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02/05/2021

Dear Sir/ Madam

**Response by the Home Builders Federation to the consultation on the Tunbridge Wells Local Plan**

1. Thank you for consulting the Home Builders Federation (HBF) on the Pre-Submission 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.

**STR 1 – The Development Strategy**

This policy is unsound as it is insufficiently flexible to ensure needs will be met in full.

*The housing requirement*

2. Using the standard method, Tunbridge Wells Borough Council (TMBC) consider their local housing needs assessment (LHNA) to be 678 dwellings per annum (dpa). The HBF would agree that this is the minimum number of homes that the Council should be planning for. However, as established in paragraph 60 of the NPPF this is a minimum and there will be circumstances where Councils will need to set a housing requirement above the assessment of need resulting from the standard method. The first such scenario is set out in paragraph 60 itself which states that in addition to the LHNA any needs that cannot be met in neighbouring areas should also be taken in to account.
3. Whilst the Council have noted the difficulties faced by Sevenoaks in meeting their needs the Council do not appear to have noted in the Duty to Co-operate Statement the fact that there are unmet needs in Rother nor the wider regional concern that London will not meet its own housing needs over the next ten years. With regard to Rother the Council note at paragraph 2.45 of the Housing Needs Assessment Topic Paper that there is no indication of unmet needs in Rother on the basis that they are yet to undertake substantive work on a new local plan.



However, Rother's local plan was adopted in September 2014 and as such those policies relating to housing delivery in that plan must be considered out of date as it is older than five years and has not been reviewed. In this situation paragraph 68-005 of PPG applies which states that in such circumstances:

*“...the 5-year housing land supply will be measured against the area's local housing need calculated using the standard method.”*

As such the annual housing requirement for Rother moving forward is the local housing needs assessment as calculated using the standard method. As we will set out below the increased requirement in Rother will mean a shortfall in delivery that must be addressed. Using the standard method with a base period 2020 to 2030, will require Rother to deliver 728 dpa. Whilst we recognise the delivery of new homes in Rother is expected to increase from 2024/25, resulting in the delivery of an additional 4,384 homes between 2020 and the end of their plan period, there would still be a shortfall of 1,440 homes against their local housing needs assessment. In particular we are concerned that it is over the next 5 years during which this shortfall will arise.

4. The housing requirement for Rother over the next 5 years using the standard method is 3,640 homes. However, between 2020 and 2025 Rother only expect to deliver 2,386 homes. This is a shortfall of 1,254 homes during this five-year period which as far as we are aware is not being addressed elsewhere in the region. Whilst a new local plan for Rother could deliver an increase in housing to address unmet needs it is unlikely to do so in the next 5 years given the lack of urgency with which Rother is undertaking its planned review it is necessary for neighbouring areas to consider how these needs can be addressed.
5. Secondly, there appears to be no consideration as to the level of unmet needs arising in the Capital. During the preparation of the London Plan the Mayor, London Boroughs and Council's across the wider South East were adamant that London would 'consume its own smoke' with regard to housing needs. However, even on publication this was not the case with the London Plan showing a shortfall of some 10,000 homes between 2018 and 2028. This situation has now worsened as the examination of the London Plan highlighting significant shortcomings in the Mayor's estimations as to the supply development lands within the Capital, and in particular the outer London Boroughs.
6. The examination report on new London Plan was published in October 2019 and outlines in paragraph 174 that the overestimation of the contribution of small sites reduces the supply of new homes from 65,000 to 52,000 homes per annum. This means that there is a shortfall of some 140,000 homes between 2018 and 2028 in the capital against its own assessment that the capital needs to deliver 66,000 homes each year across the plan period to meet future need and address the current backlog. We could not find any reference to these needs in the Council's evidence and given London borders the housing market area within which TMBC

is located it is essential that these be taken into account when setting the Council's housing requirement.

### *Housing supply*

7. Over the plan period the Council expect to deliver 13,250 homes to meet their minimum need of 12,204 homes. Whilst this provides an additional supply of around 1,000 homes the HBF do not consider this to be sufficient for two reasons. The first reason that this is not sufficient given the level of affordable housing needs identified by TWBC and the second being the reliance on strategic sites from 2025 onwards could place delivery at risk should these sites be delayed.
8. With regard to meeting affordable housing needs Planning Practice Guidance (PPG) notes at paragraph 2a-024 that:

*“The total affordable housing need can then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, taking into account the probable percentage of affordable housing to be delivered by eligible market housing led developments. 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.”*

As such it is important that Councils consider whether further allocations are possible to better meet their need for affordable housing. The Council's Housing Needs Study from 2018 establishes that 443 new affordable homes to be provided each year to meet the need for such homes in Tunbridge Wells in future and address current backlog within five years. Meeting the backlog over the plan period affordable housing needs are estimated to be 391 dpa. However, the Council will not meet this either assessment of affordable housing need. The Council estimates, as set out in table 10 of the Housing Supply Topic Paper, that it expects to deliver 224 affordable homes per annum – some 170 homes short of stated needs. Further allocations of sustainable and suitable sites should therefore be considered if these would enable more affordable housing to be provided in the Borough.

