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19/06/2024

Dear Sir/ Madam

### **Chelmsford Local Plan**

1. Thank you for consulting the Home Builders Federation (HBF) on the preferred options for the Chelmsford Local Plan. 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.

#### **Duty to co-operate (DtC).**

2. The DtC Position Statement and the DtC Strategy set out the approach the Council is taking with regard to the duty and the issues that it considers to be strategic and cross boundary. One of the issues highlighted is the delivery of homes. It will be essential that the council works closely with its neighbours to ascertain whether any unmet needs will arise in neighbouring areas. Given the extent of the Metropolitan Green Belt across south Essex it will be essential for Chelmsford, given that it is less constrained in terms of Green Belt to consider the degree to which it could support neighbouring authorities to meet their needs in full. It is important that such considerations are made as part of the preparation of this plan and not put off to future reviews leaving housing that is needed in the short term to remain undelivered.
3. The council will also need to consider the unmet needs arising in London which are considerable and will impact on the demand for new homes in Chelmsford. As the Council

note in figure 5 a significant number of Chelmsford working age population already commutes to London and is an indication of the excellent transport links to the capacity and in particular the city of London. Given that London continues to struggle to meet its own needs it will be essential that this is recognised as a key strategic issue for Chelmsford and consideration is given to this matter when preparing the next iteration of the local plan.

#### **Policy S2 – Addressing Climate change.**

4. HBF does not consider the requirement for development to exceed Building Regulations Part F and L in accordance with DM31 to be sound. Our specific concerns are set out in our comments on policy DM31 below. In addition, we note that the Council state that relying on building regulations not considered to be a reasonable alternative. Given that this is the preferred approach by government it is a reasonable alternative and one that will ensure that from the adoption of the Future Homes Standard all new homes that are zero carbon ready and will support the legally set national target of being net zero from 2050.

#### **S14 – Health and Well Being**

5. S14 requires developments of over 50 homes to submit a Health Impact Assessment (HIA). Whilst HBF would agree that HIA are an essential part of plan making to ensure the Council understand the health outcomes of its strategy and is thus able to ensure these are effectively addressed, this should be achieved through the preparation of a whole plan HIA which will help inform the Council that the policies the plan contains address the key health outcomes for the area. This will mean that if a development meets the policies in the plan, ergo it is addressing the health outcomes already identified by the Council. All a site level HIA would achieve is the repetition of the work the council has already undertaken. The only circumstance where an HIA may be appropriate would be for a larger unallocated site where the impacts may not have been fully considered by the council as part of the plan wide HIA.

#### **S6 – Housing and employment requirements.**

##### *Housing needs*

6. The policy states that the provision is made to deliver a minimum of 19,000 homes at an average annual rate of 1,000 new homes per annum in order to meet assessed housing

needs using the standard method over a plan period of 2022 to 2041. This is nearly 50 homes per annum more than the standard method calculated when the consultation document was prepared and over 80 homes each year more when using the most up to date median work place-based affordability ratios. However, the council have recognised that over the course of preparing a local plan changing variable means that the outcomes of the standard method will vary and have taken what HBF consider to be the sound decision and set a housing requirement of 1,000 homes per annum across the plan period.

### *Housing supply*

7. Para 6.8 states the council has close to a 20% supply buffer with 22,567 expected to be delivered over plan the period. This is degree of buffer is a sensible precaution and gives the degree of flexibility in overall supply that HBF would expect to see in a local plan, especially one that relies on a number of large strategic allocations to meet housing needs in full.
8. It is also notable that the level of affordable housing need in Chelmsford is high with 642 affordable homes need each year to meet the need for affordable rented housing, 67% of total housing need. Whilst the higher level of housing supply will not ensure that affordable housing needs are met in full it will ensure that the gap between needs and supply is reduced and one that is encouraged by paragraph 2a-024 of PPG which states: *“An increase in the total housing figures included in the plan may need to be considered where it could help deliver the required number of affordable homes”*.

