



Planning Policy Team  
Durham County Council

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21/07/2020

Dear Sir / Madam,

## **COUNTY DURHAM PLAN: MAIN MODIFICATIONS**

Thank you for consulting with the Home Builders Federation (HBF) on the Durham Plan Main Modifications.

The HBF is the principal representative body of the house-building industry in England and Wales. Our representations reflect the views of our membership, which includes multi-national PLC's, regional developers and small, local builders. In any one year, our members account for over 80% of all new "for sale" market housing built in England and Wales as well as a large proportion of newly built affordable housing.

The HBF considers that the response to this consultation is of huge importance to the Plan led system and its essential role in establishing effective policy and viable deliverable development. The HBF has experienced plan-led viability taken forward under transitional arrangements which we consider has been 'light touch' as guidance generally allowed deferral to application stage. The HBF considers that as the County Durham Plan is one of the first plans to be examined and adopted in line with the National Planning Policy Framework (NPPF) 2019 and Planning Practice Guidance (PPG) it could set an important precedent for other plans across the country. It is therefore vitally important that the issue of viability is addressed robustly, openly, and transparently, in line with current guidance so that all stakeholders have the understanding and clarity required.

The HBF fully recognises the clear shift in national policy through changes to the NPPF from 2012 to 2019 to help ensure sound plans with a good range of proven deliverable sites. Paragraph 34 states that policies should set out contributions expected from development and that such policies should not undermine the deliverability of the Plan. Whilst paragraph 57 makes it clear that viability assessment of plans should mean that planning applications are viable and should not require further individual viability assessment. The PPG (ID:10-002) strengthens this position and states that the role for viability assessment is primarily at the plan making stage. It goes on to highlight that policy requirements should be set at a level that allows for development to be deliverable without the need for further viability assessment at the decision-making stage unless it can be demonstrated that circumstances have changed. Thus, the robustness of the Plan stage viability is key.

The HBF is disappointed that the Inspector for the County Durham Plan does not appear to be steering the Council towards ensuring that the Plan is viable and deliverable. Instead, the Inspector appears to be allowing this matter to be deferred to reliance upon a viability clause

as was common under the previous guidance. The HBF sees this as a backward step, and in direct contradiction to current government guidance. This will not lead to the robustness and transparency that the change of approach seeks to achieve.

The Inspector's Note No.11 provides no further information about the consideration given to the evidence provided by the HBF, which runs to the heart of the Plans soundness. The HBF considers that it is essential for the Inspector to be particularly clear on the point of overall Plan viability. This is one of the first plans to be examined under the current guidance and is likely to be used as an important precedent for other plans across the country. The industry can ill afford for critical issues to be missed or for stakeholders to lack understanding or clarity on how policy decisions have been arrived at. The Inspector's consideration and deliberation of the evidence before him (reflecting actual costs on current sites) is hugely important for plan making across the country but particularly in the North where land values are lower. This is magnified as the industry may face a recessionary future with commentators forecasting significant revenue falls, increased build costs and impacts on finance due to longer development periods.

The HBF has tried to work proactively with local authorities to ensure that viability is addressed early on, and that any differences and issues are narrowed and clearly understood by the time of submission to assist the Inspector during the examination process. The HBF created a transparent standardised approach to ensure the issues highlighted above were thoroughly considered. This approach is well documented in our representations. It managed to narrow down differences and thereafter sought to concentrate solely on the key aspects of abnormal costs and BMLV's. Significant factual evidence highlighting fundamental flaws in the assumptions made within the Council's Viability Assessment were demonstrated and the lack of any market backing to BMLV's was also identified. The HBF is not aware of any further evidence provided by the Council to counter this.

An Addendum to the Viability Assessment (provided by the Council) considered some alternate scenarios (including some that are between the initial assessment and the actual costs provided by the HBF) which clearly confirmed that the policy requirements currently proposed in the Plan were not viable for the majority of site typologies. Despite this the Council have maintained their policy position and remain unperturbed about any viability concerns. This is of huge concern and a matter that must be addressed openly and transparently via a clear and reasoned justification from the Inspector based upon current guidance and the evidence provided. The modification suggested as a consequence of the Inspector's Note 11 can only be considered in this context. To do otherwise would run against the aims and objectives of the revised approach towards viability and indeed emerging case law which will be highlighted below.