9. Moving to overall supply, consideration needs to be given to the degree to which the Council are reliant on strategic sites to meet needs and whether there is sufficient flexibility should there be delays in the delivery of these sites. The HBF is supportive of the strategic allocations that have been included in this local plan. Strategic sites such as these provide opportunities to meet development well into the future. However, their scale and complexity does mean that timescales for delivery can slip and as such there can be a risk of the housing requirement not being met without a more substantial buffer in supply being provided.

10. In considering the speed at which sites can come forward it is helpful to examine the Lichfield report Start to Finish<sup>1</sup>. The latest edition of this report outlines not only the timescales it takes for larger sites to commence and the rate at which such sites deliver new homes but also the variability between sites. With regard to when the first home will be delivered figure 4 from the report shows that the average planning approval period for those sites of 2,000 or more units in the study was 6.1 years with 2.3 years between approval and first delivery. However, this is an average with some sites delivering more quickly and some being considerable slower to move through the planning process. Similarly build out rates vary significantly. Table 4 and Figure 8 of Start to Finish show that sites of more than 2,000 homes deliver on average 160 units per annum with average delivery ranging from 50 dpa to around 300 dpa.
11. It is therefore important to recognise that there is potential for the larger sites allocated by the Council to deliver at the rates suggested but there is also the possibility that delivery will commence later than expected and at lower build out rates. As outlined above this local plan expects supply to be some 1,000 homes more than needs, around an 8% buffer. However, from 2025 supply from the two strategic sites at Tudeley Village and Paddock Wood are expected to provide 64% of total supply. As such any delays as to when development commences on these sites, or slower than expected delivery, will compromise the Council's ability to meet needs in full. The NPPF establishes in paragraph 11 that local plans should be sufficiently flexible to adapt to rapid change and at present we do not consider this to be the case with regard to this local plan.
12. In order to provide the necessary flexibility required by the NPPF the HBF considers a 20% buffer between the housing requirement and expected supply over the plan period. This level of additional planned supply above the requirement would ensure that there is sufficient scope within the plan to take account of any unexpected delays in delivery. In particular it is important to ensure supply in the early years of the plan remains flexible and can take account of any delays so we suggest more smaller sites are allocated that will come forward in the first five years of the plan. A 20% buffer would also increase the potential for the Council to improve the level of affordable housing delivered in the plan period and better meet the needs of its residents.
13. The need for such a buffer to provide flexibility and increase the supply of affordable homes can also be considered as exceptional circumstances to support further amendments to the Green Belt boundary. The Council set out in the Development Strategy Topic Paper the exceptional circumstances required to support amendments to the Green Belt boundary and we would agree with their assessment. However, there is an acute need for affordable housing in Tunbridge Wells alongside the poor affordability of accommodation that we would consider to be sufficient to promote further amendments to allocate sites that would provide sustainable development opportunities to provide both market and affordable

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<sup>1</sup> Start to Finish (Second Edition) Lichfields (2020) <https://lichfields.uk/content/insights/start-to-finish>

housing. Indeed, the principle of amending Green Belt boundaries to deliver housing growth beyond minimum requirements has been considered recently in *Compton Parish Council & Ors v Guildford Borough Council & Ors*. [Case Number: CO/2173/2019]. In this case it was concluded at paragraph 105 that an excess of housing supply, and the advantages of such supply above the minimum requirement, could contribute to exceptional circumstances.

Recommendation

14. Given the unmet needs in London and the benefits of further allocations to support affordable housing delivery, consideration should be given as to whether the Council should apply the cap in relation to the standard method. As set out in paragraph 2a-007 of PPG the cap reduces the number generated by the standard methods but does not reduce the need itself. We note that the Council have considered this level of delivery in the SA and there are clearly benefits in using and meeting the uncapped housing requirement resulting from the standard method. However, even if the requirement is not adjusted, we consider it necessary for the Council identify additional allocations in the local plan to improve flexibility and better address the need for affordable housing within Tunbridge Wells.

**STR 5 – Infrastructure and connectivity**

This policy is unsound as it is not consistent with national policy.

