



Sent by EMAIL ONLY to thebassetlawplan@bassetlaw.gov.uk

26/9/2023

Dear Sir/ Madam

Response by the Home Builders Federation to the Bassetlaw Local Plan 2020-2038 Main Modifications Consultation, Aug 2023.

1. Please find below the Home Builders Federation (HBF) response to the Bassetlaw Local Plan 2020-2038 Main Modifications Consultation. 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. HBF have identified some changes needing to the wording of the some of the proposed Modifications. Where possible the HBF has suggested possible changes to the Modifications that could address the concerns raised.
3. In relation to Biodiversity Net Gain the proposed wording of the Modification has been superseded by events. We have identified the need for changes to the proposed Modification and/or that a factual update is needed to reflect the latest Government Policy on BNG. Whichever method is taken, this matter needs addressing.
4. There remains an outstanding issue relation to the carbon offsetting policy, that has now become a requirement for 5 trees. At the Examination the Council agreed to work with the HBF on this policy to come up with wording for a proposed modification. However, the wording currently being proposed does not address the issues we have previously raised.
5. HBF also remain concerned that there is a danger that the Plan as worded is seeking to give policy status to in SPDs. It is important to note that SPDs can only provide clarification and guidance, and policy should be made in the Local Plan.

Main Modification MM8.24c

POLICY ST40: Biodiversity and Geodiversity

6. At the Examination in Public HBF raised concerns that the BNG policy needed to be amended and updated to better reflect the Environment Act. The need for change

has been accepted by the Council, and the HBF welcome this. However, the proposed wording of the MM is not an accurate reflection of BNG national policy requirements, and the remainder of the wording of criteria 3 and 4 also need updating to reflect the latest policy and guidance.

7. Proposed Modification MM8.24c would see Policy ST40 amended to reads as follows:

... **Biodiversity Net Gain**

3. **In line with national legislation, Aall** new development should make provision **for at least 10%** net biodiversity gain on site, or where it can be demonstrated that for design reasons this is not practicable, off site through an equivalent financial contribution.

4. A commuted sum equivalent to 30 years maintenance will be sought to manage the biodiversity assets in the long term.

8. This proposed wording does not reflect the Environment Act which requires 10% Biodiversity Net Gain, or the emerging national policy, guidance and Best Practice on how Mandatory Biodiversity Net Gain will be implemented in practice.
9. Guidance is still emerging as preparation for the introduction of Biodiversity Net Gain in Nov 2023 continues. See for example this June 2023 Government Blog that details the work so far, and what additional work still to come <https://defralanduse.blog.gov.uk/2023/07/20/bng-whats-happened-and-whats-coming-next/>.
10. As the PAS guidance <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-faqs> explains the Environment Act amends the Town & Country Planning Act (TCPA) to secure BNG. This will be calculated using the Biodiversity Metric, and local planning authorities will need approve a biodiversity gain plan. Habitat will be secured for at least 30 years via planning obligations or conservation covenants, and BNG can be delivered on-site, through off-site units or via the new statutory biodiversity credits scheme. A national register for net gain delivery sites will be established, initially for all off-site BNG.
11. The proposed policy wording in the Main Modification do not update the policy wording to reflect to the current position as set out above. As such there needs to be a variety of further amendments to the policy wording for it to be accurate and up to date.
12. Firstly, the Environment Act is clear that BNG requirements can be met on-site, off-site or as a last resort through statutory credits (see also <https://www.gov.uk/guidance/understanding-biodiversity-net-gain>.) Whilst on-site provision should be explored first there may be many reasons, not just design reasons or practicality, why on-site BNG is not deliverable and/or not the preferred approach of the applicant and/or the Council and/or the community and/or statutory consultees. Factors that may need to be considered could include for example, whether the site is suitable for the type of BNG to be provided, what the priorities of the Local Nature Recovery Strategy are and/or the opportunity to coordinate

contributions from a range of sites to provide for large landscape scale BNG schemes. This part of the policy is therefore incorrect and needs to be amended.

