a key ingredient, flexibility, cannot be adequately achieved.