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17/03/2019

Dear Sir/ Madam

### **Response by the Home Builders Federation to the Brentwood Borough Draft Plan consultation**

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.

**We would therefore like to submit the following representations on the Local Plan and we would welcome, in due course, participating in hearings of the Examination in Public.**

#### **Duty to co-operate**

The Duty to Co-operate (S110 of the Localism Act 2011 which introduced S33A into the 2004 Act) requires the Council to co-operate with other prescribed bodies to maximise the effectiveness of plan making by constructive, active and on-going engagement. The high-level principles associated with the Duty are set out in paragraph 24 to 27 of the 2019 National Planning Policy Framework (NPPF) and in paragraph 61-021 to 61-025 of Planning Practice Guidance. In determining if the Duty has been satisfactorily discharged it is important to consider the outcomes arising from the process of co-operation and the influence of these outcomes on the Local Plan.

From the evidence that has been provided as part of this consultation we are concerned that the actual outcomes from the duty to co-operate with regard to this plan are minimal. There has been joint working in the preparation of strategic housing market assessment covering the South Essex HMA and a broad commitment to prepare a Joint Strategic Plan for South Essex in future, but there does not seem to have been much progress made in how unmet housing needs in the HMA will be addressed through those plans being prepared now. For example, the recent decision by Castle Point not to consult on a draft a Local Plan, which also did not meet identified



needs, suggests that there is little appetite within the HMA to meet the housing needs of their own areas let alone the needs of neighbouring authorities.

So, whilst we welcome work that is being undertaken with regard to the preparation of a Joint Strategic Plan there appears to be little evidence to indicate that the unmet housing needs that will occur as a result of those plans being prepared now will be addressed within a reasonable timeframe to be effective in meeting needs and addressing affordability. To seek to address strategic and cross boundary matters to future iterations of the plan cannot be considered consistent with paragraph 61-014 of PPG which states:

*“Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates ...”*

If, as required by PPG, the Council's approach to the duty to co-operate is judged on the basis of the outcomes achieved in this local plan then the Council cannot be considered to have met the duty to co-operate. There would appear to have been discussions between authorities and a commitment to prepare a joint plan but no concrete actions or outcomes that will lead to the unmet housing needs of its neighbouring authorities, such as Basildon, being addressed through the plans being prepared at present. South Essex authorities cannot put off meeting needs until the Joint Strategic Plan is prepared.

Away from the co-operation with the South Essex authorities there appears to have been minimal consideration as the cross-boundary impacts arising from London's inability to meet housing needs. The Mayor has stated in the new London Plan that the Capital will fall short of meeting housing needs by 10,000 homes over the next ten years. However, given the significant increase in delivery expected from outer London Boroughs the HBF is concerned that London will not come close to meeting housing needs in full. This will inevitably impact on housing needs in those areas adjoining London and it is essential that these issues are considered. At present it would appear that Council's in the wider South East do not consider there to be an issue as the Mayor or other London Boroughs have not raised this issue directly with them. However, it is incumbent on these authorities to recognise this concern and to proactively work with their London neighbours. It is not sufficient to ignore the problem given the significant impacts it will have on demand for homes in their area and the subsequent impact on affordability this is likely to have.

The Council has also failed to produce any Statements of Common Ground with its neighbouring authorities as is required by paragraph 27 of the NPPF. These are now a key element of plan preparation that the Council should have been prepared with its neighbouring authorities to enable those responding to the plan to have a clear understanding of what has been agreed and demonstrate effective joint working. At present all that has been prepared is a draft structure for a statement of common ground. This level of co-operation is disappointing given the concerns regarding plan preparation in this area; the unmet needs in Basildon; and the claims that the

authorities will prepare at JSP for South Essex. We would have expected more progress on SoCG at this stage.

## **SP02: Managing Growth**

### The policy is unsound as it is not consistent with national policy and ineffective

The Council considers its housing needs using the standard methodology is 350 dwellings per annum. However, this figure was calculated using the 2016-based household projections. We recognise that at the time of writing this document there was considerable uncertainty as to which projections should be used but now that the Government has clarified its position the Council must amend the local plan to reflect the latest guidance. The section on housing needs will need to be updated and show that using the standard method the starting point for considering housing needs will be based on the 2014 household projections and results in annual need figure of 452 dpa.

