

## **Examination of the Leicester Local Plan 2020-2036**

### **MATTERS, ISSUES AND QUESTIONS FOR THE EXAMINATION (MIQs)**

#### **Response from HBF, September 2024**

Please note, these comments are in addition to our Regulation 19 comments, which we have not repeated here. We have referred to our Reg 19 comments where we have expanded our comments or provided additional comments, but only where we believe this is helpful.

We have not responded to all of the questions only those where we have further comments to make. Our original Reg 19 comments still stand.

## **MATTER 1 – DUTY TO CO-OPERATE AND LEGAL COMPLIANCE**

### **Issue 1a: Duty to Co-operate**

**Has the Council complied with the Duty to Co-operate (DtC) in preparing the Leicester Local Plan (the Plan)?**

***1. Does the Plan give rise to any strategic cross-boundary issues for which there is a Duty to Cooperate (DtC)?***

***2. If so, has the Council engaged constructively, actively and on an ongoing basis with all of the relevant authorities and prescribed bodies on the ‘strategic matters’ applicable to the Plan and have they been resolved?***

***3. Is this adequately evidenced by the Statement of Compliance with the DtC2 and any supporting Statements of Common Ground (SsoCG)? Has the Leicester & Leicestershire SoCG been signed by Hinckley and Bosworth Borough Council yet?***

***4. Does the evidence contained in the Statement of Compliance with the DtC and the associated SsoCG adequately demonstrate that the City Council has met the DtC in accommodating unmet needs?***

***5. Are there any ‘strategic matters’ on which the DtC has not been met? If so, what is the evidence to support this?***

As explained in our Reg 19 response HBF’s concerns about how Leicester’s unmet need is going to be met is, in our view, are a matter of soundness rather an issue to do with the Duty to Cooperate. We note that Hinckley and Bosworth contest the final manual adjustment of their figures, and did not sign up to the July 2022 SocG for this reason.

However, we note that para 4.30 of the Hinckley and Bosworth current Reg 18 Local Plan consultation states

“Using the most up to date standard method calculation (based on the 2023 affordability ratio), the annual housing requirement is 433 dpa (or 9093 dwellings over the plan period) compared to the standard method figure set out in the HENA of 472 dpa (or 9912 dwellings over the plan period). This is slightly less than the standard method identified in the HENA, however, uses the most up to date information as required by planning practice guidance. The Borough Council has accepted in the SoCG the apportionment of 102 dpa from Leicester City’s unmet need, based on the standard method in the HENA, this would result in a housing requirement of 574 dpa (or 12,054 dwellings over the plan period). Should the Borough Council be required to accept the final step in the apportionment as set out in the SoCG, the housing requirement for the borough would result in 659 dpa (or 13,839 over the plan period). Despite the 433 dpa being the most up to date housing figure for the borough, there is little justification from the evidence to be providing a lower housing figure as set out in the most recent standard method. For this reason, the Borough Council has decided to adopt the housing figures contained in the agreed SoCG as a basis for the housing requirement in the Local Plan. Provision is made in Policy SP02 for 13,862 dwellings over the plan period (660 dpa).”

[https://www.hinckley-bosworth.gov.uk/downloads/file/8307/local\\_plan\\_reg\\_18\\_24\\_consultation\\_document](https://www.hinckley-bosworth.gov.uk/downloads/file/8307/local_plan_reg_18_24_consultation_document)

We have however been unable to find a signed statement of common ground within the Hinckley and Bosworth Reg 18 consultation paperwork, and are unclear if and when Hinckley and Bosworth have/will sign up to the July 2022 statement of common ground. Section 4.1 of the SoCG on Housing and Employment Needs (July 2022) still includes details of this outstanding disagreement.

HBF were disappointed that the Leicestershire Councils took so long to reach agreement on exactly how the unmet needs are to be re-distributed, however we welcome the fact that the Councils have committed to work together on this issue, have acknowledged that Leicester has an unmet need, and acknowledge their role in helping to meet that need through increases to their own individual housing requirements. Sadly, this is not the case in many other areas of the country.

However, HBF also note the proposed changes to the NPPF which are currently out for consultation. For the unmet need of Leicester to be addressed in a timely manner, it is essential that any agreement to contribute to meeting the unmet needs is progressed through the Local Plans of neighbouring authorities. As housing targets are a minimum number of homes not a maximum, increasing the housing requirement of a neighbouring authority to include additional housing to meet an existing commitment to contributing to meeting Leicester's unmet needs would seem to be reasonable, but must be delivered in practice.

### **Climate Change Policies**

***12. Does the Plan, taken as a whole, include policies designed to ensure that the development and use of land in Leicester contributes to the mitigation of, and adaptation to, climate change in accordance with the Act?***

As detailed in our Reg 19 response HBF have concerns about the soundness and deliverability of some of the elements and wording of the proposed climate change policies, which are not repeated here. These concerns do however demonstrate that the Council has considered the impact of climate change in their plan.

