

West of England JSP Consultation  
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7<sup>th</sup> January 2019

Dear Sir / Madam

### **WEST OF ENGLAND (WoE) Joint SPATIAL PLAN (JSP) – TECHNICAL EVIDENCE CONSULTATION**

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 to the Councils technical evidence consultation.

#### **WED 001 - November Consultation Explanatory Note**

The HBF note that in April 2018 a significant amount of evidence accompanied the submission of the WoE JSP which had not been available during the pre-submission consultation which ended in January 2018. This evidence comprises of the following documents :-

- SD 7A - Topic Paper 2 Version 1.2 Spatial Strategy (April 2018) ;
- SD 14A - Bath HMA Strategic Housing Market Assessment Update Volume 1 (March 2018) ;
- SD 14C - Wider Bristol HMA Strategic Housing Market Assessment Volume 1 (March 2018) ;
- SD 14F - Housing Trajectory (April 2018) ;
- SD 14G - Topic Paper 5 Housing Supply (April 2018) ;
- SD 14J - Topic Paper 6 Affordable Housing (April 2018) ;
- SD 14K - Topic Paper 7 Urban Living (April 2018) ;
- SD 14M - Topic Paper 1 Housing Requirement (April 2018) ;
- SD 14O - West of England Housing Target: The basis for the Housing Requirement in the Joint Spatial Plan (April 2018) ;
- SD 16A - Topic Paper 8: Transport (April 2018).



These documents are also excluded from the current consultation which only covers the following documents :-

- WED 001 - November Consultation Explanatory Note ;
- WED 002 - Schedule of Proposed Changes ;
- WED 003 - Duty to Cooperate Paper ;
- WED 004 - Justification of the requirements for the 12 Strategic Development Locations Policy 7-7.12 ;
- WED 005 - Updated Viability Assessment ;
- WED 006 - Updated Employment Evidence ;
- WED 007 - Transport Topic Paper 8 (update Nov 2018) ;
- WED 008 - Emerging Findings Transport Report (Nov 2018) ;
- WED 009 - Consolidated Sustainability Appraisal Report (Nov 2018) ;
- WED 010 - Updated Habitats Regulations Assessment (available from Monday 26th November).

The absence of consultation on the aforementioned documents is of concern to HBF Members. It is understood that some HBF Members have contacted the Councils about their concerns and received the following response :-

*"It is now seven months on since the JSP submission and the publication of the supporting documents. The four WoE Councils believe that relevant stakeholders have received appropriate and adequate time to consider these documents. I can also confirm that the four WoE Councils have not received any earlier requests from other stakeholders on this matter. Please note that any comments that stakeholders may want to make, may find it more appropriate for them to be incorporated into their responses to the Inspectors' Issues, Matters and Questions."*

The HBF considers the Councils response to be disingenuous to representors. This evidence may have been published for seven months but there has been no opportunity for representations to be made. It is not considered to align with the statement of *"In keeping with our approach through the preparation of the JSP and to ensure a full and fair opportunity for consultation these technical documents"* in WED 001. The HBF would question if the Councils have run a full and fair consultation in relation to the updated evidence in support of the WoE JSP. The relevant law for determining what a constitutes a full and fair consultation is found in a line of case law including *R on the application of Greenpeace Limited –v- Secretary of State for Trade and Industry [2007] EWHC 311 (Admin)* ("the Greenpeace Case"). In summary :-

- a consultation must be at a time when proposals are still at a formative stage ;
- the proposer must give sufficient reasons for any proposal to permit intelligent consideration and response ;
- adequate time must be given for consideration and response ;
- the product of the consultation must be conscientiously taken into account in finalising any proposal.