#### *Meeting the needs of neighbouring authorities*

Paragraph 60 of the NPPF requires Councils to consider any needs that cannot be met within neighbouring areas. As we have mentioned above London has identified that it has a 10,000 shortfall against its housing needs and Basildon have a minimum housing requirement in their plan of 15,465 homes (with land provision for 17,791 homes) against a housing needs target of 19,771 over a plan period of 2014 and 2034. For Basildon alone there would appear to be a shortfall during this period of 1,980 dwellings against expected delivery and 4,306 dwellings if the minimum requirement is reached. Given this situation the Council should have agreed a Statement of Common Ground with Basildon clearly identifying and agreeing the scale their shortfall and identifying opportunities for additional allocations to address these unmet needs in the Brentwood Local Plan.

#### *Delivery buffer*

As part of the uncertainty with regard to the household projections the Council considered it necessary to include a buffer as part of its housing needs assessment. This led the Council to consider its housing requirement to be 456 dpa. However, in the paragraph 4.15 of the Local Plan this is set out as being required to provide flexibility in the supply of housing sites as well as to offset the uncertainties faced by the Council following the publication of the Government's 'technical consultation'. We would agree with this statement and it will be necessary for the Council to continue to include a buffer within its housing land supply. This will ensure that there is flexibility to take account of any changing circumstances, as required by paragraph 11 of the NPPF, and the potential for slow delivery. This is especially the case where a Council is relying on a few large strategic sites or a specific area to meet the majority of the area's needs. Considering the Council intends to deliver 65% of its housing needs on such sites it is essential that a substantial buffer is included within the Council's housing supply. We would suggest that a 20% buffer is therefore retained within the Council's land supply to secure the necessary flexibility. This level of flexibility has been

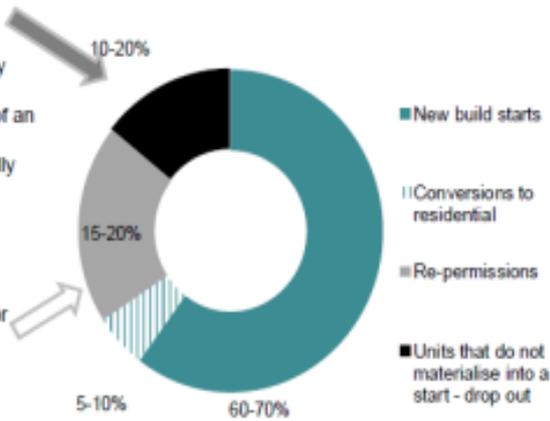
recognised as an important aspect of plan making for some time and was highlighted by DCLG in a presentation to the HBF Planning Conference in September 2015.

 Department for Communities and Local Government

## In recent years there has been a 30-40% gap between permissions and housing starts

- **Gap of around 30-40%** between the number of permissions given for housing and starts on site within a year. Estimate that for a year's permissions for housing around:
  - **10-20%** do not materialise into a start; the permission 'drops out': this could be because -
    - the landowner cannot get the price for the site that they want
    - a developer cannot secure finance or meet the terms of an option
    - the development is later not considered to be financially worthwhile
    - there are supply chain constraints hindering a start.

There may be scope to reduce this through policy.
  - **15-20%** are not abandoned but a **re-permission** is sought, for example to make a major change to plans or to extend the development period.
- Recent data and realities of private market suggests need to **plan for permissions on more units than housing start/completion ambition.**



This slide illustrates that work by the Government suggests 10-20% of residential development with permission will not be implemented and that there is a 15-20% lapse rate on permissions. This does not mean that such sites will not come forward but that delays in delivery, changing ownership or financial considerations can lead to sites not coming forward as expected. For this reason, DCLG emphasised in this slide “*the need to plan for permissions on more units than the housing start/completions ambition*”. More recently these same concerns were identified in Sir Oliver Letwin’s independent review of build out, delivery on large housing sites may be held back by numerous constraints including discharge of pre-commencement condition, limited availability of skilled labour and building materials, a lack of capital, constrained logistics of sites, slow delivery of utilities and absorption rates of open market sales.

