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SENT BY EMAIL
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9th March 2026

Dear Planning Policy Team,

Derby (Reg 18) Consultation Jan – March 2026

1. Thank you for consulting with the Home Builders Federation (HBF) on the Derby Local Plan (Reg 18) Consultation.
2. 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.
3. HBF welcomes the Council's efforts to ensure that they have an up-to-date Local Plan. Plan-making is a fundamental part of a Local Authority's role and is essential to support the delivery new homes and jobs. Government policy has clearly set out the for a significant increase in house building in order to deliver the 1.5 million new homes in this Parliament and has also clearly set out its commitment to a plan-led system.
4. It is noted that Draft Local Plan was written before the recent publication of the proposed National Planning Policy Framework (NPPF) reforms, which were published on the 16 December 2025. We recognise that the Council will have to consider how to adapt the plan in light of the proposed changes will be made in the coming months. We have provided some response and suggestions about this issue.
5. The fact that the new standard method results in higher housing requirements in many areas is an important part of that increased delivery and planning for these new homes. It is important that all efforts are made to maximise housing delivery within the Derby City area and that a full range of housing sites are allocated that will deliver the full range of housing needed to meet Derby's housing needs in full.

Impacts of removal of the legal requirement of Duty to Cooperate

6. As you will be aware the Government is not saving the Duty to Cooperate (DTC) requirement as a legal test for new Local Plans. However, there is clearly still an expectation that Councils will work together on effective plan-making and there remains a clear expectation that the housing needs of an area will still be met in full. Although compliance with DTC is no longer a legal compliance it is still part of the tests of soundness for the Plan.

Impacts of the Dec 2025 NPPF consultation

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7. As you are aware the Government published its long-awaited proposed revisions to the NPPF for consultation on 16th Dec 2025. Whilst this is clearly still consultation it clearly sets out the expectations and direction of travel of the Government. The new NPPF clearly shows the importance that is being placed on addressing the housing crisis and the clear move towards a more rules-based planning system that provides more certainty for everyone. It is very clear that the Government is expecting Local Plan to do more to help to address the housing crisis and there is a clear expectation that all Councils should be planning to meet their housing needs in full.
8. Although in the medium term it is anticipated that sub-regional housing numbers and issues of redistribution of any unmet housing needs where they occur will be addressed through SDSs. However, in the interim it is still essential that work with neighbouring authorities to address unmet needs continues. The recognition of the role of neighbouring authorities in helping to meet Derby's need is welcomed.
9. HBF recognise the tightly-bounded nature of the City and longstanding challenges and constraints this has posed to meeting its housing needs in full. The Council will need to provide clear and robust evidence of why this is not possible and demonstrate that everything possible has been done to maximise housing delivery within the area. The Local Plan and its evidence base will also need to clearly show the level of unmet need that remains and how this is being addressed through partnership working with neighbouring authorities.
10. HBF also notes the Government's intention to move towards a new more rules-based approach with consistency across standard common matters being provided at the national level. The Dec 2025 NPPF consultation sets out that Local Plans should not include policies on matters already addressed through Building Regulations and other regulatory regimes except when it comes to parking standards and the percentage of homes locally required to meet the accessibility standards M4(3)a and M4(3)b. HBF would therefore strongly encourage the Council to fully consider the scope and content of this Plan. The proposals clearly set out that the Government view is that Local Policies which conflict with the new NPPF will not be able to be taken into account in decision-making. Committing to the development of a suite of Development Management policies that will be replaced and made redundant by the new NPPF may not be the best way to proceed, especially in a time of scarce resources.

Need for Clarity on Strategic Policies

11. We note that Table Two sets out a list of which policies are strategic and which are not. However, these should be easily identifiable to plan-users using the Plan, and for those submitting, considering and responding to planning applications. There should be no need to refer to an appendix to the Local Plan to establish this. There are several ways this could be expressed for example through design, such as distinguishing and differentiating the text, font and or numbering and/or it could also be address through a pre-fix, for example an S could be added before each of the strategic policies so they are easily identifiable.

Chapter 3 Vision and Strategic Priorities

Vision and Objectives

12. HBF would request that the vision for Derby included meeting the full range of housing needs, including market, retirement housing, family homes etc. not just affordable housing.