### **S10 – Securing infrastructure and impact mitigation**

9. The second paragraph of this policy states that permission will only be granted if it can be demonstrated that there is sufficient infrastructure capacity to support the development or that such capacity will be delivered by the proposal. HBF do not consider this approach to be sound as these are matters that should be addressed through plan making and not through the development management process. It should not be for a development, especially for one that has been allocated in the local plan, to subsequently demonstrate that there is sufficient capacity within local infrastructure to support that development. The council must as part of the plan making process should have considered the existing capacity of infrastructure, identify where this capacity needs to be improved and ensure that the necessary policies, funding and agreements are, or will be, in place to deliver improved capacity. If it can't then the only conclusion must be that the plan is unsound.

10. In particular HBF are concerned as to how the proposed approach relates to the delivery of utilities where the provider has a legal duty to provide a connection. For example, Water companies are subject to statutory duties under S37 and 94 of the Water Industry Act 1991 (WIA 1991). Section 37 of the Act imposes a statutory duty on all water companies to provide and maintain adequate infrastructure and potable water supplies.
11. Consequently, it is for the water company to plan for and then provide a sufficient supply of water. It is not for the developer to either anticipate those or to have to remedy this. Simply put the issue of water supply when considering planning applications is not a land use planning matter but one to be resolved by the water company in conjunction with the relevant statutory agencies.
12. However, the HBF recognise that the supply of utilities to meet the needs of development is a legitimate issue for the council to consider as part of the preparation of its local plan. The local authority is required to do so through the preparation of the evidence to support the local plan, including a statutory Sustainability Appraisal and an Infrastructure Delivery Plan. The purpose of this preparatory work is to ensure that the local plan is deliverable by considering constraints, such as those defined in paragraph 20, part b, of the NPPF.
13. However, consideration of water supply and development needs is undertaken primarily through the relevant planning mechanism for that utility, for example water companies must prepare a Water Resources Management Plan every five years which provides an overview of what is required to achieve a secure supply of water for your customers and a protected and enhanced environment.
14. Policies in local plans relating to applicants having to assess the capacity of these services are therefore unnecessary and unlawful because they are an attempt to get applicants to do things for which they are not legally responsible. Instead, it is the responsibility of utility companies, working with local authorities to plan for the future demand for water services relating to the development requirements proposed in local plans, not applicants.
15. If utility services cannot be guaranteed, then the development requirements in the local plan cannot be delivered. Consequently, the local plan is unsound. The plan cannot be made sound in relation to such matters through policies in that plan stipulating actions that applicants must take as they cannot provide those services. Housebuilders cannot resolve

the problems relating to utilities through policy measures or conditions. The policy as currently draft should be not consistent with the legal frameworks highlighted above and the approach to plan making and HBF would suggest the second paragraph of S10 is deleted.

### **DM1 – size and type of housing**

16. The only change to the policy in the current local plan is that the Council are proposing to require increase the requirements for part M4(2) homes from 50% to 100% of all new homes. Whilst the expectation has been that the Government would make part M4(2) mandatory for all new homes the amendment to Building Regulations required has not been brought forward. Therefore, the Council will need to ensure that it has robust evidence to show that all homes are required to be built to this higher accessibility standard. It is also noted that the council have changed the suggested mix in table 4. The mix is now provided in a range rather than as specific percentages. This seems an appropriate change and provides applicant and decision maker alike with more flexibility as to the mix of homes to be delivered.

### **DM2 – Affordable Housing**

17. As outlined elsewhere in this response HBF consider that the costs relating to net zero and BNG may be underestimated, and the Council will need to revisit these costs and consider the impact on the viability of development and the ability of development to meet all the policies being proposed by this plan.

18. HBF do not consider part ii to be sound as it requires development to meet a mix of affordable homes based on the current or future housing need assessments. This in effect is conferring the weight of a local policy to the housing needs assessment and as such is inconsistent with national policy and legislation relating to local plans. The HBF consider that for this policy to be sound an alternative approach to part ii would be:

*“In considering the provision of affordable housing the council will expect:*

*ii. The mix, size, type and cost of housing to have close regard to the most recent evidence on housing needs, such as the Strategic Housing Market Assessment and monitoring data.”*

19. Tenure mix set out in para 8.23. First homes at 30% discount. But cap at £250,000 but flexibility in policy will allow for variation ...

