

Sent by email to: planningpolicy@southdowns.gov.uk

17/03/2025

Dear Sir/ Madam

South Downs National Park Local Plan Review

1. Thank you for consulting the Home Builders Federation (HBF) on the review of the South Downs National Park 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.

SD2 – Regenerative design, ecosystem services and Environmental Net Gain.

2. Regenerative design may be a helpful principle on which to base the delivery of development, however, it is an emerging concept and one that is not recognised in planning policy. Given that it is an emerging trend rather than a proven concept, to state that development proposals will only be permitted where they use regenerative design is premature. A more appropriate approach would be to encourage its use as a means having an overall positive effect on biodiversity and the environment but not, as the South Downs National Park Authority (NPA) suggest requiring its use. If the NPA continue with this approach, then they will need to ensure that any impact on viability and the deliverability of development is fully costed and tested.

SD9 – Biodiversity and Geodiversity

3. HBF do not agree that minimum biodiversity net gain (BNG) should be more than that required by the Environment Act 2021, and could not find any justification for requiring a

20% net gain in biodiversity. In considering the soundness of this policy it is necessary to take account of paragraph 74-006-20240214 of PPG which states that:

“... plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified. To justify such policies, they will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development. Consideration will also need to be given to how the policy will be implemented”.

4. It is important to note that the starting point is that local plan should not seek a higher requirement. This is different to a permissive policy allowing local plans to seek a higher level of BNG where justified, and the HBF would argue that it should be considered a high bar with regard to the evidence required to justify such a policy. There must be a very clear and robust justification that the area is significantly worse off with regard to biodiversity decline than the country as whole and that this decline is directly related to the new development rather than, for example, the result of changes in agricultural practices or industrial pollution. It is not sufficiently robust to highlight declines in species that whilst an important issue is not necessarily as a result of new homes being built.

5. Turning to the delivery of a 20% net gain requirement it is necessary for the NPA to recognise that BNG is site specific depending on both the existing site characteristics and the ability of development to both mitigate and provide additional gain without an understanding of the baseline level of biodiversity it is difficult to gauge the cost of meeting the higher requirements in this local plan. Whilst broad assumption can be used it must be remembered that the level of BNG required could be significantly higher than expected increasing costs or substantially reducing developable area of a site. In testing BNG beyond 10% the NPA need to ensure that potential impact on viability is properly costed. The NPA should treat the DEFRA Impact Assessment as the basis for the cost of delivering BNG with caution as this is based on data from 2017 and significantly underestimates costs, in particular in relation to offsetting which is costed as £11,000 per biodiversity unit. The experience of our members is that this is more likely to be £30,000 to £40,000 but even higher for more sensitive habitats that are difficult to deliver. HBF would also suggest that for larger allocations a more bespoke assessment is required given that the delivery of net gains is very site specific. A more bespoke assessment would consider the type of and

extend of habitats, the impact on developable area of delivering net gains on site and the cost of offsetting should net gains are not deliverable on site.

6. If the 20% requirement is considered to be sound it will be necessary for soundness that flexibility is included in the local plan with regard to the percentage of net gain required above the statutory minimum. The policy should clearly state that where this is impacting the viability and deliverability of a development that any BNG requirement will be reduced to the 10% statutory minimum.
7. The policy also states that offsite net gains should be delivered within the national park and preferable within the same landscape character type. HBF do not consider this requirement to be necessary. The delivery of net gains as close as possible to the development is already built into the statutory metric used to calculate the delivery of BNG through the spatial risk multiplier which increases the number of biodiversity units that must be delivered the further from the development site any net gain is delivered. As such there is already an incentive to deliver net gains close to the development within the National Park and no need for this to be set out in policy. However, should there not be the opportunity to deliver offsite net gains in the SDNPA the developer should not be restricted from delivering those net gains elsewhere.

