

London Borough of Barking and Dagenham  
Planning Policy  
C/O Be First  
9<sup>th</sup> Floor Maritime House  
1 Linton Road  
Barking  
IG11 8HG

19 February 2020

Dear Sir / Madam

### **Barking and Dagenham Draft Local Plan: Regulation 18**

Thank you for consulting on the Barking & Dagenham Local Plan. The following response is provided by James Stevens, Director for Cities, on behalf of the Home Builders Federation (HBF).

The Home Builders Federation (HBF) is the representative body of the home building industry in England and Wales. The HBF's member firms account for some 80% of all new homes built in England and Wales in any one year, and include companies of all sizes, ranging from multi-national, household names through regionally based businesses to small local companies. Private sector housebuilders are also significant providers of affordable homes, building 49% of affordable homes built in 2018/19.

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### **Plan period**

It would be helpful if the Council made it clear what period of time the Plan is intended to operate over. HBF's preference would be for the Council to set the Plan for the next ten years – 2019/20 to 2028/29 to align with the Draft London Plan. It is not possible to prepare a local plan with a longer timeframe than this owing to the uncertainty with Greater London's housing land supply beyond 2028/29 (see paras. 130 and 131 of the examining Panel's Report).

As the Panel remarked in connection with the Mayor's capacity assessment of London's housing land supply, (see para. 151) *"simply 'rolling-forward' the existing targets beyond 2029 would not be effective...Simply applying the local needs housing assessment after that date through this Plan would not properly reflect the capacity issues in London"*.



Further, in para. 150 it observes *“Given that (the targets) are derived from an assessment of capacity, setting realistic targets over a longer time span would be problematic given that circumstances might change unexpectedly”*.

Instead, the Council should monitor its performance against the new London Plan targets, policies and objectives, and it should make preparations to update the Barking & Dagenham Local Plan in line with the review of the London Plan. This will be necessary to reflect a revised London Plan which will need to be in place by 2024/25 (para. 595 of the Panel Report).

### **Duty to Cooperate**

The Council will need to engage with its legal Duty to Cooperate.

After years of uncertainty on this issue, the Panel examining the Draft London Plan has confirmed that the duty to cooperate does not apply to the preparation of the London Plan (see para. 17). This is because the London Plan is not by legal definition a development plan document. As such the Mayor is not required by law to discharge this duty on behalf of the London boroughs. He could choose to do so but has chosen not to. The Mayor’s decision to avoid the duty means that the duty now resides clearly with Barking & Dagenham Council to discharge.

Despite expectations by the Planning Inspectorate and London boroughs (see for example the Inspector’s report on the Croydon local plan, January 2018) this was not a matter addressed by the Draft London Plan or the previous London Plan. Although many London boroughs have attempted to insist that the Mayor is responsible for discharging the duty – both legally and practically – the Panel Report on the Draft London Plan confirms that this view is an erroneous one.

Paragraph 24 of the NPPF states that local planning authorities must cooperate with each other on strategic matters that cross administrative boundaries. As part of its duty, Barking & Dagenham is responsible for addressing the unmet housing needs of London – the plan area – which cannot be met within that plan area (NPPF, para. 26).

The new London Plan, like the previous London Plan is faced with the problem of a very large unmet housing need – 140,000 homes that are needed but which cannot be accommodated over the next ten-year London Plan period. Barking & Dagenham Council will need to show through this plan how it has endeavoured to accommodate an element of that unmet need through negotiations with local authorities in the wider south east. The Council could focus first upon its own unmet need, based on the downwards-revised housing targets in the new Draft London Plan, although we acknowledge the difficulties associated with this because London is treated as a single housing market, and need (and unmet needs) are not directly apportioned to individual London boroughs by the London Plan. The overall need for Greater London is apportioned on the basis of the capacity available in each borough. Barking and Dagenham Council should seek a direction from the London Mayor on this point so that it is able to effectively engage with the duty to cooperate.

However, assuming that each London local authority is responsible for dealing with the difference between the overall need apportioned to it by the London Plan and the revised capacity following the Panel Report (what other way is there to apportion the unmet need?) then Barking & Dagenham’s portion of the objectively assessed need for Greater London is 22,640 homes, but the revised capacity is 19,440 homes. This means that there would be a shortfall of 3,200 homes. Barking & Dagenham Council

should use this as the basis for its negotiations with local authorities in the wider south east, especially the local southern Essex authorities of Thurrock, Brentwood and Basildon where residents of the borough have tended to move to historically.

