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29/04/2021

Dear Sir/ Madam

## **Response by the Home Builders Federation to the consultation on the Swale Local Plan Review**

1. Thank you for consulting the Home Builders Federation (HBF) on the Local Plan Review (LPR). 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.
2. **We would like to submit the following representations on the Local Plan, and we would welcome, in due course, participating in hearings of the Examination in Public.**

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

3. The Council do not appear to have provided any evidence outlining how they have co-operated with the relevant statutory bodies in the preparation of the local plan review. As the Council will be aware, they have a legal duty to co-operate in the preparation of the local plan with the National Planning Policy Framework requiring, at paragraph 27, the preparation and maintenance of one or more statements of common ground with relevant bodies identifying the strategic and cross boundary issues with those bodies and any progress made in addressing these issues. This paragraph goes on to state that these should be made publicly available throughout the plan-making process.
4. We recognise that the Council had relatively recently justified that it had fulfilled its duty to co-operate in the preparation of the previous plan, adopted in 2017. However, this does not absolve them from the need for on-going co-operation and considering whether there are any other strategic and cross boundary issues that have come forward in the preparation of this plan. Therefore, in order for this plan to be found both sound and legally compliant the Council will need to submit statements of common ground (SoCG) setting out evidence of co-operation on the relevant strategic and cross boundary matters and as such we reserve the right to comment on these at the examination in public if necessary.



## **ST1 Development needs for the Borough**

The policy is unsound as it is not consistent with national policy.

### *Housing needs*

5. We agree with the Council's position that the standard method should be used in assessing the housing needs for Swale. However, as the Council are aware it will be necessary to consider any updated evidence with regard the inputs used in calculating the standard method. On the 25<sup>th</sup> of March, the ONS published its latest evidence on the work place-based housing affordability ratios which shows that for Swale the median affordability ratio had increased to 9.32. Using the standard method this results in the local housing needs assessment for Swale increasing from 1,038 dwellings per annum to 1,052 dpa – a total of 16,832 new homes over the plan period. This change in the minimum number of homes the council are required to plan for will need to be changed in the plan prior to it being submitted for examination. It will also be necessary to express this as the minimum number of homes that should be provided to ensure consistency with paragraph 60 of the NPPF.
6. However, as noted above, this is a minimum requirement. Paragraph 60 of the NPPF also outlines that Councils will need to take account of any unmet needs arising in neighbouring areas. Without the necessary SoCG there is no indication as to whether such discussions have taken place and whether there are likely to be unmet needs arising in neighbouring areas. As stated above it will be necessary for the Council to provide evidence as to the discussions as to whether or not there are unmet housing needs, either now or in the future, in any neighbouring area and if so, how these will be addressed.

### *Housing supply*

7. The Council set in policy ST1 that they will seek to meet its development needs through the implementation of existing sites in the Bearing Fruits local plan alongside additional sites allocated in the LPR. However, we are concerned that the local plan lacks flexibility across its plan period by identifying supply that is only around 5% more than the minimum they are required to deliver. The Council are reliant on large scale allocations and town centre regeneration projects to deliver early in the plan period to ensure needs are met in full. There is inherent uncertainty as to when such schemes will start to deliver new homes and it is important that there is flexibility early in the plan period to offset potential delays. Indeed, it is not uncommon for such small buffers between needs and supply to be lost between submission and examination as supply considerations are reassessed. Such a situation occurred at the recent Brentwood Local Plan examination where the Council went from having to a 10% buffer in supply to a shortfall of 5% from submission to hearings as delivery trajectories on strategic sites were revised.

8. Therefore, whilst the HBF do not have specific concerns regarding the allocations made in this plan or its town centre regeneration ambitions it is also important to ensure there is a substantial buffer between the requirement and supply to take account of any delays in the delivery of its allocated sites across the plan period. As such we would expect to see a far greater buffer of around 20% between overall planned supply and minimum needs for this plan to be considered deliverable. Without a significant buffer in supply the plan does not have sufficient flexibility to ensure housing needs are met in full.
9. Finally, we note that the Council has included a windfall allowance of 200 dpa for the final 11 years of the plan. We note and welcome policy DM14 on small and medium sized sites and hope that the implementation of this policy will increase the number of windfalls coming forward. However, the NPPF is clear at paragraph 70 that there must be compelling evidence that that they will form a reliable source of supply. We could not find within the submitted evidence any consideration as to past levels of windfall to justify the Council's position on windfalls. This will need to be included in the evidence base when the plan is submitted for examination.

