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06/11/2023

Dear Sir

Response by the Home Builders Federation to the additional examination documents in the evidence base for Charnwood Local Plan Examination in Public

1. Please find below the Home Builders Federation (HBF) response to the to the additional examination documents in the evidence base for Charnwood Local Plan Examination in Public. 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.

Questions about the process

2. HBF note that the Council is inviting comments on the following new and revised documents:
 1. The Sustainability Appraisal Addendum (Exam 57)
 2. Exam 56a (this is an update to EXAM56 Charnwood Additional Housing Supply Technical Note and is includes explanatory text and tracked changes to show how it differs from EXAM56)
 3. Updated housing trajectory (containing completions information) – (EXAM 58b) Updated Housing Trajectory update notes (EXAM 58c). A note setting out the housing supply position upon the adoption of the Local Plan based upon 2022/2023 monitoring year (EXAM 58d) Five Year Housing Land Supply site list (EXAM 58e)
 4. Draft Transport Strategy document (EXAM 75)
 5. Updated viability work (EXAM 76)
3. The Council's email inviting comments on this additional evidence says "Everyone who was consulted at the Regulation 19 Pre Submission Local Plan stage is being contacted to inform them of the consultation on the new documents. If you have previously submitted representations on the Plan, these will be considered as part of the Examination, so it is not necessary to



repeat them. However, if you have any new comments to make in response to the new evidence documents set out above, these should be sent to the Programme Officer using the contact details below.”

4. HBF are unclear if this means anyone and everyone is being invited to comment on this new information, in which case should this additional consultation need be included in a revised LDS and the Council needs to show it has complied with its SCI in relation to this consultation? Or, is the consultation limited to active participants in the EIP, in which case HBF would question whether full public consultation is needed?
5. The current status of the Draft Transport Strategies is unclear, especially as they appear to be at different stages in their production, with the document (Exam 75) noting in para 4.3.5 says that the Loughborough Area LCWIP is due “to be presented to the County Council’s Cabinet in Autumn 2023 for approval”. Para 4.3.8 says that that the North of Leicester “LCWIP is due to be presented to the County Council’s Cabinet for approval in early 2024” and para 4.3.11 states that “no equivalent LCWIP work has yet been undertaken in respect of villages in the Soar Valley (save for Quorn).
6. As this consultation is being undertaken as part of the Examination in Public process, HBF are unclear how our comments will (or could) be taken on board. Is it the expectation that any changes suggested to the documents be incorporated through the EIP process, or will the documents themselves be changed? How does this relate to the governance of the County Council as highways authority and Charnwood Council as the Local Planning Authority? What status is it intended that these documents will have, both as they emerge, and once they have been finalised? How does this link into the adoption of the Charnwood Local Plan? Is it the intention to address any issues raised in this consultation through Main Modifications, through another EIP hearing session if necessary and/or through a separate process of endorsement of the strategies by the County and/or District Council?
7. These questions are particularly important since the County Council have been seeking to implement these policies by seeking developer contributions in advance of the adoption of any Charnwood Local Plan policy, and even in advance of the scrutiny that may be afforded by the EIP process. Indeed, they have been seeking to implement this before any public consultation on these strategies.
8. In light of this, HBF are of the view that the Draft Transport Strategy documents, and our comments on them, need to be seen within the context of other new EIP evidence, including EXAM 74 the letter from the County Council to the Inspectors which states “it has become necessary for the County Council to seek to implement an alternative approach to seeking appropriate developer contributions in the interim period, before the Local Plan’s adoption.”

9. HBF members have been subjected to requests for financial contributions under the County's interim "policy" which has led to a number of planning appeals on sites within Charnwood that were progressing on this basis, only to find that the request for contribution has been dropped just before the appeal, presumably because the requests could not be substantiated. This has led to unnecessary costs and delay.
10. It therefore seems particularly important that the transport strategies, their methodologies, assumptions and conclusions are subject to robust testing through the Examination in Public process, and the impact on Viability of the approach being proposed fully understood. HBF has significant concerns about the approach and methodology being used (see comments below), as a strategy based on asking developers to help plug a funding gap for road improvements does not seem to be compatible with the wider objectives of the planning system to encourage sustainable development. In the case of transport, this should be underpinned by efforts to encourage modal shift to more sustainable transport options.
11. It is disappointing that this transport work has been prepared so late into the Local Plan process that it has not been able to inform the development of the of the Local Plan, but instead is now seems to have become necessary to seek to address the 'problems' that the new development being planned for in the Local Plan for Charnwood will now 'create'. In the absence of clarity on how and when the policy will be implemented and apparent tensions between the County and District Council on this matter, full scrutiny through the EIP process becomes even more essential.