### **Superseded Policies**

***13. Does the Plan make clear which policies of the adopted development plan it would supersede, as required by paragraph 8(5) of the Regulations? Should the Plan contain a list of current saved policies to be replaced?***

HBF note that such a list would be helpful.

## **MATTER 2 – VISION AND STRATEGY**

**Issue 2: Is the Plan's overall vision and strategy positively prepared, justified, effective and consistent with national policy in enabling the delivery of sustainable development?**

### ***Vision and Strategy***

***15. Should the Vision for strong sustainable growth in Leicester set out in Chapter 3 of the Plan be balanced against the need to combat climate change and enhance the natural environment and biodiversity?***

It is important for the Local Plan to clearly set out the vision for new development in Leicester. In coming to a view on where new development will be acceptable the plan-making process has already considered the various factors and considerations affecting where new development should be located. HBF do not believe there is a need to repeat this in the Vision, especially as the Local Plan should be read as whole and the development management process will refer to all relevant policies in the Local Plan when making a decision on a planning application.

***17. Is the Plan justified in identifying in Diagram 2 the proposed growth for 'Leicester Urban Area', including Strategic Growth Areas beyond the administrative boundary of the City in adjoining Districts and Boroughs?***

HBF believes Diagram 2 reflects the reality of development in the Leicester area, and as such is not misleading, but an accurate reflection of how and where the housing need of Leicester City will actually be addressed. What matters is a clear commitment from the neighbouring authorities that they will contribute to meeting Leicester's unmet, so that the needs are met in full. In the absence of mandatory strategic planning, something HBF have called for over many years, the collaborative approach adopted by the Leicestershire authorities in trying to address this matter is one of the better ones, but it must deliver in practice.

As we have mentioned in our response to questions around monitoring and delivery it is essential that Leicester City Council monitors the delivery of their housing need when it is being met elsewhere. It is important that the Council know where and when the housing to meet its needs it is being planned for outside of its boundary. Any failure of the neighbouring authorities to plan for and deliver their part of the unmet need requirement will result in Leicester's unmet housing needs remaining unmet, and remedial action of some kind will be needed.

HBF understand that some of the area shown as 'strategic growth areas' already have planning permission, and in some cases are under construction. We would suggest a differentiation on the status of sites/growth areas could usefully be shown in the Plan.

### ***Plan Period***

***19. In the light of the Council's response to the Inspectors' initial question 5 about the Plan period, would the Plan be positively prepared, justified and consistent with national policy in running only to 2036?***

HBF note that the Council's response to question 5 does not answer the question of how a plan period of less than 15 years on adoption complies with the NPPF requirements for effective plan making.

HBF note that Charnwood Local Plan (currently at EIP) and the recent Local Plan consultation from other Leicestershire LPAs are all looking to plan for a plan period beyond 2036, despite the

end date of the Strategic Growth Plan. The existence of the voluntary Strategic Growth Plan for Leicester does nothing to exempt Leicester City Council, or any of the Leicestershire LPAs, from complying with the requirement for the Plan to cover a 15 year period, and include a 30 year vision where there are longer term allocations and/or areas of growth.

HBF notes that the Council says “in terms of considering wider longer term spatial development options across Leicestershire, active work is currently being progressed by the Leicester and Leicestershire Councils to in the form of a Strategic Growth Options Study and a Strategic Transport Assessments which are expected to be published early in 2024. Any long-term requirements of Leicester and cross-boundary allocations beyond 2036, will be the subject of the next plan review, in the context of the existing Strategic Growth Plan, but also in the context of changing housing policy requirements, as set out in the NPPF and Levelling Up and Regeneration Act (2023).” However, HBF are not persuaded this approach complies with the requirements for the plan to be positively prepared, justified and consistent with national policy. If the approach suggested is pursued the known housing need of Leicester City are not being addressed in a timely fashion.

HBF also notes that the proposed changes to the NPPF may impact on the plans of neighbouring authorities. As the consultation is currently live, it is too early to be clear what the implications of the drive to increase house-building will have on plan-making in Leicestershire. We would expect the Government intention with regards national policy become clearer as the EIP progresses, and as such consultation on this specific matter may be needed.

We would welcome the opportunity to understand how the Council and the neighbouring authorities think the potential changes to the NPPF may impact on the certainty of delivery of the unmet need of Leicester. This may be a matter that need revisiting at the end of the EIP process and/or through the Mian Modifications consultation process. There may be further issues with the soundness of the plan and its approach if the City Council can no longer be certain its unmet needs will be addressed by its neighbours.

**20. Given the reliance on neighbouring Local Authorities to provide housing and employment land as well as infrastructure to ensure that the Leicester Local Plan is delivered, would an early review of the Plan be required to ensure that the Plan is effective?**

Although in their response to the Inspectors initial question number 1, the Council commits to an immediate review of their Local Plan, this will do nothing to help to address the unmet housing need in the short, or possibly even medium term. An early plan review will not address the constrained and tightly bound nature of the City Council areas and the fact the geography of the functional Leicester City Urban area already extended beyond its boundaries.