#### *Sites of less than one hectare*

10. The Council recognise in paragraph 7.0.195 the need to provide 10% of its homes on sites of less than 1 ha – 1,683 homes in total – that have either been allocated in this plan or are identified on the Council's brownfield register. However, no evidence is provided as to how many homes will be provided on such sites. Whilst the trajectory provides evidence as to the sites that make up supply over the plan period it provides no indication of site size. Without this evidence, which would be expected to have been provided in an up-to-date housing land supply assessment, it is not possible to say with accuracy how many homes will come forward on small sites. However, on the basis of the number of homes being delivered on each site and using a density of around 40dph it would appear circa 900 homes are expected to be delivered on sites of less than 1ha that are allocated in the plan or which have an extant planning permission. If this is the case, then the Council must look to allocate further small sites in this plan to address this shortfall against the requirements of paragraph 68 of the NPPF.

#### **DM1 General development criteria**

This policy is unsound as it does not provide the necessary clarity as required by paragraph 16 of the NPPF.

11. Part 2 of policy DM1 lacks the necessary clarity required of policies as set out in paragraph 16 of the NPPF. As the Council will be aware Supplementary Planning Documents (SPD) do not set out policy they are published to provide guidance on the implementation of policies in the local plan. The wording is misleading in that it suggests that development will need to accord with policies in any SPDs. As such we would suggest the following amendment:

*“Accord with the policies of the adopted Development Plan, including taking into account any guidance in Supplementary Planning Documents and Guidance, unless material considerations indicate otherwise;”*

## **DM2 Good Design**

Parts of this policy are unsound as they are not consistent with national policy.

12. The HBF are concerned that parts of this policy lack flexibility, are repetitious of national policy or lack the necessary of clarity to avoid ambiguity in decision making. Our specific concerns are set out below.
13. Point 1 of this policy should be deleted as it merely repeats the statements in policy DM1.
14. Point 3 of the policy requires development to respond to the National Design Guide and then includes the contents page from this document. Given that paragraph 26-002 of PPG already refers to this guidance we do not consider it necessary for this content page to be included in the policy.
15. Point 6e and 6h requires greater flexibility with regard to the size of private and communal gardens to allow development to respond to the specific nature of the site being developed. In some cases, well designed spaces that are smaller than those suggested in the policy should be considered acceptable where it is neither feasible nor viable to bring that site forward on the basis of the Council’s policy. We would suggest the following amendments are required to make this policy sound:

*“f. Private gardens will be located at the rear of a house and will be a minimum of 10.5m in length where possible.”*

*“h. For two-or-more-bedroom flats communal residents' gardens will be provided on the basis of a minimum area of 25m<sup>2</sup> per flat. Smaller well designed communal gardens may be acceptable where required to ensure a site is deliverable. They will be screened by above-eye-level walls or hedges from the public realm and will contain a sitting-out-area that receives sunshine during at least part of the day. Unusable strips of space between car parks or roads and buildings will not be counted as part of the communal garden provision.”*

16. Point 8a requires “*authentic architectural design*” with point 8b requiring new building to be “*of their time*”. Both of these statements offer very little clarity as to how a decision maker or applicant would respond to these policies. Their ambiguity will most likely lead to poor decision making and unnecessary appeals. As such both parts 8a and 8b should be deleted.

17. Point 8c requires developers to avoid “*generic volume house types*”. This statement is a value judgement on a particular approach to development and fails to recognise that there is no reason why such developments cannot be designed and be in keeping with the character of an area. Such developments have been successfully meeting the needs of consumers for many years creating well established developments in many communities and to dismiss all such development is unjustified. All development should be judged on its merits not on a decision makers perception as to whether it is a volume house type. As such point 8c should be deleted.
18. The requirement for porches not to be “*tacked on*” as set out in point 8f provides no clarity to the applicant or the decision maker. We would suggest there is little need for such a specific statement and that considerations such as these will be made in relation to the design of the scheme as a whole. As such part 8f should be deleted.
19. With regard to point 10 of this policy the HBF recognise that the community assets in any development need to be managed over time. However, it will be important that the Council has a clear idea from the adoption of this as to how such assets will be managed by either themselves or a partner organisation. If the Council considers a community hall to be necessary to meet the needs of that community it should play a prominent role in the providing the necessary stewardship for that asset in order to ensure that it is maintained in the long term. We would therefore suggest that the wording of this policy be amended to ensure that the Council takes a lead role in establishing the long-term management arrangements for community assets.

