

Black Country Plan
Planning and Regeneration
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Dear Sir / Madam

DRAFT BLACK COUNTRY PLAN (BCP) CONSULTATION

Introduction

Thank you for consulting with the Home Builders Federation (HBF) on the above-mentioned consultation. 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. We would like to submit the following responses to the above-mentioned consultation.

Duty to Co-operate (DtOC)

As set out in the 2021 National Planning Policy Framework (NPPF), the Black Country Authorities (BCA) are under a DtOC with other Local Planning Authorities (LPA) and prescribed bodies on strategic matters that cross administrative boundaries (para 24). To maximise the effectiveness of plan-making and fully meet the legal requirements of the DtC, engagement should be constructive, active and on-going. This collaboration should identify the relevant strategic matters to be addressed (para 25). Effective and on-going joint working is integral to the production of a positively prepared and justified strategy (para 26). The BCA should demonstrate such working by the preparation and maintenance of one or more Statements of Common Ground (SoCG) identifying the cross-boundary matters to be addressed and the progress of co-operation in addressing these matters. Therefore, as set out in the 2021 NPPF, the BCP should be positively prepared and provide a strategy, which as a minimum seeks to meet its own housing needs in full and is informed by agreements with other authorities so that unmet need from neighbouring areas is accommodated (para 35a).

The National Planning Practice Guidance (NPPG) explains that a SoCG sets out where effective co-operation is and is not happening throughout the plan-



making process. The NPPG confirms that a SoCG is a way of demonstrating that BCP is deliverable over the plan period and based on effective joint working across LPA boundaries. It also forms part of the evidence required to demonstrate compliance with the DtoC (ID 61-010-20190315). At Examination, the Inspector will use all available evidence including SoCG to determine whether the DtoC has been satisfied (ID 61-031-20190315).

To provide communities and other stakeholders with a transparent picture of collaboration, the NPPG sets out that authorities should have a SoCG available on their website by the time of publication of their Draft Plan. Once published, the BCA will need to ensure that any SoCG continues to reflect the most up-to-date position of joint working (ID 61-020-20190315). The Draft BCP consultation is accompanied by a DtoC Statement, which is not a SoCG. The BCA intend to agree SoCG with relevant parties before the pre-submission BCP consultation (see para 1.10).

The Black Country is part of Greater Birmingham & Black Country Housing Market Area (GB&BCHMA). It is common knowledge that both Birmingham and the BCA have unmet housing needs. The Birmingham Development Plan adopted in January 2017 identified an unmet housing need of 37,900 dwellings. The Draft BCP states that the capacity of the Black Country is finite and not all of the Black Country's housing needs will be met within its administrative boundaries (see para 3.20). The Draft BCP sets a housing target for the Black Country of 47,837 dwellings over the plan period 2020 – 2039 against a minimum Local Housing Need (LHN) of 76,076 dwellings (see para 3.21 & **Policy CSP1**). Table 2 – Black Country Development Strategy 2020 – 2039 expects the shortfall of 28,239 dwellings to be exported through the DtoC. The Draft BCP proposes to meet only 63% of minimum LHN of the Black Country. The Draft BCP also acknowledges that there are currently no commitments from other authorities to meet this unmet need. Under the DtoC, neighbouring authorities including South Staffordshire, Lichfield, Cannock Chase, Shropshire and Telford & Wrekin have been asked to provide additional housing and employment land to meet the needs of the Black Country.

There is a long history of on-going engagement between the GB&BCHMA authorities but to date there is no conclusive outcome from this engagement in relation to the strategic cross-boundary matter of redistribution of unmet housing needs from Birmingham and BCA. This is not a sound basis for plan-making. The HBF acknowledge that the DtoC is not a duty to agree but as stated in the recently published North Warwickshire Local Plan Inspector's Final Report dated 20 July 2021 "*the exercise of the DtoC is not a matter of process without effect*" (para 22). There is every likelihood that reaching a consensus on this strategic matter will be a lengthy disharmonious process between the GB&BCHMA authorities.

Furthermore, the current piecemeal approach of independently preparing separate SoCG between individual authorities during the preparation of each Local Plan is unacceptable and provides no certainty that unmet housing needs will be met. The approach should be holistic. As a matter of urgency, the

GB&BCHMA authorities should be prepared a Joint SoCG. Without a Joint SoCG, there is no real commitment to resolving the redistribution of unmet housing needs in full across the GB&BCHMA. The GB&BCHMA authorities should set out where unmet housing need will be met. A Joint SoCG should confirm that :-

- each authority will meet its own LHN calculated using the Government's revised standard methodology (except Birmingham City Council and BCA) and a defined amount of unmet LHN. This cumulative figure will be the housing requirement figure for each authority respectively ; and
- an acknowledgement by the GB&BCHMA authorities that additionality in HLS will be required to ensure deliverability and flexibility.

The HBF will submit further representations on the BCA compliance with the DtoC and the soundness of the BCP in representations to the pre-submission consultation.

Local Housing Needs (LHN) and Housing Requirement

Policy CSP1 – Development Strategy and **Policy HOU1 – Delivering Sustainable Housing Growth** will deliver at least 47,837 dwellings (2,518 dwellings per annum) between 2020 - 2039.

As set out in the 2021 NPPF, strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need and any needs that cannot be met within neighbouring areas can be met over the plan period (para 66). The determination of the minimum number of homes needed should be informed by LHN assessment using the Government's standard methodology unless exceptional circumstances justify an alternative approach (para 61). In the Black Country, there are no exceptional circumstances to justify an alternative approach. The latest NPPG sets out the standard methodology for calculating the LHN figure (ID 2a-004-20201216).

The LHN for the Black Country is set out in the Black Country Housing Market Assessment (HMA) Final Report dated March 2021 by HDH Planning & Development. The Black Country's minimum LHN is calculated as 76,361 dwellings (4,019 dwellings per annum) between 2020 – 2039. The Black Country's minimum LHN comprises :-

- 12,084 dwellings (636 dwellings per annum) in Dudley ;
- 28,272 dwellings (1,488 dwellings per annum) in Sandwell ;
- 16,758 dwellings (882 dwellings per annum) in Walsall ; and
- 19,247 dwellings (1,013 dwellings) in Wolverhampton.

This calculation is based on 2014 Sub National Household Projections (SNHP), 2020 as the current year, 2019 affordability ratios of 6.38, 5.82, 5.73 & 5.29 respectively and the 35% Cities & Urban Centres Uplift in Wolverhampton. The calculation is mathematically correct. However, it is noted that Table 2 - Black

Country Development Strategy 2020 – 2039 refers to a figure of 76,076 dwellings, which is 285 dwellings less than the minimum LHN. As set out in the NPPG, the LHN is calculated at the start of the plan-making process however this number should be kept under review until the BCP is submitted for examination and revised when appropriate (ID 2a-008-20190220). The minimum LHN for the Black Country may change as inputs are variable and this should be taken into consideration by the BCA.

The Black Country HMA (2021) assumes that the standard methodology LHN figure will be carried forward without the application of uplifts to a higher housing need figure (see para 4.14). However, the NPPG clearly states that the standard methodology is the minimum starting point in determining the number of homes needed. The NPPG explains that “*circumstances*” may exist to justify a figure higher than the minimum LHN. The “*circumstances*” for increasing the minimum LHN are listed in the NPPG including, but not limited to, situations where increases in housing need are likely to exceed past trends because of growth strategies, strategic infrastructure improvements, agreeing to meet unmet need from neighbouring authorities or previous levels of housing delivery / assessments of need, which are significantly greater than the outcome from the standard methodology. The NPPG indicates that if previous housing delivery has exceeded the minimum LHN, the BCA should consider whether this level of delivery is indicative of greater housing need (ID 2a-010-20201216). The BCA should consider if “*circumstances*” exist to justify a housing requirement above the minimum LHN, for example, to support economic growth at UK Central in Solihull.

