

Statement of Case

On Behalf of:
Bestway Holdings Ltd
(Representation No. 563)

In Relation to:

Barnet LDF:
Core Strategy and Development Management Policies DPD

Matter 9: 'Brent Cross Cricklewood'

To be Held on Thursday 8th December 2011

12 November 2011

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1.0 Introduction

- 1.1 This Statement expands on the written representations submitted by Bestway to the Barnet Core Strategy and Development Management Policies Development Plan Documents. In accordance with the 'Briefing Notes for the Examination in Public' (dated 25th October 2011), the Statement focuses upon the issues identified by the Inspector for the Session dealing with the 'Brent Cross-Cricklewood' (Matter 9).
- 1.2 Bestway has prepared a separate Statement in relation to the 'Spatial Strategy/Vision and Sustainability' (Matter 1). To avoid repetition the Statements cross refer to each other.
- 1.3 Pursuant to Bestway's original representations, the nature of Bestway's concerns focus on the approach which the Core Strategy ['CS'] takes to Brent Cross-Cricklewood ['BXC'] and in particular the proposed waste facility. It is Bestway's view that the CS (and wider LDF) is unsound, given the Council's failure to update its policies dealing with this Opportunity Area and their reliance on historic policies which have not been prepared in accordance with latest requirements and which are erroneous and flawed.

2.0 Does the CS provide an appropriate framework for guiding development in the BXC area? Is it necessary to strengthen the links between the non statutory development framework and the CS? Which development standards will be applied when considering development within the BXC?

Does the CS provide an appropriate framework for guiding development in the BXC area?

- 2.1 The CS provides an inappropriate framework for guiding development in the BXC area. In line with PPS12, given the scale and strategic importance of BXC, the Council should have updated its policies to make a strategic allocation of the site.
- 2.2 Whilst Policy CS2 summarises the background to the BXC Opportunity Area (together with Map 5), the policy does not provide the required strategic direction. Instead, the document refers to the London Plan; saved UDP policies (Chapter 12); and the Regeneration Area Development Framework ['RADF']. In the case of the RADF, the CS states it "*will provide the key elements of local planning policy framework for deciding future planning applications unless and until it is replaced by new DPD or SPD as a result of the LDF Monitoring and review process*".
- 2.3 This approach is wrong. Consequently the plan is unsound and does not comply with national planning guidance.

Is it necessary to strengthen the link between the non-statutory development framework and the Core Strategy?

- 2.4 The link between the Core Strategy and RADF is be inappropriate.

- 2.5 The RADF is a non-statutory document which, according to the UDP, was designed to “provide the context for deciding any planning applications” (Para 12.1.2). Its status as “being for guidance only” is further recognised in the Council’s letter to Bestway, dated 27th September 2007 (appended as **CPS1**).
- 2.6 The RADF was prepared to assist the Council determine the BXC outline application. The RADF was not designed to serve the wider policy role which the Council now wishes to use it for. In addition, for reasons expanded on below and in Bestway’s Statement on Matter 1, the RADF was not prepared in accordance with the latest guidelines for such documents, and was not based on technical assessments undertaken by the Council.
- 2.7 Consequently, rather than strengthening the link, the Council should update the CS to provide more detailed strategic guidance and flexible targets for the delivery of the BXC Opportunity Area and prepare an AAP setting out the detailed site specific policies against which future planning applications can be properly assessed.

Which development standards will be applied when considering development within the BXC?

- 2.8 Without any other policies to replace the UDP/RADF, the only development standards that the Council can apply to new BXC developments are those in the RADF. However, as noted elsewhere within this Statement, the RADF is unsound and no weight should be given to it.
- 2.9 If the CS and Development Management Policies (supported by a new APP) are not updated, the Council will be required to rely on outdated and unsound policies when considering future development proposals in one of the UK’s largest regeneration schemes, up to 2026.

3.0 Should the Parcelforce Depot site on Edgware Road be included in Table 2 of the CS? If not, why not?

- 3.1 Bestway has no comments on this matter.

4.0 Does the Infrastructure Delivery Plan correctly identify the timeline for the delivery of infrastructure in the BXC area?

- 4.1 Bestway has no additional comments on this matter.

5.0 Is the CS the right plan to identify a site for a waste facility (Geron Way)? Is this more appropriately addressed in the emerging North London Waste Plan? What evidence has been provided to justify the identification of this site? Are there any constraints in

delivering it? How will the proposals maps for the CS and North London Waste Plan fit together?

Is the CS the right plan to identify a site for a waste facility (Geron Way)? Is this more appropriately addressed in the emerging North London Waste Plan?

5.1 The CS cannot be the correct document to identify a waste site. Site identification is a requirement for the CS and wider LDF, where policies are required to be justified, effective and consistent with national planning policy. This means they MUST be:

- Founded on a robust and credible evidence base;
- Considered against reasonable alternatives;
- Be deliverable, flexible and able to be monitored;
- Be subject to a Sustainability Appraisal.

