

Sent by email to:

14/11/2019

Dear Sir/ Madam

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

Thank you for consulting the Home Builders Federation (HBF) on the draft 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. Outlined below are our comments on the approach taken by the Council to increasing the supply of land for residential development and the policies being proposed with regard to the management of new development in future.

**Strategic Policies**

**STR1 - The Development Strategy**

**The Housing Requirement**

Before considering whether the level of housing being planned for is appropriate, we would recommend that final housing requirement agreed is clearly set out in policy STR1 in order to provide the necessary clarity as to the minimum delivery expectations of this Local Plan. The Council should also include a housing trajectory in the local plan as required by paragraph 73 of the National Planning Policy Framework.

The Council have identified in table 1 of the draft local plan (DLP) that the application of the standard method results in a housing need for Tunbridge Wells of 13,560 homes (678 dpa) for the plan period 2016 to 2036. We would not disagree with this figure but the National Planning Policy Framework (NPPF) is clear that the local housing needs assessment only represents the minimum number of homes that should be delivered but we note that this is a capped figure with the uncapped figure being approximately 100 homes per annum higher. In such a position Planning Practice Guidance (PPG) outlines that:

- An early review and updating of the plan may be required; and



- Consideration is given as to whether a higher level of need can be delivered.

However, even without a cap the Government require Councils to give consideration as to whether more homes are needed to take account of:

- Unmet housing needs within neighbouring areas
- Growth strategies and infrastructure improvements
- Need for affordable housing

Each of these issues and their relevance to Tunbridge Wells District Council (TWDC) are considered below.

### ***Unmet housing needs in neighbouring area***

The Government has established in paragraph 60 of the NPPF that in addition to their own housing needs:

*“...any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for”*

The inclusion of this statement within the NPPF means that the Government are not merely requiring Council to consider whether they should address any unmet needs from neighbouring areas but that they must address these needs where possible and where it would be consistent with other policies in the NPPF. In preparing the local plan it is therefore vital that the Council establishes whether there are any areas that are not meeting housing needs in full. The Council have, to some extent, considered this matter within the Housing Needs Assessment Topic Paper. In this paper the Council acknowledges that there is an under supply within at least one neighbouring authority – Sevenoaks – but that the Council does not consider itself to be in a position to increase its own housing requirement to meet any unmet needs arising in Sevenoaks due to the constraints present across Tunbridge Wells.

We note that the Sustainability Appraisal (SA) does consider a growth option that includes delivering the unmet needs arising in Sevenoaks (option 7). However, paragraph 6.2.2 of the SA seemingly dismisses this option due to the assumption that the additional 1,900 dwellings would be located within the AONB. Given that there are areas of Tunbridge Wells not in the AONB it is unclear how this conclusion can be reached. Whilst we recognise that there are a number of constraints within the Borough the Council must acknowledge that these do not extend across the entirety of the Borough. As such there will potentially be more opportunities for meeting needs should Sevenoaks, or indeed other neighbouring authorities, not be able to meet their own needs.

In addition to those neighbouring authorities where needs will not be met the Council must also consider whether there are any needs in neighbouring “*areas*” that will not be delivered. This is an important distinction set out in paragraph 60 of the NPPF and

requires Councils to consider meeting needs across a much wider area than the Council has considered as part of the preparation of this plan. In particular we would suggest that the Council examines the ability of those London boroughs which form the northern borders of the Council's stated housing market area to meet their housing needs.

As the Council will be aware the inspectors' examining the new London Plan have submitted their final report to the Mayor of London. Whilst the report considers the approach to assessing housing needs used by the Mayor to be sound the panel did not consider there to be sufficient evidence to show that the plan would deliver the level of homes suggested by the Mayor. Rather than a shortfall of some 10,000 homes across the plan period the inspectors stated that a more realistic level of delivery across London would see a shortfall against housing needs of some 140,000 (14,000 dpa) over the next ten years. This is a substantial shortfall and it will be incumbent on authorities in the South East to work with London Borough's increase supply accordingly.

However, the mechanism through which it works with London at present cannot be considered an effective mechanism through which this situation can be addressed. The Panel's report stated that the current mechanisms, as set out in SD2 and SD3 of the Draft London Plan, are ineffective. Indeed, the Panel concluded that in the light of the lack of support being provided by the wider South East for delivery of London's unmet housing needs a strategic review of the Metropolitan Green Belt was called for. However, with limited agreement for such an approach across London and the wider south east it will be essential for the Council to work with those authorities in the South East of London to establish the level of shortfall that will occur over the next ten years and to identify how many additional homes could be delivered in TWDC.