We are in the midst of a housing crisis, and the government remains committed to delivering 300,000 homes a year (as a minimum, as current NPPF consultation seeks to increase this number). It will therefore be essential for Leicester City and the Leicestershire Councils to continue to work in partnership to ensure the City’s needs are met. The emerging plans of the neighbouring authorities must include the unmet need within their requirements and plan for it to be met.

***Policy SL01 – Location of Development***

**21. Is the spatial strategy for the location of development contained in Policy SL01 justified and effective in respect of its reliance on the Central Development Area (CDA) for around 30% of the Plan's housing provision in Leicester City?**

HBF do not comment on individual sites. However, our concerns about the Council's reliance on housing delivery within the CDA, despite obvious issue around viability and deliverability, as set out in our Reg 19 response, remain.

HBF remain concerned that the deliverability of high and super high density residential development in Leicester will be dependent upon the viability of brownfield sites and the demand for high density city centre living post Grenfell and post Covid-19. It is important that delivery of the housing requirement in Leicester does not rely overly ambitious and un-realistic intensification of dwellings within the City, that results in any under-provision and/or under delivery of housing numbers.

**22. Is the evidence set out in the CDA Residential Capacity Study, 2022 [EB/CD/10] sufficiently robust and reliable to show that a further 6,286 dwellings will come forward within the CDA over the Plan period? To ensure the Plan is effective in delivering the required capacity, should sites within the CDA be allocated for minimum numbers of dwellings?**

Our concerns about the robustness of the Residential Capacity Study as set out in our Reg 19 responses remain.

**23. Does the overall distribution of housing growth across the City, as proposed in Policy SL01, maximise the opportunities to viably address the need for affordable housing?**

HBF remains concerned that viability has shown the delivering of affordable housing in Leicester City at the levels required to meet their affordable housing need will continue to be challenging. Additional open market housing should be considered to help deliver more affordable homes in line with the PPG.

HBF remain of the view that the Council should consider if a higher housing requirement is needed to help deliver the amount of affordable housing the Council is seeking to provide. The issue is one of viability, as there is a finite amount of developer contributions that can be provided per scheme. Rising costs, including for example the costs of delivering the new Regulations and the Future Homes Standards, combined with increasing requests for section 106 contributions for other community benefits, such as transport, education and mandatory BNG will all impact of viability, and may reduce the amount of affordable housing than can be delivered on a site by site basis. Therefore, more sites will be needed to deliver the same quantum of affordable housing.

Success of the CDA approach will be dependent on maximising housing, however there is interaction between density and the size and type of housing units that will results that needs to be recognised. For example, there will be a policy interaction with the new mandatory national requirement for 10% BNG which will impact on densities, as under the BNG hierarchy on-site BNG is preferred where possible. HBF question whether optimum densities and high-density development are always synonymous. There will clearly be a trade-off to be made between what land is used for new green space and what land is used for new built forms.

We are also aware that some the delivery of housing on some urban brownfield sites has been proving particularly challenging in relation to BNG. The assumption that brownfield sites have

little BNG value, and this can more easily and cheaply secure BNG gains, is not supported by evidence from our members, albeit this is anecdotal evidence at this stage.

Development of the density envisaged in the CDA will result in the predominance of a particular type of housing within the new housing supply- mainly multi-storey blocks of apartments. HBF would therefore question if the full range of housing types and tenures can and will be delivered at the high and super high densities being sought in the Plan, for example, family housing is usually at much lower densities than even than the minimum 50 dph. HBF contend that reliance on such high amount of high-density developments are unlikely to meet all of the range of housing need and demand in Leicester, and this contrary to national guidance and led to a plan that is unsound.

HBF would therefore question if the density policy is appropriate in all cases, and suggest further flexibility is needed.

HBF is also aware of the tension between new policies that seek to increase densities and are therefore likely to require tall buildings and design advice and aspiration for the city which encourage mid-height development.

***24. Should Policy SL01 also support residential development on windfall sites given the reliance on this source of supply to meet the Plan's housing requirement?***

HFB concerns about the windfall allowance in the plan are expressed in Reg 19 response. As such we would not support the need to the reliance on windfall within this policy, because we question the reliance on windfall in principle.

***28. Overall, does the spatial strategy in Policy SL01 provide sufficient flexibility over the Plan period to ensure the needs of the City will be met?***

As set out in our Reg 19 response, HBF would support additional flexibility in terms of a higher housing requirement for Leicester. The housing requirement should be established before consideration is given to the options for housing land supply consider the requirements deliverability. HBF would also support further flexibility in the plan making. It is important that the housing needs of Leicester are met in full, and as such the requirement for its unmet need to be addressed.