13. Secondly, the policy wording that says 'off site through an equivalent financial contribution' is incorrect. The national BNG 4.0 Metric considers not only the type of the biodiversity asset, but also its condition and rarity. The metric requires any lost biodiversity to be replaced with either a like-for-like asset(s) or one of a better quality. It is not possible to 'trade down'. The metric also incentivises the implementation of BNG closest to the site, through the multipliers applied to off-site provision and the deliberately high cost of statutory credits. Therefore, it is inaccurate for the policy to refer to an equivalent financial contribution as reliance on the statutory credits is deliberately set up to be more expensive than providing on-site BNG or delivering BNG units off-site.
14. Thirdly, BNG can be delivered via either a Section 106 agreement or through a Conservation Covenant. Although best practice on conservation covenants is still emerging recent guidance on how to apply to be a Responsible Body, sets out who can become a Responsible Body, an option not limited to just Local Authorities (see <https://www.gov.uk/government/publications/conservation-covenants-apply-to-become-a-responsible-body>).

Therefore, it may well be then that a developer delivers their BNG requirements through BNG off-site unit payments to a Responsible Body who is not the LPA. This arrangement would not comply with a policy requiring "a commuted sum equivalent to 30 years maintenance" being paid to the Council, as the monitoring and maintenance arrangement would be agreed with the Responsible Body. Similarly, the situation where the onsite BNG was managed through a conservation covenant, would also not comply with the current proposed policy wording. The policy should instead seek to secure BNG for the period of 30 years without specifying how this will be achieved.

15. HBF suggest that the policy should be amended to say:

Biodiversity Net Gain

3. In line with national legislation, all new development should make provision for 10% biodiversity net gain. This should be provided on site where possible and practicable unless there are clearly demonstrated reasons why off-site BNG units or statutory credits should be used.

4. BNG should be secured for 30 years using either a Conservation Covenant with a Responsible Body, or through a Section 106 agreement.

16. We suggest that the terms Conservation Covenant, Responsible Body, on-site BNG, off-site BNG and BNG statutory credits should be defined in the Glossary for the Local Plan.

**Main Modifications MM10.4a, MM 10.4b and MM10.4c, MM10.4d and MM10.7f
POLICY ST50: Reducing Carbon Emissions, Climate Change Mitigation
and Adaptation (now renumbered Policy 48)**

Tree planting

17. Additional wording is proposed to be added to policy ST50 which says:

All major development will be required to make provision for 5 trees per dwelling or per 1,000 sqm of non residential floorspace on site, or if on site provision is not practicable then an equivalent financial contribution will be sought to enable provision of new native trees and/or the protection and enhancement of ancient and veteran woodland within the District.

18. Amendments are also proposed to paragraphs 10.1.13 and 10.1.14 of the text of the Local Plan to explain that the tree planting should be on site where this practicable, but no guidance is given on how a developer would show whether on site tree provision is practicable or not.

19. HBF were offered the opportunity to contribute to the Hearing Sessions discussion on the climate change policy, particularly the tree planting element, even though our representative was unable to be there in person. We thank the Council for this opportunity but remain concerned that the issues we raised have not been fully addressed in the proposed modification to Policy ST50 which requires major development to make provision for 5 trees per dwellings.

20. HBF remain concerned that this issues we raised have not been fully addressed by the Council in their response to the Inspectors Action 70. HBF is still not clear how the Council arrived at the requirement for 5 trees per dwelling, or how assumptions were made in relation to the size and standard of trees. The HBF considers that the provision of 5 trees per dwellings has potential to have a significant impact on the land uptake for any development and may have significant implications for the density of developments, which in turn has the potential to have an impact on the viability of developments.