13. In light of the current new NPPF consultation proposals, this section may need revisiting to reflect the refocusing of Local Plan on site allocations and matters of local interest, and not reframing or adding to matters already adequately addressed in national policy. HBF would support the aim of ensuring housing needs are met in full as both an objective and a priority for this Plan.

Derby City Vision

14. HBF agree that the Plan needs to deliver sufficient housing to meet the needs of a growing population and ensure that Derby is a destination of choice to live and work. We support the ambitions for a high-quality selection of different types, sizes and tenures of homes, both for market sale and affordable housing to be developed within Derby. This will range a range and choice of sites to be allocated.

Our Specific Vision for the City Centre

15. We support the aspiration for the City Centre to become a place where people will work, play and live, but highlight that there may also be challenges around viability and deliverability that this may bring, especially in relation to brownfield sites.

Our vision for the parts of the city outside the City Centre

16. HBF note that Council's recognition of the need to provide for a range of housing across the City and the recognition of the need to revisit the boundaries of Green Wedges and Green Gaps to enable a range of housing sites to be allocated within the Derby Plan.

Plan Objectives

17. HBF considers that it is appropriate for the Council to identify housing, and the maintenance of the five-year supply as an objective for the Plan.

Chapter 4: Overarching Spatial Strategy

Housing Market Area Context

18. HBF welcome the recognition of the spatial reality that the Derby HMA extends beyond the City boundary into the local authorities of Amber Valley and South Derbyshire. We welcome the recognition of the need for joint working on issues of meeting housing needs.
19. We note again that although the Duty to Cooperate is not being saved as a test for legal compliance, the need for ongoing and collaborative working on key strategic matters affecting the Derby, which clearly includes the cross boundary issue of planning for housing.
20. This section may need revisiting to reflect the emerging role of SDSs as a method to address issues of planning for unmet housing needs across LPA boundaries. Although the SDS may help to address this issue in the medium and longer term there is a clear expectation for LPAs to continue work on ensuring they have up to date Local Plans, without waiting for SDSs to be prepared. HBF therefore welcome the Councils commitment to plan-making and agree that ongoing collaboration

with neighbouring authorities will be an important part of preparing the Local Plan for Derby, and the spatial strategy for the City and the wider Derby HMA.

The City's Spatial Strategy

21. HBF agree that Derby City will need to accommodate its growth requirement by allocating development sites in sustainable locations within the city and through developing a strategy which responds positively to planning applications for sustainable development. We agree that this will require a range of types, tenures and sizes of new homes required including those for sale and rent and those provided to meet affordable and specialist needs. We would however caution that a brownfield first policy approach must not become a brownfield only as in order to deliver a range of sites to provide for a range of housing types both brownfield and greenfield allocations will be needed. This should include a consideration as to whether or Green Wedge, Green Gap and Green Belt release is appropriate or not. A full Green Belt review should therefore form part of the evidence base for this Plan, and it is important that there is a robust and comprehensive evidence to support and explain the spatial strategy and other policy choices made within the Plan.

Chapter 5: General Development Principles

Overarching comments

22. Although HBF recognise the challenges of meeting housing needs in full within the Derby City Council it will be important for the Council to clearly set out how it has maximised the housing that can be delivered within the Plan area. We would caution against any Plan that starts with a pre-determined housing figure before the evidence base has been updated, a Call for Sites and been undertaken, and the Council has fully explored if there are other policy changes, and indeed funding, which could increase the amount of housing that could be delivered within the City.
23. It is important for the standard method to be viewed as the starting point for consideration of the housing requirements for Derby, and, as set out in national policy, it is seen as a minimum requirement. HBF would support more housing than the standard method housing requirement in order to support economic growth, provide a range and type of sites and to support small and medium house builders. There is a need to provide a range and choice of sites, a need for flexibility and viability considerations to be taken into account and a need for the Council to consider whether higher levels of open-market housing are required in order to secure the delivery of affordable housing and/or support economic growth.
24. Only once the correct housing requirement has been established should consideration be given to how much of this accommodation can be accommodated within the City and how much may need to be provided elsewhere within the HMA area. This is a key requirement of current (and future) national planning policy.
25. The Sustainability Appraisal will also have an important role to play in considering different levels of housing and employment growth can be accommodated within Derby. The Council will need to test reasonable options through the SA, as they are required to do.
26. It will also be important for the whole plan viability assessment to fully consider the range of policy requirements, Section 106 asks and CIL payments will have on the