Although we welcome the efforts of the neighbouring authorities to work together to try and create a plan to meet the unmet needs of Leicester, this has clearly been a difficult exercise and there is as yet not full agreement on the distribution of the housing numbers. It is important that collectively the neighbouring authorities do in fact plan to meet the unmet needs of Leicester in full.

For example, the type and tenure of housing unmet need in Leicester should inform the type and tenure of housing being delivered outside of the City boundary in the plans of neighbouring authorities, so if for example if the need is for family housing, the provision of apartments and student flats would not meet this need.

HBF have already made comments in our Reg 19 response on why the housing requirement should be higher and the importance of establishing the housing requirement before considering of that requirement can be met with the City boundary. These are not repeated here. It should also be remembered that the housing requirement for Leicester is a minimum requirement.

## **Policy SL01 – Housing Need and Requirement**

**30. In the light of the most up to date calculation of local housing need for Leicester of 39,424 dwellings at 2,494 dwellings per annum (dpa) for the period 2020-2036, is Policy SL01 of the Plan positively prepared, justified and consistent with national policy in setting a housing target of 20,730 dwellings (1,296 dpa)? If not, what should the housing requirement be both annually and for the proposed Plan period?**

HBF believe the plan period needs to be extended and therefore the total housing requirement will need to be higher. We have made additional comments highlighting our concerns around the housing numbers in our Reg 19 response.

**31. Given the imperative of national policy to significantly boost the supply of homes, in paragraph 60 of the NPPF, is Policy SL01 justified in setting the figure of 20,730 dwellings as ‘a target the Council will work towards’ or should this be set as a ‘minimum housing requirement’ for Leicester?**

As the housing requirement for the plan is a minimum, HBF continues to be of the view that all housing targets should be set as a minimum. The phrasing ‘a target the Council will work towards’ is unsound and does not comply with national policy.

**32. Is it justified and appropriate that the remaining unmet housing need will be distributed as agreed in the Leicester and Leicestershire Housing and Employment Need Statement of Common Ground?**

HBF believe that the Council needs to show it is doing all it can to provide as much housing as possible within Leicester City. However, we also recognise that the City is closely bounded and it seems inevitable that some unmet need will remain, especially as HBF suggest the housing requirement should be higher in the first place.

HBF recognise that the Leicester and Leicestershire authorities have been trying to work together to address Leicester City’s unmet needs, a position which is sadly uncommon across the country. HFB therefore supports the Councils recognition of an unmet need in Leicester and the need for the neighbouring authorities to play their role in seeking to meet it. What is essential is that this commitment is followed through into allocations in neighbouring local authorities Local Plans which meet this unmet need. These sites must also be viable and deliverable.

## **MATTER 3 – HOUSING**

**Issue 3: Has the Plan been positively prepared and is it justified, effective consistent with national policy in meeting the housing needs of all groups in Leicester over the plan period?**

### **Housing Land Supply**

#### **Policy Ho01 – Non-Strategic Housing Allocations**

##### ***General Questions***

***77. Is Policy Ho01 effective, given that the housing allocations are not set out in the policy but listed in Appendix 6?***

The sites should be listed in the policy.

#### **Policy Ho02 – Housing Development on Unallocated Sites**

***187. Are criteria a) and c) of Policy Ho02 justified and consistent with national policy in making it a policy requirement for proposals on unallocated sites to comply with supplementary planning documents and design guides/codes, which do not form part of the development plan?***

National policy does support the delegation of policy to SPD. This clause should be removed from the policy. If any reference is needed to SPD this should be in the supporting text.

***188. For clarity and effectiveness, should criterion b) of Policy Ho02 cross refer to Policy DI01 on Developer Contributions and Infrastructure with regard to the requirement to provide new infrastructure?***

HBF remains concerns for the reasons set out in our Reg 19 response and elsewhere in our MIQ response that the deliverability and viability of the plan remains in question, and further flexibility is needed to ensure that the housing need in Leicester are both planned for to be met in full and met in full in practice.

##### **Windfall allowance**

***189. Is the allowance of 214 dpa for windfall sites from year 4 to the end of the Plan period justified, based on proportionate and compelling evidence of windfalls as a reliable source of supply, in addition to non-strategic site allocations?***

HBF has significant concerns about the Council's reliance on windfall which are clearly set out in our Reg 19 response. We remain of the view that the Council has not yet demonstrated the robustness and reliability of this source of supply. Our request for a clear housing trajectory showing development from all sources appears to remain outstanding.

##### **Central Area Capacity**

***190. Is the delivery of 6,286 dwellings within the Central Development Area of the City justified by the evidence and likely to be delivered within the Plan period?***

HBF's concerns about the Council's reliance on such a high level of housing in CDA is clearly set out in our Reg 19 response. We remain of the view that the Council has not yet

demonstrated the robustness and reliability of this source of supply for the level of housing proposed.

