

M1. Legal and Procedural Requirements and other General Matters

k) Viability and developer contributions

Were the viability assessments carried out during the preparation of the Plan [H8 to H11] in accordance with relevant national guidance? Are the policy requirements set at a level such that the cumulative cost of all relevant policies will not undermine deliverability of the Plan having regard to the types of sites and developments proposed?

Is policy 26 consistent with national policy and relevant legislation relating to the use of planning conditions and planning obligations?

Members of the HBF have been involved with viability work in Durham over an extensive period. More recently we were made aware that viability dialogue associated with current plan production in the North East (including Durham) was not occurring as it should. Members expressed concern about both approach and lack of feedback. As a result of this the HBF Chair wrote to all NE LPA's proactively seeking to address this (letter dated 17/01/19) explaining the key issues and how collectively / in partnership these could be resolved.

The revised NPPF has changed matters significantly with the role for viability now being primarily at plan making stage. Recognising this shifting emphasis the HBF have sought to be proactive by producing 'The HBF Local Plan Viability Guide' directly aimed at bringing issues together so that differences can be narrowed, stakeholder's positions understood and Statements of Common Ground formed in order to assist, simplify and speed up Plan processes. Key to this was ensuring that all costs were captured in a systematic transparent way whilst balancing competing matters thus reducing the likelihood of application stage viability. This has been produced by the HBF National Planning Committee and this will be the first time it has been used to assist an EIP. This Guide was forwarded to DCC following the HBF letter to aid discussions. For ease of reference it's found at **Annex 1** .

DCC responded positively to the request for better dialogue leading to a well-attended working party meeting attended by senior representatives of all stakeholders. This was hugely helpful in determining the areas of concern. DCC had no adverse comments to make in relation to the actual items / issues identified within the HBF Guidance Note which is clearly evidenced in DCC's minutes of the meeting dated 6th January 2019. Clearly the debate at the meeting fell upon the actual amounts however it's hugely important to note the lack of any disagreement about the issues / items that must be taken into account to determine a robust post revised NPPF Plan wide viability.

The minutes contained clear action points for stakeholders to complete in the hope that this could lead to a joint statement of common ground. Proactively the HBF drafted an initial S of CG (dated 20/05/19) which represented members agreed position on Plan wide viability as we moved towards the EIP.

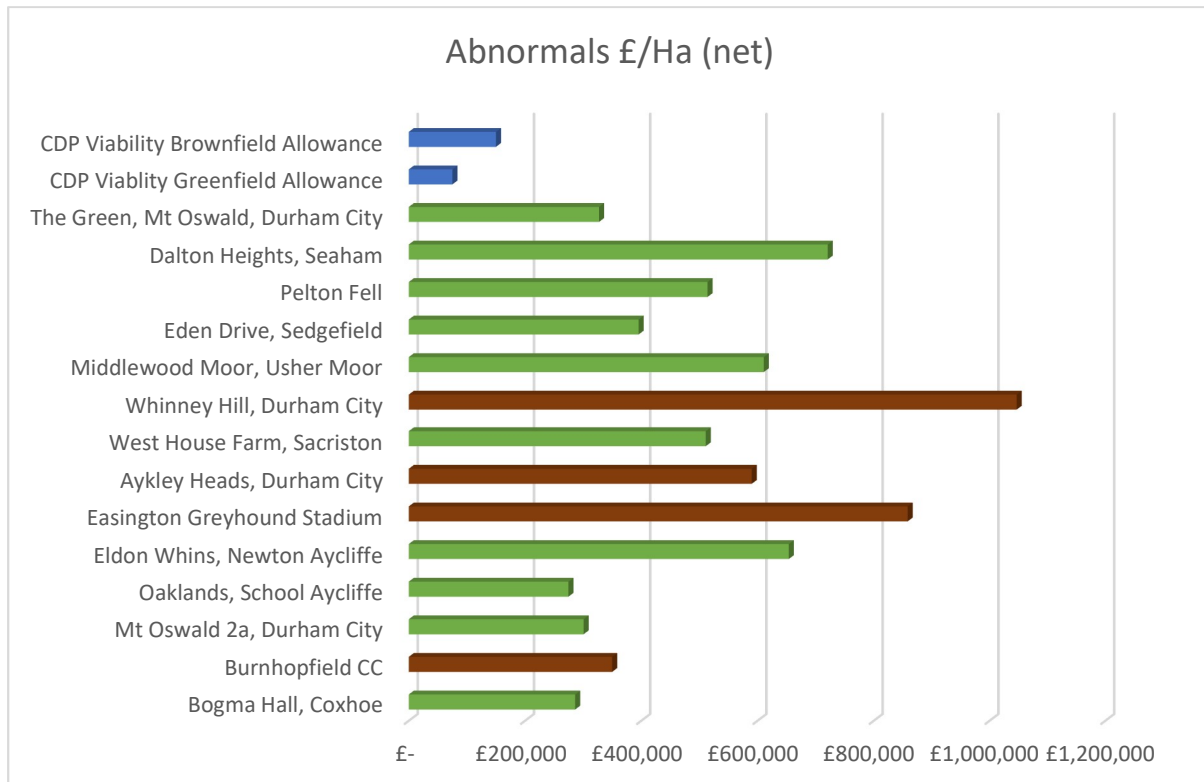
This regrettably did not lead to the progression of a joint statement but did lead to further dialogue via email (between DCC and HBF Chair dated 10.6.19) outlining the position reached which was disagreement on some key matters. Despite this disagreement the Council chose to press ahead and produced DCC's Local Plan Viability Addendum within days of this correspondence. The conclusions reached are surprising and concerning in equal measure and will be discussed in detail below. Taking this into account it's the HBF's view that the Plan and its policies had effectively been 'fixed' and that regardless of the outcome of further viability work and scenario testing there would be no change.

