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HBF Home Builders Federation

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Dear Sir/ Madam

GOSPORT LOCAL PLAN

1. Thank you for consulting with the Home Builders Federation (HBF) on the Gosport Local Plan.

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 include 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.

Draft National Planning Policy Framework

3. HBF recognise the draft NPPF will have no weight until it is formally adopted and that there are likely to be changes between the Framework published for consultation and the final version. However, consideration will need to be given as to how the new NPPF, when it is published later this year, impacts on the soundness of policies in the local plan.

4. On the basis of paragraph 4 and 8 in Annex A of the draft NPPF this local plan, which the Council propose to submit under the current plan making process, will be examined under the NPPF24. But it is also notable that in relation to decision making Annex A also states that from the date the new NPPF is published local plan policies that are "*... any way inconsistent with national decision making policies in this Framework should be given very limited weight, except where they have been examined and adopted against this Framework*". Therefore, should this new iteration of the NPPF be adopted unchanged the Council will need to have regard to national policies for decision making given that any inconsistency would effectively render many of the development management policies proposed in this consultation that are not consistent with the new Framework redundant as soon as the local plan is adopted.

5. It is clear from the draft NPPF, and the decision to establish national policies for decision making, that the Government are seeking to limit the number of development management policies in local plans that seek to gold plate policies and go beyond national standards which place significant burdens on applicants as well as their own officers. As such, when the final version of the NPPF is published it is HBF's contention that any policies which are inconsistent with the new framework should be deleted in order to avoid unnecessary and length discussions on an application by application basis as to the weight that should be attached to the policies in the adopted local plan.

Duty to Co-operate.

6. The publication of the Housing and Planning Minister's Written Ministerial Statement on Reforming Local Plan Making published on the 27th of November states that the Government has decided not to save the Duty to Co-operate. The relevant statute has now been laid before parliament and once these regulations come into force local planning authorities will no longer be under a legal duty to co-operate.

7. While the legal duty to co-operate will therefore not apply to this local plan this does not remove the requirement in the NPPF that in order to be considered sound a local plan must be "*based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground*". The only difference arising from the removal of the duty is that a failure to co-operate effectively is a soundness matter.

8. The Council's duty to co-operate statement sets out how the Council has worked with its neighbours through the Partnership for South Hampshire on cross boundary strategic matters such as unmet housing needs. The Council have also had unilateral meetings with neighbouring authorities regarding unmet housing needs. While these have not elicited any support from neighbouring authorities, the duty to co-operate statement does provide evidence of coordinated attempts to consider unmet needs. Our only criticism HBF has of GBC with regard to unmet needs is that they were not sufficiently proactive in the plan making process of neighboring areas to push for their unmet housing needs to be met. For example, we would have expected the Council to have participated in the examination of the Winchester Local Plan to press their case for additional supply. However, on the whole HBF are satisfied that in relation to unmet housing needs the Council has co-operated effectively with its neighbours.

D2: Development Strategy

<u>The policy is unsound as the level of windfall in the housing requirement is unjustified.</u>

9. The Council outline in paragraph 2.38 of the local plan that they cannot meet the assessed needs for housing as calculated using the standard method. Instead, the Council are proposing a capacity constrained housing requirement of 2,500 homes – 4,878 homes short of assessed housing needs. HBF recognises that Gosport is a geographically constrained authority and that there are limited opportunities for increasing housing supply in order to ensure housing needs are met in full. Therefore, HBF would agree in this instance that a capacity constrained housing requirement is justified. The Council have tried to ensure that these needs are met elsewhere but have been unsuccessful in securing any provision from neighbouring authorities. Given that co-operation on strategic matters is an on-going matter HBF would suggest that it is made clear in a policy that the Council commits to actively challenging other local planning authorities to meet some of their unmet housing needs. We would also recommend that the annual rate of delivery of 147 dwellings per annum (dpa) is included in the policy and that both the annual and total requirements are stated as minimums.

10. In total the Council expect 2,592 homes to be delivered over the plan period. HBF has no comments on the proposed site allocations, however, the level of windfall expected to come forward is not justified. In estimating the level of windfall, the Council have used the average delivery since 2001/02. However, what is clear from the Table 8 in the Housing Supply Background Paper is that delivery on windfall in recent years is much lower than has been seen since 2001. In the last 10 years windfall development in Gosport has averaged 15 dpa and over the last five years this has fallen to an average of 9 dpa. Paragraph 75 of the NPPF states that any allowance for windfall must be realistic taking account of historic delivery of future trends. Given the declining rate of windfall delivery in recent years HBF would suggest the trend of windfall delivery in Gosport is not likely to improve to previous levels seen in the first ten years of this century. This is unsurprising, the size of the borough and the fact that it is so constrained will mean that many opportunities for windfall development will already have been delivered leaving less potential in future. HBF would suggest that a windfall of 10 dpa is a more realistic figure based on the evidence. This would see windfall delivery lowered to 150 homes in total with housing supply over the plan period reducing to 2,467.