## **Commitments**

***191. Are the housing sites with planning permission deliverable or developable within the timescales set out in the housing trajectory, based on the evidence in Housing Allocations & Commitments –Deliverability and Developability spreadsheet [EXAM 9]?***

HBF's comments on this issue are set out in our Reg 19 statement. HBF do not comment on individual sites but we would highlight the challenges some of our members are facing in seeking to bring forward urban brownfield sites since the introduction of mandatory BNG as set out elsewhere in our MIQ response. This issue has made development more complex and added in delays.

## **5-year Housing Land Supply**

192. Does the evidence suggest that there is likely to be a 5-year supply of deliverable housing sites in Leicester on adoption of the Plan and a rolling 5-year supply from then onwards to the end of the Plan period?

HBF's comments on this issue are set out in our Reg 19 statement. HBF believe the plan period should be extended.

## **Overall Housing Land Supply**

***193. Overall, does the evidence demonstrate that the supply of housing land would be adequate to meet the housing requirements of Leicester over the Plan period?***

HBF's comments on this issue are set out in our Reg 19 statement. We have asked for a housing trajectory diagram to be included but this remains outstanding. This is important for monitoring to enable early intervention if monitoring shows the much needed housing in Leicester is not being delivered.

## **Other Housing Policies**

### **Policy Ho03 – Housing Mix including Adaptable and Accessible Homes**

***195. The optional technical standards in relation to accessibility should only be required if they address a clearly evidenced need and where their impact on viability has been considered. What is the evidence in relation to need and viability for the proposed access standards in Policy Ho03?***

HBF's view on this matter are set out in our Reg 19 response. We still question the viability of the proposed policy and housing mix.

***198. For clarity should Policy Ho03 cross reference to other policies that refer to specific housing types, such as self-build?***

HBF's comments about self-build are set out in our Reg 19 statement we continue to question the deliverability and desirability of self build plots within larger housing schemes. As such there we would not see the need to reference self build policies in this policy. It is important to remember that the Plan should be read as a hole. Cross references to some but no relevant policies can create confusion.

HBF does not consider that requiring major developments to provide for self-builders is appropriate. Instead, the HBF advocates for self and custom-build policies that encourage self and custom-build development by setting out where it will be supported in principle. The HBF considers that Councils can play a key role in facilitating the provision of land as set in the PPG. This could be done, for example, by using the Councils' own land for such purposes and/or allocating sites specifically for self and custom-build home builders- although this would need to be done through discussion and negotiation with landowners.

It is considered unlikely that the provision of self and custom build plots on new housing developments can be co-ordinated with the development of the wider site. At any one time, there are often multiple contractors and large machinery operating on-site from both a practical and health and safety perspective, it is difficult to envisage the development of single plots by individuals operating alongside this construction activity.

However, if a self-build policy is pursued, HBF highlight that if demand for plots is not realised, it is important that plots should not be left empty to the detriment of neighbouring properties or the whole development. The Plan should set out the timescale for reversion of these plots to the original housebuilder, which should be as short as possible from the commencement of development 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. There are even greater logistical problems created if the original housebuilder has completed the development and is forced to return to site to build out plots which have not been sold to self and custom builders. HBF would therefore suggest that any unsold plots should revert to the original developer after a maximum six-month marketing period.

***199. Should criterion b) of Policy Ho03 be amended to include reference to the higher standard of M4(3) given the evidence that more wheelchair accessible accommodation will be / is required?***

HBF do not support this suggestion. However, if any reference is made to M4(3) a distinction will need to be made between M4(3)a wheelchair adaptable housing and M4(3)b wheelchair accessible housing. The whole plan viability assessment should be explicit on what costs it has been applying when considering M4(3)a or M4(3)b, as the latter can only be sought on affordable housing where the Council has nominations and is considerably more expensive than the former.

*200. Whilst it is accepted that Policy Ho06 deals with the implementation of self-build/custom build housing, should the requirement for this type of housing be set out in criterion a) of Policy Ho03, particularly given the current shortfall of such plots?*

See response to 198. Our concerns about self-build remain.

**Policy Ho04 – Affordable Housing**

***201. What are the past trends in affordable housing delivery in terms of completions and housing type and tenure? How is this likely to change in the future?***

HBF remains concerned for the reasons set out in our Reg 19 and this MIQ response that the policies in the Plan when taken as a whole will not deliver the affordable housing that Leicester needs. Additional housing is required to secure affordable housing delivery. HBF unclear if and

how the delivery of housing to meet the unmet needs of Leicester in neighbouring authorities will contribute to meeting the affordable housing needs of Leicester.

**202. Are the requirements of Policy Ho04, at criterion a), justified by adequate, proportionate and up to date evidence about need and viability?**

HBF's concerns about viability remain. The whole plan viability assessment needs updating and needs to include all relevant factors. Flexibility is needed within the policy to address any site-specific factors.