NEW4: Aru Valley SPA/ SAC/ RAMSAR – Water Neutrality

8. This policy states that all development within the Sussex North Water Resource Zone (WRZ) will need to demonstrate water neutrality through water efficient design and offsetting of any net additional water use of the development. HBF has significant concerns regarding the soundness of NEW4 and the necessity for this plan to require water neutrality. This is to be achieved through water efficient design, offsetting measures or the identification of an alternative water supply.
9. Firstly, HBF does not consider it the responsibility of the development industry to offset the impact of water abstraction at Hardham in order to ensure that there is no further harm to the Arun Valley SAC. It is the legal responsibility of Southern Water to provide potable water and for the NPA in its decision making on planning applications to assume that this statutory duty will be fulfilled without harm to the SAC. It is ultimately the responsibility of water companies, working with local authorities and the Environment Agency (EA), to plan for the future demand for water services relating to the development requirements proposed in

local plans. Equally, Southern Water and the EA operate under a legal duty to ensure that activities do not have an adverse effect on European sites, under Regulation 63(5) of the Habitat Regulations. It is the HBF's view, that the Secretary of State can rely upon the 2019 Water Resource Management Plan (WRMP), which has passed that legal test, although we acknowledge that a different conclusion was reached by the Secretary of State in the Kilnwood Vale decision.

10. If the water company is unable to supply those needs, this must be disclosed in the WRMP. If unforeseen events occur after the WRMP is adopted, meaning that the water company is now unable to provide the water services required, then the HBF would agree that the local authority must reflect those problems in its local plan. However, it is then incumbent on the water company to address these issues of supply in subsequent WRMPs. It should not be the case that the water company continues, through future WRMPs, to place additional burdens on the development industry in order to offset water use in new homes in order to ensure that there is no impact on a protected habitat.
11. In the case of the Sussex North Water Resource Zone this may require the closure of abstraction at Hardham. HBF are aware that a Sustainability Study is being undertaken by Southern Water as part of the preparation of the WRMP 2024 and that they are due to published response in the first quarter of 2025. Commitment to this Sustainability Study and review of Hardham is set out in Annex 22 of the draft WRMP24 and will consider the scale of the impact of abstraction at Pulborough on the Arun Valley SAC. The outcomes of this study we understand will not be known until later this year. This may conclude that there is no harm to the SAC from abstraction. In this case the Natural England position statement will fall away, and offsetting will not be required. If it is concluded that there is harm, then logic must dictate that the EA will require abstraction to be halted at Hardham. Once abstraction is halted the Natural England position statement is no longer necessary and the need for offsetting again falls away.
12. HBF recognises that this will require Southern Water to find alternative sources of supply, but this is its statutory duty under S37 and S94 of the Water Industry Act 1991 (WIA 1991) which impose a statutory duty on all water companies to provide and maintain adequate infrastructure and potable water supplies. If there is insufficient water in such a scenario then the only conclusion that can be reached is that this plan is unsound, the lack of water infrastructure is a show stopper to new development. Southern Water cannot rely on the

development industry to offset water use rather than ensuring sufficient supply of water to meet its statutory responsibilities.

13. To conclude, it cannot be left to the development management element of the planning system to determine such an issue, it must be for plan making and the WRMP with decision makers able to rely on statutory providers to ensure a sufficient supply of water. Decision makers are entitled to assume that those statutory bodies operating under a separate regulatory regime, in this case statutory bodies operating within the WIA, are operating in accordance with their statutory duties under the water regime, including their duties under the Habitats Regulations in respect of protected sites in carrying out these statutory duties to supply water.
14. Even if it is considered appropriate for all new homes to achieve water neutrality through limiting water use and offsetting HBF are concerned that SNOWS will not deliver the necessary offsetting to address these needs. No evidence has been presented to date to show that there is or will be sufficient capacity to meet the demand for credits across the NSWRZ. Without this evidence it is not possible to show that the local plan and the development proposed within it is deliverable across the plan period.
15. With regard to accessing SNOWS the latest position is that access to credits will be managed with the Council not providing access to credits for development where:
 - the principle is not in accordance with an adopted development plan, or in a post-submission local plan or neighbourhood plan; and/or
 - Development permitted by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or as subsequently amended) (GPDO)
16. This approach is not set out in the Local Plan, but we believe has been agreed with regard to allocation of credits. HBF consider the approach to be unsound and the plan should set out the principle that credits will be made available to all development that has a planning permission approved for development. The assumption must be that all development coming forward can access SNOWS on a first come first served basis. The NPA must not be allowed to use access to credits it manages as a means of controlling what development can come forward, which should be assessed solely on the planning merits of that development.