D8 Healthy Communities

Part 7 of this policy is unsound as it unjustified

11. HBF considers it unjustified to require a Health Impact Assessment (HIA) on all residential development of 50 or more dwellings. While there are health issues to be addressed in Gosport, HBF considers that this is for the plan to address through its policies. Developments that are consistent with the policies in the plan, and in particular those highlighted by the Council in part 2 of this policy, should by dint be supporting the objectives of the plan to encourage a healthy lifestyle. Ergo there is no need for development to undertake a HIA. Therefore, HBF considers part 7 of this policy to be unnecessary and should be deleted and that part 2 of the policy provides sufficient scope for ensuring the health impacts of development are considered and addressed.

D9: Design

Policy is unsound as it not consistent with national policy and not effective.

Part 1a) is unsound as it seeks to require development to accord with guidance that is not part of the local plan. Rather than state proposal should accord with the guidance mentioned we would suggest part a) is amended to:

> "a*) proposals should outline how they have taken account of the principles of the National Design Guide, Manual for Streets, Healthy Streets, the Council's Design SPD and other local design documents including those set out in Box 9*."

12. Part 1b) states that development will be refused not only if it is of poor design but fails to improve the character, quality or function of an area. While HBF understands the council's intention in many cases the function of design is to ensure that the development is in keeping with the character of the area rather than seeking to improve it or change its character and function. The Council could rephrase this policy to state "*development of*

poor design that detracts from the character, quality or function of the area will be refused". This enables poorly designed development to be refused but does not place an unreasonably high bar on development to deliver improvements to an area which may not always be possible.

H2: Affordable Housing

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

13. This policy sets out a variable requirement for affordable housing based on the type of site, the size of sites and its location. This ranges from 20% on all brownfield land and sites in lower values areas up to 40% on greenfield sites of 50 or more homes in higher values areas. HBF welcomes the decision to differentiate between different sites given the varied viability picture across the Borough. What is notable from the evidence is that developing brownfield land in the Gosport is challenging and that the cost of developing such sites is currently higher than the returns that can be achieved. Given the reliance on brownfield sites to deliver new homes, including affordable housing in Gosport, this is a concern. However, rather than seek to remove the requirement for affordable housing on such sites in order t make them more attractive to the development industry the Council are proposing a 20% affordable housing requirement. The justification in paragraph 6.22 is that the Council considers it necessary to include an aspirational policy and allow developers with the opportunity to demonstrate that the policy fundamentally undermines the deliverability of that development. The Council goes on to outline in paragraph 6.25 that a case by case assessment of viability will allow more accurate information on house prices, price paid for land, financing arrangements and market conditions to be taken into account.

14. HBF understands the Council's position. However, as the Council will be aware paragraph 59 of the NPFF and 10-008 of PPG outline that a decision maker can assume that a development which complies with the policies in an up to date local plan is viable. That is not the case in this local plan. The evidence in figure 7.1 of the Viability Assessment shows that brownfield sites cannot support a 20% affordable housing requirement, or indeed any affordable housing provision at all. Similarly, greenfield sites in low value areas and smaller greenfield sites in mid values areas cannot support the 20% affordable housing requirement. To require the developer to negotiate the provision of affordable housing when the Council's own evidence shows it to be unviable cannot be considered sound.

15. However, if a requirement was to be retained and site by site negotiation taken forward as an explicit strategy this must be more clearly articulated in the policy itself. It must be established in H2 that the 20% affordable housing requirement on brownfield land is a starting point for a negotiation and that the Council will work with the developer to identify the appropriate level of affordable housing that could be delivered on site. This will provide a clearer signal to the developer and decision makers as to the Council's position. In part 4 of the policy which considers site specific viability, it should be stated that any independent verification of viability evidence should be at the expense of the Council not the developer given that the this is a negotiation rather than a challenge to the Council's evidence.

H7: Self-build and Custom Housebuilding and Community Led Development

Policy is unsound as it is not justified.

16. This policy requires sites of 100 or more homes to provide 1.75% of homes as self-build plots. Based on the Council expected supply this policy likely to apply to very few sites and those that it does already face challenging viability. As such the requirement placed on sites of 100 homes or more to provide self-build plots is unjustified and should be deleted.

DE1: Sustainable construction

The policy is unsound at is not consistent with national policy.