The 2021 NPPF seeks to achieve sustainable development by pursuing economic, social and environmental objectives in mutually supportive ways (para 8). The BCA should be seeking to support the long-term sustainability of the Black Country by achieving a sustainable balance between employment and housing growth. The BCA should also recognise economic benefits of housing development in supporting local communities as highlighted by the HBF’s latest publication Building Communities – Making Place A Home (Autumn 2020). The Housing Calculator (available on the HBF website) based on The Economic Footprint of House Building (July 2018) commissioned by the HBF estimates for every additional house built in the Black Country, the benefits for the local community include creation of 3 jobs (direct & indirect employment), financial contributions of £27,754 towards affordable housing, £806 towards education, £297 towards open space / leisure, £1,129 extra in Council tax and £26,339 spent in local shops.

Affordable housing need in the Black Country is calculated between 236 – 2,188 dwellings per annum dependant upon affordability threshold assumptions (see Table 6.4). Using an affordability threshold of 30% of gross household income, affordable housing need is 867 dwellings per annum. Of 9,303 households in gross affordable housing need per annum, 15.4% could afford a First Home (see Tables 6.2 & 6.3). The NPPG states that total affordable housing need should be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments. The Black

Country Viability & Delivery Study shows that viability is challenging and a differentiated policy approach to affordable housing provision in lower, medium & higher value areas and on brownfield & greenfield sites is necessary. As set out in the NPPG, an increase in the total housing figures may be considered where it could help deliver affordable housing (ID 2a-024-20190220). The HBF acknowledge that the BCA may not be able to meet all affordable housing needs but a housing requirement above the minimum LHN will make a greater contribution to delivering more affordable housing.

The HBF believe that the BCA should be more ambitious. As set out in the NPPG, the Government is committed to ensuring that more homes are built and supports ambitious Council's wanting to plan for growth (ID 2a-010-20201216). The NPPG states that a higher figure "*can be considered sound*" providing it "*adequately reflects current and future demographic trends and market signals*". However, the NPPG does not set any limitations on a higher figure, which is a matter of judgement. The Government's objective of significantly boosting the supply of homes set out in the 2021 NPPF remains (para 60).

Housing Land Supply (HLS)

The BCP's strategic policies should ensure the availability of a sufficient supply of deliverable and developable land to meet the housing needs, ensure the maintenance of 5 Years Housing Land Supply (YHLS) and achieve Housing Delivery Test (HDT) performance measurements.

The proposed Growth Network focuses on the 4 Strategic Centres of Brierley Hill, Walsall, West Bromwich & Wolverhampton and 8 Core Regeneration Areas (see **Policy CSP2 – The Strategic Centres & Core Regeneration Areas**). Outside of the Growth Network, some large-scale developments will be brought forward in the Towns & Neighbourhoods Areas (see **Policy CSP3 - Towns & Neighbourhood Areas and the Green Belt**). Most housing growth (40,117 dwellings) will be located within the existing built-up area. The BCA have optimised the use of brownfield sites and undertaken a densification of existing and new allocations. 81% of supply is on brownfield land and only 19% of supply is on greenfield land. However, there is limited information available from which to assess the robustness of the BCA proposals for the densification of sites in Strategic Centres (+1,300 dwellings) and on new allocations. This proposal should not revert to an overly ambitious intensification of site densities. Furthermore, the deliverability of residential development in the existing built-up area will be dependent upon the viability of brownfield land and the demand for high density urban living after the Covid-19 pandemic. It is critical that the BCA assumptions on densification are supported by parties responsible for delivery of housing.

The Green Belt boundary is drawn tightly around the urban edges. To help meet housing needs, 7,720 dwellings will be allocated on sites removed from the Green Belt, which are mainly located in the Neighbourhood Growth Areas and the remainder on smaller sites on the edge of the Towns & Neighbourhoods Areas in the form of rounding-off or through the redevelopment of previously

developed land. In Dudley, 1,117 homes will be provided on land proposed for release from the Green Belt including a New Neighbourhood Growth Area in Kingswinford, land at Swindon Road in Wall Heath and smaller sites on the edge of Stourbridge, near Sedgley and in Lower Gornal. In Sandwell, 171 dwellings will be provided in the Green Belt. In Walsall, 5,418 dwellings will be provided on land released from the Green Belt. In Wolverhampton, 1,013 dwellings will be provided on land to be released from the Green Belt on two clusters of sites at Bushbury & Fallings Park and at the site of Wolverhampton College in Compton Park. As set out in 2021 NPPF, where fully evidenced and justified Green Belt boundaries can be altered in "*exceptional circumstances*" through the preparation or updating of Local Plans (paras 140 & 141). The HBF support the BCA approach to the proposed release of Green Belt land but would not wish to comment on the selection of individual sites. 397.8 hectares of land will be released from the Green Belt for housing comprising 53.8 hectares in Dudley, 6 hectares in Sandwell, 300 hectares in Walsall and 38 hectares in Wolverhampton. This is a small proportion in the context that the BCP will only deliver 63% of the minimum LHN of the Black Country and 28,239 dwellings are expected to be delivered by neighbouring LPA (see Table 2 below).

Table 2 - Black Country Development Strategy 2020 – 2039 shows the following distribution of growth :-

	Number of dwellings
Strategic Centres	9,561
Core Regeneration Areas	11,208
Growth Network Total	20,769
Neighbourhood Growth Areas	6,792
Towns & Neighbourhoods Areas	12,625
Total Towns & Neighbourhoods Areas	19,417
Small windfall housing sites (outside Strategic Centres)	7,651
Total Black Country	47,837
To be exported through DtoC	28,239
Overall Total	76,076

Black Country HLS & Indicative Phasing 2020 – 39 is shown in Table 3 :-

	Total	2020 - 2029	2029 - 2034	2034 - 2039
Current Supply (sites under construction, sites with consent, other commitments, existing Strategic Centre Allocations (not subject to review in BCP)) as at April 2020	21,413	16,212	2,917	2,284
Housing allocations in BCP	17,732	7,322	5,888	4,522
Windfall allowances	8,463	2,893	2,785	2,785
Additional site capacity in Strategic Centres	1,300	0	525	775
Less demolitions	-1,071	-651	-210	-210
Total	47,837	25,776	11,905	10,156

Table 4 – Black Country Sources of HLS & Phased Housing Targets for BCA 2020-39 :-

	Dudley	Sandwell	Walsall	Wolverhampton
Current Supply as at April 2020	6,184	3,504	5,069	6,656
Housing allocations in BCP	4,588	4,066	6,820	2,258
Windfall allowances	2,816	1,728	1,455	2,464
Additional site capacity in Strategic Centres	350	200	0	750
Less demolitions	-703	-340	0	-28
Total	13,235	9,158	13,344	12,100
Phased 2020 – 2029	6,264	4,338	6,318	5,730
Phased 2029 – 2034	3,480	2,410	3,510	3,185
Phased 2034 – 2039	3,480	2,410	3,510	3,185

Under Sub Areas & Site Allocations, Dudley’s Housing Growth Targets 2020 – 2039 are as follows (see Table 13) :-

	Number of dwellings
Strategic Centre - Brierley Hill	3,154 (including additional capacity 350 uplift)
Central Core Regeneration Area	1,712
North West Core Regeneration Area	1,145
Jewellery Line Core Regeneration Area	886
Dudley Towns & Neighbourhood Areas	2,662
Kingswinford Neighbourhood Growth Area	860
Windfall Allowance (outside of the Strategic Centre)	2,816
Total	13,235

In Dudley, 12,118 dwellings will be provided in the urban area. Mostly on sites with planning permission or allocated in the existing Development Strategy or Area Action Plans. Dudley Housing Allocations in **Policy HOU1** are set out in Table 14.