Policy GD1: Placemaking Principles

27. This policy appears to apply to all applications. It is unclear how a developer would show compliance with all of the requirements in this policy, for example how could an application for a small housing scheme demonstrate a range of uses to encourage social inclusion. We also have some concerns about 80dph density requirements for the City Centre, the types of built form this would result in and whether this is appropriate in all cases. Some flexibility may be needed.
28. It is also not appropriate to refer to other documents, such as the draft City Centre Design Guide, as this is seeking to give Local Plan status to these documents which is not appropriate. Any reference to such documents should only be in the supporting text. The content of such documents can also change over time, especially when they are currently in draft form.
29. As we have said elsewhere it is not appropriate for a Local Plan policy to include reference to SPD within the policy. We also note that current SPDs provide further guidance on current policies in the current Local Plan, they do not relate to this Plan and there is now no mechanism for them to be updated and reviewed post-adoption of this new Plan especially as no new SPDs can be adopted post June 2026.
30. We also note that developers of City Centre are also encouraged to use the Council's 3D model, but we question whether this should actually be a policy requirement, rather than a reference in supporting text.
31. It would be more usual for the first strategic policy in the plan to set out that sustainable development will be permitted in accordance with the policies in the Plan. We suggest that the Council may find this way of phrasing this policy helpful. We would also suggest that reference to the importance of pre-applications discussions would be helpful.

General Comments on the remaining policies in this Chapter

32. We note that the wording of these policies are expressed in way that seem to relate to what the Council will do, rather than what a developer should do, to bring forward an acceptable scheme. We would suggest reframing these policy wordings to say 'planning applications will be granted where...' would be helpful.

Policy GD9: Infrastructure and Developer Contributions

33. This policy talks about the council requiring a claw-back mechanism where a developer can provide robust evidence to demonstrate that it is not viable to deliver the policy requirement. It does not actually say that a lower policy requirement or section 106 agreement will be agreed (as CIL is non-negotiable) where this may assist the viability of a scheme. Usually, such policies refer to the testing of viability appraisals by an independent person for which the developer picks up the costs. Is the Council proposing to do something different here?

Chapter 6 Housing

Overarching comments

34. Again, this section of the policy may need significant revisions and refocusing once the Government's response to the current (Dec 2025) NPPF consultation is known. The NPPF is suggesting a significant change to the content and scope of Local Plans, which is likely to have significant impacts on this chapter of the Plan.

Policy H1: Housing Delivery

35. HBF note that Policy H1 sets out a Plan period of 2023 to 2043. It will be important that this is kept under review as the plan progresses to ensure that there is a 15-year time horizon on adoption on the Plan as required by the PPG.
36. The policy states that Derby's housing needs will be met through the delivery of high-quality new homes in sustainable locations within the city, and within sustainable urban extensions to the city in South Derbyshire and Amber Valley and that new housing will be provided to meet a range of housing needs including market and affordable homes, across a range of sizes and which are capable of meeting a range of specialist needs. HBF supports this ambition and the recognition of the role of neighbouring authorities.
37. HBF note that the Council intends to facilitate the delivery of a minimum of 12,500 new, high quality mixed tenure homes within the city between 2023 and 2043. This should be through allocations which provide the necessary certainty for house-builders to bring forward schemes.
38. We welcome the commitment to work with neighbouring local authorities to co-ordinate and plan urban extensions to the city to ensure comprehensive development, connectivity and integration with established areas and communities and ensure that infrastructure needs are met. We would suggest that as this forms such a key part of the proposed way of delivery Derby's housing needs then monitoring of the delivery of these homes should be included within the Monitoring Framework for this. This is important because any under delivery of housing within the Derby city boundary would be likely to engender a different response to address it than the failure of neighbouring authorities to meet need. We also suggest that the Councils need to work together to carefully consider the size type and mix of housing that should be provided in the neighbouring areas and ensure an agreed position on how the nomination rights for any affordable housing delivered in these neighbouring areas as soon as possible, so this does not hold up delivery.