The Sustainability Appraisal Addendum (Exam 57)

12. HBF would question how the implications of the emerging Transport Strategies that have only recently been prepared and published can have fed into the SA process that concluded in an Addendum Report dated Dec 2022. It is important that the SA remains an iterative process and HBF would have expected to be consulted on a more up to date version of the SA that explicitly considered the implementation of the three emerging Transport Strategies now being proposed. Some of the justification provided by the County Council in the transport strategies for the high level of developer contributions required seems to include a critique of the development strategy that has been chosen and the implications of the cumulative impacts resulting from the more dispersed nature of the new housing allocations.
13. However, as para 7.4 of the document explains "the SA has been prepared prior to the Council determining which approach is to be followed". It is therefore not within the scope of this stage of the SA to set out which approach the Council has taken and why. However, it is important for the Plan to explain why the Council has taken the approach it has to meeting a

portion of Leicester unmet need and this will need to be addressed through Main Modifications, which should include links backs to the evidence base including the SA so that the approach and thinking behind it is clear.

14. The issue of the need to meet some of Leicester's unmet need seems to have been addressed through policies to densify and extend existing sites, with the allocation of new sites discounted. HBF suggest there may be different transport implications from each option that should have been considered through the SA. There is a need for all the new evidence to fit together into a coherent package that explains the approach, and any changes to the Local Plan, that are now being proposed as a result of the new evidence in a comprehensive manner. This includes clear justification for the additional request for developer contributions. It would be helpful for the SA and/or the Plan to set out more clearly the Council's reasoning for the approach chosen. There is a need for clarity. It will also be important for the evidence to show the approach chosen does not undermine the deliverability and therefore the soundness of the Plan. HFB would question if the evidence, taken in the round, supports such a conclusion at this time, and suggest further work and discussions may be needed before the Plan can progress to a Main Modifications consultation.

15. Charnwood Additional Housing Supply Technical Note (Exam 56a)

16. During the EIP sessions HBF raised concerns about the 5 year land supply and the need for a greater level of detail to be provided in relation to the Housing Trajectory and for this to be kept up to date. The September update to the January 2023 Additional Housing Supply Technical Note still concludes only a 5.16 years of supply for 2023/24, which does not leave much room for any delays or reduced capacity on sites. HBF would still question if additional flexibility is needed.

Updated Housing Trajectory

17. HBF remain concerns that the Council will be unable to demonstrate a five year land supply at the time of adoption of the Local Plan as they are required to do. HBF suggest further information is needed to provide confidence on this point. This matter may also need to be kept under review if there is the need for additional EIP hearing sessions which would, as a consequence, cause further delay to the adoption of the Plan.

Draft Transport Strategies (Exam 75)

18. HBF has significant concerns about the approach methodology, analysis and conclusion of Examination Document Number 75: Transport Strategies To Enable Growth in the Borough of Charnwood. Our comments are therefore broken down into an initial overview of concerns, then chapter by chapter comments, and finally with some overarching conclusions at the end.