This is a hugely important matter for the NE Region, a Region of generally low land values as a consequence of low revenues, low incomes and poor ground conditions which is facing the same Plan viability issues which will be debated at this EIP. It's crucial for the NE Region that we get this right in a region where Plan viability must drive delivery without dependence on application stage viability assessments.

The HBF have sought to keep this as simple as possible and have sought to agree with the Council as much as possible and indeed have agreed some viability inputs that not all members endorsed in order to assist the EIP and help concentrate minds. In simple terms the Inquiry must grapple with the question of whether the relationship between abnormal costs associated with development occurring now in the County and assumed Benchmark Land Values will incentivise owners to bring forward land for development (and thus facilitate the delivery of the Plan) whilst meeting all cumulative policy requirements. In a nutshell;

- **It's the Councils position that abnormal costs are much lower (we have seen no evidence to prove this) and that they simply come off the BMLV which has been set at a generous level, is able to absorb this cost whilst still retaining sufficient value to incentivise an owner to sell their land for development.**
- **It's the HBF's position that abnormal costs are high (with significant evidence to prove this), that BMLV's in a generally low value area have been set without detailed discussions / endorsement from landowners and / or their agents and that when these costs are deducted, land values will be decimated in all but the very highest value areas.**

This is precisely what the HBF sought to avoid. The HBF strongly advised that DCC should engage proactively with the RICS as both representatives of the landowners in the area and as valuation practitioners whom HBF members work with regularly with regard to abnormal site deductions necessary to purchase land for development across the County. DCC have provided no evidence that we are aware of to substantiate low / zero abnormal costs they claimed at the joint workshop meeting and via email correspondence. Individual HBF members did provide abnormal evidence however this was queried / considered insufficiently detailed by DCC at the workshop meeting. We had hoped that this would be resolved via the S of CG approach however with the clarity of DCC's position provided in the Local Plan Viability Addendum we organised and completed the further detailed information requested which is summarised in the graph below and detailed in **Annex 2**. This is not new information but simply supports the headline figures which DCC have been provided with via formal representations from 2015 onwards.



The approach follows precisely that asked for by DCC at the workshop providing detailed evidence across a multitude of sample sites within Durham to gauge the nature and regularity of abnormal costs. This work has been tabulated in simple form using the HBF Local Plan Viability Guide to ensure consistency and transparency. Some 14 sites have been examined in detail providing measured and evidenced actual costs for all abnormal items. **These clearly demonstrate that the current average abnormal costs are some £459k per net hectare for greenfield sites (10 tested in total) and £711k per net hectare for brownfield sites (4 tested).**

It's now important to focus on the Councils attitude towards abnormal costs for the purpose of ensuring a robust Plan wide viability. Following the workshop meetings with HBF and some RICS members (who act for both public sector and private clients) the Council agreed to consider the impact increased abnormal costs could have on land value / policy position. The Councils approach (Local Plan Viability Addendum) was to scenario test abnormal costs at £300k per net developable ha (uplifted from the current £75k greenfield or £150k brownfield) albeit we are unsure why is figure was chosen.