#### *Growth strategies and infrastructure improvements*

Paragraph 2a-010 outlines those situations where a Council may need to deliver more homes than the minimum established through the local housing needs assessment. It will be important for the Council to consider whether the economic aspirations of the Borough, and Kent in general, will place additional pressure on housing needs in the Borough that will require the allocation of further sites within the Local Plan.

#### *Need for affordable housing*

Paragraph 2a-024 of Planning Practice Guidance states that an increase in the total housing figure may be required where it could help deliver the required number of affordable homes. The Council state that on major sites that will come forward through this local plan the Council expect to be able to deliver 239 homes (Table 12 Housing Supply and Trajectory topic paper) – little over 100 homes short of meeting the identified need for 443 affordable homes needed each year. Using the Council's proposed affordable housing policy would need in the region of 1,100 homes to be delivered each year over the plan period for affordable housing needs to be met in full. This is substantially higher than the local housing needs generated using the standard

method, (678/682dpa) and clearly suggests the Council examine whether it can do more to address this shortfall. However, rather than increase the supply of land for housing the Council have instead looked to require small sites of less than 10 units to deliver affordable housing units. Such an approach is not only inconsistent with national policy it will provide an increase of just 13% to the planned supply of affordable housing. We would suggest that a more appropriate, effective and policy compliant approach would be for the Council to identify and allocate additional sites that will deliver both market and affordable housing to meet the needs of the Borough and neighbouring areas. At the very least the Council must test such a scenario through the SA.

#### Distribution of development

In considering the distribution of development across the Borough the HBF recommends that Councils seek to ensure that they supply a wide range of housing allocations across an area. An over reliance on development in a single area or through the development of a new settlement will increase the risk that a plan will not deliver its housing requirement for the plan period. To some extent the potential risk of slow delivery can be addressed by ensuring strategic expansions and new settlements allow for a range of developers providing different products to be actively delivering new homes. However, where this is not possible the Council should provide a more cautious approach to delivery and recognise, as set out in footnote 35 of the NPPF, that homes will be delivered beyond the plan period.

#### **STR2 – Presumption in favour of sustainable development**

When the presumption in favour of sustainable development was first introduced the Planning Inspectorate recommended that a policy reflecting this approach should be included in all local plans. This approach is no longer considered necessary by the Inspectorate. Given this position and the fact that paragraph 16(f) of the NPPF states that policies in local plans should serve a clear purpose and avoid any unnecessary duplication we would suggest this policy is deleted.

#### **STR4 – Green Belt**

As set out above paragraph 16(f) of the NPPF seeks to limit the inclusion of unnecessary policies in Local Plans. Given that this policy states that the Council will consider proposal in the Green Belt against national policy it is not needed.

#### **EN1 – Sustainable design and construction**

The Council's choice of words in parts 1 and 2 of EN2 are confusing. The Council state that they will prioritise development in locations with frequent and easily accessible public transport or in locations that encourage active travel. The Council should not be seeking to "prioritise" certain development on the basis of their location through a development management policy. Any prioritisation should have been undertaken when sites are allocated. There is a risk that such policies begin to create a sequential

test with regard the location of sites and their relative accessibility to services. We would suggest that parts 1 and 2 are deleted and replaced with policies that require development to consider how they encourage active travel and the use of public transport in relation to their location. This would be more consistent with national policy which not only recognises the need to limit travel and offer genuine choice in transport modes but also that solutions will vary between locations.

It is not clear what part 6 is trying to achieve and how an applicant would address this point. It would appear that the Council are seeking some form of flexibility within development to recognise the changing nature of how an occupant may use that building (as long as the use is within the same use class order). This is inappropriate and whilst the Council may encourage more flexible layouts there is no requirement in national policy or guidance to do so. We would therefore recommend that part 6 is deleted.

Part 7 requires development to seek to secure positive behaviour change and sites the provision of water fountains in a move to discourage the purchase of single use plastics. However, we do not consider this policy to be consistent with national policy or that the consequences of this policy have been properly considered. In relation to the example provided we would ask – what type of development would be required to provide water fountains? how many water fountains would be necessary? who would maintain these fountains ensure they work and who would ensure they are clean and not a danger to public health? We appreciate the sentiment but there are wider consequences that do not appear to have been considered by the Council. If the Council consider infrastructure such as water fountains to be necessary it should consider this against the tests set out in paragraph 56 of the NPPF and 122 of the CIL regulations.

