



Derby City Council
Local Plan Part 1 Core Strategy Consultation
Spatial planning
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SENT BY E-MAIL AND POST

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Dear Sir / Madam

DERBY CITY PRE SUBMISSION LOCAL PLAN PART 1 CORE STRATEGY CONSULTATION

Introduction

Thank you for consulting with the Home Builders Federation (HBF) on the above mentioned consultation. The HBF is the principal representative body of the house-building industry in England and Wales. Our representations reflect the views of our membership, which includes multi-national PLC's, regional developers and small, local builders. In any one year, our members account for over 80% of all new "for sale" market housing built in England and Wales as well as a large proportion of newly built affordable housing. We would like to submit the following representations and appear at future Examination Hearing Sessions to discuss these matters in greater detail.

Duty to Co-operate

Under S110 of the Localism Act 2011 which introduced S33A into the 2004 Act the Council must co-operate with other prescribed bodies to maximise the effectiveness of plan making. The Duty to Co-operate requires the Council to "*engage constructively, actively and on an on-going basis*". The high level principles associated with the Duty to Co-operate are also set out in the National Planning Policy Framework (NPPF) (paragraphs 156, 178 – 181). In addition there are twenty three paragraphs in the National Planning Practise Guidance (NPPG) concerning the Duty to Co-operate.

In considering if the Duty to Co-operate has been satisfied it is important to consider the outcomes arising from the process and the influence of these outcomes on the Local Plan. One required outcome of co-operation is the delivery of full objectively assessed housing needs (OAHN) for market and affordable housing in the housing market area (HMA) as set out in paragraph

47 of the NPPF including the unmet needs of neighbouring authorities where it is reasonable to do so and consistent with sustainable development (paragraph 182 of the NPPF).

There are four authorities adjoining Derby City Council namely Amber Valley Borough Council, South Derbyshire District Council, Erewash Borough Council (part of the Greater Nottingham HMA) and Derbyshire Dales District Council (part of the Peak District HMA). It has been determined that Derby City Council together with Amber Valley Borough Council and South Derbyshire District Council form the Derby HMA. The three authorities in the Derby HMA are working on separate but aligned Core Strategies / Local Plans. The Council has also prepared a Duty to Co-operate Progress Statement dated August 2015 to accompany this Pre Submission Local Plan consultation. The HBF commends Derby City Council for its collaborative working with Amber Valley Borough Council and South Derbyshire District Council.

It is acknowledged that to date Inspector's examining the Amber Valley Core Strategy and the South Derbyshire Local Plan have found that the Derby HMA authorities have satisfied the legal requirements of the Duty to Co-operate (paragraphs 2.23 & 2.24 Duty to Co-operate Compliance Statement). However there remain issues over the soundness of these Plans in relation to the outcomes from co-operation in meeting in full OAHN in the HMA in particular the justification for the apportioned distribution of unmet housing needs from Derby City to Amber Valley and South Derbyshire.

OAHN and Housing Requirement

As determined by the Inspector's examining the Amber Valley Core Strategy and the South Derbyshire Local Plan the OAHN for the Derby HMA is 33,388 dwellings for the period 2011 – 2028 comprising :-

- 7,395 dwellings in Amber Valley ;
- 9,605 dwellings in South Derbyshire ;
- 16,388 dwellings in Derby (referenced in paragraph 4.20 of the Local Plan).

Furthermore the Derby HMA authorities have agreed that the city of Derby is unable to meet its full OAHN within its own administrative boundaries therefore it is proposed to re-distribute OAHN across the HMA as follows :-

- 11,000 dwellings in Derby ;
- 9,770 – 9,849 dwellings in Amber Valley ;
- 12,539 – 12,618 dwellings in South Derbyshire ;
- 33,309 – 33,467 dwellings in Derby HMA.

Accordingly **Policy CP6 : Housing Delivery** of the Derby City Pre Submission Local Plan proposes 11,000 dwellings over the plan period 2008 – 2028.