Transport Strategies: Overarching concerns

19. HBF note that in the letter to Charnwood Council following the EIP hearing sessions the Inspectors stated that “the three Transport Strategies discussed as part of Matter 8 are not sufficiently detailed or developed to enable us to conclude that they will meet the Plan’s objective to increase the use of sustainable modes of travel, in addition to securing effective mitigation for the effects of the Plan’s growth on the Local and Strategic Road Network. Whilst a number of main modifications to Policy INF2 and the Infrastructure Delivery Schedule were discussed at the hearing, we consider that the broad contents of, and the framework for, the Transport Strategies for Loughborough Urban Centre, Shepshed Urban Area, North of Leicester and Soar Valley should be identified and submitted to the Examination.”
20. Having now had sight of these strategies for the first time, HBF is concerned about the approach, methodology and conclusions of the draft Transport Studies, and how they are intended to be implemented in practice.
21. Paragraph 3.1.4 of the report states that “the Strategies are not intended to deal with more localised impacts of a particular development site. There will continue to be a requirement for developers to assess and determine their site-specific impacts and mitigation requirements.”
22. Paragraph 3.13 explains that in County Council’s view because “the new allocations are predominately made up of non-strategic sites and instead comprise a large number of relatively smaller developments across wider geographic areas, such that the cumulative impact of the developments causes the severe impacts identified since it is clear that no individual development will be able to deliver the necessary mitigation. This requires a coordinated approach to ensure appropriate infrastructure and other services can be funded. Managing impacts on an ad-hoc case-by-case basis through the planning process will not support sustainable development in this instance.”
23. Para 3.1.2 states that “An area strategy approach is a positive way to enabling growth to come forward, where otherwise the County Council as the Local Highway Authority would find itself in a position of not being able to support an allocated site coming forward as a planning application on the basis of cumulative impacts.”
24. However, as the NPPF and PPG acknowledge:

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning

permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a levy charging schedule for the area.

25. HBF would question at a fundamental level whether the approach adopted in the Draft Transport Strategies to arrive at the cost of developer contributions meet these tests. Development can only be required to mitigate its own impact and can not be required to address existing deficiencies in infrastructure or services. It is therefore essential for the Local Transport Strategies to clearly show the existing and known deficiencies in the current infrastructure, before they can reach a conclusion on the cumulative effects of new development, and any contribution that is needed from new development to mitigate any additional individual and/or cumulative impacts. It is unreasonable and inappropriate to expect new development to contribute to resolving existing lack of highway capacity issues. Developers can only be required to mitigate their own impacts.
26. HBF would also question if the strategy that seeks to rely on road improvement is compatible with the efforts of plan-making system to encourage sustainable development and reduce reliance on the private car. The Local Transport Strategies do not seem to try to bring together the different elements of transport policies in an integrated way. Planning for sustainable development is seeking to reduce the need to travel in the first place and encourage people to make more sustainable transport choices by promoting amongst other things, active travel. The transport strategies seem to be viewing the different elements of good planning and place-making in isolation and seem to have conceded that efforts to change behaviour and encourage modal shift will be unsuccessful over the plan period.
27. The transport strategies fail to account for any successes in the efforts to encourage a modal shift away from the private car through the walking and cycling and wheeling strategies, instead seeing these as separate and distinct from implications of development on the road network. Surely the reason for improving walking cycling and public transport is to encourage people out of their cars which would then have a knock-on reduction in the need for road improvements. This point does not seem to be reflected in the strategies.

28. Para 2.4 of the report clearly states that “significant changes in people’s behaviour will be required if the impacts of growth on the County’s transportation system (and on carbon levels) are to be lessened significantly.” However, the transport strategy seems to suggest that such an approach is not currently possible and that “In the meantime, the best opportunity to achieve a level of mitigation is via a Local Plan led approach”. HBF suggest this is simply incorrect.
29. The Local Plan should be providing the vision for the future of Charnwood including the shift in behaviour that government policy, and the challenge of climate change wants to encourage, namely less reliance on the private car. The plan-led approach should therefore not be viewed as an ‘in the meantime’ way of providing additional funding for road schemes, as seems to be implied by the County Council, but a way to develop to new places and regenerate existing ones to promote more sustainable ways of living, including increasing active travel and reducing the need to travel by car.

Chapter 4.1 Evidence

30. The final paragraph on page 9 of the transport strategies states that “whilst evidence works shows that enhancement of sustainable transport alternatives help to mitigate the impacts of growth, it also suggests that this will not be sufficient in and of itself.” HBF have been unable to locate the evidence and analysis that supports this assertion.
31. Para 4.3.9 says that “having these LCWIPs in place provides a robust basis for seeking to secure funding to deliver enhancements to walking cycling and wheeling infrastructure across the two areas, both from public and private (developer) sources.” However, as HBF have previously observed, they are not in place yet and, as yet, have not even been agreed by County Council Cabinet.
32. Para 4.4.4 notes that “patronage on local bus services across the Leicestershire network remains at approximately 80% of pre-Covid levels. Patronage on Park & Ride services for the first half of financial year 2022/23 was just under a third (37%) of the figure for the same period in 2019/20, as a result of changing travel to work behaviour and the greater availability of city centre parking in Leicester.” This is another known existing problem that developers can not be expected to address. Indeed, it could be concluded that this means there is current capacity within the existing public transport to accommodate development. In order to comply with the CIL tests, the transport evidence needs to set out what impact the additional development has and differentiate it from wider societal impacts on public transport usage mentioned within the report.