Policy H2: Residential Development – General Criteria

39. HBF do not support a policy requirement for all development to comply Nationally Described Technical Space Standards, as there may be occasions where this is not possible, such as conversions.
40. We are also concerned with a policy requirement that seeks to require all new build dwellings should be constructed to comply with Part M4(2) Adaptable dwellings of the Building Regulations. The NPPF sets out circumstances where this may not be achievable, the failure to recognize this within the policy would not comply with national policy. The policy should recognise that there may need to be some flexibility.
41. The policy also states that on sites of over 25 dwellings, 5% of all newly erected market homes should be constructed to Building Regulations Part M4(3)a 'Wheelchair adaptable' dwellings and 10% of all newly erected affordable homes should be constructed to Building Regulations Part M4(3)b 'Wheelchair Accessible' dwellings. There should be clear evidence and justification to support how the Council reached this approach. We would suggest requiring 100% of affordable homes to be M(4)3b is not justified, as not all affordable housing residents require this, and note that this would have significant implications on the viability of affordable housing as the costs of complying with M(4)3b is ten times more extensive than delivering M(4)3a.

42. HBF would question the density requirements being sought, we that the mandatory requirement for BNG is impacting on density on some sites, and we would encourage the Council to undertake more work on this issue to ensure the densities being sought are both viable and deliverable.
43. It is also unhelpful for policies to repeat themselves, if a policy requirement is set in a strategic policy applying to all development, it does not then need repeating in other policies. Repetition and cross-references run the risk of undermining the fact that the Plan should be read as a whole.

Policy H4: Affordable Housing

44. Although HBF welcome the flexibility the Council is seeking to utilize in order to ensure that Derby's affordable housing needs as are achievable without unduly constraining general housing delivery, there is a need for policy to set out clear expectations of development. National Policy requires that the affordable housing target should be a figure and not a range. Any policy can not therefore seek "up to a figure". It should specify a clear figure and this should be clearly evidenced as viable (in most cases).
45. It will be important for the Plan to be supported by robust evidence including a whole plan viability assessment. HBF find that these studies are most helpful when they are an iterative document used to test different combinations of policy options and different levels of affordable housing. Whole plan viability testing should form part of the evidence base as the Plan progresses and not simply published to support the Examination after the Reg 19 consultation has concluded.
46. It is costly and time consuming to undertake site-by-site viability appraisals, and this is something strongly discouraged in national policy. This is, however, grounded in the expectation that the whole plan viability has demonstrated the viability of Plan. It is therefore essential that the Derby Plan sets out a clear target for affordable housing on brownfield and greenfield supported by a robust whole plan viability appraisal.
47. This policy only mentions that affordable housing may be reduced, whereas GD9 suggests greater flexibility on 106 and others. It is important that the policies in the Plan work together in a cohesive way and do not conflict with it other or cause confusion.
48. HBF would question is the requirement for 80% of on-site affordable housing to be made available for social rent is appropriate and justified in all cases. The locations of the site and more localised need may suggest a different approach is best.
49. HBF remain concerned that policy does not specifically refer to a site-specific viability appraisal providing justification for a lower, or zero affordable housing contributions, even though this option is allowed for in national policy. Instead, reference is made to other factors which may also impact the Council's aspirations for a site. As with much of the Plan the wording of the policies do not seem to be set up to help developers design acceptable schemes but rather sets out what the Council is thinking. This is not the same thing.
50. Words like 'generally' are not helpful in policy as they do not provide certainty on what is expected. Similarly, the policy requires exceptional circumstances to depart from the affordable housing requirement but then states sites below 25 provide such exceptional circumstances. The term exceptional is therefore unclear. If what the council means is small sites should provide off-site contribution in lieu this is what is should say. That is a policy choice, not an exceptional circumstance. In a similar vein the site specific challenges of a site that mean it departs from a typology tested in the

whole plan viability need not be exceptional. They could include a different kind of housing being proposed, a high baseline for BNG due to open mosaic habitat on a brownfield site, or even things like the higher design costs required because of other policies in this Plan, none of these are 'exceptional'.

51. It is also not appropriate to defer the setting of off-site contributions to another document. These should be set out in the Plan, or at the very least an indicative figure which may then be index-linked.
52. As we have previously highlighted it is not appropriate to reference the Council's Planning Obligations Supplementary Planning Document within the Local Plan as this would seek to give it local plan status. Current SPD stem from adopted Local Plan policy and would therefore need to be reviewed once this Plan is adopted, and there is not a mechanism to do this as new SPD cannot be adopted after June 2026.
53. Where a developer can provide robust evidence that it is not viable to provide the maximum policy requirement, the Council will be prepared to negotiate lower percentages of affordable housing provision.
54. We note that the supporting text to this policy references an existing Whole Plan viability, however no date for this study is provided, and in any respect a new one will be needed to support this new Plan. The typologies used in the new whole plan viability will need to reflect the full costs and values challenges facing developers at this time, including for example the Building Safety Levy, the costs of complying with updates to Building Regulations and the emerging Future Homes Standard, and reflect the wider economic challenges facing the whole sector at this time.