15. In addressing the impact of development on infrastructure it is important to ensure that all contributions are, as set out in the NPPF and paragraph 122 of the CIL Regulations 2010, necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. However, regardless of the impact it would appear from part 1 of this policy that a significant contribution will be required. Such a statement is not consistent to the more proportionate approach set out in both legislation and policy.

Recommendation

16. That the word “*significant*” is removed from part 1 of this policy.

**EN2 – Sustainable Design Standards**

The policy is unsound as it is not consistent with national policy.

17. The HBF does not consider this policy to be consistent with national policy. The Council are advocating the use of just one approach within the policy whereas the paragraph 129 of NPPF makes no such prescription. The Council must be clear in policy that it encourages the use of a range of assessment frameworks and remove the specific reference in policy to the encouraged minimum design standards based on Homes Quality Mark and that it pays equal consideration to the outcome of any such assessment. In addition, the Council should remove the

phrase until national policy allows otherwise. If national policy is to change to allow the implementation of alternative standards such as HQM through the local plan it will be for the Council to justify such a requirement through a focussed review of the local plan. Councils cannot seek to pre-empt national policy in this manner.

18. The Council should also amend the third paragraph which could cause confusion for applications and decisions makers as outlines the evidence required to demonstrate compliance with this policy. As outlined above paragraph 129 of the NPPF states that the Council can consider the outcome of any such assessment process, but it cannot dictate the assessment used nor require the assessment to be undertaken in the first place. High quality and sustainable development can arise without the use of such assessment tools.

Recommendation

19. The Council should remove the specific encouragement to meet the HQM standards set out in the policy. In addition, given that the policy, as it relates to residential development, is one that seeks to encourage not require as such there is no need to demonstrate compliance with these standards. The paragraph should be amended to read:

*Compliance with the sustainable design requirements for non-residential development should be demonstrated via the following certificates (or future equivalent):*

1. *'Pre-assessment estimator' at application stage;*
2. *'Design stage' certificates prior to construction;*
3. *Final certificates for all schemes six months post-completion.*

### **EN3 Climate change mitigation and adaptation**

The policy is unsound as it is not consistent with national policy.

20. The Government are expected to amend Building Regulations this year as part of the transition to the Future Homes Standard in 2025. The HBF recognises the need to reduce carbon emissions from new homes. As such we are working with our members and Government to provide an effective route map in achieving the necessary reductions whilst also maintaining the supply of housing required to meet the country's needs. To achieve improvements in energy efficiency whilst maintaining supply requires not only the housebuilding industry to adapt but also those industries supporting it to develop the necessary supply chains that will ensure the products required to meet these standards, such as ground and air source heat pumps, are available.
21. This transition will mean that all new homes will have to be built to achieve a 31% improvement on the 2013 Building Regulations and mean that the requirements in EN3 are redundant. In addition, Paragraph 16 of the NPPF requires policies to be clear in how a decision maker should react and we would suggest that there is

the potential for confusion between the application of planning policy and the building regulations should the policy be retained.

Recommendation

22. That the Energy reduction in new buildings part of EN3 is deleted.

**EN9 Biodiversity Net Gain**

Part b of the policy is unsound as it is not consistent with national policy.

23. Firstly, the Council's policy approach to biodiversity net gain should not deviate from the Government's proposals on biodiversity gain as set out in the Environment Bill. This legislation will require development to achieve a 10% net gain for biodiversity. This is not set out as a minimum and to ensure clarity in decision making, we would suggest this prefix is deleted. It is the Government's opinion that 10% strikes the right balance between the ambition for development and reversing environmental decline. A 10% gain provides certainty in achieving environmental outcomes, deliverability of development and costs for developers. Removing the term minimum will not place a cap on the aspirations of developers who want to voluntarily go further but it will ensure that decision makers do not seek to go beyond 10%.
24. Secondly the Council cannot require a higher level of net gain through supplementary planning document (SPD). The relevant legislation defining the difference between Local Plans and SPDs is the Town and Country Planning Regulations (2012). This defines an SPD in regulation 2 as "*any document of a description referred to in regulation 5 (except and adopted policies map or statement of community involvement) which is not a local plan.*" Therefore, it can be concluded that whilst SPDs are Local Development Documents they are not local plans. Regulation 5 in turn states:

*5(1) For the purposes of section 17(7)(za)(1) of the Act the documents which are to be prepared as local development documents are—*

*(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—*

*(i) the development and use of land which the local planning authority wish to encourage during any specified period;*

*(ii) the allocation of sites for a particular type of development or use;*

*(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and*

*(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;*

25. Taken together these regulations mean that a local plan is a document that contains statements as to the:

- development and use of land which the local planning authority wish to encourage during any specified period;
- allocation of sites for a particular type of development or use; and
- development management and site allocation policies, which are intended to guide the determination of applications for planning permission.

