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29/10/2020

Dear Sir/ Madam

## **Response by the Home Builders Federation to the consultation on the City Plan Part 2**

Set out below are the representations of the Home Builders Federation on the proposed submission draft of the City Plan Part 2 (CPP2). The HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational corporations through to regional developers and small local housebuilders. Our members account for over 80% of all new housing built in England and Wales in any one year.

**We would also welcome, in due course, the opportunity to participate in any hearings organised as part of the Examination in Public in order to present our concerns with the City Plan Part 2 to the appointed inspector.**

### **Duty to co-operate**

Paragraphs 24 to 27 of the 2019 National Planning Policy Framework (NPPF) set out the requirements relating to the maintenance of effective co-operation as part of all Councils duty to co-operate. This collaboration should identify the relevant strategic matters to be addressed and ensure effective and on-going joint working is an integral to the production of a positively prepared and justified strategy. In particular these paragraphs highlight the need for joint working to identify where development needs that cannot be met in one area can be met elsewhere. In order to demonstrate effective joint working paragraph 27 states that local authorities should maintain one or more Statement of Common Ground documenting any activities relating to cross boundary strategic matters. It is also important to note that paragraph 35 of the NPPF states that cross boundary strategic matters should be dealt with and not be deferred. Further detail is provided in paragraph 610-022 of Planning Practice Guidance which highlights that strategic matters should not be deferred to subsequent plan updates. This is an important change to the 2012 NPPF and one that seeks to prevent strategic and cross boundary issues being pushed down the line to future local plans to address, as was the case with the unmet housing needs identified in the City Plan Part 1 (CPP1).

However, the Council state in paragraph 1.4 of the Duty to Co-operate Statement that most cross boundary issues affecting the city were dealt with at the examination of the



City Plan Part 1 and as such do not need to be reopened. What this statement fails to recognise is that the Duty to Co-operate is an ongoing requirement of plan making and recognition must be given to the fact that some issues that should have been progressed since 2016 must be reviewed and an explanation provided as to the progress, or lack of progress, that has been made.

One such issue is the unmet need for housing in Brighton and Hove and whether the Council has secured any agreements for the provision of additional homes elsewhere to address the substantial shortfall in housing identified in CPP1. It is important for the Council, and ultimately the inspector examining this local plan, to consider whether the mechanisms in place to address cross boundary and strategic issues have maximised the effectiveness of plan preparation, as required by paragraph 33a of the Planning and Compulsory Purchase Act. If these mechanisms have not been effective in addressing any cross-boundary issues identified in the preparation of CPP1 then action should be taken by the Council to rectify any failings as part of its on-going duty to co-operate activities with the outcomes of these actions feeding into the preparation of the part 2 local plan. Such matters should not only be set out in the Council's Duty to Co-operate Statement but also within any statements of common ground (SoCG).

However, no detail is provided as to the progress made by other authorities in addressing Brighton and Hove's unmet housing needs. In particular we are concerned that we could not find any SoCGs that have been published in relation to this issue. It is necessary for the Council to provide SoCGs in relation to housing needs with the local authorities in neighbouring areas setting out their position with regard to Brighton and Hove's unmet housing needs alongside any other relevant issues. We recognise the constraints faced by the Council, but this does not absolve them of the responsibility for working proactively to ensure their housing needs are being addressed elsewhere. If no progress is being made in addressing this strategic issue it will be necessary for the Council to consider whether it can do more to promote additional development through the CPP2 before submitting it for examination.

### **Five-year Housing Land Supply**

#### The plan is unsound as the Council cannot show a five-year land supply on adoption

In order for a local plan to be considered up to date the Council must be able to show that they have a five-year land supply. It is an essential part of the examination of any local plan to show that the plan will deliver sufficient homes to ensure it has a five-year land supply on adoption. However, it would appear from the supply expectations set out in the Council's Strategic Housing Land Availability Assessment (SHLAA) published in October 2019 that the adoption of this local plan will not result in the Council having a five-year housing land supply between 2020/21 or 2022/23. Using the delivery expectations in the SHLAA we have calculated the rolling 5-year housing land supply for 2020/21 to 2024/25 which is set out in table 1 below.