As pointed out in the Inspectors letter dated 28<sup>th</sup> June 2018 (ED02) “*this approach appears somewhat disjointed with the potential to cause confusion amongst Examination participants. We therefore wonder if it would be more straight-forward to publish and consult on in one go all the additional evidence/documents on which the Councils wish to rely in the Examination?*”

SD 14M - Topic Paper 1 Housing Requirement (April 2018) (para 1.9) suggests that the Councils are relying upon SHMA evidence (SD 14A and SD 14C) which have not been previously consulted on. Furthermore a comparison of Figure 1 : Full OAHN across the WoE 2016 – 36 contained in SD 14P (West of England Housing Target : The basis for the Housing Requirement in the Joint Spatial Plan April 2018) and SD 14O (West of England Housing Target : The basis for the Housing Requirement in the Joint Spatial Plan November 2016) illustrates significant changes to the derivation of the Councils housing numbers. The HBF is seeking assurance that the Inspectors Matters Issues and Questions will provide adequate opportunities for submissions on this evidence to be considered.

### **WED 002 - Schedule of Proposed Changes**

It is agreed that the remit of subsequent Local Plans should be explicitly stated. The process of allocating Strategic Development Locations (SDL), removing land from the Green Belt, defining SDL site boundaries and new Green Belt boundaries should not re-open the established exceptional circumstances or the in principle decision of the JSP.

### **WED 003 - Duty to Cooperate Paper**

To fully meet the legal requirements of the Duty to Co-operate Councils should engage on a constructive, active and on-going basis with neighbouring authorities to maximise the effectiveness of plan making. The Duty to Co-operate Paper sets out the joint working between the four WoE Councils during preparation of the JSP together with engagement with the other neighbouring authorities. The Statements of Common Ground (SoCG) in attached appendixes confirm that the WoE Councils have not required any housing growth to be located beyond the WoE plan area and there are no requests to accommodate any growth from adjoining Councils. One key outcome from co-operation between authorities should be the meeting of housing needs in full. The JSP should be based on effective joint working on cross boundary strategic matters that have been dealt with rather than deferred as evidenced by SoCG. A key element in the examination of the JSP will be ensuring that there is certainty through formal agreements that an effective strategy is in place to deal with strategic matters such as housing needs when the JSP is adopted. If the WoE objectively assessed housing need (OAHN) and housing requirement have been under-estimated as contested by the HBF and other parties and after examination it is determined that housing figures should be increased if these higher housing needs could not be wholly met within the WoE JSP area then SoCG may have to be re-visited.

## **WED 004 - Justification of the requirements for the 12 Strategic Development Locations Policy 7-7.12**

The HBF have no comments on individual SDLs or the approach to their selection. It is essential that the acceptability of the in principle decision of the JSP relating to individual SDLs is not re-visited during respective Local Plan processes to allocate SDLs, remove land from the Green Belt and define appropriate SDL site boundaries and new Green Belt boundaries.

## **WED 005 - Updated Viability Assessment**

Policy 3 of the JSP seeks a minimum target of 35% affordable housing provision on all sites of more than 5 dwellings across the WoE plan area. As confirmed in Topic Paper 6 Affordable Housing dated April 2018 (SD 14J) the 35% requirement is a needs based target rather than the level of affordable housing at which development has been assessed as viable. The Councils are seeking to deliver 24,500 affordable homes. It is noted that since the pre-submission consultation affordable housing need has reduced from 32,200 affordable dwellings (SD 14B - Bath SHMA November 2016 and SD 14D & 14E - Wider Bristol SHMA 2015) to 30,065 affordable dwellings (SD 14A - Bath SHMA March 2018 & SD 14C - Wider Bristol SHMA March 2018).

The JSP is a high-level document. The strategy of the JSP sets the over-arching aims of a framework to guide housing and economic growth across the sub-region which subsequent Local Plans are expected to deliver. The Updated Viability Assessment is a strategic review of the viability of Policy 3 of the JSP. This Viability Assessment is not a substitute for the whole plan viability testing that will be required in order to inform and support the progression of each individual Local Plan. Viability assessment is highly sensitive to changes in its inputs whereby an adjustment or an error in any one assumption can have a significant impact on the viability or otherwise of development. It is important that the Councils understand and test the influence of all inputs on viability as this determines if 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”*. Currently there are too many unknowns to undertake a robust assessment of viability.