Under Sub Areas & Site Allocations, Sandwell’s Housing Growth Targets 2020 – 2039 are as follows (see Table 21) :-

	Number of dwellings
Strategic Centre – West Bromwich	401 (including additional capacity 200 uplift)
Sandwell Central Core Regeneration Area	2,032
Other Sites in Towns & Neighbourhood Areas	4,997
Small Windfall Housing Sites	1,728
Total	9,158

In Sandwell, 8,719 dwellings will be provided in the urban area on brownfield sites already identified in existing plans and some surplus greenfield open spaces. Sandwell Residential Site Allocations in **Policy HOU1** are set out in Table 22.

Under Sub Areas & Site Allocations, Walsall's Housing Growth Targets 2020 - 2039 are as follows (see Table 30) :-

	Number of dwellings
Strategic Centre – Walsall	1,168
Core Regeneration Area	2,126
Neighbourhood Growth Areas	5,418 (to 2039)
Towns & Neighbourhood Areas	3,177
Windfalls	1,455
Total	13,344

In Walsall, 7,926 dwellings will be provided in the urban area on brownfield sites with planning permission or identified in existing plans plus a small number on surplus open space. Walsall Residential Sites Allocations in **Policy HOU1** are set out in Table 31.

Under Sub Areas & Site Allocations, Wolverhampton's Housing Growth Targets 2020 – 2039 are as follows (see Table 42) :-

	Number of dwellings
Strategic Centre - Wolverhampton City Centre	4,838 (including additional capacity 750 uplift & 812 from windfalls)
Stafford Road Core Regeneration Area	395
Wednesfield Core Regeneration Area	627
Bilston Core Regeneration Area	2,285
Bushbury Neighbourhood Growth Area	532
Fallings Park Neighbourhood Growth Area	303
Other Sites in Wolverhampton Towns & Neighbourhoods Area	1,468
Small Windfall Housing Sites (outside Wolverhampton City Centre)	1,652
Total	12,100

In Wolverhampton, 11,083 dwellings will be provided in the urban area. Mostly on sites with planning permission or allocated in existing Area Action Plans. The housing target of 4,838 dwellings for Wolverhampton City Centre will be delivered through a review of the Wolverhampton City Centre Area Action Plan in 2023. Wolverhampton Residential Site Allocations in **Policy HOU1** are set out in Table 43.

The HBF have no comments on individual sites set out in Tables 14, 22, 31 & 43 respectively and these representations are submitted without prejudice to any comments made by other parties. However, it is critical that an accurate assessment of availability, suitability, deliverability, developability and viability is undertaken. The BCA assumptions on lead in times and delivery rates should be correct and supported by parties responsible for the delivery of housing on each individual site.

The windfall allowance of 7,651 dwellings should be robustly evidenced. National policy only permits an allowance for windfall sites if there is compelling evidence that such sites have consistently become available and will continue

to be a reliable source of supply. There should be no double counting between windfall allowances, additional capacity and Wolverhampton upper floor conversions.

The discounts of 5% for other commitments & existing allocations, 10% for other BCP allocations and 10% & 15% for occupied employment land in Tables 3, 4, 13, 21, 30 & 42 should also be robustly evidenced.

It is noted that the 4,973 dwellings on existing allocations in Strategic Centres are not subject to review in the BCP but there should be some assurance that these dwellings are deliverable. The Black Country Viability & Delivery Study found that development in Strategic Centres is unviable, even with zero developer contributions. Without grant support, it is unlikely that either market or affordable housing would be delivered (see para 7.7).

The BCA's capacity-based approach exactly matches the housing requirement with HLS, therefore there is no headroom. Without the flexibility of any headroom, the housing requirement may not be met if slippage occurs in anticipated housing delivery rates, which undermines the resilience of the BCP. It is also noted that the Black Country Viability & Delivery Study sets out very ambitious delivery rates higher than those previously achieved. The HBF always advocates as large a contingency as possible. There is no numerical formula to determine a quantum for flexibility but where HLS is highly dependent upon one or relatively few large strategic sites and / or localities then greater numerical flexibility is necessary than if HLS is more diversified. The BCP is highly dependant upon development in the existing built-up area (40,117 dwellings) and brownfield sites (81% of HLS). Furthermore, the Black Country Viability & Delivery Study confirms that 65% typologies tested are marginally viable (27%) or unviable (38%).

Housing delivery is optimised by the widest possible range of housing site sizes and market locations, which provides suitable land buying opportunities for small, medium and large housebuilding companies. On larger sites, there may be long lead in times before the commencement of on-site development and build up to optimum delivery rates. To ensure a continuous short to medium term HLS, larger sites should be complimented by smaller non-strategic sites. The widest mix of sites provides choice for consumers, allows places to grow in sustainable ways, creates opportunities to diversify the construction sector, responds to changing circumstances, treats the housing requirement as a minimum rather than a maximum and provides competition in the land market. A diversified portfolio of housing sites also offers the widest possible range of products to households to access different types of dwellings to meet their housing needs. As set out in the 2021 NPPF at least 10% of the housing requirement should be accommodated on sites no larger than one hectare or else demonstrate strong reasons for not achieving this target (para 69a). It is understood that in excess of 10% of BCP's identified HLS is on sites of less than one hectare in compliance with the 2021 NPPF.

The 2021 NPPF sets out that strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period and if appropriate to set out the anticipated rate of development for specific sites (para 74). The Housing Trajectories in Appendix 17 (pages 705 – 720) show projected yearly completions but are not site specific. The BCA have provided insufficient detailed background information on each site to allow a rigorous check of delivery assumptions. To satisfy the 2021 NPPF Glossary definition of deliverable, the BCA should provide more detailed evidence.

A 5 YHLS Statement has not been provided by the BCA. If the BCA cannot demonstrate a 5 YHLS on adoption of the BCP and maintain a 5 YHLS throughout the plan period, the BCP should not be found sound. Furthermore, it is not clear if the BCA are wishing to demonstrate 5 YHLS via adoption of the BCP as set out in 2021 NPPF (para 74b).

Before the pre-submission BCP consultation, the BCA should address the concerns raised in the above commentary.

Viability and Deliverability

In plan-making, viability is inseparable from the deliverability of development. At Examination, viability will be a key issue in determining the soundness of the BCP. The viability of individual developments and plan policies should be tested at the plan making stage. The BCA's viability evidence is set out in Black Country Viability & Delivery Study dated March 2021 by Aspinall Verdi. The Viability & Delivery Study tests the cumulative impact of proposed policies on a representative sample of development site and scheme typologies. A separate confidential report provides viability and delivery advice in respect of a portfolio of Key Large Sites. As set out in the 2021 NPPF, the contributions expected from development including the level & types of affordable housing provision required and other infrastructure for education, health, transport, flood & water management, open space, digital communication, etc. should be set out in the BCP (para 34). As stated in the 2021 NPPF, development should not be subject to such a scale of obligations that the deliverability of the BCP is threatened (para 34). Viability assessment should not be conducted on the margins of viability especially in the aftermath of uncertainties caused by the Covid-19 pandemic and Brexit. Without a robust approach to viability assessment, the BCP will be unsound, land will be withheld from the market and housing delivery targets will not be achieved.