Policy H6: Accommodation for Older People and People with Disabilities

55. HBF welcomes the Council's supportive approach to applications which can provide a diverse range of housing accommodation to meet the needs of all members of society including those who are old, frail, mobility impaired or have disabilities. However, this must be grounded in the realities of the viability and deliverability of such schemes. We also suggest that the plan could be doing more on this issues, and would encourage the Council to undertake direct engagement with older persons housing providers to better understand the challenges they face.
56. We have already provided comments about H2 and H3 have already been provided in response to Policy H2: Residential Development – General Criteria. These comments are not repeated here, but this again highlights our concerns about repetition and confusion within the Plan.

Policy H9: Self-Build, Custom Build and Community Build Homes

57. HBF welcome and support the Council's approach to self-build. HBF are concerned about the robustness of self-build registers as evidence of need. We also agree that leaving sites under-utilised and potentially vacant while awaiting a self-build opportunity would reduce the City's supply of deliverable sites. We would also suggest that if any self-build schemes are permitted the planning applications should include clauses that enable self-build plots to revert back to market housing if they remain unsold after a certain period of time, which we suggest should be 6 months maximum, without needing to apply for a variation to the planning permission.

Policies HA10-17 (Site Allocations)

58. HBF does not comment on individual sites but we would expect the Plan set out a logical site selection process which maximises housing delivery, meets housing needs and addresses all areas of the housing market, with a range of sites proposed for allocation. The Plan will also need to provide for a wide range of deliverable and developable sites across the area in order to provide competition and choice to ensure that housing needs are met in full.

Chapter 7 Economy

59. HBF note that economic growth can be a reason to justify the delivery of a higher number of homes than the standard method through a higher housing requirement. HBF would encourage the Council to consider if the aspirations for growth justify planning for more homes.

Chapter 8 Environment

Overarching comments

60. As we highlighted we would encourage the Council to consider whether these policies are required in light of the new approach in the Dec 2025 NPPF consultation. We note that the consultation is proposing changes to planning to both the Policy Making and Development Management approaches, which are likely to impact the form, scope and content of this Plan.
61. We also note that the DEFRA response to the BNG consultation is currently awaited. It is anticipated that this will exempt sites of under 0.2 Ha from BNG with a further consultation on brownfield land up to 2.5 Ha expected shortly. We suggest that this means that the Plan will need to say more about BNG and the role of LNRS in the future. It also should be reviewed to ensure it does not go into other matters that are already addressed though different regulatory regimes.
62. We also note that the policy will need to reflect the new SUDs guidance and highlight the need to avoid conflict within and between the environmental policies in this chapter and other parts of the Plan.

Policy EN1: Green & Blue Infrastructure

63. HBF are unclear of the evidence that supports the need for an Urban Greening Factor within this Local Plan and how this relates to on-site, and indeed off-site BNG. We would suggest the link between the LNRS and the policy map needs to be clearer and the Council should consider how the LNRS informs the spatial strategy and site allocations.

64. Policy EN5: Green Belt, Policy EN6: Green Wedges and Policy EN7: Green Gaps

65. These policies needs to be considered following the findings of a new full green belt review, and the review of green wedges and green gaps, and link better with the LNRS and BNG. The Council also should consider the implications of Grey Belt land in its area.

Policy EN8: Biodiversity and Geodiversity

66. Care must be taken to avoid confusion between policies around Biodiversity with relates to species and has its hierarchy of avoid, mitigate, compensate and policy of Biodiversity Net Gain which is about habitat and has a BNG hierarchy requiring on-site, then off-site then statutory credits.