SD48: Climate Change and Sustainable Use of Resources

17. The proposed policy position would require all new development to fossil fuel free and demonstrate net zero operational carbon onsite by ensuring energy use standard for all new dwellings of 35kwh/m²/year and space heating demand of less than 15 kwh/m²/year. This would be demonstrated through an Energy Assessment, which for major applications must be a full energy strategy utilising accurate methods for operational energy use prediction, such as Passivhaus Planning Package (PHPP) or CIBSE TM54.
18. Whilst the HBF would agree with the NPA 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.
19. However, if the NPA 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 are consistent with the written ministerial statement (WMS) published on the 13th of December 2023. Before considering the content of the WMS itself it is important to note the High Court judgement from the 2nd of July 2024 ([2024] EWHC 1693 Admin). This judgement was on the challenge to the WMS made by Rights Community Action on three grounds, including that the WMS restricted exercise by local authorities of powers conferred on them.
20. The judgment made by Justice Lieven was that the claim failed on all three grounds. In coming to these judgements Justice Lieven importantly notes the intention of the Government at the time with respect to section 1(1)c of the Planning and Energy Act 2008, which allowed Local Authorities to set standards above those in building regulations. Paragraph 65 states:

“With respect to the current section 1(1)(c) specifically, the Minister confirmed NPAs “can go further and faster than building regulations, but within the national

framework". The Minister also addressed the overall intention of clause 1(2) in the following terms:

"The intention was for local authorities, in setting energy efficiency standards, to choose only those standards that have been set out or referred to in regulations made by the Secretary of State, or which are set out or endorsed in national policies or guidance issued by the Secretary of State. That approach was taken with a view to avoiding the fragmentation of building standards, which could lead to different standards applying in different areas of the country. Although supportive of the hon. Gentleman's Bill, that was not an outcome that we wanted to achieve."

21. It is therefore clear that the intention of the original legislation was to ensure that energy efficiency standards within local plans were to be set within the scope of building regulations to avoid a multiplicity of standards coming forward. The judgment goes on to note in paragraph 66 that the WMS does not stray from this purpose.
22. It is also evident that not only is the WMS compliant with legislation but also in line with the intention of Planning and Environment Act 2008 which was to ensure that any policies seeking improved standards on those set out in Building Regulations must be set within the framework of those regulations. Local plan policies which seek to apply an alternative standard would not only be inconsistent with the WMS but also with the intentions of the legislation allowing local authorities to set lower standards.
23. Moving to the WMS itself, 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"*. After noting these concerns, 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).
24. HBF do not consider the approach set out in DM31 to be consistent with the WMS nor that the implications of such a policy have been properly assessed in the supporting evidence base. Our detailed points are set out below.
25. The approach proposed by the NPA 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 NPA are to require standards above those set out in building regulations they must be expressed as a percentage of the target emission rate and not as an energy use target in order to avoid fragmentation of the standards with different requirements being set in different areas which it must be recognised was not only an expectation of the WMS but also of the legislation that permits NPA to adopt higher standards in local plan in the first place. As such the HBF do not consider the NPA to be justified in departing from either the WMS or the Planning and Energy Act (2008) and consider it necessary the energy use requirements to be deleted from this policy.
26. While HBF do not consider the policy to be consistent with national policy we are also concerned that the NPA has not properly considered the impact on viability or the deliverability of development. The NPA will need to ensure the costs and deliverability of this policy are fully and robustly tested. In preparing its viability assessment HBF suggest the NPA consider costs published by the Future Homes Hub (FHH) as part of their work to support and inform the implementation of the Future Homes Standard. The costs for similar standards to those being proposed can be found in the FHH report '*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 NPA.
27. 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

15-19% higher than the 2021 Building Regs, around £17,000 to £22,000 more per unit. HBF recognise that the specifications are not direct comparison, but it does give an indication as to the potential cost and it will be necessary for the NPA not to underestimate the cost of meeting the requirements of this policy. Given that there is still significant uncertainty as to the cost of delivering the standards being proposed the NPA will need assess the impact of a higher cost in relation to the delivery of the development proposed in this local plan.