5.2 The LDF is unsound as the Council is relying on the identification of the waste site from the UDP/RADF. These documents were not subject to the level of scrutiny described above and include errors/flaws which the Council has publicly acknowledged.

5.3 In any event, the CS's identification of the waste facility can only occur once the NLWP has been adopted and having regard to the prospective contracts arising from the NWLA's procurement exercise. At present, any attempt to identify a site within the LDF (and any reliance on the UDP/RADF) prejudices the outcome and is premature to adoption of the NLWP.

5.4 Whilst the NLWP is nearing Examination Stage, the weight afforded to the document still remains limited. Bestway submitted detailed representations to the NLWP consultation stages (reps to Pre-submission version attached as **CPS2**). These demonstrate significant errors in NLWA's scoring the proposed Geron Way waste facility and identify alternative sites which score more highly. Bestway's findings are that the Geron Way site should not have made it onto the short list of new waste sites in the NLWP, let alone to be selected.

5.5 In summary, the correct document for consideration of waste issues, including and the identification of new/replacement waste sites, is the NLWP. Only once this document has been adopted, can Barnet's policies make reference to the suitability and location of a proposed waste site.

What evidence has been provided to justify the identification of this site?

5.6 There is no sound evidence to justify the identification of the waste site in the CS, UDP, RADF, emerging NLWP and the BXC planning application. We present our case concerning the lack of 'evidence' below.

Flawed UDP

5.7 The Council has presented a confused position with regard to the UDP's identification of the waste site. For example, in a letter to Bestway dated 25th May 2007 (see **CPS3**) the Council stated "...the UDP does not in fact allocate a site for such purposes....Subsequent

allocation of the site has emerged through the process of preparing the non-statutory Development Framework”.

- 5.8 The Council reinforced its views that the site was not allocated in a letter to Bestway’s solicitor dated 7th December 2007 (**CPS4**). This letter states *“The proposal to locate a waste transfer station is found in Policy C7 of the Council’s adopted UDP. This policy is not site specific...”*
- 5.9 Furthermore, in response to Legal Opinions prepared by Bestway’s Counsel (see **CPS5**), the Council conceded (in the BXC Committee Report – partly replicated in the Council’s answers to the Inspector’s Pre-examination questions - INSP001/INSP002) that it was inappropriate to refer to the WHF site as a *“UDP allocation”*, due to the *“errors in the final adoption of the UDP”*, although it maintained the view that *“the General Principle of the UDP were acceptable”*.
- 5.10 The admission of such errors undermines the Council’s reliance on the UDP/RADF. By not updating the BXC policies in the CS (and wider LDF), the CS /LDF is unsound and unlawful.

Lack of Assistance from UDP Inspector

- 5.11 In an attempt to deflect from its failure to allocate the waste site in the UDP, the Council has stated (in INSP002-Q13) that the UDP Inspector recommended *“the site should be specifically identified [for waste purposes]”* in accordance with the RADF.
- 5.12 There is nothing in the UDP Inspector’s Report (November 2004) which suggests the Inspector was presented with technical evidence to justify a designation of the waste site. The position appears to be as set out in Council’s answer to Bestway’s Question 5 prior to the determination of the BXC application. (extracts included in the ‘Addendum to Response to INSP002-Q13’). At Para’s 4.5.4 and 4.5.5 of their answer, the Council acknowledges the Inspector’s reference to a site was based on the RADF. Indeed, the Council state:

“...the UDP Inspector is recommending that the UDP proposal maps should be amended to bring it into line with the Development Framework, rather than that the Development Framework should be amended to bring the DF into line with the then draft UDP Proposals Maps”.

- 5.13 This admission is astonishing, as the Council are admitting that the UDP was amended to bring it into line with a non-statutory SPG. The RADF was designed to support the UDP, rather than to set the policies/designation within the UDP.
- 5.14 Despite requests from Bestway, the Council have never produced a ‘draft’ of the Pre-Inquiry UDP Proposals Map which identified a site for the waste facility. As such it appears the Council presented the UDP Inspector with the RADF (and did not explain to the Inspector that it was the developer who identified the waste site in the RADF). Based

on this information the Inspector recommended the Council update the Proposals Map/UDP to have regard to the RADF identified waste site.

- 5.15 In summary, the Council's attempt to rely on the UDP Inspector's endorsement of a site designation, to justify its position, is fatally flawed. All the UDP Inspector was doing was to assume the Council had undertaken a robust assessment for the location of the waste site in the RADF which, as noted elsewhere within this Statement, did not happen.