#### **DM16 – Protection and promotion of ecology nature and biodiversity**

20. HBF note that the Council will require a 20% BNG on two garden communities with 10% on all other sites. We would agree with the Council's statement that requiring all major development to deliver more than the statutory minimum is a reasonable alternative. However, as required by paragraph 74-006 of PPG the requirement for the garden communities to go beyond the statutory level of BNG will have to be justified both in terms of need and viability.

21. In terms of assessing the impact on development viability of either the 20% or 10% net gain we note that the Council's Local Plan Viability Update states in paragraph 8.63 that the costs set out in Tables 14 to 23 of the Biodiversity Net Gain and Local Nature Recovery Strategies – Impact Assessment (IA) published in 2019 to support the development of the statutory BNG requirement. Whilst in the absence of other costs these have been used across the country for assessing viability. However, it must be noted that the IA is an examination of the broad costs to the development industry based on a range of assumptions that will not necessarily reflect the type and location of development coming forward in Wealden and the costs of delivering BNG. In addition, the cost of creating and maintaining one hectare of habitat on site is based on 2017 study by Natural Trust, RSPB, and the Wildlife Trust in relation to farms and not residential development. In particular the on-site management costs may well be higher compared to the study and the Council will need to provide evidence to what these costs are rather than rely on those set out in the IA.

22. Furthermore, the IA makes no consideration as to the potential reduction in the developable area in order to deliver at least 50% of net gains on site, which is stated in paragraph 8.63 to be the base scenario used in the Viability Update. In some cases, this may have limited impact whereas on some sites it will impact significantly on the number of homes delivered. These assumptions will need to be tested with regard to allocated sites to understand the degree to which BNG can be delivered on site whilst still delivering expected levels of development. For the typology testing we would suggest that the council should undertake sensitivity testing to consider the impacts of having to deliver more BNG offsite.

23. Finally in using the cost estimate in the IA the Council are underestimating the cost of offsite delivery to meet net gains. The IA applies a cost of £11,000 per offsite credit. This is much lower than current prices in the market which are in the region of:
- £30-50,000 per Grassland unit.
  - £30-50,000 per Hedgerow unit.
  - £30-50,000 per scrubland unit.
  - £30-50,000 per individual tree.
24. These costs could also be higher still if there are insufficient credits locally. If credits are bought elsewhere then the spatial risk multiplier in the BNG Metric will increase the number of credits that are required. It will therefore be necessary for the Council to set out whether there will be sufficient credits to deliver net gains offsite within Chelmsford. If not, then the costs in the VA will need to be increased.
25. With regard to implementation the policy states in part D(iv) in terms of delivering BNG states delivering in line with local and national best practice guidance. This is an ambiguous statement and suggest that applicants will be required to meet standards that go beyond national and local policy but to a high standard it considers to be best practice. The HBF considers that this phrase needs to be amended to “... *be calculated and reported in accordance with national policy and guidance and taking account of local supplementary guidance produced by the council.*”.

### **DM25 – Sustainable Buildings**

26. Given that the level of provision for electric vehicle charging points is consistent with part S of the Building Regulations HBF do not consider it necessary to include the set out in the first, second and fourth bullet points requirements in the local plan as it merely repeats existing national policy on these matters. Only matters on which the Building Regulations are silent should be included in local planning policy.

### **DM31 – Net Zero Carbon Development in Operation**

27. Whilst the HBF would agree with the Council that there is a need to act to reduce carbon emissions we would disagree that this needs to be undertaken through the local plan given that there is already a national approach, the Future Homes Standard (FHS), being taken forward to achieve the same goal. Delivering these improvements through building

regulations has a distinct advantage over delivering a variety of different approaches across the county, in that it provides a single approach that all developers understand and can be rolled out at scale. This allows supply chains and skills to be improved prior to implementation and ensure that improvements to building standards are actually deliverable from the point at which they are introduced.