**DM3 Mitigating and adapting to climate change through sustainable design and construction.**

Parts of this policy are unsound as they are inconsistent with national policy and unjustified.

*Carbon reductions – point 8b*

20. The HBF recognises the need to reduce carbon emissions from new homes. As such we are working with our members and Government to provide an effective route map in achieving the necessary reductions whilst also maintaining the supply of housing required to meet the country’s needs. To achieve improvements in energy efficiency whilst maintaining supply requires not only the housebuilding industry to adapt but also those industries supporting it to develop the necessary supply chains that will ensure the products required to meet these standards, such as ground and air source heat pumps, are available.
21. There is still considerable work to do to ensure that supply chains are in place to supply the housebuilding industry as well as the technical skills in place to deliver and maintain systems such as ground and air source heat pumps, to guarantee

they work as expected on a much larger scale. It is important that these systems when they are used work to ensure that the public are satisfied with the product and can rely on it to meet their needs. As such the HBF supports a clearly defined national approach to improving the energy efficiency of new homes and we are broadly supportive of the Government's phased approach to this matter.

22. We recognise that the Government in their recent feedback on the responses to the consultation on the Future Homes Standard will continue to allow Councils to set higher standards in their local plans. However, this should be seen within the context of the higher standards that the Government are proposing to be introduced from the start of 2022 and the statement in paragraph 2.41 of their response to the consultation on the Future Homes Standard that these standards will mean it is "*less likely that local authorities will need to set local energy efficiency standards*".
23. It is also important to note that Planning Practice Guidance (PPG) states in paragraph 6-012, reflecting guidance in the 2015 Written Ministerial Statement, that energy standards should not be set at a standard above what would be the equivalent of level 4 of the Code for Sustainable Homes – roughly a 20% improvement in emissions on current building regulation. Furthermore, the proposed changes to the part L as set out in the Future Homes Standard will see a 31% improvement in emissions compared to the 2013 Building Regulations from 2022. As such a 50% reduction prior to 2025 is not consistent with national policy
24. When considering whether this policy is consistent with the national approach being suggested by Government, it is important to recognise that the proposed regulations are ones that ensure there is sufficient time, as outlined above, for the development industry, and relevant supply chains, to deliver the Future Homes Standard from 2025. This stepped approach, like the Council's, would see a 75% reduction in emissions compared to 2013 Building Regulations by 2025 but will allow supply chains to develop and ensure deliverability of the higher standard at the appropriate time. The Council must recognise that this is not just an issue of viability but also one of deliverability and that, as the Government notes in paragraph 2.53 of their consultation response, the interim part L standards are a key stepping stone to implementing the higher standards from 2025.
25. Therefore, the HBF considers the most effective approach in achieving national net zero commitments by 2050 alongside delivering the homes needed in any area is through the application of Building Regulations that allow for a transition to higher standards of energy efficiency and CO<sub>2</sub> reduction. We would therefore suggest that 8a is deleted from policy DM3.

*On site renewable energy - point 8c.*

26. Whilst we recognise that Councils can set energy requirements within local plans however, these must be reasonable and must not compromise the deliverability of the plan overall. The Council's requirements beyond 2025 are likely to be challenging for some development to meet from onsite renewable energy and in

some cases, it may not be possible to achieve the Council's expectations. The Government recognise this concern in paragraph 153 of the NPPF and state that any requirements should only be required where they are both feasible and viable. However, this policy provides not such flexibility. We therefore recommend that this policy is amended to provide the necessary flexibility should this requirement be either unfeasible or unviable. The Council should also clearly state in policy that the use of onsite renewable energy generation can be counted towards achieving any carbon reduction required through part 8b of DM3. The Council have confirmed that this is the case in Table 4-1 of the Viability Assessment, and it should be reflected in policy to ensure clarity as to the Council's position.

*Carbon offsetting – point 8d*

27. Given that the HBF does not consider it sound to set standards in excess of those established through building regulations, we do not, on the same basis, consider it to be sound for the Council to require developers to offset carbon emissions from new homes as set out in point 8d of DM3. To be effective in addressing climate change such matters should be left to national policy and not individual local plans.

*Homes Quality Mark – Point 8e and 8f*

28. The HBF do not consider the requirement to achieve the homes quality standards set out in this policy to be consistent with national policy. The only technical standards that the council should be required to meet are those set out in Building Regulations or the optional standards outlined in PPG and as such these policies should be deleted.