With regards to the proposed range of housing requirements for Amber Valley and South Derbyshire it is suggested that the upper end of the range is used. If the proposed bottom end of this range is used full OAHN across the HMA would not be met. As stated by the North Somerset Local Plan Inspector “*the selection of the bottom end of the range was not in the spirit of positive planning and the national objective to boost significantly supply*” and the Brighton & Hove Local Plan Inspector who concluded “*the Framework’s requirement that a LPA should assess their full housing needs ... my view is that the Plan should indicate that the full OAHN is at the higher end of the range*”.

The Derby HMA authorities have confirmed that the latest 2012 based household projections do not change the OAHN figure of 33,388 dwellings. The OAHN based on the 2012 household projections for the Derby HMA is calculated as 32,207 dwellings by the Councils as set out in a letter dated 26th March 2015 from the Derby HMA authorities to the Inspector’s examining the Amber Valley and South Derbyshire Local Plan respectively.

However as previously expressed in HBF representations to consultations held by the Derby HMA authorities 33,388 dwellings is considered to be an overly pessimistic OAHN which will not significantly boost housing supply across the Derby HMA over the plan period. These previous representations include :-

- Amber Valley Draft Local Plan consultation ended 23 August 2012 ;
- Amber Valley Pre Submission Local Plan consultation ended 29 November 2013 ;
- Amber Valley Local Plan Statements for 25 & 26 March 2014 Examination Hearing Sessions ;
- Amber Valley Local Plan Statement for 1 May 2014 Examination Hearing Sessions ;
- Amber Valley Proposed Changes consultation ended on 8 September 2014 ;
- Amber Valley Further Proposed Changes consultation 8 December 2014 ;
- South Derbyshire Draft Local Plan consultation 5 November 2013 ;
- South Derbyshire Pre Submission Local Plan consultation 22 April 2014 ;
- South Derbyshire Local Plan Examination Hearing Statements for Matters 1 & 2 ;
- Derby Draft Local Plan consultation ended on 20 December 2013

It is the HBF’s opinion that the Council’s OAHN gives insufficient consideration to household formation rates, employment forecasts, upward adjustments for market signals and the provision of affordable housing.

Land Supply

There is some inconsistency in the Council’s approach to the development of brownfield land. Bullet Point (e) of **Policy CP6** refers to “encourage” but

paragraph 4.23 of the Local Plan refers to “continuing to prioritise brownfield regeneration sites” and Spatial Objective 5 specifies “priority for previously developed land”. If the Council is prioritising brownfield land such an approach would be contrary to national policy. The core planning principle set out in paragraph 14 of the NPPF is to “*encourage the effective use of land by re-using land that has been previously developed (brownfield land)*” such encouragement is not setting out a principle of prioritising brownfield before green-field land. Similarly paragraph 111 of the NPPF states that “*Local Planning Authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land*” again there is no reference to prioritising the use of brownfield land. The Council’s proposal to prioritisation relates back to previous national policies which are no longer consistent with current national policy. In paragraph 17 of his determination of the Planning Appeal at Burgess Farm in Worsley Manchester (APP/U4230/A/11/215743) dated July 2012 (4 months after the introduction of the NPPF) the Secretary of State confirms that “*national planning policy in the Framework encourages the use of previously developed land but does not promote a sequential approach to land use. It stresses the importance of achieving sustainable development to meet identified needs*”. The Council should clarify its position and amend references in the Local Plan accordingly. These amendments should remove any inconsistencies between references and ensure conformity with national policy.

There is also the fundamental question of whether or not the maximum amount of land available to meet Derby’s OAHN within its own administrative boundary is capped at 11,000 dwellings. It is agreed by the Derby HMA authorities that the most sustainable form of development is achieved by meeting housing needs where these needs originally arise. So development should be located in Derby city itself or as close to the edge of the city as possible. In this context the Council should have undertaken a thorough search for sites to identify the maximum capacity of the city to meet its own OAHN as required by paragraph 47 of the NPPF in order to “significantly boost housing land supply”. Therefore in its search for sites the Green Wedge Policy should not have constrained the Council’s ability to meet its own OAHN as Green Wedges are not recognised as such constraints in the NPPF. So the review of Green Wedges carried out in 2012 should have been robustly undertaken.