### **EN3 – Sustainable design standards**

The Government have been clear that, other than the optional technical standards, local plans should not seek to impose additional standards. We are therefore concerned that the Council is seeking to encourage higher standards than those set out in Building Regulations. We acknowledge that the policy does not require residential development to comply with the HQM4 standard but there is the real potential that schemes could be refused if they choose not to. To ensure the necessary clarity required under paragraph 16(d) of the NPPF we would recommend that those aspects of this policy relating to residential development are deleted.

### **EN4 – Energy reduction in new buildings**

The Written Ministerial Statement (WMS) published in March 2015 stated the Government's intention to introduce improved energy efficiency requirements through Building Regulations. It went on to state that Councils should not seek to apply standards higher than those set out in building regulations other than the published optional technical standards. Some interim flexibility was provided allowing Councils to seek improvements in energy efficiency through local plans that were the equivalent

of level 4 of the Code for Sustainable Homes until new regulations had been introduced.

However, following the publication of the WMS the Government did not take forward the legislation as indicated leaving the interim guidance in place which allows for a maximum improvement of 20% in relation to part L of the building regulations. The situation has now been clarified further within 6-012 of PPG which reiterates the Government's position as set out in the WMS. However, the Council's policy as set out in EN4 would result in some developments having to deliver energy efficiency improvements of greater than 20%. As such we would suggest that part 2 of EN4 is amended to require total reduction of 20% using a combination of fabric first and renewables.

The Council will also need to monitor progress with regard to the Future Homes Standards which will see the improvements being suggested by the Council being brought into building regulations and as such make policies such as EN4 unnecessary.

We would also suggest that paragraphs 3 to 6 are removed from the policy and placed in the supporting text as they are guidance and not required in relation to the determination of a planning application.

#### **EN11 – Net Gains for Nature: Biodiversity**

The Council's proposals with regard to Biodiversity Net Gains will need to have regard to the proposals being considered by Government as set out in the Environment Bill. The Council will need to ensure their policies are consistent with the approach being promoted by Government and that their impact on viability is properly considered by the Council. Further comments on the financial impacts of this policy are provided in response to policy H5.

#### **EN17 – Local Green Space**

Whilst the HBF does not object to the appropriate application of Local Green Space (LGS) we are concerned that the Council's approach to the identification of these areas is not consistent with national policy and could have led to inappropriate designations. When considering the designation of LGS the Council have stated in their evidence the need to consider paragraph 99, 100 and 101 of the NPPF. These paragraphs set out not only the criteria as to what can be considered LGS but also that such sites:

- should be identified by the community as areas of particular importance to them; and
- be consistent with sustainable development and complement investment in sufficient homes, jobs, and other services.

We are concerned that the Council's approach to designating LGS is not consistent with these aspects of national policy. Firstly, it is apparent from the Council's evidence the Council have identified sites for potential designation on the basis of "*in office suggestions*". This would imply that it is not the community that has put these areas

forward but that they have been suggested by officers and as such is inconsistent with paragraph 99 of the NPPF. It is not for Council officers to consider what they think to be areas of important green space but for the community to request their inclusion.

Secondly, there would appear to be no consideration as to whether any of the proposed designations are consistent with the delivery of sufficient homes, jobs and other essential services. Given the need for affordable homes and the unmet need for housing in neighbouring areas the Council should be giving substantial consideration to such matters for each proposed LGS designation and whether they are available for development and could be allocated within the local plan. At present the Council has only considered sites that have a planning permission or are proposed for allocation by the Council with regard to this element of national policy as it relates to LGS.

Finally, we are surprised that the designation appears to have been applied to land that is already designated as Green Belt. Given that the LGS designation provides no additional protection it would seem pointless to designate LGS in Green Belt.

We would therefore recommend that the Council revisits its LGS designations and remove sites that have either not been put forward by the community, which are being proposed for development or where they are located in the Green Belt.

## **EN29 – Sustainable Drainage**

We would expect a development to deliver a net reduction in runoff but it would seem that the Council are expecting, in some cases, significant improvements which may see developments having to reduce run off to rates below those on green fields. This would appear to be inconsistent with current guidance produced by Defra<sup>1</sup> on this matter which suggests that a brownfield development must be as close as practicable to greenfield run off rates. This recognises that in some situations a development will not be able to deliver green field run off rates and that in such a situation it should seek an improvement over the existing run off rates on any previously developed site. Given the Government's focus on delivering more development on brownfield sites we would suggest it is essential that greater flexibility is provided in this policy. We would suggest that the policy is amended to require an applicant to show a net reduction that is as close as practicable to green field run off rates.