The Council will be familiar with Sevenoaks Council's recent failure on the Duty to Cooperate. The Inspector's letter can be read here:

[file:///C:/Users/stevej/Downloads/ED44\\_Inspector's letter to SDC 13.12.19 .pdf](file:///C:/Users/stevej/Downloads/ED44_Inspector's%20letter%20to%20SDC%2013.12.19_.pdf)

We recognise that this might be very difficult to manage but it is the position that the Mayor of London has placed the Council in by refusing to take responsibility for this important strategic planning issue.

### **Draft policy SP2: Delivering homes that meet people's needs**

The Draft Policy states that the Council will support the delivery of the ten-year net housing target.

The revised ten-year target for the Council is 19,440 net new homes reflecting the Panel's comments on the feasibility of the small-sites component of the Mayor's housing land supply estimate. The original apportionment to Barking & Dagenham of London's overall objectively assessed need was to have been 22,640 but this has been revised downwards to 19,440 to reflect the Panel's view of realistic capacity. The Mayor's *Intend to Publish* version of the Draft London Plan support this recommendation of the Panel.

While we welcome the ambition of the Council to deliver 33,765 homes over the period 2019-2034, we are not convinced that there is a reliable land supply to underpin this aim. Although the Draft London Plan says that local authorities should draw upon the GLA SHLAA 2017 to set targets beyond 2028/19 (para. 4.1.12) the SHLAA assumptions are too unreliable for this post-Plan period. Instead, it would be more sensible to plan for the next ten years and monitor performance against the new London Plan policies, while preparing a new local plan to reflect the new London Plan which is scheduled for consultation in 2024.

We note paragraph 3.6. HBF does not support the use of the Standard Method in London (which indicates a need for 2,225 homes a year) by individual or groups of London boroughs. This is not because we are opposed to the Standard Method but because the London Plan undertakes the assessment of need and then apportions the need on the basis of a combination of assessed and estimated capacity (with too much emphasis on estimated capacity). This approach has been declared sound by the examining panel despite HBF's misgivings. London is treated as a single housing market area. We note that the Standard Method generates a figure that is lower than the capacity-based apportionment by the London Plan (2,225dpa compared to 22,640dpa). Conversely, some inner-London boroughs have figures under the Standard Method that are very much higher than their London Plan apportionments. This is why it is essential that every London borough conforms to one system, not a mix of the Standard Method and the Mayor's capacity-based approach to setting targets (whatever the shortcomings might be with the latter approach). As the Draft London Plan says in para. 4.1.2:

For the purposes of the Plan, London is considered as a single housing market area, with a series of complex and interlinked submarkets. The advantage of strategic planning is that it allows London to focus development in the most sustainable locations, allowing all of London's land use needs to be planned for with an understanding of how best to deliver them

across the capital. Because of London's ability to plan strategically, boroughs are not required to carry out their own housing needs assessment but must plan for, and seek to deliver, the housing targets in this Plan. These have been informed by the SHLAA and the SHMA.

### **Small sites**

National policy (para. 68) requires plan-makers to identify land to accommodate at least 10% of the housing requirement on sites no bigger than one hectare. This is an important policy to support small developers and help them grow in number.

The Mayor's approach to small sites in the Draft London Plan differed from the approach stipulated in national policy. The Mayor overly relied on a theoretical assessment of potential capacity, coupled with a 'presumption in favour' of the development of small sites in the hope that that this might increase housing delivery via small sites. This 'probability' approach was found to be a flawed one at the examination and estimates of the potential yield via this approach have been scaled-back significantly. By contrast, national policy requires the active identification and allocation of small sites by plan-makers. This is a much more effective way to increase the number of small sites for residential development and it is what small developers need to provide them with certainty.

The Draft London Plan requires provision to be made for 1,990 homes on small sites of a quarter hectare in size or less over the ten-year plan period (Table 4.2). This is derived from the 12-year windfall trend plus an allowance – 0.3% - to take account of the beneficial effect of the new policy drive (see Panel Report para. 173). We accept that the quarter hectare site size might be a more appropriate scale for London in contrast to the one hectare set nationally. We also note that the revised small sites figure of 1,990 is broadly comparable to the national policy requirement of *at least* 10% which would require land to be allocated to enable 1,944 homes out of the total of 19,440, to be provided on small sites. HBF is content, therefore, that the figure of 1,990 is the right figure for small site delivery, but the Council will need to identify and allocate sites of a quarter hectare in size to achieve this target. Relying on windfall is an ineffective approach that fails to reflect the requirements of the NPPF. A more pro-active approach is needed.