17. It is not clear what the council means by "*requiring all development to be zero carbon when Government policy allows*". Government policy on zero carbon homes will be established in the Future Homes Standard. This will be introduced in 2028 and require all new homes to be zero carbon ready. If this is what the Council is alluding to there is no need to mention this in the local plan as it is a mandatory standard. The focus on any policy relating to climate change should be on mitigation and adaptation to the effects of climate change rather than on building performance. Such an approach is also endorsed in PM13 of the draft NPPF which states that policies in local plans should not cover matter addressed by building regulations or those relating to construction or internal layouts. HBF would recommend that part 1 of the policy is amended to:

> "*The design, construction and lifecycle of all development must contribute to the preservation of resources and the mitigation of, and adaptation to, climate change.*"

18. In part 2 of the policy encourages the incorporation of Passivhaus principles in relation to insulation, natural sunlight, solar gain colling and natural ventilation. HBF would recommend that the reference to Passivhaus is deleted with the policy instead referring to the need for development to consider the orientation of buildings in order to maximising the benefits of solar gain, cooling and natural ventilation. The principles of solar gain, cooling and natural ventilation are sufficiently well understood without the need to reference Passivhaus. While we recognise the policy only encourages developer to adopt Passivhaus principles the reference to such standard could lead to the expectation by decisions makers that such standards are met. In addition, the supporting text will need to be amended to remove reference to Passivhaus standards.

DE2: Residential Design

Part 1d(ii) of this policy is unsound as it is unjustified.

19. Part 1d(ii) of this policy requires 3% of market homes and 5% of affordable homes on sites of 100 or more to provide wheelchair accessible housing. Alongside consideration as to the need for such homes PPG also requires Councils to consider the overall impact on viability of proving homes to these accessibility standards. As noted earlier the cumulative impact of policies alongside the cost of developing show that a significant number of typologies and allocations are unviable. The Council should therefore not be seeking to require development to meet optional standards such as M4(3) which can add significant extra costs. HBF is also concerned that the

additional cost of building an house to the M4(3) standard in the viability assessment is too low. Table 1 in the Habinteg study referenced by the Council indicates that the total additional cost of delivering an adaptable home is between £15,000 and £17,500 in a house and between £9,000 and £12,000 for an apartment. For an Accessible Homes (Part M4(3)(b)) which can only be required on homes the Council nominate residents (for example affordable housing) the cost for an apartment is similar but for a house is between £28,000 and £30,000. Therefore, HBF do not consider part 1d(ii) the policy to be justified and should be deleted.

20. If the policy is to be retained it will need:
    i. a clause setting out that the policy will only be required where viable and feasible in order rot be consistent with paragraph 56-008 of PPG.
    ii. To set out that any market housing provide to part M4(3) will relate only to the adaptable standard – part M4(3)(a)

LE13: Water Resources

<u>The policy is unsound as it is inconsistent with national policy.</u>

21. Part 2 states that development will be permitted provided that there are the necessary water resources available. HBF's position is that it is the legal responsibility of water companies to ensure a supply of water for new development and that it should not be for house builders and other developers to address the failings of water companies to upgrade infrastructure to increase supply and prevent the huge loss of water from leaks. HBF does not consider it necessary to consider this as part of decision making on each application. The capacity of the water supply infrastructure is not a land use planning matter 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.*"

22. Consequently, it is inappropriate to include a policy in the local plan that requires an assessment as to the water company's ability to provide water supply connections. 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, rather than an issue to be determined on a case by case basis. If the Council cannot show that there is sufficient water supply to meet the level of development set out in the

local plan, then it cannot be considered to be deliverable. HBF therefore consider it necessary for opening sentence to be deleted.

23. Part 3 of the policy states that "*Development proposals will be permitted provided that they facilitate the efficient use of new and existing sewerage*". Clarification as to what this means is then provided in paragraph 10.124 which states that Southern Water will be consulted as to the capacity of the network and if any reinforcements are required. As out lined above in relation to water supply the capacity of the network to meet the demand placed on it by new development should be addressed through plan making as new development has the statutory right, as set out in the S106 of the Water Industry Act 1991 to connect to sewage network. As such it is unnecessary for wider network capacity to be part of the decision making process for an application.

24. The Supreme Court considered this matter in 2009 – see Barratt 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."*

25. Consequently, it is inappropriate to include a policy in the local plan that requires an assessment of overall capacity of waste water infrastructure as part of the decision on a planning application. Following adoption of the local plan it can be assumed there is sufficient capacity. As such 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. If the water company is unable to supply those needs, this needs to be disclosed in the Water Resource Management Plan (WRMP). If there is insufficient capacity to support development, then the only conclusion that can be reached as that the plan is unsound.

Conclusion

26. At present we do not consider the plan to be sound, as measured against the tests of soundness set out in the NPPF. I can therefore confirm that the HBF would like to participate in any hearing sessions held at the examination in public on the matters raised in our representations and that we would like to be kept informed of the submission and examination of the local plan.

Yours sincerely,

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