28. However, if the Council chooses to go beyond current or future standards it must be done in a way that is consistent with national policy and robustly assesses its consequences and gives consideration as to how the requirements of the proposed amendments to DM31 are consistent with the written ministerial statement (WMS) published on the 13th of December 2023. In this statement the housing minister notes that “Compared to varied local standards nationally applied standards provide much-needed clarity and consistency for businesses, large and small, to invest and prepare to build net-zero ready homes” and that local standards can “*add further costs to building new homes by adding complexity and undermining economies of scale*”. The 2023 WMS goes on to state that any standard that goes beyond building regulations should be rejected at examination if the LPA does not have a well-reasoned and robustly costed rationale that ensures:

- That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.
- The additional requirement is expressed as a percentage uplift of a dwelling’s Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).

29. The HBF do not consider the approach set out in DM31 to be consistent with the approach suggested in the WMS nor that the implications of such a policy have been properly assessed in the supporting evidence base.

### Operational energy

30. The policy relates to energy use in operation and as such relates not only to the regulated energy resulting from fixed building services and fixtures but also to unregulated energy from appliances and equipment which cannot be controlled by the developer. If the Council are to require new development to be net zero it can only do so on relation to regulated energy and not to unregulated energy use as this is beyond the control of the developer to influence over the life span of a property.



Requirements 1 and 3 – Space heating demand and energy use intensity

31. The proposed policy position would require all new development to demonstrate net zero operational carbon onsite by ensuring energy use standards for all new dwellings of 35kwh/m<sup>2</sup>/year and space heating demand of less than 15 kWh/m<sup>2</sup>/year, aside from bungalows which must achieve a space heating demand of 20 kWh/m<sup>2</sup>/year.
32. Taking the second bullet point of the WMS first, the approach proposed by the Council based on energy use is inconsistent with the approach set out in the WMS and as such is unsound. It should be noted that the Government have considered whether it was appropriate to use a delivered energy metric such as the one being proposed in the policy position paper and have concluded that these do not offer any additional benefits to those being taken forward by Government. Therefore, if the Council are to require standards above those set out in building regulations they must be expressed as a percentage of the target emission rate.
33. Turning to the first bullet point, the Council will need to ensure the costs and deliverability of this policy are fully and robustly tested. Whilst some cost analysis has been undertaken HBF are concerned that the viability assessment in the Net Zero Carbon Study Toolkit do not appear to consider the cost of meeting requirements 1 and 3. Whilst reference is made to the Energy Use Intensity (EUI), and space heating demands no attempt seems to have been made to assess how much these will increase build costs. It would appear that the study considers how much it would cost to achieve net zero through the use of PV in addition to the Future Homes Standard, at between £11,000 and £16,000 (Table 8.12) but has not costed the actual requirements being proposed. This study therefore takes no account of the fabric improvements that will be required in order to achieve the energy use levels proposed in requirements 1 and 3. Other costs are provided in the technical evidence which suggest meeting the proposed EUI and space heating standards proposed would cost between 3% and 7% more than building a home to the 2021 Part L standard. However, based on other reports HBF consider these to underestimate the costs of meeting these standards.
34. The costs for similar standards to those being proposed have been published by the Future Homes Hub (FHH) as part of their work to support and inform the implementation of the Future Homes Standard. The findings of this work are set out in “*Ready for Zero*”. This study

tests a number of archetypes against a range of specifications from the current standards set out in the 2021 Building Regulations through to standards that will achieve similar standards to those proposed by the Council.

35. The various specifications and costs considered are summarised in Figure 8 of Ready for Zero and indicates that in order to deliver standards above the FHS on a three bedroomed end of terrace house (specifications CS3, CS4 and CS5 in the FHH report) would be around £17,000 to £22,000 more per unit compared to the 2021 Building Regs. Whilst the specifications and assessment methodology may not be directly comparable to those being proposed by the Council there is a significant difference in the costs set out above and those in the Toolkit. In addition, it does not take into account of the fact that the cost of meeting these standards bungalows, semi-detached and detached homes will be significantly higher. For example, under current building regulations a detached house has a space heating demand of 46 kWh/m<sup>2</sup>/yr. and as such to achieve a 15kWh/m<sup>2</sup>/year, will be significantly more than for a mid-terrace house which under current building regulations achieves a space heating standard of 22 kWh/m<sup>2</sup>/year<sup>1</sup>.
  