**203. Is the reference in Policy Ho04 to 75% of the affordable homes being for rent and 25% for low cost home ownership justified? Is it consistent with the national policy expectation that 10% of homes on major sites should be available for affordable home ownership (NPPF paragraph 66)?**

See HBF Reg 19 response and response to question 202 above

**204. Given that the requirement for affordable homes arises from the need of the City's population, is the approach to require 0% affordable housing within the CDA justified? What evidence is there to show that affordable housing in the CDA is not required? What is the evidence to support the Council's decision to support space standards in terms of viability and not affordable housing within the CDA?**

See HBF Reg 19 response. HBF suggest affordable housing is needed within the CDA but evidence already shows it is not viable. We would therefore support increasing the housing numbers to improve viability.

**205. The Planning Practice Guidance states that 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. Has the Council considered this?**

See question 204 above.

**206. Is it sufficiently clear what would forms 'an exceptional circumstance' to justify off site provision of affordable housing referred to in criterion d) of Policy Ho04?**

No further explanation and flexibility is needed.

**207. What is the timescale for the preparation of the separate guidance on commuted sums and their calculation, referred to in paragraph 5.28 of the Plan? Would it be consistent with national policy to include this as supplementary guidance, given that the PPG states it is not appropriate to set out new formulaic approaches to planning obligations in Supplementary Planning Documents or supporting evidence base documents, as these would not be subject to Examination? To be effective should these matters be set out in the Plan?**

It is not appropriate to delegate policy making to SPD. This information should be included in the Plan and factored into the whole plan viability testing.

**208. Does the evidence in the Whole Plan Viability Study support the proposed viability zones in Diagram 3? Are the boundaries of these zones clear enough for Policy Ho04 to be effective?**

HBF has significant concerns about the viability evidence in support of this plan as detailed in our Reg 19 statement and earlier in this MIQ response.

#### **Policy Ho06 – Self-Build and Custom Build**

**213. What is the demand for Self-Build and Custom Build plots within Leicester?**

**214. Is Policy Ho06 clearly written, effective and positively prepared? Would it be apparent how a decision maker should react to development proposals for housing with regard to any provision of Self-Build and Custom Build plots? Would the policy as drafted ensure that sufficient plots are made available to meet the demand for Self-Build and Custom Build homes?**

**215. Is Policy Ho06 consistent with national policy in the NPPF and PPG in respect of the provision of Self-Build and Custom Build homes?**

**216. Should Policy Ho06 set out what should happen to Self-Build/Custom Build plots if they are not developed for this purpose within a set period of time?**

See HBF's Reg 19 response and our response to question 198 and 199 above.

#### **Policy Ho07 – Internal Space Standards**

**217. Is the requirement in Policy Ho07 for all new housing to meet the Nationally Described Space Standard as a minimum justified by adequate, proportionate and up to date evidence about need, viability and timing? Does this policy ensure the most efficient use of CDA sites?**

HBF's comments on this issue are fully set out in our Reg 19 response.

**218. Should there be a transitional period between the date of the Local Plan adoption and the date that the NDSS requirement will come into force, in order to allow developers to factor in the cost of space standards into future land acquisitions?**

HBF's comments on this issue are fully set out in our Reg 19 response.

## **MATTER 13 – NATURAL ENVIRONMENT**

**Issue 13: Has the Plan been positively prepared and is it justified, effective and consistent with national policy in respect of its policies and proposals for the natural environment in Leicester?**

**Policy NE01 - Protecting designated sites, legally protected and priority species, and priority habitats**

***429. Is Policy NE01 clearly written, such that it will provide an effective strategic framework to inform the preparation and determination of planning applications, with particular regard to a mitigation hierarchy?***

No see response to Question 430 below

**Policy NE02 - Biodiversity Gain.**

***430. Is it appropriate and justified by evidence for Policy NE02 to require an ‘at least’ 10% increase in biodiversity? Is there evidence to support a higher BNG percentage requirement, in order to provide a positive approach consistent with achieving the plan’s vision and sustainable development?***

It is noted that mandatory BNG has come into force since Leicester City Local Plans Reg 19 consultation has concluded. It will be important for the Plan to fully reflect all the new legislation, national policy and guidance.

HBF has been involved in a significant amount of work, led by the Future Homes Hub, on BNG preparedness for some time, both feeding into the preparation of the Planning Practice guidance from DLUHC (now MHCLG) and the Draft DEFRA BNG Guidance, and providing ongoing feedback on problems and challenges around its implementation since its introduction.

HBF note that there is a raft of new information on BNG now available and it is important for the Plan to note that the PPG is clear that there is no need for individual Local Plans to repeat national BNG guidance.

It is the HBF’s opinion that the Council should not deviate from the Government’s requirement for 10% biodiversity net gain as set out in the Environment Act. The Plan should provide certainty for developers and a clear BNG policy with a fixed 10% figure, rather than the policy including the phrase “at least 10%” would help to provide this.

There are significant additional costs associated with biodiversity gain, which will need to be fully accounted for in the Council’s viability assessment. It is important that BNG does not prevent, delay or reduce housing delivery. Although the national policies requiring 10% BNG cannot be subject to site specific viability discussions, any policy requirements over 10% can be. Any policy seeking more than 10% BNG needs to reflect this position.