33. Similarly, para 4.4.6 refers to a feasibility study that is looking to “identify locations on the Leicestershire bus network where bus services are delayed due to ‘road conditions’, for example because of traffic congestion or restricted widths caused by on-street parking.” Again, these are existing issues that new development can not be expected to rectify.
34. If the Charnwood Local Plan is to include policies that require developer contributions for transport infrastructure on behalf of the County Council the policies must be underpinned by robust evidence and up to date evidence that would enable the District Council when determining a planning applications to have confidence that the s106 requested satisfy the CIL tests. HBF question if this is the case with the current information and without a robust evidence base and a clear understanding of how the policy will be implemented in practice, a policy cannot be justified or effective, and as such would fail the soundness tests.

Chapter 5:1 Cost Estimates

35. The Transport Strategies report notes in para 5.1.6 that “in such times of unprecedented global economic shocks and instabilities, there remain great uncertainties around future levels of scheme costs; for example, whilst the estimate makes an allowance for construction cost inflation, it is impossible to predict how accurate that allowance might prove to be several years into the future.” But it goes on to say in 5.1.7 “as the Strategy’s development work is taken on further this will inform viability assessments that in turn will support prioritisation of measure delivery over the life of the Plan.”
36. In order to meet the ‘effective’ test of soundness, the Charnwood Local Plan has to be shown to be deliverable over the plan period. HBF have significant concerns over the viability of new housing development where the costs of transport schemes are still so vague that the value of transport contributions is unclear and the viability of development has yet to be established. It seems that the costs, and therefore the viability of scheme, can and will only be considered at some point further in the future. Such an approach does not result in viable and deliverable Local Plan, and it would seem that further work and discussion on this issue is needed.

Chapter 5.2: Funding Sources

37. HBF have significant concerns about how the County Council intend to collect and spend the monies raised. Para 5.2.4 of the report says “the County Council’s proposal is to pool such contributions from developers with this funding being used for priority projects only when the money has been received.” HBF strongly suggest such an approach would fail to meet the CIL tests for s106 contributions, as it in effect amounts to a roof tax, not a request for contribution that are directly related in scale and kind to the development being proposed.

38. HBF also suggest that such an approach is not appropriate under Section 106 requirements, where there is a clear need for developer contributions to be related to mitigating the developments own impacts. Although arguably such as approach could be supported under the Community Infrastructure Levy, local planning authorities across Leicestershire have chosen not to adopt CIL. If the District Council, or County Council, wants to have the benefit of a CIL type policy, this should be done through the introduction of a CIL.
39. As set out in the PPG on Planning Obligations “the 2019 amendments to the regulations removed the previous restriction on pooling more than 5 planning obligations towards a single piece of infrastructure.¹ However it is still the case that “Local planning authorities are expected to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not.”²”
40. HBF therefore question whether the approach of pooling contribution until they meet the amount needed for such significant pieces of infrastructure, whose costs are currently unknown, is workable in practice. Any Section 106 agreement would ideally need to set out what piece of infrastructure was being contributed to, and the timeframe within which the money would be spent and the infrastructure delivered. Owing to the complexity and lack of information currently available it is unclear how funding secured in this way could be assured of being spent appropriately. If the intention of the s106 contributions is to make the development acceptable in planning terms, breaking the link between the delivery of the scheme on the ground and the timing of the spending of the funding to deliver the transport improvement sought seems to be at odds with the approach of s106 contributions.
41. The scale and cost of transport schemes being proposed seem to suggest it may take many years for the pooled developer contribution to reach the amount of money required to progress an infrastructure scheme, and then it could take a further significant amount of time for scheme to be delivered. This could undermine efforts to introduce behavioural change and modal shift as new residents may not have the benefit of transport improvements for many years. The phasing of the transport scheme relative to the progress of development would seem to be in need some further thought and analysis if the pooling of contributions in the way envisaged is to be justified and deliverable.