*Embodied carbon – point 10.*

29. Whilst we recognise the need for the house building industry to reduce its carbon footprint it is essential that this is done in a manner that maintains the delivery of new homes alongside the national ambition of being zero carbon by 2050. As stated above the HBF is working across the industry and with Government to achieve this aim and it is important that there is a co-ordinated national approach. The Government has been clear where local plans can seek to apply higher technical standards to those set out in Building Regulations. These include accessibility, space standards, water efficiency and energy efficiency standards but only up to the equivalent of level 4 of the Code for Sustainable Homes. Councils should therefore not set further technical standards outside of these areas such as the Council's requirement in part 10 of DM3 in relation to embodied carbon.
30. In addition, no consideration appears to have been given as to whether the Council's proposed targets with regard to embodied carbon are deliverable or viable. The only analysis we could find was in the Sustainable Design and Construction Standards document. This stated that the cost of measuring embodied carbon was minimal however no assessment is made with regard to

whether the proposed standards can be achieved whilst maintaining expected levels of delivery. The cost implications have not been considered in the viability assessment and the ability of new development to deliver such reductions by the required dates does not appear to have been undertaken. These requirements will place a significant additional burden on developers in Swale and it is important that their potential impacts on the deliverability of new homes is fully considered.

*Repetition and cross referencing*

31. Whilst not matters of soundness we would suggest that parts 2 and 3 effectively repeat each other and one or the other should be deleted and that part 7 is unnecessary as it merely refers to policy DM35.

**DM11 Vehicle Parking**

32. Part 1 of this policy requires development to accord with the levels of parking for cycles, cars and electric vehicles in the guidance published in the adopted Parking SPD. Firstly, the Council cannot set policy outside of the local plan and as such it cannot require development to accord with guidance. The relevant legislation defining Local Plans and SPDs and their status as policy documents is the Town and Country Planning Regulations (2012). In particular regulation 5(1)(a)(iv) defines a local development document as being one in which includes: "development management and site allocation policies, which are intended to guide the determination of applications for planning permission". We would therefore suggest that if the Council wishes to set a standard with regard to parking, then this must be set out in the local plan to ensure that any changes to these standards are considered through the proper process of consultation and examination. If the Council wishes to refer to the County's guidance, then it should be clear that development will need to take account of this guidance but not that it must accord with it.
33. Secondly, if the Council requires development to meet the electric vehicle standards set out in part 5 of DM11 it will be important that full and proper consideration is given in the viability assessment as to the impact of requiring electric vehicle charging points (EVCP). The Council's policy approach should not compromise the viability of development. However, we note that the cost of EVCPs of £500 per unit have been included in the viability study which is substantially lower than the Government's latest consultation estimated an installation cost of approximately £976 per EVCP. Whilst this in itself is not seem a significant amount it is important that the inclusion of this in the cumulative costs given marginal viability of some development in Swale.
34. However, the HBF and its Members also have serious concerns about the capacity of the existing electrical network in the UK. The supply from the power grid is already constrained in many areas across the country. Major network reinforcement will be required across the power network to facilitate the introduction of EVCPs and the move from gas to electric heating as proposed



under the Future Homes Standard. These costs can be substantial and can drastically affect the viability of developments. If developers are funding the potential future reinforcement of the National Grid network at significant cost, this will have a significant impact on their businesses and potentially jeopardise future housing delivery. The Government's current proposal automatically levies a capped figure of £3,600 per charge point on developers for upgrading local electricity networks, therefore the impact of this higher cost should be tested in the Council's viability assessment.

#### **DM14 Small and medium sites for housing development.**

Part 5 is unsound as it is inconsistent with national policy.

35. Whilst we welcome the support that the Council is providing to small and medium sized in this policy, we do not consider part 5 of DM14 to be consistent with national policy. It is important to note that current policy as set out in the 2019 NPPF requires development to provide net gains. As such an applicant, under the current policy framework should only be required to show that there is a net gain, nothing more. However, we recognise that the Environment Bill is likely to require development to achieve a 10% net gain on development in future. It is also important to note that the legislation does not set this as a minimum. It is the Government's opinion that 10% strikes the right balance between the ambition for development and reversing environmental decline providing certainty in achieving environmental outcomes, deliverability of development and costs for developers. As such the 20% requirement is likely to be inconsistent with national policy and should be reduced to 10%. Finally, given that the requirement is purely a repetition of that set out in DM24 we would suggest that reference to biodiversity net gain is deleted from this policy and solely referred to in DM24.

