

Planning Policy
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SENT BY EMAIL
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Dear Sir / Madam,

**NEWCASTLE CITY COUNCIL DRAFT DEVELOPER GUIDANCE:
SUSTAINABILITY STATEMENTS**

Thank you for consulting with the Home Builders Federation on the City Council's draft Developer Guidance on Sustainability Statements.

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.

The HBF have very significant concerns about the Sustainability Statement Developer Guidance and do not consider that the content of the document is appropriate or lawful for a non-DPD document.

Regulations 5 and 6 of the Town and Country Planning Regulations 2012 makes it clear that documents which are to be prepared as Local Plans are those that contain development management policies which are intended to guide the determination of applications for planning permission. It is a fundamental feature of the planning system that policies which form part of the Local Plan must be subjected to proper scrutiny, including independent scrutiny.

It is clear to the HBF that the requirements set out in the Sustainability Statement Developer Guidance go well beyond that set out Policy CS16 in the Core Strategy and Urban Core Plan (CSUCP) and that it contains policy for the purposes of development management. The Core Strategy was supported by a strategic viability assessment which underpinned the policies contained within it. As part of this no costs were identified which quantified anything close to that being sought through this

document. The High Court has recently considered a similar case¹, appended to this letter, where a Local Authority had strayed into Development Plan territory when preparing a SPD and the policy discussed was quashed.

PPG is also clear that 'local requirements'...in respect of a building's sustainability... *'should form part of a Local Plan following engagement with appropriate partners and will need to be based on robust and credible evidence and pay careful attention to viability'* (ID: 6-009).

The HBF note the text within paragraph 3.8 which considers how the assessment grid will be used, this states that the grid is *'a platform for engagement with applicants, rather than a check list where the development must meet a prescribed standard'*. However, this platform for engagement soon changes to requirements within paragraph 3.10, and it becomes evident these requirements will be utilised as development management policies.

Criterion 1 of Policy CS16 states that *'development will be required to use a good standard of building fabric'*. The Assessment Grid provided as part of the Sustainability Statement Developer Guidance states that in order to demonstrate this criterion the Council *'requires that all dwellings achieve a Dwelling Fabric Energy Efficiency (DFEE) value equal to or better than the Building Regulations Part L1A 2013 Target Fabric Energy Efficiency (TFEE) divided by 1.15 (equivalent to 15% reduction)'*. The requirement set out within the Assessment Grid is clearly over and above the policy requirement set out Policy CS16 and as such not considered appropriate.

The HBF also consider that any mandatory requirements in relation to energy efficiency would be contrary to the Government's intentions, as set out in Fixing the Foundations and the Housing Standards Review, which specifically identified energy requirements for new housing development to be a matter solely for Building Regulations with no optional standards. The Deregulation Act 2015 was the legislative tool used to put in place the changes of the Housing Standards Review. This included an amendment to the Planning and Energy Act 2008 to remove the ability of local authorities to require higher than Building Regulations energy efficiency standards for new homes. Transitional arrangements were set out in a Written Ministerial Statement in March 2015. The HBF does not consider that this proposed policy is justified or consistent with national policy.

The potential cost of this requirement also needs to be taken into consideration, as it could have impacts on the viability of development. There are concerns that requirements such as these could lead to the non-delivery of homes. The HBF considers that this requirement should be removed. It is noted that the industry has raised significant concerns in relation to this point as part of the ongoing production of the emerging DPD.

Criterion 2 states that *'development will be required to be flexible from the outset to allow adaptation to alternative uses'*. The Assessment Grid provided as part of the

¹ [William Davis Ltd & Ors v Charnwood Borough Council \[2017\] EWHC 3006 \(Admin\)](#) (23 November 2017)

Sustainability Statement Developer Guidance states that in order to demonstrate this criterion the Council developers are expected to show which standards from the Lifetime Homes guidance have been incorporated in their design. It also goes on to state that the developer is required to state how many homes are built with M2 and / or M3 incorporated. The HBF consider that this is inappropriate, contrary to national policy and goes well beyond what is required in Policy CS16. Since the publication of the Written Ministerial Statement (March 2015), which introduced the Government's Housing Standards and the subsequent amendments to the PPG, Council's should no longer be seeking the incorporation of the Lifetime Homes standards. The equivalent optional housing standard is Building Regulation M4(2). However, this standard can only be introduced through a Local Plan (DPD) subject to specific evidence requirements, including the effect upon viability. The PPG (ID 56-007) identifies the required evidence for the introduction of the optional standard. Therefore, again it cannot be referred to within a non-Development Plan document and should not be utilised to influence the decision-making process.

Criterion 4 requires development to minimise its contributions and provide resilience to the ongoing and predicted impacts of climate change. Amongst other requirements, the assessment grid states that whilst building regulations ensure that water use is no greater than 125 litres per person per day, *'more ambitious limits for use will be regarded favourably'*. Again, whilst this is not quite worded as a requirement if it is to be used as part of the decision-making process for development management then the HBF consider that it is inappropriate. PPG (ID: 56-010) states that where there is a clear local need, local planning authorities can set out Local Plan policies requiring new dwellings to meet the tighter Building Regulations optional requirement of 110 litres/person/day. In order to introduce the policy, the local planning authority must establish a **clear need** based on: existing sources of evidence; consultations with the local water and sewerage company, the Environment Agency and catchment partnerships; and consideration of the impact on viability and housing supply of such a requirement. The PPG goes on to suggest the types of evidence which might support a tighter water efficiency standard including the identification of areas of serious water stress, or a river basin management plan which highlights the pressure that the water environment faces. The HBF is unaware of any evidence to support the introduction of these optional standards and does not consider that this is the appropriate document within which to introduce them.

The HBF has received significant substantiated concerns from many of its members in relation to this proposed document. The adoption of this goes against the spirit the industry has sought to adopt across Newcastle in trying to meet with the aspirational housing delivery targets of both the Core Strategy and emerging devolution deal. The HBF does not consider the Development Guidance Core Strategy Urban Core Plan Policy CS16 Sustainability Statements is an appropriate or lawful document. It is considered that the document should not be taken forward in its current form. If the Council wishes to take forward the requirements or additional standards highlighted within the document it should be done through a development plan document (DPD), with appropriate evidence base and subjected to independent examination and suitable consultation with the development industry. The HBF would also expect any DPD policy prepared to include an appropriate transitional period to allow for the additional costs associated with these requirements to be taken into consideration.

Future Engagement

I trust that the Council will find these comments useful. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry.

The HBF would like to be kept informed of all forthcoming consultations upon the Local Plan and associated documents. Please use the contact details provided below for future correspondence.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Harding', with a stylized flourish at the end.

Joanne Harding

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