21. HBF remain concerned that the provision of five trees per dwelling may have implications in relation to highway provision and highway maintenance, and we are concerned that the suggestion to use of small saplings with a low purchase cost, is likely to have implications in terms of the maintenance of the plant, and may lead to a significant number of the saplings not making it to mature trees, it may also mean that all of the trees have a similar life span, which may also not be beneficial to have across one site. Whilst the HBF appreciate this could be beneficial in terms of the cost of the policy, the longer-term implications need considering.

22. The HBF remain unclear as whether the Council are looking for these trees to be provided in public or private parts of the site, which again could have implications in relation to the management and maintenance of these trees going forward. The HBF considers that all of these elements will need to be considered in terms of the deliverability and viability of development.

23. The HBF notes that the policy states that if on site provision is not practicable than an equivalent financial contribution will be sought to enable provision of new native trees

and/or the protection and enhancement of ancient and veteran woodland elsewhere within the District. There is limited information provided in relation to how it will be determined if on site provision is not practicable, or how the financial contribution would be calculated or why greater flexibility is acceptable in terms of how the financial contribution is spent but isn't provided in the policy. Without this information it is very difficult to comment as to whether this approach is acceptable.

24. HBF suggest revising the wording of the proposed policy and the supporting text to be explicit about how site-specific viability consideration to be considered, and what a developer would need to do to justify making a financial contribution to tree planting rather than on site provision.
25. There would also seem to be a need to clarify the relationship between this policy with the new 10% mandatory BNG requirements. If on-site or off-site tree planting is one of the ways the development is contributing to its 10% BNG requirements would this need to be in addition to the 5 trees per dwelling? And if so, is this reasonable and deliverable?
26. HBF notes the reference to the Councils intention to produce an SPD on this issue. Whilst an SPD may be helpful it is important that the SPD only adds explanation to existing Local Plan policy and does not seek to introduce policy itself.
27. HBF continues to question whether the Councils desire to contribute to carbon neutrality, is best met through the proposed tree policy, and whether other options or ranges of options may be more appropriate. If the Council wishes to encourage or promote contributions towards carbon neutrality the policy could suggest that this could be done through provision of trees on or off-site or through alternate methods or approaches, taking into account other policy requirements and site circumstances.

Main Modification MM7.77e

Policy ST31: Specialist Housing

28. MM 7.77e seeks to amend criterion 3 of this Policy to say

“Proposals for residential market housing in Class C3 in Flood Zone 1 should be designed to meet the requirements for accessible and adaptable dwellings under Part M4(2) of the Building Regulations. In exceptional circumstances, where it can be demonstrated that the requirements will not be feasible or viable or where the proposal is outside Flood Zone 1, proposals should incorporate alternative measures to enhance accessibility and adaptability. Such proposals will be determined on a case by case basis.”

29. However, this results in a confusing criterion that seems to randomly drop in a flood zone policy into the middle of a requirement for adaptable dwellings. The result is a very confusing policy that needs revising and/or reformatting for it to be more easily understood by plan-users. Policy wording should provide absolute clarity on what the policy intends and should not require several re-readings to understand it.

30. At the Examination in Public, HBF made reference to the caveats set out in the Planning Practice Guidance on Optional Technical Standards for Housing (<https://www.gov.uk/guidance/housing-optional-technical-standards>) and it seems that this is the issue that Council are seeking, but failing, to address through this Modification.

31. The PPG states:

“What accessibility standards can local planning authorities require from new development?”

Where a local planning authority adopts a policy to provide enhanced accessibility or adaptability they should do so only by reference to Requirement M4(2) and/or M4(3) of the optional requirements in the Building Regulations and should not impose any additional information requirements (for instance provision of furnished layouts) or seek to determine compliance with these requirements, which is the role of the Building Control Body. They should clearly state in their Local Plan what proportion of new dwellings should comply with the requirements. There may be rare instances where an individual’s needs are not met by the wheelchair accessible optional requirement – see paragraph 011 below.