The Viability & Delivery Study assumptions are set out in :-

- Table 6.4 – Floorspace Assumptions ;
- Table 6.6 - Value Area Assumptions of £1,875 - £2,339 per square metre in Lower Value Zone, £1,929 - £2,500 per square metre in Medium Value Zone & £2,000 - £3,000 per square metre in Higher Value Zone ;
- Table 6.9 – S106 / CIL Cost Assumptions ;
- Table 6.10 – Construction Cost Assumptions ;

- Table 6.11 – Other Cost Assumptions ; and
- Table 6.12 - Benchmark Land Value Assumptions ;

Viability assessment is highly sensitive to changes in its inputs whereby an adjustment or an error in any one assumption can have a significant impact. The HBF submit the following comments on assumptions for compliance with BCP's policy requirements :-

- Under **Policy HOU3**, 25% of affordable housing provision is assumed as First Homes (at 30% less than market value). For the remaining 75% affordable housing provision, the following tenures are assumed in Wolverhampton, Sandwell and Dudley 100% affordable rent and in Walsall 45% social rent / 30% affordable rent. There is a concern that the full impacts of First Homes on viability have not been considered. There will be an increased cost to developers selling First Homes in terms of marketing plus an increased risk as they will not be able to sell First Homes in bulk to a Registered Provider thus obtaining a more reliable up front revenue stream. This increased risk is not reflected in the 6% profit on value assumed for affordable housing because there is no longer a guaranteed, known end value (see para 6.58). Furthermore, First Homes may impact on the ability of developers to sell similarly sized open market units. First Homes may dampen the appetite of first-time buyers for 1, 2 & 3 bed roomed open market dwellings as some households, which would have opted to purchase a home on the open market will use the discounted First Homes route instead. This may result in slow sales of similar open market units, increased sales risk and additional planning costs (if sites have to be re-planned with an alternative housing mix) ;
- For **Policy HOU3**, an extra-over cost allowance of only £521 per dwelling for M4(2) and £10,307 per dwelling for M4(3) based on DCLG Housing Standards Review, Final Implementation Impact Assessment, March 2015 is assumed. It is noted that Table 45 of the Impact Assessment shows that £521 per dwelling is based on 3 bed semi-detached house, the costs for apartments are higher (£907 - £940 per dwelling). £521 per dwelling is also based on 2015 costs, which are somewhat out of date and less than alternative estimates. The Government's consultation "Raising Accessibility Standards for New Homes" (ended on 1st December 2020) estimates the additional cost per new dwelling, which would not already meet M4(2), is approximately £1,400. During the Government's Housing Standards Review, EC Harris estimated the cost impact of M4(3) per dwelling as £7,607 - £8,048 for apartments and £9,754 - £23,052 for houses (Table 45). M4(2) and M4(3) compliant dwellings are also larger than NDSS (see DCLG Housing Standards Review Illustrative Technical Standards Developed by the Working Groups August 2013), therefore larger sizes should be used when calculating additional build costs for M4(2) / M4(3) and any other input based on square meterage except sales

values, which are unlikely to generate additional value for enlarged sizes ;

- The Viability & Delivery Study fails to consider the impacts of the provision of self & custom build plots on sites of more than 100 dwellings proposed in **Policy HOU3**, which will have a bearing on the development economics of these schemes. It is unlikely that up front site promotion costs (including planning & acquisition costs) and fixed site externals, site overheads and enabling infrastructure costs will be recouped because the plot price a self & custom builder is able to pay may be constrained by much higher build costs for self-builders. There are also impacts of not recouping profit otherwise obtainable if the dwelling was built and sold on the open market by the site developer, disruption caused by building unsold plots out of sequence from the build programme of the wider site and a worst-case scenario of unsold plots remaining undeveloped ;
- A cost of Fibre to the Premise (FTTP) is included in the external works allowance. However, if **Policy DEL3** requires provision above Part R of the Building Regulations, an extra-over cost allowance should be added ;
- To comply with **Policy TRAN8**, the Viability & Delivery Study includes £800 per unit for EVCP (and £5,000 for a multi-charging point for every 4 x flats) based on an average cost from the Wolverhampton Report. However, this cost is below the Government's cost estimate and excludes any costs for upgrading local networks. The Department for Transport - Electric Vehicle Charging in Residential & Non-Residential Buildings consultation estimated a cost of £1,000 per EVCP plus an automatic levy for upgrading networks capped at £3,600 ;
- If Building for a Healthy Life is introduced as a mandatory requirement of **Policy ENV9**, then any viability implications should be assessed. The BCA cannot assume that there are no additional costs as the creation of place in terms of local character and site context may involve specific elevational treatments / materials ;
- **Policy ENV9** NDSS requirements have been applied (see Table 6.4 - Floorspace Assumptions) but there is no assessment of the impact on affordability. The BCA should assess any potential adverse impacts on meeting demand for first-time buyer open market products and other affordable homeownership products such as First Homes. The delivery rates on many sites will be determined by market affordability at relevant price points of dwellings and maximising absorption rates. An adverse impact on the affordability may translate into reduced or slower delivery rates ;
- An extra-over allowance of £10 per unit based on Department of Communities and Local Government Housing Standards Review Cost Impact, September 2014 by EC Harris is included for optional water

efficiency standard under **Policy ENV9**. However, this figure is somewhat dated and should be increased to reflect 2021 prices ;

- Under **BCP ENV3**, 10% Net Biodiversity Gain is costed at £1,003 per unit for greenfield development and £268 per unit for brownfield development based upon the West Midlands regional cost (central estimate) in the Net Gain Delivery Cost Tables 16 & 17 in the DEFRA Biodiversity Net Gain & Local Nature Recovery Strategies Impact Assessment 15/10/2019. The Government has confirmed that more work needs to be undertaken to address viability concerns raised by the housebuilding industry in order that biodiversity net gain does not prevent, delay or reduce housing delivery. For example, costs increase significantly for off-site delivery under Scenario C. There may also be an impact on the ratio of gross to net site acreage ;
- For compliance with **Policy CC2**, the Viability & Delivery Study incorporates Option 1 (20% improvement on 2013 Part L Building Regulations) of £2,557 per unit from the Future Homes Standard 2019 Consultation on changes to Part L (conservation of fuel and power) & Part F (ventilation) of the Building Regulations for new dwellings: Impact Assessment. However, the Government's response confirms that the Interim Part L Uplift 2021 will be Option 2 (31% improvement on 2013 Part L Building Regulations), which was estimated at a higher cost of £4,615 per unit ; and
- Under **Policy CC6** it is intimated that a cost of £4,615 per unit is included for carbon reduction / Future Homes Standard, which is the cost of Option 2 Part L Interim Uplift 2021. The cost of Future Homes Standard 2025 will be much higher and further extra-over costs should be included. Furthermore, the Viability & Delivery Study excludes any additional costs associated with compulsory connections to heat networks.

The Viability & Delivery Study concludes that of the total housing capacity tested 38% are assessed as unviable and 27% are assessed as marginally viable based on the original target rates of affordable housing contributions of 30% for greenfield sites and 25% for brownfield sites. In Dudley, viability is similar to the Black Country as a whole. In Walsall, viability is slightly better with just over 50% of supply assessed as viable and only 16% is unviable. In Sandwell, 77% of assessed supply is unviable for private developers. In Wolverhampton 68% of assessed supply is unviable and only 5% is viable.