In the Local Plan the following strategic locations for growth (paragraph 4.4) are proposed :-

- City centre - 2,200 homes ;
- Osmaston & Sinfin - 1,780 homes ;
- Littleover, Mickworth & Mickleover - 2,385 homes ;
- Boulton & Chellaston - 1,100 homes ;
- Chaddesdon & Oakwood - 475 homes.

However the Housing Trajectory in Appendix B does not identify full 11,000 dwellings because a further 1,294 dwellings will be allocated in the Local Plan Part 2. The Council’s decision to opt for a two part Local Plan rather than the

one single Plan as envisaged by the NPPF means on adoption of the Local Plan Part 1 it is uncertain if the Council's land supply will be maintained throughout the plan period.

The Council should also provide substantive evidence of consultation with landowners, promoters and developers to justify Bullet Point (f) of **Policy CP6 – Housing Delivery** which states that developers are expected to provide the numbers identified in site specific policies. Moreover Table 1 – Housing Supply Components demonstrates that there is no headroom to the Council's proposed housing land supply.

Derby City Council Interim Housing Position Statement dated 2015 indicates 5.5 YHLS on adoption (paragraph 6.3). In this calculation it is agreed that the recouping of previous shortfalls as per the Sedgefield approach and the application of a 20% buffer are appropriate but the Council has not added the 20% buffer to shortfalls (paragraph 6.5). The HBF disagrees with this methodology and the Council should refer to :-

- the Warwick Local Plan Examination Inspector's letter dated 1st June 2015 (paragraph 41) ;
- the letter dated 10th August from the Inspector examining the Amber Valley Local Plan *"the joint letter from Ms Kingaby (Inspector examining the South Derbyshire Local Plan) and myself dated 10 December referred to appeal ref 2199085 as the SoS's model for adding the buffer to the sum of the 5-yr target and the shortfall. Although the Council refers to the Cheshire East decision ref 2209335 (Gresty Lane) where the SoS took a different approach, PINS is not aware of any other SoS decision in which the calculation was made in that way. The Cheshire East method is outside the SoS's 'normal' approach. The model set out in 2199085 is therefore the one which should be followed"* ;
- the West Dorset Weymouth & Portland Joint Local Plan Inspector's Final Report dated 14th August 2015 (paragraphs 85 & 86) ;
- the Herefordshire Local Plan Core Strategy Inspector's Final Report dated 29th September 2015 (paragraph 48) ;
- East Staffordshire Local Plan Inspector's Final Report dated 7th October 2015 (paragraph 101) ;
- Torbay Local Plan Inspector's Final Report dated 12th October 2015 (paragraph 46).

Without commenting on the merits or otherwise of specific individual sites the Council's application (if any) of lapse rates on sites with planning permission and lead in times on sites without planning permission in Appendix 3 is also unclear in its 5 YHLS calculation.

If a re-calculation including the aforementioned adjustments is undertaken the Council's 5 YHLS will reduce to less than 5.5 YHLS possibly to even below 5 years. Therefore if there is not a reasonable certainty that the Council has a 5 YHLS the Local Plan cannot be sound as it would be neither effective not consistent with national policy. Moreover if the Plan is not to be out of date on

adoption it is critical that the land supply requirement is achieved as under paragraph 49 of the NPPF *“relevant policies for the supply of housing will not be considered up to date if the LPA cannot demonstrate a five year supply of deliverable housing sites”*.