#### **DM15 Affordable housing**

The policy is unsound as it is not effective or consistent with the NPPF.

*20% requirement on brownfield sites*

36. Whilst the HBF welcomes the Council's decision to include a variable rate depending on the type of site being developed we are concerned that the 20% requirement is at the margins of viability for brownfield sites. The Council's viability study indicates at paragraph 8.9 that brownfield sites and sites in lower value zones have a surplus at 20% affordable housing of around £13,500 with no other policies in place. With a policy package potentially costing £14,400 we are concerned that the policies proposed in this local plan will make such development unviable particularly once the Council's proposed carbon standards come into play from 2025. The NPPF makes it clear at paragraph 57 that decision makers should be able to assume that policy compliant schemes are viable. On the basis of the Council's evidence this would not appear to be the case, or at least not across the whole plan period. Given that in order to be considered effective local plans must

be deliverable across their plan period we would argue that the 20% requirement on brownfield sites is unsound and should be reduced.

37. The Council state in part 5 of this policy that they will seek an appropriate tenure mix of social rented, affordable rent, intermediate rent, and shared ownership affordable units. This list however does not include other options for low-cost home ownership such as discounted market sales. We would recommend that the policy is amended to include discount market sales within the list set out in part 5 of DM15.

#### *Older people's housing*

38. The Council state at paragraph 7.0.208 that the Housing SPD will provide further amplification with regard to the housing needs of older people. However, aside from the statement in this paragraph and an overall indication of support for such development the Council provide no further detail as to needs and have no specific policy or allocations aimed at supporting development that meets the needs of older people. The HBF considers such an approach to inconsistent with the importance given to the needs of older people by national policy in paragraph 63-001 of PPG. As such we consider it necessary in line with paragraph 63-006 for a clear policy to be included in this plan that outlines the needs of older people and how these needs will be met through specific allocations in the local plan.
39. Whilst the HBF recognise that there is not a requirement in national policy to set out the level of housing needs older people in a policy. However, we consider it important that the need for such accommodation is identified in the local plan in order to support decision makers and improve transparency. In particular it will help decision makers to assess whether there is a shortfall in supply to meet the needs of older people to ensure a more positive approach to decision making should shortfalls be identified. Such an approach would also ensure transparency and support effective monitoring and review of the Council's approach to older peoples housing.
40. In addition, we would also suggest that residential developments for older people should be exempt from providing affordable housing given the conclusion of the Viability Study. This study concludes at paragraph 7.6 that such development even at 0% affordable housing is only marginally viable on brownfield sites. The study even shows that the development of greenfield sites for older people's accommodation is marginal at 15% or 20% affordable housing with the surplus per dwelling of between £1,500 and £3,500 per dwelling being unable to support any other policy costs. As such we would suggest that DM15 is amended to exempt such development from affordable housing contributions to ensure such development can come forward without excessive negotiation.

#### **DM24 Biodiversity and geodiversity conservation and biodiversity net gain**

Part 6 is unsound as it is inconsistent with national policy.

41. As set out in our comments on DM14 the requirement for 20% net gain is not consistent with national policy and should be amended as suggested above.

### **DM37 Sustainable drainage**

Part 1b is unsound as it is inconsistent with national policy.

42. As set out above we do not consider the requirement to achieve a 20% biodiversity net gain to be consistent to national policy and this should be deleted from part 1b of DM37.

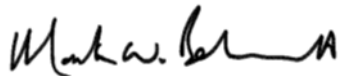
### **Conclusion**

43. At present we do not consider the plan to be sound, as measured against the tests of soundness set out in paragraph 35 of the NPPF, in the following key areas:

- No Statements of Common Ground have been submitted with the local plan;
- Minimum housing needs is not consistent with the standard method as calculated using the latest available information;
- Insufficient flexibility in housing supply;
- No evidence submitted that 10% of supply will be delivered on sites of less than 1 ha that are identified in the local plan or brownfield register;
- Carbon reduction targets are inconsistent with proposed building regulations;
- Biodiversity net gain requirement is inconsistent with national policy; and
- No older people's housing policy.

44. We hope these representations are of assistance in taking the plan forward to the next stage of plan preparation and examination. I would also like to express my interest in attending any relevant hearing sessions at the Examination in Public. Should you require any further clarification on the issues raised in this representation please contact me.

Yours faithfully



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