Before the pre-submission BCP consultation, further viability work should be undertaken to address concerns raised about the afore-mentioned assumptions. Most sites should be deliverable at planning application stage without further viability assessment negotiations. Viability negotiations should occur occasionally rather than routinely. Trade-offs between policy requirements, affordable housing and infrastructure provision should not be necessary. However, if the viability of sites is overstated, policy requirements

will be set at unrealistic levels. Landowners and developers will have to submit site-specific assessments to challenge assumptions in the Black Country Viability & Delivery Study. Such negotiations at planning application stage causes uncertainty for both the BCA and developers, which may result in significant delay to housing delivery or even non-delivery.

Housing Policies

Policy HOU2 – Housing Density, Type and Accessibility

Under **Policy HOU2**, all developments of 10 or more dwellings should achieve minimum density of 100 dwellings per hectare where the site is located within a Strategic Centre or Town Centre, 45 dwellings per hectare where accessibility standards for high density housing are met and 40 dwellings per hectare where accessibility standards for moderate density housing are met (see Table 5) except where this would prejudice historic character and local distinctiveness.

The setting of residential density standards should be undertaken in accordance with the 2021 NPPF (para 125), whereby in the circumstances of an existing or anticipated shortage of land for meeting identified housing needs then a minimum net density in suitable locations such as town centres and those benefiting from good public transport connections may be appropriate. The proposed policy approach to housing density should provide development that is in keeping with the character of the surrounding area and sufficient variety in house typologies to create balanced communities with the right types of new homes to meet the housing needs of different groups. A nuanced range of residential densities specific to different areas of the Black Country is necessary to ensure that any proposed density is appropriate to the character of the surrounding area.

Policy HOU3 – Delivering Affordable, Wheelchair Accessible and Self Build / Custom Build Housing

Affordable Housing

Under **Policy HOU3**, all developments of 10 or more dwellings should provide a proportion of affordable housing, where this is financially viable. The minimum proportion of affordable housing that should be provided is :-

- 10% on all sites in lower value zones and brownfield sites in medium value zones ;
- 20% on greenfield sites in medium value zones ; and
- 30% on all sites in higher value zones.

The tenure and type of affordable homes sought will be determined on a site by site basis, based on national planning policy and best available information regarding local housing needs, site surroundings and viability considerations. Detailed guidance may be set out in Supplementary Planning Documents (SPD), where appropriate.

The HBF support the BCA's differentiated approach to the provision of affordable housing, which is justified by the Black Country Viability & Delivery Study. However, it is noted that between 2010 – 2020 only 5% affordable housing provision has been achieved on eligible sites of 10 or more dwellings. The proposed percentages set out in **Policy HOU3** are above the recommendations of the Black Country Viability & Delivery Study.

It is also noted that the type and tenure of affordable housing sought is ambiguous. The 2021 NPPF states that policies should be clearly written and unambiguous so that a decision maker knows how to react to a development proposal (para 16d). To be effective, the BCA should provide further clarification of its requirements, which should be justified by supporting evidence. The 2021 NPPF expects that at least 10% of homes will be available for affordable home ownership (para 65) and the 24 May 2021 Written Ministerial Statement sets out a requirement for 25% of affordable housing to be First Homes. The Black Country Viability & Delivery Study tested a specific affordable housing tenure mix, any deviation from this tested mix will impact on viability (see HBF comments under Viability & Deliverability).

Wheelchair Accessible Housing

Under **Policy HOU3**, all developments of 10 or more dwellings should provide a proportion of wheelchair accessible housing, where this is financially viable. The minimum proportion that should be provided is :-

- 20% of dwellings to meet M4(2) on all brownfield sites and on greenfield sites in lower value zones ; and
- 15% of dwellings to meet M4(3) and all remaining dwellings to meet M4(2) on greenfield sites in medium or higher value zones.

Other than for reasons of financial viability, these requirements will only be reduced where it can be demonstrated that any of the following apply :-

- it is not practically achievable given the physical characteristics of the site ; or
- site specific factors mean that step-free access to the dwelling cannot be achieved ; or
- the dwellings are located on the first floor or above of a non-lift serviced multi-storey development.

If the BCA wish to adopt the optional standards for accessible & adaptable dwellings, then this should only be done in accordance with the 2021 NPPF (para 130f & Footnote 49) and the latest NPPG. Footnote 49 states *“that planning policies for housing should make use of the Government’s optional technical standards for accessible and adaptable housing where this would address an identified need for such properties”*. As set out in the 2021 NPPF, all policies should be underpinned by relevant and up to date evidence which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned (para 31). A policy requirement for M4(2) and

M4(3) dwellings must be justified by credible and robust evidence. The NPPG sets out the evidence necessary to justify a policy requirement for optional standards. The BCA should apply the criteria set out in the NPPG (ID 56-005-20150327 to 56-011-20150327).

The BCA's evidence is set out in the Black Country SHMA (2021). This evidence does not justify the BCA's proposed policy requirements for M4(2) and M4(3). This evidence does not identify any local circumstances, which demonstrate that the needs of the Black Country differ substantially to those across the West Midlands or England. If the Government had intended that evidence of an ageing population alone justified adoption of optional standards, then such standards would have been incorporated as mandatory in the Building Regulations, which is not currently the case. The relationship between the percentage requirements set out in **Policy HOU3** and the disaggregated data by market / affordable housing, general / supported housing and under / over 65 in Figures 7.1 & 7.2 is unclear, it is possible that overlaps have not been discounted.

All new homes are built to M4(1) "visitable dwelling" standards. These standards include level approach routes, accessible front door thresholds, wider internal doorway and corridor widths, switches and sockets at accessible heights and downstairs toilet facilities usable by wheelchair users. M4(1) standards are not usually available in the older existing housing stock. These standards benefit less able-bodied occupants and are likely to be suitable for most residents.

Furthermore, as the BCA are aware not all health issues affect housing needs. Many older people already live in the Black Country and are unlikely to move home. No evidence is presented to suggest that households already housed would be prepared to leave their existing homes to move into new dwellings constructed to M4(2) and / or M4(3) standards. Those who do move may not choose to live in a new dwelling. Recent research by Savills "Delivering New Homes Resiliently" published in October 2020 shows that over 60's households "*are less inclined to buy a new home than a second-hand one, with only 7% doing so*". The Black Country's existing housing stock is significantly larger than its new build component, therefore adaption of existing stock will form an important part of the solution.

The 2021 NPPF confirms that Local Plans should avoid unnecessary duplication (para 16f). The BCA's proposed policy approach will be unnecessary if the Government implements proposed changes to Part M of the Building Regulations as set out in the "Raising Accessibility Standards for New Homes" consultation, which closed on 1 December 2020.

If the requirements for M4(2) and M4(3) are carried forward, the BCA should distinguish between wheelchair adaptable dwelling (M4(3a)), which include features to make a home easy to convert to be fully wheelchair accessible and wheelchair accessible dwelling (M4(3b)), which include the most common features required by wheelchair users. The BCA are also reminded that the

requirement for M4(3) should only be required for dwellings over which the BCA have housing nomination rights as set out in the NPPG (ID 56-008-20150327).

Self Build / Custom Build Housing

Under **Policy HOU3**, on developments of 100 or more dwellings, where there is currently a need for self-build & custom build plots identified in the relevant LPA Register, at least 5% of plots should be made available for self-build or custom build, or sufficient to match the current number on the register if lower. Any plots that have not been sold after 12 months of appropriate marketing will revert to the developer to build.

There is no legislative or national policy basis for imposing an obligation on landowners or developers of sites of more than 100 dwellings to set aside at least 5% of plots for self & custom build housing. Under the Self Build & Custom Housebuilding Act 2015 and 2021 NPPF (para 62), it is the responsibility of the BCA, not landowner's or developer's, to ensure that sufficient permissions are given to meet demand. The BCA are not empowered to restrict the use of land to deliver self & custom build housing. The NPPG sets out ways in which the BCA should consider supporting self & custom build by "*engaging*" with developers and landowners and "*encouraging*" them to consider self & custom build "*where they are interested*" (ID 57-025-201760728).