36. With regard to deliverability of zero carbon homes HBF would not disagree with the Council's evidence which suggests that the proposed standards are technically feasible the HBF are concerned as to the impact these requirements will have on the rates at which sites can deliver new homes on all types of sites. Given that the standards proposed are higher than those proposed by Government in the Future Homes Standard and will require higher levels of fabric efficiency, which in turn will require new skills and materials that may not be readily available, HBF are concerned this could slow delivery in the short to medium term as supply chains are developed. It has been recognised by the FHH that to deliver higher standards will require phased transitional arrangements to enable a steady build-up of skills and ensure quality. The FHH also notes in its report Ready for Zero that even if a short transition period between current standards and those similar to the Council are proposing that this would “... *create a high risk of quality problems, inflated costs and, potentially, stalled build programmes.*” As such consideration will need to be given as to the delivery rates of development in the early years of the plan period with fewer homes potentially coming forward in this period as these much higher standards will take time to embed.

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<sup>1</sup> Figure 119 Ready for Zero (Future Homes Hub, 2023)

37. Therefore, in addition to the approach being inconsistent with national policy and as such fundamentally unsound the current evidence basis does not even consider the actual cost of these standards on the viability of development nor their impact on the deliverability of new homes. As such the council must reconsider its approach as set out in requirements 1 and 3.

Requirement 2: Fossil Fuel Free

38. Given the Future Homes Standard will ensure all new homes to be zero carbon ready this policy unnecessary for Colchester to take forward as it will already be addressed through building regulations by the time the local plan review is adopted.

Requirement 4: On site renewable energy generation

39. Careful consideration will need to be given to setting a specific requirement and the ability of development to meet these standards. Some flexibility is provided but HBF are concerned that delivering of energy from on-site renewables can impact on the developable area where the levels energy needed cannot be delivered from roof mounted PV. Any reduction in the developable area will inevitably impact on development viability.

40. Where on site renewable energy generation does not meet all the energy requirements of the development the council will require development to offset these through a financial contribution at £1.35 per kWh, or the most up to date costing at the time the contribution is made. HBF do not consider it appropriate for development to have to offset any energy use that is not met from renewable energy sources. In particular we are concerned that as the policy relates to operational energy use which includes both regulated energy consumption from fixed services as well as unregulated energy from appliances etc. The level of energy use from unregulated sources is beyond the control of the developer and as such it is unreasonable to require the developer to make a payment in order offset use from these sources.

Requirement 5: As-built performance confirmation and in-use monitoring

41. The policy position paper requires all development to submit as built performance information prior to completion alongside in use monitoring of 10% of the dwellings built for the first five year of operation on sites of 100 dwellings or more. Further detail is provided

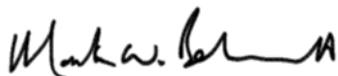
the supporting text with section 9.56 stating that major development should use methodologies such as Passivhaus Planning Package (PPP) or CIBSE TM54 as part of the assessment of compliance with this policy.

42. HBF consider the requirement sort use PPP or CIBSE TM45 to be inconsistent with the WMS which requires policies, and by extension the assessment of performance against those policies to be based on SAP. The approach proposed by the current Government provides consistency between the assessment frameworks for planning policies and building regulations and ensures there is not a proliferation of assessment frameworks used that adds to the complexity for both applicant and decision maker. As such the policy and its supporting text shod be clear that any assessment required with regard to net zero carbon is based on SAP.
43. With regard to the requirement that developers should monitor development for the first five years to understand the building performance HBF consider this to be well beyond the scope of what local planning authorities can require of a developer. The energy use in a home will depend significantly in the occupant of that home and how they use it, and it is not for the developer to dictate how an individual uses there home either now or in the future. HBF consider part ii of this policy to be unjustified and ineffective and should be deleted.

### **Future engagement**

44. We hope these representations are of assistance in taking the plan forward. Should you require any further clarification on the issues raised in our comments please contact me.

Yours faithfully



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