Table 1: Rolling five year land supply Brighton and Hove

	2020/21	2021/22	22/23	23/24	24/25
Annual Requirement	856	856	856	856	712
Cumulative	6,389	7,245	8,101	8,957	9,669
Delivery	646	1,323	1,350	1,058	1,023
Cumulative	5,051	6,374	7,724	8,782	9,805
Surplus/deficit	-1,338	-871	-377	-175	136
Five-year requirement	4,136	3,992	3,848	3,704	3,560
Five-year requirement including deficit/surplus	5,264	5,330	4,719	4,081	3,735
Buffer	1,053	1,066	944	816	747
Total requirement	6,317	6,396	5,663	4,897	4,482
Five-year supply	5,400	5,777	5,477	5,150	5,115
Surplus/deficit	-917	-619	-186	253	633
<b>5YHLS</b>	<b>4.27</b>	<b>4.52</b>	<b>4.84</b>	<b>5.26</b>	<b>5.71</b>

What is concerning is that the Council will only have 4.27-year land supply in 2020/21 and will not have a five-year land supply until 2023/24 at the earliest. Even then the five-year supply is marginal and slow delivery on any of the sites identified in the part 2 local plan could see the period with future supply being less than the required five years extending even further is a very real possibility. Whilst we recognise the constraints facing Brighton and Hove the evidence indicates that additional sites with the ability to deliver new homes in the next five years need to be identified and brought forward through this local plan. It will also be important to ensure that policies in the CPP2 are not overly onerous and would either delay or prevent the delivery of some developable sites.

### **DM1 Housing Quality, Choice and Mix**

The policy is unsound as it is not effective and has not been sufficiently justified

Our concern with policy DM1 relates to parts c and d which set out the requirements relating to the optional technical standards for space and accessibility.

#### *Part c – Nationally Described Space Standards*

Policy DM1 requires development to meet national spaces standards as a minimum. Whilst the HBF shares the Council's desire to see good quality homes delivered across Brighton and Hove we also consider that space standards can, in some instances,

have a negative impact upon affordability issues and reduce customer choice. In terms of choice some developers will provide entry level two, three and four-bedroom properties which may not meet the optional nationally described space standards but which would allow on lower incomes can afford a property which has their required number of bedrooms. Given the poor affordability of property in the area and the tight constraints on development it is therefore important that the Council can provide robust evidence that there is a need to introduce the optional space standards – that these standards are a must have rather than a nice to have policy.

As the Council are aware paragraph 56-020 of PPG establishes the type of evidence required to introduce space standard through the local plan. The Council is required to have a robust justifiable evidence to introduce any of the optional housing standards, based on the criteria set out in PPG. It is also important to note that they can only be adopted through a policy in the local plan. It is therefore surprising to note that the Council has been applying these standards without their being an adopted local plan policy that would support their use in Brighton. As such the Council state that the majority of development coming forward meets space standards. However, the Council provides no evidence in the Combined Space Standards Topic Paper that development had, prior to this, been coming forward significantly below expected standards. The paper states that there was growing concern around spaces standards given the high densities of many developments in the Borough but provides no evidence, aside from two case studies, that new homes were being brought forward below space standards. The topic paper sets out that the type of home being delivered in the Borough comprises of a high number of flats and studio apartments, however it does not indicate whether these types of home are coming forward below space standards. At present we do not consider the topic paper to provide the robust evidence required by national policy to justify the adoption of the nationally described space standards.

The HBF is also not aware of any evidence that market dwellings not meeting the NDSS have not sold or that those living in these dwellings consider that their housing needs are not met. There is no evidence that the size of houses built are considered inappropriate by purchasers or dwellings that do not meet the NDSS are selling less well in comparison with other dwellings. The HBF in partnership with National House Building Council (NHBC) undertake an annual independently verified National New Homes Customer Satisfaction Survey. The 2019 Survey demonstrates that 91% of new home buyers would purchase a new build home again and 89% would recommend their housebuilder to a friend. The results also conclude that 93% of respondents were happy with the internal design of their new home, which does not suggest that significant numbers of new home buyers are looking for different layouts or house sizes to that currently built.