The HBF does not want the County Durham Plan to be found unsound, rather, the HBF wishes to understand the context for modifications as outlined above which we feel is crucial to the Plans soundness. If it is not done in this way, the HBF can see the potential for disinvestment in the County with applicants needing to contest viability for every site based upon a lack of understanding and clarity. This is not conducive to strong land supply and the delivery of homes.

Within this context the HBF would like to submit the following comments on the proposed individual Main Modifications.

**MM4: Policy 1**

The HBF supports the Council in including ‘*a net minimum*’ in relation to the number of dwellings, which makes it clear it is a minimum.

**MM7: Policy 1**

The HBF is concerned that the Council have determined that it is not appropriate to include a lapse rate for housing allocations and the justification for this is retained in paragraph 4.21, which states that the lapse rate is not required as the housing allocations have been assessed including using viability assessment. Our concerns on this are laid out clearly above.

The NPPF<sup>1</sup> is clear that Plans need to be robust and sufficiently flexible to adapt to rapid change. A Plan based upon suspect viability is unlikely to be resilient to changing circumstances, which is likely to be crucial in the years ahead as outlined above.

**MM8: Policy 1**

The Council propose to amend paragraph 4.22 to include a windfall allowance of 100 dwellings per annum, this will be included in the supply from 2021/22. The HBF continues to have concerns about this high proportion of windfall development and considers that it should be reduced.

**MM9: Policy 1**

The HBF supports the Council in removing an allowance for bringing empty homes back into use, the HBF supports the Council in seeking to monitor this figure and include it within the housing requirement.

**MM83 and MM86: Policy 15**

The HBF continues to have concerns that the affordable housing contributions set in policy 15 are not justified for the reasons laid out above. It is considered that the policy requirement should be reset once there is clarity from the Inspector on the key viability issues. In addition, greater flexibility is required (for application stage) that allows for the policy requirement itself to be reduced where viability and deliverability concerns exist, and evidence clearly confirms this.

The HBF has significant concerns that as currently proposed this policy will further undermine the deliverability of the Plan as it offers little to no flexibility in the face of significant viability concerns. As such it is not considered to be consistent with national policy and is therefore unsound.

Currently when it comes to viability, the proposed policy simply allows a switch of tenure from the preferred mix but no more. Indeed, it is also unclear whether this relates to both affordable and market housing or simply affordable.

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<sup>1</sup> Paragraph 11

With the above context in mind the HBF considers that this policy should be amended to better reflect the content of Policy 26, which refers to the levels of affordable housing provided, and to also allow change to the proportion of affordable homes provided. Without this the HBF considers that the policy is not consistent with national policy<sup>2</sup> and is as such unsound.

**MM85: Policy 15 & MM89: Paragraph 5.107a**

The Council propose to amend this policy to require 66% of dwellings on sites of 5 units or more to be built to the M4(2) standard. The HBF continues to have concerns in relation to this policy and does not consider that the Council has provided sufficient evidence to support such a high proportion of dwellings at the M4(2) standard. This percentage level was revised significantly upward at the last minute without consultation with the HBF or the industry. The HBF does not consider that this policy has been justified or fully considered within the viability work with regard to build cost and coverage and as such is considered unsound. The HBF does however, support the inclusion of additional text in relation to when the requirements will not be applied for example site specific factors and viability, if the policy is to be retained.

**MM116: Policy 26 & MM118: Paragraph 5.268**

The Council propose to include a new paragraph in this policy which states that *‘Planning applications which do not propose policy compliant levels of affordable housing and/or obligations necessary to mitigate the impact of development will need to be supported by robust viability assessment. Any viability assessment accompanying a planning application should refer back to the assessment that informed the plan and provide evidence of what has changed since then’.*

The HBF considers that whilst it is beneficial to include a clause in relation to viability and to allow for viability evidence to be provided, it does not replace the need to have a viable plan. The HBF comments on this modification are firmly set within this context, as clearly laid out above.

The fundamental issue of concern is that the policy requires reference back to the Plan stage viability assessment, which the HBF believes, indeed the evidence demonstrates, is fundamentally flawed. Unless all stakeholders are provided with clarity on this from the Inspector, it could be interpreted that the Council’s viability evidence has been endorsed. As such, the application of PPG (regarding the need to evidence on what has changed at application stage) becomes a ‘millstone around the neck’ for the decision maker (the LPA) who will clearly stand by their own evidence. If it is found that the Plan viability is based upon ‘straw’ does this comprise a justifiable change of circumstance? How would the Council react at application stage if this is brought to light? Would the need to win this argument year on year, site by site give rise to positive investment decisions necessary for the delivery of homes?