Therefore, any supplementary guidance being proposed cannot include anything that is intended to guide the determination of applications for planning permission – such as a level of biodiversity net gain above that required by legislation. Such policies can only be adopted in a local plan following the prescribed process.

### Recommendation

26. The phrase “*or greater where required by supplementary planning guidance*” should be deleted from policy EN9.

### **H3 Affordable housing.**

27. The Council will need to consider whether it would be appropriate to include the requirement that 25% of affordable homes are delivered as First Homes in this policy. Whilst the Written Ministerial Statement and PPG set out the transitional arrangements that do not require TWBC to include the 25% First Home requirement in their affordable housing policy PPG does state at paragraph 70-019 that inspector may wish to consider at the examination of a local plan whether an early update of the plan would be appropriate to take account of this change to national policy. Rather than include an early review of the local plan to amend policy H3 we would suggest that the requirement is included prior to the plan being submitted for examination.

### **H6 Housing for older people and people with disabilities.**

Parts 2 and 4 of this policy is unsound as it has not been justified.

28. Whilst it would appear likely that part M4(2) will be made mandatory through proposed changes to the Building Regulations this is still to be confirmed by the Government and as such it is important that the Council’s requirement in H3 that all new homes are built to part M4(2) of the Building Regulations is justified. The HBF consider it the case that new homes built to the mandatory part M4(1) will be suitable for a significant proportion of the population throughout their lifetime. However, we recognise that there will be a need for some new homes to be built to higher accessibility standards.

29. The Council have provided evidence on the need for such homes in its Housing Needs Study and the consider this to be sufficient to support the proposal that all



new homes should be built to part M4(2) of the Building Regulations. However, when considering the implementation of the optional standards it is important to note that footnote 46 in paragraph 147 in the NPPF states that policies on adaptable and accessible housing should be used “... *where this would address an identified need* ...”. This would suggest that any policy should seek to address an identified need and there must be clear evidence as to how many such homes are needed.

30. The Housing Needs Study indicates that 30.8% of households contained at least one person with impaired mobility over the plan period. However, the study also states that only 8.1% of all households had a physical or mobility impairment and as such more likely to need a more accessible home. This position is not dissimilar to that seen nationally in the English Homes Survey. The study examined the need for adaptations in 2014/15 and noted that 9% of all households in England had one or more people with a long-term limiting illness or disability that required adaptations to their home. The survey also found that in 2014-15, 81% of households that required adaptations in their home, due to their long-term limiting disability, felt their current home was suitable for their needs and that only 10% of those households whose home required an adaptation were trying to move somewhere more suitable.
31. Therefore, whilst we recognise that with an ageing population there will be more people with mobility problems in future it does not necessarily lead to them needing a new home built to the M4(2) standard nor provide sufficient justification to require all new homes to be built to that standard. Indeed, for many older people a home built to current mandatory standard, which is significantly better than homes built prior to this standard, will be sufficient to meet their needs throughout their lifetime.

#### Recommendation

32. That the proportion of new homes required to be built to part M4(2) be reduced.

### **H8 – Self-Build and Custom Housebuilding**

#### Part of the policy is unsound as it is not effective.

33. The final paragraph of this policy states that following a six-month marketing period unsold plots it is advised that these then offered to the Council to increase the chance of plots being developed. It is not clear why these should be offered to the Council and why that would increase the chance of the plot being developed as a self-build home. If a plot remains unsold following the marketing period rather than extend the period that this plot remains vacant a more effective policy would be for this plot to be developed and come forward to the market as soon as possible.

#### Recommendation

34. The final paragraph of policy H8 should be amended as follows:

*If a plot/s has been marketed for six months, and a buyer has not been found, ~~it is advisory that the plots are then offered to the Council to increase the chance of plots being developed.~~ If a buyer is not found, then the owner of the plot can build for sale on the open market.*

## **Conclusion**

35. At present we do not consider the plan to be sound, as measured against the tests of soundness set out in paragraph 35 of the NPPF, in the following key areas:

- Insufficient housing supply to ensure the necessary flexibility and improvements in the delivery of affordable housing;
- Requirement for all homes to be built to the higher option technical standard on accessibility have not been sufficiently justified;
- Sustainable design standards are not consistent with national policy.

36. As such I can confirm that I wish to participate in the relevant hearing sessions in order to full represent our concerns which reflect the views of discussions with our membership who account of 80% of the market housing built in England and Wales.

Yours faithfully



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