## **H4 – Housing Density**

The proposed policy is inconsistent with the wording of national policy which seeks to ensure appropriate densities rather than providing an appropriately high-density development. The final sentence is redundant as it is self-evident that a planning application that does not meet a policy requirement will be refused permission. We would suggest the following amendment:

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<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415773/sustainable-drainage-technical-standards.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415773/sustainable-drainage-technical-standards.pdf)

~~“Development shall be delivered~~ should ensure appropriate densities that make the most effective use of land to an appropriately high density with regard to its context, including landscape, topography, surrounding built form and any other relevant factors

~~Planning application will be refused where development is found not to make efficient use of land”~~

## **H5 – Affordable housing**

### *Viability assessment*

The latest Framework places far more emphasis on the local plan with regard to viability and ensuring that development will be deliverable against the policy requirements being set by the Local Planning Authority. It is therefore essential that the approach taken by Councils is consistent with both policy and guidance and that the Council does not seek to secure contributions at a level that could make development viability marginal and which will, inevitably, lead to site by site negotiations with regard to affordable housing and other contributions. To assist Council's in the consideration of viability issues within their local plans the HBF has worked with its membership on how they consider build costs, fees, profit etc. and have the following recommendations with regard to the approach and the costs it applies:

- *Fees.* We would recommend using the highest figure in the ranges suggested on page 43. It is important that a cautious approach is taken with regard to fees. In particular professional fees on larger and more complex sites can be up to 20% of build costs.
- *Developer profit.* The Council proposes 15% to 20% on GDV for market housing and 6% on affordable. However, PPG advises that profit should be 15% to 20% on total GDV for a development. A 15% margin on market housing and 6% margin on affordable housing will result in a profit margin on development GDV of less than 15%.
- *Abnormals.* Whilst the assessment suggests that any abnormal costs will be removed from the land value there is the risk that if these are significantly higher than the land value will not be sufficient to incentivise the sale of that land. As we set out in our viability guide there are a huge range of abnormal costs to be accounted for and the Council should engage with housebuilders in Tunbridge Wells to consider the amount of abnormal costs, they have faced in bringing sites forward. Evidence submitted by the HBF to the County Durham Local Plan showed that evidence from 14 sites the average level of abnormal costs for a Greenfield site was £495,000 per hectare and £711,000 per hectare for brownfield sites. Whilst we appreciate that these costs will vary between areas it provides an indication that these costs can be substantial and should be considered in more detail.
- *Other policy costs.* The Assessment appears to have considered the impact of its policies for affordable housing and accessibility standards. However, we could not find any consideration of the higher design standards in EN3, higher energy standards in EN4 and the requirement to achieve a net gain in



biodiversity as set out in EN11. In particular achieving biodiversity net gain could have a significant impact on development. The Government's Impact Assessment on its proposals for biodiversity net gain published alongside its response to the consultation<sup>2</sup> indicates that it will cost an average of around £20,000 per hectare to achieve a 10% net gain in biodiversity through a 75:25 split between onsite mitigation and offsite contributions. However, the study also recognises that should higher levels of off-site contribution be required the costs will increase substantially.

### *Small sites contributions*

Paragraph 63 of the 2019 NPPF establishes the approach set out in the 2015 Written Ministerial Statement with regard to contributions for affordable housing not considered to be major residential development. The Council have decided to ignore this policy and will require small sites delivering a net increase of between 4 and 9 units to make a financial contribution toward affordable housing provision.

When considering the appropriateness of including such a policy it is worth reiterating why the Government introduced this particular policy. The Ministerial Statement is clear that the reason for introducing this policy was to “*ease the disproportionate burden of developer contributions on small scale developers*”. This is distinct from whether or not such development is viable in general but whether they are a disproportionate burden on a specific sector that faces differential costs that are not reflected in general viability assessments. These costs have led to a reduction in the number of small and medium (SME) sized house builders. Analysis by the HBF<sup>3</sup> shows that over the last 30 years changes to the planning system and other regulatory requirements, coupled with the lack of attractive terms for project finance, have led to a long-term reduction of total SME house builder numbers by about 70% since 1988. The Government is very anxious to reverse this trend and increase the number of small businesses starting up and sustaining this activity. Improving business conditions for SME home builders is the key to long-term supply responsiveness from this sector.