### *Sequential land use*

It is not clear what the Council are seeking to achieve through the inclusion of the sequential land use test as part of the determination of applications. The approach to brownfield land within NPPF relates to ensuring that development is maximised on such sites before considering, as part of the plan making process, whether it will be necessary to use green field sites to meet the development needs of an area. The sequential consideration is part of plan making not decision making once the plan has been adopted. It would appear that the Council has undertaken this work and as such

it is not clear why the sequential land use test should inform decision making. As such we would recommend that paragraph 4.22 and 4.23 are deleted.

### *Stepped trajectory*

We do not consider the Council's decision to adopt a stepped trajectory within policy SP02 to be justified. Paragraph 4.19 outlines that the high proportion of land designated as Green Belt makes it extremely difficult to achieve a five-year land supply without a stepped trajectory. We would disagree with this statement. If the Council were to allocate sustainable small and medium sized sites within the Green Belt these would be able to contribute to the Borough's five-year housing land supply. Once the plan is adopted such sites would no longer be constrained and as such can come forward relatively quickly and certainly start delivering within five years of the plan's adoption. It would appear that the Council have planned on the basis of stepped trajectory rather than seeking to meet annual needs in full from the adoption of the plan.

There is also an inconsistency within the stepped trajectory as set out in the policy. The Council states that the trajectory between 2016/17 and 2022/23 will be 310 dpa. However, in their 5-year housing land supply paper we note the Council has set the requirement at the level of delivery in 2016/17 and 2017/18. We would therefore question whether the plan period is in fact 2016 to 2033 given that these two years appear to have been discounted by the Council. If this is the case the Council will need to revisit their plan period and extend it by two years to finish at the end of 2035/36. This would also ensure that from adoption the plan will have a 15-year period as required by national policy.

### **SP03: Health Impact Assessments**

#### Policy is unsound as it is not consistent with national policy and is ineffective

We recognise the importance of ensuring new development supports the wider aims of local authorities and their partners to improve the health and well-being of their residents and workforce. However, the requirement for all applications of 50 or more dwellings to undertake a Health Impact Assessment (HIA) is unnecessary and an additional burden on applicants. The PPG sets out that HIAs "*may be a useful tool to use where there is expected to be significant impacts*" but it also outlines the importance of the local plan in considering the wider health issues in an area and ensuring policies respond to these concerns.

We consider that the Local Plan should already have considered the impact of development on the health and well-being of their communities, identified the infrastructure needed to meet the health needs of its residents and set out policies to address any concerns. Where a development is in line with policies in the local plan an HIA should not be necessary. Only where there is a departure from the plan should the Council consider requiring an HIA.

## **Plan viability – cumulative costs**

Paragraph 34 of the NPPF out that polices in the plan should not undermine the the deliverability that plan. In particular the Government are concerned with the cumulative impact of the costs placed on development by local authorities. This is clarified in paragraph 10-002 of PPG which states:

*“Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.”*

So, whilst individual policies on their own may appear to have relatively small impacts on viability it is important to consider how the totality of the costs that are imposed on development through the local plan will impact on development viability. To a certain extent the viability study has examined the impact of the costs on development. It has tested the impact of the affordable housing requirement and other costs such as those for the optional technical standard and improving emissions. However, we are concerned that, for example, the impact of policies on sustainable construction (BE02), allotments (BE20), Green and Blue Infrastructure (BE18), access to nature (BE19), digital infrastructure (BE10), open space (BE22), have not been fully considered as part of the viability assessment.

All these policies will have a cost impact and it is not evident that the viability study has considered the full impact the costs this will place on development in future. For example, BE02 will increase build costs for a development with an expectation for development to go beyond what is normally expected (if not then there is no need for a policy) and as it is likely they will have a cost impact in addition to current build costs. For example, paragraph 5.19 in the supporting text for BE02 of the local plan states that all new development should be:

*“... designed to maximise resources efficiency and identify, source, and use environmentally and socially responsible materials”*

Such requirements to use alternative, potentially more costly materials, increase the construction costs of a development and must be reflected within the viability study. We would suggest that all these requirements indicate that the study should use a higher build cost for development rather than the median cost. This would ensure the place making policies that the Council is imposing through the local plan are fully considered and the Council can be confident that their local plan will not have an impact on the deliverability of development.