Policy EN9: Trees and Hedgerows

67. The plan needs to be clearer on how this policy relates to BNG for linear features.

EN10: Biodiversity Net Gain

68. HBF was involved in a significant amount of work, being led by the Future Homes Hub, on BNG preparedness for some time, including feeding into the BNG Planning Practice Guidance and the DEFRA BNG Guidance, and continue to be involved in this work through sitting on the FHH BNG Implementation Board. This group seeks to ensure that BNG can deliver the win for nature and the win for housing as intended, by identifying challenges in the implementation of this policy and trying to find solution to them. HBF recognises the role that development can play in helping to support nature recovery. However, it is also important BNG delivers the win-win intended and does not become a barrier to housing delivery.
69. Experience has found that delivering the 10% BNG requirements can be very challenging in some cases, particularly on brownfield site where open mosaic habitat is present, and on some of the smallest sites where on-site BNG provision requires a disproportionate amount of the developable area to be used for BNG. As 10% BNG is mandatory, where viability challenges are encountered then it is usually affordable housing that it reduced to accommodate this.
70. The Government (via DEFRA) recently undertook a consultation on potential revisions to the national BNG requirement and is now intending that sites under 0.2 Ha are exempt from BNG. Further work on other possible improvements to the working of the policy in practice are ongoing and it will be important that the Plan's policy on this issue is kept under review.
71. The current NPPF (Dec 2025) consultation indicates that the only time where it may be appropriate to seek more than 10% BNG through local policy relates to allocations, and even then only where this is clearly evidenced and justified. BNG implementation is an area of work being led by DEFRA and is required under the Environment Act. As such changes to how BNG is operationalised will need to be fully considered in the Local Plan. and reflected in any Local Plan, whichever version of the NPPF (2023, 20204, or 2025) it is being progressed under.
72. In order for Derby his Plan to be sound it must comply with the Environment Act and DEFRA Guidance. This is separate from and in addition to MHCLG advice and the NPPF. Care is therefore needed to ensure that any policy on Biodiversity Net Gain policy complies with the latest policy and guidance on adoption, and it is noted that some of this DEFRA guidance and legislation is currently under review. In Feb 2025 the Government also published additional Guidance on how Local Nature Recovery Strategies should be integrated with/feed into Local Plan Making. It will be important for this Plan to fully reflect any new guidance.
73. It should also be noted that the PPG is clear that there is no need for individual Local Plans to repeat national BNG guidance, and that additional advice on phased development has been provided in the BNG PPG For large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase.

74. HBF also notes that there seems to be significant potential for confusion around environmental hierarchy, and suggest particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. There is need for the policy wording and/or supporting text to be clearer about the differentiation between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and only then compensate it in relation to protected habitats) and the BNG hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. HBF therefore suggest that the Derby Plan should do all it can to explain how the two hierarchies work in different ways and that they seek to achieve different aims. We would suggest the use of the term “BNG spatial hierarchy” may help with this issue.

Chapter 9 Climate Change

Policy CL1: Flood Risk and Water Management

75. This policy seeks to require applicants to demonstrate that there is adequate wastewater infrastructure and water supply capacity to serve the development on a case-by-case basis. This is not proportionate or reasonable. HBF consider that the capacity of the sewage network is not a land use planning matter for consideration on an application-by-application basis as Water companies are subject to statutory duties under S37 and 94 of the Water Industry Act 1991 (WIA 1991). Section 37 of the Act, set out below, imposes a statutory duty on all water companies to provide and maintain adequate infrastructure and potable water supplies.

“S37 General duty to maintain water supply system etc. (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made— (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and (b) for maintaining, improving, and extending the water undertaker’s water mains and other pipes, as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part. (2) The duty of a water undertaker under this section shall be enforceable under section 18 above— (a) by the Secretary of State; or (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

76. Section 106 of the WIA 1991 confers a power to connect to a public sewer. Section 106(1) states that the owner of any premises or the owner of any private sewer which drains premises, shall be entitled to have its drains or sewer communicate with the public sewer of any sewerage undertaker and therefore discharge foul water and surface water from those premises or that private sewer.
77. Specifically, in relation to wastewater, the Supreme Court considered this matter in 2009 – see *Baratt versus Welsh Water* [2009] UKSC 13. Paragraph 23 of the decision is salient. Given its importance in the context of wastewater it is recited in full below:

“The right to connect to a public sewer afforded by section 106 of the 1991 Act and its predecessors has been described as an “absolute right”. The sewerage undertaker cannot refuse to permit the connection on the ground that the additional discharge into the system

*will overload it. The burden of dealing with the consequences of this additional discharge falls directly upon the undertaker and the consequent expense is shared by all who pay sewerage charges to the undertaker. Thus, in *Ainley v Kirkheaton Local Board (1891) 60 LJ (Ch) 734 Stirling J held that the exercise of the right of an owner of property to discharge into a public sewer conferred by section 21 of the 1875 Act could not be prevented by the local authority on the ground that the discharge was creating a nuisance. It was for the local authority to ensure that what was discharged into their sewer was freed from all foul matter before it flowed out into any natural watercourse.**