Local Plan policies should also take into account site specific factors such as vulnerability to flooding, site topography, and other circumstances which may make a specific site less suitable for M4(2) and M4(3) compliant dwellings, particularly where step free access cannot be achieved or is not viable. Where step-free access is not viable, neither of the Optional Requirements in Part M should be applied.”

Paragraph: 008 Reference ID: 56-008-20160519

Revision date: 19 05 2016

32. This is the point that HBF was making, and the PPG caveats around when it would be unreasonable to require M4(2) and M4(3) compliant dwellings are not limited to just flooding, because typography and other circumstances are also listed. HBF suggest that flexibility is needed in the application of these standards to reflect site specific characteristics.

33. The Council’s attempt to address the point raise by adding a specific reference to Flood Zone 1 in the policy is confusing and potentially misleading. And the suggested reference to the need for “alternative measures to enhance accessibility and adaptability” is in direct conflict with the PPG.

34. However, HBF also question whether the reference to M4(2) of the Building Regulations is in fact still needed. The requirements to meet Part M4(2) will be superseded by changes to residential Building Regulations. The Government response to ‘Raising accessibility standards for new homes’ states that the Government proposes to mandate the current M4(2) requirement in Building Regulations as a minimum for all new homes, with M4(1) applying in exceptional circumstances. This will be subject to a further consultation on the technical details and will be implemented in due course through the Building Regulations.

35. This could mean this entire criterion is unnecessary as all new development, including older person's housing in C3 Use Class is already required by Building Regulations.
36. However, if the Council are determined to keep the criteria, it must be amended to address the point raised above. If it is to be retained HBF suggest that this section of the policy should be amended to read:

“Proposals for residential market housing should be designed to meet the requirements for accessible and adaptable dwellings under Part M4(2) of the Building Regulations. Flexibility will be applied where it can be demonstrated that the requirements will not be feasible or viable.”

37. A consequential amendment to the Target in the Table on page 233 will also be needed so the reference to within Flood Zone 1 is removed.
38. HBF have also identified a lack of clarification in Plan in relation to Part M4(3) of the Building Regulations. Part M4(3) differentiates between wheelchair adaptable housing and wheelchair accessible housing. Part a) and part b) of M4(3) technical standards are different. M43a sets out standards for wheelchair adaptable housing, where M43b relates to wheelchair accessible housing. M43b can only be required on affordable housing where the Council has nomination rights.
39. HBF would therefore suggest clarification/factual update is needed in several places in the Local Plan to reflect this distinction, namely:
- Criterion e of Policy 27: Site HS13: Ordsall South, Retford which should refer to M4(3)a not just M4(3)
 - Paragraph 7.19.7 which should refer to M4(3)a
 - The Target in the Table on page 231 should refer to M4(3)a
40. HBF notes that paragraph 7.19.7 of the Local Plan states that the whole plan viability assessment found the delivery of wheelchair accessible housing would be unviable in combination with the other requirements of the Plan. It would be helpful to clarify whether the M4(3)a, or the M4(3)b, standard was used in this work. As the remainder of the paragraph refers to the provision of market dwellings, which the Council would not have nomination rights too, HBF assume that it was M4(3)a that was considered as part of the Whole Plan Viability Assessment and found to be unviable. Therefore, the Council must take particular care in looking to require wheelchair adaptable and/or accessible housing. Delivery of the M4(3)b standard is considerably more expensive than the M4(3)a which has already been found to be unviable. The provision of wheelchair accessible housing will have a significant impact on site specific viability requiring external funding and/or a reduction in other Section 106 requirements.

Future Engagement

41. I trust that the Council will find these comments useful. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry if that would be helpful.

42. The HBF would like to be kept informed of the progress and adoption of the Local Plan. Please use the contact details provided below for future correspondence.

Yours faithfully

A handwritten signature in blue ink that reads "R. H. Danemann". The signature is written in a cursive style with a light blue background behind it.

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