As a consequence if the Council is to consider allocating more sites the Council should be mindful that to maximize housing supply the widest possible range of sites, by size and market location are required so that house builders of all types and sizes have access to suitable land in order to offer the widest possible range of products. The key to increased housing supply is the number of sales outlets. Whilst some SUEs may have multiple outlets, in general increasing the number of sales outlets available means increasing the number of housing sites. So for any given time period, all else been equal, overall sales and build out rates are faster from 20 sites of 50 units than 10 sites of 100 units or 1 site of 1,000 units. The maximum delivery is achieved not just because there are more sales outlets but because the widest possible range of products and locations are available to meet the widest possible range of demand. A wider variety of sites in the widest possible range of locations also ensures all types of house builder have access to suitable land which in turn increases housing delivery.

In conclusion the Council should re-calculate its 5 YHLS and re-consider the amalgamation of the Part 1 and 2 Local Plans together with the allocation of more sites.

Plan Period

It is noted that if the Derby City Local Plan is adopted in 2016 only twelve years will remain before the end of the plan period. The NPPF recommends a fifteen year timeframe for Plans (paragraph 157). Whilst other Local Plans have been adopted with shorter timespans these Plans also rely upon an early review mechanism to rectify this deficiency, for example, in the case of the Swindon Local Plan there is less than twelve years to go before the end of the plan period (31 March 2026) and the housing provision is set in the context of the Council’s intention to undertake an immediate review (by 2016 at the latest) of the Plan to ensure development provision looks to an appropriate long term end date. The use of a strategic review at an early stage in the life of a development plan has also been successfully defended in a High Court Judgment in relation to the Dacorum Core Strategy (Neutral Citation Number [2014] EWHC 1894 (Admin)) in which a main modification committed the Council to aim to adopt its reviewed Plan by 2017/18. Paragraph 51 of that judgment refers to the NPPG, which states that: *“Local Plans may be found sound conditional upon a review in whole or in part within five years of the date of the adoption.”* The Written Ministerial Statement dated 22nd July 2015 also refers to *“a commitment to an early review of a Local Plan may be appropriate as a way of ensuring that a Local Plan is not unnecessarily delayed by seeking to resolve matters which are not critical to the plan’s soundness or legal competence as a whole”*. Therefore it is suggested that if the Derby City Local Plan is progressed with a shortened plan period an early review policy should be included. This Policy should

commit the Council to preparing and submitting to the Secretary of State for examination its reviewed Local Plan by a specified date within 5 years of adoption. Alternatively the Council should extend the plan period to 2031.

5. Viability and Affordable Housing

If the Derby City Local Plan Draft Core Strategy is to be compliant with the NPPF, the Council needs to satisfy the requirements of paragraphs 173 and 174 whereby development should not be subject to such a scale of obligations and policy burdens that viability is threatened. The Council should be mindful that it is inappropriate to set unachievable policy obligations. Under paragraph 174 of the NPPF the Council must properly assess viability. It is unrealistic to negotiate every site on a one by one basis because the base-line aspiration of a policy or combination of policies is set too high as this will jeopardise future housing delivery.

The Council's viability testing is contained within the report "*Derby HMA Strategic Viability Assessment Final Report*" dated March 2013 by Peter Brett and Roger Tym & Partners which is now somewhat dated. There are also a number of concerns about assumptions used in this viability assessment such as the exclusion of abnormal site development costs and exceptional off-site infrastructure costs from the BCIS costs, low gross to net land ratio's, gross profit calculated on costs rather than gross development values, accelerated build rates and lack of brownfield scenarios.

The residual land value model is highly sensitive to changes in its inputs an error in any one assumption can subsequently have a significant impact on the residual land value. Therefore it is important to understand and test the influence of all inputs such as policy requirements on the residual land value as this determines whether or not land is released for development. The Harman Report highlighted that "*what ultimately matters for housing delivery is whether the value received by land owners is sufficient to persuade him or her to sell their land for development*". The other important assumption in viability testing is the benchmark land value against which the residual land value is judged. If the bench mark land value is set too low the capacity to contribute to affordable housing, S106 payments, CIL and other Local Plan policy requirements will be over-estimated meaning that land will not be released for development and as a consequence housing targets will not be achieved.