Given that there is little to suggest that development below space standards is an endemic concern within the Brighton and Hove we would suggest that part c of policy DM1 is removed from the plan. This would give the Council greater flexibility to maximise the number of sites that are developable as well as extending consumer choice to more households.

#### *Part d - Accessibility standards*

Part d of DM1 requires all homes to be built to part M4(2) of the Building Regulations. Whilst the HBF recognises that there is a need for some homes to be built to higher accessibility standards we do not consider the evidence presented to indicate that there is a need for all new homes to be built to the optional building regulation M4(2).

When considering the implementation of the optional standards it is important to note that footnote 46 in paragraph 147 in the NPPF states that policies on adaptable and accessible housing should be used "... *where this would address an identified need* ...". This would suggest that any policy should seek to address an identified need that is required rather than considering these standards as being 'nice to have' on all new homes. There must be clear evidence that these homes are needed. The evidence supporting the Council's decision is set out in section 3 of the Combined Space Standards Topic Paper.

One argument that is put forward in section 3 of this paper is that the city has an ageing population and this, inevitably, leads to an increase in the need for housing that allows people to remain living in their home for longer. We would not dispute that across the UK there is an ageing population, however the HBF does not agree that this leads to the conclusion that all new homes should be built to part M4(2).

Firstly, if the Government had considered, when it introduced this policy, that the ageing population seen across the Country to be sufficient to require all homes accessible & adaptable homes standards, then the logical solution would have been to incorporate the M4(2) as mandatory via the Building Regulations. The Government did not do this and introduced the needs-based approach currently set out in PPG and as such the number of homes built to part M4(2) should be proportional to identified needs.

Secondly, the need for more accessible homes above current standards is further reduced for those who live in a recently constructed house. All new homes will be built to part M4(1) which, according to Part M of the Building Regulations, will ensure reasonable provision for most people, including wheelchair users, to approach and enter the dwelling and to access habitable rooms and sanitary facilities on the entrance storey. As such these standards are likely to be suitable for the significant majority of people as they get older and including many those with long term health problems or disabilities.

Thirdly many people with a long-term health problem or disability will be able to adapt their current home to meet their needs. Given that many of those who will need to adapt their homes in future will already live in the Borough this will reduce the number of people moving to meet their housing needs. Some evidence related to this is provided in the English Homes Survey. Whilst we recognise that this is a national study it provides an indication as to the proportion of more adaptable homes that are

required. The study examined the need for adaptations in 2014/15<sup>1</sup> and noted that just 9% of all households in England had one or more people with a long-term limiting illness or disability that required adaptations to their home and that this had not changed since 2011-12. So, despite an increasing proportion of older people in the general populace the proportion of the population requiring adaptations had not changed. The survey also found that in 2014-15, 81% of households that required adaptations in their home, due to their long-term limiting disability, felt their current home was suitable for their needs and that 10% of those households whose home required an adaptation were trying to move somewhere more suitable.

So, whilst there is an ageing population this does not directly lead to the need for all new homes built to higher accessibility standards. An ageing population will lead to more people who are likely to have a mobility problem but not necessarily more people who need a new more home built to the M4(2). Many older people, and indeed those of all ages with a long-term limiting illness or disability, will be able to adapt their existing homes to meet their needs and do not need to find alternative accommodation. It is also the case that for many people a new home built to the mandatory M4(1) standard will offer sufficient accessibility and adaptability throughout their life and as such to require all new homes to comply with Part M4(2) is disproportionate to the likely need arising in Brighton.

On the basis of the results of English Homes Survey it is possible to consider the number of households that may need a more adaptable home over the plan period by applying the proportion of people who required an adaptation but considered their home to be suitable, to the number of households in Brighton and Hove. Using the data provided by the Council in the topic paper on household projections, which are derived from the 2012-based Sub National Population Projections, there will be 145,300 households by 2030. If 9% of these household contain a person with a long term limiting illness or disability that required an adaptation to their home due to their disability, and 19% of these households considered their home to be unsuitable to meet their need there would be around 2,500 households in need of a more accessible home in 2030. Using the same approach to the number of households in 2010 this would represent an increase of circa 450 such households from the start of the plan period. As mentioned earlier we recognise that applying national data to local circumstances will not give a precise figure for those needing a more accessible home. However, it does give an indication that there is no need for all new dwellings to be built to part M4(2) of the building regulations.