The previous responses of the HBF have clearly set out our concerns highlighting that the abnormal costs identified are insufficient (with significant evidence provided to demonstrate this), and that the BMLVs have been set without engagement or endorsement from

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<sup>2</sup> Paragraph 16 NPPF 2019

landowners or land agents. When actual abnormal costs are deducted land values will either be decimated or too low to ensure that owners are sufficiently incentivised to sell.

These are not minor differences. This is a disagreement about actual evidenced costs that have simply not been allowed for. The Councils advisor simply states that BMLV's will reduce as a consequence which is not what PPG states and bears no relationship to the reality of the land market. This is compounded by the complete lack of agent support for the BMLV's in the first place. This is not a recipe for the encouragement of investment and delivery of homes.

Indeed, these issues are beginning to be probed in case law. In the recent judgement of J Dove in R (Holburn Studios) v London Borough of Hackney a number of matters relevant to the Durham situation can be highlighted;

1. A legitimate expectation in respect of the disclosure of viability information
2. The problems of viability information in the public domain being opaque and unexplained
3. No explanation of how BMLV has been derived
4. In following the approach recommended in the framework and PPG standardised inputs should be used.

All of the above point towards the clear need for the Inspector to explain the logic that has given rise to his Note 11 and apparent allowance for viability to be deferred to application stage in Durham.

Nevertheless, in order to try to be helpful (and in the context of Plan viability concerns) we have sought to consider how such wording could be made to work if this indeed is the outcome of our requests for transparency outlined above. The HBF proposes the following amendments:

*'Planning applications which **provide alternate** ~~do not propose policy compliant~~ levels of affordable housing and/or obligations necessary to mitigate the impact of development will need to be supported by robust viability assessment. Any viability assessment accompanying a planning application should **consider** ~~refer back to~~ the assessment that informed the **plan including the robustness of its assumptions and provide evidence of the particular site specific circumstances that justify alternative affordable provision** ~~what has changed since then~~'.*

The HBF also considers that supporting text for this policy should also be amended to reflect these concerns. Paragraph 5.268 starts with the wording '*in the unlikely circumstances where the viability of a scheme is in question*', however, the HBF does not consider that this is an appropriate reflection of the evidence provided at the examination by either the Council, the HBF or other participants. It is clear that site level viability assessment is likely to occur for a number of site typologies identified, therefore, the HBF considers this introductory sentence should be amended. As set out above the HBF also considers that remainder of the text in paragraph 5.268 should be amended to reflect the situation in Durham, including a recognition of the viability issues identified in the Viability Assessment

and the evidence provided by the HBF, rather than repeating PPG. This is key if we are to avoid poor practice developing.

The policy also includes reference to review mechanisms and / or an overage payment clause within Planning Obligations. Indeed, this was discussed at the EIP with the HBF expressing a willingness to work with the Council should they wish to look at this via an SPD. It should be stressed that such mechanisms have generally come from the south east of England where existing high revenues and strong growth have warranted such an approach aimed at capturing policy affordable shortfalls later on in development projects. Reviews are not a tool to improve viability or incentivise owners to sell and certainly not owners that are likely to receive very little value uplift. As such we would urge the Council to think carefully about the impact such a mechanism may have on the future delivery of land to the market and what the aims and objectives would be. The HBF would be happy to assist in this deliberation but would strongly suggest some reflection is needed as this approach is more likely to disincentive investment decisions.

**MM124: Policy 28**

The HBF supports the amendments to Policy 28, which reflect that developers are not infrastructure providers.

**MM127: Policy 30**

The HBF continues to be concerned by the requirement for all new residential development to comply with the NDSS and considers this to be yet another potential viability burden which may impact on the deliverability of homes.

However, if the requirement is to be retained, the HBF supports the inclusion of a transitional period.

**Future Engagement**

I trust that the Council will find these comments useful as it continues to progress its Local Plan to adoption. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry.

The HBF would like to be kept informed of the adoption of the Local Plan and all forthcoming consultations upon associated documents. Please use the contact details provided below for future correspondence.

Yours faithfully,



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