The BCA should ensure that the BCP will result in a wide range of different self & custom build housing opportunities. It is unlikely that self & custom build serviced plots on residential sites of more than 100 dwellings will appeal to those wishing to build their own home. Alternative policy mechanisms should be used to ensure a reliable and sufficient provision of self & custom build opportunities across the Black Country including allocation of small and medium scale sites specifically for self & custom build housing and permitting self & custom build outside but adjacent to settlement boundaries on sustainable sites especially if the proposal would round off the developed form.

The BCA have provided no evidence to justify the proposed 100 or more dwellings site threshold. As set out in the NPPG, the BCA should use their Self Build Register and additional data from secondary sources to understand and consider future need for this type of housing (ID 57-011-20210208). In the Black Country, there is a minimal demand for self & custom build housing. Currently, there are only 153 individuals on BCA Registers of which 83 are in Dudley, 8 are in Sandwell, 32 are in Walsall and 30 are in Wolverhampton (see para 6.29). Furthermore, a simple reference to the headline number of entries on the BCA Registers may over-estimate actual demand. The Registers may indicate a level of expression of interest in self & custom build but cannot be reliably translated into actual demand should such plots be made available. Entries may have insufficient financial resources to undertake a project, be registered in more than one LPA area and have specific preferences.

The provision of self & custom build plots on sites of more than 100 dwellings adds to the complexity and logistics of developing these sites. It is difficult to

co-ordinate the provision of self & custom build plots with the development of the wider site. Often there are multiple contractors and large machinery operating on-site, the development of single plots by individuals operating alongside this construction activity raises both practical and health & safety concerns. Any differential between the lead-in times / build out rates of self & custom build plots and the wider site may lead to construction work outside of specified working hours, building materials stored outside of designated compound areas and unfinished plots next to completed and occupied dwellings resulting in consumer dissatisfaction.

It is important that unsold plots are not left empty to the detriment of neighbouring dwellings or the whole development. The timescale for reversion of these plots to the original housebuilder should be as short as possible because the consequential delay in developing those plots presents further practical difficulties in terms of co-ordinating their development with construction activity on the wider site. 12 months of appropriate marketing is too long and the expression “*appropriate marketing*” should be defined.

As well as on-site impracticalities, impacts on viability should be tested (see HBF comments under Viability & Deliverability).

Policy HOU3 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy HOU3** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy HOU3** should be modified as outlined above.

Other Policies

Policy DEL3 – Promotion of Fibre to the Premises and 5G Networks

Under **Policy DEL3**, all developments of 10 or more dwellings will be required to deliver Fibre to the Premises (FTTP) capacity / infrastructure to all individual properties. This requirement will only be reduced where it can be clearly demonstrated that it is not practical or viable to deliver FTTP. Where FTTP cannot be delivered, non-Next Generation Access technologies that can provide speeds in excess of 30MB per second should be provided as an alternative. All eligible proposals should be supported by an FTTP Statement that details how FTTP will be provided to serve the development and confirms that FTTP will be available at first occupation.

The HBF recognise that new residential development should have infrastructure to facilitate access to high-speed broadband connections. However, the BCA should not impose new electronic communications requirements beyond the provision of infrastructure as set out in statutory Building Regulations. In the Budget (11th March 2020), the Government confirmed future legislation to ensure that new build homes are built with gigabit-capable broadband. The Government will amend Part R “Physical Infrastructure for High-Speed Electronic Communications Networks” of the Building Regulations to place obligations on housing developers to work with

network operators to install gigabit broadband, where this can be done within a commercial cost cap. The Department for Culture, Media and Sport (DCMS) has outlined its intentions on the practical workings of this policy, which will apply to all to new builds. Any type of technology may be used, which is able to provide speeds of over 1000 Mbps. All new build developments will be equipped with the physical infrastructure to support gigabit-capable connections from more than one network operator. Furthermore, the delivery of broadband service connections is reliant on a third-party contractor over which a developer is unlikely to have any control and therefore cannot confirm availability at first occupation. **Policy DEL3** is unnecessary and repetitious, which should be deleted.

Policy DEL3 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy DEL3** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy DEL3** should be modified as outlined above.

Policy TRAN8 - Planning for Low Emission Vehicles

Under **Policy TRAN8**, proposals for low emission vehicles will be supported by ensuring that new developments include adequate provision for charging infrastructure.

The HBF recognise that electric vehicles will be part of the solution to transitioning to a low carbon future. As set out in the Department of Transport consultation on Electric Vehicle Charging in Residential & Non-Residential Buildings (ended on 7th October 2019), the Government's preferred option is the introduction of a new requirement for EVCPs under Part S of the Building Regulations. The inclusion of EVCP requirements within the Building Regulations will introduce a standardised consistent approach to EVCPs in new buildings across the country and supersede the BCA's policy approach.

Until the introduction of proposed changes to Part S of the Building Regulations, the HBF consider that the physical installation of active EVCPs is inappropriate. The evolution of automotive technology is moving quickly therefore a passive cable and duct approach is a more sensible and future proofed solution, which negates the potential for obsolete technology being experienced by householders. A passive cable and duct approach means that the householder can later arrange and install a physical EVCP suitable for their vehicle and in line with the latest technologies.

The 2021 NPPF states that policies should be clearly written and unambiguous so that a decision maker knows how to react to a development proposal (para 16d). **Policy TRAN8** should be clearer in specifying if adequate provision for charging infrastructure is a requirement for a passive cable and duct approach or installation of active EVCPs.

The HBF and its Members 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.

Policy TRAN8 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy TRAN8** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy TRAN8** should be modified as outlined above.

Policy ENV9 – Design Quality

Under **Policy ENV9**, Building for a Healthy Life criteria and Local Housing Design SPDs will be used to demonstrate a commitment to achieve the highest possible design standards, good place-making and sustainable development.

The HBF is supportive of the use of Building for a Healthy Life as best practice guidance to assist the BCA, local communities and developers assess new housing schemes. The HBF has played a fundamental role in establishing Building for a Healthy Life, but it was never intended to become enshrined as a mandatory policy requirement in Local Plans. The use of Building for a Healthy Life should remain voluntary rather than becoming a requirement of **Policy ENV9**, which would oblige developers to use this tool. If the BCA wish to refer to Building for a Healthy Life, this reference should be in supporting text only. Before the BCP pre-submission consultation, **Policy ENV9** should be modified.

Policy ENV9 should not be interpreted by the BCA's Development Management Officers as conveying the weight of a DPD onto the Local Housing Design SPD, which has not been subject to examination and does not form part of the BCP. The Town and Country Planning (Local Planning) (England) Regulations 2012 are clear that development management policies, which are intended to guide the determination of applications for planning permission should be set out in policy in the BCP. To ensure a policy is effective, it should be clearly written and unambiguous so it is evident how a decision maker should react to development proposals. The BCA's requirements should be set out in sufficient detail to determine a planning application without relying on, other criteria or guidelines set out in a separate SPD. National policy clearly defines the scope and nature of an SPD in the planning process as providing more detailed advice and guidance on adopted Local Plan policies. The NPPG confirms that an SPD cannot introduce new planning policies nor add unnecessarily to the financial burdens on development (ID: 61-008-20190315).

Under **Policy ENV9**, new residential development will be required to meet water efficiency standards of 110 litres per person per day.