It is also worth considering the Government's broader aims for the housing market. This is most clearly set out in the Housing White Paper (HWP). Their aims are not just to support existing SME house builders but to grow this sector again which was hit hard by the recession with the number of registered small builders falling from 44,000 in 2007 to 18,000 in 2015<sup>4</sup>. To grow the sector one key element has been to simplify the planning system in order to reduce the burden to new entrants into this market. Therefore, the focus of the Council should be on freeing up this sector of the house building industry rather than seeking to place financial burdens that the Government have said should not be implemented.

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<sup>2</sup> <https://www.gov.uk/government/consultations/biodiversity-net-gain-updating-planning-requirements>

<sup>3</sup> [http://www.hbf.co.uk/?eID=dam\\_frontend\\_push&docID=25453&filename=HBF\\_SME\\_Report\\_2017\\_Web.pdf](http://www.hbf.co.uk/?eID=dam_frontend_push&docID=25453&filename=HBF_SME_Report_2017_Web.pdf)

<sup>4</sup> Fixing our Broken Housing Market, Department for Communities and Local Government, February 2017

In conclusion, the Council's focus on the general viability of affordable housing delivery on small sites is, in part, missing the broad scope of the Government's policy to support the growth of this particular sector and see it thrive once more. As such we do not consider the Council to have justified a departure from national policy with regard to the small site exemption. The policy will continue to be a burden to SME house builders and in particular to new entrants into the market. In addition, the outcomes of the policy are likely to be ineffective in delivering the scale of affordable housing required to meet needs in Tunbridge Wells. We would therefore recommend that the Council must delete part 4 under the overall approach

### **Policy H8 - Vacant Building Credit.**

The dis-application of the Vacant Building Credit (VBC) is unsound because it conflicts with the national policy in paragraph 63 of the NPPF, introduced originally via the Ministerial Written statement of 28 November 2014. The aim of this policy, along with the exemption from S106 obligations for affordable housing on small schemes, is to support small scale developers and the reuse of previously developed land and as such should be supported by the Council in order to maximise the delivery of such sites. This policy should therefore be deleted.

### **H9 – Housing for older people**

Whilst we welcome the recognition of the need to ensure a supply of accommodation for older people, we consider it necessary to identify within the plan sites that will meet the specialist needs of older people. In particular it will be important to identify C3 retirement accommodation to increase the choice for older people that will potentially free up larger family homes within the Borough.

#### *Contributions from older persons housing*

This policy will require affordable housing to be provided on-site and as such provides insufficient flexibility. Such affordable housing provision has proven to be incompatible with managed sheltered housing developments. This matter has been accepted in many areas and tested at length at appeals. RSL's have also been found to be unwilling to take on any such units. The effect of this Policy would stifle delivery of sheltered housing accommodation. Such an approach conflicts with the positive approach towards housing delivery contained within the NPPF and as such is unsound. We would suggest that accommodation for older people not be required to provide onsite provision for affordable housing and instead be required to provide a commuted sum in lieu of provision.

### **H11 – Self-Build and Custom Housebuilding**

Whilst we support the encouragement of self-build housing through the local plan, we do not consider the requirement for sites of over 100 to provide at least 5% service plots for self and custom house building to be justified or consistent with national policy. Whilst we recognise that Local Planning Authorities now have a duty to promote self-

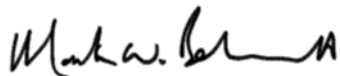
build housing, we do not consider the Council to have looked at sufficient options with regard to how it can provide plots to support self-builders. Paragraph 57-024 of the PPG sets out a variety of approaches that need to be considered – including the use of their own land. This is reiterated in para 57-14 of the PPG which sets out the need for Council's to consider how they can support the delivery of self-build plots through their housing strategy, land disposal and regeneration functions. The Council must investigate other means by which to promote self-build custom house-building opportunities, including the use of its own land, it has not been able to bring this forward in the Local Plan. We would suggest that it should conclude these investigations before requiring the provision of service plots on larger sites.

Finally, the Council will also need to carefully consider their evidence to ensure that it is sufficiently robust to support the proposed requirement. Paragraph 67-003 of PPG requires Council's to review their registers to ensure that those individuals or groups who are on the list are still interested and that there is no double counting with other registers. Where lists have been reviewed elsewhere the number of self-build plots to be planned for have dropped significantly. In Runnymede for example more stringent registration requirements were applied in line with national policy and saw the numbers of interested parties on the register fall from 155 to just 3.

## **Conclusion**

I trust that the Council will find these comments useful. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry. The HBF would like to be kept informed of the progress of the document. Please use the contact details provided below for future correspondence.

Yours faithfully



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