### Recommendation

The council must test its policies on the basis of the increased build costs that would be the likely outcome of those policies that have not been adequately tested. If the Council considers, as is suggested in the viability study, that such policies do not to

require development to go beyond building regulations or normal design expectations, then we would suggest they are deleted or amended as they do not serve a clear purpose or they provide the unambiguous position against which it is evident as to how a decision maker should react - as required by paragraph 16 of the NPPF.

## **BE02: Sustainable construction and resource efficiency**

### Policy is unsound as it is inconsistent with national policy

As set out above we are concerned that the increased build costs resulting from this policy are not fully reflected in the viability study. Aside from this point we are also concerned that part f of the policy, which requires the inclusion of renewable and decentralised energy as part of a new development, is not consistent with national policy. Whilst paragraph 153 of the NPPF states that local plans can expect development to comply with such provision it also states that they are only required to comply with such policies where it is either feasible or viable. To ensure consistency with national policy part f of BE02 should be amended to reflect this position.

### Recommendation

We would recommend the following amendment is made:

*“f. include commercial and domestic scale renewable energy and decentralised energy as part of new development, where feasible and viable.”*

## **BE03: Carbon reduction, renewable energy, and water efficiency**

### Policy is unsound as it is inconsistent with national policy

Whilst we recognise there is some scope to allow for an improvement on emissions levels over and above existing building regulations it is still government policy to seek to deliver improvements to emissions from buildings through the building regulations. As such we do not think it is necessary to include in the table at part a of this policy that from 2020 buildings will be delivered in line national zero carbon policy. If these regulations are introduced, then, as recognised in paragraph 5.33 of the Local Plan, it they will be applied through building regulations and not through the local plan. If this regulation is not applied and the Council wishes to revisit this policy, it should do so through a local plan review.

## **BE10: Connecting new developments to digital infrastructure**

### The policy is unsound because they are unjustified and contrary to national policy.

Following the Government’s *Housing Standards Review*, the Written Ministerial Statement of 25 March 2015 announced that local planning authorities preparing Local Plans “*should not set any additional standards or requirements relating to the construction, internal layout or performance of new dwellings*”. In terms of the

construction, internal layout and performance of new dwellings local planning authorities are only allowed to adopt the three optional technical standards, subject to evidence of need and viability. Council's should not seek higher standards than Building Regulations on any other technical standard – including Part R1 Physical infrastructure for high speed electronic communications networks.

### **BE17: Parking Standards**

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

The Council does not set out in this policy what is required by an applicant with regard to parking provision. The Council have stated that this will be set out in county wide guidance. The approach taken by the Council is therefore unsound as it does not comply with legislation that prevents the Council from setting policy in supplementary planning documents, which cannot be challenged through an Examination in Public. This principal was most recently tackled in *William Davis Ltd & Ors v Charnwood Borough Council* [2017] EWHC 3006 (Admin) (23 November 2017) where supplementary planning document strayed into an area that should be considered by a development plan document. This decision quashed an SPD that contained policies that clearly encouraged and imposed development management policies against which a development could be refused. Policy can only be established through the Local Plan to ensure these cannot be amended without the required consultation and examination in public.

#### Recommendation

Parking requirements currently proposed to be established in the SPD should be set out within an appendix to the Local Plan.

### **HP01: Housing mix**

Policy is unsound as it has not been adequately justified

#### *Accessible homes*

The Government has established that the optional technical standard should be based on evidence that demonstrates a clear need for housing for people with specific housing needs and plan to meet this need. In considering whether there is evidence to support the introduction of these standards the Government set out that these should include the likely future need for housing for older and disabled people, the size and type of housing needed to meet evidenced needs, the accessibility of the existing stock and the need across different tenures.

However, the evidence presented in the local plan suggests that the Council have based their decision to require all homes to be built to part M2 of the building regulations is based on an increased proportion of older people in the population. No consideration has been given as to whether these older people will need a more

accessible home or how many of those who will move to a new home will need it to be adapted in future. It is also worth considering that the better accessibility of new homes compared to the existing stock will mean that it will better meet the needs of the majority of older people. Without this evidence the Council cannot justify a requirement that all new homes should be built to the higher accessibility standard. There may be a need for some homes to be built to this standard, but the Council will need to consider how many such homes are required based on local needs.