Under Building Regulations, all new dwellings must achieve a mandatory level of water efficiency of 125 litres per day per person, which is a higher standard than that achieved by much of the existing housing stock. This mandatory standard represents an effective demand management measure. If the BCA wish to adopt the optional standard for water efficiency of 110 litres per person per day then the BCA should justify doing so by applying the criteria set out in the NPPG. The NPPG states that where there is a “*clear local need, LPA can set out Local Plan Policies requiring new dwellings to meet tighter Building Regulations optional requirement of 110 litres per person per day*” (ID : 56-014-20150327). The NPPG also states the “*it will be for a LPA to establish a clear need based on existing sources of evidence, consultations with the local water and sewerage company, the Environment Agency and catchment partnerships and consideration of the impact on viability and housing supply of such a requirement*” (ID : 56-015-20150327).

The Water Cycle Study (2020) identifies the Severn Trent Water and South Staffordshire Water supply regions as areas of only moderate water stress. A clear local need has not been demonstrated.

Under **Policy ENV9**, all new residential development will be required to meet the Nationally Described Space Standards (NDSS), except where it can be clearly evidenced that the implementation of the NDSS would cause harm to the significance of a heritage asset. The space standards will apply to all tenures.

If the BCA wish to apply the optional NDSS to all dwellings, then this should only be done in accordance with the 2021 NPPF (para 130f & Footnote 49). Footnote 49 states that “*policies may also make use of the NDSS where the need for an internal space standard can be justified*”. As set out in the 2021 NPPF, all policies should be underpinned by relevant and up to date evidence, which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned (para 31). The NPPG sets out that “*where a need for internal space standards is identified, the authority should provide justification for requiring internal space policies. Authorities should take account of the following areas need, viability and timing*” (ID: 56-020-20150327). The BCA should provide a local assessment evidencing their case. The BCA have provided no evidence to justify this policy requirement.

The NDSS should only be introduced on a “need to have” rather than a “nice to have” basis. Need is generally defined as “*requiring something because it is essential or very important rather than just desirable*”. If it had been the Government’s intention that generic statements simply stating in some cases the NDSS had not been met justified adoption of the NDSS then NDSS would have been incorporated as mandatory in Building Regulations, which is not the case.

There is a direct relationship between unit size, cost per square metre (sqm), selling price per sqm and affordability. The BCA’s policy approach should recognise that customers have different budgets and aspirations. An inflexible

policy approach to NDSS for all new dwellings will impact on affordability and effect customer choice. Well-designed dwellings below NDSS can provide a good, functional home. Smaller dwellings play a valuable role in meeting specific needs for both open market and affordable home ownership housing. An inflexible policy approach imposing NDSS on all housing removes the most affordable homes and denies lower income households from being able to afford homeownership. The introduction of the NDSS for all dwellings may mean customers purchasing larger homes in floorspace but with bedrooms less suited to their housing needs with the unintended consequences of potentially increasing overcrowding and reducing the quality of their living environment. The BCA should focus on good design and usable space to ensure that dwellings are fit for purpose rather than focusing on NDSS.

If the proposed requirement for NDSS is carried forward, then the BCA should put forward proposals for transitional arrangements. The land deals underpinning strategic and non-strategic sites may have been secured prior to any proposed introduction of the NDSS. These sites should be allowed to move through the planning system before any proposed policy requirements are enforced. The NDSS should not be applied to any reserved matters applications or any outline or detailed approval prior to a specified date.

Policy ENV9 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy ENV9** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy ENV9** should be modified as outlined above.

Policy ENV3 – Nature Recovery Network and Biodiversity Net Gain

Under **Policy ENV3**, all development shall deliver a minimum 10% net gain in biodiversity value when measured against baseline site information.

It is the HBF's opinion that the BCA should not deviate from the Government's proposals on biodiversity gain as set out in the Environment Bill. This legislation will require development to achieve a 10% net gain for biodiversity. It is the Government's opinion that 10% strikes the right balance between the ambition for development and reversing environmental decline. 10% gain provides certainty in achieving environmental outcomes, deliverability of development and costs for developers. 10% will be a mandatory national requirement, but it is not a cap on the aspirations of developers who want to voluntarily go further. The Government will use the DEFRA Biodiversity Metric to measure changes to biodiversity under net gain requirements established in the Environment Bill. The mandatory requirement offers developers a level playing field nationally and reduced risks of unexpected costs and delays. The BCA should not specify a requirement above 10%. The prefix "*a minimum*" should be deleted.

The BCA should not require "*all development*" to deliver biodiversity net gain. The BCA should apply proportionality in their application of planning policy. Sites without reasonable opportunities to achieve biodiversity net gain should not face risks of delay through rigid or prescriptive requirements. As set out in

the Environment Bill, the Government will introduce exemptions applicable to the most constrained types of development. Sites not containing habitats to start with (e.g. those entirely comprising buildings and sealed surfaces) will not be required to deliver compensatory habitats through biodiversity net gain, but may be required to incorporate some green infrastructure through wider planning policy. There will be a targeted exemption for brownfield sites that meet a number of criteria including that they (i) do not contain priority habitats and (ii) face genuine difficulties in delivering viable development, which will address concerns about the cost sensitivity of the redevelopment of post-industrial developed land. These exemptions will be set out in secondary legislation. The Government will also consider whether minor (less than 10 dwellings) residential developments should be subject to longer transition arrangements or a lower net gain requirement than other types of development. A simplified process for minor residential developments will be introduced to ensure that such schemes do not face additional new survey requirements. This simplified assessment will not include a condition assessment, so users will only need to state what habitats are present and the area that these habitats occupy to define their baseline for net gain.

In the Environment Bill, the Government also makes provision for a transition period of two years. The Government will work with stakeholders on the specifics of this transition period, including accounting for sites with outline planning permission, and will provide clear and timely guidance on understanding what will be required and when. Transitional arrangements should be incorporated into **Policy ENV3**.

Policy ENV3 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy ENV3** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy ENV3** should be modified as outlined above.

Policy CC2 – Energy Infrastructure

Under **Policy CC2**, any development including 10 or more dwellings must include opportunities for decentralised energy provision within the site, unless it can be demonstrated that the development is not suitable, feasible or viable for district heat or decentralised power networks. Where there is existing decentralised energy provision available close to the site, the development will be expected to link into it or should be designed to accommodate a subsequent connection if a source has not yet become operational. Where developers can demonstrate to the satisfaction of the relevant BCA that a link to an existing or committed decentralised energy source nearby is not viable, the LPA will support the provision of alternative onsite carbon elimination measures that can be incorporated into the scheme (see **Policy CC7**).

It is acknowledged that communal heat networks are one aspect of the path towards decarbonising heat, however currently the predominant technology for district-sized communal heating networks is gas combined heat and power (CHP). As 2050 approaches, meeting the Government's climate target of

reducing greenhouse gas emissions to net zero will require a transition from gas-fired networks to renewable or low carbon alternatives such as large heat pumps, hydrogen or waste-heat recovery but at the moment one of the major reasons why heat network projects do not install such technologies is because of the up-front capital cost. The BCA should be aware that for the foreseeable future, it will remain uneconomic for most heat networks to install low-carbon technologies.