28. With regard to deliverability of zero carbon homes HBF would not disagree that the proposed standards are technically feasible. However, 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 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 and robust evidence will need to be provided to show that this will not be the case in the NPA.
29. 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 NPA are proposing that this would “... *create a high risk of quality problems, inflated costs and, potentially, stalled build programmes.*” However, HBF could find no evidence that the NPA has considered whether its proposed standard will impact on the rate at which new homes can be built. The NPA will need to speak directly to a range of housebuilders operating in Chelmsford to understand the impact of its policy on the rate at which homes will be delivered on its allocated sites. Without any consideration of delivery then the NPA’s decision to go beyond what is required by building regulations is clearly unjustified
30. While HBF understands the desire for LPAs to go further current policy recognises that even where development can viably implement higher standards this must be within a consistent technical framework and approach to assessing building performance against those technical standards. Indeed, this has long been the case in planning policy with paragraph 159b of the NPPF stating that “*Any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards*”.

31. If the NPA have the evidence to show that the policy is deliverable the NPA will need to ensure that all other policies in the local plan are consistent with delivering the levels of embodied carbon being proposed. The most energy efficient design will inevitably lead to less variety in the built form in order to reduce the surface area of the building. This will need to be reflected in design policies and any design codes that are produced to ensure that development is not refused for seeking to meet energy efficiency standards but, for example, not being designed in the character of the local area.
32. HBF would also recommend that that if a net zero policy is to be included in the local plan it should require a development to be net zero rather than for individual homes. As the NPA will be aware some homes, such as terrace houses and flats, are more intrinsically energy efficient and emit less carbon compared to detached homes and bungalows. As such it may be difficult for some individual homes to be net zero but where there is a mix of development the site as a whole to achieve the required standard.

SD26: Supply of Homes

33. The Council are still to establish the number of homes that will be delivered in the national park. In considering number of homes the NPA should be planning for it will be necessary for the council to take into account the changes in national policy and guidance. In order to establish the minimum number of homes that an area should be planning for the NPPF requires local planning authorities to use the standard method. However, where strategic policy-making authorities do not align with local authority boundaries or the data required for the model are not available, such as in the SDNP PPG recognises that an alternative, locally determined, approach may have to be used.
34. In considering any locally determined approach to assessing housing need, it will be necessary to recognise that the Government approach to assessing housing needs is now based on housing stock and that paragraph 2a-014 of PPG states that in identifying an alternative method authorities should consider "... *the best available evidence on the amount of existing housing stock within their planning authority boundary*". This would suggest that the basis for assessing housing needs within the national park should be closely aligned to the standard method and ideally be based on housing stock. This will require the Council to revisit its Housing and Economic Development Needs Assessment (HEDNA) which uses household projections as the basis for assessing housing needs in

the national park and proposes a housing requirement of 350 dwellings per annum (dpa) for the SDNP.

35. Using a stock-based approach should be possible given that it should be relatively simple to ascertain the housing stock in the national park using council tax data. This is an approach that has already been used in Lewes in apportioning the number of homes that need to be delivered in the area not covered by the SDNP. The outcomes of this work would mean that the housing needs for the area covered by the national park in Lewes would be 197 dwelling per annum (dpa) – significantly higher than the 63 dpa proposed for the same area by the HEDNA and would likely result in a housing need across the whole of the SDNP than is currently being suggested.
36. However, it is clear that the NPA are not expecting to meet housing needs in full. Whilst further work is still to be undertaken before alighting on a number of homes that can be delivered it is currently suggested in the local plan that the new allocations alongside existing allocations and planning permissions will amount to a supply of 4,500 homes over the plan period and around 250 dpa. Even with a windfall allowance similar to that included in the previous local plan this will be not meet the housing needs set out in the HEDNA and likely to be significantly lower than assessed housing needs using the stock-based approach proposed by national policy and will require additional allocations if needs are to be met in full.
37. Therefore, a key question for the NPA is whether or not it should meet its housing needs in full. Paragraph 11 of the NPPF states that there will be circumstances where the application of policies in the Framework will mean that the scale of development is restricted with result that assessed needs are not met in full. Footnote 7 includes national parks as being relevant in this regard with paragraph 189 of the NPPF stating that the scale and extent of development in national parks should be limited. This does not mean that housing needs should not be met but that great weight should be given to the conserving and enhancing the landscape in these areas when considering the amount of development that is planned for. However, within this context every effort should be made to meet housing needs in full especially given that the coastal authorities such as Brighton and Hove and Worthing are highly constrained and unable to meet their housing needs. In Sussex alone the unmet need for housing is in the region of 30,000 homes and it will be important for the NPA to seek to maximise delivery as well as recognising the constraints that are placed on it by both policy and legislation.