With regard to part M4(3) whilst we would agree that there may be some need for such homes the Council must base this on evidence of local needs. The Council evidence is based on national evidence and cannot be considered appropriate justification.

### **HO5 Affordable housing**

The policy is unsound as the viability study has not taken into account the cumulative impacts of its policies

As set out above we are concerned that the cumulative impact of the development management policies has not been adequately tested in the viability study and that this could compromise the ability of development to deliver 35% affordable housing as set out in policy HO5. The Council needs to make choices over its priorities as to the delivery of new development to ensure that schemes come forward without the need for site by site negotiation.

### **HP06: Standards for new housing**

The policy is unsound as it has not been justified.

PPG (ID 56-020) identifies the type of evidence required to introduce such a policy. It states that:

*“where a need for internal space standards is identified, local planning authorities should provide justification for requiring internal space policies. Local planning authorities should take account of the following areas:*

- *Need – evidence should be provided on the size and type of dwellings currently being built in the area, to ensure the impacts of adopting space standards can be properly assessed, for example, to consider any potential impact on meeting demand for starter homes.*
- *Viability – the impact of adopting the space standard should be considered as part of a plan’s viability assessment with account taken of the impact of potentially larger dwellings on land supply. Local planning authorities will also need to consider impacts on affordability where a space standard is to be adopted.*
- *Timing – there may need to be a reasonable transitional period following adoption of a new policy on space standards to enable developers to factor the cost of space standards into future land acquisitions.”*

The Council therefore need robust justifiable evidence to introduce any of the optional housing standards, based on the criteria set out above. However, we could not find any evidence to support the adoption of these standards in the local plan. Therefore, whilst the Council has considered the impact of these standards on viability they cannot be adopted if there is no evidence to suggest that they are needed. Without this evidence the policy must be deleted.

Need is generally defined as 'requiring something because it is essential or very important rather than just desirable'. The Council seem to suggest that the justification for the policy is a desire to improve the quality of housing for the residents of Epping Forest who deserve high quality homes. However, there is no evidence or justification that confirms that introducing the NDSS will improve the quality of housing or that these will improve the living environment for residents. We consider that additional space does not necessarily equal improvements in quality. There must also be concerns that the introduction of the NDSS could lead to people purchasing homes with a smaller number of bedrooms, but larger in size due to the NDSS, which could therefore have the potential to increase issues with overcrowding and potentially lead to a reduction in quality of the living environment.

We consider that standards can, in some instances, have a negative impact upon viability, increase affordability issues and reduce customer choice. This could lead to a reduction in housing delivery, and potentially reduce the quality of life for some residents. In terms of choice some developers will provide entry level two, three and four-bedroom properties which may not meet the optional nationally described space standards but are required to ensure that those on lower incomes can afford a property which has their required number of bedrooms. The industry knows its customers and what they want, our members would not sell homes below the enhanced standard size if they did not appeal to the market. We do not consider that this policy is required, it is considered that local needs can be met without the introduction of the nationally described space standards.

We also note that this policy does not appear to include a transition period as set out in the PPG. If this policy is to be retained in the we would support the inclusion of an appropriate transition period, considering the lead in times for residential from land negotiations to development.

## **Conclusions**

At present we do not consider the plan to be sound, as measured against the tests of soundness set out in paragraph 35 of the NPPF, for the following reasons:

- Failure to adequately co-operate with its neighbouring authorities to ensure needs are met in full. It cannot be considered sound to leave decisions on this matter to a future joint strategic plan;
- Housing needs have not been assessed in accordance with standard methodology;

- The use of a stepped housing trajectory has not been adequately justified
- The full cumulative impact of viability has not been tested;
- Policies on carbon reduction and digital infrastructure are inconsistent with national policy;
- Parking standard should be included within the local plan; and
- Optional technical standards for space and accessibility have not been justified.

We hope these representations are of assistance in taking the plan forward to the next stage of plan preparation and examination. Should you require any further clarification on the issues raised in this representation please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Behrendt', with a stylized flourish at the end.

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