It is also important to note that for large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development has now been provided in the PPG.

HBF also suggest particular care is needed in terminology to ensure the BNG policy reflects the national policy and guidance. For example, on-site and off-site biodiversity is referred to as

units, and the statutory national credit system of last resort is referred to as credit. Similarly, it will be important to differentiate between the mitigation hierarchy, which seeks to avoid harm and then mitigate it in relation to protected habitats and the BNG hierarchy which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits. National BNG policy allows for all three of these options, and therefore the Plan should also reference statutory credits.

The costs of BNG must also be considered as part of the whole plan viability assessment and should be specified as a single specific item, not combined into a generic s106 costs item. There are significant additional costs associated with biodiversity net gain, which should be fully accounted for in the Council's viability assessment, some of which are unknown at this time. It is important that BNG does not prevent, delay or reduce housing delivery.

As this is an emerging policy area and the market for off-site provision, and statutory credits are not yet known, any figure used for BNG costs will need to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. The Whole Plan Viability Assessment should clearly set out how it considered the implications of mandatory BNG and how it was arrived at using the most up to date BNG costs information available.

HBF suggest that there will also be a need for this policy and supporting text to say more about Local Nature Recovery Strategies. As the LNRS emerges it will be important for this Local Plan to be kept under review and further public consultation on the interaction between the two documents and the Local Plan policy to reflect how the development of the LNRS may impact on planning, both policy making and at the decision-making time.

HBF would also encourage the Council to ensure the Local Plan fully considers the new BNG requirements in relation to site allocations. This is likely to require undertaking an assessment of the baseline to support the allocation to enable an understanding the BNG requirements for a site to be allocated and the impact this may have on viability and other policy requirements and considerations. It will be important to understand the BNG costs of mandatory BNG as this is non-negotiable and as such may impact on the viability of the site and its ability to deliver against other policy requirements such as affordable housing or other s106 asks.

HBF also notes that there seems to be significant potential for confusion around environmental hierarchy, and suggest particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. There is need for the policy wording and/or supporting text to be clearer about the differentiation between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and only then compensate it in relation to protected habitats) and the BNG hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. HBF therefore suggest that the Reg 19 Plan should do all it can to explain how the two hierarchies work in different ways and that they seek to achieve different aims. We would suggest the use of the term "BNG spatial hierarchy" may help with this issue.

Reference could also usefully be made within the Plan to the small sites metric. This is intended to be a less complex statutory metric that can be used to set out how 10% BNG will be secured on small sites. It can only be used for on-site BNG delivery. The national mandatory 10% BNG policy came in for small sites in April 2024.

The DEFRA and MHCLG guidance is clear that going beyond the mandatory 10% requires evidence and there is a need to show that this will not impact viability. No such evidence exists to support a higher figure in Leicester and as such the policy wording must be clear that the Council is seeking 10% BNG.

## **MATTER 15 – MINERALS AND WASTE NEEDS**

**Issue 15: Has the Plan been positively prepared and is it justified, effective and consistent with national policy in respect of its policies and proposals for minerals and waste needs in Leicester?**

### **General Questions on Minerals and Waste Needs**

**455. Should mention be made of dealing with wastewater from new developments? In particular, who is intended to secure, or provide, further investment in wastewater treatment?**

HBF opposes any requirement for applicants to assess or demonstrate the capacity of the water company to connect a development with water services (e.g. the supply of fresh water and the treatment of wastewater).

HBF also rejects the requirement for applicants to demonstrate water neutrality, as the legal responsibility for the supply of water services falls to the water company.

These are not land use planning matters. They are matters managed under a separate statutory regime. Matters relating to water and sewerage infrastructure and its availability and/or network capacity are both controlled by separate, dedicated legislation, i.e., s37 (water) and s94 (sewerage) of the Water Industry Act 1991. The planning process should not be used as a route to subjugate established primary legislation.

## MATTER 16 – DEVELOPMENT AND INFRASTRUCTURE

**Issue 16: Has the Plan been positively prepared and is it justified, effective and consistent with national policy in respect of its policies and proposals for infrastructure in Leicester?**

### ***Policy DI01 - Developer Contributions and Infrastructure***

***469. Does Policy DI01 satisfy paragraph 34 of the NPPF, which states that plans should set out the contributions that are expected from development, including infrastructure for, amongst other things, education, health and transport?***

***470. What is the timescale for the production of the ‘developer contributions and infrastructure supplementary planning document’ (SPD) and what will it cover, bearing in mind that the Planning Practice Guidance states that it is not appropriate to set out new formulaic approaches to planning obligations in SPDs or supporting evidence base documents, as these would not be subject to examination? To be effective does this SPD need to be mentioned within the policy?***

HBF suggest any SPD should only be mentioned in the supporting text, not the policy, as this would give SPD Local Plan policy status which is not appropriate. However, HBF would request that the policies on developer contributions and infrastructure are included within the Leicester Local Plan and subject to viability testing.