The Councils conclusions on this exercise are that '**overall only around 15% of the schemes return a viable outcome with abnormals at £300k per net ha**' - (para 3.7.5 LPVA). This is based on a reduced level of Affordable Housing (5%), suggesting that the figure would be even higher should a policy compliant level of Affordable Housing be factored in. In the context of the Plan led approach of revised NPPF this is a fairly remarkable statement and at very least one that warrants a full explanation of why this is not of significant concern to Plan viability. **There are 2 strands to the Councils logic which need to be examined.**

Firstly, paragraphs 2.2.14 to 2.2.20 seeks to use the North Tyneside CIL Inspectors report as the foundations of their logic. HBF members were heavily involved in the detail of viability and Plan formulation in NT which was a pre revised NPPF Plan. The entire Plans soundness was driven by the viability and deliverability of 2 strategic sites which we debated in detail and were the subject of comprehensive site specific viability work. All of this was the subject of an agreed Memorandum of Understanding with the Council establishing all viability inputs that were known at that stage including a reasonable BMLV agreed with all owners including the Council Estates Dept. The Inspector acknowledged this and endorsed the plans Adoption specifically stating that viability would remain a 'live' issue (para 128 Inspectors Report). The CIL examination was principally about transferring S106 planning gain to CIL and avoiding double dipping. It did not in any way seek to 'bottom out' all abnormal costs as all intrusive site investigation and technical investigation was still to get underway with application viability acknowledged in both policy (para 7.85 of NTLP) and previously agreed joint statements. Indeed, this work has continued a pace in conjunction with NTC and Homes England as part of HIF work associated with the site. None of this is mentioned in the Councils work which simply concludes that *'it is clear that when determining benchmark land value for the North Tyneside sites there is an assumption of nil abnormal costs for greenfield land'* para 2.2.17. **Put simply this is fundamentally wrong and a very worrying assumption to base Plan wide viability upon particularly in the NE Region.**

Secondly, paragraphs 3.7.6 to 3.7.11 (even presuming the Councils view that greenfield sites should not have abnormal costs as a deduction from BMLV) then seek to clarify that this does not represent a problem to Plan viability as these further costs can simply be absorbed by a reduction in BMLV. **This is a fundamental concern for the following key reasons;**

- HBF do not agree that by scenario testing abnormal costs at £300k per net ha the Council have utilised a sufficient sum. The further detailed evidence provided as summarized in the graph above and Annex 2 clearly demonstrates this. This further undermines DCC's position.
- The costs agreed with DCC are **current** costs. Build cost inflation is increasing rapidly as evidenced by BCIS Indices (+ 38.4% between 2013 – 2019) well in excess of revenue uplifts over the same period which in the NE is significantly influenced by lower income levels and the second hand market. The Industry must now tackle Zero Carbon by 2025 (where Government accept significant cost increases per unit), the impact of Biodiversity Net Gain + 10% on costs / coverage / agricultural land value, Building Regulations changes as we move towards Zero Carbon such as EV charging to all homes alongside the impacts of Brexit on labour markets, material supplies and consumer confidence. Clearly these matters are emerging and cannot have been factored in yet they provide a very clear direction of travel. Put simply delivering viable schemes will become more challenging as we move forward over the duration of the Plan period such is the importance that must be placed on Plan viability now.
- It's the Council's position that if the abnormal costs are high then the premium uplift should be reduced and borne by the landowner rather than by a loss of planning gain (LPVA para 3.7.7). It's the HBF's position that this incorrectly reflects NPPG in that it

completely ignores the crucial need to actually achieve development. To do so there must be land available and that requires a sufficient incentive to a landowner to sell. This need is fundamental to the effective operation of land market and key to Plan delivery. Taking the above points into account it is important to pause and formulate a clear view on whether DCC or HBF's position is logical, based on the facts and alignment with NPPG.