¹ <https://www.gov.uk/guidance/planning-obligations> Paragraph: 021 Reference ID: 23b-021-20190315
Revision date: 15 03 2019

² Ibid Paragraph: 006 Reference ID: 23b-006-20190901 Revision date: 01 09 2019

42. The reliance on public funding for delivering transport schemes, is a further complications, in that success is securing public funding is not guaranteed, especially for road schemes, when national policy is seeking to encourage a modal shift. HBF is concerned about what would happen to developer contribution collected for a transport scheme that was unsuccessful in securing the public money needed to fund the whole scheme? Would every developer then have to apply to the County Council and/or the District Council for their money back? What implications would this have for resources? Developer contributions simply can not be held by the local authority or other partner agency indefinitely.
43. Para 5.2.4 of the report states that “Officers have been working on the understanding that Charnwood Borough Council support the Proposed Main Modifications to the policy framework provided by the Local Plan, and that they will ultimately provide the basis for seeking to secure developer contributions.” However, the Proposed Main Modification to the Local Plan have not been subject to consultation, and as such relying on them here seems premature and predetermining. HBF would question of this assumption is appropriate?
44. HBF concerns about the County’s attempts to rely on the Interim Transport Contributions Strategy have been detailed previously, and are not repeated here. However, HBF remains concerned that the County’s approach to transport contributions appears to be a post hoc rationalisation for contributions being sought to meet existing County Council priorities, a factor and does not relate to the impact of new development on the existing network and the encouragement of a modal shift as required by national and local planning policy.
45. HBF note the comments from the Inspectors in EXAM 74A that “the mechanism for, and documentation behind, the requirement for developer contributions is a matter for the authorities to resolve in due course”. HBF would strongly suggest that this is fact a matter that the Local Plan must address. Planning policy must be made in the Local Plan, and any developer contributions being sought must form part of the whole plan viability appraisal and be tested to ensure they do not make development unviable.
46. Similarly, the Local Plan should clearly set out what a developer needs to do in order to bring forward a planning permission capable of being approved, this must surely include clearly setting out what developer contributions are likely to be required, and the justification for these requests. HBF have significant concerns that the current approach will make development in Charnwood unviable, a view supported by the Consolidated Addendum Viability Appraisal (see comments on EXAM 76)

Chapter 5.3: Delivery

47. HBF note that in para 5.3.3 the County Council indicate that the Transport Strategies are drawing on lessons learned in Melton. The report says that in the case of Melton “major highway infrastructure was identified alongside sustainable transport measures as part of an area-based transport strategy, with an intention to allow some development to come forward prior to full implementation of mitigation measures, on the condition that it does not prejudice the ability to deliver cumulative infrastructure at a later date.” It is unclear from the evidence and information currently available how approach would be applied in Charnwood. HBF suggest that if this is the approach to be adopted, the Local Plan provides a appropriate mechanism to set out any phasing of development in relation to transport scheme delivery. It is important that this issue does not hold up housing delivery on the ground, or result in a plan that is undeliverable.
48. HBF is also concerns by the statement in para 5.1.4 which says “where the County Council has already prepared conceptual designs and cost estimates, these will mark the starting point for discussions with site promoters about a proportionate contribution (either financial or in kind). Alternatively, where no design work has been undertaken, the County Council will expect developers to prepare their own proposals in discussion with the Authority and in the context of ‘Gear Change’ and LTN1/20.” HBF is unclear how this could and/or would be coordinated to address what the cumulative impacts of development occurring across a range of smaller sites being delivered to different timescales.