As set above the NPPF and PPG state that the adoption of the optional technical standard should address an identified need. Whilst there is evidently a need for some homes to be built to a higher accessibility standard there is not the need for all new homes to be built to part M4(2).

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/539541/Adaptations\\_and\\_Accessibility\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539541/Adaptations_and_Accessibility_Report.pdf)

## **DM36 Parking and Servicing**

The current policy is not legally compliant as currently worded

This policy requires development to meet the parking standards in the SPD Parking Standards for New Development which are replicated in appendix 2. In order for the Council to require compliance with parking standards they must be included in the local plan as they are policies against which an application could be refused, they are legally considered to provide more than just guidance to the applicant. The issue of what is policy is explored in detail in the High Court Judgement between William Davis Ltd, Bloor Homes Ltd, Jelson Homes Ltd, Davidson Homes Ltd & Barwood Homes Ltd and Charnwood Borough Council. In this case Justice Gilbert quashed the SPD on the grounds that it contained policies that should have been contained in the local plan because they could be considered to fall under regulation 5(1)(a)(i) and 5(1)(a)(iv) of the Town and Country Planning Regulations (2012). As such the policy cannot defer in future to subsequent revisions of any parking standards within the SPD. Such changes would need to be made through a focussed review of the local plan in order to allow the proper scrutiny of any changes being made. In order to make this policy sound it is necessary to amend the policy to read "*Provision of parking, including 'blue badge' holder and cycle parking, in new developments should follow the standards in SPD14 'Parking Standards for New Development' (and any subsequent revisions) as set out in Appendix 2*", and delete the final sentence of paragraph 2.265.

## **Energy Efficiency and Renewables**

Part 2 of the policy is unsound as it is not consistent with national policy

The Council have included a requirement for new build development to meet higher Energy Performance Certificate ratings than those that are required through Building Regulations. This is in addition to the 19% improvement in CO<sub>2</sub> on the basis of the transitional arrangements following the discontinuation of the Code for Sustainable Homes in the 2015 Written Ministerial Statement (WMS). The Government have recognised the confusion that has been caused with regard to energy efficiency in the absence of the legislation promised in the WMS. The HBF recognise that the transitional arrangements provide flexibility for Council's to require development to deliver improvements in CO<sub>2</sub> emissions over the levels expected in Building Regulations to what would have been expected under Code 4 of the Building Regulations. However, the regulations do not provide further flexibility for Councils to require new homes to meet higher than expected standards set out through Energy Performance Certificates (EPC). At present all properties for sale and rent are expected to meet at least a level EPC C rating yet the Council is requiring new build residential development to deliver up a minimum EPC B rating. Given that EPC ratings goes beyond just CO<sub>2</sub> emissions we are concerned that this approach is not consistent with national policy and guidance. Whilst the vast majority of new homes will achieve

a level B or higher EPC rating<sup>2</sup>, we would suggest this requirement is removed to ensure consistency with national policy and avoid confusion as to the legally required standard.

The HBF has continually argued that the most effective approach to ensuring improvements in the energy efficiency of homes is through a consistent national approach applied through the Building Regulations. This approach allows the supply chains required to deliver improved energy efficiency to become established and not threaten development viability and the delivery of new homes – and in particular, low-cost market homes.

## Conclusions

For the CPP2 to be found sound under the four tests of soundness as defined by paragraph 35 the 2019 NPPF the Plan should be positively prepared, justified, effective and consistent with national policy. The HBF considers the CPP2 to be unsound in the following areas:

- No evidence on co-operation with regard to the delivery of unmet needs identified in the CPP1
- no 5 YHLS on adoption;
- Unjustified requirements relating to optional technical standards for accessibility and space standards;
- Using an SPD to define parking standards;
- Requirement for higher EPC standards than the minimum legally required for new residential development.

It is hoped that these representations are of assistance to the Council. If any further assistance or information is required, please contact me.

Yours faithfully



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<sup>2</sup> 84.4% of new build homes were rated A-B for energy efficiency in the second quarter of 2017 (HBF 2017)