- The Local Plan Viability Addendum helpfully reminds us of the BMLV assumptions made to underpin the Plan (para 2.2.9). They range from £200k per gross ha in low value areas to £900k per gross ha in the highest value areas. What needs to be done is to relate these gross values to the net values evidenced per hectare and understand the effect that actual abnormal cost deductions would have upon them. From this it should be clear to all whether the resultant BMLV figure would be sufficient incentive for a reasonable owner to bring their land forward for development.
- The differential between what DCC have allowed for in their Plan viability work (£75k per ndha greenfield / £150k per ndha brownfield) and evidenced actual costs per net hectare ranges between £368k and £561k. To see the effect of this we need to convert this net cost into a gross BMLV impact..
- The Local Plan Viability Addendum provides assistance as it clarifies that the average gross to net used in the LP viability is 85%. Applying this to HBF's evidenced costs equates to between £312k and £477k per gross hectare reduction. **In simple terms this decimates land value / puts it 'underwater' in all but the highest value areas and is as such a huge concern to Plan delivery. An issue this significant cannot be left to chance if Plan viability work in a revised NPPF world is to be robust.**
- Taking all of the above into account the HBF would reiterate its concern over the alarming conclusions of the LP Viability Addendum the intention of which is to provide all with confidence that the Plan is underpinned with robust viability work that will lead to delivery.

In the NE Region the problems are magnified as the revenues to simply absorb cost whilst still incentivising owners is simply not there. Other EIP's may have happened further south but few have tackled viability post revised NPPF and none likely to provide important context for Durham or the NE Region. However, if we are to have an effective Plan led system based upon robust viability work each area must be able to fully outline its particular issues. Our members are therefore in the awkward position of needing land to come forward, seeking policy compliance, not wishing to pay any more for land that they need to whilst still encouraging owners to sell land within a competitive market. **If sites are not sold homes will not be built.**

The planning system is rightly a key determinant in land value but it must operate in conjunction with the market which itself needs to react to changing political priorities to maximise value in the public interest. NPPG clearly advises that developers and landowners

need to be heard in the process of Plan viability. Clearly this HBF statement outlines the developers view however one of the suggestions put to DCC was to further engage with owners and agents. We are unaware of whether this has taken place beyond the commentary in the LP Viability Addendum. This simply suggests that Agents turn to previous market transactions which are not comparable when setting BMLV's.

All must remember that at the end of viability work there must be enough left to incentivise an owner to sell. It is worth drawing attention to the various factors that may influence owners to sell which are clearly laid out in the HBF Local Plan Guidance Note which is drawn from the RICS Financial Viability in Planning. Similarly, the Harman Review usefully highlights to all that *'owners are rarely forced or distressed sellers and generally take a much longer term view over the merits or otherwise of disposing of their asset'* – Harman Review Page 30. It is good to note that the Councils evidence base had sought to reflect upon and follow the guidance offered in these reports (see section 5 of LP Viability testing June 2018) yet it would appear ignore them in its final conclusions.

Such is our concern for the NE Region over this issue that the HBF have sought to engage proactively with the RICS organising a joint meeting with all stakeholders including the NE Councils which took place in August 2019. The presentation by the HBF (using the example of Durham) called upon the RICS to provide us all with assistance on the matters outlined in this statement. The HBF are doing all they can to engage proactively in these important issues which we hope will bring more market balance to the debate.

The HBF want the Plan to be found sound but we want to ensure that land will come forward so that we can invest over the plan period without having to worry about an ineffective land market coupled with the need to argue viability cases at application stage site by site which is contrary to NPPF, NPPG and indeed the policies before this EIP. These policies provide little if any room for viability arguments at application stage.

It is therefore with regret that we are of the view that the viability work has not been undertaken in accordance with NPPG and that the resultant cumulative policy burden and consequential BMLV's could well undermine Plan delivery. As such change to the plan will be required if it is to be found sound. Modifications would need to be considered in relation to whether certain policies are required at all, whether some policies should be relaxed / reduced, whether quantum / current spatial distribution of sites will deliver what is required and that viability at application be incorporated should there be any residual Plan stage viability concern (as currently all sites will require them other than in the highest value areas).

With regard to Policy 26 we are satisfied that its principles accord with national policy but would highlight the references to review mechanisms and reserve judgment on this until the Council explain the principles envisaged and how they may or may not further discourage the operation of the local land market.

As indicated above coupled to this is the operation of Policy 15 and its strictly limited ability to challenge viability at application stage by tenure change alone thus reinforcing the crucial need to get viability matters and policy burden correct in the first place via meaningful dialogue and strong evidence.

HBF