***471. The Whole Plan Viability Assessment (May 2022) [EB/DI/3] states, in paragraph 12.100, that, on the whole, the Council is not securing developer contributions. Where is the evidence to show that Policy DI01 would be effective in delivering contributions, particularly on brownfield sites?***

HBF have been unable to locate an updated Whole Plan Viability Assessment. The 2022 Viability cannot, and does not reflect the current range of factors impacting viability, for example, the introduction of mandatory BNG, the costs of which are still emerging.

We flagged this issue in our Reg 19 response to Chapter 15: Natural Environment, in para 56 noting that there are significant additional costs associated with biodiversity gain, which should be fully accounted for in the Council’s viability assessment. More work needs to be undertaken to address viability concerns raised by the housebuilding industry in order that net gain does not prevent, delay or reduce housing delivery.

The implementation of mandatory BNG has shown it presents challenges for viability, particularly for brownfield sites see our response to questions 23 and 430.

***472. In considering viability in decision making, is Policy DI01 clear and unambiguous on the guidance being referred to and the circumstances in which development contributions may be varied?***

Whole Plan viability testing is an important part of the plan-making process. However, as noted in PPG (ID: 10-003-20180724) assessing the viability of plans does not require individual testing of every site or assurance that individual sites are viable.

In light of this, and the other factors impacting viability such as BNG, HBF would therefore note that additional flexibility should be included within the Local Plan policies and allocations. This is needed because whole plan viability assessments use methodologies that test typologies of sites, and not the detailed circumstances of individual sites. As such there may be individual

sites that are already not viable, for example if the costs or values of a specific site fall outside the parameters used of a typology that was tested. Some sites will be on the very margins of viability and other sites may already be unviable even without a change of circumstances. Therefore, additional flexibility is needed in the Local Plan policies, and without this flexibility the plan is unsound because it was neither justified nor effective.

For example, 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.

Other factors that need to be taken into account include increasing costs of materials and labour due to inflation and the costs of mandatory BNG, which are still emerging as the off-site market is yet to be established. HBF members are reporting costs of £20-30k per off-site BNG unit. 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.

HBF suggest the Local Plan policy wording should include the opportunity for negotiation around policy requirements for site specific reasons, as any sites whose circumstances fall outside the parameters of the typologies tested could already be unviable under the proposed Local Plan policies. To accord with the PPG viability guidance the Plan should allow for site specific viability considerations to be taken into account.

***473. Within the updated Infrastructure Assessment 2023 [EB/DI/2], it is stated that a number of the infrastructure requirements would be funded by the Local Authority. What evidence is there to demonstrate that the necessary funding would be available over the Plan period?***

Development can only be required to mitigate its own impact and cannot be required to address existing deficiencies in infrastructure or services. It is therefore essential for the IDP to clearly show the existing and known deficiencies in the current infrastructure, before reaching any 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.

***474. What evidence is there to demonstrate that the necessary infrastructure requirements can be delivered over the Plan period?***

See response to 473.

## **MATTER 19 – MONITORING**

**Issue 19: Is the monitoring framework of the Plan effective and consistent with national policy?**

**478. Does the Plan have an adequate framework for monitoring, so that the extent to which its policies are being delivered and the need for Local Plan review will be clear?**

As mentioned in our Reg 19 response HBF believe more detail is needed about the Housing Trajectory in order for it to be effectively monitored. If the council is looking to reply on development outside of its boundaries to meet its need, it clearly needs to monitor the development of both the policy and new housing to ensure this occurs.

**479. To measure the effectiveness of its policies, should the Plan include monitoring indicators and targets for the vision and objectives and for each of its policies?**

Monitoring is an important part of the plan. If monitoring shows the Council is not delivering the housing needed the Council should be required to take action to address this under supply. HBF would suggest explicit reference is made to the actions that the LPA can and would take in the case of under-delivery. HBF do not support the inclusion of policies within a Local Plan that merely triggers a review of the Local Plan if monitoring shows housing delivery is not occurring as expected. Such a policy, on its own, does nothing to address the housing crisis or undersupply of homes. There are other more effective and immediate measures that could be introduced into policy that would enable the Council to address housing under deliver, much more quickly than would be possible through the production of another plan, or plan review.

**480. Paragraphs 21.4 and 21.5 of the Plan refer to the intention to publish supplementary planning documents to set out development requirements or technical guidance on issues such as parking standards, climate change, developer contributions, tall buildings and character areas in the CDA. Are these likely to introduce new policy requirements, which should be incorporated in the Plan and made subject to independent Examination?**

HBF share the concern that policy should be included in the local plan. The role of the SPD should be to provide advice and guidance on the interpretation of policy and not to set policies. Policies in the plan should be subject to the whole plan viability appraisal. Without a clear understanding on the expectations for developer contributions at this stage, how can a plan be assessed to be sound, deliverable and viable.