Unmet housing needs

38. HBF assumes that housing needs across the SDNP will not be met. If this is the case, then the NPA will need to work with neighbouring areas to ensure that these needs are met elsewhere. Given the significant shortfall in housing across the Counties within which the SDNP is located it is essential that the national park plays a significant role in seeking to ensure its unmet needs are addressed. This co-operation will need to be active and on-going and not merely through written correspondence asking if other areas can help. The NPA must act strategically to ensure unmet needs are delivered elsewhere and that a failure to act in such a way must be seen as a failure to co-operate as required by section 33A of the Planning and Compulsory Purchase Act 2004.

Housing trajectory

39. Paragraph 78 of the NPPF requires local plans to include a housing trajectory illustrating the expected rate of housing delivery and consider whether it is appropriate to set out the rate of delivery for specific sites. HBF consider it necessary for the SDNP to set out not only the trajectory but also details of all the sites that are expected meet needs over the plan period. This provides the necessary transparency required not only with regard to consultation and examination but also monitoring delivery in future.

New 1: Accessible homes

40. This policy requires market housing to provide 5% of their homes as wheelchair accessible with this increasing to 15% for affordable housing. Firstly, the Council need to make the distinction between wheelchair adaptable homes (M4(3)a) and wheelchair accessible homes (M4(3)b) given that PPG only allows for the wheelchair accessible home to be used where the council has nomination rights for the property.

41. As for the need for such homes the HEDNA projects that at the end of the plan period around 750 households will include someone in a wheelchair. It then discounts by 25% in recognition that some households will already be in accommodation that suits their needs or that can be adapted to meet their needs. However, given that only 25% of wheelchair users live in a house that could not be adapted to meet their needs this appears to be unjustified. HBF would suggest that this should be reduced by 75% to reflect the evidence

presented by the council. It must be recognised that many of those household that will require a wheelchair accessible home already live in the area, they are not moving to the SDNP. Therefore, the need for such homes is likely to be lower than suggested not the HEDNA at around 188 households.

SD28: Affordable housing

42. This policy retains the 50% affordable housing requirement from the current Local Plan. Given the increasing costs of development across the country, the introduction of statutory Biodiversity Net Gain and the higher building standards required by policies in this local plan there is a real risk that this policy will not be viable. The NPA will therefore need to ensure that it published a robust viability assessment with realistic costs to ensure that this policy, in combination with others, will not make development in the SDNP unviable.

43. The NPA will also need to consider whether this policy is sufficiently flexible given to take account of the difficulties homebuilders are having in selling S106 affordable housing to registered providers. A survey by the HBF of its members, covering 31 developers, revealed that as of October 2024 at least 17,432 Section 106 affordable housing units with detailed planning permission remain uncontracted. Across the country, 139 home building sites are currently delayed due to uncontracted Section 106 units. HBF would suggest that further work is undertaken by the Council to understand whether the value of S106 affordable homes is at the level suggested in the viability study. In addition, we would suggest that flexibility is included in the local plan supporting changes in tenure should it not be possible to find an RP to take on board S106 affordable though the inclusion of the following in SD28:

“Where evidence can be shown that following a suitable period of time and active marketing no registered provider is found to purchase affordable homes then the Council will consider proposals to amend the tenure of the affordable units.”

44. With regard to part iii of 1a) we would question the requirements for all low cost home ownership tenures to remain affordable in perpetuity. It is possible for those entering shared ownership scheme to eventually own the home in full, and his policy should not seek to prevent that from happening.

Future engagement

45. 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

A handwritten signature in black ink, appearing to read 'Mark Behrendt'.

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