No doubt the BCA are also aware that some heat network consumers do not have comparable levels of satisfaction as consumers on gas and electricity networks, and they pay a higher price. Currently, there are no sector specific protections for heat network consumers, unlike for people on other utilities such as gas, electricity or water. A consumer living in a building serviced by a heat network does not have the same opportunities to switch supplier as they would for most gas and electricity supplies. All heat network domestic consumers should have ready access to information about their heat network, a good quality of service, fair and transparently priced heating and a redress option should things go wrong. Research by the Competition and Markets Authority (CMA) found that a significant proportion of suppliers and managing agents do not provide pre-transaction documents, or what is provided contains limited information, particularly on the on-going costs of heat networks and poor transparency regarding heating bills including their calculation and the consumers limited ability to challenge their heat suppliers reinforces a perception that prices are unjustified. The monopolistic nature of heat networks means that future price regulation is required to protect domestic consumers. The CMA have concluded that *“a statutory framework should be set up that underpins the regulation of all heat networks.”* They recommended that *“the regulatory framework should be designed to ensure that all heat network customers are adequately protected. At a minimum, they should be given a comparable level of protection to gas and electricity in the regulated energy sector.”* The Department for Business, Energy & Industrial Strategy consultation on Heat Networks : Building A market Framework (ended on 1st June 2020) proposes a regulatory framework that would give Ofgem oversight and enforcement powers across quality of service, provision of information and pricing arrangements for all domestic heat network consumers. These concerns are not reflected in the BCA proposals for connection to decentralised energy networks.

Policy CC2 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy CC2** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy CC2** should be modified as outlined above.

Policy CC7 – Renewable and Low Carbon Energy

Under **Policy CC7**, small developments of between 1 - 9 dwellings must incorporate generation of energy from renewable or low carbon sources sufficient to off-set at least 10% of the estimated residual energy demand of the development on completion. Major developments of 10 or more dwellings must achieve a 19% carbon reduction improvement upon the requirements of

Building Regulations Part L 2013, or any higher standard required under Building Regulations and in addition incorporate generation of energy from renewable or low carbon sources sufficient to off-set at least 20% of the estimated residual energy demand of the development on completion. A variety of renewable and low-carbon energy sources and generation methods should be assessed and costed, including on-site and off-site sources where appropriate, and the use of district heat and / or decentralised energy networks. An energy assessment must be submitted with the planning application to demonstrate that these requirements have been met. The renewable energy target will only be reduced if it can be demonstrated that achievement of the target would make the proposal unviable through submission of an independently assessed financial viability appraisal or would not be feasible due to practical constraints.

Today's new homes are already very energy efficient with lower heating bills for residents in comparison to older existing homes. Energy performance data has shown that 8 out of 10 new build dwellings have an A or B energy efficiency rating, compared to only 3% of existing properties. In November 2019, the average new build buyer in England saved £442.32 every year on heating costs compared to owners of existing dwellings. Nevertheless, the HBF recognise the need to move towards greater energy efficiency via a nationally consistent set of standards and timetable, which is universally understood and technically implementable. The Government Response to The Future Homes Standard : 2019 Consultation on changes to Part L (conservation of fuel and power) and Part F (ventilation) of the Building Regulations for new dwellings dated January 2021 provides an implementation roadmap for achieving the Government's aim for greater energy efficiency. The interim Part L (Conservation of fuel and power), Part F (Ventilation) & Overheating Regulations will be regulated for in late 2021 and to come into effect in 2022. The 2021 interim uplift will deliver homes that are expected to produce 31% less CO₂ emissions compared to current standards. To ensure as many homes as possible are built in line with new energy efficiency standards, transitional arrangements will apply to individual homes rather than an entire development and the transitional period will be one year. This approach will support successful implementation of the 2021 Interim Uplift and the wider implementation timeline for the Future Homes Standard from 2025. The Future Homes Standard will ensure that new homes will produce at least 75% lower CO₂ emissions than one built to current energy efficiency requirements. By delivering carbon reductions through the fabric and building services in a home rather than relying on wider carbon offsetting, the Future Homes Standard will ensure new homes have a smaller carbon footprint than any previous Government policy. In addition, this footprint will continue to reduce over time as the electricity grid decarbonises.

It is noted that in its Response to the Future Homes Standard consultation, the Government has confirmed that the Planning and Energy Act 2008 will not be amended, therefore for the moment the BCA retains powers to set local energy efficiency standards for new homes. However, the Government has acknowledged the need to clarify the role of Councils in setting energy efficiency requirements for new homes that go beyond the mandatory standards set out

in the Building Regulations. The Housing, Communities & Local Government Committee have opened a new inquiry into “Local Government and the path to net zero”. The aim of the inquiry is to scrutinise the Government’s plans to make all new homes “zero carbon ready” by 2025, through the introduction of the Future Homes Standard, and to explore how Local Government can help the UK to reduce its carbon emissions to “net zero” by 2050. The deadline for the submission of evidence on the role of Councils in determining local energy efficiency standards was 30th April 2021.

The HBF consider that the BCA should comply with the Government’s intention of setting standards for energy efficiency through the Building Regulations. The key to success is standardisation and avoidance of individual Council’s specifying their own policy approach to energy efficiency, which undermines economies of scale for product manufacturers, suppliers and developers. The BCA should not need to set their own local energy efficiency standards to achieve the shared net zero goal because of the higher levels of energy efficiency standards for new homes proposed in the 2021 Part L uplift and the Future Homes Standard 2025.

The HBF support the Government’s approach to the Future Homes Standard but there are difficulties and risks to housing delivery, which include :-

- the immaturity of the supply chain for the production / installation of heat pumps ; and
- the additional load that would be placed on local electricity networks in combination with Government proposals for the installation of EVCPs in new homes under changes to Part S of the Building Regulations and the BCA’s own requirements under **Policy TRAN8**.

In autumn 2020, the HBF established a Future Homes Task Force to develop workable solutions for the delivery of the home building industry’s contribution to meeting national environmental targets and objectives on Net Zero. Early collaborative work is focussed on tackling the challenges of implementing the 2021 and 2025 changes to Building Regulations successfully and cost-effectively as well as providing information, advice and support for Small Medium Enterprise (SME) developers and putting the customer at the centre of thinking. On 27 July 2021, the Future Homes Delivery Plan was published (see attached Appendix A : The Future Homes Delivery Plan – Summary of the goals, the shared roadmap & the Future Homes Delivery Hub). To drive and oversee the plan, a new delivery Hub supported by involvement from Government will be launched in September. The Hub will help facilitate a sector-wide approach to identifying metrics, more detailed targets (where necessary), methods and innovations to meet the goals and collaborations required with supply chains and other sectors. It will incorporate the needs of all parties including the public and private sector and consumers, so that they can all play their part in delivering environmentally conscious homes that people want to live in.

The HBF note that the BCA have provided no evidence specifying the local circumstances in the Black Country to justify **Policy CC7**. As set out in the 2021 NPPF, all policies should be underpinned by relevant and up to date evidence which should be adequate, proportionate and focussed tightly on supporting and justifying the policies concerned (para 31). It is the HBF's opinion that the BCA should comply with the Government's intention of achieving net zero carbon development through the Building Regulations, the BCA's proposed policy approach is unnecessary because of the higher levels of energy efficiency standards for new homes proposed in the 2021 Part L uplift and the Future Homes Standard 2025.

Policy CC7 is unsound because it fails the four tests of soundness defined by the 2021 NPPF (para 35). **Policy CC7** is not positively prepared, justified, effective and consistent with national policy. Before the BCP pre-submission consultation, **Policy CC7** should be modified as outlined above.

Conclusion

For the BCP to be found sound under the four tests of soundness as defined by the 2021 NPPF (para 35), the BCP must be positively prepared, justified, effective and consistent with national policy. For the reasons set out above the afore-mentioned Policies are unsound. Before the pre-submission BCP consultation, the afore-mentioned Policies should be modified. If any further information or assistance is required, please contact the undersigned.

Yours faithfully
for and on behalf of **HBF**



Susan E Green MRTPI
Planning Manager – Local Plans