

Sent by email to: localplan@arun.gov.uk

19/06/2019

Dear Sir/ Madam

Response by the Home Builders Federation to the consultation on the Accommodation for older people and people with disabilities SPD

Thank you for consulting the Home Builders Federation (HBF) on the above supplementary planning document (SPD). 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.

The decision to adopt the optional technical standard for accessible housing (part M4(2) and M4(3)) through supplementary planning guidance is neither consistent or compliant with national policy or legislation. If the Council, following this consultation, decides to adopt and implement this SPD it will be open to legal challenge. In order to avoid this situation, and the unnecessary additional costs to both the Council and our members, we suggest that the SPD is not adopted. If the Council wishes to introduce the optional technical standards it will need to be achieved through a focussed review of the local plan. These matters are explored in more detail below

Policy consistency

When considering the approach to be taken in the adoption of the optional technical standards it is essential to consider that Planning Practice Guidance states in paragraph 56-002-20160519 that:

“Local planning authorities will need to gather evidence to determine whether there is a need for additional standards in their area and justify setting appropriate policies in their Local Plans.” (our emphasis)

Paragraph 56-008-20160519 reinforce this in relation to the accessibility standards which states that local planning authorities should:

“... clearly state in their Local Plan what proportion of new dwellings should comply with the requirements.”



Alongside these statements we would also refer the Council to Glossary of the NPPF which defines SPDs as being “...not part of the development plan”. The Council cannot, therefore, seek to introduce the Optional Technical Standards for accessibility via SPD as this would be explicitly contrary to government guidance on the approach to be taken. It would appear from the consultation document that the Council are suggesting that policies DM1 and DM2 provide the necessary hooks within the local plan to allow for the introduction of these optional standards. However, neither of these policies suggest that the Council intended to introduce these standards through SPD and even if such an approach had been proposed it would have been considered unsound. The only policy compliant and sound approach the Council can take to the adoption of the optional technical standards is through a focussed review of the local plan. Only this approach would provide the necessary opportunity for the evidence to be thoroughly tested and scrutinised by stakeholders and a Planning Inspector.

Legal compliance

The relevant legislation defining Local Plans and SPDs also relevant with regard to adoption of the optional technical standards. The Town and Country Planning Regulations (2012) 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, as stated above, that whilst SPDs are Local Development Documents they are not local plans. It is also important to note that regulation 2 defines the local plan as:

“any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b), and for the purposes of section 17(7)(a) of the Act these documents are prescribed as development plan document”

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;

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.

We would suggest that the application of the optional technical standards fall under regulation 5(1)(a)(iv) and are development management policies which are intended to guide the determination of applications for planning permission and should only be adopted in a local plan following the prescribed process. As such their adoption through SPD without the need for examination in public is wholly inappropriate. This issue was explored in detail in the recent High Court Judgement between William Davis Ltd, Bloor Homes Ltd, Jelson Homes Ltd, Davidson Homes Ltd & Barwood Homes Ltd and Charnwood Borough Council. In this case Justice Gilbart quashed the SPD on the grounds that it contained policies that should have been contained in the local plan because they could be considered to fall under regulation 5(1)(a)(i) and 5(1)(a)(iv).

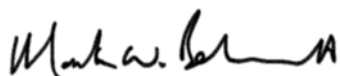
Finally, the Council state in paragraph 3.4 that “*now is considered the right time to set out the Council’s expectations as a starting point for any negotiations*”. We would disagree. The correct point at which this should have been properly considered by the Council was during the examination of the local plan. It is also worth remembering that the Government has placed greater emphasis on the considering viability at the plan making stage (paragraph 34 and 57 of the NPPF and paragraph 10-002 of PPG) and not through site by site negotiations. The Council’s approach is at odds with this approach by not only placing an additional cost on development outside of the plan making process but also by creating the need for site by site negotiation.

Conclusion

Had the Government intended for the optional technical standards to have been adopted through SPD, without the need for public examination, it would have said so. The Council’s decision to adopt the optional technical standards through SPD is contrary to national planning policy and legislation governing the contents of SPDs and Local Plans. We would suggest the Council reconsiders its approach in the light of the evidence presented in this representation and does not adopt this SPD.

We hope these comments are helpful and if you would like to discuss these issues further please contact me.

Yours faithfully



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