The Updated Viability Assessment observes that the JSP does not set out very much detail in terms of policy specifics. It is understood that strategic principles and infrastructure requirements for the SDLs are still evolving and in the absence of allocating the SDLs site boundaries are undefined. At this time there can be no certainty that the SDLs can achieve a policy compliant requirement for 35% affordable housing.

The Updated Viability Assessment also identifies viability challenges on previously developed land and Topic Paper 6 Affordable Housing (SD 14J) confirms that the urban living component in the JSP is unviable on a Policy 3 compliant basis. After taking account of abnormal costs brownfield sites will

only deliver circa 20% affordable housing. This is applicable to sites in Bristol City's Inner West and East zones where previous affordable housing delivery has been only 10%. In North Somerset the Weston-super-Mare town centre regeneration area is considerably less viable and any affordable housing is likely to be undeliverable.

The Updated Viability Assessment provides no further certainty that sites of 5 or more dwellings are financially viable. The Updated Viability Assessment has not tested the proposed threshold of 5 dwellings. Only in North Somerset is a site of 5 dwellings tested (see list of site typologies on page 40 of WED 005).

The Written Ministerial Statement (WMS) dated 28 November 2014 stated that due to the disproportionate burden of developer contributions on small scale developers (sites of 10 dwellings or less) affordable housing and tariff style contributions should not be sought. For Designated Rural Areas under Section 157 of the Housing Act 1985 authorities may choose to implement a lower threshold of 5 dwellings or less. Within these designated areas if the 5 dwelling threshold is implemented then payment for affordable housing on developments of 6 – 10 dwellings should be sought as a cash payment only and be commuted until after completion of the development. The 2018 NPPF re-confirms that provision of affordable housing should not be sought for residential developments that are not major developments other than in Designated Rural Areas (where policies may set out a lower threshold of 5 units or fewer) (para 63). Other than Areas of Outstanding Natural Beauty (AONB) there are no Designated Rural Areas in WoE. The proposed site threshold for the provision of affordable housing in Policy 3 is inconsistent with national policy which is unjustified. Topic Paper 6 Affordable Housing (SD 14J) sets out no acceptable justification for the policy approach of Policy 3.

Of great concern is the Councils answer to the Inspectors as set out in WoE01 Annex 1 which states that on adoption of the WoE JSP Policy 3 will supersede existing adopted policies in Local Plans and planning permission will be refused if 35% affordable housing is not provided unless material considerations indicate otherwise. It is also noted that in recent Issues & Options consultations for Local Plans for Bristol, North Somerset and BANES Policy 3 of the WoE JSP is repeated verbatim. The Updated Viability Assessment is not a robust viability test of Policy 3 underlying the assessment is the assumption that further viability testing will be undertaken therefore it cannot supersede existing adopted Local Plan policies or become the automatic default policy requirement in future Local Plans. The Updated Viability Assessment provides no further certainty the proposed site threshold of 5 or more dwellings or the minimum 35% affordable housing requirement of Policy 3 are financially viable. The cumulative burden of policy requirements should be set so that most sites are deliverable without further viability assessment negotiations.

The Updated Viability Assessment concludes that *“at this stage, our suggestion is that the viability findings mean that some modification of the Policy 3 wording or its application, if not general intent perhaps, might be considered. This may be a point for review / further consideration by the WoE Councils during*

*examination of the JSP policies*" (para 3.5.7). It is the HBFs opinion that the contents of Policy 3 cannot be anything more than a statement of intent. The Council's Updated Viability Assessment is insufficient evidence to justify the specific policy requirements of Policy 3.

### **Conclusion**

It is hoped that these representations assist the Councils and Inspectors in informing the next stages of the WoE JSP Examination. If any further information or assistance is required please contact the undersigned.

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



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