Consolidated Addendum Viability Report (Exam 76)

49. HBF notes that the Inspector’s next steps letter requires “some updates to the Viability Assessment have already been provided in Exam 32 (Assessment of Changes Since Viability Study) and Exam 32a (Second Transport Addendum). However, the Viability Assessment should be further updated to reflect the updated school build costs in the proposed main modifications to the Infrastructure Schedule in Exam 4 (February 2023). An assessment of the viability implications of the increased school build costs together with the indicative cost of the Transport Strategies as outlined above should also be undertaken, and where necessary, the updates in Exam 32 and 32a should be incorporated as part of that work.
50. HBF are note that the Consolidated Addendum Viability Report concludes is ES19, on page iii that “further work is required to monitor and manage the infrastructure requirements (particularly schools and highways – County Contributions) depending upon the business case for additional public sector funding. Detailed infrastructure requirements will also be assessed on a planning application basis having regard to the CIL Regulations.”
51. HBF concerns about delivery of infrastructure requirements where even the business case for public funding in support of the project has yet to be

established. Developer contributions secured through Section 106 agreement need to be for tangible mitigation of development impacts, not a fund that the County Council can then seek to spend on whatever projects it sees fits.

52. Para 1.9 of the viability report explains that this consolidated addendum to the viability study, as well as considering the implications of the Transport and Education (LCC) request the study has also “consider the impact of the Building Regulations Part L and Future Homes Standard which were not included as part of the original study, but para 6.9 says changes have been made to allow for Biodiversity Net Gain (BNG); M4(2) Category 2 – Accessible and Adaptable housing; and Electric Vehicle Charging Points (Part S). Para 6.10 says “These costs were consulted upon at the stakeholder consultation in September 2020. We received no substantive feedback on these costs at that time”. Clearly time has moved on since then and HBF offer the following comments in relation to these elements of the revised Viability Study

Part L and Future Homes Costs

53. Para 6.12 of the revised viability study notes that an allowance of £4847 per unit has been included for compliance with Part L of the Building regulations but that the additional costs for net carbon ready housing required from 2025 have not been included.
54. Para 6.13 of the report explains “We acknowledge that there could be additional costs to achieve ‘net zero carbon ready’ design standards in 2025. However, given the rapidly changing politics, policy development, building technology development, energy costs and price/value premium for low energy homes we have not included any additional cost for ‘net zero carbon ready’ at this stage (i.e. this is a future cost implication)”.
55. HBF information suggests that complying with the current new part L is costing £3500 per plot. The Future Homes Standard Part L in 2025 is anticipated to cost up to £7500+ per plot. There will also be the addition of the Building Safety Levy that is coming in pay for cladding. This will be a per plot basis around the UK, and initial values are around £1500- £2500 per plot.
56. Other factors that need to be taken into account include increasing costs of materials and labour due to inflation. HBF suggest these factors are likely to also have short, medium and longer term impacts on viability.

Biodiversity Net Gain

57. The viability study shows BNG costs as £287 per dwelling on brownfield sites and £1011 per dwelling on greenfield. The data used to arrive at these figures is now very dated. The actual the costs of mandatory BNG are still emerging as the off-site market is yet to be established. Although the initial

price of statutory credits is now known this national fallback option has been deliberately highly priced to discourage their use. Whilst this intention is understandable, at present the lack of functioning local markets for off-site credits causes viability problems because HBF members experience to date suggests that any scheme that needed to rely on statutory credits would become unviable.

Affordable Housing Return

58. HBF considers that affordable housing return of 6% is no longer appropriate in relation to First Homes, where it is likely that the risk for delivering these homes will lie with the developer rather than the registered provider.

County Council s106 requests

59. The consolidated viability study has been updated to incorporate the additional developer contribution costs being requested by the County Council. Para 6/7 of the report states that “in developing their transport strategies Leicestershire County Council divided the Borough into three Transport Strategy Areas: North of Leicester, Loughborough/Shepshed and the Soar Valley”.
60. Para 6.38 continues that “the Transport Strategy Areas are similar to the Housing Sub Market Areas which have been used in the Viability Assessment work but their boundaries do not align exactly. The main difference between the two is the location of Anstey which is located within the North of Leicester Transport Sub Area, but in the viability assessment it has always been included within the Wider Charnwood Housing Market Sub Area. Because of this, it was decided to apportion the cost of offsite transport costs evenly across the Borough. Further, justification for this approach was based on the fact that the impacts of development are not restricted solely to the transport subarea in which housing is located, as journeys will extend beyond an area's boundary, and there may also be knock on effects such that development may displace existing journeys and traffic causing impacts in other sub-areas.”
61. Therefore, the viability appraisal uses a Total Off Site Highways Costs including Sustainable Transport Measures and Passenger Support of £19,675 per dwelling across each of the three areas as shown in Table 6.12 in para 6.38.
62. Para 6.39 of the consolidated viability appraisal explains that “Leicestershire County Council informed the Borough Council that education infrastructure required to support development, including the need for new, expanded or enhanced existing schools, will have to be funded by developer contributions.”
63. Para 6.41 explains that “The per dwelling figures for each sub market area have been calculated by taking into account the cost of constructing new primary schools where they are required based on the expectation that allocation

policies in the Local Plan state that the reasonable costs of making provision would be shared amongst the developments that they would serve.”