We have considered the Council's *Interim Five-Year Housing Supply Statement* (commencing 1 April 2019). This is useful and very helpful. It does include some small sites although it is unclear whether these fall within the Draft London Plan's stipulation that these should be a quarter hectare in size or less. Also, it is unclear which locations, among those listed in the schedule, are the small sites, although one can hazard a guess. Nevertheless, these small sites, total to 433 homes. This would fall well short of the requirement for 1,990 homes. This is a very good start, but the Council needs to take the work further.

The Council's draft Plan is unclear at the moment about what it is doing to support this aspect of national and London Plan policy. The Council will need to engage with this area of policy before it consults again at the Regulation 19 stage. HBF would be happy to talk to the Council about this area of work.

### **Stepped trajectory**

We note the intention to adopt a stepped trajectory. We acknowledge the challenge in scaling-up delivery to reflect the new Draft London Plan targets. We reserve judgement as to whether this is justified compared to a flat trajectory. The problem

with a backloaded trajectory is the challenge of increasing delivery in the latter five years of the Plan (as we have argued above, we consider that it is only appropriate for London boroughs to plan for 10 years) given the time it takes to secure planning permission and given the nature of build-out rates among other things. It also means delaying meeting housing needs which in a city with major issues of affordability is something to be avoided if possible (a problem that will be made worse by the major shortfall across Greater London of future housing supply compared to the assessed housing need). In view of the existing need for affordable housing in the borough, this should be avoided if possible.

We have noted the *Interim Five-Year Housing Supply Statement*. This shows that 10,507 homes could be provided in the next five years. The Draft London Plan would require 19,440 homes in total to be provided over the next decade. This averages to 1,944 homes a year and it would require 9,720 homes in the first five years plus a buffer of 20% (owing to significant under-delivery in previous years). This would indicate that there is a requirement for 11,664 homes in the first five years. This demonstrates that against the new Draft London Plan housing target for Barking & Dagenham, the Council would still be operating a backloaded trajectory.

In order to avoid a backloaded trajectory and avoid deferring meeting housing needs, the Council should endeavour to identify (and allocate) more small sites so that it is reasonably confident that it can deliver 11,664 homes in the first five years.

### **Planning for older persons housing**

We note Draft Policy SP2, part h). National policy and guidance attach importance to increasing the supply of older persons housing. There does not appear to be a specific policy for the supply of older persons housing. Policy H13 of the Draft London Plan seeks to increase the supply of older persons housing. Draft London Plan has established annual benchmark targets for the supply of older persons housing in Table 4.3. This requires 70 units of older persons accommodation a year. This is not a target that must be met by the Council each year, but it is one that indicates the level of new supply that the Council should be aiming to provide. Without a target there is a risk that the supply of housing for older people could be neglected.

The Council should include a policy for older persons housing that translates Draft London Plan policy H13 into the Barking and Dagenham Local Plan which explains how the Council will endeavour to deliver this target of 70 units a year. HBF considers that the Council should include a policy in the Local Plan that says that applications relating to older persons housing will be considered favourably, and applications will benefit from a presumption in favour of development where supply against the benchmark target has failed to reach the level required in the previous year.

### **Draft Policy DM1: Affordable Housing**

Part 1 of the draft policy is unclear. It states that the Council will expect a minimum of 35% affordable housing (subject to financial viability) in accordance with the London plan...". This is not what the Draft London Plan states. Part C of Policy H6 of the Draft London Plan states that applications that 'meet or exceed the relevant level of affordable housing...' will benefit from the Fast Tracked Route. Part D of the same policy states that "Fast tracked applications are not required to provide a viability

assessment at the applications stage". A viability assessment is required only if the developer fails to make the agreed level of progress in building out the scheme.

The Council in asking for a viability assessment to accompany an application is asking for something that is contrary to the Draft London Plan. This has the effect of vitiating the potential benefits of the Mayor's policy intervention which is articulated in his policy H6. The aim of the threshold approach is to *incentivise* developers to commit to at least 35% affordable housing on all private-led schemes. The effect of Barking & Dagenham Council's policy is to remove the incentive in Draft London Plan policy H6.