Moreover paragraph 2.67 of the Strategic Viability Report states "*our viability assessment has not factored in any policy requirements*". Paragraph 4.6 continues "*it is no longer appropriate to separate out requirements such as affordable housing from other policy requirements. The cumulative impact of the whole policy ask will need to be taken into account in the viability assessment and it is likely that some prioritisation and flexibility will need to be included in the emerging CS policies*". Therefore the Council has not undertaken a whole plan viability assessment as outlined in the NPPF.

It is noted that since its Local Plan Examination South Derbyshire District Council has undertaken further viability assessment work. Until Derby City

Council also undertakes further work **Policy CP7** which proposes 30% affordable homes on sites of 15 or more units subject is not proven to be viable. Indeed the Derby City Council Interim Housing Position Statement dated August 2015 (paragraphs 7.21 – 7.23) identifies that 30% affordable housing provision is not achievable in particular on brownfield sites.

Whilst it is accepted that **Policy CP7** enables developers to negotiate lower affordable housing provision (albeit subject to clawback clauses) on the grounds of viability such negotiations inevitably incur additional costs in terms of both time and money which impairs housing delivery. The purpose of whole plan viability assessment is to ensure that the bar of policy expectations is not set unrealistically high. If the bar is set too high then the majority of schemes instead of the exception will be subject to site by site viability negotiations.

Other Policies

The Government wishes to streamline the planning system and to rationalise many differing existing standards into a simpler system which will reduce policy burdens and deliver more much needed housing. The Deregulation Bill 2015, which received Royal Assent in March 2015, specifies that Councils should not set any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. The only technical standards that can now be considered and incorporated into DPDs are restricted to the nationally described space standard, an optional requirement for water usage and optional requirements for adaptable / accessible dwellings. However to do so the Council should provide supporting evidence on need, viability, affordability and timing in order to assess the impact and effect of this policy in the local area. The Written Ministerial Statement dated 25th March 2015 confirms that *“the optional new national technical standards should only be required through any new Local Plan policies if they address a clearly evidenced need, and where their impact on viability has been considered, in accordance with the NPPG”*.

In this context there are a number of out of date policies which the Council should re-consider. These are :-

- The reference to Lifetime Homes in Spatial Objective 6 ;
- The reference to Lifetime Homes in Bullet Point (b) of **Policy CP7 – Affordable Housing & Specialist Housing** ;
- The reference to sprinkler systems in Bullet Point (l) of **Policy CP3 – Placemaking Principles**.

In addition **Policy CP2 - Responding to Climate Change** in Bullet Point (j) refers to allowable solutions the Council should re-check for compatibility with the Written Ministerial Statement dated 25th March 2015 and the Productivity Plan published on 10th July 2015.

The Council should also re-consider the references in Spatial Objective 16 and Bullet Point (j) in **Policy CP3 – Place making Principles** to integrate public art. In re-considering this requirement the Council should refer to Paragraph 204 of the NPPF, the Community Infrastructure Levy (CIL)

Regulations (2010) and the NPPG (ID 23b-004-20140306) which states that “*planning obligations should not be sought – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms*”.

Likewise the Council should confirm its proposals in **Policy MH1 – Making It Happen** remain valid after the introduction of S106 pooling restrictions in April 2015.

Conclusions

For the Derby City Pre Submission Local Plan Core Strategy to be found sound under the four tests of soundness defined by paragraph 182 of the NPPF, the Plan must be positively prepared, justified, effective and compliant with national policy. There are a number of concerns on the soundness of the Derby City Local Plan including :-

- an under-estimation of OAHN across the Derby HMA ;
- an over-estimation of housing land supply ;
- no whole plan viability assessment ;
- out of date policy requirements.

Therefore the Plan is not consistent with national policy. It is not positively prepared nor properly justified so it will be ineffective.

It is hoped that these representations are of assistance to the Council in informing the next stages of the Derby City Local Plan Core Strategy. If any further information or assistance is required please contact the undersigned.

Yours faithfully
for and on behalf of **HBF**



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