Flawed Regeneration Area Development Framework

- 5.16 Counsel, acting on behalf of Bestway has given clear advice (see **CPS5**) that, in relation to the waste facility, *"no weight should be attached to the Framework"*.
- 5.17 Counsel reached this view since the Council conceded in correspondence that it had not undertaken any technical assessment on the waste issues. For example, in its letter to Bestway's solicitor dated 19th November 2007 (**CPS6**) the Council stated that relocation of the waste facility *"...was a proposal by the developer not the council. No information available."* This view was reinforced in a further letter to Bestway's solicitor dated 7th December 2007 (**CPS4**).
- 5.18 The absence of any independent assessment, or an audit of the developer's site selection exercise, by the Council, is confirmed in its letter to Bestway dated 27th September 2007 (see **CPS1**) which states *"The Council has not undertaken any separate studies nor will it have detailed technical material to determine the exact siting of a replacement waste facility....."*
- 5.19 Bestway's Counsel concluded that *"the decision to promote the Development Framework in a form which appeared to allocate the Bestway site was uninformed by any consideration of whether it was the appropriate site on which to meet NLWA's needs (or indeed even any independent consideration of whether the "enhanced" waste facility should be created by relocation rather than by re-development of the existing facility). It is clear that in this respect the Development Framework is no more than an expression of the developer's unaudited preference and for this fundamental reason is not entitled to any weight."*
- 5.20 Of further relevance is the Council's response to Bestway questioning prior to the determination of the BXC application. In answer to Bestway's Question 10 the Council stated it *"...did not undertake any independent consideration of alternative sites for the Waste Handling Facility when preparing the development framework. It relied upon the detailed work that was being done by the applicants in that respect"*. In the same response the Council admitted its error by stating *".. the criticisms implied by the question may have been valid questions to raise"*.
- 5.21 In its further response to Bestway's Question 10, the Council noted there was no legal requirement to undertake an evaluation of alternatives sites at the time the RADF was prepared, although they accept *"the consideration of alternatives is a legal requirement"*

under the LDF regime and the Strategic Environmental Assessment Directive (which came into force on 21st July 2004". It seems perverse that, having made such a strong statement, the Council have then relied on the flawed RADF, and has not attempted (through the LDF) to comply with the 'legal requirement' to assess alternative sites.

5.22 The Council's error in not undertaking any assessment of the potential waste site in the RADF is further compounded by the NLWA's admission (NLWA letter dated 16th November 2009 – see **CPS7**) that *"there is no document showing the NLWA consultation response to the Barnet draft RADF" and "there has been no consultation or discussion on detailed design issues relating to waste handling facilities within the Brent Cross Cricklewood development area, and there are therefore no documents to discussed"*. It seems extraordinary, that the body responsible for overseeing waste facilities/issues, and identifying new/replacement waste sites, did not comment on a document which planned to relocate an existing facility.

5.23 The NLWA's admission was not a surprise to Bestway, since NLWA had previously gone on record to as stating:

"CRL [aka BXC Development Partners] has indicated that the Authority [NLWA] will be offered a site that the developer considers to be suitable elsewhere within the development and that the location and area of the land that that will be offered is not negotiable due to it already having been approved in the developers masterplan...." (NLWA, Hendon Relocation Update Report, 7th February 2007 – **CPS8**)

5.24 It is clear from the evidence outlined in Bestway's two Statements, that the location of the waste facility was predetermined by the BXC developers from the outset in order to realise financial gains and their achieve master planning requirements. The Council/NLWP have been unwilling to question this in the RADF, or indeed any subsequent documents (e.g. the NLWP).

Are there any constraints in delivering the Waste Facility?

5.25 There are several constraints preventing the delivery of the waste facility. The key constraint is Bestway's freehold site ownership, which is vital to the success of its business. Bestway has no intention of making the site available for the development of a waste facility.

5.26 A second key constraint is that the Geron Way site is too small to meet the London Plan's requirements for a replacement waste facility. This is demonstrated in the two letters prepared by the NLWA in relation to the BXC application (letters dated 13 June 2008 **CPS9** and 6 May 2009 **CPS10**).

5.27 In the first letter the NLWA raised a "fundamental objection" with size of the site, stating it was inadequate to meet the relevant London Plan Policy 4A.24 requirement for compensatory replacement of existing waste facilities being lost through redevelopment.

- 5.28 Within its second letter (**CPS10**) the NLWA removed its fundamental objection (Bestway is currently awaiting material from the NLWA concerning this U-turn, following a successful FOI appeal for full disclosure from the Information Commissioner), following assurances from the BXC developers that they *“will work with the NLWA and London Borough of Barnet, to secure a larger site.”*
- 5.29 Therefore, despite removing their objection, this was only on the basis that a larger site is provided. Consequently, NLWA must be accepting that the UDP/RADF identified site is too small and not in accordance with the London Plan and UDP Policy C7.
- 5.30 The NLWA have then compounded this non-compliance issue in the NLWP, since the site area (and boundaries) identified for the waste site reflect those identified in the UDP/RADF, which they have previously acknowledged is too small. The failure of the waste site area to comply with the London Plan’s size requirements is therefore a constraint.
- 5.31 A further constraint arises from the NLWA’s admission (in their second letter) that *“a separate planning application”* will be required to achieve a London Plan/UDP compliant waste site. The need for such an application and the uncertainty as to outcome of this application, places a further constraint on delivering the waste facility.
- 5.32 Finally, the precise technologies to be used at the waste facility are unknown. The ability for the waste providers to secure licences to operate their preferred waste treatment technology, particularly on a site close to houses and a local school, is a further constraint.