We acknowledge that legislation only requires general conformity with the London Plan. The Council is not obliged to adopt all of London Plan policy. It may choose a different approach to the supply of affordable housing. However, if the Council is intentionally not choosing to follow policy H6 of the Draft London Plan then: a) it should state this clearly in its local plan; and b) it will need to take account of what national policy (in the NPPF) says. National planning policy requires policies to be 'clearly written and unambiguous' (para. 16) and that policies set out the contributions expected from them so that it is clear to the applicant what is expected from them (para. 57). Para. 62 of the NPPF expands what is required in terms of making policy on affordable housing. A draft policy that says that 35% is only the 'minimum' required, and a viability appraisal will need to accompany all applications to assess whether more could be provided, would not satisfy Draft London plan or national policy.

If the Council does not wish to reflect the Draft London Plan *in full* - an approach that has been tested and found sound at examination (subject to agreement for the Secretary of State) - then the Council will have to have regard to national policy when devising its different approach to affordable housing for its local plan.

The Council may also need to revise Draft Policy DM36 (development contribution) to ensure this is consistent with policy DM1.

Section 2 of the Draft Policy states that schemes of 2 to 9 dwellings may be required to provide a contribution to affordable housing. This is contrary to national policy in two respects. First, policies need to be written clearly so that it is evident to both the applicant and the decisions-taker what is expected from a residential development. This is vital as we move into a policy regime where all planning applications are expected to be fully compliant with the policies in the London and Local Plan. Clear and unambiguously written policies will send price signals to landowners and developers. This is especially important for small developers who need to be able to price the development and assess risk accurately. Therefore, either the Council will expect development contributions from small schemes, or it will not. It has to be clear one way or another. If it does seek contributions it will need to specify exactly what those financial contributions will be and how these will be calculated.

Second, the policy is contrary to national policy. Para. 63 of the NPPF states that affordable housing should not be sought from schemes of ten units or fewer (or non-major developments). The purpose of this national policy is to encourage more small schemes come forward and help more small housebuilding companies to become established. This is necessary to reverse the huge decline in their number over the last 30 years. In 1988 small builders were responsible for 4 out of 10 new homes built. Today it is just over 1 in 10 (*Reversing the decline of small housebuilders: reinventing entrepreneurialism and building more homes*, HBF, 2017). The

collapse of small builders has been a contributing factor to lower rates of delivery nationally. Yet more small builders are essential to competition and diversification in the housing market. The presence of more small builders should help to force the pace of build-out on larger sites as rival companies in the locality compete for customers. We therefore urge the Council to conform to the national policy.

### **Draft Policy DM11: Responding to Place**

We note the requirements of this draft policy. We support the council's ambitions in this area but the Local Plan needs to be very clear what it expects from applicants in terms of design. This is in keeping with paragraphs 125 and 130 of the NPPF. The Draft Local Plan also needs to be clear how its policy will operate alongside Draft London Plan Policy D2: Delivering Good Design. The Council will need to be clear what its design guide or code is and if this is going to be published alongside the local plan. If it is not going to produce a design guide or code, the Council should clarify whether it is proposing rely its Townscape and Socio-economic Characterisation Study as the main guide for applicants. If the Council is going to prepare a design guide or code we refer the Council to the Government's *National Design Guide* and the supporting guidance *Design: process and tools*. It should refer to these when developing its own design guide for use in Barking and Dagenham.

Part 3 g) is too vague in seeking the 'highest standards of sustainable design'. The Council will need to specify what it wants, as para. 16 of the NPPF requires. For matters relating to the performance, layout and construction of new dwellings, we would strongly advise against the Council making policy in this area but defers instead to the Building Regulations. The Building Regulations are under review (*Future Homes Standard*) and will include more exacting standards relating to the energy efficiency and ventilation of homes. These new standards will begin to be applied in 2020. Consequently, we recommend that this part of the policy is deleted.

### **Draft Policy DM12: Tall Buildings**

Part A of the Draft London Plan Policy D8: Tall Buildings requires local plans to define what is considered a tall building for specific localities. Part B states that local plans need to identify sustainable locations for tall buildings.

The Council's local plan policy is vaguer than this, saying that this is a matter of judgement for the decision-taker. This will not provide the certainty that applicants require and has the potential to waste time and resources trying to second-guess what might be an appropriate height in any location in the borough. We recommend that the Council undertakes work to identify those locations where tall buildings would be acceptable, or, perhaps more permissively, identify those areas where tall buildings are deemed to be inappropriate. This does not mean that other design and environmental principles and standards will not apply where tall buildings are involved. By dropping the density matrix in his new Draft London Plan, the Mayor has acknowledged the need for a more permissive approach to planning for tall buildings. The Barking and Dagenham Local plan should reflect this.