64. Para 6.43 explains that “Leicestershire County Council provided confirmation of updated per dwelling school costs in June 2023. The table below is a cost per dwelling for a new build school. Significant cost increases have taken place over the last two years.” As a result, Table 6.19 (in para 6.47) sets out the Total Section 106 Education Cost per Dwelling of £14,644 on the Leicester Fringe, £14,675 in Loughborough/Shepshed and £15,813 in Wider Charnwood. Flatted brownfield schemes and rural exception sites are not required to make any contribution.
65. Para 7.1 sets out that “the first run of the appraisals was based on a high Section 106 figure derived from an uplift in off-site transport costs and higher education costs as shown in Tables 6.12 and 6.19 above. The result of applying these figures was that the full range of typologies would be unviable except for just two large greenfield sites in the Wider Charnwood area and the Rural Exception Site typology. All of the other typologies were considered to be unviable, many by significant margins.”
66. Therefore, at its most basic level the s106 ask within the Charnwood Local Plan has been shown to be unviable. PPG³ clearly states that “The role for viability assessment is primarily at the plan making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan” and “the total cumulative cost of all relevant policies should not be of a scale that will make development unviable⁴.”
67. The viability study shows the Plan is undeliverable, and clearly the expectation would then be that the policy requirements as a whole would be revisited and revised. The viability of the new policy requirements can then be retested until an option is found where viability can be achieved. This does not appear to be what has happened in this case. Instead, para 7.1 continues that “However, Leicestershire County Council have expressed a clear intent to seek funding from other sources as set out in paragraph 6.32 as it was realised that S106 developer contributions alone would not be sufficient to pay the full cost of infrastructure requirements. Consequently, it was clear that the plan could not be viable while seeking such large developer contributions. Therefore, we have been asked to calculate what might be a ‘maximum’ level of S106 in light of the findings of the appraisals and other considerations such as the need to deliver the Plan’s development strategy and other policy requirements.”
68. HBF would question whether this approach is appropriate and complies with viability guidance and best practice, and the CIL tests for s106 contributions.

³ <https://www.gov.uk/guidance/viability> Paragraph: 002 Reference ID: 10-002-20190509
Revision date: 09 05 2019

⁴ Ibid Paragraph: 029 Reference ID: 10-029-20190509 Revision date: 09 05 2019

Development can only be required to mitigate its own impact. Different typologies should be tested to see if the s106 policy requests are viable or not, not to see how much s106 contributions can be sought before a scheme is unviable. The viability appraisal should be about testing policy, not seeking to establish a 'maximum headroom' for contributions.

69. If schemes are unviable the amount the affordable housing they are required to provide can be reduced, and for some scheme no affordable housing is sought for reasons of viability. The logical conclusion of the County Council requests for Section 106 agreements making scheme unviable should be a reassessment of affordable housing policies. However, this appraisal has created an alternative approach, modelling instead for the retention of the amount of affordable housing required by policy and seeking instead to adjust the Education and Transport contributions to 'as much as possible' and then plugging any gaps with promise of seeking to apply for unspecified and unguaranteed public funding. HBF question the validity and soundness of this approach.

70. The viability appraisal should be a way to demonstrate the amount of affordable housing and other contribution sought from development does not make the plan unviable or undeliverable. This is not what the current evidence shows.

Future Engagement

71. I trust that these comments are useful. I would be happy to discuss these issues in greater detail if that would be helpful.

72. HBF are keen to understand the next stage of the process and how any comments made in relation to this evidence consultation will be taken into account.

73. HBF would also request to be involved if any further EIP hearing session are deemed necessary.

Yours faithfully

A handwritten signature in blue ink that reads "R. H. Danemann". The signature is written in a cursive, slightly slanted style.

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