78. Consequently, it is inappropriate to include a policy in the local plan requiring a housebuilder, or other applicants for development, to assess the capacity or otherwise of the water company to provide water supply and wastewater connections as they are an attempt to get applicants to do things for which they are not legally responsible. Rather it is the responsibility of water companies, working with local authorities and the Environment Agency, to plan for the future demand for water services relating to the development requirements proposed in local plans, not applicants. If the water company is unable to supply those needs, this needs to be disclosed in the Water Resource Management Plan (WRMP). HBF recognises that this could represent a significant barrier to the delivery of the local plan, but it should not be addressed through capacity assessments of new development but through plan making. If the Council cannot demonstrate that the housing being planned for can connect to the water and sewage infrastructure that it needs, then the Plan is undeliverable and therefore unsound.

Policy CL2: Our City Our River

79. This policy needs to be clearer on how it relates to the water units requirement of BNG.

Policy CL3: Sustainable Design & Construction

80. Again, HBF note it is not appropriate to seek to give SPD Local Plan policy status.
81. The policy also seeks to require development to ensure an estimated water consumption of no more than 110 litres/person/day. HBF do not believe such a policy is needed in the Local Plan because current Part G Building Regulations require 125 litres per day, and house builders are frequently delivering 115-110 litres per day which means the house building industry is already improving upon the regulations. There is no need for Local Plan policies to repeat Building Regulations and it is in fact unhelpful to do so as Building Regulations may change during the course of the plan period. This part of the policy should also be deleted.
82. The proposed wording suggests that the Council is seeking to move away from the carbon reduction methods set out in Part L of the Building Regulations. HBF supports the Council in seeking to minimise carbon emissions and reduce heat and power demand through energy efficient design. However, the HBF does not consider that the Council setting its own standards is the appropriate method to achieve these outcomes.
83. The HBF is concerned that the Council is adding to the complexity of policy, regulations and standards that housebuilders are already expected to comply with. The key to success is standardisation

and avoidance of individual Councils specifying their own policy approach, which undermines economies of scale for product manufacturers, suppliers and developers. The impact of this requirement along with others in this Plan may have considerable viability implication and may lead to the non-delivery homes and needs to be fully considered within the Viability Assessment.

84. HBF would caution against policies that seek to go further and faster than national legislation and policy changes, which would lead to the creation of a patchwork of differing local policies which could inadvertently undermine the delivery of the wider environmental objectives the Council is seeking and create unnecessary delays to much needed new housing.
85. HBF would highlight the report 'Future Homes, One Plan Building a generation of high quality, affordable and sustainable homes and communities, together' https://irp.cdn-web-site.com/bdbb2d99/files/uploaded/Future%20Homes%20One%20Plan_Future%20Homes%20Hub%20Prospectus-%20FINAL%20WEB.pdf. This was published in Nov 2023 and highlights what actions are needed to support the delivery of sustainable homes.
86. In particular HBF, would highlight 'Issue 9. The Partnership Imperative' on page 15 which states in the Local Government section that "Local planning requirements must align with the overall plan for improving performance standards at national level. For example, avoiding divergence of local energy standards that make it harder to accelerate improvement in standards at national level, and avoiding conflict between local planning conditions and new requirements of building regulations."
87. The Government has provided further advice for local authorities through the Written Ministerial Statement which says "the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale." See <https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/HCWS123>
88. Indeed the Dec 2025 NPPF consultation shows the Government clear intention to move towards a more rules based system with DM set out in the NPPF and location variations only allowed in exceptional circumstances. Therefore, to consistent with current and future national policy, HBF request the Council rely on the Building Regulations process as the way to manage improving energy efficiency standards and as such no policy on this issue is needed in the Local Plan.

The need for a Plan Review policy and a Monitoring Framework

89. There is clear need for a Monitoring Framework to be an integral part of the Derby Plan, particularly if this Plan is to deliver its unmet housing need in the HMA but not the City boundary. It is important that the monitoring framework not only shows if there is a problem with housing delivery, but the actions that would result if this were to occur.

Future Engagement

90. I trust that the Council will find these comments useful as it continues to progress its Local Plan. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry.

91. 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,



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