### **Draft Policy DM24: Energy, Heat and Carbon Emissions**

The Draft London Plan policy for energy efficiency goes further than the Government's proposed change to Part L of the Building Regulations which would involve a 31% improvement in CO<sub>2</sub> reduction compared to current Part L. The Government's consultation document *The Future Homes Standard* (MHCLG,

October 2019) explores the costs associated with this requirement. It estimates that meeting this standard would add £4847 to the build cost of a new home. It would be less for flats (see the discussion on page 25). A 35% reduction would be more expensive still.

The Council will be familiar with the examining Panel's discussion about the viability of the Draft London Plan and local plans (para. 86 in particular) and the inability of the Mayor to insist on full compliance with the policies in the Draft London Plan until the local plan is in place. The Council will need to produce a viability assessment to support the local plan that assesses the cost of Draft London Plan and Local Plan policies. We recommend that it engages with housebuilders and landowners operating in the Borough to discuss the issues, including those with land interests in the Borough. This would be helpful to alert developers and landowners (public and private) to the emerging expectations of the Council so they can price-in the cost of these policies.

### **Draft Strategic Policy SP7: Planning for integrated transport**

In line with the Draft London Plan, the Council should consider making contributions to public transport and walking and cycling networks a priority for S106 obligations along with affordable housing. We provide comments on this in Draft Policy DM36.

### **Draft Policy DM32: Cycle and car parking**

Part 1 a) of the draft policy states that development proposals will need to meet or exceed the minimum cycle parking standards in the new Draft London Plan. The NPPF requires precision from local plan policies. Para. 16 d) expects policies to be clearly written and unambiguous so that it is evident how a decision-maker should react to a development proposal. In its current form, it is unclear how the decision-maker would know how to react to a development proposal that met the Draft London Plan standard but did not exceed this. Could s/he legitimately refuse it on this ground?

### **Draft Policy DM36: Development contribution**

The new Draft London Plan sets out in policy DF1: Delivery of the Plan and Planning Obligations, Part D, that contributions towards affordable housing and public transport improvements should be the first priority for planning obligations.

Part 1 C) of the policy DM36 identifies other areas where planning obligations may be required. This includes contributions to construction and employment skills. While we acknowledge the good intent, it is likely that endeavours in this area led by the Council will be a waste of resources. HBF, through its HBF Skills Partnership, is leading the industry on the planning for careers in construction and the content of courses. This takes a strategic approach to skills training, where interventions are informed by an understanding of what skills are needed by developers operating in particular geographic localities, and the availability, and (very importantly) the course content provided by local colleges. For skills training to be effective, this work has to be informed by the skills needs and experiences of the development industry and an understanding of what colleges are currently able to provide. We advise that the Council does not demand contributions towards skills training, and instead prioritises contributions towards other objectives, such as the supply of affordable housing and public transport.



The risk with initiatives devised outside of this strategic framework is that they train people inadequately and in skill-sets that are not needed by the housebuilding industry.

In the meantime – but outside of the local plan – the Council should establish with other east London councils, a forum for developers and course providers to discuss their future skills needs.

Part 1 E) of the policy could be unclear. Draft Policy DM1: Affordable Housing states that viability assessments will need to accompany the application. This is contrary to the Draft London Plan. The Council will need to clarify its position in connection with its policy DM1. Insisting on viability appraisals with applications is no longer the accepted approach in national policy.

Part 3 can be deleted as the Mayor's attempt to suspend the Vacant Building Credit in Greater London was found to be unsound as it is contrary to national policy.

### **Viability of the local plan**

PPG, para. 006 observes:

*“Plan makers should engage with landowners, developers, and infrastructure and affordable housing providers to secure evidence on costs and values to inform viability assessment at the plan making stage.”*

It would be helpful if the Council could convene one or two meetings with developers, housing providers and landowners to discuss the factors that will need to be considered as part of the viability assessment of the local plan. These should be convened between now and consultation on Regulation 19 to allow the public to provide its priorities. The first meeting could discuss the inputs into the assessment – i.e. the costs and values - to be used. The second could discuss the initial outputs of the assessment and what this is signalling in terms of policy requirements. The Council might also wish to hold events with the general public to discuss the policy choices that will probably have to be made. This needs to take place between now and consultation of the Regulation 19 version of the plan.

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I hope that the Council will find these representations helpful. HBF is willing to meet to discuss these comments to help the Council secure a sound plan.

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